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Legal brief *

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I WANT TO HAVE MY FATHER'S WILL ANNULLED

Your father informs you that you are one of the legatees named in his will as an heir. Shortly before his death, he changes his will and bequeaths all his property to someone else. Can you have this will, which you believe is unfair, annulled?

THE FACTS

In April 2006, the deceased had a notary prepare a will in which he bequeathed all his property in equal shares to his daughter and granddaughter. In October 2006, he signed a new will, still before a notary, in which he changed the beneficiaries of his succession, disinheriting his daughter and granddaughter in favour of his nephew and the nephew's spouse. He died in November 2006.

THE ISSUE

The plaintiff, the daughter of the deceased, wanted to obtain the annulment of the will signed by her father in October 2006 which appointed persons other than her and her daughter as universal legatees.

THE DECISION

The Court could not find that the testator had not been of a sound mind and it dismissed the plaintiff's recourse.

THE GROUNDS

According to the *Civil Code of Québec*: "Every person having the required capacity may, by will, provide otherwise than as by law for the devolution upon his death of the whole or part of his property." (Article 703). Thus, every individual can choose to bequeath his property to whomever he wants and he has no obligation to choose the members of his family. When the validity of a will is contested, the court must be able to assess the testator's capacity to make a will at the time the will was signed.

According to the notes made by the family doctor who had met the deceased in October 2006, there had been nothing abnormal in the deceased's conduct. At the end of September 2006, an occupational therapist had met with the deceased and had prepared a written report in which she had noted a few deficiencies, but nothing major. At the beginning of October 2006, an assessor from the SAAQ testified that she had had the deceased undergo a road driving test and had filed a report in which nothing particular had been noted. The notary who prepared the last will testified to the effect that that he had known the deceased since at least 1995. When the deceased signed the new will on October 3, 2006, the notary had had no doubts regarding his lucidity.

The burden of proof therefore lies on the person contesting the validity of a will. In order to invalidate a will, there must be serious evidence of the existence of an unusual state of mental alienation or weakness at the time the will was signed.

To make this assessment, the judge may consider certain criteria in addition to the testimony of close relatives and various professionals. One criterion is to ensure that there are no suspicious circumstances surrounding the signing of the will. In the case at hand, there did not seem to have been any such circumstances. Another criterion is haste in the preparation and signing of the will. Here, too, this had not been the case. On the contrary, the deceased had thought about it all summer and had asked the notary to finalize the whole matter. A third criterion is an unexplained change in legatees. In the case at hand, the strained relationship between the plaintiff and her father could easily explain the change. A fourth criterion has to do with age, but it cannot be said that the deceased had been exceedingly old, notwithstanding the fact that he had been 78, given that he had been autonomous and had had no serious illnesses. A fifth criterion is the unreasonable nature of the testamentary provisions. In light of the particular circumstances of the case, the provisions were not unreasonable.

References

Lavallée v. Lavallée, 2009 QCCS 5193, Superior Court (C.S.) 200-17-008061-079, November 10, 2009, Judge: Jacques Babin

Civil Code of Québec, (S.Q. 1991, c. 64), article 703

The jugement discussed in this article was rendered based on the evidence submitted to the court. Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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