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Massachusetts Appeals Court Rules That Interest in an Irrevocable Trust Is a Marital Asset

Last week, the Massachusetts Appeals Court affirmed a decision by the Probate and Family Court to, among other things, include a wife's beneficial interest in an irrevocable trust in the marital estate for the purposes of equitable distribution in a divorce (*Jones v. Jones*, No. 21-P-655, 2023 WL 5729650 (Mass. App. Ct. Sept. 6, 2023)).

The wife and the husband were married in Michigan in August 1998 and had two children together. They did not execute either a prenuptial or postnuptial agreement to govern the disposition of their property in the event of death or divorce. During the marriage, the wife's mother made significant financial gifts to the family, which enabled the wife and the husband to maintain a lifestyle beyond what their incomes could support. Among other gifts, the wife's mother settled and funded an irrevocable trust, of which the wife is the sole beneficiary.

The irrevocable trust at the center of this case is governed by Michigan law, which the Massachusetts Appeals Court reviewed in determining the nature of the wife's interest in the trust at the time of the divorce. Massachusetts law, including its equitable distribution statute, governed the divorce itself. For purposes of equitable distribution in Massachusetts, a party's estate "includes all property to which a party holds title, however acquired" and a court is "not bound by traditional concepts of title or property in considering whether a particular interest is to be included in the marital estate." This allows for the inclusion of "intangible interests (even those not within the complete possession or control of their holders) to be part of a spouse's estate" for divorce purposes. Determining whether a trust is included in the marital estate "requires close examination of the particular trust instrument to determine whether the interest is a fixed and enforceable property right … or whether the party's interest is too remote or speculative to be included." This is a topic that has received significant attention in Massachusetts over the past several years. *See, e.g., Pfannenstiehl v. Pfannenstiehl*, 475 Mass. 105 (2016); *Levitan v. Rosen*, 95 Mass. App. Ct. 248 (2019); *Savoy v. Savoy*, 97 Mass. App. Ct. 1128 (2020).

The wife, as the sole beneficiary of the trust in this case, may receive discretionary distributions of income and principal that the trustee, in its "sole and absolute discretion, considers to be necessary for the [wife's] best interests and welfare." In addition, the trust provides for a "'[m]andatory [d]istribution' of the entire trust corpus" following the wife's mother's death. The wife has a power of appointment, or an ability to redirect the trust property by her will "to the beneficiaries of her will" if the wife were to die before the trust terminates. Instead of outright distributions to the wife, the trustee may "'expend … amounts for the [wife's] benefit' to avoid the reach of her creditors and 'to give [her] the maximum possible benefit and enjoyment of all of the trust income and principal to which [she] is entitled.'"

The trust includes a spendthrift provision, which prohibits the assignment of the wife's interest in the trust to creditors and means that if this trust is included as part of the marital estate, the asset itself cannot be assigned to the husband.

Perhaps most interesting in this case, the trust also includes a Postponement of Distribution provision. This provision authorizes the trustee to delay any required distribution if the trustee determines there is a compelling reason for postponement. The trust provides examples such as "a beneficiary's serious disability, drug or alcohol abuse, a beneficiary's failure to enter into an appropriate prenuptial agreement, the possibility of divorce, failure to pursue a college education or vocation commensurate with the ability of such beneficiary, potential or pending creditor claims … [] a serious tax disadvantage to such beneficiary … if such distribution were made, or similar substantial cause." Notably, a postponement can be made for the entire lifetime of the beneficiary.

The wife argued that the trust terms do not ensure that she "will ultimately receive the whole of the trust property" because of the trustee's discretionary powers, including the Postponement of Distribution terms. She argued, therefore, that her interest in the trust was "a mere expectancy and … thus too remote and speculative for inclusion in the marital estate." Both the Probate and Family Court and the Appeals Court disagreed, finding that the wife's interest was fixed and vested notwithstanding that the trustee could, potentially, postpone the mandatory outright distribution. The Appeals Court held that, while the wife's outright distribution could be postponed under certain circumstances, the trustee could not divest the wife of her interest, and thus the interest was sufficiently fixed and vested to constitute a marital asset. The Appeals Court thus affirmed the Probate Court's decision to divide the marital estate equally, including the wife's trust interest in the overall value but assigning that interest to her and requiring her to make equalization payments to the husband over time from other assets that were assigned to her. While the full extent and value of the marital estate was not detailed in the Appeals Court decision, the Court noted there was no evidence that the wife would need to request a distribution from the trust itself in order to make the required equalization payments.

In reviewing this case alongside other recent appellate decisions, the Massachusetts appellate courts have repeatedly differentiated trusts where the divorcing spouse is the sole beneficiary from trusts with an open class of beneficiaries. Trusts that give a beneficiary an interest only if certain conditions are met (such as the beneficiary living to a certain date or surviving the settlor) are also distinguishable from the current case, where the wife will receive a mandatory distribution of the entire trust corpus at her mother's death, subject to what the Appeals Court characterized as a limited postponement provision, and retains a power of appointment if she predeceases her mother.

The outcome of this case likely would have been quite different in Michigan or other jurisdictions that apply less expansive definitions of the "marital estate" than is the case under Massachusetts law. Of course, the outcome could also have been quite different even in Massachusetts if the parties had entered into a prenuptial agreement to address the wife's various gifted and inherited assets. Estate planners both within and outside Massachusetts would be well served to consider *Jones* and its predecessor cases when drafting trusts for beneficiaries who may, someday, be party to a Massachusetts divorce, and should stress the importance of prenuptial planning as the best method to protect inherited assets.

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