

COMMONWEALTH OF MASSACHUSETTS
APPEALS COURT

ESSEX, SS.

APPEALS COURT NO:
2012-P-1250

APPEALS COURT NO:
2012-P-0635

APPEALS COURT
SINGLE JUSTICE
NO.:2012-J59

ALEXANDER B.C. MULHOLLAND,
JR., et al.

Plaintiffs,

v.

ATTORNEY GENERAL OF THE
COMMONWEALTH OF
MASSACHUSETTS, et. al.

Defendants.

PROBATE AND FAMILY
DEPARTMENT OF THE
TRIAL COURT No.
ES09E0094QC

MOTION TO CONSOLIDATE APPEALS

The proposed interveners¹ in the above matter hereby move to consolidate the above two appeals, Appeals Court No. 2012-P-1250 and Appeals Court No. 2012-P-0635. Both appeals raise identical issues of law and fact; both appeals involve the identical parties; and, in both appeals, the appellants intend to file a single brief and record appendix. In the interests of judicial economy, and justice, the

¹ Douglas J. DeAngelis, Catherine T.J. Howe, Jacqueline and Jonathan Phypers, Peter Buletza, Kenneth Swenson, Robert Weatherall, Jr., Joanne Delaney, Cara Doran, Andrew and Susan Brengle, Michele and Jason Wertz, and Clark Ziegler

appeals should be consolidated. As grounds for this motion the interveners state:

1) These appeals stem from a judgment entered by a Probate Court judge to permit deviation from the explicit instructions of a charitable trust that the land be held in trust "forever" and shall never be "sold nor wasted".

2) The Trust was established in 1660 by William Paine's gift of land for the benefit of the school children of Ipswich.

3) The appellants are a group of parents and school children of Ipswich who, as specially interested beneficiaries of the trust, sought to intervene in the Probate Court action to uphold the terms of the trust and prevent the sale of the trust property to private owners.

4) The Probate Court judge denied the motion to intervene and entered judgment allowing the sale of the trust property without making any findings of fact or rulings of law to justify deviation from the terms of the trust as required by Massachusetts law.

5) The interveners appealed the denial of their motion to intervene as is their right, Mass. Fed'n of Teachers vs. School Committee of Chelsea, 409 Mass.

203, 204 (1991), and appealed the judgment ordering the sale.

6) The Probate Court dismissed the appeal from the judgment ordering the sale. That order of dismissal was then appealed by the interveners.

7) In the meantime, the interveners filed a motion with the single justice seeking to stay the judgment pending the outcome of their appeal.

8) The single justice (Agnes, J.) denied the motion to stay from which the interveners have taken an appeal, Appeals Court No. 2012-P-0635.

9) The principal appeal from the denial of the Probate Court's motion to intervene, and from the Probate Court's judgment of dismissal of the appeal has recently been docketed as Appeals Court No. 2012-P-1250.

10) The interveners now move to consolidate both the principal appeal from the Probate Court's decisions and judgment, and their appeal of the single justice's denial of their motion to stay judgment in a single proceeding.

11) In the interests of judicial economy and justice, all of the issues concerning intervention and the legal sufficiency of the judgment that entered in

the Probate Court should be consolidated in a single appeal to be heard by the Appeals Court, or the Supreme Judicial Court, as the case may be.

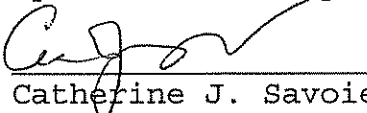
11) The interveners intend to file a single record appendix and a single brief to address the identical issues raised in both appeals.

Wherefore, for the reasons stated above, and to avoid duplicate appeals concerning identical issues and involving identical parties, the interveners respectfully request that the two appeals, Appeals Court No. 2012-P-1250 and Appeals Court No. 2012-P-0635, be consolidated.

Respectfully Submitted,

DOUGLAS J. DeANGELIS, CATHERINE T.J. HOWE, JACQUELINE PHYPPERS, JONATHAN PHYPPERS, PETER BULETZA, KENNETH SWENSON, ROBERT WEATHERALL, JR., JOANNE DELANEY, CARA DORAN, ANDREW BRENGLE, SUSAN BRENGLE, MICHELE WERTZ, JASON WERTZ and CLARK ZIEGLER, individually and on behalf of their minor children,

By their attorney,



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Dated: August 9, 2012

CERTIFICATE OF SERVICE

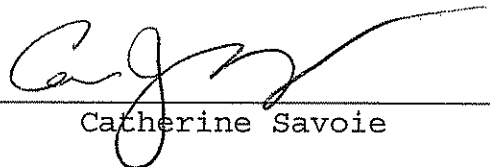
I, Catherine Savoie, hereby certify that on this 8th day of August, 2012, I served a copy of the foregoing by first-class mail upon the following counsel:

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