

202990 - Ruling on the wealth of an Alzheimer's patient who entrusted it to the care of someone else before she became sick

the question

My husband's mother is elderly. Some time ago she gave me a purse of hers, and asked me to keep it for her. Now she is becoming very old and is suffering from Alzheimer's, which means that she forgets a lot all the time. For that reason I found that I had no choice but to open the purse to find out what was in it, and I found some money and some gold that belongs to her.

My husband and I have decided to hire a servant for her to look after her. Is it permissible for me to use her cash and gold for that purpose?

Detailed answer

Firstly:

Alzheimer's disease is the most widespread form of dementia in the elderly. Dementia is a brain disorder that severely affects an elderly person's ability to carry out his daily activities.

End quote from Mawsoo'at al-Malik 'Abdullah al-'Arabiyyah li'l-Muhtawa as-Sihhi.

Hence Alzheimer's is what is known to the fuqaha' and in Arab societies as al-kharaf (lit. senility or feeble-mindedness), which in terms of shar'i rulings comes under the same ruling as insanity.

Taqiy ad-Deen as-Subki (may Allah have mercy on him) said:

With regard to the waiving of accountability from one who is affected by senility, who has lost his mental faculties, there is no doubt concerning it.

End quote from Ibraaz al-Hikam min Hadith Raf' al-Qalam (p. 98).

He also said: The ruling on one who is senile and one who is insane is the same, and there is no difference between them.

End quote from Ibraaz al-Hikam min Hadith Raf‘ al-Qalam (p. 99).

Secondly:

With regard to the one who has gone insane and lost his mind:

1. So long as he is still alive, his ownership of his wealth remains as is, so it is not permissible to divide his wealth among his heirs or to spend it on anything that is not in his interests. This wealth should be looked after until he recovers, or until he dies, whereupon it is to be divided among his heirs.

2. He should be prevented from disposing of his wealth and not be allowed to spend it (in other words, she should be declared legally incompetent).

Allah, may He be exalted, says (interpretation of the meaning):

“And do not give the weak-minded your property, which Allah has made a means of sustenance for you, but provide for them with it and clothe them and speak to them words of appropriate kindness”

[an-Nisa’ 4:5].

Ibn Katheer (may Allah have mercy on him) said:

Here Allah, may He be glorified and exalted, forbids allowing the weak-minded to dispose of the wealth that Allah has made a means of sustenance for people, that is, something on which their livelihood through trade or otherwise is based.

Hence the weak-minded are to be declared legally incompetent and prevented from disposing of their wealth. They fall into several categories, one of which is the minor child, who should be declared legally incompetent and prevented from disposing of his wealth, because the minor cannot express himself. Other such categories include the insane, and those who mishandle their wealth due to lack of reasoning or lack of religious commitment.

End quote from Tafseer al-Qur’an al-‘Azeem (3/350)

Ibn Qudaamah (may Allah have mercy on him) said:

Ahmad said: The old man who has lost his mind should be declared legally incompetent. In other words, if he has grown old and lost his mind, he should be prevented from disposing of his wealth, as in the case of one who is insane, because he is no longer able to handle his wealth in such a way as to serve his interests and preserve the wealth. Hence he is like the minor child or one who is weak-minded.

End quote from al-Mughni (6/610)

Secondly:

In the case of your husband's mother, what you should do is refer her case to the shar'ī court, if such is available in your country, so that they can examine her case and appoint someone to be in charge of her wealth. Because deciding who deserves to be declared legally incompetent is a matter that is subject to ijtihad, it should be referred to the judge to decide concerning it.

It says in Kashshaaf al-Qinaa' 'an al-Iqnaa' (8/394), which is a Hanbali book:

No one should declare them legally incompetent (and thus prevent them from having control of their wealth) – referring to one who is weak-minded or became insane after having reached adulthood and having been of sound mind – except the judge. End quote.

Shaykh Ibn 'Uthaymeen (may Allah have mercy on him) was asked:

I have an elderly father who has reached the stage of senility. He has a large piece of land, and we want to subdivide it and sell it as lots for residential construction, but some brothers said that so long as your father is still alive, you have no right to dispose of that property. Is it permissible for me to take power of attorney from the court in order to look after his interests?

He (may Allah have mercy on him) replied: If the way he behaves and handles his wealth is not proper, then you have no alternative but to refer the matter to the court so that they can decide concerning that.

End quote from Fataawa Noor 'ala ad-Darb (2/16)

If there is no shar‘i court, then in this case her sons should get together and choose someone to take care of her wealth and preserve it for her, for guardianship/power of attorney is only for the closest of people to the one who has been declared legally incompetent, and the one who is best in serving his interests.

Ar-Rooyaani narrated from ash-Shaafa‘i that if the judge declares a weak-minded adult to be legally incompetent (and thus incapable of handling his wealth properly, it is recommended for him to refer his case to his father or grandfather, or if that is not possible, then to other male relatives on the father’s side, because they will be more compassionate towards him.

End quote from Mughni al-Muhtaaaj (2/222).

Shaykh Ibn ‘Uthaymeen (may Allah have mercy on him) said:

Guardianship/power of attorney should be granted to the closest of people, even if it is his mother, if she is a woman of mature thinking, because the aim is to protect this minor child or insane person or weak-minded person. Therefore, if there is someone among his relatives who could take care of him, then it is more appropriate to give this task to him rather than anyone else.

End quote from ash-Sharh al-Mumti‘ (9/306)

If any dispute arises among the children (of that man), then they should go to the fatwa council or similar body in their city, who can tell them what they should do.

If a guardian is appointed to look after her wealth, whether that is her son to whom you are married, or another son, then he must try his best to look after her wealth and not spend it except in her best interests and on things that will benefit her, such as medical treatment, maintenance and so on. Spending on her maintenance includes the wages of a servant, within reason, if she needs that and there is no one else who can serve her.

It says in ash-Sharh as-Sagheer ‘ala Aqrab al-Masaalik ila Madhhab al-Imam Maalik (3/393-394):

The guardian must dispose of the wealth of the one who has been declared legally incompetent in a manner that best serves the interests of that person, now or in the future. End quote.

In Manaar as-Sabeel fi Sharh ad-Daleel (1/388), which is a book of Hanbali fiqh, it says:

It is haraam for the guardian of a minor, one who is insane or one who is weak-minded to dispose of their wealth except in ways that preserve that wealth or serve their interests, because Allah, may He be exalted, says (interpretation of the meaning): “And do not approach the orphan's property except in a way that is best” [al-An‘aam 6:152]. This also applies to the weak-minded and the insane. End quote.

See also fatwa no. [59866](#).

It should also be noted that the guardian of one who has been declared legally incompetent must pay zakaah on that person's wealth, if it reaches the nisaab (minimum threshold at which zakaah becomes due).

See the answer to question no. [75307](#).

And Allah knows best.