

## T&E Litigation Newsletter- 4/9/15

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Mark E. Swirbalus and Marshall D. Senterfitt

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On April 6th the Appeals Court issued a decision concerning standing in guardianship proceedings under the Massachusetts Uniform Probate Code ("MUPC") that may influence future cases involving the interpretation of other provisions of the MUPC.

In *Guardianship of B.V.G.*, Case No. 14-P-307, 2015 Mass. App. LEXIS 35 (April 6, 2015), the Appeals Court disagreed with the probate court's finding that a grandfather lacked standing to intervene as an "interested person" under Section 5-306(c) of the MUPC in a pending guardianship proceeding concerning his adult granddaughter.

In considering whether the grandfather is an "interested person" under the MUPC, the Appeals Court looked first to the general definition of the term in Section 1-201(24), which provides that anyone having a pecuniary interest in a particular matter is an "interested person." The Court ruled, however, that the list of "interested person[s]" was not meant to be exclusive given that the general definition applies to "many different types of MUPC proceedings," and in light of the express provision in the statute that its meaning "shall be determined according to the particular purposes of, and matter involved in, any proceeding."

Having determined that the general definition of "interested person" must be read in context of the particular proceeding, the Appeals Court looked to "surrounding sections" of the MUPC, including those that govern petitions for guardianship. In support of its holding that the grandfather was in fact an "interested person," the Court cited the fact that an original guardianship petition may be filed by "any person interested in the welfare of the person alleged to be incapacitated."

Accordingly, to find the grandfather lacked standing to intervene would "yield the discordant result that the grandfather would have had standing to file his own petition ... yet lack standing to petition the court" in the pending proceeding.

The Appeals Court added that its ruling was consistent with the guardianship statute that predated the MUPC and with the interpretations of parallel statutes by courts in other jurisdictions.

Ultimately, the Appeals Court upheld the denial of the grandfather's motion to intervene on the grounds that, although he had standing, he could not show his granddaughter's current representation to be inadequate, particularly given the probate court's appointment of a guardian ad litem to evaluate her best interests going forward.