

**IN RE WILL OF HONIGMAN**

**168 N.E.2d 676**

**Court of Appeals of New York**

**July 8, 1960**

DYE, J.

Frank Honigman died May 4, 1956, survived by his wife, Florence. By a purported last will and testament, executed April 3, 1956, just one month before his death, he gave \$ 5,000 to each of three named grandnieces, and cut off his wife with a life use of her minimum statutory share plus \$ 2,500, with direction to pay the principal upon her death to his surviving brothers and sisters and to the descendants of any predeceased brother or sister, per stirpes. The remaining one half of his estate was bequeathed in equal shares to his surviving brothers and sisters and to the descendants of any predeceased brother or sister, per stirpes, some of whom resided in Germany.

When the will was offered for probate in Surrogate's Court, Queens County, the widow Florence filed objections. A trial was had on framed issues, only one of which survived for determination by the jury, namely: "At the time of the execution of the paper offered for probate was the said Frank Honigman of sound and disposing mind and memory?" The jury answered in the negative, and the Surrogate then made a decree denying probate to the will.

Upon an appeal to the Appellate Division, Second Department, the Surrogate's decree was reversed upon the law and the facts, and probate was directed. Inconsistent findings of fact were reversed and new findings substituted.

We read this record as containing more than enough competent proof to warrant submitting to the jury the issue of decedent's testamentary capacity. By the same token the proof amply supports the jury findings, implicit in the verdict, that the testator, at the time he made his will, was suffering from an unwarranted and insane delusion that his wife was unfaithful to him, which condition affected the disposition made in the will. The record is replete with testimony, supplied by a large number of disinterested persons, that for quite some time before his death the testator had publicly and repeatedly told friends and strangers alike that he believed his wife was unfaithful, often using obscene and abusive language. Such manifestations of suspicion were quite unaccountable, coming as they did after nearly 40 years of a childless yet, to all outward appearances, a congenial and harmonious marriage, which had begun in 1916. During the intervening time they had worked together in the successful management, operation and ownership of various restaurants, bars and grills and, by their joint efforts of thrift and industry, had accumulated the substantial fortune now at stake.

The decedent and his wife retired from business in 1945 because of decedent's failing health. In the

few years that followed he underwent a number of operations, including a prostatectomy in 1951, and an operation for cancer of the large bowel in 1954, when decedent was approximately 70 years of age. From about this time, he began volubly to express his belief that Mrs. Honigman was unfaithful to him. This suspicion became an obsession with him, although all of the witnesses agreed that the deceased was normal and rational in other respects. Seemingly aware of his mental state, he once mentioned that he was "sick in the head" ("Mich krank gelassen in den Kopf"), and that "I know there is something wrong with me" in response to a light reference to his mental condition. In December, 1955 he went to Europe, a trip Mrs. Honigman learned of in a letter sent from Idlewild Airport after he had departed, and while there he visited a doctor. Upon his return he went to a psychiatrist who Mr. Honigman said "could not help" him. Finally, he went to a chiropractor with whom he was extremely satisfied.

On March 21, 1956, shortly after his return from Europe, Mr. Honigman instructed his attorney to prepare the will in question. He never again joined Mrs. Honigman in the marital home.

To offset and contradict this showing of irrational obsession the proponents adduced proof which, it is said, furnished a reasonable basis for decedent's belief, and which, when taken with other factors, made his testamentary disposition understandable. Briefly, this proof related to four incidents. One concerned an anniversary card sent by Mr. Krauss, a mutual acquaintance and friend of many years, bearing a printed message of congratulation in sweetly sentimental phraseology. Because it was addressed to the wife alone and not received on the anniversary date, Mr. Honigman viewed it as confirmatory of his suspicion. Then there was the reference to a letter which it is claimed contained prejudicial matter – but just what it was is not before us, because the letter was not produced in evidence and its contents were not established. There was also proof to show that whenever the house telephone rang Mrs. Honigman would answer it. From this Mr. Honigman drew added support for his suspicion that she was having an affair with Mr. Krauss. Mr. Honigman became so upset about it that for the last two years of their marriage he positively forbade her to answer the telephone. Another allegedly significant happening was an occasion when Mrs. Honigman asked the decedent as he was leaving the house what time she might expect him to return. This aroused his suspicion. He secreted himself at a vantage point in a nearby park and watched his home. He saw Mr. Krauss enter and, later, when he confronted his wife with knowledge of this incident, she allegedly asked him for a divorce. This incident was taken entirely from a statement made by Mr. Honigman to one of the witnesses. Mrs. Honigman flatly denied all of it. Their verdict shows that the jury evidently believed the objectant. Under the circumstances, we cannot say that this was wrong. The jury had the right to disregard the proponents' proof, or to go so far as to hold that such trivia afforded even additional grounds for decedent's irrational and unwarranted belief. The issue we must bear in mind is not whether Mrs. Honigman was unfaithful, but whether Mr. Honigman had any reasonable basis for believing that she was.

In a very early case we defined the applicable test as follows:

"If a person persistently believes supposed facts, which have no real existence except in his perverted imagination, and against all evidence and probability, and conducts

himself, however logically, upon the assumption of their existence, he is, so far as they are concerned, under a morbid delusion; and delusion in that sense is insanity. Such a person is essentially mad or insane on those subjects, though on other subjects he may reason, act and speak like a sensible man." (American Seamen's Friend Soc. v. Hopper, 33 N. Y. 619, 624-625.)

It is true that the burden of proving testamentary incapacity is a difficult one to carry (Dobie v. Armstrong, 160 N. Y. 584), but when an objectant has gone forward, as Mrs. Honigman surely has, with evidence reflecting the operation of the testator's mind, it is the proponents' duty to provide a basis for the alleged delusion. We cannot conclude that as a matter of law they have performed this duty successfully. When, in the light of all the circumstances surrounding a long and happy marriage such as this, the husband publicly and repeatedly expresses suspicions of his wife's unfaithfulness; of misbehaving herself in a most unseemly fashion, by hiding male callers in the cellar of her own home, in various closets, and under the bed; of hauling men from the street up to her second-story bedroom by use of bed sheets; of making contacts over the household telephone; and of passing a clandestine note through the fence on her brother's property -- and when he claims to have heard noises which he believed to be men running about his home, but which he had not investigated, and which he could not verify -- the courts should have no hesitation in placing the issue of sanity in the jury's hands. To hold to the contrary would be to take from the jury its traditional function of passing on the facts.

Clapp v. Fullerton (34 N. Y. 190) is not controlling in the circumstances of this case. There, the decedent had not expressed his suspicion of the infidelity of his first wife, who had died 45 years earlier, until after the making of the will, and even then he did so casually and discreetly. His belief was based on a statement made by the wife during her last illness, while she was in a state of delirium. Here, on the other hand, Mr. Honigman persisted over a long period of time in telling his suspicions to anyone who would listen to him, friends and strangers alike. That such belief was an obsession with him was clearly established by a preponderance of concededly competent evidence and, *prima facie*, there was presented a question of fact as to whether it affected the will he made shortly before his death.

The proponents argue that, even if decedent was indeed laboring under a delusion, the existence of other reasons for the disposition he chose is enough to support the validity of the instrument as a will. The other reasons are, first, the size of Mrs. Honigman's independent fortune, and, second, the financial need of his residuary legatees. These reasons, as well as his belief in his wife's infidelity, decedent expressed to his own attorney. We dispelled a similar contention in *American Seamen's Friend Soc. v. Hopper* (*supra*, p. 625) where we held that a will was bad when its "dispositive provisions were or *might have been caused* or affected by the delusion" (emphasis supplied).

FULD, J., dissenting.

I am willing to assume that the proof demonstrates that the testator's belief that his wife was unfaithful was completely groundless and unjust. However, that is not enough; it does not follow

from this fact that the testator suffered from such a delusion as to stamp him mentally defective or as lacking in capacity to make a will. (See, e.g., *Matter of Hargrove*, 288 N. Y. 604, affg. 262 App. Div. 202; *Dobie v. Armstrong*, 160 N. Y. 584, 593-594; *Matter of White*, 121 N. Y. 406, 414; *Clapp v. Fullerton*, 34 N. Y. 190, 197.) "To sustain the allegation," this court wrote in the *Clapp* case (34 N. Y. 190, 197), "it is not sufficient to show that his suspicion in this respect was not well founded. It is quite apparent, from the evidence, that his distrust of the fidelity of his wife was really groundless and unjust; but it does not follow that his doubts evince a condition of lunacy. The right of a testator to dispose of his estate, depends neither on the justice of his prejudices nor the soundness of his reasoning. He may do what he will with his own; and if there be no defect of testamentary capacity, and no undue influence or fraud, the law gives effect to his will, though its provisions are unreasonable and unjust."

Moreover, I share the Appellate Division's view that other and sound reasons, quite apart from the alleged decision, existed for the disposition made by the testator. Indeed, he himself had declared that his wife had enough money and he wanted to take care of his brothers and sisters living in Europe. (See *Matter of Nicholas*, 216 App. Div. 399, 403, affd. 244 N. Y. 531; *Coit v. Patchen*, 77 N. Y. 533, 541-542; *Matter of White*, 121 N. Y. 406, 414, *supra*.)

In short, the evidence adduced utterly failed to prove that the testator was suffering from an insane delusion or lacked testamentary capacity. The Appellate Division was eminently correct in concluding that there was no issue of fact for the jury's consideration and in directing the entry of a decree admitting the will to probate. Its order should be affirmed.