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Decedents' Estates And Trusts—Irrevocable Assignment of Trust Income to Wife Not Violative of Spendthrift Rules In Certain Cases

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allowed a fiduciary who maintained something less than undivided loyalty to be compensated. The background of facts support strongly the Surrogate's finding that the attorney's machinations did not taint the sale of the land. The attorney was the husband of one of the four beneficiaries.[25] It is unlikely that his design would be to effect a quick sale of the property in order to realize an immediate $800.00 where he faced the possibility of a larger commission should the property sell for more. By urging such a quick sale, the attorney would also jeopardize his wife's interest by an amount approximating $7,500, *i.e.*, ¼ of $30,000, the amount by which the executor was able to increase this offer. However, assuming that the lawyer had such a design, it does not follow that the executor thwarted that design by stepping in late in the negotiations. There was ample evidence to show that the executor's evaluation of the property was strongly influenced by the attorney, who had been entrusted by the executor with the investigation of the local real estate market and an on-site evaluation of the property. It would appear then that the Court may have engaged in an amelioration of the rule of undivided loyalty. It may no longer be sufficient to show that the agent of a fiduciary breached his trust but additionally proof as to the agent's connection with a particular transaction appears now to be necessary.[26] That such a change is desirable in order to avoid the hazards of post facto analyses of the propriety of certain real estate sales by executors remains highly dubious.

George P. Doyle

IRREVOCABLE ASSIGNMENT OF TRUST INCOME TO WIFE NOT VIOLATIVE OF SPENDTHRIFT RULES IN CERTAIN CASES

In 1931 Mrs. Anna Knauth created an income trust for the benefit of her son Oliver. Sixteen years later, pursuant to the terms of a voluntary support agreement, Oliver made an "irrevocable assignment" to his wife of all said trust in excess of one hundred dollars per month in lieu of his duty to support his wife and the issue of their marriage. In an action by the trustees for a judicial accounting, Oliver attacked the assignment as violative of the rule against alienability of income trusts. From an adverse ruling of a referee appointed by Supreme Court, Special Term and the Appellate Division,[1] Oliver appealed to the Court of Appeals, *held*, affirmed, one Judge dissenting. Such an assignment did not violate the rule against alienation of spendthrift trust income in view of the beneficiaries sufficient remaining means to provide for his own maintenance. *In Matter of Knauth*, 12 N.Y.2d, 259, 189 N.E.2d, 482, 238 N.Y.S.2d, 942 (1963).

25. Compare *In re* Dutchers Estate, 251 App. Div. 184, 295 N.Y. Supp. 643 (2d Dep't 1937).

26. *But see, e.g.*, Wendt v. Fischer, 243 N.Y. 439, 154 N.E. 303 (1926); Albright v. Jefferson County Nat'l Bank, 292 N.Y. 31, 53 N.E.2d 753 (1944), *In re* Lewisohn, 294 N.Y. 596, 63 N.E.2d 589 (1945); *In re* Ryan's Will, 291 N.Y. 376, 52 N.E. 909 (1943).

1. In the Matter of Knauth, 15 A.D.2d 778 (1st Dep't 1962).

At Common Law, prior to the enactment of income trust statutes, restraints on alientation of equitable interests were invalid.[2] The purpose of these statutes[3] is to permit a testator to make secure provisions for the support and maintenance of the beneficiary for life and place the trust income beyond the fruits of the latter's folly or the tentacles of his creditors.[4] The aforementioned statutes, in derogation of the common law, are to be strictly construed;[5] and coupled with certain statutory and common law exceptions provide a measure of relief for creditors of the cestui que trust. Creditors may reach the surplus beyond what is necessary for the cestue que's support by means of attachment,[6] a garnishee,[7] or an action in equity.[8] Accrued income due in owing a beneficiary of an income trust may be validly assigned and is not totally immune from attachment.[9] Although an assignment of future income is prohibited, such an assignment is at most a voidable order to the trustee as to the mode of payment as it becomes due and if not revoked by the beneficiary is valid as to his interests.[10]

The courts of this state have previously allowed the wife to invade the beneficiaries' interest under the theories that either the settlor of a income trust impliedly creates the trust also for the family of the beneficiary[11] or that the wife and children are preferred creditors of the income trust.[12] The latter theory has resulted in the Court ordering the trust income for the support of the wife pursuant to a decree of divorce,[13] for alimony arrearages,[14] and in a judicial separation agreement.[15] Voluntary alienation of trust income by the beneficiary by way of a voluntary separation agreement has also been upheld.[16] While the courts recognize that surplus income available to creditors does not include that which is necessary for the suitable support of the beneficiary and his family,[17] the beneficiary cannot willfully avoid paying his just debts by transferring the trust income to his wife.[18] Such support to the wife must also

2. Griswold, Spendthrift Trusts 9 (2d ed. 1947).
3. N.Y. Pers. Prop. Law § 15; N.Y. Real Prop. Law § 103.
4. In the Matter of Renn, 177 Misc. 195, 29 N.Y.S.2d 410 (Sup. Ct. 1941).
5. In the Matter of Will of Fowler, 263 App. Div. 255, 32 N.Y.S.2d 700 (3d Dep't 1942), *aff'd*, 288 N.Y. 697, 43 N.E.2d 87, *rehearing denied*, 289 N.Y. 756, 46 N.E.2d 357 (1942).
6. Harry Winston Inc. v. Acheson, 144 N.Y.S.2d 472 (Sup. Ct. 1955).
7. N.Y. Civ. Prac. Act § 684.
8. In the Matter of Estate of Cramer, 166 Misc. 713, 3 N.Y.S.2d 75 (Surr. Ct. 1938).
9. Pray v. Boissevain, 27 Misc. 2d 703, 212 N.Y.S.2d 432 (Sup. Ct. 1961).
10. *In re* Feinstein's Will, 73 N.Y.S.2d 129 (Surr. Ct. 1947).
11. Robinson v. Robinson, 173 Misc. 985, 19 N.Y.S.2d 44, (Sup. Ct. 1940).
12. See, *e.g.*, *In re* Appley, 33 N.Y. Supp. 724 (Sup. Ct. 1894); Pruyn v. Sears, 96 Misc. 200, 161 N.Y. Supp. 58 (Sup. Ct. 1916).
13. Wetmore v. Wetmore, 149 N.Y. 520, 44 N.E. 169 (1896).
14. Scott v. Scott, 219 App. Div. 451, 220 N.Y.S. 93 (1st Dep't 1927).
15. Matter of Estate of Yard, 116 Misc. 19, 189 N.Y. Supp. 190 (Surr. Ct. 1921).
16. In the Matter of Estate of Moller, 157 Misc. 338, 283 N.Y. Supp. 365 (Surr. Ct. 1935).
17. In the Matter of Estate of Randolph, 159 Misc. 688, 288 N.Y. Supp. 678 (Surr. Ct. 1936).
18. In the Matter of Will of Fowler, 263 App. Div. 255, 32 N.Y.S.2d 700 (3d Dep't

be commensurate with what is reasonable for her support with due regard for the prime object of the trust—the beneficiary.[19]

The majority in the instant case succinctly announces a new rationale for allowing the wife to seize the portion of the income trust, grounded neither upon implied intent of the settlor nor of a debtor creditor relationship, but rather one of public policy. The spirit and policy behind the statute is simply that there is a societal duty of support on the part of this husband. The dissent however, argues that the relationship of debtor-creditor is only to be substituted by legislative fiat. It attempts to distinguish the support agreement in this case as being pro forma outside those upon which the Court has previously allowed the wife to recover.

The husband may be compelled to support his family out of trust income under four possible theories: the unity theory of husband and wife, the idea of an implied intent by the settlor, a debtor creditor relationship, or by a statutory duty. The anachronistic theory, of the unity of husband and wife now for all practical purposes is judicially absolete. The second would be the implied intent of the settlor to include the family of the beneficiary. This again would be unmanageable and might lead to specific exclusions of the beneficiaries' family by the settlor. The third approach, that of debtor and creditor, in a sense secularizes the matrimonial contract and would again allow the settlor to frustrate the husband's duty to support by explicity excluding the family from the benefits of the trust. The last approach and the one adopted by the majority puts the husband in a position of duty and adequately protects the family of the beneficiary from starvation or public assistance; and at the same time leaves the judicial portals open for a modification of the argument in light of changed circumstances of the beneficiary.

William Carnahan

DEVOLUTION OF A LAPSED RESIDUARY LEGACY: A DEPARTURE FROM THE "NO RESIDUE OF A RESIDUE" RULE

The original proceeding was for a final settlement of the account of the executor and for a construction of certain paragraphs of decedent's will. Mary M. Dammann died at the age of eighty-five, an adjudged incompetent, leaving a will executed sixteen years before her death. She had never married and her closest living relatives were cousins. With minor exceptions, her will was devoted to bequests and devises to the eight relatives named in the residuary clause.[1] One of these pre-deceased the testatrix by a few months. The question therefore arose, whether paragraphs eighteen and nineteen[2] of the will directed

1942), *aff'd*, 288 N.Y. 697, 43 N.E.2d 87 (1942), *rehearing denied*, 289 N.Y. 756, 46 N.E.2d 357 (1942).

19. In the Matter of Estate of Moller, 157 Misc. 338, 283 N.Y. Supp. 365 (Surr. Ct. 1935).

1. Record pp. 26-31.

2. *Id.* at 31.