

A DEMENTIA DIAGNOSIS ALONE LIKELY NOT ENOUGH TO SHOW LACK OF CAPACITY TO INVALIDATE BENEFICIARY DESIGNATION

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Dementia is a medical term that covers a wide range of specific medical conditions, including Alzheimer's disease. Disorders grouped under the term "dementia" share similar symptoms, including memory loss and other thinking abilities that can be severe enough to interfere with daily life. Those who have dementia can suffer a decline in thinking skills and independent function.

Eyebrows tend to raise when an individual suffering from dementia changes his or her estate plan, including changes to beneficiary designations to direct where certain assets like life insurance, retirement accounts, and annuities will go upon death. Changes to beneficiary designations can trigger challenges based on lack of capacity, undue influence, and even fraud.

Ohio's First District Court of Appeals recently heard a change where a sister sued her brother regarding their mother's change to the beneficiary under her IRA account. In *Webb v. Anderson Children Trust, et al.*, 2020-Ohio-4975 (1st. Dist), the sister argued that making her brother the sole beneficiary of their mother's IRA was invalid because, among other reasons, the mother could not understand what she was doing due to a recent dementia diagnosis.

The mother had previously made brother and sister equal beneficiaries of her IRA, but in June 2003, the mother created an estate plan with a Will and a Trust. The Will left her remaining assets in equal one-third shares to the brother, a trust for the benefit of brother and sister, and the grandchildren. The mother changed the IRA beneficiaries to match her Will simultaneously and named brother as her financial power of attorney.

Six years later, in February 2009, the mother switched her IRA to a new financial institution, UBS. This change required the completion of new account paperwork, including a new beneficiary designation form. The mother filled out the beneficiary form at home with the brother and named him the sole beneficiary.

Just months later, in April 2009 and at brother's request, a doctor evaluated the mother who received a score of 19/30 on a Mini-Mental Status Exam ("MMSE"), which indicated mild to moderate

cognitive impairment. Almost a year later, in March 2010, the mother was evaluated after showing signs of confusion, again at brother's request, and received an MMSE score of 17/30—indicating "severe cognitive impairment." The mother was placed under guardianship, and the brother was made the guardian.

After mother died and sister did not receive any of the IRA proceeds, she sued her brother. Sister relied on the prior MMSE exams in 2009 and 2010 and the dementia diagnosis. Sister called the doctor who evaluated mother as an expert witness. Brother relied on the financial advisor who met with mother in February 2009 as his primary witness who testified that the mother was sharp and knew what she was doing when she designated a beneficiary for her new IRA.

The Trial Court found that the sister did not prove the mother lacked the capacity to change the IRA beneficiary in 2009 because the mere dementia diagnosis was not enough to show a lack of capacity. The doctor's expert opinion did not persuade the Court that the mother's cognitive impairment in 2009 made her unable to understand a beneficiary change.

Sister appealed this decision, but the Court of Appeals also agreed with brother. The Court of Appeals held that consistent with other legal precedent, a dementia diagnosis itself is not definitive to show lack of capacity.

The *Webb* case holds that a disinherited heir cannot merely rely on the existence of a dementia diagnosis alone to invalidate a beneficiary designation. Instead, the facts must prove that an individual, at the time she is making a beneficiary designation, is unable to: understand the nature of her business; comprehend generally the nature and extent of her assets; hold in her mind the identities of those who have a natural claim to her assets; and appreciate the relationship with her family members.

If you face a beneficiary designation dispute, please reach out to the Schneider Smeltz Spieth Bell LLP Probate Litigation Team to review your options at (216) 696-4200.