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Trusts - Validity and Effect of Assignment of Beneficial Interest in Trust for Support - Claims of Beneficiary's Divorced Wife and Children

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TRUSTS—VALIDITY AND EFFECT OF ASSIGNMENT OF BENEFICIAL INTEREST IN TRUST FOR SUPPORT—CLAIMS OF BENEFICIARY'S DIVORCED WIFE AND CHILDREN—A testamentary trust required the trustee to apply income in such amounts as might be necessary for the education, support and maintenance of *H* until he attained the age of 35 years; then to hand over the corpus and accrued interest. Contingent interests were created for children of *H* who might survive his death before the age of 35. After the death of testatrix, *H* married *W* and had two children. In an agreement subsequently incorporated in a California decree of divorce obtained by *W*, *H* promised to make monthly payments to *W* for her own support and for the support of his children until distribution of the trust, and purported to assign to her his interest in the trust income to secure this obligation. Upon *W*'s request for payment, plaintiff trustee sought a judgment declaratory of the effect of the assignment and the claims of *H*'s wife and children. On appeal, *held*: (1) Trustee had no right or duty to comply with the purported assignment of income to *W*. The trust was one for support from income and *H* could not alienate his income interest. (2) The will of testatrix evidenced her expectation that *H* might marry and her intent that reasonable support be provided not only for *H* individually, but for his family as well. Accordingly, trustee was instructed to pay from surplus income, after providing support for *H*, amounts which it should consider reasonably necessary for the education, support and maintenance of his children. (3) Trustee had no right to honor *W*'s claim for support from the trust. Under the terms of the divorce decree she became a mere creditor unconnected with *H*'s family and her needs for support were not to be considered in determining the amount necessary for *H*'s support. *Seattle First Nat. Bank v. Crosby*, (Wash. 1953) 254 P. (2d) 732.

The extent of the beneficiary's interest in a trust for support is determined by factors personal to him, i.e., his "needs" or "requirements" for education or support. Payment to his assignee or creditor could not satisfy his needs in these respects and would frustrate the whole purpose of the settlor in creating the trust.¹ Thus it is commonly held, even in jurisdictions which reject the

¹ *Slattery v. Wason*, 151 Mass. 266, 23 N.E. 843 (1890); 1 SCOTT, TRUSTS §154 (1939). This analysis would fail, of course, where the creditor has supplied the beneficiary's needs within the trust purpose, i.e., provided for his support or education.

spendthrift trust,² that the beneficiary's interest in a trust for his support is not alienable by him and not amenable to the demands of his creditors.³ However, it may be that a purported assignment by the beneficiary is not wholly ineffective. In *Keeler's Estate*⁴ it was held that an attempted assignment of the beneficial interest in a trust for support operated as a revocable order to the trustee to pay successively accruing installments of income to the assignee, and the trustee, although not obliged to do so, could make such payments until the order was revoked by the beneficiary without incurring liability for breach of trust.⁵ This result was reached on the doubtful theory that the assignee receives payment as the agent or representative of the beneficiary.⁶ If the trustee's primary duty is not to comply with the beneficiary's orders, but to observe the settlor's lawful restrictions on the use of trust funds under his control, then payment to the assignee surely violates these restrictions whether or not the beneficiary acquiesces. In giving instructions to the trustee the court in the principal case rejected without much discussion the doctrine of the *Keeler* case. Whether it would do so if the suit were one for breach of trust is another question.

The great dispute concerning the right of dependents of the beneficiary to share in the income from a spendthrift or support trust still continues. Claims of the beneficiary's children for support from these types of trusts have generally met with success either on the basis that the expressed or implied insulation of the beneficiary against the claims of his creditors was not intended to include his dependents,⁷ or, as the court in the principal case determined, that it was the intent of the settlor to include them as beneficiaries of the trust.⁸ Where the terms of the trust expressly or by reasonable construction attempt to preclude the children of the beneficiary from enforcing their claims for support against his interest, the courts have been driven to put their decisions one way or another on grounds of public policy.⁹ The claim of the beneficiary's

² *Thurber v. Thurber*, 43 R.I. 504, 112 A. 209 (1921); 1 SCOTT, TRUSTS §154 (1939).

³ *Holmes v. Bushnell*, 80 Conn. 233, 67 A. 479 (1907); 1 SCOTT, TRUSTS §154 (1939); GRISWOLD, SPENDTHRIFT TRUSTS, 2d ed., §§430 to 434.2 (1947); 1 TRUSTS RESTATEMENT §154 (1935). But see *Keeler's Estate*, 334 Pa. 225, 3 A. (2d) 413 (1939).

⁴ Note 3 supra.

⁵ Similar results were reached on the grounds of estoppel in *Shuster's Estate*, 26 Pa. Dist. 232 (1917), and *In re Jones Estate*, 199 Pa. 143, 48 A. 865 (1901).

⁶ See annotation of *Keeler's Estate*, note 3 supra, in 121 A.L.R. 1301 (1939).

⁷ *England v. England*, 223 Ill. App. 549 (1922); *Tuttle v. Gunderson*, 254 Ill. App. 552 (1929); *Keller v. Keller*, 284 Ill. App. 198, 1 N.E. (2d) 773 (1936); *Moorehead's Estate*, 289 Pa. 542, 137 A. 802 (1927); *Thomas v. Thomas*, 112 Pa. Super. 578, 172 A. 36 (1934); *Marsh v. Scott*, 2 N.J. Super. 240, 63 A. (2d) 275 (1949); 1 SCOTT, TRUSTS §157.1 (1939).

⁸ *Eaton v. Eaton*, 82 N.H. 216, 132 A. 10 (1926), noted in 35 YALE L.J. 1025 (1926); 1 SCOTT, TRUSTS §157.1 (1939). See also 148 A.L.R. 1036 (1941).

⁹ Sustaining dependent's claims: *Keller v. Keller*, note 7 supra; *Thomas v. Thomas*, note 7 supra; *Reynolds v. Reynolds*, 208 N.C. 254, 180 S.E. 70 (1935); *In re Sullivan's Will*, 144 Neb. 36, 12 N.W. (2d) 148 (1944); *Cogswell v. Cogswell*, 178 Ore. 417, 167 P. (2d) 324 (1946). See also *Bank of Beaumont v. Howard*, 149 Tex. 130, 229 S.W.

wife has been similarly treated.¹⁰ But there is considerable authority for the view that the separated wife or divorcee is a mere contract claimant.¹¹ Much depends in a given jurisdiction upon whether alimony or a support claim is regarded as a mere debt or continuation of the social obligation assumed in matrimony.¹² The court in the principal case observed that by the terms of the divorce decree, *W* had released all marital property rights and relegated herself to the position of a creditor. However, its conclusion that she had thereby "waived any possibility of urging . . . the appealing equities which have led many courts to invade a spendthrift or support trust for the maintenance of a divorced wife"¹³ is doubtful as a matter of policy and contrary to better reasoned decisions.¹⁴

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(2d) 781 (1950). *Contra*: *Erickson v. Erickson*, 197 Minn. 71, 266 N.W. 161, 267 N.W. 426 (1936); *Schwager v. Schwager*, (7th Cir. 1940) 109 F. (2d) 754; *San Diego Trust & Savings Bank v. Heustis*, 121 Cal. App. 675, 10 P. (2d) 158 (1922); *In re Bucklin's Estate*, 243 Iowa 312, 51 N.W. (2d) 412 (1952). See 1 SCOTT, TRUSTS §157.1 (1939).

¹⁰ *Reynolds v. Reynolds*, note 9 *supra*; *Moorehead's Estate*, note 7 *supra*. Cf. *Schwager v. Schwager*, note 9 *supra*. See *Eaton v. Eaton*, note 8 *supra*. See also 10 MD. L. REV. 359 (1949); 93 UNIV. PA. L. REV. 207 (1944).

¹¹ *Hitchens v. Safe Deposit & Trust Company of Baltimore*, 193 Md. 53, 66 A. (2d) 97 (1949); *Schwager v. Schwager*, note 9 *supra*; *Lippencott v. Lippencott*, 349 Pa. 501, 37 A. (2d) 741 (1944). *Contra*: *England v. England*, note 7 *supra*; *Safe Deposit & Trust Co. of Baltimore v. Robertson*, 192 Md. 653, 65 A. (2d) 292 (1949), noted 10 MD. L. REV. 359 (1949); *Clay v. Hamilton*, 116 Ill. App. 214, 63 N.E. (2d) 207 (1945), noted 19 ROCKY MOUNT. L. REV. 87 (1946); 1 SCOTT, TRUSTS §157.1 (1939); 93 UNIV. PA. L. REV. 207 (1944).

¹² 2 SCHOULER, MARRIAGE, DIVORCE, SEPARATION AND DOMESTIC RELATIONS, 6th ed., §1754 (1921). See also 93 UNIV. PA. L. REV. 207 (1944).

¹³ Principal case at 744.

¹⁴ *Cogswell v. Cogswell*, note 9 *supra*; 1 SCOTT, TRUSTS §157.1 (1939). While the divorced wife may in a sense occupy the position of a creditor, she is a special one, for her claim is generally not assignable or subject to garnishment and, unlike other "debts," may be enforced by the equitable remedies of injunction, contempt, and sequestration. See 93 UNIV. PA. L. REV. 207 (1944).