December 9, 2011

T&E Litigation Update: *Purcell v. Landers*

In *Purcell v. Landers*, Case No. 10-P-1757, 2011 Mass. App. Unpub. LEXIS 1251 (Dec. 6, 2011), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed in part and reversed and remanded in part the probate court's disposition of a will contest.

The decedent had one adopted daughter, the plaintiff Lisa Purcell, and they were described as "estranged" from each other. The decedent was afraid of the plaintiff, who had admitted to sufficient facts and a guilty finding of threatening to commit a crime against the decedent, apparently for threatening to burn down his house with him in it, and whom the decedent said had taken $26,000 from him during his lifetime.

In his will, the decedent left only $1 to the plaintiff, leaving the rest to his friend, the defendant Richard Landers, whom the decedent also named as executor. The defendant was described as the decedent's "one true friend" for many years both before and after the death of the decedent's wife in 1984.

The plaintiff objected to the allowance of the will and to the defendant's appointment as executor, in part because it was the defendant who had introduced the decedent to his estate planning lawyer and drove the decedent to the lawyer's office for the preparation of the will. After a trial, the probate court struck the plaintiff's objections and allowed the will for probate, finding that the defendant, rather than the plaintiff, had become the natural object of the decedent's bounty.

The Appeals Court affirmed the portion of the probate court's decision striking the plaintiff's objections, but reversed the allowance of the will for probate, because the defendant, as the proponent of the will, had not met his burden of proving that the will was executed in accordance with the law. Specifically, the defendant had not called the attesting witnesses to testify at trial. "[T]he judge erred in not enforcing the requirement of testimony by attesting witnesses. Instead, he inappropriately shifted the burden of producing the witnesses to the plaintiff. As a result, despite the judge's diligence in preparing thoughtful findings, the defendant failed to satisfy his burden to prove proper execution of the decedent's will as required under G.L. c. 191, 1." Based on this holding, the Appeals Court remanded the case for further testimony by the attesting witnesses and related evidence.