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Trusts: Right to Reach Spendthrift Trust for Support of Minor Child

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If the person furnishing impure food may be found liable upon the broad basis of policy, must the liability of one furnishing impure blood rest upon the narrow question of whether or not the blood was sold? It was the furnishing of impure blood which caused the patient to become infected with jaundice and not the manner in which this act was performed. The plaintiff's illness is as real as if this blood had been sold and the defendant is no less responsible. If it is good policy to hold one liable who *sells* impure blood for a price, should not the same policy be applied to one who *furnishes* impure blood for a price?

In this case the real cause of the damage was the defective blood sold to the hospital by the third party defendant, the Blood Transfusion Association. The Blood Transfusion Association, when it sold the blood to the hospital, impliedly warranted the blood to be pure. If the blood is not pure, the Blood Transfusion Association is liable to the hospital for the damage caused. The hospital's damages would include any payments made to the plaintiff for breach of its implied warranty. If the hospital is held liable to the plaintiff, the hospital then has a remedy against the party responsible for the damage.[13]

On the other hand, if the hospital is not liable, the plaintiff cannot recover against the party responsible for the damage, for the plaintiff is a sub-purchaser and the general rule is that a mere resale of warranted goods does not give the sub-purchaser a right to sue the original seller for damage caused by defective goods.[14] The injured plaintiff is then left without a remedy, for as the court pointed out, there are no means of detecting the jaundice producing agent or of treating the blood to remove the danger. Therefore, lack of care on the part of the hospital did not produce the injury, and the plaintiff cannot recover in an action for negligence.

The defendant hospital could have been liable for breach of implied warranty upon a theory of breach of implied promise, misrepresentation, or imposed liability as a matter of policy. The plaintiff has then stated a good cause of action and the motion to dismiss should not have been granted. The court, by confining itself to the narrow question of whether or not the transfusion constituted a sale, has permitted this debate to obscure the real issue of whether or not it is desirable to hold a hospital liable for the purity of the blood which it furnishes. The wisdom of holding such an institution liable may be highly questionable, but the question is hardly answered when the court tells us only that the blood was not sold.

—*Allan B. O'Connor.*

TRUSTS: RIGHT TO REACH SPENDTHRIFT TRUST FOR SUPPORT OF MINOR CHILD. The Circuit Court of the District of Columbia recently held in *Seidenberg v. Seidenberg*,[1] a case of novel impression, that a married woman may reach the income of a spendthrift trust[2] of which her husband is beneficiary for the support of a minor child. The facts were these: The wife had been awarded the custody of five minor children, the husband being directed to pay support for the children. The husband failed in payments whereupon the wife moved to garnish the income of the spendthrift trust for the arrearages due the wife. The trustees answered that the terms of the

[13] 1 WILLISTON, SALES § 244 (Rev. ed. 1940).
[14] *Id.*, § 237a.

[1] 126 F.Supp. 19 (D.C. Cir. 1954).
[2] The pertinent provision of the will creating the trust read as follows: "(f) No assignment by my said beneficiary, by way of anticipation shall be valid. The aforesaid payments . . . shall be paid by the trustees, directly to my son, irrespective of any assignment or order, nor shall the principal or income of the said trust become attached by process of attachment, garnishment, or other legal process while in the hands of the trustees."

trust precluded garnishment. The wife traversed, and the trustees then filed a motion to quash the traverse. In denying the motion, the court stated:

> ". . . irrespective of the validity of a spendthrift trust, which need not be passed upon in this case, the income of such a trust may be reached for the purpose of meeting the claims of a wife and minor children for alimony and maintenance."[3]

The extent to which a spendthrift trust can be reached for the support of a wife or child or alimony for a divorced wife has plagued the courts at various times with varying results.[4] The problem, of course, will not arise where spendthrift trusts are invalid. However, since the majority rule in the United States upholds the validity of spendthrift provisions,[5] the narrow question is the extent to which the courts have created an exception to the general rule, and thus limited the spendthrift trust, in the special cases of support and alimony.[6]

The court, in the principal case, relied heavily upon the leading case of *In Re Moorhead's Estate.*[7] Here the spendthrift trust provided that neither income nor principal should be liable for the "contracts or debts" of the beneficiary. Following a second desertion by the husband-beneficiary the wife sought to subject the income from the trust to her support. It was evident that the husband during his absences had been living an adulterous and profligate life. Holding that a husband's duty to support his wife is not founded on "contract or debt" but rather founded on a duty called for by public policy, the court allowed the wife to reach the income for her support. The court said:

> "Public policy is not so vague and wavering a matter as not to be rightly invoked in a case of this character, where the degenerating tendencies of marital relations of the present day are so faithfully exemplified by one who comes into court and demands judicial condonation of his violations of law. In every civilized country is recognized the obligation, sound as well as lawful, of a husband to protect and provide for his family, and to sustain the claim of the husband in the case at bar would be to invest him with a right to be a faithless husband and a vicious citizen. The case reaches beyond the concern of the immediate parties to it. It affects the status of the family as being the foundation of society and civilization and hence in a very certain sense is of wide public concern."[8]

The question of child support arose directly in *Tuttle v. Gunderson,*[9] where the deserted wife of the husband-beneficiary prayed that the custody of a minor child be awarded to her, and that the trustees be ordered to pay the wife such sums of money as necessary for the support of herself and a minor child. The court, in holding that the income of a spendthrift trust could be reached, noted:

> ". . . it is highly improbable that the father intended to create a trust solely for

[3] Seidenberg v. Seidenberg, *supra* note 1 at 21. In the principal case no claim was made by the wife for support or alimony; therefore, the court's statement in these respects is dictum. In Buchanan v. National Savings and Trust Co., 146 F.2d 13 (1944), child support was allowed out of a spendthrift trust on the theory that the beneficiary was also intended by the settlor to act as trustee for the beneficiary's child. The court added that in some circumstances the trust may be reached by a wife for support, or by a divorced wife for alimony, but this would require compliance with certain statutory provisions requiring personal service on the beneficiary or attachment of his equitable interest.

[4] See notes, 35 A.L.R. 1035 (1925); 52 A.L.R. 1259 (1928); 104 A.L.R. 779 (1936).

[5] See BOGERT, TRUSTS § 40 (3d ed. 1952). The English rule followed in a few American jurisdictions, holds spendthrift provisions void as restraints on alienation and against public policy. Brandon v. Robinson, 18 Ves. 429 (1811).

[6] Most states consider support or alimony claims as an exception, but in Pennsylvania, at least, spendthrift provisions are void as a matter of public policy in respect to support claims by wife or child. In re Stewart's Estate, 334 Pa. 356, 5 A.2d 910 (1939). *Cf.* Lippincott v. Lippincott, 28 Pa. D&C Rep. 28 (1936).

[7] 289 Pa. 542, 137 A. 802 (1927).

[8] *Id.* at 551, 137 A. at 806.

[9] 254 Ill.App. 552 (1929).

> the benefit of such a son, and that he was willing to have the wife and any children that might be born of the marriage, want. . . . it is unreasonable to believe that such a man intended that the wife of the son, against whom he had no feeling of animosity, and children . . . should be denied any benefit in the income and increment of the estate."[10]

In *Eaton v. Eaton*,[11] the divorced wife of the beneficiary attempted to reach the income of a discretionary spendthrift trust for alimony and support of a minor child. It was held that the wife could not reach the trust since she was only a judgment creditor and stood no better than any other creditor. However, the court reached an equitable result by construing a section of the creating instrument which provided that the trustee expend property "for the benefit" of the beneficiary "as his needs require" as having been intended by the settlor to include those dependent upon him for support, i.e., his family. The court stated "it is hardly probable that he intended to take care of the [beneficiary] and let his wife and child starve."[12] This case did not decide whether a divorced wife or a child in her custody was within the meaning of family. Subsequently, on appeal,[13] the court held that a minor child in the custody of a divorced wife of the beneficiary was within such meaning but that a divorced wife was not. The court based its decision on the apparent intent of the settlor by reasoning that a divorce does not affect the child's relationship to his father as belonging to the father's family. A divorced wife, however, was not within such contemplation because the parties upon divorce become strangers to each other.

A divorced wife again brought an action in *Keller v. Keller*,[14] in an action limited to child support. She had been awarded the custody of two minor children but the divorce decree had made no provision for the support of the children. The father conveyed real property in trust to pay the income to the support of the children, but the property failed to meet expenses thereon and was conveyed by the trustees in satisfaction of a mortgage indebtedness. Being in dire financial condition, the mother then sought to subject the income of a spendthrift trust of which the father-defendant was beneficiary for the support of the minor children. Holding that the income from the trust could be reached, the court accepted the reasoning of the *Moorhead* case, saying that the duty of a father to support his children is not regarded in the light of a merely contractual obligation, but rather that the nurture and training of children are matters of vital interest to the state.

In the Maryland case of *Zouck v. Zouck*[15] a married woman and her husband executed a separation agreement whereby the wife was to have custody of a minor child for whom the husband was to pay support. The husband reneged on his promise and the wife then sought to reach for child support a spendthrift trust of which her husband was beneficiary. The court held that the principal and income of the trust could be reached, stating:

> "We will not extend the holding that a wife entitled to support by virtue of an agreement is a creditor only, who may not invade a spendthrift trust, but rather here hold

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[10] *Id.* at 564.

[11] 81 N.H. 275, 125 A. 433 (1924).

[12] *Id.* at 275, 125 A. at 433.

[13] Eaton v. Eaton, 82 N.H. 216, 132 A. 10 (1926). *Cf.* Bucknam v. Bucknam, 294 Mass. 214, 200 N.E. 918 (1936), in an action by a divorced wife for alimony and support of minor child, the court held that the divorced wife was only a judgment creditor, but pointed out "we do not decide, and do not decide whether a petition might be maintained in a court of competent jurisdiction . . . to obtain a direction to pay reasonable sums out of the income for the support of legal dependents of the beneficiary."

[14] 284 Ill.App. 543, 1 N.E.2d 773 (1936).

[15] 204 Md. 285, 104 A.2d 573 (1954), dissenting opinion in 204 Md. 285, 105 A.2d 214 (1954).

> that a contract by a father to support a child . . . is the equivalent of the decree of a court awarding support to the child or alimony to a wife. . . ."[16]

While it is believed that recent cases are generally uniform in allowing recovery for support of wife or child,[17] the cases in which a divorced wife sought to subject the income of a spendthrift trust for the payment of *alimony* are in sharp conflict. On the one hand, recovery is often denied on the ground that an alimony claim is merely a debt, the wife standing in no better position than any other creditor.[18] On the other hand, courts allowing recovery state that the obligation to pay alimony is not a debt but a general obligation based upon public policy.[19]

It is to be noted, then, that the basic conflict seems to depend on the meaning of debt and creditor. In its strict legal sense, a creditor is one who voluntarily assumes to give credit to another. In its broader and more general sense, however, a creditor is one who has a right by law to demand and recover of another a sum of money on any account whatever.[20] This would, then, include obligations based upon the common law, statute law and court decree as well as credit voluntarily given. The broad definition of creditor lends support to Professor Bogert's view that a plaintiff seeking to enforce an alimony or support claim is only a "creditor with a strong equity."[21] But it is likewise recognized that the term "creditor" is susceptible of various meanings.[22] This has undoubtedly led the courts in the area under discussion to use at least three approaches: (1) Accepting the broad definition of creditor but making an exception in the cases of support or alimony claims;[23] (2) support and alimony claims are not debts;[24] (3) support and alimony claims are debts.[25] Which approach is used is necessarily a question for each court to decide as the question arises.

The strongest argument in favor of refusing to subject spendthrift trusts to support or alimony claims rests on the well-settled doctrine that a person has the right

[16] *Id.* at 291, 104 A.2d at 579. In the principal case, the court stated that the common law and equity decisions of Maryland carry great weight in the District of Columbia. In Maryland, spendthrift trusts are immune against general creditors, but an exception is made in the cases of support or alimony claims. Safe Deposit & Trust Co. v. Robertson, 192 Md. 653, 65 A.2d 292 (1949). However, *agreements* for support of wife are treated as contracts, the wife becoming only a contract creditor, and hence barred by the spendthrift provision. Hitchens v. Safe Deposit & Trust Co., 193 Md. 62, 66 A.2d 97 (1949); Bauernschmidt v. Safe Deposit & Trust Co., 176 Md. 351, 4 A.2d 712 (1939).

[17] Cogswell v. Cogswell, 178 Or. 417, 167 P.2d 324 (1946); Dillon v. Dillon, 224 Wisc. 122, 11 N.W.2d 628 (1943); In re Stewart's Estate, 334 Pa. 356, 5 A.2d 910 (1939); Thomas v. Thomas, 112 Pa. Super. 578, 172 A. 36 (1934); cases cited at notes 7, 9, 11, 14, 15, *supra.* See also In re Sullivan's Will, 144 Nebr. 36, 12 N.W.2d 148 (1943); Gardner v. O'Loughlin, 176 N.H. 481, 84 A. 935 (1912); *cf.* Clarke v. Clarke, 246 Ala. 170, 10 So.2d 526 (1944). *But cf.* Moore v. Moore, 137 N.J. Eq. 314, 44 A.2d 639 (1945). *Contra:* Bucknam v. Bucknam, 294 Mass. 214, 200 N.E. 918 (1936); Erickson v. Erickson, 197 Minn. 71, 266 N.W. 161 (1936); Board of Charities v. Lockard, 198 Pa. 572, 48 A. 496 (1901).

[18] Lamberton v. Lamberton, 229 Minn. 29, 38 N.W.2d 72 (1949); Erickson v. Erickson, 197 Minn. 71, 266 N.W. 161 (1936); Bucknam v. Bucknam, 294 Mass. 214, 200 N.E. 918 (1936); San Diego Trust v. Heustis, 121 Cal.App. 675, 10 P.2d 158 (1932); Eaton v. Eaton, 81 N.H. 275, 125 A. 433 (1924); *cf.* Hearst v. Hearst, 123 F.Supp. 756 (N.D. Cal. 1954).

[19] Cogswell v. Cogswell, 178 Or. 417, 167 P.2d 324 (1946); Clay v. Hamilton, 116 Ind.App. 214, 63 N.E.2d 207 (1945); Dillon v. Dillon, 224 Wisc. 122, 11 N.W.2d 628 (1943); Tuttle v. Gunderson, 253 Ill.App. 552 (1929); England v. England, 223 Ill.App. 549 (1922).

[20] Commerce Trust Co. v. Farmer's Exchange Bank, 332 Mo. 979, 61 S.W.2d 928 (1933); Stewart v. Waterboro & W. Ry. Co., 64 S.C. 92, 41 S.E. 827 (1902); Keith v. Hiner, 63 Ark. 244 (1896).

[21] 1A BOGERT, TRUSTS and TRUSTEES § 223 (1951).

[22] Cases cited note 20 *supra.*

[23] Safe Deposit & Trust Co. v. Robertson, 192 Md. 653, 65 A.2d 292 (1949).

[24] Cases cited note 19 *supra.*

[25] Cases cited note 20 *supra.*

to dispose of his property as he sees fit and that subjecting the trust to such claims negates the purpose of the trust. However, this argument is not completely true.[26] It would seem that the public policy that allows spendthrift trusts in the first instance is not inherently stronger than the policy supporting the obligation for support or alimony claims. Certainly, in the case of a minor child such should not be the case. The interests of a child should not be dependent upon the marital status of his parents. While the equity in favor of a child is obviously stronger, a wife's right to support cannot be said to be such an impingement upon a spendthrift trust as to be precluded by a spendthrift provision. The position of a divorced wife is necessarily weaker.[27] She is no longer a spouse but rather a single person; hence the family relationship is gone. But it would appear that the equity of an alimony claim is at least strong enough to be allowed to be heard on the merits regardless of whether or not alimony is considered to be a judgment debt.[28]

In the present state of the law, the decision in the principal case is sound and indicates a continuing tendency to subject the income of a spendthrift trust to the support of wife and minor children. This fact is recognized by a leading writer in the field.[29] While there does not seem to be any disagreement as to the justifiable result in allowing support or alimony claims, the text-writers are split as to whether the problem is judicial or legislative in nature. It is argued by Professor Bogert[30] that the merits of such claims should be left to the Legislature. Dean Griswold's[31] position is that the generality of a spendthrift trust should be limited as a matter of policy in support or alimony cases.

A few states have adopted statutes[32] under which, in certain situations, the income of a spendthrift trust may be reached for support, or for alimony. However, since most states have not adopted statutes, the responsibility of applying justice as each case calls for it falls upon the courts. The crux of the problem seems to lie in the balancing of interests. That is, giving legal protection to the spendthrift trust by

[26] The ultimate validity of this argument would seem to depend on the strong public policy arguments against such an absolute power. For example, on the basis of public policy a man may not declare that property shall not be subject to taxes, or that the rule of Shelley's case shall not apply, or restrain the alienation of legal fees. See 21 MINN. L.R. 80, 84 (1936).

[27] The statement that is often made is that the family relationship has ceased to exist. In Bucklin v. Bucklin, 243 Ia. 312, 51 N.W.2d 412 (1952), it was held that where a wife had been divorced 18 years prior to probate of will creating the spendthrift trust and since remarried and the children were now adults, the equity in favor of wife and children reaching the income of the trust would not be applicable. *Cf.* cases cited note 19 *supra*. *But cf.* Keller v. Keller, *supra* note 14, where the court in a dictum declared that the public policy argument does not apply in the case of a wife where the trust is created after divorce.

[28] GRISWOLD, SPENDTHRIFT TRUSTS § 339 (2d ed. 1947). "It should be recognized that the restraint of a spendthrift trust . . . is not absolute, and does not present a complete barrier to the wife; and it should be recognized as well that the claim of the wife is not absolute, to be enforced without limit against any trust." *Id.* at 399.

[29] BOGERT, *op. cit. supra*, note 21, § 40. "There has been some tendency also to permit alimony and support money to be collected from a husband who is the beneficiary of a spendthrift trust." *Id.* at 189.

[30] BOGERT, *op. cit. supra*, note 21, §40. "It would seem that exceptions of this type should be made by a legislature since they involve passing judgment on the merits of alleged special claims." *Id.* at 189-90.

[31] GRISWOLD, *op. cit. supra*, § 339. "It should be recognized that it is against public policy to provide that a trust shall be wholly immune from the claims of a beneficiary's wife or children for support or alimony." *Id.* at 400.

[32] See for example MO. REV. ST. ANN., 1939 § 570 (income of spendthrift trust reachable for support of wife or children or for alimony); 20 PA. PURD. ST. § 243, 48 *id.*, § 136 (50 per cent reachable for support of family). Oklahoma and Louisiana have generally adopted the provisions of the Model Spendthrift Trust Act. Numerous states have statutes similar to CAL. CIV. CODE § 859 which provides that surplus of the trust beyond the sum necessary for the education and support of the beneficiary is liable to the claim of creditors.