287691 - Ruling on handling the wealth and property of someone who is severely autistic

the question

We are three brothers. I am the eldest. The one younger to me is severely autistic. He understands almost nothing about the world. We've tried all treatments ever since he was diagnosed with severe autism (18 years in all) yet he remains severely autistic. He can neither read, nor write nor can he interact with anyone. What will his share in property be? And as far as charity, khairaat, Haj, Eid sacrifices etc are concerned, are those duties waived off for him? My mother has 5 sisters and 2 brothers. Due to the societal context none of the sisters had gotten any share in property. All the property was divided only amongst the two brothers. Both of them are well-off. What's the ruling concerning this situation; are the sisters morally obligated to remind the brothers of the Islamic rulings and seek their rights in property? And should the brothers themselves come forward to give their sisters their rightful share in property?

Detailed answer

Praise be to Allah.

Firstly:

If the autism is so severe that the person affected may be described as having an intellectual disability, or he does not have any power of discernment or ability to assess what is going on around him, then in this case he is exempt from religious obligations, and the Pen is lifted from him. Being of sound mind is the foundation of accountability; if that is lost due to sickness or a disorder, then accountability is waived. The Prophet (blessings and peace of Allah be upon him) said: "The Pen has been lifted from three: from the sleeper until he awakens, from the child until he reaches puberty and from the insane person until he comes to his senses." Narrated by Abu

Dawood in as-Sunan (4403); classed as saheeh by al-Albaani in Saheeh Abi Dawood.

If he is of sound mind and has the power of discernment, then he is accountable.

We have discussed this in detail in the answer to question no. 214189.

On that you may base your decision on whether to ask him to pray, fast, offer the sacrifice and so on. If religious duties are waived in his case, then he should not be asked to do any of them.

If he is still accountable, he may be asked to do whatever he can of them.

With regard to Hajj, Hajj may be done on his behalf using his wealth, if he can afford it financially but is physically unable to do it.

If he is able to understand and is able to do Hajj for himself, then he must do it, and it will not be acceptable for someone to do Hajj on his behalf.

With regard to zakaah, it is due from his wealth, even if he has no power of reasoning and is not of sound mind, because zakaah is due on the wealth of children and the insane.

See the answer to question no. 75307 .

Secondly:

If your brother has property, and is of sound mind, then he may dispose of his property however he wishes.

If he is not of sound mind, then his property should be looked after and guarded for him, and no one has the right to dispose of it except in ways that are in the best interests of its owner – who is not of sound mind – such as spending on his maintenance if he needs that.

Zakaah must be paid on his wealth, if it is the kind of wealth on which zakaah is due.

In al-Mawsoo'ah al-Fiqhiyyah (45:162) it says: There is no difference of opinion among the fuqahaa' concerning the fact that it is not permissible for a guardian to dispose of the wealth of his

ward (the one who is under his care), except by way of taking care of it and protecting it, and in a way that serves the interests of the one under his care, because of the hadith, “There should be neither harming nor reciprocating harm.”

Based on the above, they give examples of what does not serve the interests of the one who is under the care of a guardian, such as giving something (of that person’s wealth to a third party) with nothing in return, bequeathing it, giving it in charity, manumitting a slave and doing favours to the other party when engaged in business transactions. The guardian has no right to do any of these things (with the wealth of his ward).

The guardian is liable for whatever he gives away of that wealth, whether as a gift or charity, or manumitting a slave, or doing favours to the other party in business transactions, or whatever he spent on maintenance that was more than needed according to reasonable terms, or that he gave to a dishonest person, because he is removing part of his ward’s wealth with nothing in return, which is pure harm…

There is no difference of opinion among the fuqahaa’ that the guardian must spend on his ward from the ward’s wealth, and he must also spend on those for whose care his ward is responsible, according to reasonable terms, without extravagance or stinginess, because Allah, may He be exalted, says (interpretation of the meaning): “And [they are] those who, when they spend, do so not excessively or sparingly but are ever, between that, [justly] moderate” [al-Furqaan 25:67].

The Shaafa‘is and Hanbalis added that if he is stingy and spends sparingly, he is sinning, and if he is extravagant and spends excessively, he is sinning, and he is liable for his negligence. End quote.

Thirdly:

It is obligatory to divide the estate as Allah, may He be exalted, divided it, and it is not permissible to deprive any heir of his or her share. Allah has issued a warning to the one who does that, as He says, after explaining how the estate is to be divided (interpretation of the meaning):

“These are the limits [set by] Allah, and whoever obeys Allah and His Messenger will be admitted

by Him to gardens [in Paradise] under which rivers flow, abiding eternally therein; and that is the great attainment.

And whoever disobeys Allah and His Messenger and transgresses His limits - He will put him into the Fire to abide eternally therein, and he will have a humiliating punishment”

[an-Nisaa’ 4:13-14].

Your mother and her sisters have the right to demand their rights from their brothers, and they may take them to court for that.

The brothers must give their sisters their share of the inheritance in full.

And Allah knows best.