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T&E Litigation Update: *Redding v. Proulx* and *Davis v. Davis*

In *Redding v. Proulx,* Case No. 09-P-722, 2010 Mass. App. Unpub. LEXIS 580 (June 1, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court addressed the shifting of the burden of proof in an undue influence action. The decedent's grandson claimed that the granddaughter had unduly influenced the decedent to amend her will for the granddaughter's benefit and to transfer certain bank accounts during her lifetime to the granddaughter. The grandson argued that because the granddaughter was the decedent's attorney-in-fact, the burden should have shifted to the granddaughter to disprove undue influence. The Court disagreed, holding that the burden does not shift where the fiduciary does not play a role in the principal's generosity toward the fiduciary. Here, the evidence showed that although the granddaughter was the decedent's fiduciary, and although the decedent changed her will and transferred bank accounts for the granddaughter's benefit, the granddaughter played no role in these decisions.

In *Davis v. Davis,* Case No. 09-P-1356, 2010 Mass. App. Unpub. LEXIS 596, another decision issued pursuant to Rule 1:28, the trustee of a realty trust sought instruction and a declaration allowing her to terminate the trust and distribute its assets to the beneficiaries, arguing that continuation of the trust would be uneconomical due to the cost of maintaining the property. Four of the five beneficiaries supported termination and distribution. The fifth beneficiary counterclaimed that, among other things, the trustee deliberately spent down the trust by commencing the action and paying associated legal fees from the trust account.

The Court affirmed the lower court's grant of summary judgment for the trustee, holding that the judge had not abused her discretion under G.L. 203, 25 in ruling that continuation of the trust would be uneconomical. Moreover, the trustee was well within her rights in seeking instruction from the court, given the lack of unanimity among the beneficiaries. As the Court explained, "faced with the lack of unanimity of the beneficiaries and the depletion of funds to maintain the property, the trustee more likely would have breached her duties had she failed to seek instruction from the court."