

UNDUE INFLUENCE IN WISCONSIN PART 2: ELEMENTS OF CLASSIC UNDUE INFLUENCE

This is the second in a series of three articles on undue influence in Wisconsin.

In Wisconsin, the four elements of classic undue influence cases are susceptibility, opportunity, disposition and a coveted result. In addition to classic undue influence in Wisconsin, there is a second method of challenging a will or gift made during lifetime, a so-called *inter vivos* conveyance, which will be discussed in the third and final article in this series.

Susceptibility

The first element of classic undue influence is a finding that the person charged with exercising undue influence unduly influenced a susceptible testator or grantor.

The Wisconsin Supreme Court, in numerous cases, has stated that the key factors regarding the issue of a testator or grantor's susceptibility to undue influence are:

- Age
- Personality
- Physical and mental health
- Ability to handle business affairs[1]

Opinions about the general state of mind of the testator or grantor from third parties with whom he or she may have had contact are given much credence by the court.

For example, the court will consider whether or not a person is considered to be strong-willed, independent, self-reliant, dominant, stubborn, dependent, capable of making decisions, and taking care of ordinary day-to-day management of their affairs.

Age, in and of itself, is of little significance unless it is coupled with a deteriorating physical or mental condition.[2]

If consideration of the factors set forth above demonstrates that the testator or grantor was unusually receptive to the suggestions of others and consistently deferred to others on matters of utmost personal importance, then the element is established.[3]

Opportunity to Influence

This element requires a showing that the person charged with exercising such influence on the susceptible person had the opportunity to procure the improver favor.

As a general rule, this is the easiest of the four elements to prove. To justify a finding of the opportunity to influence, the court must find repeated close contact with the testator.[4] Close personal relationships whether because of familial ties, living conditions, working conditions, or other social conditions have been found sufficient.

However, opportunity to influence does not mean mere physical propinquity or personal contact. It requires that interviews or personal transactions between the parties exist and that they were followed by the accomplishment of a desired end.[5] It is not necessary, nor is it often the case, that opportunities to influence are accomplished in secret or that they culminate in one particular act that represents the attempt to unduly influence. However, the opportunities to influence must exist at or about the time the will or conveyance is effected.[6]

Disposition to Influence

The third element requires proof of more than a desire on the part of the person charged with undue influence to obtain a share of the estate. It necessitates a showing of a willingness to do something wrong or unfair to obtain a share. It requires proof of grasping or overreaching affirmative steps on the part of the person charged.[7]

Evidence must be submitted of conduct designed to take an unfair advantage. Proof of this element requires evidence of the personality traits of the person charged with committing the act of undue influence.

For example, evidence shows a willingness to take advantage of the kindness and generosity of the testator or grantor. Alternatively, evidence shows that the influencer misled or kept a secret from natural beneficiaries.[8] The court has specifically indicated that there is nothing wrong with aiding and comforting a failing testator and that such activity should be encouraged.[9]

Coveted Result

The last element required in order to present a case of classic undue influence is the showing of a result caused by, or the effect of, such undue influence. Two compounds of this element exist.

First, the result must be an “unnatural,” raising “a red flag of warning.”[10] The essential question is whether the person was favored to be excluded from the natural or expected

recipients of the testator's bounty. However, more than a result favorable to the alleged person is required.

The second component is whether the result obtained was caused by or was the effect of undue influence. What is under scrutiny is that a particular recipient benefits for no apparent reason and that the disposition is, in fact, unnatural and, therefore, the bequest or conveyance is unjust^[11]

The mere provision in a will that benefits the influencer does not, by that fact alone, prove the element. Evidence may make what appears unnatural natural given the circumstances of the individual case. The mere fact that the testator makes bequests to his close friends rather than to relatives does not necessarily render the disposition unnatural. Whether a will or conveyance is unnatural or not must be determined from a consideration of all the surrounding circumstances.^[12]

If you have any question, please contact Carl Holborn at carl.holborn@wilaw.com or 414-276-5000.

[1] *Dejmal*, 95 Wis. 2d at 156.

[2] *Id.* at 159.

[3] *Id.* at 157.

[4] *In Matter of Estate of Becker*, 76 Wis. 2d 336, 348, 251 N.W.2d 431 (1977).

[5] *Ward vs. Ward*, 62 Wis. 2d 543, 554, 215 N.W.2d 3 (1974).

[6] *Elvers*, 48 Wis. 2d at 21.

[7] *Estate of Brehmer*, 41 Wis. 2d 349, 356, 164 N.W.2d 318 (1969).

[8] *In Matter of Estate of Vorel*, 105 Wis. 2d 112, 312 N.W.2d 850 (1981).

[9] *Estate of McGonigal*, 46 Wis. 2d 205, 214, 174 N.W.2d 256 (1970).

[10] *Estate of Culver*, 22 Wis. 2d 665, 673, 126 N.W.2d 536 (1964).

[11] *Will of Cooper*, 28 Wis. 2d 391, 399, 137 N.W.2d 93 (1965).

[12] *Becker*, 76 Wis. 2d at 349.