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

Hitchins v. Safe Deposit & Trust Co. of Baltimore

This was a dual action, one part of which was a proceeding filed by a surviving trustee in the Circuit Court of Baltimore City, praying a construction of the will of a certain testator. By that will the testator created a trust, containing spendthrift provisions as to both corpus and income, for the benefit of certain designated life tenants. The will then directed that upon the death of the surviving life tenant, the trustee should pay the net income to those grandchildren who were in being at the time of the testator's death, in equal shares, until such time as the youngest eligible grandchild should reach the age of twenty-one years, at which time the trust should terminate and the property and effects constituting the corpus be sold, the proceeds therefrom to be divided among the grandchildren entitled to take under the will. Surviving the testator at his death, were the designated life tenants and four grandchildren. The appellant, wife of one of the grandchildren entitled to share under the will, entered into a separation agreement with him in 1928, whereby he agreed to pay to her as "permanent alimony" a certain sum, until such time as the estate of his grandfather should be finally settled and distributed, at which time he would pay over to her one-third of the amount distributed to him by the trustee, upon receipt of which the "permanent alimony" should cease. Subsequently, the appellant secured a divorce in a foreign forum. Upon the death of the surviving life tenant, in 1947, all of the eligible grandchildren were over twenty-one years of age.

In one proceeding, February 1948, the appellant issued in the Superior Court of Baltimore City a non-resident attachment, to which the separation agreement was at-

1 66 A. 2d 93, 97 (Md. 1949).
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1950

The above referred to bill for construction filed by the trustee in the Circuit Court produced two decrees, one authorizing a sale of the property without prejudice to the rights of the parties, and the other disallowing the appellant's claim due to the spendthrift provisions of the trust. From the judgment at law and the decrees in Equity, the appellant prosecuted twin appeals.

In affirming the lower court in both cases, the Court of Appeals, in an opinion by Judge Henderson, disposed of the spendthrift problem by stating: "The appellant's claim is not based upon a lien or judgment but merely upon an agreement to pay certain sums as 'permanent alimony', and to pay one-third of the amount distributed to him after settlement of the estate. . . . The appellees contend that such a claim cannot be recognized until reduced to judgment. . . . In any event, we think the claim is barred by the spendthrift provisions. . . . The appellant is only a contract creditor and has not brought herself within the exception as to alimony laid down in Safe Deposit & Trust Co. of Baltimore v. Robertson."

The instant decision presents an apparent qualification of the position recently taken by the Court of Appeals in the Robertson case. In the earlier case, the question presented was as to the right of the divorced wife of a spendthrift cestui que trust to reach the income from the trust when suing on the basis of a judgment for alimony arrearages. In a forceful opinion, also by Judge Henderson, the Court of Appeals there 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." The Court quoted at length from Scott On

*The Court of Appeals, in the first case, held that the trust did not terminate upon the death of the surviving life tenant, since the trustee was directed to then sell and divide the proceeds among the grandchildren entitled, which duty on the trustee was essential to the complete fulfillment of the trust provisions; and that the testator's direction to sell and distribute the proceeds worked an equitable conversion, the only interest of the remainderman being to receive distribution of the proceeds of sale. Ibid, p. 93.

*Supra, n. 1, 99.

*65 A. 2d 292, 296 (Md. 1949).
Trusts, where it is said: "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." The Court further quoted and followed the Restatement of Trusts, Section 157, which provides:

"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."

The Court of Appeals then concluded its basic reasoning by stating that: "In such situations the wife is a favored suitor, and her claim is based upon the strongest grounds of public policy.... 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." Thus, in this case, the Maryland Court recognized that such classes of claimants—wives, children, and creditors who have furnished necessaries to the spendthrift beneficiary—are persons holding peculiarly strong equities, which equities that Court would not allow to be defeated by the general rules supporting spendthrift trusts. In *Fetting v.*

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5 SCOTT, TRUSTS (1939) Sec. 157.1, 790.
7 Supra, n. 4, 296.
Flanagan, the Court of Appeals had already recognized that the trustee's right to reimbursement for taxes paid on the estate was within this special class of claims, quoting and relying on the Restatement, Section 157, comment "d".

Commenting upon the Robertson decision, this REVIEW pointed out that: "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, 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, should not have that favor extended to defeat the social policy of the State that a husband must support his wife and children." As a result of the Robertson decision, it was hoped that when the question as to the right of a support (as distinguished from technical alimony) claimant came before it, the Maryland Court would determine the outcome not by a technical distinction as to what is and what is not "alimony", but upon the fundamental basis of public policy, and recognize that any suit, the true nature of which is a proceeding for support or maintenance, should prevail against the provisions of a spendthrift trust. It was expected that the erroneous implication of the Bauernschmidt case, discussed infra, had been destroyed by the breadth and strength of the Robertson opinion. The Hitchins decision disappoints that expectation.

In that portion of its argument in the instant controversy relative to the spendthrift issue, the appellee relied upon the cases of Dickey v. Dickey, Bushman v. Bushman, and Bauernschmidt v. Safe Deposit & Trust Co. of Baltimore. The Dickey and Bushman cases are well-known authorities for the proposition that, in Maryland, money decrees founded upon agreements for support are not alimony

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8 185 Md. 499, 45 A. 2d 355, 174 A.L.R. 301 (1946), quoting Scott and the Restatement, Section 157, Comment d.
9 Note, Further on Whether a Spendthrift Trust May Be Reached for Alimony or Support, 10 Maryland Law Review 359 (1950).
10 154 Md. 675, 141 A. 387, 58 A.L.R. 634 (1928).
11 157 Md. 166, 145 A. 488 (1929).
12 176 Md. 351, 4 A. 2d 712 (1939), noted May a Spendthrift Interest be Reached for Alimony or Support, 4 Maryland Law Review 417 (1940), where the rationale of the decision was questioned, it being pointed out that public policy clearly required that the wife's right to reach a spendthrift interest for support should not depend upon the reduction of her claim to technical alimony. See the appellate briefs submitted in the instant controversy.
decrees, but rather ordinary debts of record in relation to the constitutional limitation in respect to imprisonment for debt. The *Bauernschmidt* case applied these decisions, beyond their original holdings, as a bar to an attempt to reach a spendthrift interest in Maryland for a claim based on a California decree for separate maintenance pursuant to an agreement between the parties. In thus applying the rule of these earlier cases, the Court of Appeals held that the wife's claim stood upon no higher footing than that of any other creditor.

As a result, a query must be raised as to just what types of claims in Maryland may be properly denominated "claims for support or alimony" within the language of the *Robertson* case so as to enable the wife to reach her husband's spendthrift interest. Little help would be derived from an attempt to analogize the problem to the Maryland alimony law, since the alimony decisions labor under the burden of fine distinctions, as, e.g., distinctions for purposes of imprisonment for contempt, and for purposes of modification of decrees. There can be little doubt but that a court order for the support of dependent children and/or an equitable award of support, whether as "alimony" or otherwise, should under the *Robertson* case be enforceable against the income from a spendthrift trust, irrespective of whether such awards could be enforced by contempt proceedings. A similar result should be obtained when the wife is attempting to enforce a support agreement, or a decree based thereon, because the same social policy is present, viz., the insistence of the State that the husband support his wife. That is, irrespective of whether the claim brought against the spendthrift trust is an alimony judgment, a judicial order of support, a support agreement, or a decree based upon a support agreement, the social policy that a husband maintain his wife is equally present. It is somewhere short of logical to strongly adopt the rule of the *Robertson* case that a wife proceeding against a spendthrift trust on the basis of an alimony judgment may, due to the over-riding pressure of public policy, succeed in her suit, whereas if her suit is based upon a support agreement it must fail. Yet that is, apparently, the combined result of the *Robertson* and *Hitchins* decisions. This result can only be achieved by ignoring in the *Hitchins*

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13 Ibid.
14 Dickey v. Dickey, supra, n. 10, Bushman v. Bushman, supra, n. 11.
case the one element which it is submitted is common to both situations — the long established moral and legal obligation of a husband to provide for his wife, and which in policy outweighs the policy of generally sustaining spendthrift provisions.

The reasoning in a New York case, *In Re Yard's Estate*, is apposite. There, a wife was permitted to enforce the provisions of a separation and support agreement against the income from a certain trust, against the objections of the husband who contended that the support agreement was an assignment, and therefore void, under the New York statutes which prohibited the transfer of trust income. In allowing the wife's suit, the Court said, in part, that: "I see no difference between the direction in a decree of alimony and the amount allowed in the separation agreement. In the former case there is an element of compulsion, although within the proper jurisdiction of a court of equity. In the latter case the husband consents to the allowance, thereby recognizing the duty to provide and the reasonableness of the amount fixed by both parties. Indeed, under all the authorities, the terms of a valid separation agreement seem to be equally as forceful and effectual as a judicial allowance of alimony. . . . Such a contract is binding upon both parties, unless set aside or impeached. . . . This court cannot allow the husband to repudiate a written contract directing payment of his trust income for the support of his wife."

An argument which may be raised in support of the result of the *Hitchins* case is that if support agreements, lacking as they do judicial surveillance in their inception, may be used as a basis for reaching a spendthrift trust, the interest of the beneficiary may be subjected to unduly large or excessive claims. This fear should be obviated by the fact that support money could be obtained from the spendthrift interest only by proceeding in equity against the trustee, and should naturally be allowed only when, in the sound discretion of the equity court, the amount called for in the support agreement is reasonable. This would follow automatically when such agreement has been approved by formal decree, and the decree becomes the basis of the claim; but the problem should not be an insurmountable one when suit is directly on the original agreement. Professor Scott has suggested as an intermediate view for permitting the spendthrift interest to be reached that: "It may be held that the dependents of the beneficiary cannot

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16 116 Misc. 19, 189 N.Y.S. 190, 193 (1921).
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.\textsuperscript{17} While the Court of Appeals found no necessity for such an analysis to support its result in the Robertson case,\textsuperscript{18} it is submitted that the analysis could be a very appropriate one with which to handle the situation presented by the Hitchins case. Such flexibility of equity's action is demonstrated by those cases which allow a reasonable recovery to persons who have supplied necessaries or rendered essential services to the spendthrift beneficiary, or who have improved or preserved the trust property.\textsuperscript{19} Also, equity courts regularly take the similar action of adjusting the provisions of alimony decrees as changing circumstances may require. Unless the law is now to regard private separation and support agreements with disfavor, which has not been the case in the past, the Hitchins result has little or no justification.

\textsuperscript{17} Scott, op. cit. supra, n. 5, p. 791 et seq.
\textsuperscript{18} Supra, n. 4, 296.
\textsuperscript{19} See, e.g., Alvis v. Bank of America National Trust and Savings Ass'n., 212 P. 2d 608 (Cal. App., 1949); Matter of Williams, 187 N.Y. 286, 70 N.E. 1019 (1907), rev'd. (mem.), Matter of Bischoff, 114 App. Div. 904, 100 N.Y.S. 1105 (1906) (attorney); Rosenthal v. Lawyer's County Trust Co., 156 Misc. 910, 282 N.Y.S. 869 (1934) (attorney); Sherman v. Skuse, 166 N.Y. 349, 59 N.E. 990 (1901), aff'd., 45 App. Div. 335, 60 N.Y.S. 1030 (1898) (physician); Matter of Berrien, 147 Misc. 788, 264 N.Y.S. 593 (1933) (physician and hospital allowed recovery); Cooper v. Carter, 145 Mo. App. 387, 129 S.W. 224 (1910); and note Pole v. Pietsch, 61 Md. 570 (1884), allowing recovery by physician against discretionary trust for support; cf. Levi v. Bergman, 94 Md. 204, 50 A. 515 (1901); Matter of Frayer, 155 Misc. 811, 280 N.Y.S. 657 (1935); note also such cases as In Re Cooke's Estate, 181 Misc. 748, 47 N.Y.S. 2d 844 (1944), allowing suit against trust by State institution for reimbursement of expenses incurred in supporting an incompetent beneficiary; Estate of Surbeck, 56 N.Y.S. 2d 487 (1945); Matter of Emmons, 59 N.Y.S. 2d 264 (1946); such New York cases proceed under the authority of Section 24-a of the Mental Hygiene Law (Section 40 giving the State a preferred status in such cases); see also, Sections 792 and 793, N.Y. Civil Practice Act, and N.Y. Laws, 1941, ch. 694, giving to equity courts general power to make such orders with respect to trust income as may be proper under the circumstances; see Ryan v. Edgerton, 177 Misc. 421, 30 N.Y.S. 2d 941 (1941), applying these statutes; for a full study of the N.Y. statutory law relative to this problem see Griswold, Spendthrift Trusts (2nd ed. 1947); see also Department of Public Welfare v. Meek, 264 Ky. 771, 95 S.W. 2d 599 (1936); Walters' Case, 278 Pa. 421, 123 A. 403 (1924); Cronin's Case, 329 Pa. 345, 192 A. 397 (1937); Town of Shrewsbury v. Bucklin, 105 Vt. 185, 163 A. 626, 86 A.L.R. 133 (1933), noted, Spendthrift Trusts — Claim of Town For Costs of Maintaining Beneficiary In Jail, 81 U. of Pa. L. Rev. 1000 (1933): Bradshaw v. American Advent Christian Home, 145 Fla. 270, 199 So. 329 (1940).
Desirable as might be the result of allowing all claims for support or alimony, to the extent to which equity deems them reasonable, to reach the spendthrift interest, the Hitchins case eliminates one possible claim (the support agreement) and suggests elimination of another (the support agreement reduced to judgment.) Policy-wise, it would seem desirable for the Court to at least avoid striking down the latter, by distinguishing the Dickey, Bushman, and Bauernschmidt cases as being limited to their particular facts, and thus permit a spendthrift interest to be reached by any support agreement which has been reduced to a Maryland decree or judgment. But full accord with the view of the Restatement (approved in the Robertson case), which would seem to protect the wife in any valid reasonable claim for support can only be secured by a reversal of the Hitchins and Bauernschmidt rulings, or by legislative enactment. The matter is controlled by statute in a number of jurisdictions.\textsuperscript{20}