

Probate and Fiduciary Litigation Newsletter

December 16, 2016

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The last several weeks have brought us two decisions in which issues of family law intersected with T&E issues.

First, the decision in *Heystek v. Duncan*, Case No. 15-P-1201, 2016 Mass. App. Unpub. LEXIS 1113 (Nov. 21, 2016) is notable as the first reported decision in Massachusetts to cite *Pfannenstiehl* in a substantive way. In *Heystek*, the Appeals Court found that the probate court judge did not abuse his discretion in disproportionately allocating distributions from a trust between a divorcing husband and wife, because (a) the trust was created before their marriage, (b) the trust played no role in their financial plans during their marriage, (c) they did not rely on income or capital from the trust until the final year of their marriage, and (d) the distribution in question was made for unexpected reasons after they had filed for divorce. The Appeals Court remanded the property division, however, because it did not take the husband's opportunity to receive future gifts or inheritances into adequate consideration. "We conclude that by failing to consider the husband's opportunity for acquisition of capital or income in the form of gifts or inheritances from his mother, *Pfannenstiehl v. Pfannenstiehl*, *supra*, ... the judge's division of the marital estate did not achieve an equitable distribution."

Second, in *Stacy v. Stacy*, Case No. 16-P-0095, 2016 Mass. App. Unpub. LEXIS 1189 (Dec. 9, 2016), the Appeals Court reversed and remanded a decision of the probate court granting a motion to dismiss the claims of a personal representative against the decedent's wife to recover estate assets, including claims against the wife for constructive trust, conversion, and unjust enrichment. The probate court had dismissed the claims based on a finding that the wife's prenuptial agreement with the decedent was intended to govern the disposition of assets in the event of divorce, but not in the event of death. Therefore, according to the probate court's rationale, the wife was not prohibited from removing personal belongings from her marital home with the decedent after the decedent's death. The Appeals Court disagreed, holding that the language of the prenuptial agreement suggests that it may apply to events other than divorce, such as death. Moreover, the Appeals Court reasoned that the personal representative has authority under Section 3-709 of the MUPC, separate and distinct from the effect of the prenuptial agreement, to seek property that is improperly removed from the estate, and that the facts alleged in the Complaint were sufficient to state the personal representative's claims against the wife to recover estate assets. Therefore, the probate court's dismissal of those claims was in error.

This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are

urged to consult your own lawyer concerning your situation and any specific legal questions you may have.

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