Steve Leimberg's Estate Planning Email Newsletter - Archive Message #3188
Date: 10-Mar-25
From: Steve Leimberg's Estate Planning Newsletter
Subject: In re Spofford: Testamentary Capacity in Maine

"In a challenge to the testamentary capacity of a decedent in a probate proceeding what is enough to overcome summary judgment? In In re Spofford, the Maine Supreme Court concurred that events which occurred a year before the signing of the Last Will & Testament, erratic driving, hostility towards a care giver, and medical record notes were not sufficient to establish a genuine issue of material fact concerning testamentary capacity. Bibeau v. Concord Gen. Mut. Ins. Co., 2021 ME 4, ¶ 6, 244 A.3d 712 (as to a genuine issue of material fact). The Court, in citing to In re Loomis' Will, 133 Me. 81 (1934), articulated that the 'want of capacity, when urged as a ground for invalidating a testamentary act, must relate to the time of the act. Incompetency may exist before or after, and still the will be valid'"

Marc Soss provides members with commentary on In re Spofford and testamentary capacity in Maine. Marc Soss, J.D., LL.M. Marc Soss' practice focuses on estate planning, probate and trust administration, and corporate matters in Southwest Florida. Marc is a frequent contributor to LISI and has published articles in the Florida Bar, Rhode Island Bar, North Carolina Bar and National Contract Management Association magazine. Marc is a retired United States Navy Supply Corps Officer.

Here is his commentary:

EXECUTIVE SUMMARY:

In a challenge to the testamentary capacity of a decedent in a probate proceeding what is enough to overcome summary judgment? In In re Spofford, 2025 ME 15, Lin-24-235, (Me. 2025) the Maine Supreme Court concurred that events which occurred a year before the signing of the Last Will & Testament, erratic driving, hostility towards a care giver, and medical record notes were not sufficient to establish a genuine issue of material fact concerning testamentary capacity. Bibeau v. Concord Gen. Mut. Ins. Co., 2021 ME 4, ¶ 6, 244 A.3d 712 (as to a genuine issue of material fact). The Court, in citing to In re Loomis' Will, 133 Me. 81 (1934), articulated that the "want of capacity, when urged as a ground for invalidating a testamentary act, must relate to the time of the act. Incompetency may exist before or after, and still the will be valid."

COMMENT:

Background:

In the summer of 2017, Patricia M. Spofford ("Spofford") was diagnosed with a cognitive impairment and her physician recommended the appointment of a guardian and conservator for her. On February 15, 2018, Spofford's physician examined her and wrote in a note that she

displayed "[s]ignificant cognitive dysfunction." On March 1, 2018, Stofford executed her last Will & Testament which left her entire estate to multiple beneficiaries, including St. Jude Children's Research Hospital. Subsequently, during another examination on June 4, 2018, her physician noted that she was "uncooperative," "not able to listen," and "aggressive and reactive."

Stofford passed away on June 7, 2020, and her sons, Patricia M. Spofford, Michael Zani and Peter Zani (collectively "Zani"), challenged her testamentary capacity at the time she executed her last Will & Testament on March 1, 2018. In questioning her capacity, her children argued that (i) she assaulted her caregivers; (ii) drove erratically through town; (iii) a physicians note that she displayed "[s]ignificant cognitive dysfunction;" (iv) a physicians note that described her as "uncooperative," "not able to listen," and "aggressive and reactive;" (v) a physician diagnosis of impairment. None of these diagnosis or events specifically related to the date on which she executed her Last Will & Testament; and (vi) the decedent was under a guardianship and conservatorship at the time the will was executed. Zani further argued that a "medical opinion by a physician does not demonstrate testamentary capacity under the law" and a non-expert cannot opine on competency.

In contrast, the beneficiaries of her estate presented records containing evidence of her testamentary capacity on March 1, 2018. This evidence included: (i) a video of the will's execution; (ii) an affidavit signed by Spofford's attorney stating that she believed that she was competent to execute her will on March 1, 2018; (iii) an affidavit from one of the witnesses attesting that she "had no reason to believe that [Spofford] was not acting of her own free will or that she lacked a 'sound mind' during the will signing;" (iv) an affidavit from her primary care physician stating that he had examined her on the day the Last Will and Testament was executed and she "possessed the capacity and intention to execute a testamentary will on March 1, 2018;" and (v) the Zanis concession that they had "no direct evidence regarding the events that took place on March 1, 2018."

The videos further evidenced that she understood "the business [she] was engaged in; possessed knowledge of the makeup and general extent of her estate; could identify her family members and her relationships to them; knew how she wished to dispose of her estate; and had clear wishes about the persons she wanted to participate in [her] bounty and whom she wished to exclude." The videos also establish that she reviewed her will with her attorney, confirmed that the drafted will accurately reflect her wishes, and that she signed her will in the presence of two witnesses and a notary.

The Lincoln County, Maine, Probate Court found that there was no genuine issue of material fact concerning the decedent's testamentary capacity when she executed her Last Will and Testament on March 1, 2018, and entered summary judgment in favor of the estate. On appeal, Zanis argued that the court erred and that there was a genuine issue concerning her testamentary capacity. The Maine Supreme Court concurred with the probate court and affirmed the ruling.

Legal Issues and Argument:

The Zanis contend that evidence from before and after the date the will was executed is sufficient to put her testamentary capacity on March 1, 2018, into question. However, the Probate Court

found that the evidence relied upon is too remote from the issue of testamentary capacity at the time that she executed her Last Will and Testament.

In affirming the Maine Probate Court, the Maine Supreme Court relied upon several cases which established precedent for issues of this nature. In re Waning's Appeal, 151 Me. 239 (1955) the Maine court found that "[a]n attending or family physician's opinion as to the mental health of his patient is competent [evidence of that patient's testamentary capacity]." In Est. of Mitchell, 443 A.2d 961 (Me. 1982), the court relied upon a neurology examination conducted on the day before the decedent executed her will in assessing whether the decedent possessed sufficient testamentary capacity at the time when she executed her will. In Appeal of Royal, 152 Me. 242, 127 A.2d 484 (1956) found that "[t]he want of capacity, when urged as a ground for invalidating a testamentary act, must relate to the time of the act. In On re Loomis' Will, 133 Me. 81 (1934), "[i]ncompetency may exist before or after, and still the will be valid," and some degree of cognitive impairment, including dementia, will not preclude testamentary capacity. Further, In re Leonard, 321 A.2d 486 (Me. 1974), Maine courts have found that "[i]f he was then rational and acting rationally, or, in popular phrase, knew and understood what he was about, the will is valid." Additionally, in In re Am. Bd. of Comm'rs for Foreign Missions, 102 Me. 72 (1906) the courts have established that someone under guardianship and conservatorship may have the requisite testamentary capacity to execute a will.

CONCLUSION

In Maine, if you want to challenge a Last Will and Testament on the basis of testamentary capacity, you need to present direct evidence from the day when the instrument and the quality of the testator's mind at the time of executing the document. In Florida, the standard is whether the person making the Last Will and Testament has sufficient capacity to comprehend (i) the nature and extent of his or her property (assets and their relative size); (ii) his or her relationship to the persons who were, or should, be the natural objects of his or her estate; and (iii) a general understanding of the effects/process of the will. Florida courts have found that the person making the Last Will and Testament must have sufficient active memory to collect in their mind, without prompting, the particulars or elements of the business to be transacted, and to hold them in his mind a sufficient length of time to perceive at least their obvious relations to each other, and be able to form some rational judgment in relation to them.

HOPE THIS HELPS YOU HELP OTHERS MAKE A POSITIVE DIFFERENCE!

Marc Soss

CITE AS:

LISI Estate Planning Newsletter #3188 (March 10, 2025) at http://www.leimbergservices.com.

CITATIONS:

In re Spofford, 2025 ME 15, Lin-24-235, (Me. 2025); Zani v. Zani, 2023 ME 42, ¶ 12, 299 A.3d 9; 18-C M.R.S. § 3-407 (2024); On re Loomis' Will, 133 Me. 81 (1934); In re Am. Bd. of Comm'rs for Foreign Missions, 102 Me. 72 (1906); In re Leonard, 321 A.2d 486 (Me. 1974); In re Waning's Appeal, 151 Me. 239 (1955); Appeal of Royal, 152 Me. 242, 127 A.2d 484 (1956); Est. of Mitchell, 443 A.2d 961 (Me. 1982).