**26.08 TESTAMENTARY CAPACITY (INSANE DELUSIONS)**

No instruction, See Comment.

Use Note

An instruction regarding insane delusions should follow Instruction 26.07 when testamentary capacity is contested on the basis of evidence of insane delusions.

Comment

The courts have had difficulty deciding how to treat the wills of people suffering from schizophrenia, paranoia or other major affective disorders. These mental conditions have been lumped for centuries under the "insane delusion" rule. See E. Ross & T. Reed, Will Contests § 6.10, at 42 (1992). Although there is no Alaska case law on the insane delusion rule, Judge Ross and Professor Reed's comments offer some guidance:

In order to cover the problems of the person who knew the natural objects of his or her bounty, the nature and extent of his or her property, and could make a 'rational' plan for disposition, but who nonetheless was as crazy as a March hare, . . . jurists invented the notion of the 'insane delusion.'

  **. . . .**

Judges have concocted a number of verbalizations to describe an insane delusion. Some courts, notably in Arkansas, define an insane delusion as a 'fixed belief in something which no rational person would believe in.' Other jurisdictions call it a 'mental disease in which persons believe in what they imagine as though it were real.' Another popular formula says that an insane delusion is a 'false and fixed belief not founded on reason and incapable of being removed by reason.' All these formulations have the following common elements: If a testator is suffering from an 'insane delusion,' the testator will (1) possess an irrational acceptance of a phenomenon as actual, when it is not actual, and (2) in contemplation of the phenomenon, will subsequently alter testamentary plans.

E. Ross & T. Reed, Will Contests § 6.11 (1992).

Because there is no reported Alaska law on testamentary capacity and insane delusions, no definitive instruction is offered. However, the following instruction, adapted from the California Book of Approved Jury Instructions (BAJI) § 12.10, is suggested:

You may find that [name of testator] had the ability to do the three things that I outlined for you but is not of sound mind if [he or she] was the victim of an insane delusion.

A delusion is a belief held by someone that certain facts are true when they are, in fact, not true.

The fact, if it be a fact, that [name of testator] was the victim of some delusion does not establish that [he/she] was not of sound mind if the delusion was founded on any facts, however insubstantial, or if the delusion did not bear directly upon and influence the creation and terms of the will.

In order to find that the will is invalid because [name of testator] was the victim of an insane delusion, you must find that it is more likely true than not true that at the time the will was signed:

(1) [Name of testator] held a belief which had no basis in reason and which could not be removed by any amount of reasoning or argument and

(2) The false belief bore directly upon the creation and terms of [name of testator's] will so that the will provides for a distribution of [his/her] property in a way which except for the existence of such delusion [he/she] would not have made.