June 30, 2011

T&E Litigation Update: *Cherubini v. Goodsell*

In *Cherubini v. Goodsell*, Case No. 10-P-1245, 2011 Mass. App. Unpub. LEXIS 827 (June 24, 2011), a decision issued pursuant to Rule 1:28, the Appeals Court addressed the anti-lapse statute, G.L. c. 191, 22, and its effect on purported assignments of interests in an estate.

Donald Goodsell predeceased Dominic Cherubini. One of Donald's children, Edward Goodsell, argued that the portion of Dominic's estate that would have passed to Donald should go directly to Edward rather than to all of Donald's children by right of representation, because Donald's other children had assigned their interests in Donald's estate to Edward. The probate court disagreed, instructing the executor of Dominic's estate to make distributions to all of Donald's children by right of representation.

The Appeals Court affirmed, explaining that the anti-lapse statute operates to require the distribution of Donald's share of Dominic's estate directly to Donald's surviving issue. In other words, Donald's share would not pass through his estate, meaning that any assignment of interest in Donald's estate would have no effect. The Appeals Court also rejected Edward's argument that the assignment agreements were intended to include Donald's share in Dominic's estate, because Edward did not meet his high burden of proving mutual mistake, and found that the assignment agreements unambiguously pertained to Donald's estate exclusively.