

Incompetent Man Executes Valid Will

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Can a person who has been declared incompetent in a guardianship proceeding still execute a valid will? Yes, depending on the circumstances.

1. Recent Court Decisions

Two Texas appellate courts have recently upheld wills that were executed during a guardianship or shortly prior to a guardianship.

2. Rebuttable Presumption: No Capacity

If the will was executed during a guardianship, there is a presumption that the testator lacked testamentary capacity. However, the presumption is not conclusive and it may be rebutted with evidence that the testator did have capacity on the day the will was signed.

3. Different Standards of Capacity

The legal standards for incapacity in the guardianship context and in the will execution context are different, so a guardianship finding does not necessarily control the testamentary capacity issue. Because of these different standards, a guardianship finding of incapacity does not operate as collateral or judicial estoppel in a probate proceeding.

4. Conclusion

If the testator is the subject of a guardianship, it will be more difficult to establish testamentary capacity. However, trial court findings of capacity in such situations have been upheld on appeal.



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