April 29, 2010

T&E Litigation Update: *Whittenberger v. Whittenberger*

In *Whittenberger v. Whittenberger*, Case No. 09-P-714, 2010 Mass. App. Unpub. LEXIS 437 (Apr. 26, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court addressed the enforceability and effect of a disinheritance clause.

Parents were the settlors of a trust ("Trust 1"), which provided that upon the death of either settlor, the trustee was to divide the trust property into three subtrusts. Although the surviving settlor could amend or revoke two of the subtrusts, he or she would have no right to amend or revoke the third subtrust.

After the mother's death, the father executed a second trust ("Trust 2") which purported to revoke Trust 1. Then, after the father's death, one of his children, Thomas, in his capacity as trustee of Trust 1, filed an equity action seeking a declaratory judgment that Trust 1 controlled the disposition of the father's trust and estate assets, and that Trust 2 was null and void as a matter of law. The defendants filed a motion for summary judgment arguing that Trust 2 was valid and controlled the disposition of the trust and estate assets, and that the disinheritance clause in the father's will precluded Thomas from filing the declaratory judgment action. The disinheritance clause provided for the disinheritance of any person who "(a) attempt[s] to oppose or set aside the probate of this will or any codicil hereto or to impair or invalidate any of the provisions thereof in any legal proceeding..., or (b) attempt[s] to set aside said Trust or any amendment thereto or to impair or invalidate any of the provisions thereof in any legal proceeding..., or (c) brings any legal proceeding against any major beneficiary under my will or trust."

The probate court held that the language of Trust 1 expressly prohibited the father from completely revoking Trust 1, and thus Trust 2 had no effect on two of the three subtrusts created under Trust 1. The third subtrust created under Trust 1, however, which was subject to amendment or revocation, had indeed been revoked by Trust 2. The probate court found it unnecessary to discuss the issue of the inheritance clause, implicitly ruling that Thomas had standing to file the declaratory judgment action.

The Appeals Court affirmed. Regarding the disinheritance clause, the Court held that Thomas's filing of the declaratory judgment action did not trigger the disinheritance clause, and that the disinheritance clause did not deprive Thomas of standing to file the declaratory judgment action. On this second point, the Court explained that a disinheritance clause does not prevent a contest by a beneficiary, but merely results in disinheritance if the contest is unsuccessful. Moreover, even if Thomas were deemed to have forfeited his individual beneficial interest, he would continue to have standing to pursue the declaratory judgment in his capacity as trustee of Trust 1.