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Spendthrift Trusts: Reaching the Interest of the Beneficiary for Alimony or Support

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that the result is bad, and urging legislative action; but statutory relief is hardly flexible enough to cope with the situation, as previous experience has shown. 26

(3) The court may regard the Kentucky cases as authority only to the true extent of their holding, following the logical implications of the McClary case which enjoined procurement of breach, with a resulting approach to the view taken by the Restatement 27 to the effect that inducing a breach of contract in the absence of legal justification is an actionable wrong.

HOWARD E. TRENT, JR.

SPENDTHRIFT TRUSTS; REACHING THE INTEREST OF THE BENEFICIARY FOR ALIMONY OR SUPPORT

A wife obtained a divorce with a provision for alimony and support for three minor children. Subsequently the husband's mother created by will a discretionary spendthrift trust in his favor and specifically stated that the divorced wife and the children should receive no benefit from the income of the trust. The husband failed to pay the sums to the wife as directed in the decree and continued to refuse to comply after the death of his mother at which time the spendthrift trust became operative. The wife alleged that she and the children were in indigent circumstances, while the husband had a substantial income from the trust fund which was his only asset, and she sought support from the income or principal of that trust.

The District Court dismissed the petition for failure to state a cause of action and the Circuit Court of Appeals affirmed that order in a two to one decision. The case arose in Wisconsin and as that state had no decisions or statutes in point the majority of the court said that they must “determine the law of that state from the rule in other

26 See Hackney v. Fordson Coal Co., 230 Ky. 362, 19 S. W. (2d) 989 (1929) (The statute making it unlawful to refuse further employment to employees who did not deal at a particular store was construed as being for the benefit of employees, and not as a protection for merchants competing with the employer; thus a competing merchant was denied recovery for loss of custom resulting from a violation of the statute); Boulier et al. v. Macanley, 91 Ky. 135, 15 S. W. 60 (1921) supra n. 25, exemplifies the strict interpretation given such a statute by the Kentucky Court as it applies to inducing breach of a labor contract.

27 Restatement, Torts (vol. IV, 1939) sec. 766: "Except as stated in Section 698, one who, without a privilege to do so, induces or otherwise purposely causes a third person not to (a) perform a contract with another, or (b) enter into or continue a business relation with another is liable to the other for the harm caused thereby"; Id. at sec. 767: “In determining whether there is a privilege to act in the manner stated in Section 766, the following are important factors: (a) the nature of the actor’s conduct, (b) the nature of the expectancy with which his conduct interferes, (c) the relations between the parties, (d) the interest sought to be advanced by the actor and (e) the social interests in protecting the expectancy on the one hand and the actors freedom of action on the other hand."
The court then found that by the weight of authority the creation of a spendthrift trust which cuts off the wife and children is not void as against public policy. As it was impossible to find any intent of the settlor for the estranged wife to share in the fund, she had no valid claim against it.

Judge Evans dissented on the grounds that (a) only a few states had passed on the precise issue and that among them there was not complete unanimity of opinion; (b) two states have statutes expressing a contrary public policy; (c) the Restatement of the Law of Trusts takes a view opposite to that followed in the majority opinion; (d) since the State of Wisconsin is not bound by stare decisis and as the reasons for reaching a contrary conclusion are more in accord with justice, that result should be reached as a matter of public policy. 

Schweiger v. Schweiger, 109 F. (2d) 754 (C. C. A. 7th 1940)."

The spendthrift trust, though not recognized at common law in England and some American jurisdictions, has been widely accepted in this country since the nineteenth century. Several explanations have been advanced for its origin, some of which arise from the teachings of Kant that the purpose of law is to give the fullest possible opportunity for the expression of the human will, the pioneer spirit in America, and the influence of the great man in the development of the law.

Attempts have been made to apply the proceeds of a spendthrift trust to the payment of alimony and in many instances in which the wife has been successful the courts have fictionally inferred that the settlor intended that the wife should receive a beneficial interest. A few courts have emphasized the social undesirability of allowing a husband's equitable interest to be restrained so as to put it beyond the reach of his dependents. Where the right to subject the fund to payment of alimony or support has been denied, it has usually been found that the settlor did not intend for the wife to share in the benefits of the trust estate. Since in the instant case it is clear that the settlor

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1 This case has been noted in (1940) 53 Harv. L. Rev. 1059.
3 Griswold, Spendthrift Trusts (1936) secs. 51-63.
5 Griswold, op. cit. supra n. 3, secs. 25-31.
did not intend that the wife should be a beneficiary either directly or indirectly, the solution of the case depends upon whether there has been a limitation upon the use of the property which is contra bonos mores.

A clash of two conflicting policies presents itself. The theory, evidenced by the existence of the device of the spendthrift trust, that the owner of property may dispose of it as he sees fit is not readily reconciled with the idea that marriage is a status in which the public has an interest. That the right to dispose of one's property is a privilege granted by the state is made plain by the exercise of the sovereign's power to tax that privilege in the form of inheritance, estate, and gift taxes. Probable the most obvious illustration of forbidding a settlor to dispose of his property against public policy is the denial of the right to create a trust for capricious purposes. The common law right of dower is a restriction upon a husband's absolute right of disposal of his estate.

The spendthrift trust and similar devices make it possible for the donor to prevent the reaching of the interest of the cestui que trust by his contract creditors. But a husband's obligation to pay alimony and surely his obligation to support his children are not to be classed with his ordinary debts. The public has an added interest in securing the payment of the claims of these dependents. The importance of the welfare of the wife and children is not solely dependent upon a humanitarian sympathy but is a product of an interest in marriage as an institution, and the fact that economically the state will be responsible for the well-being of those dependents if the husband should fail to make provision for them. This obligation of the husband does not depend upon contract but is a duty that attaches to the status of marriage.

It is urged that the settlor had no duty to provide for the wife and children in the instant case; that she could have refused to have made any provision for the son if she had believed the wife would receive a part of the son's interest, and that the donor has the right to determine who shall receive her property at her death. But while she had the right to provide for the son, she cannot separate him from his obligations to his family where he has the means of supporting it. It was alleged that the husband had no assets other than his interest in the spendthrift trust. Without that income he would have been forced to earn his own living and a part of his earnings would be subject to the claim of the wife and children for support. It seems then that the selfish desire of the settlor to provide for her improvident son should

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10 Brown v. Burdett, 21 Ch. D. 667 (1882); In re Scott's Will, 38 Minn. 386, 38 N. W. 109 (1903); Scott, op. cit. supra n. 6, sec. 124.7.
11 Scott, op. cit. supra n. 6, sec. 157.
be forced to give way to the claim of his dependents and to the interest of the public in seeing that demand satisfied. That conclusion was reached by the framers of the Restatement of the Law of Trusts and was followed in the dissenting opinion in the case under discussion.

Professor Scott has submitted a view that seems to be equitable. He suggests that consideration should be given to the needs of the beneficiary and to his dependents and to allow those dependents to enforce their claim for support in an amount that would be reasonable under all the circumstances.

Since spendthrift trusts have been recognized in some jurisdictions without the aid of statutes, courts of equity should mould that device to conform with modern concepts of public policy so that the absolute will of the settlor should not defeat a stronger public interest.

Though section 235 of the Kentucky Statutes has been construed by the Court of Appeals to mean that spendthrift trusts are invalid in this state, there are methods by which much the same result may be obtained. (1) If it is provided that the cestui que trust may receive only such amounts as the trustee in his absolute discretion may direct, the creditors of the beneficiary will not be allowed to reach the fund until it is received by him. (2) The court has held valid a provision by the settlor that the trust shall cease or that the beneficial interest shall go over if that interest is held to be subject to the claims of creditors of the cestui que trust. (3) Where the beneficial interest is given to two or more persons jointly, it has been held that the fund could not be reached by the creditors of one of the beneficiaries.

Restatement, Trusts (1935) sec. 157(a): "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, by the wife or child of the beneficiary for support, or by the wife for alimony."

Scott, op. cit. supra n. 6, (1936) 50 Harv. L. Rev. 60, 70.
Griswold, op. cit. supra n. 3, sec. 54.
See Costigan, Spendthrift Trusts Reexamined, (1934) 22 Calif. L. Rev. 471, 483. Griswold, op. cit. supra n. 3, sec. 565 proposes a model statute for the authorizing and regulating of spendthrift trusts. In section 3(c) of that draft he adopts a provision similar to section 167 of the Restatement.

Hackett's Trustee v. Hackett, 146 Ky. 408, 141 S. W. 673 (1912); Russell v. Meyers, 202 Ky. 593, 260 S. W. 377 (1924); Griswold, op. cit. supra n. 3, sec. 186; Evans, supra n. 4 at 120. Could Ford v. Ford, infra n. 23 come within this classification?
Since Kentucky allows restraints on alienation that are reasonable, it is possible in this state for a settlor to prevent a voluntary transfer of the equitable interest by the *cestui que* trust which would be void in most jurisdictions. However, such a provision is not effective to limit the rights of the beneficiary's creditors.

In *Todd's Exrs. v. Todd* the testatrix combined the first two of these methods and gave property to her son in trust for his life. The divorced wife of the son attempted to apply his interest to the payment of an award she had received for the support of herself and her children. The court refused to allow the wife to recover on the ground that the trustee had *absolute* discretion in the matter of payments to the beneficiary. Whether any distinction should be made between dependents and creditors of the *cestui que* trust was not discussed, most of the opinion being devoted to a consideration of whether the settlor had created a spendthrift trust.

Two noted authorities have cited the case of *Ford v Ford*, as allowing dependents to reach a spendthrift trust or a trust for support. The husband was required to pay an amount for the support of his children from his interest in a discretionary trust, but upon a careful examination of the decision it is found that this was allowed because the settlor did not provide for a limitation over if the creditors of the husband should try to subject his interest to their claims. There is also indication that if the testator had vested the trustee with *absolute* discretion the wife would not have recovered. The right of the wife to reach the interest of *cestui que* trust for the payment of alimony was not passed upon.

The reasons for not giving effect to a stipulation that a divorced wife may not reach the husband's beneficial interest for the payment of alimony under a spendthrift trust should also prevent the settlor from accomplishing the same result by using one of the devices that the Kentucky Court has recognized.

R. Vincent Goodlett.

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26 260 Ky. 611, 86 S. W. (2d) 168 (1935) noted in (1936) 11 Tulane L. Rev. 149.
27 Scott, *op. cit. supra* n. 6, sec. 157.1, n. 1; Griswold, *op. cit. supra* n. 2, sec. 339, n. 32.