

## T&E Litigation Newsletter- 8/10/16

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On August 4, 2016, the Supreme Judicial Court issued its highly anticipated decision in *Pfannenstiehl v. Pfannenstiehl*, 2016 Mass. LEXIS 591, reversing an Appeals Court decision that had been a hot topic of discussion among many members of the family law, estate planning, and trust bars.

At issue was whether a husband's beneficial interest in a discretionary spendthrift trust could properly be included in the marital estate during divorce proceedings. In reversing the probate court's decision to include the husband's interest in the marital estate, the Supreme Judicial Court determined that the interest was too speculative to constitute more than an "expectancy" and therefore was "not assignable to the marital trust."

In the courts below, the wife had argued successfully that trust language requiring the trustees to consider the "comfortable support, health, maintenance, welfare, and education" of beneficiaries provided an ascertainable standard for distributions from the trust, which in turn rendered the husband's interest sufficiently certain to include in the marital estate. Relying on this argument, the probate court had calculated the value of the husband's share in the trust and ordered the husband to pay 60% of the value to the wife.

In rejecting the wife's argument, the Supreme Judicial Court focused on the fact that the husband was one of eleven beneficiaries among an open class of beneficiaries (subject to additions through the birth of more beneficiaries). The Court also noted that, while the trustees are required to consider the needs of all beneficiaries, distributions are discretionary and the trustees are not required to make any distributions at all. The Court therefore concluded that the probate court could not effectively compel a distribution from the trust to the wife when the husband had no right to compel a distribution himself.

Though the Supreme Judicial Court concluded that "the ascertainable standard does not render [the husband's] future acquisition of assets from the trust sufficiently certain such that it may be included in the marital estate," the Court did remand the matter to the probate court, noting that the trust "may be considered as an expectancy of future 'acquisition of capital assets and income' in determining what disposition to make of the property that is subject to division."

In another recent matter of interest, the First Circuit Court of Appeals served up a stark reminder that the failure to pay federal taxes owed by the estate can and will subject the personal representative of the estate to individual liability. In *United States of America v. McNicol et al.* 2016 U.S. App. LEXIS 13037 (July 15, 2016), the First Circuit affirmed the trial court's decision finding a personal representative personally liable for unpaid federal taxes owed by her late husband at the time of his death. The undisputed record established that the personal representative distributed essentially all of the estate's assets to herself at a time when the estate was insolvent (because

its tax liability exceeded the value of all of its assets) and when she was aware of the unpaid tax bills. The Court affirmed personal liability under 31 U.S.C. § 3713 in an amount equal to the value of the estate assets improperly transferred to the personal representative in her individual name.

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