Can a person suffering from Alzheimer’s disease sign a valid will?

Section 4 of the Wills Act, 1953 stipulates that “every person of the age of sixteen years or more may make a will unless at the time of making the will he is mentally incapable of appreciating the nature and effect of his act”.

Whether the testator is mentally capable of appreciating the nature and effect of his act is a factual question that needs to be answered for each case. The mere fact that someone suffers from an illness or a disease, such as Alzheimer’s disease or cancer, or uses painkillers such as morphine, does not invalidate a will.

In terms of section 4, “the burden of proof that he was mentally incapable at that time shall rest on the person alleging the same”. Therefore, the person attacking the validity of the will has to prove that the illness or disease affected the mental capacity of the testator to such an extent that he did not appreciate the nature and effect of signing the document.

The signatory’s mental capacity when he signs the document consequently has to be determined. Therefore, a person might be very forgetful, disorganized, physically disabled, and not have a clear grasp of his assets, but still sign a valid will.

In this regard, it should be noted that a person can also “sign” a will with a cross or a fingerprint in front of a commissioner of oaths. Make sure you get expert advice to assist with this.

Volker Krüger

Van Velden-Duffey Inc