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# T&E Litigation Update: *McGeoghean v. McGeoghean*

In *McGeoghean v. McGeoghean*, Case No. 10-P-407, 2011 Mass. App. Unpub. LEXIS 936 (Aug. 3, 2011), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed the superior court's judgment in all respects. The complicated facts of this case are not fully apparent from the decision, but the Court held that the superior court's findings of fact and conclusions of law were not clearly erroneous. Two issues in particular bear noting.

First, the Appeals Court affirmed the superior court's finding that the plaintiff John McGeoghean was entitled to *quantum meruit* damages in compensation for his actions in reliance on the oral promise of his mother, the decedent, to give him certain property and her interest in a business. The superior court did not specify whether the oral promise was one to make an *inter vivos* gift or a bequest in her will. Consequently, the Court held that the superior court, in awarding *quantum meruit* damages, had not impermissibly remade the dispositions in the will. Although a promise to include a bequest in a will is not enforceable under the Statute of Frauds, *quantum meruit* is an available remedy under these circumstances, and the superior court properly found that the plaintiff had rendered valuable services in reliance on his mother's oral promise.

Second, the defendant argued that the plaintiff is judicially estopped from arguing promissory estoppel (i.e., reliance on the mother's oral promise) because of a "Vaughan" affidavit filed by the mother in the plaintiff's divorce action. In that affidavit, the mother had not mentioned a bequest of the property and her interest in the business to the plaintiff. Because the superior court had not found that the mother's oral promise was one to make a bequest, however, judicial estoppel was not implicated. Moreover, even if the superior court had found that the oral promise was one to make a bequest, the Court held that the superior court would have been within its discretion in not applying judicial estoppel.