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T&E Litigation Newsletter - 2/14/14

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Mark E. Swirbalus and Marshall D. Senterfitt

In the recent Rule 1:28 decision Cheney v. Flood, 2014 Mass. App. Unpub. LEXIS 154 (February 7, 2014), the Appeals Court reviewed the dismissal of a malpractice claim brought against an attorney on the grounds that the attorney should have known that the decedent – the attorney's former client and plaintiff's stepfather – wanted the plaintiff and her children to be his only beneficiaries.

Although the plaintiff did not properly appeal the dismissal of the malpractice claim, the Appeals Court noted that had she done so, the decision in Miller v. Mooney, 431 Mass. 57, 61 (2000), would have been dispositive of her claim. In Miller, the Supreme Judicial Court held that the surviving relatives of a decedent could not bring claims against a lawyer based on allegedly erroneous statements the lawyer made to one of the relatives concerning the terms of the decedent's will because they could not establish that they had an attorney-client relationship with the lawyer. Miller, 431 Mass. at 61 (holding that the duty of care owed by an attorney arises only from an attorney-client relationship).

The complaint also asserted a claim for quantum meruit seeking payment from the decedent's estate for services that the plaintiff and her family provided during the last years of his life. However, the plaintiff could not establish any express agreement with the decedent for such payment and instead only offered evidence that she assumed she would be a beneficiary of the estate because she "always hoped that he would eventually have a little bit to pay [her] back."

The Appeals Court distinguished the plaintiff's case from situations in which a decedent had expressly agreed to make someone a beneficiary in exchange for the performance of services prior to the decedent's death (*e.g.,* a wealthy bachelor who promised to leave a plaintiff one-half of his estate in exchange for services). In affirming the lower court's dismissal of the plaintiff's claim, the Court quote Congregation Kadimah Toras-Moshe v. DeLeo, 405 Mass. 365, 366-367 (1989) for the proposition that "moral obligation is not legal obligation [and a] hope or expectation, even though well founded, is not equivalent to either legal detriment or reliance."

This update was authored by Mark Swirbalus and Marshall Senterfitt, attorneys in the firm's Probate & Fiduciary Litigation group. For questions or additional information on this topic, please contact Mark at mswirbalus@goulstonstorrs.com, Marshall at msenterfitt@goulstonstorrs.com, or any member of the Probate & Fiduciary Litigation group.

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