

Question MPT – February 2020 – Selected Answer 1

TO THE HONORABLE JUDGE:

1. The Court should annul the January 15, 2019 marriage of Paula Daws and Eli Doran. Eli Doran lacked the capacity to consent to marriage, since he did not have the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities, as has been proven by clear and convincing evidence.

While there is a presumption that if a marriage complies with the licensing and officiating requirements of the Franklin Uniform Marriage and Dissolution Act (FUMDA) it is valid, this presumption can be overcome with clear and convincing evidence. That requires evidence that establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage.

Capacity to consent to marriage is defined as the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. Additionally, each party to the marriage must freely intend to enter the marital relationship and understand what marriage is. The capacity to consent to marriage is measured at the time of the marriage.

In the case *In re Marriage of Simon*, the Court annulled the marriage of Henry and Nancy Simon after Henry married Nancy while she was living in a residential facility. Henry was a medical technician employed at the facility where Nancy lived and administered a few of her treatments. Three weeks prior to the marriage, Nancy suffered a fourth stroke, which doctors determined (and testified to at trial) rendered Nancy disabled, making her incapable of receiving or evaluating information and should not make any decisions for herself or others. Additionally, Nancy and Henry only knew each other for a few weeks prior to their marriage and had no prior romantic relationship. The Court ultimately found that Nancy was not only incapable of consenting to marriage, but at the time of the marriage she had no understanding of what marriage was.

In re Marriage of Simon can be compared to the case at hand, because while Eli did not suffer from any strokes or other serious medical issues, Dr. Leon Ricci diagnosed Eli with dementia, and recommended that his niece find a place where he could receive daily care and supervision of his medications. Additionally, Dr. Bush evaluated Eli prior to the marriage on May 3, 2018, and found that Eli's MMSE score had dropped significantly from when Dr. Ricci had tested him. Dr. Bush also

evaluated Eli on the Independent Living Scale, and using both of these evaluations found that Eli suffered from cognitive dysfunctions that included severe memory impairment; and significant disturbance in executive functioning, which included no ability to plan, problem-solve, reason, or think abstractly. Additionally, Dr. Bush found that Eli was incapable of any abstract thinking and incapable of ordinary judgment or reasoning, lacked the ability to meet his most basic needs and was unable to provide for his safety and health.

While Opposing Counsel may argue that the case at hand is more aligned with *In re the Estate of Carla Mason Green*, that case can be differentiated for many reasons.

In that case, Mason's oncologist believed she had the capacity to consent to stopping medical treatment and going home, and that even though Mason was prescribed pain medication that had a high probability of creating mental changes in a patient, including confusion, that patients do have periods of lucidity and alertness. On the morning of the marriage, the oncologist met with Mason and believed that Mason had the capacity to make decisions about her medical care and treatment. Here, Dr. Bush testified that he doubted that Eli had any moments of lucidity, and that even if he did, that it would not be the same as having the ability to exercise judgment. Additionally, unlike *In the Estate of Carla Mason Green*, Dr. Bush did not see Eli on the day that he got married.

This case can also be differentiated from *In re the Estate of Carla Mason Green*, in that Mason and Green had been engaged to be married for two years, planned for marriage and a life together, discussed where they would live in retirement. Even though they broke off their engagement, they stayed in contact and were reunited when Mason contacted Green when she learned of the cancer. Here, while Eli had been living in Paula's home for two years, they had no plans of marriage, did not plan their future together, and had no prior romantic relationship. While Opposing Counsel may argue that they planned to get married when Eli told her that "we should get married", they were married the next day and would be difficult to define that as a plan.

In *In re the Estate of Carla Mason Green*, the Court found that the Trial Court's decision that Mason had capacity to consent to marriage was not erroneous, since his oncologist believed he had the capacity to consent to stopping medical treatment and going home, and his sister believed he had the capacity to make decisions when Mason signed the POA. Here, neither Eli's psychologist believed he had capacity to consent to marriage, nor did his Doctor, who also diagnosed Eli with dementia and recommended that Eli live somewhere where he could receive daily care and supervision of his medications. Eli's niece Carol also did not think he had capacity to

consent to the marriage, and testified that he would often be very forgetful and saw a serious decline in his cognitive abilities and did not know what he was doing.

While Rev. Simms testified that he would not have married Eli and Paula if he questioned Eli's mental capacity, Rev. Simms has no training to diagnose cognitive functioning and did not conduct any assessments to determine Eli's cognitive abilities. Furthermore, Rev. Simms had only met with Eli on two separate occasions. While Eli might have seemed happy at those times, it does not mean that Eli had the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities.

Eli also did not understand what the marital relationship is. Carol testified that on another occasion, Eli had asked his cleaning lady and cook, Vera, to marry him. Even though they were not married, Eli said he was going to sign a will and leave everything to her. He even told Dr. Bush in his interview on May 3, 2018, that he was married to Vera and wanted to marry her because she took care of him. Similarly, Eli said that he loved the way that Paula cared for him. Dr. Bush established that Eli equated marriage being cared for.

2. The Court should set aside the will signed by Eli Doran on October 7, 2019, since Eli lacked testamentary capacity at the time of executing the will, as was proven and established by a preponderance of the evidence, thus rendering the will void.

In order to execute a will, the testator must have testamentary capacity. This required that at the time of executing the will, the testator must be capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them. A will executed by a testator who lacks testamentary capacity is void. A party seeking to prove lack of testamentary capacity must do so by a preponderance of the evidence.

Opposing Counsel will argue that just because the Court has determined that Eli is incompetent does not establish that Eli lacked testamentary capacity; However, that argument is not persuasive. While it is true that the Court in *In re the Estate of Tarr* held that a determination of legal incompetence alone is not sufficient to find that the testator lacked testamentary capacity, it has been shown that Eli lacked the testamentary capacity as well, as he did not know the natural objects of his bounty or his relation to them, or the nature and extent of his property. Carol testified that on several occasions he did not recognize her husband or children, even though he had known them for years. While Opposing Counsel might argue that Carol's testimony

regarding Eli's testamentary capacity was not credible, she was not an interested party since his 2016 will left everything in his estate to his Church. Additionally, Dr. Bush testified that when he saw Eli on May 3, 2018, he said that he lived in his home with his wife Janet, even though she had died two years earlier and had already sold his house and no longer owned it. Again, on June 21, 2019, when Dr. Bush was evaluating Eli, he again told Dr. Bush that he was living with his wife, Janet, and also was going to visit his parents soon, even though they had been deceased for many years. Dr. Bush testified that he believed that Eli did not know who his relatives were or who might have a claim on his estate, did not know the nature and extent of his property, and lacked testamentary capacity on October 7, 2019 to execute a will.

In *In re The Estate of Dale*, many witnesses testified that due to Matthew's alcoholism he lacked testamentary capacity. Jill and Samuel, testified that Matthew had a noticeable decline in cognitive ability, a loss of short term memory exhibited by the inability to recall names, places, or events during periods of inebriation, and would sometimes forget his mother was not alive. However, Dr. Copper testified that even though she diagnosed him with alcoholism, these periods were mostly at certain times of the year, and that at other times Matthew did not drink at all. Murphy and Speck testified that during these periods, Matthew was "quite lucid" and was able to accurately discuss his finances, his work, and identify the extent and value of his investments. The Court held that the trial Court did not err in finding that the Dades failed to show that Matthew lacked testamentary capacity, and that even if the Court found that Matthew was periodically disabled due to alcoholism, Matthew's physician's testimony that he had long periods of sobriety was credible.

Here, Eli's psychologist, Dr. Bush, testified that it was unlikely that Eli had any moments of lucidity and that even if he does, that it is not the same as having the ability to exercise judgment. Dr. Bush was able to make this determination on evaluations he had performed, as well as Eli's Doctor, Dr. Ricci's, evaluations and recommendations.

3. Conclusion

In conclusion, we pray that the Court annul the January 15, 2019 marriage of Paula Daws and Eli Doran, and pray that the Court set aside the will signed by Eli Doran on October 7, 2019.

Eli Doran lacked the capacity to consent to marriage, since he did not have the ability to understand the nature, effect, and consequences of marriage and its duties and

responsibilities, as has been proven by clear and convincing evidence. It has been shown that it is substantially more likely than not that Eli lacked capacity to consent to marriage.

Additionally, Eli lacked testamentary capacity at the time of executing the will, since at the time of executing the will he was not capable of knowing the nature of the act he was about to perform, the nature and extent of his property, the natural objects of his bounty, or his relation to them, as was proven and established by a preponderance of the evidence, thus rendering the will void.

Question MPT – February 2020 – Selected Answer 2

I. Eli suffers from sustained and worsening dementia, his condition has been verified by appropriate medical professionals and the most credible witnesses.

Eli lacks capacity as will be shown below. While capacity is not the same as competence, the record shows that Eli lacks capacity.

Eli's condition has been sustained and not episodic. Eli Doran's deterioration began approximately two years ago, as he began forgetting to pay bills and generally care for himself. CR Testimony. Eli has become more forgetful as the years have gone on, to the point that Eli began failing to recognize Carol's husband and children, whom he had known for years, as well as repeatedly asking the same questions during conversations. CR Testimony. Eli had in fact suffered a "serious decline" in cognitive abilities. CR Testimony. Beginning as far back as May 2018, Eli was not oriented to date or time, and did not understand that his wife was passed away. Bush Testimony. In approximately 2017, Eli conducted a Mini Mental State Exam and scored a 21, when someone of his age should score a 23 and then in 2018 he scored a 19, which shows serious deterioration. Bush Testimony. In fact, Dr. Ricci, Eli's family doctor, then diagnosed Eli with dementia. Bush Testimony. Eli has a permanent, progressive condition and it is doubtful that he has periods of lucidity. Bush Testimony. Because Eli's condition was sustained and not episodic, this case is distinct from *In Re Green* and *In Re Dade*, where medication and alcoholism, respectively, caused a lesser degree of lack of cognitive ability and where such conditions were also episodic.

We recognize that the issue of capacity is specific to the applicable issue at hand. We now turn to the issues of capacity to marriage and testamentary capacity, respectively.

II. Eli's marriage is void because there is clear and convincing evidence that he lacked the ability to understand the nature of marriage and the duties of marriage.

While a formally executed marriage is presumed valid, clear and convincing evidence of lack of capacity is grounds invalidating a marriage. A marriage is invalid if a party lacks capacity to marry. Capacity is defined as the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. In *Re Carla Mason Green*. In other words, each party must understand what marriage is and must freely intend to enter into it. In *Re Carla Mason Green*.

Here, the record shows that Eli did not have the ability to understand the nature of marriage. He married Paula Daws and never told his close niece, Carol. CR Testimony. In fact, Carol first heard news of the marriage from Paula herself approximately a year after they were married. CR Testimony; PD Testimony. It is highly improbable that one would marry and never tell a close relative with whom one has regular contact. In addition, Eli had once asked Vera Wilson, a family friend from church to marry him. CR Testimony. This further shows that Eli did not understand that nature and duties of marriage. In fact, according to Dr. Bush's testimony, it appears that Eli equated marriage to cooking and cleaning chores being done for him, since he at times believed he was married to Vera Wilson, who was seeing after certain chores for Eli. Bush Testimony. As of January 2019, Eli's condition had become even worse. Bush Testimony. Dr. Bush, a PhD and forensic clinical psychologist, concluded in her professional opinion, that Eli lacked the capacity to marry. Bush Testimony.

This case is distinct from *In Re Green* because in that case the married couple had known each other for years and had been engaged to be married for two years. Here, Paula Daws knew Eli for only two years ago. Also, Pauls' relationship with Eli makes her suspect, as was the case in *In Re Simon*. In *In Re Green*, the married couple did not have a customer/business person relationship.

Opposing counsel may argue that it was Eli who proposed the marriage. PD Testimony. First, this testimony should be given less credibility because Paula Daws has an interest in this outcome. Second, since Eli lacked the capacity to marry, it is irrelevant that he was the one who proposed the marriage. As shown above, Eli equated marriage with whoever was caring for him at the moment. The circumstances here are highly suspect, as Paula obtained a marriage license the very next day after Eli "proposed" to her. PD Testimony. Under these conditions, a prudent person in Paula's position would not have immediately sought to consummate a marriage. In fact, Vera Wilson had turned down a similar "proposal" from Eli earlier. Eli would make these proposals to anyone who cared for him.

Opposing counsel may also argue that Eli had capacity to marry because the minister who married them believed that Eli had capacity. JS Testimony. However, the minister is not trained in cognitive ability and his testimony should be given little-to-

no weight compared to the testimony of Dr. Bush, who is trained in these matters and who had a long-term relationship of assessing Eli.

Therefore, while competence is not the same as capacity, In Re Dade, the record shows by clear and convincing evidence that Eli did not have the ability to understand the nature of marriage or the duties of marriage and so his marriage is void.

III. Eli's second will is void because there is a preponderance of the evidence that he did not have the ability to understand the natural objects of his bounty or the nature of the act of executing a will.

For a will to be valid, a testator must, at the time of execution, have the capacity to execute the will. Capacity here means the ability to know the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty and his relation to them. In Re Dade. A will that is executed without testamentary capacity is void. In Re Dade.

Here, as far back as May 2018, Dr. Bush had determined that Eli did not have the capacity to understand the nature of a will. Bush Testimony. Dr. Bush had arrived at this conclusion in part based on an objective MMSE test. Bush Testimony. In fact, Dr. Bush found that Eli had "no ability" to problem solve or reason. Bush Testimony. Eli does not have the ability to think abstractly. Bush Testimony. Eli's prior will had left everything to his church, and, prior to Eli's decline, he had stated that he loved his church. CR Testimony. Eli did not have the ability to know the objects of his bounty because he did not know who his niece was. Bush Testimony. These conditions all must have existed at the time the will was executed because Dr. Bush has shown that Eli's condition is permanent and only deteriorates over time.

As with the marriage, the circumstances here are highly suspect. Paula claims that Eli told her that he wanted her to "have all my stuff." PD Testimony. Paul immediately found a will online, without consulting an attorney or Eli's family, found two witnesses who are related to Paula and thus have an indirect interest in Eli's new will, and had Eli execute a will online. PD Testimony. This is not the action of a prudent person who has the best interest of the testator in mind.

Furthermore, assessments of witness credibility are critical to determinations of testamentary capacity. In Re Dade. The testimony of Carol Richards should be deemed considerably credible because she is Eli Doran's niece, Eli was her favorite uncle, she regularly attended to his errands, attended church with him and they regularly ate barbecue together. CR Testimony. Carol's relationship with Eli continued after he was admitted to Paula Daws' home. Opposing counsel may argue that Carol

is merely jealous of Paula. However, this is nothing more than speculation and cannot be supported by any evidence in the record. Paula, on the other hand, has not known Eli for more than two years and they have only a customer/business person relationship. Paula's testimony should thus be given little credibility.

Opposing counsel may argue that dementia itself does not equate to lack of capacity, just as alcoholism did not equate to lack of capacity in *In Re Dade*. However, the court in *In Re Dade* found that the testator's alcoholism was periodic and not sustained as he had long periods of abstinence. In addition, the testator in *In Re Dade* had periods of lucidity, but it is doubtful that Eli does and even if he does, he would lack judgment. Bush Testimony.

Therefore, while competence is not the same as capacity, *In Re Dade*, the record shows by a preponderance of the evidence that Eli did not have the ability to understand the natural objects of his bounty or the nature of the act of executing a will and so his second will is void.

Question MPT – February 2020 – Selected Answer 3

Because He Did Not Understand What Marriage Is, Eli Doran Did Not Have The Capacity To Consent To Marriage On January 15, 2019.

As petitioner, it is our burden to show by clear and convincing evidence that Eli Doran lacked capacity to consent to marriage. In *re the Estate of Carla Mason Green*, Franklin Court of Appeal (2014). The Franklin Court of Appeal has established that in a case such as the case at bar, evidence is clear and convincing if "it establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage." *Id.*

In order to be capable of consenting to marriage, a person must have "the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities." *Id.* This is measured at the time the marriage takes place, and each person getting married must understand what it is and freely intend to get married. *Id.* On January 15, 2019, when he married Paula Daws, Eli Doran lacked the necessary ability to understand marriage and therefore the marriage is not valid because the capacity to consent to marriage is one of the requirements of a valid marriage. *Id.*

During the hearing Your Honor heard testimony from Dr. Anita Bush, a forensic clinical psychologist who had examined Eli Doran several times. The first time Dr. Bush met with Mr. Doran, on May 3 2018, he told her he lived in his home with his wife. In fact, his wife had been deceased for several years. Later during that same

meeting, he told her that he was married to Vera Wilson. (Direct Examination of Dr. Anita Bush By Attorney Cook). This was some eight months before the marriage to Paula Daws. Clearly, at this time, Eli Doran did not understand the nature of marriage since he seemed to believe he was married to two people. As Dr. Bush noted, "it appeared he equated marriage with being cared for." Id. This evidence is significant for two reasons. Firstly, because it shows that Eli Doran lacked the capacity to consent to marriage at that time. Now, doubtless, Respondent will argue that nobody examined Mr. Doran's capacity on the date of the wedding itself and that is the time at which we measure capacity. This brings me to my second reason this evidence is so significant. Dr. Bush also testified that Eli has "a permanent, progressive condition. It only gets worse." Id. And Dr. Bush had scientific evidence of this, in the form of the results of the Mini-Mental State Exam (MMSE). Approximately three years ago, Eli Doran's score on that MMSE was a 21. It should have been a 23. On that May 3, 2018, meeting it had dropped to a 19. And by June 21, 2019, it was down to a 17. Id.

If Eli Doran lacked the capacity to understand the nature, effect, and consequences of marriage and its duties and responsibilities on May 23, 2018, then we can be certain he also lacked that understanding on January 15, 2019, when he married Paula Daws because, as shown by expert testimony and scientific evidence, his condition only gets worse. Not better.

Even the testimony Your Honor heard from the Respondent's own witness supports the evidence that Eli Doran believed marriage was equivalent to being cared for. Paula Daws herself said the first proposal occurred when she was bringing Mr. Doran his laundry and that the phrasing was "You take good care of me. We should get married." (Direct Examination of Paula Daws By Attorney Andrews). Ms. Daws admitted she laughed it off, and then when he brought it up again a few days later asked if he was serious. The response was "You are nice. I love you." Id. Reverend Joseph Simms, the minister who conducted the marriage, believed Eli was mentally competent to marry after he asked him some questions. The first question, how they met, included "she was taking good care of him and he loved her" as part of the answer (Direct Examination of Rev. Joseph Simms By Attorney Andrews) and the answer to his question about why they wanted to get married was "[H]e loved her and the way she cared for him." Id. Love, marriage, and being taken care of are inseparably linked in Eli Doran's mind. Rev. Summs stated "Eli seemed very aware that he was getting married." Id. But it's not enough to be aware you're getting married. You have to be aware of the nature, effect, and consequences of that action and the duties and responsibilities of it. And as You've heard, Your Honor, Eli's understanding of marriage begins and ends with being cared for. Every witness You Heard gave evidence to that effect in some form or another, even those who would have motivation to do otherwise.

Compare this to the marriage at issue in *In re the Estate of Carla Mason Green*. In that case "Mason and Green had been engaged to be married for two years. They had planned for marriage and a life together. They had discussed where they would live in retirement." *In re the Estate of Carla Mason Green*, Franklin Court of Appeal (2014). The marriage at issue in the case at bar has far more in common with that of the Simon case mentioned and distinguished by the appeals court, where the couple had known each other for a short time, had no prior romantic or other relationship, and one party was incapable of understanding due to a medical condition (a series of strokes). *Id.*

The marriage before You today is much more like the marriage of Simon than of Green and so this Honorable Court should grant the petition to annul the January 12, 2019, marriage of Paula Daws and Eli Doran because, by clear and convincing evidence, it is substantially more likely than not that Eli Doran lacked the capacity to consent to marriage at the time of the marriage.

Because He Did Not Understand What a Will Was, The Nature And Extent Of His Property, Or The Natural Objects Of His Bounty And His Relationship To Them, Eli Doran Did Not Have Testamentary Capacity On October 7, 2019.

In order to execute a valid will, the law requires testamentary capacity. This means that, at the time they make the will, the testator must "be capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them." *In re the Estate of Dade*, Franklin Court of Appeal, 2015. Without such, the will is void. *Id.* Lack of testamentary capacity must be proved by a preponderance of the evidence. *Id.*

In the hearing, Your Honor heard evidence of Eli Doran's declining mental capacity. As early as May 3, 2018, he could not verbalize a reasonable understanding of a will. His score on the MMSE was a 19. By the time he actually executed the will, on October 7, 2019, his score on the MMSE had declined even further to a 17 as of June 21, 2019. (Direct Examination of Dr. Anita Bush By Attorney Cook). Dr. Bush, in her professional opinion, does not believe Eli Doran had the capacity to execute a will at that time. *Id.*

In that same June 21, 2019, meeting Eli Doran denied being related to his niece. By the time he actually executed the will, Eli Doran knew neither the natural objects of his bounty and his relation to them nor the nature and extent of his property, in the professional opinion of Dr. Bush. *Id.*

The Franklin Court of Appeal has noted that "[a]ssessments of credibility are critical to determinations of testamentary capacity." In re the Estate of Dade, Franklin Court of Appeal, 2015. Dr. Bush's testimony is extremely credible for several reasons. She has nothing to gain regardless of how the case is decided, and she based her conclusions on scientific tests that gave an objective score of Eli Doran's mental capacity and capabilities. Petitioner Carol Richards is also extremely credible. It's clear her challenge to the will cannot be motivated by anything other than a genuine concern and belief that Eli Doran did not have testamentary capacity and was acting against his interest. As she told Your Honor "After my aunt died, Eli saw his attorney and executed a will leaving his estate to his church. He loved that church. And I knew that now, having sold his house, he had some savings that could benefit the church." (Direct Examination of Carol Richards By Attorney Robert Cook). If this Honorable Court grants her petition, Ms. Richards will not benefit in any way. The previous valid will leaves everything to the church.

Consider, however, the credibility issues on the other side. Paula Daws, as the sole beneficiary of the challenged will, benefits directly. And her own testimony does not paint the process in a particularly good light. She was the one who asked if he wanted to make a will, allegedly in response to him commenting he wanted her to have his things when he was gone. She was the one who went online and found the will kit. She was the one who filled out the will. And she was the one who arranged the two witnesses, her daughter and son-in-law. (Direct Examination Of Paula Daws By Attorney Andrews). Her daughter, Mary Daws Johnson, testified as to Eli's awareness of what he was doing. She claims he said, in response to her questioning whether he wanted her mother to have his stuff when he died, "Yes, she takes good care of me." (Direct Examination of Mary Daws Johnson By Attorney Andrews). And, as was discussed on cross, she will eventually inherit from her mother so she also has an interest in this proceedings.

The nature of the discussion about what exactly the will would do also shows Eli Doran did not understand the extent and nature of his property. The first suggestion that Paula Daws should get his property came in response to her saying "Eli, you have a lot of stuff in your room." (Direct Examination Of Paula Daws By Attorney Andrews). Mary Daws Johnson's question to Eli was "Eli, do you want my mother to have your stuff when you die?" (Direct Examination of Mary Daws Johnson By Attorney Andrews). It's far from clear, especially since Paula Daws filled the will out herself, that Eli Doran understood he was giving away the money he had wanted to go to the church rather than merely the 'stuff' in his room.

Doubtless Respondent will argue that, because the last time Dr. Bush examined Eli Doran was several months before the will, the evidence they've put forth about his

mental state at the time of the will is more convincing. But consider what Dr. Bush said during her testimony. Eli has "a permanent, progressive condition. It only gets worse." (Direct Examination of Dr. Anita Bush By Attorney Cook). And Dr. Bush demonstrated that with those MMSE results. Id. When taken together with the credibility issues discussed above, it is clear that Dr. Bush's testimony is the most reliable, the most credible, and the most accurate despite the intervening time.

Because, as proven by a preponderance of the evidence, Eli Doran was not capable of knowing the nature of the act he is about to perform, the nature and extent of his property, the natural objects of his bounty, and his relation to them at the time he made the will on October 7, 2019, the will is void and we ask this Honorable Court to find as such and grant the petition.

Conclusion

Based on the evidence heard and present, and because Petitioner has met the applicable legal standards, Petitioner prays this Honorable Court grant the petitions annulling the January 15, 2019, marriage of Paula Daws and Eli Doran and setting aside the will signed by Eli Doran on October 7, 2019. Eli Doran lacked the capacity to contract marriage, and the testamentary capacity necessary to execute a valid will. This prayed for relief is therefore fair and just. Eli Doran has, sadly, lost his mental faculties. He shouldn't lose the comfort of knowing his true wishes will be followed also. Thank you.

Question MPT – February 2020 – Selected Answer 4

I. Statement of Facts

[Insert]

II. Closing Argument

A) Mr. Doran's January 15, 2019 marriage to Ms. Daws should be annulled because Mr. Doran lacked the capacity to consent to marriage as he was unable to understand the nature, effect, and consequences of marriage and its duties and responsibilities.

There is a rebuttable presumption that a marriage that complies with the licensing and officiating requirements of the Franklin Uniform Marriage and Dissolution Act (FUMDA) is valid. To rebut, the challenger must show, by clear and convincing evidence that it is invalid due to the right to marry being constitutionally protected. The Franklin Court of Appeal provided that evidence is clear and convincing in a case if it establishes that it is substantially more likely than not that a party lacked capacity to consent to marriage. In re Estate of Carla Mason Green ("Green").

We do not dispute that the marriage ceremony was in compliance with FUMDA as Rev. Sims, minister, conducted the ceremony and Mr. Doran and Ms. Daws executed the marriage license which was witnessed by a nurse and medical assistant. However, the evidence clearly shows that Mr. Doran lacked the ability to consent to this marriage. Consent to marriage, measured at the time of the marriage, requires the ability to understand the nature, effect, and consequences of marriage and its duties and responsibilities. Green. Each party must freely intend to enter the marital relationship and understand what marriage is.

Ms. Richards, the person most familiar with Mr. Doran for the last many years, testified that Mr. Doran's cognitive levels have been declining rapidly since his wife, Janet, died four years ago. Ms. Richards was so convinced that she asked Dr. Ricci, Doran's family doctor to evaluate him. Dr. Ricci testified conducting a Mini-Mental State Examination (MMSE) and found that Doran scored a 21, below the level he should have been, 23. Dr. Ricci referred Doran to a clinical psychologist (Dr. Bush) who conducted another MMSE and found that Doran had declined to a 19 only a short time later. A subsequent exam scored at only a 17, and Dr. Bush determined that this would continue to decline.

Dr. Bush testified that she did not believe that Doran possessed the mental capacity to marriage, because he lacked the ability to think abstractly about anything or make any rational judgments. In her expert opinion, Doran equates marriage with being cared for.

Opposing counsel will argue that this does not establish clear and convincing evidence that Doran lacked capacity on January 15, 2019 but that he was experiencing a period of lucidity. The Court in Green determined that the subject, Ms. Mason, had capacity to marry by showing the evidence of two people who knew him prior to the marriage, a hospice nurse and the nurse on duty at the marriage. They stated that she was oriented to person, place, and time and that her mood was appropriate to the situation. The second testified that she was alert and oriented.

However, what opposing counsel is failing to point out is that these nurses were familiar with Ms. Mason. Unlike the case at hand where Rev. Sims is opposing counsel's key witness regarding Mr. Doran's capacity and Rev. Sims knew Doran for only a few short moments before marrying them. Thus, opposing counsel has provided no evidence to rebut the clear and convincing evidence that Ms. Richard, Doran's guardian, and Dr. Bush, Doran's psychologist, have presented.

Further, Ms. Daws' own testimony, as well as the testimony of Dr. Sims and Mary Daws ("Mary"), supports Dr. Bush's findings that Mr. Doran convultues being taken care of with marriage. Ms. Daws testified that Doran said "You take good care of me. We should get married." Rev. Simms testified that Mr. Doran told him that "he loved . . . the way she cared for him." And, Mary testified that Doran stated "Yes, she takes good care of me." This further establishes the argument that he believed marriage was being "taken care of" and was thus not considering the nature, effect, and consequences of marriage and its duties and responsibilities.

Further, Ms. Daws knew that Ms. Richards brought dinner to Mr. Doran ever Sunday evening, and that they were very close. Ms. Daws failed to inform Ms. Richards about the marriage for over a year. This indicates that Ms. Daws was fully aware that the marriage was likely inappropriate, if not, voidable.

Opposing counsel will argue that this is not clear and convincing evidence as that in Green. However, this is different from Green and more like In re Marriage of Simon, where this court held that the subject had no understanding of what marriage was. Again, Mr. Doran thought marriage was "being taken care of." He did not understand that it was a legal act. Thus, this is different from Green and more like Simon.

Based on the testimony, the Ms. Richards has established clear and convincing evidence that Mr. Doran lacked the capacity to consent to marriage because he was unable to understand the nature, effect, and consequences of marriage. Thus, this Court should annul the January 15, 2019 marriage.

B) Mr. Doran lacked the testamentary capacity to enter a will on October 7, 2019 as he was not capable of knowing the nature of the act he was performing, the nature and extent of his property, the natural objects of his bounty, and his relation to them, and accordingly, the will should be set aside.

A valid will requires the testator to have testamentary capacity, which means that, at the time of executing the will, the testator must be capable of knowing the nature of the act he was performing, the nature and extent of his property, the natural objects

of his bounty, and his relation to them. In re the Estate of Dade (Fr. Ct. App. 2015). Lack of testamentary capacity means the will is void. Dade.

Dr. Bush testified that, in her expert opinion, Mr. Doran did not know who his relatives were or who might have a claim on his estate. During her sessions with Doran, in May 2018 and June 2019, Ms. Bush testified that Mr. Doran did not know that Ms. Richards was his niece, he believed that he lived with his wife, Janet (who had died four years earlier), and that he might pay his deceased parents a visit in Ohio. Ms. Richards, Doran's disinterested niece and guardian testified that she had been witnessing this rapid decline and that Mr. Doran had consistently failed to remember their relationship, that she was married, and her kids. Ms. Richards also testified that she saw Doran's will after Janet died, and that Doran was giving everything to his church in that will. Thus, she is disinterested. This shows that he likely did not understand the act that he was performing.

Opposing counsel will make arguments surrounding a period of lucidity at the time of executing the will, again, based on the testimony of Rev. Simms, who barely knew Mr. Doran, as well as Mary, a very interested witness.

In Dade, this court held a will valid where the testimony of challengers of a codicil to the will, "was colored by their interest." Here, we believe that Mary's testimony in favor of the October 7, 2019 will was colored by her interest. Thus, she is an interested witness, and her testimony should be seen as colored. Further, Ms. Daws is interested as this new will leaves everything to her. She testified that Mr. Doran, on numerous occasions over a period of only days, told her that because she, again, "took good care of him," he wanted her to have all of his stuff. Mr. Doran, according to Daws, was looking at the things in his room at the time, which evidences that Mr. Doran was not aware of the extent of his property (i.e., everything outside of the room, including his pension and savings account with proceeds from the home sale).

Ms. Richards and Ms. Bush testified that Mr. Doran had trouble remembering who Ms. Richards was and that he thought she was "his driver." As a natural object of his bounty, this shows that Mr. Doran did not know the natural objects of his bounty and his relation to them.

Thus, the testimony of Dr. Bush and Ms. Richards has established by a preponderance of the evidence (see Dade) that Mr. Doran lacked testamentary capacity to execute this new will. According to Dr. Bush, he was not capable of understanding the nature of the act of executing a will; Ms. Daws stated that Doran looked around his room and told her that he wanted her to have all of his stuff, indicating that he thought "all of his stuff" was in that room, which means he was not

aware of the extent of his property; and he could not remember his niece, the natural object of his bounty. Accordingly, this court should hold that the will is void based on Mr. Doran's lack of testamentary capacity.