April 23, 2012

T&E Litigation Update: *McEachern v. Budnick*, *Bank of America v. Center for Human Development*, *Lombardi v. Director of the Office of Medicaid*

First, in *McEachern v. Budnick*, 81 Mass. App. Ct. 511 (April 2, 2012), the Appeals Court addressed the question of what constitutes valid "delivery" of a trust amendment to make it effective.

In the revocable trust instrument, the grantor, who was also the sole trustee, expressly excluded her son as a beneficiary. In two subsequent amendments, the grantor added language by which certain real property was to be distributed to her son upon her death. Upon executing these amendments, however, the grantor retained the originals in her possession, telling her lawyer that she wanted to hold them until she decided whether she actually wanted to provide anything for her son.

After the grantor's death, her daughter, the successor trustee, brought an action to evict the son from the real property. He argued in opposition that he is the rightful owner pursuant to the trust amendments. The Superior Court agreed, granting summary judgment in his favor and holding that the trust amendments were effective when executed because the grantor was also the sole trustee, and so delivery was automatic.

The Appeals Court reversed and remanded for further proceedings to determine the grantor's intent. In so doing, the Court explained that delivery means more than physical transfer of possession. "Under Massachusetts law, delivery of a written instrument amending a trust ... is principally a question of intent."

Second, in *Bank of America v. Center for Human Development*, 81 Mass. App. Ct. 1127 (April 9, 2012), a decision issued pursuant to Rule 1:28, the trustee of a testamentary trust sought instructions as to whether the share of trust income paid to the Child and Family Service of Pioneer Valley ("CFS") should continue to be paid to its successor by merger, or alternatively to the remaining charitable beneficiaries designated in the trust. The probate court ruled that as a result of the merger, CFS ceased to exist within the meaning of the trust and ordered its share of the trust income to be divided amongst the remaining designated charities. The Appeals Court vacated and remanded the probate court's judgment, explaining that there was insufficient evidence to establish whether CFS ceased to exist as a result of the merger. The Court noted that the objecting party, the Young Women's Christian Association of Western Massachusetts, had not filed a brief in support of its position, and that the Attorney General had not made its position known.

Third, in *Lombardi v. Director of the Office of Medicaid*, Case No. 11-P-1208, 2012 Mass. App. Unpub. LEXIS 479 (April 17, 2012), another decision issued pursuant to Rule 1:28, the Appeals Court affirmed a determination of an applicant's ineligibility for long-term care benefits. The question presented was whether MassHealth could consider a court-approved transfer of assets, pursuant to a court-approved estate plan, in determining eligibility for benefits. The Court rejected the applicant's argument that a probate court can insulate asset transfers from being considered.