Michigan Law Review

Volume 34 | Issue 8

1936

TRUSTS - RESTRAINTS ON ALIENATION - ABILITY OF A DIVORCED WIFE TO REACH THE CORPUS OF A SPENDTHRIFT TRUST FOR ALIMONY CLAIM

TRUSTS — RESTRAINTS ON ALIENATION — ABILITY OF A DIVORCED WIFE TO REACH THE CORPUS OF A SPENDTHRIFT TRUST FOR ALIMONY CLAIM — Testator placed the residue of his estate in trust, and, after making provision as to one-third of the principal and income for his widow, left the remaining two-thirds to his children, or their children by right of representation, the net annual income to be paid to them in convenient installments for twenty years after his death, the principal share of each to be transferred in four as nearly equal installments as possible at five-year intervals. By a codicil, executed after plaintiff, the wife of one of testator's sons, had announced her intention of securing a divorce, it was provided that no title in the trust estate or income should vest in any beneficiary, nor should the principal or income be liable for the debts of any beneficiary, nor should any beneficiary have any power to dispose of his interest in the estate prior to actual distribution. Plaintiff, having secured a judgment for alimony and support against her former husband, sought to reach his interest in the principal, allocated to him by the trustee, but not yet paid. *Held*, the corpus was as inalienable as the income, and a claim for alimony could not reach it. *Erickson* v. *Erickson*, (Minn. 1936) 266 N. W. 161.

Both aspects of the decision present questions upon which there is a good deal of confusion. Some jurisdictions appear to support the court in the view that the settlor may restrain the voluntary or involuntary alienation of the cestui's

interest in the corpus [1] until transferred from the trustee; [2] but the text writers, certainly,[3] and, it is believed, the majority of cases, also, maintain that only provisions against the alienation of the cestui's income [4] will be deemed valid.[5] A similar conflict exists in regard to the right of a divorced wife to satisfy a judgment for alimony from the income or corpus.[6] The court in the instant case

[1] The leading case is Boston Safe Deposit & Trust Co. v. Collier, 222 Mass. 390, 111 N. E. 163 (1916), noted in 29 HARV. L. REV. 557 (1916). See also Wallace v. Foxwell, 250 Ill. 616, 95 N. E. 985 (1911), noted in 7 ILL. L. REV. 445 (1913), Lindsey v. Rose, (Tex. Civ. App. 1915) 175 S. W. 829. And see annotation in 2 A. L. R. 858 (1919). Statutes may govern this problem, as they may in all questions of spendthrift trusts.

[2] For one rationale for this position, see Broadway Nat. Bank v. Adams, 133 Mass. 170 (1882); Boston Safe Deposit & Trust Co. v. Collier, 222 Mass. 390, 111 N. E. 163 (1916). In the instant case the ground for the holding seems to be merely that all that was said in Nichols v. Eaton, 91 U. S. 716, 23 L. Ed. 254 (1875), as to ability to render the income inalienable applies just as well to the cestui's interest in the corpus. Nichols v. Eaton was one of the earliest cases in the field and permitted the spendthrift trust as to income on the theory that it was the settlor's intention and he should be able to provide as he wished. See also In Re Morgan's Estate, 223 Pa. 228, 72 A. 498 (1908). Logically, of course, this reasoning is just as applicable to restraints on the interest in the corpus as it is to interests in the trust income; but it is believed an arbitrary line must be drawn in the use of this argument unless the law is to throw overboard long accepted concepts of policy, for it would seem just as applicable to justify restraints on the alienation of the absolute legal interest.

[3] GRISWOLD, SPENDTHRIFT TRUSTS, §§ 85-106 (1936); 1 BOGERT, TRUSTS AND TRUSTEES, § 220 (1935); 1 PERRY, TRUSTS AND TRUSTEES, 7th ed., § 386a (1929). And Cf. 1 TRUSTS RESTATEMENT, §§ 151, 153 (1935).

[4] Income may be provided for in several ways. Property may be left in trust for the life of the cestui with a restraint on the income to be given him. Or the absolute equitable interest may be given him but the settlor provide that the income for the cestui's life shall not be alienable. The latter type of restraint, while attached to an absolute interest, presents no questions of policy not found in the former. Cf. Sheridan v. Krause, 161 Va. 873, 172 S. E. 508 (1934), noted in 91 A. L. R. 1084 at 1089 (1934). But either of these restraints, it is submitted, is different from that found in the principal case where the interest in the principal was made inalienable.

[5] Cf. Kessner v. Phillips, 189 Mo. 515, 88 S. W. 66 (1905); Lynch v. Lynch, 161 S. C. 170, 159 S. E. 26 (1931), annotated in 80 A. L. R. 1007 (1932); Flanders v. Parker, 80 N. H. 566, 120 A. 558 (1923); and see 1 BOGERT, TRUSTS AND TRUSTEES, § 220 (1935). Square decisions on the point, however, are not believed to be numerous, and some cases seemingly allowing the creditor to reach the interest in the corpus may have done so only because the settlor had not provided otherwise. Cf. Meyer v. Reif, 217 Wis. 11, 258 N. W. 391 (1935); In re Hall's Estate, 248 Pa. 218, 93 A. 944 (1915); Perabo v. Gallagher, 241 Mass. 207, 135 N. E. 113 (1922).

[6] Compare Eaton v. Eaton, 81 N. H. 275, 125 A. 433 (1924), annotated in 35 A. L. R. 1035 (1925), 82 N. H. 216, 132 A. 10 (1926), with England v. England, 223 Ill. App. 549 (1922), and Wetmore v. Wetmore, 149 N. Y. 520, 44 N. E. 169 (1896). In the analogous situation of a wife suing for support, the cases seem more unanimous. Either on the theory that the settlor intended the wife and children to share as beneficiaries [In re Moorehead's Estate, 289 Pa. 542, 137 A. 802, 52 A. L. R. 1259 (1927)] or that there are limitations on the ability to render

takes the often repeated position that alimony is an obligation of the nature of a debt, the wife standing in no better position than a simple credior.[7] It would seem, however, that a policy in favor of alimony strong enough to prevent its discharge in bankruptcy,[8] and strong enough to allow it to reach assets exempt from the claims of ordinary creditors [9] would put it in that preferred class of claims which, because of superior equities [10] or strong policy,[11] are held to prevail regardless of the settlor's stipulations.[12] In reaching its conclusion the court leaves the rather definite impression that it looks favorably upon spendthrift trusts and will do lip-service to the declarations of the settlor, carrying original doctrines [13] to their logical conclusions.[14] It is submitted that some doubt may be placed upon such an approach. There is no natural correlation between restraints on income and restraints on the corpus, nor between ordinary creditor's claims and the claim of a wife for alimony and support, which requires the extension in the direction indicated by the court. But even granting that correlation, policy has always drawn arbitrary lines, and it is believed that strong policy in each aspect here presented should countervail any extension of the questionable bases of the spendthrift trust.[15]

J. B. B.

income inalienable [Oberndorf v. Farmers' Loan & Trust Co., 208 N. Y. 367, 102 N. E. 534 (1913)], the wife is allowed to recover.

In the principal case it appears that the spendthrift provision was intended to apply to the situation which arose. The court observes that it may be inferred that the testator "anticipated the attempt of plaintiff to endeavor to share in a large estate by a subsequent attempt to enlarge both her alimony and support money." Hence, if the spendthrift provision was to be inapplicable, it was on grounds of public policy and not testamentary intent.

[7] Eaton v. Eaton, 81 N. H. 275, 125 A. 433 (1924), and see annotation in 35 A. L. R. 1035 (1925).

[8] 32 Stat. L. 798, 11 U. S. C. A., § 35, p. 150 (1903). And see Audubon v. Shufeldt, 181 U. S. 575, 21 S. Ct. 735 (1900).

[9] Stone v. Stone, 188 Ark. 622, 67 S. W. (2d) 189 (1934); Monck v. Monck, 184 App. Div. 656, 172 N. Y. S. 401 (1918).

[10] Sherman v. Skuse, 166 N. Y. 345, 59 N. E. 990 (1901) (claim for medical services rendered cestui); Matter of Williams, 187 N. Y. 286, 79 N. E. 1019 (1907) (claim for attorney's fees for protection of the trust).

[11] In re Rosenberg's Will, 269 N. Y. 247, 199 N. E. 206 (1935) (liability for taxes); Oberndorf v. Farmers' Loan & Trust Co., 208 N. Y. 367, 102 N. E. 534 (1913) (liability for support of cestui's wife); Eaton v. Eaton, 82 N. H. 216, 132 A. 10 (1926) (support of children in custody of divorced wife).

[12] Cf. TRUSTS RESTATEMENT, § 157 (1935), which the court refers to with disapproval.

[13] See In re Morgan's Estate, 223 Pa. 228, 72 A. 498 (1908); Nichols v. Eaton, 91 U. S. 716, 23 L. Ed. 254 (1875).

[14] The court in the instant case does not indicate whether the same approach is to be applied to other obligations of the cestui; but the language used is broad enough to cover all sorts of claims against the cestui.

[15] Cf. GRISWOLD, SPENDTHRIFT TRUSTS, §§ 102-106 (1936).