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Admissibility of Judgments Appointing Guardians

EVIDENCE—TESTAMENTARY CAPACITY—ADMISSIBILITY OF JUDGMENTS APPOINTING GUARDIANS.—The plaintiffs, heirs at law, contested a will, made in 1926 by the testatrix who died in 1936, on the ground of unsoundness of mind at the time of making the will. Defendants are the administratrix and devisees. Plaintiffs introduced over defendants' objection a judgment in 1928 appointing a guardian for testatrix because of incompetency to manage her estate. Held, reversed. Where the issue is the unsoundness of mind of the person at the time of making a will, a subsequent judgment appointing a guardian because of incompetency[1] to manage the estate is not admissible as evidence. *Lasher v. Gerlach* (Ind. App. 1939), 23 N. E. (2d) 296.

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[17] "If it should appear that there is any foundation for the suggestion, a means of protection may be found in diligence on the part of the insurance carriers to ferret out and expose the fictitious claims and reliance may be placed on our courts and juries to detect and prevent a fraud." Rozell v. Rozell (N. Y., 1939), 22 N. E. (2d) 254. See, LoGalbo v. LoGalbo (1930), 138 Misc. Rep. 485, 246 N. Y. S. 565, p. 568.

[18] Insurance has been considered as an important factor in recent cases involving this and similar problems and, it is contended, will be more so in the future, no matter what the actual language used by the courts may be. Said Lord Blackburn in Young v. Rankin (1934), S. C. 499, p. 514: "The practice of a parent insuring himself against claims which may arise out of his own negligence in the conduct of some particular matter is of very recent date, and had such practice existed at an earlier date I have no doubt that the very question that is raised in this action would have been brought before the courts long ago, for I do not see anything unnatural in a minor recovering damages from his parent where the parent is himself covered against any loss incurred by him as the result of his negligence. I, accordingly, attach little importance to the fact that there are no reported cases on the subject."

Possibly the desired result may be achieved in an indirect manner through legislative action requiring compulsory insuranec for automobiles and allowing recovery to be had directly from an insurer by the one injured through the negligence of the insured. See, Mesite v. Kirchstein (1929), 109 Conn. 77, 145 Atl. 753, 755.

[1] Incompetency as used herein designates the disabilities set out in Burns Ind. Stat. Ann. (1933), sec. 8-301; Ind. Acts 1911, ch. 218, sec. 1, p. 533, and Ind. Acts 1919, ch. 106, sec. 1, p. 580. As to what constitutes unsoundness of mind see Burns Ind. Stat. Ann. (1933), sec. 8-202; 2 Ind. R. S. 1852, ch. 14, sec. 2, p. 333, and Ind. Acts 1895, ch. 99, sec. 1, p. 205.

A judgment usually is not admissible as evidence of facts upon which the judgment is founded.[2] Guardianship proceedings involving the unsoundness of mind of an individual however, concern status, and being public actions similar in nature to actions in rem are often admissible where other judgments are not.[3] The two problems involved in cases of this type are: (1) the relevancy of the judgment, i. e., the identity of the issues, and (2), the time, i. e., the remoteness from the time in question. Adjudications of insanity are directly in point in cases of will contest for unsoundness of mind and therefore are relevant as evidence on that point.[4] The time of judgment, whether prior, contemporaneous, or subsequent to the time of making the will, being a question of remoteness usually goes only to the weight of evidence, although it occasionally involves admissibility. In proving unsoundness of mind at a particular time, for practical reasons it is held that facts or occurrences both prior and subsequent to the time in question are admissible.[5] This is not the same as the question of whether the judgment is admissible. Since unsoundness of mind is usually a continuing condition there is a rebuttable presumption that a person once adjudicated to be of unsound mind remains that way until adjudged sane.[6] The presumption that a party adjudicated to be of unsound mind was under this disability at any particular time prior to the judgment is slight however, unless there is a specific finding of that fact in the judgment.[7] Therefore a prior adjudication of unsoundness of mind is almost always admissible whereas a subsequent one is sometimes inadmissible and at least of less weight.[8] The application of these principles to judgments of incompetency to manage estates has resulted in much confusion.

While a judgment appointing a guardian on the ground of unsoundness of mind may be strictly relevant, a judgment appointing a guardian because of incompetency to manage an estate need not involve the same issues as capacity to make a will. A guardian may be appointed where there is no mental condition involved, as in the case of drunkards, spendthrifts, or even where physical disabilities prevent competent management of the estate.[9] If the

[2] Maple v. Beach (1873), 43 Ind. 51).

[3] 1 Greenleaf on Evidence (16th ed.), § 556.

[4] Stevens v. Stevens (1891), 127 Ind. 560, 26 N. E. 1078; Pepper v. Martin (1910), 175 Ind. 580, 92 N. E. 777.

[5] Peters v. Knight (1937), 103 Ind. App. 453, 8 N. E. (2d) 401; Ailes v. Ailes (1937), 104 Ind. App. 302, 11 N. E. (2d) 73. Cf. Profer v. Profer (1938), 342 Mo. 184, 114 S. W. (2d) 1035; In re Piney's Will (1880), 27 Minn. 280, 6 N. W. 791.

[6] Rush v. Magee (1871), 36 Ind. 69; Redden v. Baker (1882), 86 Ind. 191.

[7] "In some states the statute authorizes the inquiry de lunatico to be extended to a time anterior to the inquiry itself; but our statute does not authorize a retroactive inquiry to be made, or statute fixed. . . ." Taylor v. Taylor (1910), 174 Ind. 670, 93 N. E. 9. Cf. Spiers v. Hendershott (1909), 142 Ia. 446, 120 N. W. 1058; Weisterland v. First Nat. Bank (1917), 38 N. D. 24, 164 N. W. 323; In re Weber's Will (1928), 196 Wis. 377, 220 N. W. 380; Wetzal v. Firebaugh (1910), 251 Ill. 190, 95 N. E. 1085; In re Weedman's Estate (1912), 254 Ill. 504, 98 N. E. 956.

[8] Weisterland v. First Nat. Bank (1917), 38 N. D. 24, 164 N. W. 323. Cf. Spiers v. Hendershott (1909), 142 Ia. 446, 120 N. W. 1058; Kelley v. Stanton (1922), 141 Md. 380, 118 A. 863; Digan v. Linilon (1928), 262 Mass. 273, 159 N. E. 610; Green v. Green (1893), 145 Ill. 264, 33 N. E. 941.

[9] Champ v. Brown (1936), 197 Minn. 49, 266 N. W. 94. Burns Ind. Stat. Ann. (1933), sec. 8-301, Ind. Acts 1911, ch. 218, sec. 1, p. 533, and Ind. Acts 1919, ch. 106, sec. 1, p. 580.

mental capacity of the party is involved, a much higher capacity is required to manage an estate than to make a will.[10] Thus although one can quite properly say that a person of unsound mind is incompetent to manage an estate, one cannot reason that a person incompetent to manage an estate is of unsound mind. Judgments appointing guardians for incompetency to manage an estate which do not specifically find unsoundness of mind are irrelevant and should not be admissible on the issue of testamentary capacity. Where the judgment is subsequent or remote in time it might in addition be inadmissible because of remoteness.[11]

It is believed that the failure to distinguish clearly between these two types of guardianship proceedings is partially the cause of the confusion in this field. Of the few states which have been consistent concerning the admissibility of judgments appointing guardians on the ground of incompetency to manage the estate the majority have held them inadmissible.[12] Indiana has authority on both sides although on the question of subsequent judgments the weight seems on the side of inadmissibility.[13] The case favoring the admission of such judgments is one in which the guardianship proceedings was defeated and the party held competent to manage his estate.[14]

There is no logical need for admitting these judgments as the actual facts and occurrences on which the judgments were based are always admissible and the courts are in unanimous agreement that the judgment is not conclusive even if unsoundness of mind was the issue.[15] In reality the admission of such judgments is highly prejudicial as it will undoubtedly give a bolstering effect to the other evidence admitted. It is submitted therefore, that the present case in distinguishing between the admissibility of judgments of unsoundnss of mind and those of incompetency to manage estates is adequately supported by authority both in Indiana and in other states and is following the more logical and desirable rule in litigation involving testamentary capacity. W. E. B.

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[10] Pittard v. Foster (1882), 12 Ill. App. 132. Cf. Watson v. Watson (1910), 137 Ky. 25, 121 S. W. 626; Taylor v. Taylor (1910), 174 Ind. 670, 93 N. E. 9; Emry v. Beaver (1922), 192 Ind. 471, 137 N. E. 55; Harison v. Bishop (1892), 131 Ind. 161, 30 N. E. 1069.

[11] Lane v. Moore (1898), 151 Mass. 87, 23 N. E. 828.

[12] Holding such judgments inadmissible: Entwistle v. Meikle (1899), 180 Ill. 9, 54 N. E. 217; Watson v. Watson (1910), 137 Ky. 25, 121 S. W. 626; In re Gahagan's Estate (1912), 102 Neb. 404, 167 N. W. 412; In re Weber's Will (1928), 196 Wisc. 377, 220 N. W. 380; Weisterland v. First Nat. Bank (1917), 38 N. D. 24, 164 N. W. 323; Kish v. Bakayas (1938), 330 Pa. 533, 199 A. 321. But see McAllister v. Rowland (1913), 124 Minn. 27, 144 N. W. 412; In re Van Houton's Will (1910), 147 Ia. 725, 124 N. W. 886.

[13] Taylor v. Taylor (1910), 174 Ind. 670, 93 N. E. 9. But see Emry v. Beaver (1922), 192 Ind. 471, 137 N. E. 55.

[14] Since competency to manage an estate necessitates a higher mental capacity than making a will a judgment of competency to manage estate is relevant as to testamentary capacity. Emry v. Beaver (1922), 192 Ind. 471, 137 N. E. 55. Cf. Kish v. Bakaysa (1938), 330 Pa. 533, 199 A. 321. In re Van Houton's Will (1910), 147 Ia. 725, 124 N. W. 886.

[15] Even though held insane on Feb. 22, the judgment was not conclusive as to Jan. 23 of the same year. Spiers v. Hendershott (1909), 142 Ia. 446, 120 N. W. 1058. Cf. Holiday v. Shepard (1915), 269 Ill. 429, 109 N. E. 976; Pepper v. Martin (1910), 175 Ind. 580, 92 N. E. 777; Kelly v. Stanton (1922), 141 Md. 380, 118 A. 863.