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Further on Whether a Spendthrift Trust May Be Reached for Alimony or Support - Safe Deposit & Trust Co. of Baltimore v. Robertson

FURTHER ON WHETHER A SPENDTHRIFT TRUST MAY BE REACHED FOR ALIMONY OR SUPPORT

Safe Deposit & Trust Co. of Baltimore v. Robertson[1]

Appellee, wife, obtained a divorce *a vinculo* from her husband in the Circuit Court of Baltimore City. The decree ordered the husband to pay a certain sum as permanent alimony, subject to the further order of the Court. Subsequently, the husband took up residence in New York and allowed the alimony payments to fall in arrears. Appellee obtained an order reducing to judgment the arrears in the amount of $4,229 and laid an attachment for this amount in the hands of the garnishee-appellant, who filed a motion to quash, reciting that the only assets in its hands consisted of accrued income payable to the husband under valid spendthrift trusts. The Chancellor overruled the motion to quash, and signed an order directing the garnishee to bring into court all the funds due the judgment debtor, and pay the same to him in open court on a certain day, the husband being notified by registered mail to appear

[1] 65 A. 2d 292 (Md. 1949).

on that day. He declined to do so. The Chancellor further ordered that if the husband did not appear, the garnishee should pay over the funds to the Clerk of Court "until all of the arrears of alimony due by him . . . be fully paid and satisfied". An appeal was taken from that order, no question being raised as to the validity of the judgment or attachment from a procedural point of view.

Thus, the question was squarely presented to the Court of Appeals as to whether the rule prohibiting attachment of income from spendthrift trusts should apply to claims for alimony. The Court, in a unanimous opinion written by Judge Henderson, *held:* "We think the rule that gives legal effect to spendthrift provisions as against contract creditors should not be extended to claims for support or alimony."[2]

The Court pointed out that the question was an open one in Maryland. The validity of spendthrift trusts in this State was established in 1888 in *Smith & Son v. Towers, Garnishee,*[3] where it was held, over the strong dissent of Chief Judge Alvey, that the income from such a trust was beyond the reach of creditors of the beneficiary by any process at law or in equity. While the enforcement of spendthrift provisions has become general practice it constitutes a departure from the normal trusts rule which recognizes that the beneficiary's interest in a trust is freely alienable, either voluntarily or involuntarily.[4]

One earlier attempt was made to have the Court of Appeals rule that this specially favored device—the spendthrift trust—should not be further favored to defeat the claims of a wife for support. In the case of *Bauernschmdit v. Safe Deposit & Trust Company,*[5] plaintiff had obtained a divorce from her husband in California, and a decree for separate maintenance pursuant to an agreement between the parties. Defendant allowed the payments to fall in arrears, and plaintiff sued out a writ of non-resident

[2] *Ibid.*, 296. The Court decided, however, that there was no occasion for impounding the fund with the Clerk of Court upon default of the defendant to appear and subject himself to imprisonment for contempt, and that the appellee was entitled to a judgment of condemnation, upon disclosure of the amount of assets held by the trustee, according to the regular course of procedure in attachment on judgments. The order was therefore affirmed in part and reversed in part, and remanded for further proceedings.

[3] 69 Md. 77, 14 A. 497, 9 Am. St. Rep. 398 (1888); see dissent, 15 A. 92 (1888). See also: Jackson Square Loan & Savings Association v. Bartlett, 95 Md. 661, 53 A. 426, 93 Am. St. Rep. 416 (1902); Medwedeff v. Fisher, 179 Md. 192, 17 A. 2d 141, 138 A. L. R. 1313 (1941); Fetting v. Flanagan, 185 Md. 499, 45 A. 2d 355, 174 A. L. R. 301 (1946).

[4] See SCOTT, TRUSTS (1939), sec. 132, and secs. 142-148; RESTATEMENT, TRUSTS (1935) sec. 132, and secs. 142-148.

[5] 176 Md. 351, 4 A. 2d 712 (1939), Note, May a Spendthrift Trust be Reached for Alimony, or Support? (1940), 4 Md. L. Rev. 417.

attachment against him in Baltimore City, garnisheeing the Trust Company to recover said arrears out of the income due defendant under two spendthrift trusts. Plaintiff argued that in California an award based on an agreement was considered to be alimony, and that in that state the income from a spendthrift trust could be reached by an alimony claimant.[6] The Maryland Court, on the strength of the *Dickey*[7] and *Bushman*[8] cases, refused to consider the decree based on a separation agreement as alimony, and held that whatever status might be accorded to such a decree in California, it was not alimony in Maryland, and, hence, that a wife's claim based upon an agreement stands upon no higher footing than that of any other creditor. The Court then disposed of the trust question by saying: "The second contention, that the rule respecting the attachability of spendthrift trusts should be relaxed when the claim is for alimony, cannot be entertained here unless we overrule the decisions in the *Dickey* and *Bushman* cases, *supra*, which give to money decrees founded on agreements for support the same dignity, force and status as other debts of record. As we are not ready to overrule those decisions there is no need to discuss the decisions elsewhere, of the rights of the wife of a spendthrift cestui que trust." In the casenote commenting upon the Bauernschmidt case, it was pointed out that when the issue was faced: "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."[9]

Throughout the country, this has been a much litigated question, marked by a wide divergence of opinion among the individual courts. Some jurisdictions have dealt with the problem by resting the decision upon a consideration of the intent of the settlor.[10] Where the settlor expressly

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[6] This was apparently a misconception of the California law, which was quite to the contrary; see San Diego Trust & Savings Bank v. Heustis, 121 Cal. App. 675, 10 P. 2d 158 (1932); Canfield v. Security First National Bank, 8 Cal. App. 2d 277, 48 P. 2d 133 (1935); Kelly v. Kelly, 11 Cal. App. 2d 356, 79 P. 2d 1059 (1938).

[7] 154 Md. 675, 141 A. 387, 58 A. L. R. 634 (1928).

[8] 157 Md. 166, 145 A. 488 (1929).

[9] 4 Md. L. Rev., *op. cit. supra*, n. 5, 423.

[10] England v. England, 223 Ill. App. 549 (1922); Keller v. Keller, 284 Ill. App. 198, 1 N. E. 2d 773 (1936), based on the mere absence of an express provision to the contrary; In re Moorehead's Estate, 289 Pa. 542, 137 A. 802, 52 A. L. R. 1251 (1927); Thomas v. Thomas, 112 Pa. S. 578, 172 A. 36 (1934); Wetmore v. Wetmore, 149 N. Y. 52, 44 N. E. 169 (1896); Schwager v. Schwager, 109 F. 2d 754 (C. C. A. 7th Cir. 1940), *cf.* Dillon v. Dillon, 244 Wisc. 122, 11 N. W. 2d 628 (1943).

provides in the trust that the wife is to receive the benefits thereof, there is no difficulty, since clearly she is a beneficiary equally with the husband. But where the settlor has failed to make express provision within the instrument, treating the wife as an intended beneficiary would seem to be less desirable as a justification for the result than would be a direct recognition that public policy does not permit her to be excluded,[11] as was basically the reasoning of the instant case.

A growing number of the courts have thus resolved the controversy, some reasoning that since alimony is not a debt, but rather a social duty imposed upon the husband, the standard provisions in the trust instrument exempting the interest of the beneficiary from the claims of his creditors will not apply to a wife suing on the basis of an alimony decree.[12] Even in some of the above referred to decisions allowing income from a spendthrift trust to be reached by an alimony or support claimant by resorting to the fiction of the settlor's implied intent, the broad pattern of public policy has been emphasized, and it may be regarded as implicit in them all. Thus in the leading case of *In re Moorehead's Estate*,[13] the Pennsylvania Court stated, *arguendo*, that: "Public policy is not so vague and wavering a matter as not to be rightly invoked in a case of this character . . ." And, in the later case of *In re Stewart's Estate*[14] that Court stated: "Since we have declared that spendthrift trusts are against public policy in this State as to claims of wives for maintenance, they are entitled to recover against the beneficial interests of their husbands as though no spendthrift clause was contained in the will or deed creating them." The opposition to this view has

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[11] GRISWOLD, SPENDTHRIFT TRUSTS (1936) Sec. 334 states "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".

[12] Stone v. Stone, 188 Ark. 622, 675 S. W. 2d 189 (1934); England v. England, *supra*, n. 10; Tuttle v. Gunderson, 254 Ill. App. 552 (1929), *cert. den.* 341 Ill. 36, 173 N. E. 2d 175 (1930); Clay v. Hamilton, 116 Ind. App. 214, 63 N. E. 2d 207 (1945); Hollis v. Bryan, 166 Miss. 874, 143 So. 687 (1932); Cogswell v. Cogswell, 178 Ore. 417, 167 P. 2d 324 (1946); Dillon v. Dillon, *supra*, n. 10; and see Audubon v. Shufelt, 181 U. S. 575 (1901), stating as to the nature of alimony: "Permanent alimony is regarded rather as a portion of the husband's estate to which the wife is equitably entitled, than strictly as a debt."

[13] *Supra*, n. 10.

[14] 334 Pa. 356, 5 A. 2d 910, 914 (1939); *cf. Lippincott v. Lippincott*, 349 Pa. 510, 37 A. 2d 741 (1944), in which the Pennsylvania Court refused to apply this to alimony arising under an *a vinculo* divorce, apparently confining it to the claims of deserted or neglected wives; the present Pennsylvania statute, 20 P. S. 301.12 (The Wills Act of 1947) seems to be broader.

been chiefly on grounds that the right of the donor to dispose of his property as he sees fit is paramount to the donee's obligation to pay alimony or support, and that, hence, to allow the income to be so attached would enforce the obligations of the husband against the settlor, thus in effect rewriting his will and disposing of his property contrary to his wishes.[15] A number of jurisdictions have stated in statute law this policy of according full protection to alimony claims.[16]

The Court of Appeals in the instant opinion, in holding that the spendthrift beneficiary's income may be reached by an alimony claimant (and the opinion extended this to cover claims for support as well)[17] said in part: "In such situations the wife is a favored suitor, and her claim is based upon the strongest grounds of public policy. The fact that, as against a resident husband, an award may be enforced by imprisonment for contempt, is no argument against the exercise of a less drastic remedy in a proper case. In the case at bar it is the only remedy available. . . . We rest our decision upon grounds of *public policy,* not upon any interpretation of the instruments in question, which are not broad enough to authorize payments by the trustee for the benefit of a divorced wife."[18]

Leading text writers and the Restatement of Trusts are in complete accord with this position.[19] Professor Scott,

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[15] Erickson v. Erickson, 197 Minn. 71, 266 N. W. 161, 164 (1936), *rehearing den.* 267 N. W. 426 (Minn. 1936): "It is the intent of the donor, not the character of the donee's obligation which controls the availability and disposition of his gift"; Roorda v. Roorda, 230 Iowa 1103, 300 N. W. 294 (1941); Eaton v. Lovering, 81 N. H. 275, 125 A. 433, 35 A. L. R. 1034 (1924); DeRousse v. Williams, 181 Iowa 379, 164 N. W. 896 (1917); Bucknam v. Bucknam, 294 Mass. 214, 200 N. E. 918, 104 A. L. R. 774 (1936). See Note, *Is Alimony a Debt?* (1941), 27 Va. L. R. 914.

[16] See, *e.g.,* Mo. Rev. Stat. (1939) Sec. 570: "All restraints upon the right of the *cestui que* trust to alienate or anticipate the income of any trust estate in the form of a spendthrift trust, or otherwise, and all attempts to withdraw said income of any trust estate from the claims of creditors of the *cestui que* trust, whether said restraints be by will or deed, now existing or in force, or, which may be hereafter executed in this state, be and the same are hereby declared null and void and of no effect, as against the claims of any wife, child or children, of said *cestui que* trust for support or maintenance, or, as against the claim of any said wife for alimony". Howard v. Jennings, 146 F. 2d 332 (C. C. A. 8th 1944), *Aff'g.,* 56 F. Supp. 193 (E. D. Mo. 1944), applying statute to foreign decree for divorce and alimony. La. Gen. Stat. Ann. (Dart 1939), Sec. 9850.28; Okla. Stat. (1943 Supp.) Tit. 60, Sec. 175.25.

[17] Above *circa,* n. 2.

[18] Emphasis supplied.

[19] I BOGERT, TRUSTS AND TRUSTEES (1935) sec. 223; GLENN, FRAUDULENT CONVEYANCES (Rev. Ed. 1940) Sec. 189a; SCOTT, TRUSTS (1939) Sec. 157.1; GRISWOLD, SPENDTHRIFT TRUSTS (2d ed. 1940) Sec. 339; RESTATEMENT, TRUSTS (1935) Sec. 157.

in his work on Trusts, which is quoted from at length by the Court, has said that: "The claim of a wife and dependent children to support is based upon the clearest grounds of public policy. They are in quite a different position from ordinary creditors who have voluntarily extended credit. It would be shocking indeed to permit a husband to receive and enjoy the whole of the income from a large trust fund and to make no provision for his needy dependents."[20] The Restatement, also cited and followed by the Court, states: "Section 157. Particular Classes of Claimants. Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary,

(a) by the wife or child of the beneficiary for support, or by the wife for alimony;

(b) for necessary services rendered to the beneficiary or necessary supplies furnished to him;

(c) for services rendered and materials furnished which preserve or benefit the interest of the beneficiary."[21]

Professor Scott has suggested that it is possible to take an intermediate view, stating that: "It may be held that the dependents of the beneficiary cannot be precluded from reaching his interest under a spendthrift trust, but that they can reach only so much of the income as under the circumstances may appear reasonable to the court which has control over the administration of the trust. . . . Under . . . [this view] the beneficiary is not permitted to live in luxury while his dependents starve. On the other hand, they will not be permitted to live in comfort while he starves."[22] The Court of Appeals, however, found no necessity for this analysis, saying that: "This view seems to be based upon the proposition that if the wife is allowed the full amount of her claim the beneficiary may be left destitute. We think that danger is remote, because in Maryland at least, an alimony decree is always open to revision in the light of changed circumstances or conditions."[23]

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[20] See, SCOTT, *op. cit. supra*, n. 19, p. 790.

[21] *Loc. cit. supra*, n. 19; see RESTATEMENT, TRUSTS, Md. Annot. (1940) Sec. 157, citing cases accord and *contra* to subparagraph "b" on their facts, but which probably do not settle the question because of failure to face the theory presented to and adopted by the Court of Appeals in the instant decision.

[22] *Loc. cit., supra*, n. 19. See Bucknam v. Bucknam, *supra*, n. 13, apparently the basis for this; but *cf.* Burrage v. Bucknam, 16 N. E. 2d 705 (Mass. 1939), later proceeding *contra*.

[23] *Supra*, n. 1, 296, citing Knabe v. Knabe, 176 Md. 606, 616, 6 A. 2d 366, 124 A. L. R. 1317 (1939).

The result of the decision in the instant case is to place Maryland, under a strongly written opinion, squarely in line with the growing number of jurisdictions which hold that the income from spendthrift trusts may be reached by the wife for alimony. And the language of the opinion, as quoted above,[24] relates to claims for support as well as for alimony. This is sound because spendthrift trusts, which required special favor of the law to be enforceable at all,[25] should not have that favor extended to defeat the social policy of the State that a husband must support his wife and children. A logical extension of this approach would recognize that the spendthrift interest may be reached for other purposes when social policy so requires, as has been accepted as the general rule by the American Law Institute in the Restatement[26] and by other leading authorities.[27]

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[24] *Circa*, n. 2.

[25] *Supra, circa*, n. 4.

[26] Quoted, *supra, circa*, n. 21; cf., RESTATEMENT, TRUST, Md. Annot. (1940), sub. par. 6. See Mercantile Trust Co. v. Hofferbert, 58 F. Supp. 701, 704 (1944), in which Judge Chesnut, after reviewing the Maryland authorities, held that the interest of the beneficiary under a spendthrift trust was subject to a claim for federal income taxes (relied on in the instant opinion).

[27] *Supra*, n. 19.