

received in the course of her relationship with Martha. In partially reversing the trial court, the Supreme Court of Iowa found that nearly all of the gifts and monies transmitted from Martha to Janice were the product of Martha's free will and not the result of undue influence and that Martha had demonstrated a propensity outside of their confidential relationship to reward Janice in this manner. In partially affirming the trial court, the Supreme Court of Iowa upheld the ruling that Janice reimburse Martha's estate only for those gifts for which there was no specific proof of Martha's wishes outside of their confidential relationship and therefore the presumption of undue influence had not been rebutted.

With respect to the additional transactions of which Kathleen complained on her cross-appeal, the trial court's holding was affirmed. The Supreme Court of Iowa thus established a new standard for rebutting a presumption of undue influence: whether or not the end result was the product of undue influence.

#### Reasoning

The standard for rebutting a presumption of undue influence stated in *In re Estate of Todd* is unreasonably demanding and may cause the invalidation of *bona fide* transfers in a confidential relationship. In applying a more appropriate standard (whether the end result was the product of undue influence), the court's *de novo* review concluded the evidence failed to show that many of the challenged transactions were the product of undue influence.

The Iowa Supreme Court reviewed *Todd* and concluded that the criteria (from *In re Estate of Baessler*, 561 N.W.2d 88, 92 (Iowa Ct. App. 1997) to rebut the presumption of undue influence was unrealistic. The court examined other case law to hold that the rule for rebutting the presumption of undue influence arising from a confidential relationship only requires the grantee of a transaction to prove by clear, satisfactory, and convincing evidence that the grantee acted in good faith throughout the transaction and the grantor acted freely, intelligently, and voluntarily.

The court agreed with the lower court's reasoning that Martha had the mental capacity to engage in ordinary and familiar financial transactions such as those contested by Kathleen. The question of com-

petency was therefore disposed of on the ground that Kathleen had failed to show that Martha lacked mental capacity at any specific time.

#### Discussion

Testamentary capacity—a person's ability to make a last will and testament—differs from undue influence. A person is presumed to have testamentary capacity, which requires a relatively low level of functioning. Specifically, to execute a valid will, a person must know she is making a will, appreciate the extent of her assets, identify her natural heirs, and understand how the will distributes her assets. A person who suffers from a mental disease or defect (including dementia) still may possess testamentary capacity as long as her compromised mental status does not influence the will.

Undue influence refers to the use of unscrupulous methods (such as threats or coercion) by a second person, to influence the decision-making process of the testator (the person making the will). Undue influence does not imply a lack of testamentary capacity; it suggests the testator was coerced into making a decision regarding her will. When wills are contested, the burden of proof is on the person contesting the will to show either lack of testamentary capacity or existence of undue influence.

This case changed the standard for rebutting a presumption of undue influence in Iowa from the cumbersome "quality of the confidential relationship" to the more reasonable "end result."

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## Insurance

### ***An Insured's Mental Condition May Negate His Intent for a Criminal Act and Bar the Application of an Intentional-Act Exclusion Clause in a Homeowner's Policy***

#### *Facts of the Case*

In *Allstate Insurance Co. v. Barron* (848 A.2d 1165 (Conn. 2004), during the early morning

hours of June 10, 1999, a homeowner's policyholder, Kelly S., who had bipolar disorder, stabbed her husband to death and then started a fire that killed her and two of the couple's children. Wrongful-death actions were filed against the policyholder's estate by the estates of the other decedents. The insurer claimed that it had no duty to defend or indemnify the policyholder's estate, because the incident was not an "occurrence" within the meaning of the policy and because the policy's exclusions relating to intentional or criminal acts applied to the policyholder's conduct. The insurer filed a declaratory judgment action against the defendants seeking a determination that it had no such duty. It then filed a motion for summary judgment claiming, *inter alia*, that there was no genuine issue of material fact as to whether the insured's conduct was intentional within the meaning of the policy's intentional-conduct exclusion clause.

The defendants objected to the motion for summary judgment. In support of their argument that there was a genuine issue of material fact as to whether Kelly's conduct had been intentional, the defendants presented to the court the transcript of the deposition of Dr. Kazarian, Kelly's treating psychiatrist. During her deposition, Dr. Kazarian testified that she had diagnosed bipolar II disorder in Kelly, but because she had not seen Kelly since July 2, 1998, she did not believe that she could give an opinion as to whether postpartum depression (Kelly was two months postpartum) had impaired Kelly's ability to tell right from wrong, to control her actions, or to form an intent during the events of June 10, 1999. The defendants also presented an affidavit by Walter Borden, an independent psychiatrist who reviewed the available information in this case and opined that ". . . Kelly was incapable of appreciating the nature of her behavior, unable to control herself and incapable of forming rational intent to do the acts attributed to her."

The Superior Court in the Judicial District of Waterbury (Connecticut), relying on the appellate court's decision in *Home Ins. Co. v. Aetna Life & Casualty Co.*, 644 A.2d 933 (Conn. Ct. App. 1994), concluded that, although Kazarian's testimony established that Kelly had had a severe mental illness in July, 1998, it did not create a factual dispute as to whether Kelly was "legally insane" when she committed the acts of June 10, 1999. The trial court also determined that Borden's affidavit

did not constitute a basis for denying the motion for summary judgment, because it was conclusory and did not set forth any facts to support those conclusions. Accordingly, the trial court determined that there was no genuine issue of material fact as to whether Kelly had a mental condition negating her intent and barring application of the policy's exclusion for intentional acts, and it therefore granted the plaintiff's motion for summary judgment.

The defendants filed an appeal with the appellate court claiming that the trial court improperly determined that there was no genuine issue of material fact as to the insured's state of mind. The appeal was transferred to the Supreme Court of Connecticut pursuant to Connecticut General Statutes.

#### *Ruling and Reasoning*

The judgment was reversed and remanded for further proceedings. With regard to the defendants' claim that the trial court improperly determined that there was no genuine issue of material fact that Kelly's conduct was intentional within the meaning of the intentional-conduct exclusion clause, the Supreme Court of Connecticut reasoned that, under *Home Ins. Co.*, the crucial issue of fact in this case was not whether Kelly's actions were intentional in the narrow sense that they were deliberate, but whether her intent was negated by her inability to understand the wrongfulness of her conduct or to control her conduct. They concluded that the documents submitted by the plaintiff in support of its motion for summary judgment simply did not address that issue. Accordingly, they held that the trial court properly could have denied the plaintiff's motion in the absence of any objection or supporting documents filed by the defendants. With regard to the plaintiff's claim that Kelly's conduct was not "accidental" and, therefore, not an "occurrence" covered by the policy, the court concluded that, to the extent that Kelly engaged in conduct for which she could not be held responsible because her mental incapacity negated her intent, the consequences of her conduct were accidental and, therefore, an "occurrence" within the meaning of the policy.

#### *Discussion*

The question addressed in this case is whether a policyholder's mental condition could negate her intent for

a criminal act and bar the application of an intentional-act exclusion clause. Under the law, the terms of an insurance policy are construed according to the general rules of contract construction. The determinative question is the intent of the parties, that is, what coverage the insured expected to receive and what the insurer was to provide, as disclosed by the provisions of the policy. If the terms of the policy are clear and unambiguous, then the language, from which the intention of the parties is to be deduced, must be accorded its natural and ordinary meaning. However, when the words of an insurance contract are susceptible to two equally reasonable interpretations, the one that will sustain the claim and cover the loss must, in preference, be adopted. This rule of construction favorable to the insured extends to exclusion causes.

Intentional-act exclusion clauses were adopted primarily to prevent individuals from benefiting financially when they deliberately injure others. An individual who lacks the capacity to conform his or her behavior to acceptable standards of society will not, however, be deterred by the existence of insurance coverage for injuries caused by his or her actions. Therefore, the consideration of mental capacity when interpreting an exclusionary clause is not inconsistent with the purposes of such an exclusion. Furthermore, both principles meet the public interest in compensating victims for their injuries. Under a rule whereby damages caused by an insured's conduct are not denied coverage where the insured lacks a certain capacity, the injured person will have redress for his or her damages, even if the insured is judgment proof. However, some insurance companies have excluded coverage for:

. . . an act or omission which is criminal in nature and committed by an insured person who lacked the mental capacity to appreciate the criminal nature or wrongfulness of the act or omission or to conform his or her conduct to the requirements of the law or to form the necessary intent under the law. . . such provisions have received unfriendly treatment from certain courts.

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## Privacy Violation in Fitness-for-Duty Evaluation

### ***Police Officer's Statements in a Department-Ordered Fitness-for-Duty Evaluation Are Protected Under Illinois Mental Health and Developmental Disabilities Confidentiality Act From Further Disclosure Without the Officer's Consent***

#### *Facts of the Case*

In *McGreal v. Ostrov*, 368 F.3d 657 (7th Cir. 2004) James T. McGreal was a police officer for the Village of Alsip, Illinois. His superior officers, Chief of Police Kenneth Wood and Field Operations Commander Lt. David Snooks, were appointees of the longstanding mayor, Arnold Andrews. Mr. McGreal, following a series of incidents in which he felt that the mayor and other village officials had acted improperly, challenged Mayor Andrews in the 1997 election. After his failed attempt to unseat the mayor, Mr. McGreal found himself under "unprecedented scrutiny" from his departmental superiors. He filed reports detailing the alleged infractions, which in one case initiated an investigation into the conduct of the mayor.

In November 1997, Mr. McGreal was ordered to appear for an administrative interview to address the matter. Despite his undergoing many hours of interrogation over four months, no charges or disciplinary actions were brought against him. Instead, he was ordered to undergo a psychological evaluation to assess his fitness for duty.

Mr. McGreal was forced to sign a waiver with respect to the confidentiality and privacy of the information given to the psychologist and the dissemination of his report. He signed the waiver and noted it was "under duress." The psychologist's lengthy and detailed report concluded that to remain on the force, Mr. McGreal must "undertake a course of psychotherapy directed toward helping him gain insight into the vagaries of his reasoning processes, their potential for disruption in the police department and the community, and the relationship to his own psychological needs and functioning." Mr. McGreal agreed to the therapy, but Chief Wood chose to place him on paid sick leave until further notice. Mr. McGreal sued, and two weeks later he was terminated on the basis of "various acts of misconduct." Subsequent to the receipt of the report, Chief Wood forwarded the report to Mr. McGreal's colleagues in