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MAY A SPENDTHRIFT INTEREST BE REACHED FOR ALIMONY, OR SUPPORT?

*Bauernschmidt v. Safe Deposit & Trust Co.*¹

One N. B., a resident of California, sued out a writ of foreign attachment in Baltimore City against her husband W. B. and garnished the Trust Company. The basis of the attachment by N. B. was a claim of \$17,641.90 alleged to be due her under a decree for separate maintenance by the Superior Court of California for Los Angeles County. The Trust Company answered that under the will of the husband's ancestors they were but trustees of a spendthrift trust and therefore had no assets of the husband which were open or subject to garnishment. In order to avoid the obstacle of the general immunity to attachment of income from spendthrift trusts, the plaintiff, according to the Court, invoked the California rule that the separation decree was the equivalent of an award of alimony and that in California the income of a spendthrift trust may be reached in order to satisfy a claim for alimony.² The Court of Appeals held that in Maryland the decree of the California Court could not be considered as an alimony award but was a debt of record and said "there is no need to discuss the decisions elsewhere, of the rights of the wife of a spendthrift cestui que trust."³

The case raises vital issues in two important branches of law. In the field of Conflict of Laws, the decision pre-

¹ 176 Md. 351, 4 A. (2d) 712 (1939). The same case is noted in the following casenote on another point.

² Apparently the plaintiff so argued, for early in the Court's opinion there appears the following language, "To overcome this obstacle in the decisions of this court that income from a spendthrift trust could not be reached with respect to attachments of income from spendthrift trusts, the plaintiff invokes the rule of comity between the States, and aims to apply here the rule in California that there is an exception in favor of decrees for alimony." However, this does not appear to have been the rule in California; for, quite to the contrary, the Courts of that state had held that income from a spendthrift trust was not open to a wife's suit for support. See *San Diego Trust and Savings Bank v. Heustis*, 121 Cal. A. 675, 10 P. (2d) 158 (1932); *Kelly v. Kelly*, 11 Cal. (2d) 356, 79 P. (2d) 1059 (Cal. 1938); and four cases all of the same name, *Canfield v. Security First Nat. Bank*, 8 Cal. A. (2d) 277, 48 P. (2d) 133 (1935); 77 P. (2d) 857 (Cal. 1938); 77 P. (2d) 866 (Cal. 1938); 13 Cal. (2d) 1, 87 P. (2d) 830 (1939); 13 Cal. (2d) 35, 87 P. (2d) 847 (1939). It would seem that plaintiff should have relied on the California decree as establishing a valid claim for support, and recognized that Maryland law would determine whether a Maryland spendthrift trust could be reached, arguing that Maryland law should allow it to be reached for this purpose.

³ 4 A. (2d) 712, 714 (Md. 1939).

sents the question whether Maryland will treat as alimony an award of money by a California decree confirming a separation agreement which was effective as an award of alimony in California, when the Maryland Courts have failed to consider such an agreement rendered in Maryland as the equivalent of an award of alimony.⁴ In the field of Trusts, the decision opens, by indirection at least, the question of the amenability of income from a spendthrift trust to a suit by the wife for alimony, or to a suit by the wife or child for support against the beneficiary of the trust.⁵

As to the Trusts problem, the Court of Appeals opened its argument with the statement that spendthrift trusts are not subject in Maryland to attachment, execution, assignment, or anticipation. In support of this premise the Court cited five cases.⁶ However, each of the cases cited, having facts which involved only general creditors, involved mere statements of the general rule that income from spendthrift trusts is not within reach of the creditors of the beneficiary. Accordingly, these cases were not determinative of any consideration of the rights of a wife or child to reach that income for their support under the special doctrines allowing particular classes of claimants to reach such an interest.

Actually, the Court, in the words quoted above, seems to have avoided the issue as to whether the income from such trusts was reachable by a wife suing for alimony, on the basis that the decree of the California Court could not be considered in Maryland as an award of alimony.⁷ Without comment as to whether this was justified, it would appear that the Maryland law as to the rights of a wife or child to reach a spendthrift interest is left undetermined.

The weight of judicial authority, the Restatement of the Law of Trusts, text writers, and law review articles all favor the proposition that in an action by a wife or by a child for support against the beneficiary of a spendthrift trust the public will demands that the wife or child shall

⁴ *Dickey v. Dickey*, 154 Md. 675, 141 A. 387, 58 A. L. R. 634 (1928); *Bushman v. Bushman*, 157 Md. 166, 145 A. 488 (1929).

⁵ The present case note is concerned only with the second issue, namely, the problem raised in the field of trusts. As to the question raised in the field of Conflict of Laws, see the following casenote.

⁶ *Smith and Son v. Towers, Garnishee*, 69 Md. 77, 14 A. 497, 15 A. 92, 9 Am. St. Rep. 398 (1888); *Reid v. Safe Deposit and Trust Co.*, 86 Md. 464, 38 A. 899 (1897); *Jackson Square Assn. v. Bartlett*, 95 Md. 661, 53 A. 426, 93 Am. St. Rep. 416 (1902); *Safe D. and T. Co. v. Ind. Brewing Assoc.*, 127 Md. 463, 96 A. 617 (1916); *Johnson v. Stringer*, 158 Md. 315, 148 A. 447 (1930).

⁷ See notes 3 and 4, *supra*.

recover.⁸ The wife and child represent but one of several classes of claimants which have been thought capable of subjecting income from a spendthrift trust to their respective claims against the beneficiary.⁹ There is authority that the interest of the beneficiary of a spendthrift trust may be reached by the government for taxes;¹⁰ creditors who have furnished necessities to the beneficiary;¹¹ and persons who have conferred some benefit upon the beneficiary's interest in the trust estate.¹² Professor Scott adds that tort creditors also should be able to reach the interest of the beneficiary.¹³

That which is common to all of those instances wherein it is generally thought that the income of such trusts is reachable is the factor of public policy. While the particular theories advanced in each case or group of cases may be different from that advanced in the other cases or group of cases nevertheless the "inarticulate major premise" in all the decisions is the demand of social policy. Professor Scott reasons that "when one comes to examine the question of public policy in regard to spendthrift trusts

⁸ GRISWOLD, SPENDTHRIFT TRUSTS (1936) Sec. 333; RESTATEMENT OF TRUSTS (1935) Sec. 157; SCOTT, TRUSTS (1939) Sec. 157; Brown, *Rights of Creditors of Beneficiary of Spendthrift Trusts* (1922), 21 Calif. L. Rev. 142; England v. England, 223 Ill. App. 549 (Ill., 1922); Eaton v. Lovering, 81 N. H. 275, 125 A. 433, 35 A. L. R. 1034 (1924); In Re Moorehead's Estate, 289 Pa. 542, 137 A. 802, 52 A. L. R. 1251 (1927). *Contra*, see Buckman v. Buckman, 294 Mass. 214, 200 N. E. 918, 104 A. L. R. 744 (1936); San Diego Trust and Savings Bank v. Heustis, 121 Cal. A. 675, 10 P. (2d) 153 (1932); *Cf.* Canfield v. Security First Nat. Bank, 8 Cal. A. (2d) 277, 48 P. (2d) 133 (1935); In Re Fitzgerald (1904) 1 Ch. 573; Oberndorf v. Farmer's Loan and Trust Co., 208 N. Y. 367, 102 N. E. 534 (1913); Pruyn v. Sears, 161 N. Y. Supp. 58, 96 Misc. 200 (1916); Thomas v. Thomas, 112 Pa. S. 598, 172 A. 36 (1934); Keller v. Keller, 284 Ill. App. 198, 1 N. E. (2d) 773 (1936). *Cf.* Note (1928) 41 Harv. L. Rev. 410; and Note (1928) 76 U. of Pa. L. Rev. 220. The cases of In Re Jones' Estate, 48 A. 865 (Pa. 1901) and Schuster's Estate, 26 Pa. Dist. Rep. 232 (1917) were homologous decisions in that they upheld payment by a trustee of funds from spendthrift trust to the wife on order of the beneficiary.

⁹ RESTATEMENT, TRUSTS (1935) Sec. 157; SCOTT, TRUSTS, (1939) Sec. 157. In a caveat to this section the RESTATEMENT admonishes that these two classes plus that of the wife and child are not necessarily the only claimants who may reach the income from the fund.

¹⁰ In Re Rosenberg's Will, 269 N. Y. 247, 199 N. E. 206, 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392, (1935); as to powers of the Alien Property Custodian to reach the income see Keppelmann v. Palmer, 91 N. J. E. 67, 108 A. 432 (1919), cert. denied, 252 U. S. 581, 40 S. Ct. 392, 64 L. Ed. 727 (1920).

¹¹ Cooper v. Carter, 145 Mo. App. 387, 129 S. W. 224 (1910). Scott cites Pole v. Pietsch, 61 Md. 570 (1884). That was a discretionary trust and the evidence showed bad faith in the exercise of the discretion. Matter of Berrien, 264 N. Y. Supp. 593 (1933).

¹² In Re Williams, 187 N. Y. 286, 79 N. E. 1019 (1907); *Cf.* Pond v. Harrison, 96 Kan. 542, 152 P. 655, L. R. A. 1916 B. 1264 (1915).

¹³ SCOTT, TRUSTS (1939) Sec. 157.5.

there is no clear answer. So much depends upon the actual effects produced by permitting them, the effects both economic and sociological upon the community and upon the beneficiaries of such trusts, and so much depends upon whether these effects are deemed desirable or otherwise".¹⁴ However, he goes on to indicate that when a wife or child is suing for support none of the reasons which are generally advanced to exclude creditors are applicable. For the law of spendthrift trusts developed to protect the beneficiary against ordinary contract creditors and not other types of claimants.¹⁵ Accordingly it is extending the law unduly in the direction of an already favored instrument of the law, the spendthrift trust, to hold that where a wife or child is concerned the interest of the beneficiary is still unreachable.

In arriving at the result that income from a spendthrift trust was reachable by a wife or child suing for maintenance the authorities have advanced varying theories. Illinois,¹⁶ New Hampshire,¹⁷ and Pennsylvania¹⁸ have held that the settlor intended the income from such a trust to cover support of the wife or child. In other words that the beneficiary's wife and children, equally with the beneficiary, were to be considered within the settlor's bounty. This being the intent of the settlor, the effect of the decisions in these jurisdictions has been to vest in the wife or child a right of action against the trustee.¹⁹ Public policy in some instances has been so strong that it has been held that even though it can be seen that the settlor intended to exclude the wife and child, nevertheless these claimants are not barred.²⁰ New York, on the other hand, has held

¹⁴ *Ibid.*, Sec. 152.

¹⁵ *Ibid.*, Sec. 157, 157.1.

¹⁶ *England v. England*, 223 Ill. App. 549 (1922); *Keller v. Keller*, 284 Ill. App. 198, 1 N. E. (2d) 773 (1936); *Futtle v. Grunderson*, 254 Ill. App. 552 (1929).

¹⁷ *Eaton v. Lovering*, 81 N. H. 275, 125 A. 433, 35 A. L. R. 1034 (1924).

¹⁸ *In Re Moorehead's Estate*, 289 Pa. 542, 137 A. 802, 52 A. L. R. 1251 (1927).

¹⁹ In California it has been held that where creditors are allowed by statute to reach the "surplus" income from the trust, the needs of the wife and children are considered in determining the amount of surplus. *Magner v. Crooks*, 139 Cal. 640, 73 P. 585 (1903). See also the New York case of *Wetmore v. Wetmore*, 149 N. Y. 520, 44 N. E. 169 (1896), where the wife was allowed to reach all of a trust income of \$5,000 where it appeared that the husband had an independent income of \$10,000 a year.

²⁰ *Thomas v. Thomas*, 112 Pa. S. 578, 172 A. 36 (1934); *Keller v. Keller*, 1 N. E. (2d) 773. *Contra*, *Erickson v. Erickson*, 197 Minn. 71, 266 N. W. 161, 197 Minn. 432, 267 N. W. 426 (1936); *Schwager v. Schwager*, 7th C. C. A., 8 U. S. Law Week 319, noted (1940) 88 U. Pa. L. Rev. 758; (1940) 53 Harv. L. Rev. 1059.

that the wife or child may reach the husband's or father's beneficial interest in the trust as creditors.²¹ Both of these views are but legal legerdemain employed by the courts to palliate the fact that they are really making an exception to the general immunity of spendthrift trust income in favor of the public policy calling for support of a wife or child.²² In the words of Professor Griswold, "it would appear to be more satisfactory for the courts to recognize frankly that recovery by the wife or child represents a limitation on the generality of the spendthrift trust."²³ Such a limitation needs no such extended excuses when it is remembered that spendthrift provisions themselves did not receive unanimous approval at their inception in American law.²⁴ They are of too recent recognition in Maryland for the law to crystallize in favor of excluding all classes of claimants without careful consideration of the problem by the courts.²⁵ Professor Scott has suggested a third or intermediate point of view that might be taken in these cases. He argues that the wife and child should not be precluded from reaching the beneficiary's interest but that they be permitted to reach it only to the extent that may appear to the court as reasonable under the circumstances. Of course much can be said in behalf of this position. Actually, no harm results to anyone if this view obtains. And the court, which is in an excellent position to determine the best interests of the parties, can allocate funds for the wife's support and simultaneously aid public policy.

There is ample analogy in other than spendthrift trust cases to support the right of the wife or of the child to recover for maintenance. Many cases allow the wife to reach income paid the husband as veteran's compensation where by Federal statute such income cannot be reached by

²¹ *Oberndorf v. Farmer's Loan and Trust Co.*, 208 N. Y. 367, 102 N. E. 534 (1913).

²² In further carrying out the public policy concept, courts have upheld assignments by the beneficiary of a spendthrift trust of a part of his interest for the purpose of providing for his wife's support. *Wright v. Leupp*, 70 N. J. E. 130, 62 A. 464 (1905); *In Re Yard's Estate*, 189 N. Y. Supp. 190, 116 Misc. 19 (1921). In this latter case a statute was involved. "Where the trust is created for the support of the beneficiary, it has been held that the fact that he has dependents is to be taken into consideration in determining the amount to which he is entitled under the trust, that the support of a person includes the support of those whom it is his duty to support." *SCOTT, TRUSTS* (1939) Sec. 157.1.

²³ *GRISWOLD, SPENDTHRIFT TRUSTS* (1936) Sec. 334.

²⁴ *GRAY, RESTRAINTS ON ALIENATION* (2d ed., 1895) IX.

²⁵ The earliest Maryland Case is *Smith v. Towers*, 69 Md. 77, 14 A. 497, 15 A. 92 (1888).

creditors generally.²⁶ There are also those decisions and statutes which do not give the general exemptions from execution to proceedings to enforce the payment of alimony or support.²⁷ Thus, the position of the wife is favored and protected in those instances where by general statutory law the husband's income is not within reach of the general creditors. No sound basis of distinction exists between these cases and those where the husband's income is held to be beyond the grasp of creditors because of a legal contrivance designated as a spendthrift trust. The rule should be general to the effect that the wife's and child's dependent position is such that the law favors them and allows them always to partake in the husband's or father's income regardless of its source.²⁸

In relation to the substance of the issue, no difference in results should be reached because of the technical nature of wife's or child's suit. Thus whether the suit is one for alimony or support, on the one hand, or to recover for necessities, the result should be the same.²⁹ In those cases outside of Maryland where the issue has been raised in terms of a suit on an alimony decree, the better authority allows the wife to recover.³⁰ In doing so, these opinions recognize the true nature of the wife's or child's suit, namely, that it is a suit for support by a dependent, and accordingly adjudicate the wife's and child's rights in terms of the substantive nature of the issue.

As time passes, it is probable that a greater and greater number of courts will allow the wife or child to reach the income from a spendthrift trust. Likewise, it will become

²⁶ *Stone v. Stone*, 188 Ark. 622, 67 S. W. (2d) 189 (1934); *Hollis v. Bryan*, 166 Miss. 687, 143 So. 687 (1932). As to amenability of police pensions see *Monck v. Monck*, 172 N. Y. Supp. 401, 184 App. Div. 656 (1918).

²⁷ *Willen v. Willen*, 121 Cal. A. 351, 8 P. (2d) 942 (1932); *Walker v. Walker*, 204 N. C. 210, 167 S. E. 818 (1933), a minor child; *Caldwell v. Central of Georgia Ry. Co.*, 158 Ga. 392, 123 S. E. 708 (1924); see also 50 L. R. A. (N. S.) 697; 11 A. L. R. 123.

²⁸ Professor Griswold points out that two states have statutes to this effect, Missouri and Pennsylvania, *GRISWOLD, SPENDTHRIFT TRUSTS*, Sec. 341. See also *RESTATEMENT, TRUSTS TENTATIVE DRAFT No. 2* (1931) 124.

²⁹ See for discussion *De Rousse v. Williams*, 181 Iowa 379, 164 N. W. 896 (1917). *Eaton v. Lovering*, 81 N. H. 275, 125 A. 433, 35 A. L. R. 1034 (1924) gives a full discussion of the law, but allows recovery.

³⁰ *England v. England*, 223 Ill. App. 549 (1922); *GRISWOLD, SPENDTHRIFT TRUSTS*, Sec. 339, states that, in New York, while the wife's legal standing may be no better than that of any other creditor nevertheless as a practical matter she recovers. *Moore v. Moore*, 208 N. Y. 97, 101 N. E. 711 (1913); *Hoagland v. Leask*, 138 N. Y. Supp. 790, 154 App. Div. 101 (1912), *aff'd* (mem.), 214 N. Y. 645, 108 N. E. 1096 (1915); *Fink v. Fink*, 248 N. Y. Supp. 129, 139 Misc. 630 (1931). See also *Ford v. Ford*, 230 Ky. 56, 18 S. W. (2d) 859 (1929); *Gilkey v. Gilkey*, 162 Mich. 664, 127 N. W. 715 (1910). See also *SCOTT, TRUSTS* (1939) Sec. 157.

decreasingly important that the wife is basing her suit on an alimony or support award, or that third parties are suing to recover for necessities advanced to the wife or child. It is to be hoped that the Maryland Court will not be overpowered by the inertia of past decisions dealing with spendthrift trusts to the extent of accepting as law their failure to state an exception not necessary to their result. It would be better policy to fall in line with the sound view of public welfare to the effect that a wife or child in a suit whose real nature is one for support may reach the income from a spendthrift trust.