November 3, 2010

T&E Litigation Update: *Germain v. Girard*

In *Germain v. Girard*, Case No. 09-P-1710, 2010 Mass. App. Unpub. LEXIS 1167 (Oct. 28, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court addressed an award of legal fees pursuant to G.L. c. 215, 39A.

This is the second decision issued by the Appeals Court in this case. The first decision, which I reported on two years ago, concerned the probate court's approval and allowance of a will that was executed by the decedent in 2004, shortly before his death. The probate court had rejected a claim that the will was the product of undue influence. The Appeals Court reversed this ruling and remanded the case to the probate court with instructions that the burden of proof on the undue influence claim should have been shifted to the petitioner, who is the decedent's stepdaughter, because her husband stood in a fiduciary relationship with the decedent and indirectly benefited from the will.

After a bench trial on remand, the probate court ruled that the stepdaughter had met her burden of proving that her husband had not unduly influenced the decedent. The Appeals Court affirmed.

The Appeals Court also affirmed the probate court's allowance of the stepdaughter's motion for legal fees pursuant to G.L. c. 215, 39A. Section 39A authorizes the probate court to award an attorney compensation and reimbursement for legal services upon a showing that the services "conferred a benefit upon the estate, and 'benefit conferred' means assistance in 'creating, preserving, or increasing the estate.'" Because the work of the stepdaughter's lawyer preserved the decedent's will, the Court held that a benefit was conferred on the estate and that the lawyer was entitled to compensation under the statute.