

Washington Law Review

Volume 29
Number 2 *Washington Case Law-1953*

5-1-1954

Trusts

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Recommended Citation

Newman S. Dotson, *Washington Case Law, Trusts*, 29 Wash. L. Rev. & St. B.J. 177 (1954).
Available at: <https://digitalcommons.law.uw.edu/wlr/vol29/iss2/18>

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across a crosswalk between the automobiles of the defendants, an instruction was given as follows: "In the eyes of the law, a person will not be heard to say that he did not see an object which he plainly could have seen had he looked. The situation from a legal point of view is the same as though he had looked and seen the object. When the law requires a person to look, it places upon such person the duty of seeing and observing." The instruction was held prejudicial error as indicating to the jury that it is contributory negligence, under all circumstances, to fail to perceive that which is discoverable by the use of one's senses, and in effect took the question of contributory negligence from the jury.

TRUSTS

Support Trust—Claims of Children and Divorced Wife of Beneficiary. *Seattle First National Bank v. Crosby*¹ is a case of first impression in Washington on the problems involved in support trusts. The testamentary trust provided that the trustee should pay over such part of the income as might be necessary or required for the education, support and maintenance of the beneficiary, the son of the testatrix, until he attained the age of thirty-five years at which time the beneficiary was to receive the corpus plus accumulated income. The will further provided that should the beneficiary die before reaching the age of thirty-five, his heirs at law would receive his share. After the death of the testatrix the beneficiary married and had two children. Subsequently, his wife obtained a divorce. A property settlement agreement was incorporated in the interlocutory decree of divorce under which the beneficiary promised to make monthly payments to the wife for her own support and for the support of the children until distribution of the trust and to secure this obligation the beneficiary assigned to the wife his interest in the trust income. The beneficiary also assigned stated percentages of his interest in the trust corpus to his wife individually and to her and another as trustees for his children. The trustee sought a declaratory judgment of the effect of the assignment and the claims of the divorced wife and children. It was held that the trustee had no duty nor right to comply with the assignment of the income to the wife, this being a trust for support from income only and the beneficiary having no interest in the income which he could assign. The court further held that the intention of the testatrix as evidenced by the terms of the will was that reasonable support be provided not only for her son, the beneficiary, but also for his family and that the children's right to support existed irrespective of any assignment of income. The trustee was therefore instructed to pay from the

¹ 42 Wn.2d 234, 254 P.2d 732, noted in 52 MICH. L. REV. 622 (1953).

support income, after providing for the support of the beneficiary, amounts reasonably necessary for the education, support and maintenance of the children. However, the court held that the trustee had no duty nor right to honor the divorced wife's claim for her individual support. The court reasoned that under the property settlement agreement, she had released all her marital property rights and relegated herself to the position of a creditor and hence had waived any possibility of persuading the court to allow an invasion of the support trust for her maintenance. Lastly, the court held that the assignments of principal were void, subject only to the condition that the beneficiary reach the age of thirty-five.

A provision in a trust instrument that the income is to be applied only so far as is necessary for the beneficiary's support, maintenance or education is by most courts held to limit the beneficiary's interest to the extent that it is not capable of being assigned by him and not subject to his creditor's claims.² This results from the nature of the beneficiary's interest and not from an express provision in the instrument restraining alienation. This doctrine is even recognized in jurisdictions which do not sanction the spendthrift trust doctrine.³

A major point of interest in the instant case has to do with the rights of the children and the divorced wife of a beneficiary to reach the income of a support trust. Although the cases are not in harmony on this point, the prevailing view is that the beneficiary's children have a right to that amount of income which is necessary for their support.⁴ This result is reached on various theories. Some decisions are based on the proposition that such dependents are not creditors of the beneficiary and that the liability of the beneficiary to support them is not a debt and hence that the intended protection from creditors afforded the beneficiary does not extend to his dependent's claims for support.⁵ Others, as in the instant case, employ the rationale that it was the intention of the testatrix to include them as beneficiaries of the trust.⁶

² *Holmes v. Bushnell*, 80 Conn. 233, 67 Atl. 479 (1907); *Seymour v. McAvoy*, 121 Cal. 438, 53 Pac. 946 (1898); 1 SCOTT, TRUSTS 154 (1939); RESTATEMENT TRUSTS § 154 (1935); GRISWOLD, SPENDTHRIFT TRUSTS, §§ 421, 430 *et. seq.* (1939).

³ *Garner v. Wills*, 92 Ky. 386, 17 S.W. 1023 (1891); *Thurber v. Thurber*, 43 R.I. 504, 112 Atl. 209 (1921); 1 SCOTT, TRUSTS § 154 (1939).

⁴ *Keller v. Keller*, 284 Ill. App. 198, 1 N.E.2d 773 (1936); *Eaton v. Eaton*, 82 N.H. 216, 132 Atl. 10 (1926); 1 SCOTT, TRUSTS § 157.1 (1939).

⁵ *Moorehead's Estate*, 289 Pa. 542, 137 Atl. 802 (1927); *Marsh v. Scott*, 2 N.J. Super. 240, 63 A. 2d 275 (1949); 1 SCOTT, TRUSTS § 157.1 (1939).

⁶ *Eaton v. Eaton*, 82 N.H. 217, 132 Atl. 10 (1926); *Gardner v. O'Loughlin*, 76 N.H. 481, 84 Atl. 935 (1912); *Matter of Sand v. Beach*, 270 N.Y. 281, 200 N.E. 821 (1936); 1 SCOTT, TRUSTS 157.1 (1939).

The claim of the divorced wife for support from a spendthrift or support trust is a matter upon which the courts are in even greater disharmony.⁷ A major factor in deciding whether or not to allow recovery in such cases is whether the particular jurisdiction will regard the alimony obligation or support claim as a debt,⁸ or whether it will be looked upon as the enforcement of an extension of the legal duty of a husband to support his wife, which continues even after dissolution of the material relationship.⁹ The majority rule is that alimony is an obligation similar in nature to that of the marital duty of support, not being founded on contract, but arising out of the relationship of marriage, and therefore recovery from the income of the trust should be allowed.¹⁰ Although the court disallowed the divorced wife's claim, from the language employed by the court it would seem that the Washington position on this controversial matter remains to be decided by subsequent cases. The court placed considerable emphasis on the fact that she had voluntarily relinquished all her marital property rights under the terms of the property settlement agreement and by implication indicated that absent such an agreement, perhaps the "appealing equities" of a divorced wife would have moved the court to invade a support or spendthrift trust for her maintenance and support.¹¹

The courts are divided on the question of whether a restraint on alienation of the beneficiary's interest in the corpus is effective.¹² Such a restraint has been held valid in a prior Washington decision.¹³ In the principal case the court did not pass upon the validity of such a provision since it concluded that the will of the testatrix did not support an inference that she intended a restraint upon the beneficiary's right to alienate his interest in the trust corpus and accumulations.

NEWMAN L. DOTSON

Trust for Indefinite Period—Rule against Perpetuities. In *Kendall v. Kendall*, 143 Wash. Dec. 385, 261 P.2d 422 (1953), under the terms of an inter vivos trust, a con-

⁷ 35 A.L.R. 1035 (1925); 52 A.L.R. 1259 (1928); 104 A.L.R. 779 (1936); 1 Scott, TRUSTS § 157.1 (1939); 93 U. OF PA. L. REV. 207 (1944).

⁸ *Eaton v. Eaton*, 81 N.H. 275, 125 Atl. 433 (1924); *De Rouse v. Williams*, 181 Iowa 379, 164 N.W. 896 (1917); 93 UNIV. OF PA. L. REV. 207 (1944).

⁹ *England v. England*, 223 Ill. App. 549 (1922); *Wetmore v. Wetmore*, 149 N.Y. 520, 44 N.E. 169 (1896); 93 UNIV. OF PA. L. REV. 207 (1944).

¹⁰ *Faversham v. Faversham*, 161 App. Div. 521, 146 N.Y. Supp. 596 (1914); 1 SCOTT, TRUSTS § 157.1 (1939); 93 UNIV. OF PA. L. REV. 207 (1944).

¹¹ Note 1 *supra*; for a different interpretation of the court's reasoning see 52 MICH. L. REV. 622 (1953). In *Knettle v. Knettle*, 197 Wash. 225, 228, 84 P.2d 996, 997, the court by way of dictum stated, "Even a spendthrift trust may be subjected to the support of a wife or child, or for alimony awarded to the divorced wife of the beneficiary."

¹² 119 A.L.R. 33 (1939); 1 SCOTT, TRUSTS § 153.3 (1939).

¹³ *Milner v. Outcalt*, 36 Wn.2d 720, 219 P.2d 982 (1950).

trolling stock interest in a corporation was transferred to three named children of the trustors as trustees. The trust instrument provided that the trustees were to hold the stock in one fund until the stock was sold in one block or the company was liquidated or merged, the income to be paid to the three named children or in the event of the decease of one of the children, to his or her named child or children. Upon liquidation the corpus was to be divided between the three named children and four named grandchildren. No time for duration of the trust was explicitly set by the trustors, nor did the instrument contain an express direction to sell. On appeal it was held that there was no violation of the rule against perpetuities. When the objects of a trust have been fully accomplished, no specific duration of the trust having been set, the trust then terminates and the corpus vests. The objects of this trust will have been accomplished upon the death of the last of the seven beneficiaries. This will be within the period of the rule against perpetuities; hence the trust is not invalid. The court cited Hamley, *The Rule against Perpetuities and Powers of Sale*, 7 Wash. L. Rev. 237 (1932).

WILLS AND ESTATES

Construction of Wills—Conditions Precedent—Impossibility of Performance. In *In re Bridge's Estate*,¹ the testator executed a will in 1945 with the following provision:

" . . . I hereby will and bequeath unto the following named persons the amounts set opposite their respective names, provided, however, that if any of said named persons are now employed by me or the Mary Bridge Hospital and are not so employed at the time of my decease, then such named former employees are hereby willed and bequeathed nothing."

In 1946 the testator was forced to retire and liquidate his medical business because of ill health. The bequests to eight of the legatees were contested. Six of the recipients were employed by the testator at his clinic. One was employed at the hospital. They were personal friends and had been with him for many years. Another recipient had been engaged as his personal nurse prior to his retirement. All were employed by him or the hospital at the time of the execution of the will. All were in his employ at the time of his retirement except for the hospital employee. She had suffered from a heart attack, and at the direction of the testator she was placed in his hospital and given a pension. The personal nurse voluntarily left his employment after he retired but before his death in 1949. The employment relations of the others were severed because of the liquidation of the business, but they continued to render occasional services in their professional capacity. The court held that literal compliance with the condition of employ-

¹ 41 Wn.2d 916, 253 P.2d 394 (1953).