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Massachusetts Appeals Court Rules That Interest in Irrevocable Trust With Ascertainable Standard Is a Marital Asset Subject to Division Upon Divorce

On August 27, 2015, the Massachusetts Appeals Court held in *Pfannenstiehl v. Pfannenstiehl*, Nos. 13-P-906, 13-P-686, & 13-P-1385, 2015 Mass App. LEXIS 123, that a husband's interest in an irrevocable trust with an ascertainable standard is a "vested beneficial interest subject to inclusion in the marital estate." This is a significant decision that could impact the way in which trusts and estates practitioners in Massachusetts draft estate plans for clients concerned about divorce protection.

At issue in the case is an irrevocable trust established by the husband's father for the benefit of the husband and his siblings, as well as their children. The trust contains an ascertainable standard, which obligates the trustees to make distributions of income and principal "to provide for the comfortable support, health, maintenance, welfare and education of [the beneficiaries]." The trust also contains a spendthrift clause, which prohibits the assignment or attachment of trust assets to creditors of any beneficiary.

Between 2008 and August 2010, the trustees made distributions from the trust to the husband totaling $800,000. The parties relied heavily on these distributions; indeed, the distributions allowed the parties to live an upper-middle-class lifestyle while also affording to care for their two children, both of whom have special needs. After August 2010, one month before the husband filed for divorce, the trustees ceased making distributions to the husband. They continued, however, to make distributions to the husband's siblings.

After an eight-day trial, the trial court held that the husband's interest in the trust constituted marital property pursuant to G.L. c. 208, § 34. The trial court based its ruling on its determination that the husband's interest was "presently enforceable" and that the parties had relied on the distributions from the trust to sustain their lifestyle during their marriage. The trial court also found that the husband had a 1/11th beneficial interest in the trust. Accordingly, the trial court ordered the husband to pay 60% of the value of his 1/11th share to the wife in 24 monthly payments totaling $1,133,047.79.

On appeal, the husband contended that he did not have a "present, enforceable right" because the trustees could refuse (and indeed had refused) to make distributions to him pursuant to the trust's ascertainable standard. He also argued that the existence of a spendthrift clause rendered his interest in the trust incapable of division as marital property.

The Appeals Court, in a 3-2 decision, affirmed the trial court's decision that the husband's interest in the trust constituted marital property subject to division pursuant to G.L. c. 208, § 34. Specifically, the Appeals Court held that the trust's ascertainable standard gave the husband a "present enforceable right to distributions from the 2004 trust" because the trustees of the trust "were obligated to, and actually did, distribute the trust assets to the beneficiaries, including the husband, for such things as comfortable support, health, maintenance, welfare, and education." Therefore, the Court held, "the ascertainable standard embedded in the 2004 trust, the enforceability of that standard for distributions to the husband, and the vested nature of the husband's interest in the 2004 trust warranted the [trial court] judge in including the 2004 trust in the marital estate."

In reaching this conclusion, the Appeals Court weighed heavily the parties' reliance on the trust distributions, emphasizing

that the distributions "were woven into the fabric of the marriage" and "were integral to the family unit."

Relying on "settled trust law," the Appeals Court rejected the husband's argument that the presence of a spendthrift clause shielded his trust interest from being included in the marital estate. In fact, the Court opined that the "spendthrift provision is being invoked [by the husband] as a subterfuge to mask the husband's income stream and thwart the division of the marital estate in divorce," and that the "spendthrift scheme...is virtually empty of purpose except as a form of insulation to inclusion and valuation in the divorce process." While the Appeals Court held (as it has in the past) that the presence of a spendthrift provision does not preclude inclusion of a trust interest in the marital estate, the Court did not hold that trustees of an irrevocable trust can be ordered to make distributions directly to the non-beneficiary divorcing spouse.

Lastly, the Appeals Court affirmed the trial court's award of attorneys' fees to the wife, although neither the trial court nor the Appeals Court held that the award of attorneys' fees need be paid from the trust assets.

The dissenting opinion states that the husband's interest in the trust should have been considered under G.L. c. 208, § 34 as an "opportunity for each [spouse] for future acquisition of capital assets and income" because the value of the husband's interest in the trust was "too remote and speculative." In reaching this conclusion, the dissent notes that the trust has an open class of beneficiaries, making the value of the husband's interest in the trust uncertain. The dissenting opinion also states that the husband's right to the trust assets was uncertain because the ascertainable standard allows the trustees to determine the amount and timing of distributions as well as consider the funds available to the beneficiaries from other sources.

The Appeals Court's decision is significant because it holds that an interest in an irrevocable trust with an ascertainable standard - where there is a history of distributions woven into the fabric of the marriage - is a vested, presently enforceable interest and, therefore, properly included in a marital estate for purposes of equitable division of property in divorce proceedings. While the implications of the decision are not yet clear, Massachusetts trusts and estates practitioners should be mindful of this ruling in drafting estate plans and should consider whether to amend revocable trusts to include fully discretionary standards of distribution for clients concerned about divorce protection.

It is unclear at this point whether the husband will seek further appellate review from the Supreme Judicial Court.

Day Pitney LLP and Looney & Grossman LLP represented the wife on appeal. Jillian B. Hirsch of Day Pitney argued the appeal.

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