Top Ten

Orphans' Court Cases

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Trust under Agreement of Edward Winslow Taylor, 164 A.3d 1147, 15 EAP 2016 (Pa. 7/19/2017), rev'g 124 A.3d 334, 2015 PA Super 199, (9/18/2015).

In a reversal of the Superior Court, the Supreme Court held that the scope of 20 Pa. C.S. § 7740.1 of the Pennsylvania Uniform Trust Act ("UTA") does not extend to modification of noncharitable irrevocable trusts to permit the removal and replacement of a trustee by the addition of a portability clause; instead, 20 Pa.C.S. § 7766 is the exclusive provision for the removal and replacement of a trustee.

Settlor executed a trust agreement establishing a noncharitable trust (the "Taylor Trust") which, at the time of his death in 1939, designated a corporate trustee and an individual co-trustee. Through successive corporate mergers, Wells Fargo became the Taylor Trust's corporate trustee. In 2009, Wells Fargo filed its account of the Taylor Trust, seeking approval to divide the Taylor Trust into four separate and equal trusts, one for each of the current beneficiaries - all of whom were Settlor's great-grandchildren - and the appointment of each great-grandchild as the co-trustee of his or her own trust. Those requests were granted.

In 2013, three of Settlor's great-grandchildren petitioned for a modification of their respective trusts to add a portability clause under 20 Pa. C.S. § 7740.1, which permits the modification of a noncharitable irrevocable trust upon the consent of all beneficiaries if the court concludes the modification is not inconsistent with a material purpose of the trust. Wells Fargo argued that § 7740.1 must be interpreted in conjunction with 20 Pa.C.S. § 7766, the latter of which is the statutory default for trustee removal and grants the court the sole authority to remove a trustee. Ultimately, the Supreme Court concluded that § 7766 is the exclusive statutory provision for removal of a trustee under the UTA, and more broadly, that trust modifications under § 7740.1 cannot modify statutory defaults under the UTA.

In re: Estate of John Brumbaugh, 2017 PA Super 287 (9/6/2017).

The Superior Court affirmed a decision of the Orphans' Court Division of the Court of Common Pleas of Bedford County, reversing the decision of the Bedford County Register of Wills to admit a photocopy of decedent's alleged last will and testament to probate.

After the death of John Brumbaugh ("Decedent"), Letters of Administration were granted to his mother, Marjorie Brumbaugh ("Marjorie"). Approximately two months after the Decedent's death, his girlfriend Judy McClintock ("McClintock"), petitioned the Register of Wills to vacate Marjorie's Letters of Administration and appoint McClintock as executor under a document purporting to be a photocopy of the Decedent's last Will and testament. The Register of Wills admitted the photocopy to probate and revoked Marjorie's Letters of Administration.

Marjorie appealed the Register's decision to the Orphans' Court, asserting that the Register had improperly admitted the photocopy and arguing McClintock failed to establish the requisite proof that the original Will had not been revoked and/or destroyed. The Orphans' Court reversed the Order of the Register of Wills and directed the Register to vacate the probate of the photocopy; McClintock appealed.

The Superior Court examined the standard for lost Wills: when a testator retains custody and possession of a Will and, after death, the Will cannot be found, a presumption arises that the Will was revoked or destroyed by the testator. In order to overcome this presumption, and establish the existence of a lost Will, the proponent of the copy must prove that: (1) the testator duly and properly executed the original Will; (2) the contents of the Will were substantially as appears on the copy presented for probate; and (3) when the testator died, the Will remained undestroyed or revoked. The proponent's evidence must be positive, clear and satisfactory. Based on testimony and evidence, the Superior Court found that the Orphans' Court had not erred in finding that McClintock failed to establish that the contents of the purported Will were substantially as appears on the copy presented for probate by positive, clear and satisfactory evidence, noting both incredible testimony in support of the original execution of the Will, and irregularities within the Will copy itself.

Estate of Robert H. Agnew v. Ross, No. 76 MAP 2015 (Pa. 1/19/2017), rev'g 110 A.3d 1020, 2015 PA Super 22 (2/2/2015).

The Supreme Court reversed a decision of the Superior Court, and remanded the case for reinstatement of Summary Judgment granted by the Chester County, Court of Common Pleas, finding that an executed testamentary document naming an individual as legatee is a prerequisite to that individual's ability to maintain a malpractice claim against an attorney as third-party beneficiary to a legal services contract.

Between 2003 and 2007, the testator retained an attorney to draft various estate planning documents, and amendments thereto. In 2010, when the testator was in hospice, the attorney met with the testator to discuss various amendments to his existing testamentary documents, including adding certain nieces and nephews of testator's deceased wife as residual beneficiaries of his revocable trust. Attorney drafted a revised Will and revocable trust agreement reflecting the changes. Although the Will was executed, by mistake, the attorney failed to have the testator sign the 2010 revocable trust amendment before his death. The nieces and nephews filed suit against attorney and his partner, alleging breach of contract to provide legal services to testator. Specifically, they claimed to be third-party intended beneficiaries of the contract for legal services between testator and attorney.

The Supreme Court denied this argument, finding that in order to maintain a malpractice claim against an attorney as third-party beneficiary to a legal services contract, a claimant must show that there is an otherwise valid document naming them as recipients of all or part of testator's estate. Since the testator had not signed the revised trust agreement in which the claimants were named as beneficiaries, the Court noted it was unknown whether or not he would have signed the document, and whether or not he had intended the nieces and nephews to be third-party beneficiaries.

In re: Estate of Helen J. DiSabato, 2017 PA Super 185 (6/13/2017).

The Superior Court affirmed the Order of the Court of Common Pleas of Chester County, Orphans' Court Division, finding Peter DiGiovanni ("DiGiovanni") in continuing contempt for failure to make scheduled payments to an estate which he previously served as administrator.

In Orders dated December 18, 2015 and February 3, 2016, the Chester County Orphans' Court declared DiGiovanni to be in continuing contempt of its Orders dated July 18, 2012, August 6, 2013 and July 29, 2014, which directed DiGiovanni to pay $500 per month to the successor co-administrators in order to pay off a $29,279.55 debt, representing the costs and fees incurred by the estate in transitioning to successor administrators.

As a result of DiGiovanni's chronic failure to pay his debt, the estate requested the imposition of a civil contempt Order with a conditional jail sentence, whereby DiGiovanni could purge his contempt by making the previously required payments. The Orphans' Court Order dated December 18, 2015, placed DiGiovanni on 'probation', the terms of which required DiGiovanni to pay $1,000 by January 5, 2016, and thereafter pay $500 by the 21st of each month, starting in February. Failure to comply with these terms, the Order instructed, could result in the imposition of fees, costs, and fines, as well as the issuance of a bench warrant for DiGiovanni's commitment to Chester County Prison for 3 months or until such time as he purges his contempt.

DiGiovanni appealed the December 18, 2015 Order, arguing that Order imposed unlawful criminal contempt sanctions. The Superior Court disagreed, finding ample evidence of DiGiovanni's continuing contempt, and that the contempt Order aimed to compel compliance by setting an appropriate purging condition carefully measured in accordance with evidence relating to DiGiovanni's ability to pay. Further, the restrictions of 42 Pa.C.S. §§ 4132 and 4133 alleged by DiGiovanni to forbid summary criminal punishment do not apply when the contemnor is given the ability to purge himself of contempt.

In re: Trust under Deed of David P. Kulig, 97 MAP 2016 (Pa. 12/19/2017) rev'g 131 A.3d 494, 2015 PA Super 271 (2015), 5 Fid. Rep. 3d 93 (O.C. Bucks Co. 2014).

The Supreme Court reversed a decision of the Superior Court affirming a Decree of the Court of Common Pleas of Bucks County, Orphans' Court Division, declaring that assets held by Decedent's revocable trust should not be considered in calculating a pretermitted spouse's share under 20 Pa.C.S. § 2507(3).

Decedent, prior to his marriage, funded a revocable trust and signed his last Will and testament. The dispositive terms of both documents benefitted his children at his death. At Decedent's death, the revocable trust had a value of approximately $3.3 million, and his probate estate had a value of $2.1 million. Decedent's surviving spouse, who qualified as a pretermitted spouse pursuant to 20 Pa. C.S. § 2507(3), argued that the value of Decedent's revocable trust must be included in the value of Decedent's estate in determining her pretermitted intestate share because of Section 7710.2 of the UTA, which applies the interpretative principals of wills to trusts. Under her argument, she would receive $1.5 million more compared to the elective share under Section 2203.

The lower courts held that Section 7710.2 compelled inclusion of the Trust in the estate subject to the pretermitted share, relying heavily on the commentary to the provision. The Supreme Court disagreed, finding the statute's application ambiguous and using tools of construction and exploring the legislative history in order to discern whether Section 7710.2 was intended to change long standing law by extending the scope of the assets subject to the pretermitted share to include inter vivos trusts. The Court concluded such a change was not intended, reciting the policy considerations underlying each of

20 Pa.C.S. §§ 2203 and 2507, which protect a spouse from being entirely or substantially excluded from receiving the benefit of her deceased spouse's assets.

Pennsylvania Department of Revenue, Board of Appeals, Docket No. 1703688 (8/10/2017).

Amounts retained by a surviving spouse during Equitable Division should be listed as a debt on the inheritance tax return of the deceased spouse. Decedent's spouse protested the appraisement and assessment of inheritance tax owed by a Decedent's estate at 15%. At the time of Decedent's date of death, the Decedent was married to S.P. ("SP"), although Decedent and SP were in the process of obtaining a divorce and grounds for divorce were entered prior to Decedent's death. Pursuant to 20 Pa. C.S. § 2507(2), in the case of divorce, any provision in a testator's Will in favor of or relating to the testator's spouse shall become ineffective for all purposes, unless it appears from the decedent's Will that the provision was intended to survive a divorce, if the testator: (i) is divorced from such spouse after making the Will; or (ii) dies domiciled in Pennsylvania during the course of divorce proceedings, no decree of divorce having been entered pursuant to 23 Pa. C.S. § 3323 (relating to decree of court) and grounds having been established as provided in 23 Pa. C.S. § 3323(g). The estate argued that when grounds for divorce have been established, Equitable Distribution of marital property is determined by family court and not by the actual title to the property, the decedent's Will, intestate law, or an election against the Will. The Board ruled that all amounts retained by SP in Equitable Distribution should be listed on Decedent's Inheritance Tax return as a deductible debt.

In Re: Sellers (Pa. Super. Ct., No. 329 EDA 2017, Sept. 19, 2017).

A Pennsylvania appeals court rules that an agent under a power of attorney did not have authority to create a Medicaid trust and transfer her mother's property to the trust because the power of attorney allowed her to transfer property only to a trust that was created before the power of attorney was signed.

Eva Sellers named her daughter, Elizabeth Fischer, as agent under a power of attorney. With regard to estate and trust transactions, the power of attorney granted Ms. Fischer the ability to transfer property to a living trust that Ms. Sellers created before the power of attorney was signed. Ms. Sellers entered a nursing home and Ms. Fischer and her brothers consulted an elder law attorney who recommended creating an irrevocable income-only trust. Acting as Ms. Sellers' agent, Ms. Fischer created the trust and transferred Ms. Sellers' property to the trust.

Ms. Sellers died and one of her sons died soon after her. Her son's estate filed a claim against Ms. Fischer, arguing that the power of attorney did not permit Ms. Fischer to transfer the property to the irrevocable trust. The trial court granted summary judgment for the estate, and Ms. Fischer appealed. She argued (1) that the power of attorney was ambiguous and (2) that her two brothers agreed with the transfer at the time.

The Pennsylvania Superior Court affirmed, holding that under the plain language of the power of attorney, Ms. Fischer did not have authority to transfer property to a trust that was not already in existence when Ms. Sellers signed the power of attorney.

The case stands as a good example of why it is so important to draft powers of attorney carefully and consider whether it is wise to include a temporal limitation on an agent's power. Was it really necessary to require that a trust be in existence at the signing of the power of attorney?

Consider also the interplay between Pennsylvania's power of attorney statute and the Pennsylvania Uniform Trust Act regarding how trusts can be established and who has the authority to do so. If an agent cannot create a trust on behalf of a principal, for example, can an individual, who happens to serve as the principal's agent, act individually to establish a trust for a principal's benefit and then use the agent's authority to make gifts or fund trusts to transfer the principal's assets to the trust?

Vinci v. Connolly (U.S. Dist. Ct., D. N.J., No. 17-cv-7709 (PGS), Oct. 25, 2017).

A U.S. district court denies a Medicaid applicant a preliminary injunction after the state denied her Medicaid application because she created an irrevocable trust outside of the look-back period.

In 2011, Grace Vinci created an irrevocable trust with her daughter as trustee. The trust purchased property. In 2016, Ms. Vinci applied for Medicaid. The state determined that the trust was an available resource, and Ms. Vinci appealed.

At a hearing, the administrative law judge ruled that the trust was an available asset because the resources in the trust were unavailable to Ms. Vinci through her own "fault" in creating an irrevocable trust. Ms. Vinci sued the state in federal court and filed a motion for preliminary injunction.

Without discussion, the U.S. District Court for the District of New Jersey denies the motion for preliminary injunction. According to the December 2017 issue of The ElderLaw Report, during oral argument the state retreated from its argument that the assets were countable due to Ms. Vinci's "fault" in funding the trust, which apparently has heretofore been the state's position even for trusts established outside of the look-back period.

Daley v. Secretary of the Executive Office of Health and Human Services (Mass., No. SJC-12200, May 30, 2017) and Nadeau v. Director of the Office of Medicaid (Mass., No. SJC-12205, May 30, 2017).

Reversing a lower court, Massachusetts' highest court rules that two Medicaid applicants' trusts are not available assets even though the applicants retained the right to reside in houses that were titled into the trusts.

James and Mary Daley created an irrevocable trust. They conveyed their interest in their condominium to the trust, but retained a life estate in the property. Seven years later, Mr. Daley entered a nursing home and applied for Medicaid benefits. The state denied him benefits after determining that the trust was an available resource.

Lionel Nadeau and his wife created an irrevocable trust and transferred their home to the trust. The trust granted the Nadeaus the right to use and occupy the house, which they did until Mr. Nadeau entered a nursing home and applied for Medicaid benefits. As with the Daleys, Massachusetts considered the trust a countable asset and denied Medicaid benefits.

The Daleys and the Nadeaus both appealed, but following hearings, the state trial court ruled that the trusts were available assets because the Daleys and Nadeaus retained the right to occupy and use the properties that were titled to the trusts. Essentially, the court concluded that the grantors retained beneficial enjoyment of the trusts' principal, and that made the assets held in the trusts available resources for Medicaid purposes. In separate rulings, Massachusetts trial courts held that both trusts were available assets. (Daley v. Sudders, Mass. Super. Ct., No. 15–CV–0188–D, Dec. 24, 2015 and Nadeau v. Thorn, Mass. Super. Ct., No. 14-DV-02278C, Dec. 30, 2015).

Those trial court decisions were appealed and the intermediate appellate court affirmed the trial court decisions. Both the Daleys and Nadeaus appealed again and the Massachusetts Supreme Judicial decided both cases together.

The Massachusetts Supreme Judicial Court reversed, holding that the trusts are not available assets. According to the court, "where a trust grants the use or occupancy of a home to the grantors [as in the Nadeau's case], it is effectively making a payment to the grantors in the amount of the fair rental value of that property." The court added that these payments "do not affect an applicant's eligibility for Medicaid long-term care benefits, but they may affect how much the applicant is required to contribute to the payment for that care."

In the Daleys' case, the court rules that because the Daleys hold a life estate, their use of the home is not considered income and "the continued use of the home by the applicant pursuant to his or her life estate interest does not make the remainder interest in the property owned by the trust available to the applicant."

These cases highlight the significance Medicaid places on classifying assets as either income or principal. Retaining the ongoing use and enjoyment of trust principal results in trust assets being considered available resources. Retaining only the right to receive income from a trust does not make the trust's principal an available resource under Medicaid. In the case of the Nadeaus the court ultimately affirmed what most practitioners believed: their occupancy right in the home was akin to an income interest, not a right to access trust principal.

Dougherty v. Dept. of Human Services, No. 30 C.D. 2017.

In this case the court addressed a common Medicaid application problem. Robert Dougherty entered a skilled nursing facility in February, 2015. In May, 2015 Mr. Doughtery's son submitted a Medicaid application for Mr. Doughterty. The County Assistance Office (CAO) determined the application was incomplete and requested additional information to establish financial eligibility. Mr. Doughtery's son did not provide the requested information (although he told the nursing home that he did) and the CAO denied benefits on July 8, 2015. No appeal was taken from the July 2015 notice of denial.

The nursing home, Sayre Health Care Center, learned that the son was misappropriating Mr. Doughtery's assets and went to court. In March, 2016 it obtained a court order directing the son to produce financial records. Sayre also filed a new Medicaid application. That application was approved and the CAO awarded benefits retroactive to December 1, 2015.

Sayre appealed seeking benefits retroactive to May, 2015 because the prior denial of benefits was due to the son's misconduct. Sayre argued that its appeal should be considered a request for nunc pro tunc relief. Both the ALJ and the Bureau of Hearings and Appeals denied the appeal concluding that any appeal of the first denial of benefits was untimely.

On appeal to the Commonwealth Court Sayre argued that its delay in pursuing an appeal of the July 2015 denial notice was the result of fraud by Mr. Doughtery's son. DHS countered that once Sayre learned that the basis for the first denial was a lack of financial information, it knew or should have known that the son lied about submitting the required financial information. Accordingly, DHS argued that Sayre did not act promptly to protect its interests. The Commonwealth Court agreed with DHS and denied the nunc pro tunc relief.