THE COMPLETELY INSANE LAW OF PARTIAL INSANITY: THE IMPACT OF MONOMANIA ON TESTAMENTARY CAPACITY

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Editors’ Synopsis: In this Article, the author discusses the doctrine of monomania, which permits a court to invalidate a will based on the testator’s insane delusion if that insane delusion caused the testator to dispose of his property in a way that he otherwise would not have. The author argues that the monomania doctrine is fatally flawed and that the doctrine should be abandoned in favor of using the general test for capacity to make all testamentary capacity decisions.

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I. INTRODUCTION

Is it possible to be just a little crazy? At what point (if any) does a delusion or hallucination become so significant that it destroys testamentary capacity? Can a delusion about a specific subject obviate

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testamentary capacity even though the testator is, in all other respects, sane?¹

Courts have long held that a testator² suffering from an insane delusion cannot execute a valid will if the will is a product of the delusion.³ For example, a testator who suffers from an insane delusion that she is the Holy Ghost may not be able to execute a valid will.⁴ If the will is a product of the insane delusion, the delusion renders the will invalid even if the testator had sufficient mental capacity in all other aspects of her life.⁵

The problem is that in creating a test for an insane delusion, or monomania, courts have fashioned rules that are simultaneously over and under inclusive. Insane delusion law considers the wrong issues. Instead of considering the testator’s mental abilities—as is done in most capacity decisions⁶—the monomania doctrine attempts to determine why the testator believed what he believed and why he did what he did.⁷ This subjective state of mind is particularly difficult to prove because the best witness—the testator—is unavailable.

As discussed in more detail below, in order for a court to invalidate a will based on the testator’s insane delusion, the contestan⁸ must prove

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¹ Yes. See, e.g., Athey v. Rask (In re Estate of Rask), 214 N.W.2d 525, 529 (N.D. 1974).
² For grammatical ease, this Article will use “testator” to refer to individuals of either gender.
³ See, e.g., Kelly v. Reed, 580 S.W.2d 682, 683 (Ark. 1979); In re Estate of Romero, 126 P.3d 228, 232 (Colo. Ct. App. 2005); Kingdom v. Sybrant, 158 N.W.2d 863, 866 (N.D. 1968).
⁵ See In re Sandman’s Estate, 8 P.2d 499, 500 (Cal. Dist. Ct. App. 1932) (“[M]ental derangement sufficient to invalidate a will must be insanity in one of two forms: (1) Insanity of such broad character as to establish mental incompetency generally; or (2) some specific and narrower form of insanity under which the testator is the victim of some hallucination or delusion . . . .”); English v. Shivers, 133 S.E.2d 867 (Ga. 1963).
⁶ See infra notes 78–80 and accompanying text.
⁷ See infra notes 230–62 and accompanying text.
⁸ Although it varies from state to state, generally the burden of proving an insane delusion is on the contestan. See, e.g., Ballelli v. Muldoon, 991 S.W.2d 633, 638 (Ark. Ct. App. 1999) (“[T]he party challenging the will’s validity is required to prove by a preponderance of the evidence that the testator lacked mental capacity.” (citing In re Estate of Davidson, 839 S.W.2d 214 (Ark. 1992))); Manion v. Hunt (In re Scherrer’s Estate), 7 N.W.2d 848 (Wis. 1943) (discussing that when the issue in a will contest is “whether deceased [possessed] sufficient mental capacity, . . . contestants have the burden of proof by clear, convincing, and satisfactory evidence”).

In many states, the proponent must make out a prima facie case of capacity before the burden of proof shifts to the contestan. See infra notes 50–52 and accompanying text. The
two facts. First, the contestant must show that the testator suffered from an insane delusion. Proving that a delusion is insane, however, is more difficult than one might expect. Specifically, it is difficult to distinguish between a testator suffering from an insane delusion and a testator who has merely reached a wrong, mean-spirited, or “stupid” conclusion. An insane delusion could invalidate the will, but a wrong, mean-spirited, or “stupid” conclusion should not.

Second, the contestant also must show that the will was a “product” of the insane delusion. In essence, the contestant must show that the insane delusion caused the testator to dispose of his property in a way that he otherwise would not have done. For example, a delusion that the moon is made of green cheese might be an insane delusion. It is, however, not always easy to prove that a testator’s insane delusion is a question of fact. See, e.g., Murphy v. Warner (In re Murphy’s Estate), 483 P.2d 1364, 1365 (Colo. Ct. App. 1971); Holcomb v. Drennan (In re Estate of Holcomb), 63 P.3d 9 (Okla. 2002).

The determination of whether a will is invalid because of the testator’s insane delusion is a question of fact. See, e.g., Murphy v. Warner (In re Murphy’s Estate), 483 P.2d 1364, 1365 (Colo. Ct. App. 1971); Holcomb v. Drennan (In re Estate of Holcomb), 63 P.3d 9 (Okla. 2002).

See infra notes 31–44 and accompanying text.


See Estate of Aune, 478 N.W.2d at 564 (“The contestants must establish that the will was a product of the insane delusion and that the testator, if not laboring under the insane delusion, would have differently devised the property.”).

See Hartung v. Holmes (In re Chevalier’s Estate), 113 P. 130, 133 (Cal. 1911).

It would thus not be sufficient, to avoid a will, to show that the testator believed that the moon was made of green cheese, but if it should be established, in addition thereto, that because of this belief he devised or bequeathed his property in a way which, saving for the belief, he would not have done, a case is presented where the abnormality of mind has a direct influence upon the testamentary act.

Generally, if there is any evidence in support of the testator’s belief, then such belief is not an insane delusion. See Dillon v. Phillips, 756 P.2d 1278, 1279 (Or. Ct. App. 1988)
however, unlikely that such a delusion would invalidate a will. On a less amusing note, many monomania cases involve paranoid delusions. For example, a testator might believe that her loved ones are trying to harm her or steal her property. In such a case, the contestant must show that the paranoid insane delusion, and not another motivation, such as dislike of an heir, affected the terms of the will.

The difficulties of proof are palpable. For example, determining whether a testator disinherited his daughter because he suffered from an insane delusion that she was trying to steal his property or because she did not spend enough time with him is nearly impossible. Of course these issues are addressed when the only reliable witness of the testator’s subjective thoughts—the testator himself—is deceased.

As discussed below, the standards for monomania not only lead to arbitrary results, they also provide fact-finders—both judges and juries—with significant leeway to express their biases. Generally, these biases run in favor of traditional dispositive schemes, such as leaving property

(“An insane delusion is a belief which has absolutely no foundation in fact, and even slight evidence which provides a basis for the belief negates the existence of a delusion.”). This is true even if the testator’s reasoning is absurd. See Estate of Pilon, 780 N.Y.S.2d at 812 (citing COMM. ON PATTERN JURY INSTRUCTIONS, ASS’N OF SUPREME COURT JUSTICES, NEW YORK PATTERN JURY INSTRUCTIONS § 7:49 (2003)).

On the Internet, it is possible to find support for the green cheese theory based on the “seismic velocity” of moon rocks. See Is the Moon Made of Green Cheese?, http://www.planetfusion.co.uk/~pignut/cheese.html (last visited May 16, 2007). Thus, it seems that a conclusion that the moon is made of green cheese might not be an insane delusion. This (admittedly silly) example highlights the limitations of the current law regarding insane delusions. See infra notes 118–71 and accompanying text.

See Chevallier’s Estate, 113 P. at 133.
19 See M.I. Marshall & Isley Trust Co. of Ariz. v. McCannon (In re Estate of Killen), 937 P.2d 1368, 1373 (Ariz. Ct. App. 1996); see also In re Morgan’s Estate, 68 A. 953, 953 (Pa. 1908) (finding that the testator had capacity even though there was no foundation for his dislike of some family members).
only to close family and treating all children equally. Thus, the doctrine of monomania conflicts with the policy of testamentary freedom—an individual’s freedom to control the disposition of his property at his death.

It has been noted that the aging of the population will likely lead to increased litigation regarding testamentary capacity over the next few decades. This aging of the population is particularly likely to increase the number of monomania cases. The occurrence of Alzheimer’s disease, for example, is strongly correlated with age. Three percent of individuals between ages sixty-five and seventy-four are expected to suffer from the disease, and forty-seven percent of individuals over age eighty-five. A common symptom of the disease is paranoid delusions; therefore, this aging of the population likely will result in a greater number of decedents that suffered from paranoid delusions. Because paranoid delusions are a common source of monomania cases, the increased number

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23 See Milton D. Green, Proof of Mental Incompetency and the Unexpressed Major Premise, 53 YALE L.J. 271, 300 (1944); see also Fletcher v. DeLoach, 360 So. 2d 316, 319 (Ala. 1978) (“The fact that the . . . will left all of the estate to . . . the testatrix’s daughter, thus making no provision for her son or granddaughter, could be evidence of an unnatural disposition of her property, and could be considered by the jury on the issue of testamentary capacity.”).
24 See U.S. Census Bureau, U.S. Interim Projections by Age, Sex, Race, & Hispanic Origin (Mar. 18, 2004), available at http://www.census.gov/ipc/www/usinterimproj/ (click on “Table 2a”) (last visited May 16, 2007) (noting that 12.4% of the U.S. population was over age sixty-five as of the 2000 census). By 2050, that percentage is expected to increase to 20.7%. Moreover, the percentage of residents age eighty-five or older is expected to increase from 1.5% as of calendar year 2000 to 5% in 2050. See id.
27 See id. at 2554.
28 See Evans, supra note 26, at 2554.
of decedents that suffered from paranoid delusions may lead to an increase in the number of monomania cases.

Part Two of this Article briefly discusses the issue of testamentary freedom and addresses the conflict between respect for testamentary freedom and the requirements of testamentary capacity. This Part also discusses the general test for testamentary capacity.

Part Three of this Article discusses the issue of monomania as it relates to testamentary capacity. Specifically, Part Three addresses when an insane delusion obviates testamentary capacity. As mentioned, the law regarding insane delusions creates unworkable standards. These amorphous standards invite fact-finders to substitute their judgment for that of the testator. This exacerbates the bias in favor of traditional estate plans that is inherent in the usual test for general testamentary capacity.

Part Four argues that the doctrine of monomania is unnecessary. If the testator truly lacks capacity, the will should be found invalid under the test for general testamentary capacity. In addition, eschewing the law of monomania allows fact-finders to consider more probative issues in determining the testator’s capacity and reduces fact-finder bias in favor of traditional estate plans.

Part Four concludes that the doctrine of monomania serves no useful purpose, leads to arbitrary results, and injects additional fact-finder bias into determinations of testamentary capacity.

II. TESTAMENTARY FREEDOM AND TESTAMENTARY CAPACITY

Testamentary freedom—the ability of a decedent to control the disposition of his property at death—is a fundamental tenet of American law.\textsuperscript{31} Explicit limitations on testamentary freedom are relatively minor,\textsuperscript{32} with


\textsuperscript{32} In addition to a surviving spouse’s elective share rights, many states provide the surviving spouse, the decedent’s minor children, or both, with rights to relatively small amounts of property. Generally, the most significant of these so-called offsets is the homestead allowance. Although it varies from state to state, the homestead allowance tends not to be terribly valuable. See, e.g., MICH. COMP. LAWS. ANN. § 700-2402 (West 2002).
the notable exception of elective share statutes that prevent testators from disinheriting a surviving spouse.\textsuperscript{33} Indeed, many people are surprised to learn that, for the most part, testators are free to completely disinherit their children—even their minor children.\textsuperscript{34}

In addressing the constitutionality of elective share statutes, the Supreme Court has held that “the dead hand rules succession only by sufferance.”\textsuperscript{35} Later Supreme Court cases, however, make it clear that there is some constitutional right to testamentary freedom, although its metes and bounds are unclear.\textsuperscript{36}

Regardless of the scope of the constitutional right, it is clear that the right to control the disposition of property at death is fundamental to Anglo-American wills law.\textsuperscript{37} Indeed, the right to dispose of personal

\textsuperscript{33} All common law property states, except Georgia, have an elective share statute that prevents a testator from freely disinheriting her surviving spouse. See Sarah E. Waldeck, \textit{An Appeal to Charity: Using Philanthropy to Revitalize the Estate Tax}, 24 VA. TAX REV. 667, 701 n.168 (2005). These statutes vary greatly from state to state. For example, in Connecticut a surviving spouse is entitled to a life estate in one-third of the decedent’s probate estate. See CONN. GEN. STAT. ANN. § 45a–43b (West 2002). In Missouri, the surviving spouse would be entitled to one-half of the decedent’s estate, if she left no surviving descendants; one-third if the decedent also left surviving descendants. See MO. ANN. STAT. § 474.160 (West 1992). In Missouri, unlike Connecticut, the surviving spouse receives his elective share outright. See id. In contrast, under the Uniform Probate Code, the surviving spouse is entitled to a portion of the “augmented estate,” an artificial construct that includes much more than merely the decedent’s probate estate. See UNIF. PROBATE CODE §§ 2-202, 2-203 (amended 1993), 8 U.L.A. 102–04 (1998). Further, under the Uniform Probate Code, the surviving spouse’s share of the augmented estate depends on how long the decedent and surviving spouse were married, not on whether the decedent left any surviving descendants. See id. § 2-202.


\textsuperscript{35} Irving Trust Co. v. Day, 314 U.S. 556, 562 (1942):

Rights of succession to the property of a deceased, whether by will or by intestacy, are of statutory creation, and the dead hand rules succession only by sufferance. Nothing in the Federal Constitution forbids the legislature of a state to limit, condition, or even abolish the power of testamentary disposition over property within its jurisdiction.


\textsuperscript{37} See United States v. Perkins, 163 U.S. 625, 627–28 (1896) (stating that control is fundamental, although subject to limitations); Middleditch v. Williams, 17 A. 826, 827 (N.J.)
property by will was established in England in the thirteenth century.³⁸
Although primogenitor³⁹ and other limitations on the freedom to dispose
of real property lingered for several centuries, freedom of testation over
real property was established by the middle of the nineteenth century.⁴⁰

Any discussion of testamentary capacity—and especially a discussion
of insane delusions—must recognize the importance of testamentary
freedom. Many of the cases discussed in this Article involve testators who
capriciously disinherited their heirs.⁴¹ In these situations, it is tempting to
use the requirement of testamentary capacity to invalidate the will and
allow the property to descend to the heirs.⁴² Indeed, numerous commenta-
tors have noted the inclination of fact-finders to do just this.⁴³ However,
courts frequently state that, out of respect for testamentary freedom, wills
are not invalid merely because the estate plan is arbitrary, mean-spirited,
or prejudiced.⁴⁴

To some extent, the requirement of testamentary capacity inherently
conflicts with respect for testamentary freedom. When a court rejects a
will, the court is failing to implement the testator’s desires as expressed in

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³⁸ See McMurray, supra note 31, at 105–06.
³⁹ “Primogenitor” is the right of the testator’s eldest male son to take the testator’s real
property at his death. See Webster’s III New International Dictionary of the English
⁴⁰ See McMurray, supra note 31, at 105–06.
⁴¹ For example, in Hardy v. Barbour, 304 S.W.2d 21 (Mo. 1957), the testator
disinherited her daughter largely because the testator had always wanted a son. See id at 27.
In fact, the testator named her daughter Werdna, because she had hoped to name a male
child Andrew. Obviously, “Werdna” is “Andrew” spelled backwards.
⁴² An “heir” is an individual who would receive a portion of the decedent’s estate if he
died intestate. See Black’s Law Dictionary 740 (8th ed. 1990). Generally, the decedent’s
heirs are his surviving spouse, if any, and his closest living blood relatives. See, e.g., Mo.
Ann. Stat. § 474.010 (West Supp. 2006); Unif. Probate Code §§ 2-112 to 2-113, 8
U.L.A. 90–91 (1998). In most cases, if a will is denied probate, the decedent’s estate will
be distributed according to the state’s intestacy statute. Thus, the decedent’s heirs will divide
the estate. However, in cases in which the decedent leaves an earlier executed will and a
later will that is disputed, if the later will is rejected, the earlier will may still be probated.
See, e.g., Estate of Karabatian v. Hnoi, 170 N.W.2d 166 (Mich. Ct. App. 1969); see also
N.Y. Est. Powers & Trusts Law § 3-4.6 (McKinney 1998).
⁴⁴ See M.J. Marshall & Isley Trust Co. of Ariz. (In re Estate of Killen), 937 P.2d 1368,
the purported will. Despite frequent pronouncements of judicial respect for testamentary freedom, numerous commentators have noted courts’ willingness to refuse to probate a will when the estate plan is non-traditional. Some of this bias is explicit. For example, an “unnatural” estate plan is evidence of testamentary incapacity.

Testamentary capacity is a question of fact to be determined by the fact-finder. Generally, the burden of proving testamentary capacity is on the proponent of the will. Once the proponent has made a prima facie case of capacity, however, the burden shifts to the contestant to prove incapacity. In most cases, the proponent can make her prima facie case relatively easily. The fact that the will is properly executed may suffice.

A will is valid only if the testator had testamentary capacity at the moment the will was executed. Thus, an individual who is usually incompetent may execute a valid will if she is enjoying a “lucid interval”

45 Of course, if the testator did not have capacity when he executed the will, it is unclear whether the purported will is an accurate statement of the testator’s testamentary intent. In these cases, it is arguable that the rejection of the will is done out of respect for testamentary freedom. See Mary Louise Fellows, In Search of Donative Intent, 73 IOWA L. REV. 611, 621 (1988).
46 See, e.g., Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998).
47 See supra note 43.
50 See In re Estate of Farr, 49 P.3d 415, 419 (Kan. 2002); In re Estate of Broderick, 125 P.3d 564, 572 (Kan. Ct. App. 2005).
51 See Estate of Farr, 49 P.3d at 419; Estate of Broderick, 125 P.3d at 572.
52 See Gathings v. Howard, 84 So. 240, 241 (Miss. 1920); Rocco v. Sims (In re Estate of McQueen), 918 So. 2d 864, 870–71 (Miss. Ct. App. 2005); Chrisman v. Chrisman, 18 P. 6, 7 (Or. 1888).

Many wills are executed contemporaneously with “self proving affidavits.” Generally, in these affidavits the witnesses attest to the various requirements for probate, such as due execution and testamentary capacity. See, e.g., MO. ANN. STAT. §§ 474.337, 473.065 (West 1992); N.Y. SURR. CT. PROC. ACT § 1406 (McKinney 1995); UNIF. PROBATE CODE § 2-504, 8 U.L.A. 362–63 (1998). These affidavits should establish the proponents’ prima facie case. See Aichler v. Farmers State Bank & Trust Co. (In re Estate of Camin), 323 N.W.2d 827, 833 (Neb. 1982). Indeed, if the will is not contested, wills may be admitted to probate solely on the strength of the affidavit. See, e.g., MO. ANN. STAT. § 473.065 (West 1992); N.Y. SURR. CT. PROC. ACT § 1406 (McKinney 1995).
53 See Noland v. Noland, 956 S.W.2d 173, 176 (Ark. 1997); Mask v. Elrod (In re Estate of Mask), 703 So. 2d 852, 856 (Miss. 1997); Chrisman, 18 P. at 12.
at the time the will was executed. The requirement that capacity be determined at the moment of the will’s execution makes capacity determinations particularly difficult. Generally, evidence of the testator’s capacity at that moment (other than the testimony of the subscribing witnesses) is likely to be limited. Therefore, courts frequently rely on evidence regarding capacity at other times to determine capacity at the moment of the will’s execution."

In most states, by statute, a testator must be of “sound mind” in order to make a will. This requirement is also sometimes referred to as a “disposing mind and memory.” Neither standard is particularly helpful in determining whether a testator had testamentary capacity. Fortunately, case law in most states provides a more complete definition of

54 See In re Carnegie’s Estate, 13 So. 2d 299, 300 (Fla. 1943); In re Estate of Washburn, 690 A.2d 1024, 1028 (N.H. 1997).
55 See Noland, 956 S.W.2d at 176 (“The time to look at a testator’s mental capacity is at the time the will is executed. However, proof may be taken as to the testator’s condition both before and after the will’s execution as being relevant to his condition at the time the will was executed.”); Chrisman, 18 P. at 12 (“What his mental condition was before or after executing it is of no importance, only as it throws light upon his mind, and shows what its actual condition was when the will was executed.”).
56 See, e.g., N.Y. EST. POWERS & TRUSTS LAW § 3-1.1 (McKinney 1998); NEV. REV. STAT. ANN. § 133.020 (LexisNexis 2000); N.J. STAT. ANN. § 3B:3-1 (West 1983); UNIF. PROBATE CODE § 2-501, 8 U.L.A. 144 (1998).
58 In a few states, the standard for testamentary capacity has been codified into the statutes. For example, section 6100.5 of the California Probate Code provides:
(a) An individual is not mentally competent to make a will if at the time of making the will either of the following is true:
(1) The individual does not have sufficient mental capacity to be able to (A) understand the nature of the testamentary act, (B) understand and recollect the nature and situation of the individual’s property, or (C) remember and understand the individual’s relations to living descendants, spouse, and parents, and those whose interests are affected by the will.
CAL. PROB. CODE § 6100.5 (West Supp. 2004).
In Georgia, the statute dealing with testamentary capacity mentions that the testator must be free from monomania. See GA. CODE ANN. § 53-2-23 (1997):
An insane person generally may not make a will; however, during a lucid interval he may do so. A monomaniac may make a will if the will is in no way the result of or connected with his monomania. In all such cases it must appear that the will speaks the wishes of the testator, unbiased by the mental disease with which he is affected.
testamentary capacity. The Restatement (Third) of the Law of Property provides the following definition of testamentary capacity:

To be “of sound mind,” the testator must, when executing a will, be capable of knowing and understanding in a general way the nature and extent of his or her property, the natural objects of his or her bounty, and the disposition that he or she is making of that property, and must also be capable of relating these elements to one another and forming an orderly desire regarding the disposition of the property.\(^5^9\)

Although the definitions vary from state to state,\(^6^0\) and even from case to case within a state,\(^6^1\) most definitions are similar to the Restatement definition quoted above. Generally, the testator must have the ability to know the natural objects of his bounty, know the nature and extent of his property, and understand the consequences of making a will.\(^6^2\)

One should not, however, overemphasize the importance of the precise language used in the various tests for capacity. Although most

\(^5^9\) Restatement (Third) of Prop.: Wills & Other Donative Transfers § 8.1 cmt. c (2003).

\(^6^0\) Compare In re Clapper, 718 N.Y.S.2d 468, 470 (App. Div. 2001) (stating that a testator has testamentary capacity if “(1) he understood the nature and consequences of executing a will, (2) he knew the nature and extent of the property he was disposing of, and (3) he knew those who are the natural objects of his bounty and his relationship to them”) with Rogers v. Overton (In re Estate of Rogers), 47 N.W.2d 818, 820 (Iowa 1951) (stating that the test for testamentary capacity requires the testator “1. To understand the nature of the instrument he is executing; 2, to know and understand the nature and extent of his property; 3, to remember the natural objects of his bounty; and 4, to know the distribution he desires to make”).

\(^6^1\) Compare Fridline v. Dolby, No. 19115, 1929 WL 2381, at *2 (Ohio Ct. Com. Pl. Dec. 2, 1929) (“The law, therefore, requires that a testator, or testatrix, shall be able to hold in his or her mind the nature and extent of his or her property; the persons who would be the natural objects of his or her bounty, and their relationship to him or her.”) with Niemes v. Niemes, 119 N.E. 503, 506 (Ohio 1917).

Testamentary capacity exists when the testator has sufficient mind to understand the nature of the business in which he is engaged, to comprehend generally the nature and extent of the property which constitutes his estate, and which it is his intention to dispose of, . . . to hold in his mind the names and identity of those who have natural claims on his bounty[, and] to be able to appreciate his relation to the members of his family.

\(^6^2\) See, e.g., Taylor v. Kelly, 31 Ala. 59, 65 (Ala. 1857); In re Estate of Kumstar, 487 N.E.2d 271, 272 (N.Y. 1985).
cases recite the relevant standard, few actually go through the standard in an ordered factor-by-factor way.\textsuperscript{63} Indeed, many courts seem to make the capacity decision viscerally and then mention the standard to support the decision.\textsuperscript{64} Moreover, capacity issues are so difficult, and gradations of sanity and insanity so subtle, that the precise terms of any test are of limited value.\textsuperscript{65}

The test for capacity does, however, provide some useful insight into capacity decisions. Generally, testamentary capacity requires, among other things, that the testator had the ability to “know the natural objects of her bounty.”\textsuperscript{66}\textsuperscript{66} Although the phrase “natural object of the testator’s bounty” is used frequently in describing capacity, the phrase is much less frequently defined.\textsuperscript{67} Generally, the natural objects of the testator’s bounty are his spouse and closest blood relatives.\textsuperscript{68}

\textsuperscript{63} See Milton D. Green, \textit{Judicial Tests of Mental Incompetency}, 6 MO. L. REV. 141, 159–60 (1941); see also, \textit{e.g.}, Teel v. Roberson \textit{(In re Estate of Teel)}, 483 P.2d 603 (Ariz. Ct. App. 1971); Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998).


\textsuperscript{65} See Slaughter v. Heath, 57 S.E. 69, 71 (Ga. 1907) (“The mind grades up from zero to the intellectual boiling point so gradually that dogmatic tests are of little value.”); Green, \textit{supra} note 63, at 159.

\textsuperscript{66} \textit{E.g.}, Bye, 975 S.W.2d at 455 (“To validly execute a will, the testator must: (1) know the natural objects of her bounty; (2) know her obligations to them; (3) know the character and value of her estate; and (4) dispose of her estate according to her own fixed purpose.”); \textit{see also} RESTATEMENT (THIRD) OF PROPS.: WILLS & OTHER DONATIVE TRANSFERS § 8.1 (2003). In California, the definition of capacity that has been codified into the probate code eschews the traditional “natural objects of the testator’s bounty” language. In its place, California law requires that the testator had the ability to “remember and understand the individual’s relations to living descendants, spouse, and parents, and those whose interests are affected by the will.” CAL. PROB. CODE § 6100.5 (West 1991).

\textsuperscript{67} See, \textit{e.g.}, Teel, 483 P.2d 603. The phrase “natural objects of the testator’s bounty” was first used in the United States in 1823; however, the Court did not define the phrase. See Daly’s Lessee v. James, 21 U.S. 495, 504 (1823); \textit{see also} Robert E. Mensel, Right to Feeling and Knowing Right: Insanity in Testators and Criminals and Nineteenth Century American Law, 58 OKLA L. REV. 397, 425 (2005).

\textsuperscript{68} Frequently, the “natural objects of a testator’s bounty” are his heirs; that is, the individuals who would inherit the decedent’s estate if he died intestate. See Daly’s Lessee, 21 U.S. at 504; BLACK’S LAW DICTIONARY 741 (8th ed. 1990). In cases in which the heirs cannot reasonably be considered the natural objects of the testator’s bounty because of the testator’s frayed relations with his heirs, courts search for those individuals who provide a family-like support structure. See Mensel, \textit{supra} note 67, at 426–29. Further, in cases in which the testator had both a traditional family and a nontraditional family, courts will
The testator does not, however, need an encyclopedic recall of the natural objects of his bounty.\textsuperscript{69} Indeed, testamentary capacity requires a relatively low degree of mental ability.\textsuperscript{70} Thus, although the testator must have the ability to “know the natural objects of her bounty” and “know the character and value of her estate,” she does not need to have perfect knowledge of either.\textsuperscript{71} For example, the testator may execute a valid will even though she does not know the value of her property with great precision\textsuperscript{72} or does not know all of her heirs.\textsuperscript{73}

Courts have frequently stated that an individual may execute a valid will even though his capacity is significantly impaired.\textsuperscript{74} Thus, even an individual who is forgetful, eccentric, and fails to recognize old friends may have testamentary capacity.\textsuperscript{75} Indeed, an Arizona court has held that a mentally retarded individual who had the mental function of a ten-to-

generally conclude that the traditional family is the “natural object of the testator’s bounty.” See id.; see generally Spitko, supra note 21, at 275–86.

\textsuperscript{69} See Havens v. Mason, 62 A. 615, 616 (Conn. 1905); Mangan v. Mangan, 554 S.W. 2d 418, 422 (Mo. Ct. App. 1977).

\textsuperscript{70} See Turner v. Hand, 24 F. Cas. 355, 364–65 (D.N.J. 1855) (No. 14257) (noting that testamentary capacity requires that the testator had a “disposing memory” but that such memory may be “very imperfect”); Bye, 975 S.W. 2d at 455. Capacity to contract requires a higher level of mental ability than testamentary capacity. See Norwest Bank Minn. v. Beckler, 663 N.W. 2d 571, 579 (Minn. Ct. App. 2003); Owen v. Summers, 97 S.W. 3d 114, 125 (Tenn. Ct. App. 2001). But see In re Estate of Romero, 126 P. 3d 228, 233 (Colo. Ct. App. 2005).

Even individuals under guardianship may execute a valid will. See Beckler, 663 N.W. 2d at 579; Allen v. Worrall (In re Worrall’s Estate), 127 P. 2d 593, 595 (Cal. Dist. Ct. App. 1942). A ward under guardianship may be able to execute a valid will for two reasons. First, as mentioned, the level of capacity that allows for the appointment of a guardian (lack of capacity to contract) is higher than the level of capacity required to make a valid will. See Beckler, 663 N.W. 2d at 579. Second, even an individual that has been adjudicated insane may enjoy a “lucid interval” during which he can execute a valid will. See supra text accompanying note 54.

\textsuperscript{71} See Bye, 975 S.W. 2d at 455.


\textsuperscript{73} See supra note 69 and accompanying text.

\textsuperscript{74} See, e.g., Firestone v. Atkinson, 218 N.W. 293, 294 (Iowa 1928) (stating that a testator may have capacity to execute a valid will even though his “mind may have been debilitated by age or disease, the memory enfeebled, the understanding weak, he may have even lacked the capacity to transact many of the ordinary business affairs of life” (quoting Perkins v. Perkins, 90 N.W. 55, 57 (Iowa 1902))); GA. CODE. ANN. § 53-2-25 (1997).

\textsuperscript{75} See In re Selb’s Estate, 190 P. 2d 277 (Cal. Dist. Ct. App. 1948).
twelve year old child had testamentary capacity. It is not necessary that the testator actually knew the “natural objects of his bounty” or the “character and value” of his estate. A testator’s mistaken belief will not vitiate testamentary capacity. Instead, the testator merely needs to have the ability to understand these things. Courts focus on the testator’s ability to know (rather than what the testator actually knew) because trying to determine what the testator was thinking when he executed his will requires delving too deeply into the mind of the deceased. It creates an impossible issue of proof.

The role of the dispositive scheme in determining testamentary capacity is an issue that frequently confronts the courts. This is also the area in which the issue of capacity is most likely to conflict with testamentary freedom. A competent testator is free to dispose of his property in any manner he chooses. In some cases, however, the choices the testator

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78 A factual mistake by the testator will not invalidate his will or any part of it, unless the mistake is apparent from the face of the will. See In re Estate of Alberts, 448 N.Y.S.2d 829, 830 (App. Div. 1982); Jackson v. Austin, No. CA99-34, 1999 WL 760974, at *3 (Ark. Ct. App. Sept. 22, 1999). Thus, for example, a testator who executed a will that left substantial property to Campbell College because of the testator’s gross underestimation of the size of his estate had testamentary capacity and the will (complete with mistake) was probated. See Holmes v. Campbell College, 125 P. 25, 26–27 (Kan. 1912). Although wills are not reformed to correct a mistake made by the testator, there is a statutory exception in cases in which the testator omitted a child solely because the testator erroneously thought that child was deceased. See, e.g., MO. ANN. STAT. § 474.240(2) (West 1992); MONT. CODE ANN. § 72-2-332(3) (2005); UNIF. PROBATE CODE § 2-302(c) (amended 1991), 8 U.L.A. 135–36 (1998).
79 See Holmes, 125 P. at 26; Edwards v. Vaught, 681 S.W.2d 322, 325 (Ark. 1984) (“Capacity to understand the effect of making one’s will, and not actual understanding, is the test of mental capacity required of the testator.”); Taylor v. McClintock, 112 S.W. 405, 411 (Ark. 1908). In many states, the test for capacity is based explicitly on the testator’s “ability.” See, e.g., Smith v. Smith, 25 A. 11, 12 (N.J. Prerog. Ct. 1891); see also RESTATEMENT (THIRD) OF PROP.: WILLS & OTHER DONATIVE TRANSFERS § 8.1 (2003) Occasionally, courts will mention that capacity requires actual knowledge by the testator. See, e.g., Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998). It seems, however, that these courts simply did not focus on the difference between what the testator knew and what he had the ability to know. See Edwards, 681 S.W.2d at 325 (holding that the capacity to understand is the proper test).
80 See Harry M. Sterling, Mental Capacity and Freedom of Testation, Collo. L.A., Mar. 1997, at 15, 18; see also Champine, supra note 25, at 553 (noting that the focus on the testator’s ability makes the test more objective).
81 See Bye, 975 S.W.2d at 454–55; see also Lehman v. Lindenmeyer, 109 P. 956, 959
makes show a lack of testamentary capacity, thereby rendering the will invalid.  

Courts frequently claim that an arbitrary, unfair, unequal, or even mean-spirited estate plan is not evidence of incapacity.  

Indeed, disinheriting a possible future heir may be a testator’s primary purpose for executing a will. Despite these broad pronouncements of judicial respect for testamentary freedom, courts do consider the terms of the estate plan in determining whether the testator had capacity. Thus, an “unnatural” distribution is evidence of incapacity. For example, in Fletcher v. DeLoach, the Alabama Supreme Court faced a will that left the testator’s entire estate to one of his two children. The court affirmed the jury’s denial of probate. The court held that it was appropriate for the jury to consider the “character of the testamentary scheme.” An estate plan that was not “just and reasonable” or was not “consonant with the state of the testatrix’s family relations” was evidence of a lack of capacity. The court decided that the unequal distribution was sufficient evidence of incapacity to support the jury’s verdict. Similarly, in Middleditch v. Williams, the New Jersey Supreme Court held that it was unlikely that a testator “in the full possession of his senses” would execute a will that failed to provide for his descendants.

(Colo. 1909); Newkirk v. Knight (In re Estate of Newkirk), 456 P.2d 104, 106–07 (Okla. 1969); supra note 34 and accompanying text.


See McGral v. Rhoades, 323 S.W.2d 815, 821 (Mo. 1959).

See also Leslie, supra note 43, at 236 (noting that, in practice, courts have very little respect for testamentary freedom); Spitko, supra note 21, at 275 (same).

Arguably, courts’ frequent protestations regarding their respect for testamentary freedom may, in fact, be evidence of their willingness to reject atypical estate plans. See William Shakespeare, Hamlet, act 3, sc. 2 (“The lady doth protest too much, methinks.”).

See Fletcher, 360 So. 2d at 318.

See id. at 319.

Id. at 318.

Id. (quoting Fountain v. Brown, 38 Ala. 72, 74 (1861)).

See id. at 319.

Despite the importance of the estate plan in determining testamentary capacity, numerous courts have held that the character of the estate plan cannot in and of itself establish incapacity.\(^2\) In some cases, this principle leaves contestants in a difficult situation. If the will makes an unnatural (or unfair or even merely unequal) distribution, but no other evidence of the severe incapacity required to invalidate the will exists, the contestant may be forced to accept the will’s probate.\(^3\) In these cases, the contestant still may successfully oppose probate of the will by arguing that the testator suffered from an insane delusion. As discussed below, such an insane delusion possibly could invalidate the will even though the testator had general testamentary capacity.\(^4\) This represents a significant risk of undermining testamentary freedom.

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\(^2\) See, e.g., \textit{id.}; Newkirk v. Knight (\textit{In re Estate of Newkirk}), 456 P.2d 104, 106–07 (Okl. 1967). As mentioned, however, the bias in favor of traditional estate plans tempers the strength of this statement. See \textit{supra} note 43 and accompanying text. Of course, in some situations the estate plan provides powerful evidence of incapacity. For example, in one case the testator left her entire estate to “John Gale Forbes,” who supposedly “resolved out of space” when the testator was playing with a Ouija board. See \textit{In re Estate of Peck}, 144 A.2d 338, 340 (Conn. 1958).

\(^3\) As discussed below, in this situation the will should be probated. See \textit{infra} notes 230–82 and accompanying text.

\(^4\) See \textit{infra} notes 114–15 and accompanying text.
III. MONOMANIA

The first case to address the issue of monomania in the context of testamentary capacity was the English case of Dew v. Clark. In Dew, the court faced a truly dislikable testator. Throughout the testator’s life he was cruel to his daughter. He was convinced that his daughter was “the special property of Satan,” and his treatment of her was “harsh” and “severe.” The testator beat his daughter, treated her like a servant, and displayed no filial love for her. When his daughter was eleven years old, the testator (a doctor) forced the daughter to spend the evening with an insane female patient living in an asylum.

The testator’s shameful treatment of his daughter continued after his death. In his will, he left only a small portion of his estate to her. The daughter contested the will arguing that the testator lacked testamentary capacity because of an insane delusion regarding her. The testator’s daughter did not contest the testator’s general testamentary capacity; instead, she claimed only that he was insane on the subject of his relationship with her.

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95 Dew v. Clark, (1826) 162 Eng. Rep. 410 (L.R.A. & E.), is generally cited as the first monomania case. See, e.g., Note, Testamentary Capacity as Affected by Insane Delusions, 26 Ind. L.J. 291, 294 (1951). However, Dew cites the earlier case of Greenwood v. Greenwood that also involves an insane delusion. See Dew, 162 Eng. Rep. at 416 (citing Greenwood v. Greenwood, (1790) 163 Eng. Rep. 930 (K.B.)). The issue in Greenwood, however, was whether the testator had recovered from an insane delusion that, admittedly, had rendered the testator insane. See id. Thus, Greenwood is really more about lucid intervals than monomania.

Dew actually involves three related cases. The first case, decided by the Prerogative Court in 1822, determined that the contestant (the decedent’s daughter) could admit proof regarding the testator’s insane delusion. See Dew v. Clark (Dew I), (1822) 162 Eng. Rep. 98 (L.R.A. & E.). The second case, decided by the Prerogative Court in 1824, also dealt with evidentiary issues. See Dew v. Clark (Dew II), (1824) 162 Eng. Rep. 233 (L.R.A. & E.). In that case, the court decided that the daughter could introduce certain contested evidence. See id. at 238. The third case, decided by the Prerogative Court in 1826, finally resolved the issue. In that case, the court decided that the testator lacked testamentary capacity and, thus, the will was invalid. See Dew v. Clark (Dew III), (1826) 162 Eng. Rep. 410, 455 (L.R.A. & E.) (“[T]hat the will here propounded, in my judgment, is null and void; and . . . the . . . deceased . . . is dead intestate.”).

99 See id. at 235.
100 The testator left his daughter merely a life interest in a small portion of the estate.
The court held that the testator, as a general matter, had testamentary capacity. 102 However, the court decided that the testator was insane on the subject of his daughter. 103 The court noted that the testator had some slight factual basis for his antipathy towards his daughter. 104 Indeed, the Dew court reasoned that most insane delusions have some factual basis. 105 The court concluded, however, that such overwhelming antipathy toward a child based on minor misdeeds had to be the result of an insane delusion. 106

Based on the terms of the will, the court decided that the testator’s insane delusion must have affected how he devised his property. 107 Therefore, the will was the product of the insane delusion and, thus, invalid for want of testamentary capacity. 108

It is hard not to feel sympathy for the daughter in Dew. Indeed, the court spent a great deal of time discussing the daughter’s fine moral character and vilifying the testator. 109 In fact, the court noted that a jury likely would be swayed by its sympathies and that the court had similar

102 See id. at 453. ("[T]he deceased is proved . . . to have been sui juris at all times, and sane upon all ordinary subjects, and in all ordinary respects . . .").

103 See id. at 454.

104 It is not clear from the case exactly what misdeeds the daughter committed. The court notes that, at worst, the daughter is guilty of “some sullenness and perverseness of temper; of some unwillingness or inaptitude to profit by the pains bestowed upon her education [and] even of youthful indiscretion.” See id. at 444. However, at another point in the case, the court notes that the daughter would periodically leave the testator and try to live independently. See id. at 444. The court notes that these “revolts” greatly upset the testator.

105 See id. at 445 (“In most cases of delusion, the delusion founds itself, originally, on some slight circumstance, the magnifying of which, beyond all reasonable bounds, is . . . as good in proof of its being a delusion as the taking up some absurd prejudice, which is utterly unfounded, or that rests upon no basis.”).

106 See id. at 446:

So, if the parent of a child really blamable to a certain extent . . . takes occasion from this to fancy her a “fiend” . . . if, moreover, he be found through his whole life acting under and upon that conception . . . such a parent is, I should say, as much in a state of morbid delusion, and so of insanity, in regard to that child, as if the child’s conduct were wholly irreprouachable.

107 See id. at 454.

108 See id. at 455.

109 For example, the court describes radical instructions that the testator as a doctor gave his wife’s nurses. See Dew I, 162 Eng. Rep. at 98. The court notes that these treatments likely led to the wife’s death. See id.
feelings. The court, however, also repeatedly “protest[ed]” that sympathy for the daughter did not cloud its judgment.

Arguably, a testator should not have the power to disinherit heirs such as the daughter in Dew. An explicit bias by a court in favor of a testator’s child, however, would run counter to the tradition of testamentary freedom. Moreover, even if it were wise for courts to prevent testators from disinheritance deserving heirs, courts should prevent such disinheritance explicitly rather than through misapplications of the test for testamentary capacity.

Since Dew, courts have struggled to determine when a will should be invalidated based on the testator’s insane delusion. These courts have determined that a testator may have “sound mind” in terms of general testamentary capacity but may still lack capacity if suffering from an insane delusion. For the most part, the determination of whether the testator was suffering from an insane delusion is distinct from the test for general testamentary capacity.

Although the phrasing and nuances of the test vary from state to state, some generalities can be made. A will is found invalid for lack of testamentary capacity because of monomania if: (1) the testator was suffering

110 See Dew II, 162 Eng. Rep. at 236:
[T]he [contestant] was actually anxious to submit her case . . . to a jury, that with such a case she had a much better prospect of succeeding with the jury through the medium of their feelings . . . The Court . . . avow[s] that it participates to some extent in the feeling with which a British jury may be supposed to have looked at a case of this description.

111 See Dew III, 162 Eng. Rep. at 455 (“[T]he Court has only again to protest that its feelings in this case have not been suffered to bias its judgment.”); see also supra note 85.

112 See infra notes 226–29 and accompanying text.

113 See infra notes 227–29 and accompanying text.

114 For example, in Zielinski v. Moczulski (In re Estate of Zielinski), 623 N.Y.S.2d 653 (App. Div. 1995), vacated on other grounds, 664 N.E.2d 891 (N.Y. 1996), the court held that even though the testator had general testamentary capacity and was able to handle the activities of day-to-day life, the will was invalid because of an insane delusion. See id. at 655.


In Kottke v. Parker (In re Estate of Kottke), 6 P.3d 243 (Alaska 2000), the Alaska Supreme Court noted that the test for an insane delusion was a facet of law regarding general testamentary capacity, rather than a separate and distinct test. See id. at 246. Despite the unusual characterization of the interaction between general testamentary capacity and monomania, the court’s description and analysis of the doctrine of monomania was relatively typical.
from an insane delusion, and (2) the will is a product of that delusion.\textsuperscript{116} Generally, the contestant bears the burden of proof.\textsuperscript{117}

A. Requirement One: An Insane Delusion

First, the obvious requirement: for a court to invalidate a will based on an insane delusion, the testator must have been suffering from a delusion that is insane.\textsuperscript{118} The requirement that the delusion be an insane delusion is based on respect for the testator’s testamentary freedom. If the purported delusion is merely a mistaken conclusion, then the delusion is not insane and the will is valid.\textsuperscript{119} For example, in Jackson v. Austin,\textsuperscript{120} the Arkansas Supreme Court addressed a case in which a testator left nothing to her grandson or her daughter, the grandson’s mother. The testator had cosigned a note for her grandson\textsuperscript{121} and later became consumed with fear that she would be required to pay off the grandson’s note.\textsuperscript{122} The contestant argued that this fear was an insane delusion and was the reason that the testator disinherited her grandson and daughter.\textsuperscript{123} The court noted that a belief founded on prejudice or mistake is not an insane delusion, “no matter how unreasonable.”\textsuperscript{124} A delusion is an insane delusion only if the delusion has absolutely no basis in fact.\textsuperscript{125} Even a “glimmer” of a factual basis for the delusion renders the delusion not insane.\textsuperscript{126}

\textsuperscript{116} See, e.g., Powell v. Thigpen, 199 S.E.2d 251, 252 (Ga. 1973); Athey v. Rask (In re Rask’s Estate), 214 N.W.2d 525, 528 (N.D. 1974).
\textsuperscript{117} See supra notes 50–52.
\textsuperscript{118} See Dibble v. Currier, 83 S.E. 949, 950 (Ga. 1914); Pyle v. Millar (In re Millar’s Estate), 207 P.2d 483, 489 (Kan. 1949). This determination is made as of the time the testator executed the will. See Nigro v. Fata (In re Estate of Nigro), 52 Cal. Rptr. 128, 131 (Dist., Ct. App. 1966).
\textsuperscript{119} See Dibble, 83 S.E. at 950; Millar, 207 P.2d at 489.
\textsuperscript{121} See id. at *1.
\textsuperscript{122} See id.
\textsuperscript{123} See id. As discussed below, in order to prove that the will was invalid based on an insane delusion, the contestant (the daughter and grandson in this case) must show that the will was the product of the insane delusion. See infra notes 172–229 and accompanying text. Because the Jackson court decided that the testator was not suffering from an insane delusion, the court never reached the issue of whether the testator’s will was a product of the purported delusion. See id. at *3.
\textsuperscript{124} See id. at *4.
\textsuperscript{125} See id.
\textsuperscript{126} See Kottke v. Parker (In re Estate of Kottke), 6 P.3d 243, 246 (Alaska 2000).
Like the *Jackson* court, most courts require that the delusion have no factual basis.\(^{127}\) For example, the fact that the testator’s children had a guardian appointed for him was sufficient to support the testator’s belief that his children were trying to control his property and keep it for themselves.\(^{128}\) Thus, the will disinheriting his children was probated even though the court noted that the children acted in the testator’s best interests throughout the testator’s life.\(^{129}\)

If there is going to be any respect for testamentary freedom, there needs to be a test that distinguishes between unusual (or even unreasonable) conclusions that do not negate testamentary capacity and insane delusions that do. However, if the requirement that the delusion have absolutely no basis in fact is strictly applied, few, if any, wills would be rejected based on monomania. The doctrine would be rendered vacuous.

Delusions almost always have some basis in fact.\(^{130}\) Indeed, in one monomania case, the expert witness testified that insane delusions always have some basis in fact, even though it is not always possible to determine what that basis is.\(^{131}\) A review of the cases seems to support the expert’s conclusion that some (perhaps trivial) factual basis can be found for any delusion. For example, in *Dew*, there were trivial reasons for the testator’s antipathy toward his daughter.\(^{132}\) Despite this, the *Dew* court held that the testator was suffering from an insane delusion.\(^{133}\)

In the more extreme case of *Smith v. Tebbitt*,\(^{134}\) the testator believed that she was the Holy Ghost referred to in the Trinity.\(^{135}\) The court rejected her will for lack of testamentary capacity based on this insane

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\(^{129}\) See id. at 994, 996–97.

\(^{130}\) See William Lubersky, Note & Comment, *Wills-Insane Delusion*, 18 OR. L. REV. 45, 47 (1938); Dew v. Clark (*Dew III*), (1826) 162 Eng. Rep. 410, 445 (R.R.A. & E.). See also Kottke, 6 P.3d at 246. Presumably, it is possible for a testator to be suffering from a hallucination or some other form of delusion that is completely and entirely devoid of any factual basis. In these cases, however, it seems that a testator in such a weakened mental state would fail the general test for testamentary capacity. See *Restatement (Third) of Prop.: Wills & Other Donative Transfers* § 8.1 (2003).

\(^{131}\) See First Methodist Church of Ann Arbor v. Seegeen (*In re Doty’s Estate*), 180 N.W. 608, 616 (Mich. 1920).


\(^{133}\) See id. at 454.

\(^{134}\) (1867) 1 L.R.P. & D. 398.

\(^{135}\) See id. at 405.
delusion.\textsuperscript{136} One could argue, however, that the common belief that all persons are formed in God’s image provides a factual basis (however slight) for the testator’s delusion.\textsuperscript{137}

Other cases also show the presence of minor factual bases for the testator’s purportedly insane delusion. For example, many monomania cases involve delusions of marital infidelity.\textsuperscript{138} In these cases, if the facts are searched carefully, some basis for the testator’s delusion can be found. This is especially true when a “trifle as light as air” is enough of a factual basis to render a jealous suspicion not an insane delusion.\textsuperscript{139}

For example, in \textit{In re Kaven’s Estate},\textsuperscript{140} the Michigan Supreme Court faced a will that largely disinherited the testator’s husband. The testator was suffering from a delusion that her husband was having extramarital affairs, but the court noted that there was no evidence of marital infidelity. Therefore, the delusion was insane,\textsuperscript{141} and the will was denied probate.\textsuperscript{142} The court also stated, however, that the testator had sexual problems\textsuperscript{143} and that the testator was jealous because her husband worked odd hours, worked predominantly with women, and frequently left in the middle of the night for emergencies.\textsuperscript{144} These facts are easily explained. The testator’s husband was a doctor (perhaps an obstetrician).\textsuperscript{145} Although it is easy to understand why the court ruled as it did and refused to probate the will, the court’s decision is clearly wrong. There was obviously some factual basis for the testator’s belief that her husband was unfaithful. Her

136 See id. at 436.
137 See \textit{Genesis} 1:26–27. Generally, religious beliefs cannot be insane delusions. See, e.g., Conner v. Stanley, 14 P. 306, 307 (Cal. 1887); Owen v. Crumbaugh, 81 N.E. 1044, 1052 (Ill. 1907). One possible explanation for this rule is that religious beliefs, by their nature, cannot be proved or disproved. Thus, it is not possible to determine if there is any factual basis for the testator’s belief. See Owen, 81 N.E. at 1053. Uncommon religious beliefs, however, are sometimes determined to be insane delusions. For example, in \textit{Irwin v. Lattin}, 135 N.W. 759 (S.D. 1912), the court held that the testator’s belief in spiritualism was an insane delusion that rendered the will invalid. See id. at 763.
139 See Scott, 60 P. at 530.
140 272 N.W. 696.
141 See id. at 698.
142 See id. at 699.
143 See id. at 697.
144 See id. at 697–98.
145 The court never explicitly describes the type of medicine practiced by the husband. However, based on the facts described in the case (and noted in the main text), the guess that the husband was an obstetrician seems reasonable.
reasoning may have been flawed, her jealousy may have been unreasonable. However, because there was some foundation for her belief, the delusion should not be deemed insane. By overlooking trivial facts supporting a testator’s belief in order to determine that a testator suffered from an insane delusion, courts risk rejecting wills based on a testator’s merely unreasonable conclusion, as the *Kaven* court did.

Moreover, a “standardless” disregard of evidence leads to arbitrary results. For example, *Kaven* and *In re Scott’s Estate* both involved delusions of marital infidelity. In both cases, the testators suffered from physical ailments that may have affected their sexual performance. Despite the similarities, in *Kaven*, the court held that there was no factual basis for the delusion of infidelity, and therefore, the delusion was insane and the will invalid. In contrast, the *Scott* court held that the admittedly trivial factual basis for the testator’s delusion was sufficient to make the delusion not insane.

In making the standardless determination of what evidence to ignore, fact-finders frequently rely on their own biases. For example, numerous monomania cases include a discussion that amounts to whether the excluded beneficiary was deserving of an inheritance. Of course, this decision is supposed to be, and already has been, made by the testator. Thus, fact-finders are substituting their judgment for that of the testator and failing to respect the testator’s testamentary freedom.

In short, the requirement that an insane delusion have absolutely no basis in fact leads to one of two possible results. If followed precisely, this requirement renders the law of monomania superfluous. No

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146 60 P.527 (Cal. 1900).
147 See *Kaven*, 272 N.W. at 697; *Scott*, 60 P. at 530.
148 See *Kaven*, 272 N.W. at 698–99. The factual differences between *Scott* and *Kaven* tend to show that the testator in *Kaven* had a greater factual basis for her belief in marital infidelity than the testator in *Scott*. For example, the spouse’s odd hours in *Kaven* have no analog in *Scott*. See *id.* at 698. Despite this, the *Kaven* court decided that there were no facts to support the testator’s belief, and the *Scott* court reached the opposite conclusion. See *id.* at 699; *Scott*, 60 P. at 535.
149 See *Scott*, 60 P. at 535.
151 See Brumelow v. Hopkins, 29 S.E.2d 42, 48 (Ga. 1944); Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998).
testator—at least no testator who has general testamentary capacity—would be found to be suffering from an insane delusion. On the other hand, a standardless disregard of trivial factual bases for the testator’s belief leads to arbitrary results and fails to respect testamentary freedom.

Because the requirement that an insane delusion have no basis in fact, if followed precisely, renders the doctrine of monomania meaningless, a few courts have adopted a more flexible standard. For example, in Benjamin v. Woodring,152 the Maryland Court of Appeals held that an insane delusion is a belief in something that “no man of sound mind could give . . . credence.”153 An exegesis of this definition, however, reveals that it is a tautology. Essentially, the quoted language is equivalent to a statement that an insane delusion is a belief in something no man of sound mind would believe or, more succinctly, an insane delusion is a belief that is not sane.

There are two closely related problems with the Benjamin court’s tautological definition. First, the tautological definition is tautological.154 Thus, it provides no guidance for when a delusion is an insane delusion. It is important to remember that the fact-finder should not be trying to distinguish between a reasonable and an unreasonable conclusion—a distinction fact-finders are frequently called upon to make. There is no requirement that the testator’s conclusion be reasonable.155 Instead, the fact-finder is trying to distinguish between an insane delusion and a conclusion that may be unreasonable, wrong, or mean-spirited.156 This is a difficult task under the best of circumstances. Trying to draw the line of sanity between the subtle gradations of unreasonable conclusions without a meaningful standard is essentially impossible.

This impossibility leads to the second problem with the tautological definition of an insane delusion. When a fact-finder tries to determine if a

152 303 A.2d 779 (Md. 1973) (“An insane delusion, in the legal sense, is ‘a belief in things impossible, or a belief in things possible, but so improbable under the surrounding circumstances that no man of sound mind could give them credence.’” (quoting Johnson v. Johnson, 65 A. 918, 919 (Md. 1907))).
153 Id. at 784.
154 Of course, this statement is also tautological.
156 An insane delusion obviates testamentary capacity. See Pyle v. Millar (In re Millar’s Estate), 207 P.2d 483, 487 (Kan. 1949). A conclusion that is merely unreasonable, wrong, mean-spirited, prejudiced, and so forth, will not invalidate the will. See id. at 488; infra notes 254–58 and accompanying text.
belief is an insane delusion but has no meaningful standard for doing so, the fact-finder will use his personal biases to make the decision. This is true whether the fact-finder is a judge or a jury.  

For example, in Dew, the court admitted there was some slight factual basis for the testator’s antipathy towards his daughter. The court concluded, however, that no sane man could have so much antipathy for his daughter based on such slight evidence. Similarly, in In re Klein’s Estate, the testator, a woman of German heritage, became quite offended when her son-in-law (among other actions) made an anti-German remark. Her will left nothing to her daughter and son-in-law in favor of her church. The court held that the testator was suffering from an insane delusion and that the will was invalid. The court was unwilling to consider the anti-German remark as possible grounds for the testator’s action, even though the testator was “intensely loyal to her German heritage” and was a member of a then secret society of women of German extraction. It seems that the court’s decision was likely biased by the fact that Klein was decided just two years after the end of World War II.  

Firestine v. Atkinson is a marked contrast to Dew and Klein. In Firestine, the court probated a will that disinherited the decedent’s sole heir—an illegitimate daughter. The daughter contested the will based on

157 See Champine, supra note 25, at 553–54. For example, in Dew v. Clark, the court candidly mentioned that it shared the same sympathies as a jury would. See Dew v. Clark (Dew II), 162 Eng. Rep. 233, 236 (L.R.A. & E.). Of course, the court also claimed that those sympathies had no effect on its decision. See Dew III, 162 Eng. Rep. at 455; see also supra note 85.  
159 See id. at 446.  
161 Id. at 519, 523. The testator was also quite upset that her son-in-law had, at another time, made a “jocular, though innocent” remark about a bit of glass the testator had found in her food. Id. at 522. Based on this incident, the testator began to believe that her daughter and son-in-law were trying to harm her.  
162 See id. at 518.  
163 See id. at 526–27.  
164 See id. at 519.  
166 218 N.W. 293 (Iowa 1928). In Firestine, the court used the definition of monomania that required a complete lack of evidence for the testator’s belief. See id. at 294–95. However, because the court disposed of the case by requiring the illegitimate daughter to prove the lack of evidence, the result would have been the same regardless of the test used by the court. See id. at 297.
the testator’s purported insane delusion that the daughter was an immoral woman.\textsuperscript{167} The record contained no evidence that could serve as the basis of such a conclusion.\textsuperscript{168} The court noted, however, that the daughter could not prove the lack of evidence for the testator’s belief.\textsuperscript{169} Thus, the will was probated. In \textit{Dew} and \textit{Klein}, the courts found evidence in support of the testator’s delusion but nonetheless concluded that the delusion was insane. In \textit{Firestone}, the court had no evidence to support the testator’s delusion, but still held that the delusion was not insane.\textsuperscript{170}

When a fact-finder relies on his biases to make determinations, the risk is not just the inconsistent results shown above. By relying on his own biases, the fact-finder substitutes his judgment for that of the testator. The fact-finder, in effect, rewrites the testator’s will. For example, it may seem a bit capricious for the testator to disinherit her daughter based on a single anti-German remark made by her son-in-law. However, American law is quite clear that the decision is the testator’s.\textsuperscript{171} The tautological definition of monomania leaves fact-finders with no guidance except their own biases. This leads to arbitrary results that fail to respect testamentary freedom.

\section*{B. Requirement Two: The Will Must Be a Product of the Insane Delusion}

Once a contestant has shown that the testator is suffering from an insane delusion, the contestant also must show that the will is a product of that insane delusion.\textsuperscript{172} Because monomania is partial insanity, it is important to determine if the will is connected with the insanity. For

\begin{footnotesize}
\begin{enumerate}
\item See \textit{id}. at 296.
\item See \textit{id}. at 297:
\begin{itemize}
\item It does not appear that the testator made any explanation to the witness of his claimed basis for such belief [that his daughter was immoral] except the oft-repeated statement that “he knew.” What it was that “he knew” or thought he “knew,” upon what, if anything, his statement was based, nowhere appears in the record.
\end{itemize}
\item See \textit{id}.
\item In \textit{Dew}, the bias is in favor of the sympathetic and mistreated daughter. See \textit{Dew v. Clark} (\textit{Dew II}), (1824) 162 Eng. Rep. 233, 239 (L.R.A. \& E.). In \textit{Klein}, decided shortly after World War II, the court dismissed as trivial the offense caused to a German woman by an anti-German statement. \textit{See Klein}, 183 P.2d at 523. In \textit{Firestone}, the bias runs against the contestant—an illegitimate daughter. \textit{See Firestone}, 218 N.W. at 297.
\item See supra note 31 and accompanying text.
\end{enumerate}
\end{footnotesize}
example, suppose that the testator is suffering from an insane delusion that the moon is made of green cheese.\textsuperscript{173} It is unlikely that this insane delusion would invalidate the testator’s will because the delusion likely has nothing to do with the testator’s estate plan.

Unfortunately, determining when a will is a product of an insane delusion requires the fact-finder to make difficult (if not impossible) factual determinations. To prove the will is a product of the insane delusion, the contestant must show that the insane delusion caused the testator to dispose of his property in a way that he would not have otherwise done.\textsuperscript{174} Thus, the fact-finder must determine what the (now deceased) testator would have done if he were not suffering from an insane delusion. As a practical matter, it is nearly impossible for a fact-finder to make that determination.

Moreover, it is difficult to determine what the testator \emph{would} have done without considering what the testator \emph{should} have done. Indeed, it is unclear how a fact-finder could make this determination without considering what he would have done in the testator’s situation—in other words, what the fact-finder believes the testator \emph{should} have done. However, when the fact-finder considers what the testator \emph{should} have done, he is substituting his judgment for that of the testator.\textsuperscript{175} Once again, the law of monomania conflicts with respect for testamentary freedom.

This conflict is easily demonstrated in a common monomania situation. As mentioned, many monomania cases involve a testator’s paranoid delusion that his spouse or children are trying to harm him or take his property.\textsuperscript{176} Even if the presence of an insane delusion is proved, causation is difficult to prove in these cases. Why did the testator disinherit his child or spouse? Was it because of the insane paranoid delusion, or was there some other non-insane reason? These determinations are difficult for many reasons. The testator is unavailable. In addition, the testator did not need a reason to make the disposition he did.\textsuperscript{177} A testator who acts capriciously or arbitrarily still has capacity.\textsuperscript{178}

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\textsuperscript{173} See Hartung v. Holmes (\emph{In re} Chevallier’s Estate), 113 P. 130, 133 (Cal. 1911). \textit{But see supra} note 15.

\textsuperscript{174} See \textit{supra} note 15; \textit{see also} Steiner v. Dickmeyer (\emph{In re} Estate of Koch), 259 N.W.2d 655, 662 (N.D. 1977).

\textsuperscript{175} See Brumbelow v. Hopkins, 29 S.E.2d 42, 48 (Ga. 1944); Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998).

\textsuperscript{176} See \textit{supra} notes 17–20 and accompanying text.

\textsuperscript{177} See McGovern v. McGovern, 65 N.E.2d 583, 583 (Ill. App. Ct. 1946); Quathamer v. Schoon, 19 N.E.2d 750, 751–52 (Ill. 1939); \emph{In re} Morgan’s Estate, 219 Pa. 355, 357–58
\end{flushright}
The will is invalid only if the insane delusion caused the testator to make the disposition he did.

*Taylor v. McClintock* is a typical case. In *Taylor*, the testator was found to have suffered from an insane delusion that his daughter did not love him. However, the record also showed that the testator strongly disapproved of his daughter’s marriage. Indeed, the testator doted on his daughter prior to her marriage. Assuming that the testator’s belief that his daughter did not love him was an insane delusion, the court had to decide if the will was a product of that delusion. If the testator disinherited his daughter because of the insane delusion, then the will is invalid for want of testamentary capacity. In contrast, if the testator disinherited his daughter because he was upset that she married against his wishes, the will would be valid even if his anger with his daughter was unreasonable, capricious, or “stupid.” This is an impossible factual determination to make after the testator’s death.

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179 112 S.W. 405.

180 See *id.* at 411. The *Taylor* court noted that an insane delusion cannot be predicated on an abstract concept because abstract concepts cannot be proved false. See *id.* at 413. Thus, it would be impossible to show that the purported delusion had no basis in fact. The court ruled, however, that filial love is not an abstract concept. See *id.* Instead, the court noted that the presence of filial love is a concrete concept that is capable of being proved false. In contrast, the court noted that the amount of filial love is an abstract concept. See *id.* at 413–14. Thus, under the *Taylor* court’s reasoning, the testator could (and did) have an insane delusion regarding whether his daughter loved him, but not regarding whether his daughter loved him enough. Similarly, in *In re Estate of Sarras*, a Michigan court faced a case in which a testator had disinherited his heirs because he felt that his heirs did not pay a sufficient amount of attention to him. See *Sarras*, 384 N.W.2d at 120. The court noted that this was a subjective determination that was completely up to the testator’s discretion. See *id.* at 122–23. Thus, the testator’s determinations probably were not the result of an insane delusion.

181 See *Taylor*, 112 S.W. at 416–17.

182 *Id.* at 405.

183 Arguably, the court’s conclusion was erroneous. Based on the facts of the case, the testator’s conclusion that his daughter did not love him likely was based on her marrying against his wishes. See *id.* at 416. Thus, the testator’s belief was (at worst) a mistaken conclusion based on facts as they actually existed. Such a mistaken conclusion is not an insane delusion. See *id.* at 414; see also *Dibble v. Currier*, 83 S.E. 949, 950 (Ga. 1914); *Pyle v. Millar (In re Millar’s Estate)*, 207 P.2d 483, 489 (Kan. 1949). Of course, the court did not decide that the testator’s belief was an insane delusion; rather, it referred the issue to the jury. See *Taylor*, 112 S.W. at 420.

184 *Id.* at 411–12.
Taylor involves one of the most common monomania fact patterns—a paranoid delusion. *In re Honigman’s Will* involves another common monomania situation—a delusion of marital infidelity. The testator in *Honigman* left most of his property to collateral relatives to the exclusion of his wife. The court held that the testator suffered from an insane delusion that his wife had been unfaithful.

The *Honigman* court then turned to the issue of causation—whether the will was the product of the testator’s insane delusion. The court noted that the testator had various non-insane reasons to disinherit his wife. For example, the testator’s wife had a large, independent fortune, and the collateral relatives that were beneficiaries of the will had substantial financial need. Indeed, the testator told his attorney that this (along with his belief in the wife’s infidelity) was the reason that he left most of his property to the collateral relatives. Despite these reasons, the court held that the will’s “dispository provisions were or might have been caused or affected by the delusion.” Thus, the court held, the will was a product of the insane delusion and invalid.

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186 See id. at 676–77.
187 See id. at 678. The *Honigman* court reached the conclusion that the testator’s belief was an insane delusion despite facts that arguably supported the testator’s belief. For example, the testator suffered from prostate problems and had a prostatectomy. See id. at 677. Prostatectomies very frequently result in impotence. See Janet L. Stanford et al., *Urinary and Sexual Function After Radical Prostatectomy for Clinically Localized Prostate Cancer*, 283 JAMA 354, 354 (2000). In addition, the Honigmans had various marital problems. See *Honigman*, 168 N.E.2d at 677. It seems the marital problems, coupled with the testator’s likely impotency, provide a factual basis for the testator’s belief that his wife was unfaithful. Thus, the belief had some factual basis and should not have been held an insane delusion. See id. at 678; see also Steiner v. Dickmeyer (*In re Estate of Koch*), 259 N.W.2d 655, 659 (N.D. 1977). Indeed the dissent argued that the testator’s belief was “groundless and unjust,” but not an insane delusion. *Honigman*, 168 N.E.2d at 680 (Fuld, J., dissenting).
188 See id. at 679.
189 See id.
190 See id.
191 Id. The *Honigman* court’s statement does not seem to be an accurate representation of New York law concerning insane delusions. Specifically, other New York cases have held that the will is invalid only if the delusion directly affected the testator’s will. See Zielinski v. Moczalski (*In re Estate of Zielinski*), 623 N.Y.S.2d 653, 654–55 (App. Div. 1995), vacated on other grounds, 664 N.E.2d 891 (N.Y. 1996); *In re Heaten’s Will*, 120 N.E. 83, 86 (N.Y. 1918).
192 To be perfectly accurate, the court actually remanded the issue to a jury. See *Honigman*, 168 N.E.2d at 679. However, the court largely determined that the testator’s
Honigman illustrates the risks inherent in the causation portion of the insane delusion test. Honigman required merely that the contestor show that the will was “or might have been” affected by the delusion.193 This is a much easier standard to meet than the standard required by most courts—including other New York courts—that the will be a product of the delusion.194 Suppose that the testator in Honigman disinherited his wife solely because the collateral relatives had greater need for the money. This is a completely sane, and even reasonable, reason for making the disposition he did. However, under the test described in Honigman, the will nonetheless would be rejected because its dispositive provisions “might have been” affected by the delusion. Rejecting a will that is not tainted by the testator’s insane delusion impugns the testator’s testamentary freedom—his will is rejected despite his capacity.

If one applies the more usual test for insane delusion causation—whether the will was a product of the delusion195—to the facts of Honigman, the problem with that test becomes even more apparent. As in Taylor, the fact-finder would be faced with two possible reasons for the testator’s estate plan—one insane and one sane.196 Again, the best witness regarding the testator’s reasons for making his choice—the testator himself—is deceased. The fact-finder would be faced with the almost impossible task of determining the subjective thoughts of a dead person.

Of course, courts are frequently faced with a search for the testator’s intent. In interpreting wills, for example, courts attempt to effect the testator’s intent.197 In these other contexts, however, the issue is what the

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193 See id.
194 See, e.g., Kelley v. Reed, 580 S.W.2d 682, 682–83 (Ark. 1979); Pyle v. Millar (In re Millar’s Estate), 207 P.2d 483, 487 (Kan. 1949); Heaton’s Will, 120 N.E. at 86.
195 See supra note 172.
196 In fact, in Honigman, unlike Taylor, the sane rationale (favoring beneficiaries with greater financial need) is not only sane, it is quite reasonable. See Honigman, 168 N.E.2d at 679. In contrast, in Taylor, the sane rationale (anger at the daughter’s marriage) was rather unreasonable. See Taylor v. McClintock, 112 S.W. 405, 416 (Ark. 1908).
197 See, e.g., MO. REV. STAT. § 474.430 (“All courts and others concerned in the execution of last wills shall have due regard to the directions of the will, and the true intent and meaning of the testator, in all matters brought before them.”).
testator intended by the terms of his will.\textsuperscript{198} The text of the will is the touchstone.\textsuperscript{199} Indeed, in most states evidence of the testator’s intent is inadmissible if the will itself is unambiguous.\textsuperscript{200} In contrast, the inquiry in the monomania context is why the testator made the disposition that he did.\textsuperscript{201} The terms of the will are largely irrelevant and may, in fact, even be ignored.\textsuperscript{202} The lack of the will as a guidepost (or, for that matter, the lack of any meaningful guidepost) makes the monomania inquiry into why the testator made the disposition he did substantially more arbitrary than inquiries into the meaning of the terms of the will.

It is worth noting that numerous courts have recognized the impossibility of determining what is in the testator’s mind when he executed his will. Recall the test for general testamentary capacity discussed above.\textsuperscript{203}

\begin{quote}
\textsuperscript{199} Patrick v. Patrick, 182 S.W.3d 433 (Tex. 2005) (“In determining the testator’s intent, we are limited to the language within the four corners of the will. We focus not on what the testator intended to write but on the meaning of the words actually used.”); \textit{In re Britt’s Estate}, 87 A.2d 243, (Pa. 1952).
\textit{In determining the testator’s intention—if no uncertainty or ambiguity exists—his meaning must be ascertained from the language of his will; it is not what the court thinks he might or would have said in the existing circumstances, or even what the court thinks he meant to say, \textit{but what is the meaning of his word.} (emphasis in original).
\textsuperscript{200} \textit{In re Britt’s Estate}, 87 A.2d at 245; Lomax v. Lomax, 75 N.E. 1076, (Ill. 1905) (refusing to reform a devise of “the south-west fractional quarter of section 24, township 40 north, range 12, east” because the testator, in fact, owned only “the south-west fractional quarter of section 14, township 40 north, range 12, east”); Hover v. Roberts, 58 P. 83, 85 (Kan. 1936) (refusing to reform decedent’s will based on extrinsic evidence that provision in will relating to children dying “intestate” was meant to refer to children dying without issue); Estate of Cruse, 710 P.2d 733, 734 (N.M. 1985); \textit{In re Baylis’ Will}, 78 N.Y.S.2d 893 (Sur. Ct. 1948); Fersinger v. Martin, 36 A.2d 716 (Md. Ct. App. 1944); see also John H. Langbein & Lawrence Waggoner, \textit{Reformation of Wills on the Ground of Mistake: Change of Direction in American Law?}, 130 U. Penn. L. Rev. 512 (1982). \textit{Cf. Restatement (Third) of Prop.: Wills & Other Donative Transfers} § 12.1 (2003); \textit{In re Estate of Ikuta}, 639 P.2d 400, 404–06 (Ha. 1981).

In contrast, the \textit{Restatement (Third) of Law of Property} allows for the reformation of an unambiguous will if there is “clear and convincing evidence” regarding the testator’s true intent. \textit{Restatement (Third) of Prop.: Donative Transfers} § 12.1 (2003).
\textsuperscript{201} See supra notes 172–84 and accompanying text.
\textsuperscript{202} See, e.g., Sanford v. Freeman (\textit{In re Estate of Watlack}), 945 P.2d 1154, 1155–56 (Wash. Ct. App. 1997); Hardy v. Barbour, 304 S.W.2d 21, 25 (Mo. 1957); see also infra notes 212–21 and accompanying text.
\textsuperscript{203} See supra notes 56–73 and accompanying text.
\end{quote}
In applying the test, courts have repeatedly held that the issue is not whether the testator actually knew the natural objects of his bounty and the character and value of his estate. Instead, the issue is whether the testator had the ability to know the natural objects of his bounty and the character and value of his estate. Part of the reason for this distinction is to avoid trying to determine what the testator was actually thinking when he executed his will. The subjective test (what the testator actually knew) is simply too difficult to be workable.

However, fact-finders face exactly this type of subjective determination in monomania cases. The contestant in a monomania case must show that the will is a product of the insane delusion. This is,

204 See, e.g., Smith v. Smith, 25 A.11, 12 (N.J. Prerog. Ct. 1891); [T]he testator must possess the ability to comprehend those who appear as natural objects of his bounty, and appreciate the duty which recommends them for consideration. It is not required that he in fact correctly ascertain the legal status of each person who apparently stands in natural relation to him. (emphasis added). See also, e.g., Edwards v. Vaught, 681 S.W.2d 322, 325 (Ark. 1984); Melody v. Hamblin, 115 S.W.2d 237, 242 (Tenn. Ct. App. 1937). Occasionally, a court will phrase the test as whether the testator actually “knew” the natural objects of his bounty. See, e.g., Burns v. McIntyre (In re Estate of McIntyre), No. 1999-001700-COA-R3-CV, 2000 WL 33191354, at *10 (Tenn. Ct. App. Nov. 7, 2000); Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998) (“To validly execute a will, a testator must: (1) know the natural objects of her bounty; (2) know her obligations to them; (3) know the character and value of her estate; and (4) dispose of her estate according to her own fixed purpose.” (emphasis added)). However, in cases in which the difference between what the testator knew and what the testator had the ability to know is an issue, courts specifically decide that the test is whether the testator had the ability to know the natural objects of his bounty. See, e.g., Ashford v. Van Horne, 580 S.E.2d 201, 203 (Ga. 2003); Holmes v. Campbell College, 125 P. 25, 26 (Kan. 1912).

205 See, e.g., Benoist v. Murrin, 58 Mo. 307, 322 (1874) (“A disposing mind and memory may be said to be one which is capable of presenting to the testator all his property, and all the persons who come reasonably within the range of his bounty . . . .” (emphasis added)); Rocco v. Sims (In re Estate of McQueen), 918 So. 2d 864, 870 (Miss. Ct. App. 2005).

Testamentary capacity is based on three factors: 1. Did the testatrix have the ability at the time of the will to understand and appreciate the effects of her act? 2. Did the testatrix have the ability at the time of the will to understand the natural objects or persons to receive her bounty and their relation to her? 3. Was the testatrix capable of determining at the time of the will what disposition she desired to make of her property?

206 See supra notes 78–80 and accompanying text.

207 See supra note 172 and accompanying text.
mutatis mutandis, the same as requiring the jury to consider whether the testator actually knew the natural objects of his bounty. Both determinations require the fact-finder to determine what the testator was thinking when he executed his will. Indeed, the determination in monomania cases is more difficult because it requires the fact-finder to speculate on what the testator would have done in a different situation.

Further, this determination injects additional fact-finder bias into monomania decisions. As mentioned, the fact-finder must determine if the will is a product of the delusion or, put another way, whether the testator would have made the same disposition if he were not laboring under an insane delusion. When making this determination, fact-finders will naturally consider what they would have done had they been in the testator’s situation or, similarly, what they think the testator should have done.

For example, testators frequently leave their property to their descendents. Courts often characterize the failure to do so as unjust or unnatural. Certainly, this bias, coupled with sympathy for the beneficiary, seems to have informed the Dew court’s decision that the testator would have left his property to his daughter, absent the insane delusion. Simply, the causation part of the monomania test is so unworkable that fact-finders are left with little to work with other than their own biases.

This bias is so pronounced that courts sometimes disregard the testator’s own statement regarding why the testator disinherited the beneficiary. For example, in In re Estate of Watlack, the court addressed a will that disinherited the testator’s daughter in favor of collateral relatives. The court concluded that the testator was suffering from an insane delusion that his daughter was trying to take his money.

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208 See supra note 174 and accompanying text.
209 See Middleditch v. Williams, 17 A. 826, 828 (N.J. Prerog. Ct. 1889); Fellows, supra note 45, at 613; McMurray, supra note 31, at 608–09.
210 See Bruere v. Mullins, 320 S.W.2d 274, 279 (Ark. 1959) (referring to a will that left nothing to the testator’s heirs as “injudicious”); Hardy v. Barbour, 304 S.W.2d 21, 25 (Mo. 1957) (describing a will that disinherited the testator’s daughter as “very unjust”); Middleditch, 17 A. at 828 (referring to a will that left nothing to the testator’s grandchildren as “unnatural” and “unjust”).
211 See supra notes 109–11 and accompanying text.
213 See id. at 1155–56.
214 See id. at 1158. The court’s conclusion that the testator’s belief was an insane delusion rests on uneasy footing. Specifically, the testator’s conclusion was based, in part, on his daughter withholding of a substantial check from him, although she did eventually
court also determined that the insane delusion caused the testator to disinherit his daughter. Therefore, the court affirmed the lower court’s denial of probate. However, the testator’s will stated that he disinherited his children because the children “had spent very little time with” the testator and because the testator had given his car to his daughter during his life. Both of these statements were at least partially true. The court concluded, however, that these statements did not represent the testator’s true reason for disinheriting his daughter. Instead, the court affirmed the jury’s finding that the testator disinherited his daughter because of the insane delusion. Thus, the will was invalid. The court did not explain why, in its opinion, the testator lied in his will about the reason for disinheriting his daughter.

Although Watlack is an extreme case, it illustrates an important point. The law regarding monomania provides an excess of opportunity for fact-finders to insert their own biases. Indeed, by asking fact-finders to determine what the testator would have done absent the delusion, the law

give the check to the testator’s attorney. See id. at 1156–58. The court noted that the daughter withheld the check for the testator’s own good; thus, there was no rational basis for the testator’s belief. See id. at 1156. However, whether a beneficiary acted in the testator’s best interests is irrelevant to monomania decisions. See Brumbelow v. Hopkins, 29 S.E.2d 42, 44 (Ga. 1944). The test is whether the testator had a factual basis for his belief, and in this case, he clearly did. See Hammett v. Reynolds, 256 S.E.2d 354, 356 (Ga. 1976).

See id. at 1156. Although it seems unfair to disinherit the daughter because she followed the nursing home’s advice, testators are under no obligation to execute a will that is fair or just. See Alegria v. Alegria (In re Alegria’s Estate), 197 P.2d 571, 577–78 (Cal. Dist. Ct. App. 1948).

See id. at 1156.

See id. at 1156. However, Watlack is not unique. For example, the testator in Hardy v. Barbour, 304 S.W.2d 21 (Mo. 1957), stated in her will that she disinherited her daughter because the daughter had already received a “very large” inheritance from her father. See id. at 25. Despite the testator’s statement in her will, the court held that the testator was actually motivated by an insane delusion of hatred for her daughter. See id. at 33–34. Thus, the court affirmed the jury’s rejection of the will. See id. at 37–38.

The Watlack and Hardy courts’ willingness to disregard the terms of the testator’s will is a sharp contrast to the importance of the terms of the testator’s will in most contexts. Patrick, 182 S.W.3d at 433; In re Britt’s Estate, 87 A.2d at 243.
all but requires the fact-finder to substitute his judgment for the testator’s. This is anathema to testamentary freedom.

Both parts of the test for monomania are deeply flawed. The first requirement—that the delusion have no basis in fact—would render the law of monomania irrelevant if it were strictly applied. However, this requirement is not faithfully applied. Instead, fact-finders disregard evidence that could have been the basis of the testator’s delusion based on their own biases. The second requirement—that the will be a product of the insane delusion—is equally flawed. This requirement forces fact-finders to determine what the testator was thinking when he executed his will. This is an impossible factual determination. Moreover, it all but forces the fact-finder to substitute his judgment for that of the testator.

The law of monomania fails to respect testamentary freedom. Decisions are based on the fact-finders’ biases rather than legal principles. If one assumes, however, that these biases are consistent with the biases of the community at large, then it may be possible to defend biased decisions based on that assumption.

For example, this Article has criticized the court’s reasoning in *Dew*. Arguably, that decision was the product of the court’s bias in favor of the testator’s daughter. It is, however, difficult to imagine that anyone can read that case and not feel sympathy for the abused and unloved daughter. In contrast, it is unlikely that many readers feel sympathy for the abusive father just because the court nullified his estate plan. However, the possibility of unjust dispositions is the cost of testamentary freedom. It is not possible to have a doctrine that allows an individual to dispose of his estate however he chooses—even arbitrarily, unreasonably, or unjustly—and not assume that some testators will do exactly that.

Testamentary freedom has its downside. Some testators will exercise their freedom in a manner most people find abhorrent. Indeed, Blackstone

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222 As mentioned, some courts hold that a belief may be an insane delusion even if there is some factual support. However, as discussed above, these courts employ a tautological standard that provides little guidance and injects substantial fact-finder bias. See *supra* notes 152–70 and accompanying text.

223 See *supra* notes 130–50 and accompanying text.

224 See *supra* notes 109–11 and accompanying text.

suggested that limiting testamentary freedom was sound policy. Perhaps he was correct. However, if society wishes to limit testamentary freedom, it should do so explicitly. Relying on the law of monomania to rein in aberrant testators simply leads to a new set of arbitrary, unreasonable, or unjust results based on the biases of the fact-finder. For example, the Dew court found a way to help the testator’s legitimate daughter. However, in the factually similar Firestone case, the court declined to assist the testator’s illegitimate daughter.

IV. ELIMINATING THE DOCTRINE OF MONOMANIA

A. The Doctrine of Monomania Is Inherently Flawed and Should Be Abandoned

As shown above, the doctrine of monomania is significantly flawed. The situation should be remedied by a total abrogation of the law of monomania rather than by small changes to the standards. There is no need for a monomania doctrine. Courts can handle the few cases in which a will is properly invalidated based on monomania under the general test for testamentary capacity.

Modifications to the monomania doctrine will not correct the problems discussed in the previous Part. Indeed, courts have tried to address some of the subjectivity in monomania determinations. For example, in In re Estate of Killen, an Arizona court addressed a will

226 See William Blackstone, 2 Commentaries ch. 23 (“[S]ome have questioned, whether [restraints on testamentary freedom over real property are] not founded upon truer principles of policy than the power of wantonly disinheriting the heir by will, and transferring the estate, through the dotage or caprice of the ancestor, from those of his blood to utter strangers.”).

227 For example, in Louisiana the decedent may not freely disinherit certain descendants, including children age twenty-three or under. See La. Civ. Code Ann. arts 1493–1495 (West 2000 & Supp. 2007).


229 See Firestone v. Atkinson, 218 N.W. 293, 297 (Iowa 1928).

230 The Honigman court’s test that invalidated the will because its “dispositive provisions were or might have been . . . affected by the [insane] delusion” arguably makes the issue of causation less subjective. See In re Honigman’s Will, 168 N.E.2d 676, 679 (N.Y. 1960) (quoting American Seaman’s Friend Soc. v. Hopper, 33 N.Y. 619, 625 (1865)). Specifically, using the Honigman test, the fact-finder does not need to determine what the testator would have done absent the insane delusion. As discussed above, however, the Honigman test is overly inclusive. This test invalidates wills that are wholly unaffected by the testator’s insane delusion. See supra notes 193–94 and accompanying text.

executed by a testator suffering from a paranoid delusion that her heirs (nieces and nephews) were harming her. The proponent argued that there was no way of knowing how the testator would have disposed of her property had she not been suffering from the delusion. Thus, it was not possible to prove that the will was a product of the delusion.

The Killen court rejected the proponent’s argument and denied probate. The court agreed that determining what the testator would have done absent the insane delusion would result in “mere speculation.” The court held, however, that the will is invalid if the testator’s insane “delusions prevented her from appreciating her relationships with the natural objects of bounty.” This language moves the causation part of the monomania test toward the more objective standard used for general capacity decisions. In the very next sentence, however, the court ruled that the will would be denied probate if the “insane delusions . . . affected the terms of the will.” Thus, the court required a determination of whether the insane delusion caused the testator to make a disposition that she would not have otherwise done. In order to make this determination, the fact-finder must determine what the estate plan would have been absent the delusion. Thus, although Killen desideres determinations of what the testator would have done absent the delusion as “mere speculation,” the court required the fact-finder to make exactly that determination.

Killen illustrates one court’s inability to eliminate the “speculation” inherent in monomania decisions. This inability is not the consequence

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232 See id. at 1369–71.
233 See id. at 1373.
234 See id. at 1373–74; see also Kelly v. Reed, 580 S.W.2d 682, 683 (Ark. 1979); In re Estate of Romero, 126 P.3d 228, 232 (Colo. Ct. App. 2005); Kingdom v. Sybrant, 158 N.W.2d 863, 866 (N.D. 1968).
235 See Killen, 937 P.2d at 1373–74.
236 See id. at 1373.
237 See supra notes 78–80 and accompanying text. As discussed above, the court’s attempt to move the monomania doctrine toward the general test for testamentary capacity is similar to this Article’s argument that monomania cases should be dealt with under the general test for testamentary capacity. See infra notes 263–82 and accompanying text.
238 See Killen, 937 P.2d at 1374.
239 See id. at 1374. Technically, the Killen court merely affirmed the probate court’s denial of probate based on its own speculation.
240 See id.

Similarly, in an attempt to create a more workable standard, some courts have moved away from the requirement that the delusion must have absolutely no basis in fact. See supra notes 152–56 and accompanying text. This test, which provides that an insane delusion is a delusion no sane man would believe, provides no useful guidance to fact-finders and
of a lack of judicial aptitude or creativity. Rather, it is a symptom of the inherent problem in any monomania doctrine. Causation (the requirement that the will be a product of the insane delusion) is an essential part of the law of monomania, but it is a catch-twenty-two. Any monomania doctrine must include a causation test, but any monomania causation test will lead to arbitrary and speculative results that fail to respect testamentary freedom. This conflict cannot be resolved in a way that allows the monomania doctrine and testamentary freedom to survive.

An essential part of the law of monomania is that monomania may exist alongside general testamentary capacity. Indeed, if courts only found individuals who failed the general test for testamentary capacity to be monomanics, then the law of monomania would be superfluous.

Because monomania can exist alongside general testamentary capacity, respect for testamentary freedom requires a determination of whether the will is the product of the sane portion of the testator’s mind or the insane portion. If this determination is not made, then a person with testamentary capacity would have his will rejected solely because he suffered from an unrelated delusion. Thus, for example, wills of persons who believe that the moon is made of green cheese, that there are alligators in the New York City sewers, or that they owe no federal income tax because Indiana is not part of the United States would lack testamentary capacity even though their delusions have nothing to do with their dispositive plan. To use a more realistic example, a testator suffering from a paranoid delusion about the caregivers in her nursing home would be unable to execute a valid will even though her delusion has no bearing on her relationships with her various beneficiaries. Essentially, without the causation part of the monomania test, numerous individuals would be arbitrarily denied the right to make a will even though they clearly have

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injests additional bias into determinations. See supra notes 152–70 and accompanying text.

242 This Article argues that the general test for testamentary capacity can better address the cases that are currently analyzed under the monomania standard. See infra notes 263–82 and accompanying text.
243 See Hartung v. Holmes (In re Chevallier’s Estate), 113 P. 130, 133 (Cal. 1911); see also supra note 15.
244 This is a common urban legend that has little, if any, factual support. See Urban Legends & Folklore, Alligators & Crocodiles, http://urbanlegends.about.com/od/alligators/a/sewer_gators.htm (last visited May 16, 2007).
capacity under the current standard. This would be a significant limit on testamentary freedom.246

Moreover, without a causation test, testamentary capacity would bear little relationship to mental ability. An impaired adult with the mental ability of a child would have testamentary capacity.247 However, a fully functioning individual with a paranoid delusion about the nurses in her nursing home would not.

As shown, a causation test is essential to any monomania doctrine. However, the causation test is inherently flawed. It requires a determination of what the testator would have done absent the insane delusion. This determination is, at best, “mere speculation” and it allows (indeed, it almost forces) the fact-finder to substitute his judgment for that of the testator.248 In short, neither keeping nor eliminating the causation portion of the monomania doctrine is an acceptable alternative.

The portion of the monomania doctrine that determines when a belief will be classified as an insane delusion suffers from similar problems. Generally, an insane delusion must have no factual support.249 However, all delusions appear to have some factual support, if one digs deeply enough.250 If the standard that an insane delusion have no factual support were strictly applied, no testator would be found to be suffering from monomania; the doctrine would be vacuous.251 This standard is not applied rigorously, however. Fact-finders frequently disregard some evidence in making determinations that a testator’s belief is an insane delusion. This leads to arbitrary results that depend more on the fact-finder’s willingness to disregard evidence (and the fact-finder’s own biases) rather than on the facts of the case.

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246 Even if this limit on testamentary freedom is acceptable, court decisions should not be based on whether the testator happened to be suffering from a delusion unrelated to his estate plan. An example of a more sensible limitation on testamentary freedom might be based on whether the testator left a spouse or child. See supra notes 226–29.


251 See supra notes 130–45 and accompanying text.
Occasionally, a court will determine whether a testator’s belief is an insane delusion based on a different standard. Specifically, some courts hold that a delusion is an insane delusion if no sane man would believe it.\(^{252}\) As discussed above, however, this standard is essentially tautological.\(^{253}\) As such, it provides the fact-finder with no useful guidance. Again, the predictable outcome is an arbitrary result that depends more on the fact-finder’s bias than the facts of the case.

Regardless of the precise standard used, determinations of when a delusion is an insane delusion are inherently problematic. The law frequently requires fact-finders to make determinations of reasonableness. Reasonableness, however, is not relevant in monomania cases. Respect for testamentary freedom requires that a testator could be feebleminded,\(^{254}\) stupid,\(^{255}\) unreasonable,\(^{256}\) mean,\(^{257}\) or unjust\(^{258}\) but still have general testamentary capacity. Thus, the fact-finder must make the subtle distinction between whether the testator was insane or merely unreasonable and arbitrary. This determination is nearly impossible to make.

Both portions of monomania determinations result in arbitrary decisions by fact-finders. The fundamental source of these problems is that the monomania doctrine lies uncomfortably between the law requiring testamentary capacity and the policy of respecting testamentary freedom. Courts must chart a course between the Scylla of impinging on testamentary freedom and the Charybdis of allowing impaired testators to dispose of their property in a way they would not have done had they been in possession of all of their faculties. The course chosen by the courts is flawed. It leads to arbitrary outcomes and inevitably results in fact-finders substituting their judgment for that of the testator. Thus, cases should no longer be decided using the doctrine of monomania.

Admittedly, eliminating the doctrine of monomania will not eliminate fact-finder bias in capacity decisions. Indeed, numerous commentators

\(^{252}\) See, e.g., Benjamin v. Woodring, 303 A.2d 779, 784 (Md. 1973).
\(^{253}\) See supra notes 152–70 and accompanying text.
\(^{255}\) See, e.g., Taylor v. McClintock, 112 S.W. 405, 411 (Ark. 1908).
\(^{256}\) See, e.g., Lee v. Boyer, 120 S.E.2d 757, 760 (Ga. 1961).
have noted that capacity decisions are rife with bias. 259 The fact-finder bias inherent in the monomania doctrine, however, is qualitatively different. In monomania decisions, unlike general capacity decisions, the fact-finder is charged with determining what the deceased testator was thinking when he executed his will. Such determinations are necessarily subjective and all but require fact-finders to rely on their own determinations of what the testator should have done. 260 In contrast, most general capacity decisions are subject to relatively objective standards that ask for determinations of the testator’s mental ability, not his actual thoughts. 261 Thus, general capacity decisions provide less opportunity for fact-finder bias.

Moreover, validity of a will currently requires both that the testator have general testamentary capacity and that the testator be free from monomania. 262 Thus, monomania cases allow two opportunities for fact-finder bias—in the general capacity decision and the monomania decision. Thus, at the very least, eliminating the doctrine of monomania will obviate the quantum of bias injected through monomania decisions.

B. Replacing the Doctrine of Monomania with the General Test for Testamentary Capacity

Elimination of the doctrine of monomania leads to an obvious question: would abrogation of the doctrine lead to the probate of wills that ought to be rejected for want of testamentary capacity?

A large majority of the wills that courts reject under the doctrine of monomania would be admitted to probate. In many monomania cases, the court specifically notes that the testator has general testamentary capacity. 263 For example, in Dew, the court noted that the testator had general testamentary capacity. 264 Similar results would obtain in many of the cases discussed above. For example, the will of the testator in Wattack, who suffered from an “insane delusion” that his daughter was

259 See, e.g., Green, supra note 23, at 308; Leslie, supra note 43, at 236–37; Spitko, supra note 21, at 275–86; Sterling, supra note 80, at 16; see also Taylor, 112 S.W. at 411 (noting jurors’ desire to “even up . . . gross inequalities” in a will).

260 See supra notes 172–75 and accompanying text.

261 See supra notes 78–80 and accompanying text.


trying to steal his money because she withheld a check from him, would be probated because the testator had general testamentary capacity.265 The will of the testator in Klein,266 who took great offense at her son-in-law’s anti-German comment and another “innocent” joke, also would be probated.267 Similarly, in most of the cases involving delusions of marital infidelity, the wills would be probated unless there were other bases for determining that the testator lacked capacity.268

In these cases, the testator may have acted arbitrarily (Klein),269 reprehensibly (Dew),270 jealously (the marital infidelity cases), suspiciously (Watlack),271 or even stupidly (arguably all of the cases mentioned), but none of these motivations vitiates testamentary capacity.272 As stated above, if the doctrine of testamentary freedom means anything, we need to be prepared to apply it when testators exercise that freedom in abhorrent ways.

Admittedly, even without an insane delusion doctrine, it will be difficult in some cases to make capacity determinations. Determinations of capacity are notoriously thorny.273 Eliminating the monomania doctrine cannot eliminate all uncertainty or make these decisions easy. Even these difficult cases, however, are better handled under the general test for testamentary capacity.

Perhaps the most difficult cases are those involving severe paranoid delusions. The general capacity test, unlike the monomania doctrine, better handles these cases because it attempts to determine the testator’s mental ability rather than his subjective motivation. For example, the testator in In re Estate of Zielinski suffered from severe paranoid

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265 See Watlack, 945 P.2d at 1156 (“Although agitated, Mr. Watlack had testamentary capacity at the time of the signing of the June 22, 1988 will.”).
266 183 P.2d 518 (Wash. 1947).
267 See id. at 526.
268 See, e.g., In re Honigman’s Will, 168 N.E.2d 676 (N.Y. 1960). The Honigman court did not expressly find that the testator had general testamentary capacity. However, the opinion mentions no evidence of a lack of general testamentary capacity and discusses only the purported insane delusion of marital infidelity. Similarly, in Kaven, another marital infidelity case, the court did not mention general testamentary capacity. See In re Kaven’s Estate, 272 N.W. 696 (Mich. 1937).
269 See Klein, 183 P.2d 518.
271 See Watlack, 945 P.2d 1154.
272 See supra notes 254–58 and accompanying text.
273 See Slaughter v. Heath, 57 S.E. 69, 71 (Ga. 1907); Champine, supra note 25, at 553.
delusions. She imagined that her husband periodically broke her legs and put someone else’s legs on her, pushed her eyes back into her head, and had a machine that “turned the world inside out.” Upon her husband’s death, her focus changed to her son. She began to imagine that her son was doing all of these things to her. The Zielinski court rejected the will under the monomania doctrine; however, even without the insane delusion doctrine, the court should have rejected this will. Recall that the general test for capacity requires that the testator had the ability to “know the natural objects of her bounty . . . [and] her obligations to them.” If that test were applied to the facts of the Zielinski case, it seems that the testator would lack capacity.

The testator in Zielinski believed that the person closest to her (her husband during his life and her son after her husband’s death) was trying to hurt her in bizarre ways. It seems that this is strong evidence of the testator’s inability to know the natural objects of her bounty. Presumably, this means something more than being able to pick one’s heirs out of a lineup. The testator also must have the ability to appreciate her relationship with the natural objects of her bounty. In Zielinski, testator’s paranoia seems to have prevented the testator from appreciating her relationship with her son or understanding her obligations to him. Thus, her will would be invalid for want of testamentary capacity. This appears to be the correct result in the case of a testator like Zielinski who

275 Id. at 653.
276 See id. at 655.
277 See id. at 653. Despite these severe delusions and other odd behavior (the testator saved numerous gallon jars of her own saliva), there was testimony that the testator was able to lead a normal life. See id. at 655. Generally, this is strongly indicative of testamentary capacity. See, e.g., Quathamer v. Schoon, 19 N.E.2d 750, 753 (Ill. 1939); Benoist v. Murrin, 58 Mo. 307, 315 (1874).
278 Bye v. Mattingly, 975 S.W.2d 451, 455 (Ky. 1998).
279 Of course, the testator does not need to have encyclopedic knowledge of all of her heirs. Courts repeatedly have held that forgetting the names or relationships of some relatives does not vitiate testamentary capacity. See, e.g., Havens v. Mason, 62 A. 615, 616 (Conn. 1905); Mangan v. Mangan, 554 S.W.2d 418, 422 (Mo. Ct. App. 1977).
280 See Bye, 975 S.W.2d at 455 (requiring that the testator understand her obligations to the natural objects of her bounty); Hall v. Mercantile Trust Co., 59 S.W.2d 664, 669 (Mo. 1933) (requiring that the testator have the capacity to know the natural objects of his bounty and “their deserts with reference to their conduct and treatment” of the testator); Doyle v. Schott, 582 N.E.2d 1057, 1059 (Ohio Ct. App. 1989).
lacked the ability to “know” her children, in terms of understanding her relationship with them.

Zielinski is an extreme case. Clearly, some cases involving the testator’s paranoia would be more difficult. Somewhere between the relatively mild paranoia of Watlack (in which the testator’s will should be probated)\(^\text{281}\) and the severe paranoia of Zielinski (in which it should be denied probate),\(^\text{282}\) there must be a dividing line. The difficult cases would reside close to that line. However, the purpose of eliminating the doctrine of monomania is not to eliminate the difficult cases—determinations of capacity are inherently difficult. The point of eliminating the monomania doctrine is to limit, to the extent possible, fact-finder bias and to focus the court on the right question: did the testator have sufficient mental ability? Deciding these cases under the test for general capacity appears to do just that.

V. CONCLUSION

The widely accepted doctrine of monomania is fatally flawed. Both portions of the test for invalidating a will based on monomania require impossible factual determinations. Both invite the fact-finder to substitute his judgment for that of the testator.

In order to invalidate a will based on monomania, the contestant must show that the testator’s belief has no basis in fact. However, nearly all delusions have some basis in fact. Therefore, if one strictly applies this test, the monomania doctrine becomes vacuous. Fact-finders, however, frequently disregard some evidence. Essentially, the fact-finder determines if the testator’s belief was reasonable and consonant with their own biases. This is directly contrary to the doctrine of testamentary freedom, which allows a testator to dispose of his property however he chooses, even arbitrarily or unreasonably.

To invalidate the will, the contestant also must show that the will is a “product” of the insane delusion. Generally, this requires a showing that the delusion caused the testator to dispose of his property in a way that he would not have otherwise done. In making this speculative determination, fact-finders naturally rely on their own biases. Instead of determining what the testator would have done, the fact-finder decides what the testator should have done. In so doing, the fact-finder substitutes his own judgment for that of the testator.

\(^{281}\) See supra note 265 and accompanying text.

\(^{282}\) See supra notes 274–80 and accompanying text.
Instead of trying to analyze cases using the unworkable monomania standard, courts\textsuperscript{283} should abandon the law of monomania. Without the doctrine of monomania, all testamentary capacity decisions would be based on the general test for capacity. This is not a panacea. Testamentary capacity decisions are judgments regarding shades of gray, and there is substantial bias in favor of traditional estate plans and blood-relatives. Nonetheless, the test for general testamentary capacity provides less opportunity for fact-finder bias and is more objective.

Although many wills previously rejected under the monomania doctrine would be probated under the general test for capacity, wills would be denied probate in the truly severe cases. For example, extreme paranoid delusions that prevent the testator from appreciating the natural objects of her bounty would invalidate the will.

Without the monomania doctrine, a delusion would invalidate a will only if the delusion vitiates general testamentary capacity. This would be a hard standard for contestants to meet. However, proving incapacity is supposed to be difficult. Because of the importance of testamentary freedom, courts frequently express their unwillingness to reject wills lightly. The general test for capacity respects (or at least attempts to respect) the importance of testamentary freedom. The doctrine of monomania does not.

In short, the monomania doctrine leads to arbitrary results that are based more on fact-finder bias than on well-defined rules of law. Moreover, fact-finders in monomania cases are asked to apply standards that are impossible to apply without substituting the fact-finder’s judgment for that of the testator. Thus, the law of monomania fails to respect testamentary freedom. If limits on testamentary freedom respect are advisable, it should be done expressly, with clearly defined rules, rather than hiding behind the edifice of monomania and the fact-finder bias inherent therein. The doctrine of monomania should be abrogated in favor of the general test for testamentary capacity.

\textsuperscript{283} In most states, the law of monomania is common law. \textit{Cf. GA. CODE ANN. § 53-2-23} (1997).