

## Testifying in Court Again

Tags

[legal](#)

Author

[Dr. Jerry Bergman, PhD](#)

Date

26 June, 2024

Collection

[Village Reporter](#)

[VR 2024](#)

Among the more interesting cases for which I served as an expert witness were “Last Will & Testament” or Will cases. Most of the cases I was involved with involved a deceased that lacked a properly filed Will. This is a common situation. About half of all persons who die in America do not have a Will. Glancing at the obituary pages provides one reason why: no small number of persons unexpectedly die when they are below their average-life expectancy. In the current edition of the *Village Reporter*, of the 18 obituaries published this week, fully 12 died at an age below the average-life expectancy for their sex (In 2021, according to CDC data, women's life expectancy was 80 years in the U.S., while men's was about 74). Of course, for single persons living at home, a Will may not be needed.

One of the most interesting cases I served as a consultant for, and also testified in court for, involved a 91-year-old man I will call William. William left most of his 338,000-dollar estate, the value of the family farm, to a church, not to his family. As far as is known, his original Will left most of his estate to his three surviving sisters (hereafter called the family) and, by extension, to their families including their children, grandchildren, and great grandchildren.

The original Will was destroyed by the person who wrote the new Will, which the family felt was deliberate. Doing so prevented them from learning what the family feels were his actual desires. The family believed that the new Will, which gave the bulk of William's estate to a church that they considered a cult, was made under undue influence. The new Will was done by an attorney who was a member of the church that was to receive the 338,000 dollars. The family believed that the church

openly implied giving his estate to the church would help in ensuring that William would make it to Heaven. Another concern of the family was they believed William was mildly retarded and was suffering from the early stages of dementia.

For these reasons, the family decided to appeal to the courts. Consequently, they obtained an attorney who recruited me to testify in favor of the family. The circumstances under which this second Will was prepared and executed were the subject of the trial. A jury determined that the testator had the requisite competence, but that the Will was invalid because it was the product of improper influence. The family prevailed in court.

The church appealed the case to the appellate court in the hopes of overturning the jury's verdict. The appellant court ruled that, unless clear and compelling evidence existed, the desires of William, as expressed in his Will, must prevail.

If a person dies without a will, called "intestate," a probate court will apply the intestacy laws of the state to determine how to distribute the property among the next of kin. In cases for which I have consulted where no valid Will existed, the estate is normally left to the person's spouse, or cohabiting partner who was in the relationship for five years or more. This is an issue of older persons who do not formally marry due to their concerns about loss of health insurance or retirement benefits which, by law, after marriage must normally be assumed by the marriage partner.

Another concern is the legalization of gay marriages and partners. In the case of same-sex partners, by law they must be treated according to the same rules as for heterosexual couples. In both the case noted above, and other cases I worked with, the foremost concern is satisfying the desire of the deceased. Ohio law gives the order of priority, first to any surviving spouse or domestic partner, then to a child or children, then to a grandchild or grandchildren, then to a parent or parents, and, lastly, to a sibling or siblings.

If no Will exists, and evidence exists that the deceased desired the bulk of his estate is to go to a church, or an entity such as a hospital, this goal must normally be fulfilled. Verbal or written comments made to friends are also considered, such as letters sent to an entity stating that "I plan to leave 20,000 dollars of my estate to ... hospital." If these statements are not challenged, the executor or probate court most always supports the wishes of the deceased. Estate settlement varies widely by state but, in my experience, the outline above is typical. My involvement in these

cases provided me with the determination to ensure my Will is signed and properly filed.

- 7 views

[View PDF](#)