

Probate and Fiduciary Litigation Newsletter - February 19, 2019

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Welcome to our first newsletter of 2019!

Below you'll find summaries of three recent cases of note.

***Leighton v. Hallstrom*, 94 Mass. App. Ct. 439 (2018)**

In *Leighton*, the Appeals Court vacated a final decree of the Plymouth Probate and Family Court settling an intestate estate. The decedent had no spouse, parents, or children. The Appeals Court found that the appellant, Hallstrom, had timely asserted that he was an heir to the estate, overturning the Probate Court decision that Hallstrom's claims were untimely.

Hallstrom had notified the Personal Representative of the estate (the Personal Representative was a first cousin of the decedent who stood to inherit from the estate) that he believed he was an heir as the decedent's first cousin. Hallstrom also filed a notice of appearance with the Probate Court, but he did not check the box on the appearance form indicating that he objected to the probate of the estate. In correspondence with Hallstrom, the Personal Representative first claimed that Hallstrom's proof of relationship to the decedent was insufficient, and then later stopped responding. In December 2016, the Personal Representative filed a petition for order of complete settlement of the estate, and Hallstrom filed his objection. The Probate Court ruled that Hallstrom's objections were untimely, stating that the class of heirs had closed pursuant to a July 2015 order that named the Personal Representative and ruled on related issues.

The Appeals Court overturned, finding that the July 2015 order did not actually rule on the issue of identifying the heirs. The Appeals Court noted that under the specific circumstances, where the Personal Representative and the Probate Court were aware of Hallstrom's claims, the July 2015 order was not meant to rule on the identity of heirs. The Appeals Court also noted, without ruling on the issue, that the Personal Representative owed fiduciary duties to Hallstrom beyond the scope of what the Probate Court had ruled, and that she may have violated such duties. Accordingly, the case was remanded for further adjudication regarding Hallstrom's claims.

***Ciani v. MacGrath*, SJC-12531 (Mass. Jan. 8, 2019)**

In *Ciani*, the Massachusetts Supreme Judicial Court had to interpret a Massachusetts statute from the late 1700's that allows a dissatisfied surviving spouse to waive the provisions of a deceased spouse's will, and elect to take a statutorily-prescribed share of the decedent spouse's estate – even if the surviving spouse was excluded from the decedent's will.

The case was brought by a surviving spouse ("Plaintiff") who was not included in her husband's will, which had been executed in 2000, before the couple wed in 2013. Plaintiff asserted that under

M.G.L. c. 191, § 15, she was entitled to take \$25,000 from the estate, a share of his personal property, and a life estate in all of the decedent's real property (the statute provides different mechanisms for calculating the surviving spouse's share depending upon the size of the estate and whether the decedent had children). The decedent's children (from the decedent's previous marriage, which ended when his first wife died) claimed that Plaintiff was only entitled to \$25,000 plus any income from the decedent's real and personal property for the rest of her life. There was such a lack of case law concerning the statute that the trial judge refused to grant summary judgment to either party, and instead certified several questions for appellate review, and the SJC took up the appeal directly.

The SJC ruled that Plaintiff was entitled under the statute to: (1) \$25,000; (2) a life estate in all of the decedent's real property; and (3) be named as the lifetime income beneficiary of a trust that will be created to hold the decedent's personal property until Plaintiff's death. The SJC rejected the defendant's assertion that Plaintiff was only entitled to be an income beneficiary of both the real and personal property, reasoning that under such an outcome the defendants would control all of the property and Plaintiff could not be guaranteed that they would generate any income. The Court also stated that "the statute is in desperate need of an update and we urge the Legislature to do so."

***Cusack v. Clasby*, No. 18-P-711 (Mass. App. Ct. Feb. 6, 2019)**

The Court in *Cusack* held that under the Model Uniform Probate Code (MUPC), as adopted by G.L. c. 190B, a Probate Court may allow a petition for final settlement of an estate and discharge the personal representative before the ordered final distributions to the heirs are actually executed. Three of the eight heirs involved an estate dispute objected to the Probate Court's approval of the final accounting and settlement of the estate, claiming that under G.L. c. 206, § 22, the personal representative could not petition for complete settlement until all final payments had actually been made by the estate. The Appeals Court rejected this argument, holding that under the MUPC, a personal representative may petition for the approval of a final accounting and distributions at the same time (G.L. c. 190B, § 3-107). Accordingly, the Court held that G.L. c. 206, § 22 is no longer applicable because previous statutes that were displaced by particular provisions of the MUPC were automatically repealed upon the adoption of the MUPC under G.L. c. 190B, § 1-103.

If you have a probate and fiduciary litigation question or other business concern, we invite you to reach out directly to any member of our [Probate and Fiduciary Litigation](#) group.