

T&E Litigation Newsletter - 8/27/12

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In *Bedard v. Corliss*, Case Nos. 11-P-2118 & 11-P-2173, 2012 Mass. App. LEXIS 241 (Aug. 23, 2012), the Appeals Court addressed complications arising in the intestate estate of a wife when it was learned that she and her surviving husband had not been validly married.

Ethan and Carol were married – or so they believed – in Mexico in 1983. Over the next 21 years, they lived together and held themselves out as husband and wife, filing joint tax returns, maintaining joint accounts, etc. Carol died intestate in 2004, and Ethan as her husband was appointed the administrator of her estate with the assent of her three children from a prior marriage. As administrator, Ethan distributed assets in accordance with Carol's wishes. Specifically, though he had no obligation to do so, he transferred \$120,000 to the children from a joint account in which he had a right of survivorship. He also believed that Carol wanted him to have a life estate in their cottage in Maine, which was titled in her name, and that the cottage was to go to the children upon his death.

When one of the children later became dissatisfied with Ethan, the validity of his marriage with Carol was challenged, and through the ensuing investigation it was revealed that their marriage had been invalid because it was not in compliance with Mexican law. With the parties stipulating to the invalidity of the marriage, the children filed a petition to revoke Ethan's petition to administer Carol's estate, and Ethan filed an equity action claiming that the children had been unjustly enriched by the assets he had distributed to them.

The Probate Court entered judgment revoking the decree appointing Ethan as administrator of the estate, concluding that because he was not married to Carol at the time of her death, he could not be appointed the administrator pursuant to G.L. c. 193, §§ 1 and 2. The Probate Court also struck Ethan's name from the list of Carol's heirs.

In the equity action, the Probate Court concluded that Ethan had distributed the \$120,000 from his account (the joint account with Carol with a right of survivorship) to the children on the basis of two mistakes of fact. "The Court finds that Ethan made a mistake of fact when he believed that Carol's children considered Ethan to be Carol's husband, and Ethan made another mistake of fact when he believed that the children would follow through with their mother's wishes." As a result of these mistakes of fact, the Probate Court held that the children had been unjustly enriched, and ordered the children to return the \$120,000 to him.

On appeal, the Appeals Court reversed the Probate Court's judgment removing Ethan as administrator, holding that the children were estopped from challenging the validity of Ethan and Carol's marriage because Carol herself would have been estopped from challenging the validity of the marriage, having received the benefits of the marriage. In light of this reversal, the Appeals Court vacated the judgment in the equity action for further proceedings.

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

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