Support Claims of the Wife and the Spendthrift Trust Interest of the Husband-Beneficiary

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In the recent case of *Lippincott v. Lippincott*,¹ the Supreme Court of Pennsylvania, through Mr. Justice Drew, said:

"It is now firmly settled not only by our decisions, but also under our Statutes, that as to claims for maintenance and support of deserted and neglected wives, not divorced, spendthrift trusts are invalid in this Commonwealth."

This unequivocal excerpt hints that such was not always the law. Factually, case law around the 1900's proves it. In *Thackera v. Mintzer*² a testamentary spendthrift trust, in which the husband was the beneficiary, was attacked by the wife who had secured a divorce a mensa et thoro, a bed and board divorce, as distinguished from an absolute divorce. She had been awarded monthly support. The

²100 Pa. 151, (1882).
payments having fallen in arrears, she issued a writ of attachment against the income due the beneficiary-husband under the spendthrift trust. The trust successfully withstood the assault. The court baldly stated that the testator's intent was the decisive factor. It reasoned that the testator-settlor had impressed on the fund exemption from all kinds of legal process against the trustee, and added:

"If we depart from the clearly expressed will of the testator in this respect, we make a new will, instead of enforcing the one he made."

Likewise in the later case of Board of Charities v. Lockard, the husband-beneficiary of a testamentary spendthrift trust created by his father, neglected to support his wife. She secured a support order and the Court of Quarter Sessions ordered the trustee to pay a weekly sum to her from the income of the trust due to the husband-beneficiary. The Supreme Court, on appeal, held that the income thereof could not be attached. Reaffirming its policy of giving full consideration to the testator-settlor's intent, the Court said:

"The fund did not originate with the beneficiary, but the bequest was made by another, the father, who had a right to bestow his benefactions as he pleased, and in this case, he chose to bestow them upon the son, and upon him alone. We agree entirely with all that has been said about the duty of the beneficiary to support his wife and child, but that does not authorize interference with the right of another individual to dispose of his own property as he may see fit."

The rule asserted in these two early cases is in direct opposition to the stand taken by the Court in the recent Lippincott case. This change of position from one extreme to the other has been accomplished, as Justice Drew pointed out, by statute and by case law itself. Tracing the change, and the extent thereof, is interesting because behind the obvious about-face in the law there is involved a silent shifting of emphasis from one fundamental policy to another. Law is, after all, the ultimate crystallization of public policies which endeavor to promote the orderly conduct of society. Occasionally these policies meet in head-on collision. The story of the extreme change in reference to spendthrift trusts and the wife's claim for support is that of a conflict of two fundamental policies and the ultimate resolution of that clash.

Upholding the spendthrift provisions in a trust is upholding the basic policy that a donor has a right to dispose of his property as he so desires. Weaving its way through the common law is the doctrine, based upon public sentiment, that a man can give his property to whom and under such conditions as he wishes. In disposing of his property via a spendthrift trust, the donor conditions the transfer to the extent that "... by the terms of the trust a valid restraint is placed on the voluntary and involuntary transfer of the interest of the beneficiary ... "

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3198 Pa. 572, (1901).
4Restatement of Trusts, Section 152.
is to say, such a trust is one so limited by its terms that the beneficiary's interest cannot be transferred or assigned by him, nor is it subject to the claims of his creditors prior to actual payment to him. In the words of the Supreme Court:

"A spendthrift trust . . . exists where there is an express provision forbidding anticipatory alienations, and attachment by creditors."

Naturally, spurred by such advantages, spendthrift provisions in inter vivos and testamentary trusts have increased in number, particularly in Pennsylvania where the doctrine of the spendthrift trust is said to have originated. As a result, the Pennsylvania courts have been zealous in upholding the validity of such provisions. Only one exception has been grafted upon it, to wit, that a person cannot create a spendthrift trust for himself as beneficiary. To countenance such a procedure would enable one to defeat his creditors too easily.

However, sustaining spendthrift trusts where the beneficiary is a third person rather than the creator himself still runs against the general policy of the law that a creditor has a sacred right to secure satisfaction from his debtor's (beneficiary's) property. The interest of a beneficiary in a trust is considered a property interest.

Nevertheless, Pennsylvania courts have continually given these trusts their blessing, as a mother blesses her own child, leaving the policy protecting creditors a poor runner-up.

When, however, the claim against the interest of a beneficiary is that of a deserted or neglected wife or children for support, another public policy enters the arena to do battle against the policy behind spendthrift trusts. This policy is stronger than, and incidentally absorbs, the principle which supports creditors' claims. In assuming the status of man and wife, the state as an interested third party imposes a legal duty upon the husband,

"to provide for and protect his wife during the life of their marriage. The Commonwealth has a vital interest in the maintenance of marriage, because it is the foundation of society . . . the Commonwealth is vitally interested not only in the moral and social factors, but also in preventing wives from becoming public charges."

The policy that a husband is under duty to support his wife and children had

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7 Mackason's Appeal, 42 Pa. 330, (1862).
10 Supra, note 1.
been crystallized as early as 1867 in the Support Act of that year. But case law, the Thackeral and Lockard cases, had excepted spendthrift trusts from attachment on support orders. It was necessary for the Legislature to overcome the effect of these decisions and to shift the emphasis on policies. In 1917, remembered in Pennsylvania legislative history because of the volume and importance of legislation enacted therein, the General Assembly turned its attention to spendthrift trusts. In that year and in 1921, a relatively short space of time, two statutes were passed which remain in full force and effect today. As outstanding pronouncements of legislative policy concerning spendthrift trusts and the wife's claims for support, the provisions of each Act are worth quoting in toto.

The Wills Act of 1917 reads as follows:

"All income whatsoever, devised or bequeathed by any will so as to be free from liability for the debts, contracts, or engagements of the beneficiary, or so as not to be subject to execution, attachment sur judgment, sequestration, or other process, shall, notwithstanding such testamentary provisions, be subject to and liable for the support and maintenance of the wife and minor child of the beneficiary, and for the value of necessaries furnished to them, or any of them, where said beneficiary has refused or neglected to provide suitably for them; and all of the income of said beneficiary shall be subject to all legal process issued by any Court of this Commonwealth having jurisdiction in the premises, in order to enforce such liability of said beneficiary."

This provision referred to spendthrift trusts without mentioning them by name. The Act applied only to spendthrift trusts created by will, i.e. testamentary spendthrift trusts. Nothing was said about such trusts which were created or came into existence before the date of the Act. In general, all of the income from a testamentary spendthrift trust in the hands of the trustee at the time of the attachment execution, which ultimately would be distributed to the husband-beneficiary as income, was made subject to claims of wife and children for maintenance and support, i.e. no limitation was placed upon the amount of recovery. However, an attachment execution was not given the status of a continuing lien and levy so as to effect income coming into the trustee's hands after the attachment writ was served upon the trustee.
Thus having announced its policy with regard to testamentary spendthrift trusts, the Legislature devoted its attention to inter vivos spendthrift trusts. The result was embodied in the Act of 1921, and reads as follows:

"Sec. 1—Be it enacted that whenever any court of competent jurisdiction has made an order or entered a decree or judgment against any husband requiring him to pay any sum or sums for the support of his wife or children or both, the Court may issue the appropriate writ of execution against any property, real or personal, belonging to the defendant to enforce said order, decree, or judgment, and the said court may issue a writ of attachment execution, or writ in the nature of attachment execution, against any money or property to which said husband is entitled, whether under what is known as a spendthrift trust or otherwise; and the said writ of attachment execution shall become a lien and continuing levy upon any money or property to which he may be in any way entitled, whether under what is commonly known as a spendthrift trust or otherwise; and, in cases of levy on, or attachment of any trust, said levy or attachment shall only be, for 50 per centum thereof, and shall remain a continuing levy until the order, decree, or judgment has been paid in full, with costs; and, in cases where the order, decree, or judgment requires the payment of stated sums at stated intervals, said writ of attachment execution shall remain a lien and continuing levy until the last payment due under such order, decree, or judgment has been made, with costs. . . . The provisions of this act shall apply to any Trust whether it is such a trust as is known as a spendthrift trust or otherwise, whether such trust was created or came into existence before or after the passage of this act. Where an attachment execution is issued, the further proceedings thereon shall be in the manner heretofore practiced, and allowed in cases of foreign attachment."

Note that the Act, by employing the general term "spendthrift trust" without words of limitation, thus applies to both inter vivos and testamentary trusts, whereas the Wills Act relates to the latter only. By its terms the Act of 1921 applies to trusts activated before or after the date of the act. The important feature is that it limits recovery to 50 per centum of the beneficiary's income in the trustee's hands, but provides in effect for a lien and continuing levy until all payments under the decree for support are made in full. Thus, as income comes into the trustee's possession, 50 per cent thereof automatically comes under the attachment. The writ having been served upon the trustee, no further process is necessary. This lien continues until the support order is satisfied. Though the order provides for future payments to the wife, the lien is in force as the future payments become due.

Thus by the year 1922, the Court's exalted child, the spendthrift trust, had been attacked with the results that testamentary trusts could be proceeded against

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16Act of May 10, 1921, P.L. 434.  
16The constitutionality of the Act of 1921 was upheld in Everhart v. Everhart, 87 Pa. Super 184, (1926), as being within the police power of the State.
by support decrees with recovery allowed up to 100% of the husband-beneficiary’s interest, and inter vivos as well as testamentary trusts were subject to support claims brought under the Act of 1921, with recovery limited to 50% of the husband-beneficiary’s interest, but with provision for continuing lien.

With the Legislature now definitely favoring the policy of a husband’s duty to support, as above, the right of the donor to dispose freely of his property, the situation remained static until 1927 when the Supreme Court of Pennsylvania, in the case of Moorehead’s Estate,\(^1\) recognized for the first time an additional ground upon which a wife could recover against a spendthrift trust, a common law right, completely independent of any Statutory right previously given her. That is to say, the court was by decisional law overruling its earlier position in the Thackerer and Lockard cases.\(^2\)

In Moorehead’s Estate\(^3\) a testamentary spendthrift trust was activated around 1908 by the beneficiary’s mother, and the beneficiary thereof was the husband of the plaintiff in the action. He deserted her and she brought an action to levy upon the income in the hands of the trustee, due the husband from the trust, for her support and maintenance. Neither the Statute of 1917 nor the Statute of 1921 were involved in the case. The court ruled in favor of the wife’s claim on two theories. First, the court analyzed the trust instrument which contained express spendthrift provisions, and the surrounding circumstances, and concluded that the settlor’s intent was not to preclude the husband-beneficiary’s interest from support and maintenance claims by his wife. The court admitted the use of the words “creditors” and “debts” in the instrument, but felt that a wife’s claim for support does not make her a creditor in the ordinary sense of the word, and the obligations arising under the marriage relation do not fall within the scope of the nature or meaning of a “debt.” It would seem, however, that a claim for support when due, does create a debtor-creditor relationship between husband and wife. The reason why the husband owes the money becomes less important than the fact that he does owe something. He is now a debtor; his wife is now creditor. Secondly, the court openly declared that even if the spendthrift trust provisions were construed as to include the wife as a creditor, yet the trust must fall before a support decree because public policy was involved in the duty of the husband to support the wife. Said the court:

“In every civilized country is recognized the obligation sacred 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 (denying the wife’s claim against the spendthrift trust) would be to invest him with a right to be both a faithless husband and a vicious citizen. This case reaches beyond the concern of the immediate parties to it.”

\(^{17}\)289 Pa. 542, (1927).
\(^{18}\)Supra, notes 2 and 3.
\(^{19}\)Supra, note 17.
Although the case is not as strong as its later brothers because it stressed the creator's intent as well as public policy, nevertheless, the practical result was to overrule, without statutory aid, a spendthrift trust in favor of a wife's support decree.

In 1934 came the case of Thomas v. Thomas, in which the court considered the claim of a deserted wife against testamentary spendthrift provisions. It was held again that, independent of the Act of 1921, the husband's property interest therein could be reached. The court said:

"To the extent that the cases prior to the decision in Moorehead's Estate differ therefrom, the former must be considered as overruled. It is a step in the right direction and consonant with public policy and good morals."

Then once again the court stressed the donor's intent, saying it was clear that the intention of the testator-settlor was that the wife should not be excluded from benefitting from the trust, since she had a life interest beginning after her husband's life interest expired. This would seem to be an obvious effort to give lip-service to the donor's intent which is behind a spendthrift trust, while actually overriding those very provisions. It is noteworthy, however, that the decision basically revolved around public policy, the language concerning the creator's intent being dictum.

The Restatement of Trusts adopted this Pennsylvania common law view in this language:

"Section 157: Particular Classes of Claimants. Although a trust is a spendthrift trust or a trust for support, the interest of the beneficiary can be reached in satisfaction of an enforceable claim against the beneficiary, (a) by the wife or child of the beneficiary for support . . ."

With both a common law right and a statutory right existing side by side, it remained for the Supreme Court to fit both into a pattern; and its opportunity to do so came in 1939, in Stewart's Estate. This case involved two trusts—one an inter vivos spendthrift trust, the other an ordinary testamentry trust. The apparent conflict arose upon the matter of the percentage of the husband's interest in the spendthrift trust which could be attached. The trustee and husband-beneficiary claimed that the maximum was 50 per cent, as awarded under the provisions of the Act of 1921. The wife, relying upon the Moorehead case, which had announced the common law doctrine, argued that 100 per cent was attachable. The lower court awarded her 50 per cent, basing its judgment upon the statute. She appealed, and the Supreme Court allowed recovery upon 100 per cent of the husband's interest as beneficiary. Justice Drew said:

"That statute (Act of 1921), as to trusts created by deed, is but an enabling one and affords an additional remedy to that which a wife had prior to its enactment. It is permissive and cumulative only; and is not exclusive. Since the passage of that act, a wife has, under similar circumstances as here under consideration, two remedies; first, she may, as heretofore, reduce to judgment the accrued payments due her under an order, judgment, or decree, execute thereon and recover such accrued payments to the extent of 100 per cent of her husband's beneficial interest in the trust; or second, proceed under the Act of 1921, where the order, decree or judgment allowing her support requires 'payments of stated sums at stated intervals,' and levy and attach but 50 per cent of her husband's interest, and such writ 'shall remain a lien and continuing levy until the last payment due under such order . . . has been made, with costs.' Mrs. Stewart (claimant wife) having proceeded under the first of these remedies, as an ordinary creditor, she may reach 100 per cent of the beneficial interest of her husband in the trust, but she can recover her claim only in so far as it has accrued. However, had she proceeded under the Act, she could have reached only 50 per cent of the income of the trust but her entire claim, whether accrued or not, would have become a continuing lien against the trust until it had been fully satisfied."

It would appear then, that today modern Pennsylvania case law allows 100 per cent recovery against an inter vivos or testamentary spendthrift trust, and the Wills Act of 1917 allows 100 per cent recovery against testamentary spendthrift trusts only. If, however, the wife brings action under the 1921 Statute, recovery is allowed to only 50 per cent of the husband-beneficiary's interest under either type of spendthrift trust, but her total claim, present and future, becomes a continuing lien against the trust interest until it has been completely paid.

There was also a second trust involved in Stewart's Estate, supra. It was a testamentary trust containing no spendthrift provisions. Thus the entire income was attachable by the wife to secure payment of her decree, subject to any prior legal claims, for the same reasons that the entire income from an ordinary inter vivos trust can be reached by creditors of the beneficiary. Then the court, by dicta, placed the statutes of 1917 and 1921 together with regard to testamentary spendthrift trusts in these words:

"Even where a testamentary trust contains a spendthrift clause, the entire income therefrom is made liable for the maintenance of the beneficiary's wife, by section 19 of the Wills Act of 1917, P.L. 403. The right to reach the entire income from a testamentary trust, whether spendthrift or otherwise . . . is not affected by the Act of 1921, P. L. 434. As we have already indicated, that Act merely gives the wife an additional remedy where she seeks to make future payments a lien on the trust. It did not, therefore, affect the existing right to reach the entire income from an ordinary testamentary trust, nor did it either expressly or by implication repeal section 19 of the Wills Act, giving that right where the testamentary trust was a spendthrift one."
The main feature of the shift in emphasis from one policy to another having been well established, collateral issues on the horizon were subsequently settled. One which was presented to the Court was whether the Acts and the decisional law applied to non-resident as well as resident wives, holding foreign, i.e. other states' decrees, orders, or judgments. In Everhart v. Everhart, the Court held that the statute did not authorize the issuance of attachment on a foreign execution. Likewise in Naylor's Estate, the lower court ruled that the Act of 1921 applied only where the wife and minor children were "citizens" of the State of Pennsylvania, who otherwise might become public charges.

In 1939, however, in Stewart's Estate, the Supreme Court overruled both Superior and lower court cases. There the father-settlor set up an inter vivos spendthrift trust for his son, who married and later separated from his wife. She was a resident of Florida and secured a Florida support order. Unpaid claims mounted, and from time to time she secured five Florida judgments for the accrued unpaid sums. In Pennsylvania she had five foreign attachments issued against her husband-beneficiary and summoned the trustee as garnishee. The total was in excess of $9,000. The husband claimed she could collect nothing, being a non-resident attempting to proceed upon a decree of a court of Florida, while the Act of 1921 related only to resident wives holding Pennsylvania decrees. The Court held that neither the statutes nor case decisions precluded claims of a non-resident wife, nor the entry of a decree or judgment of a foreign jurisdiction in a court of this state and the issuance of an appropriate writ of execution by such Pennsylvania court. The statute of 1921 provides specifically, "... that whenever any court of competent jurisdiction has... entered a decree or judgment... the court may issue the appropriate writ of execution..." The Court concluded that the question involved did not concern a suit to secure an order for maintenance and support for the wife of the beneficiary, but rather the problem involved was an attempt by her to enforce payment of a decree rendered by a foreign court of competent jurisdiction to which the Pennsylvania court must give full faith and credit under the Federal Constitution.

In 1944, the Supreme Court reaffirmed this position, in Lippincott v. Lippincott, and held that a non-resident wife could attach her husband's spendthrift trust interest in Pennsylvania under a California judgment growing out of accumulated arrearages under an order of support which had been obtained from a California court.

The latest issue before the court concerned alimony claims of a divorced wife against the husband-beneficiary's interest in a spendthrift trust. Previously, all cases had involved claims for support by a deserted or neglected wife. Issue

2Supra, note 16.
24Supra, note 21.
25Supra, note 1.
arose in Lippincott v. Lippincott in 1944. There Lippincott was the beneficiary of an inter vivos spendthrift trust created in 1927 by his mother. His first wife had secured an absolute divorce with an award of alimony by a New York decree in 1919. He remarried in 1921 and deserted his second wife in 1928. She obtained a support order in California, where she resided. Both women claimed the beneficiary’s interest in the hands of the trustee. The Court held that the deserted wife could attach the interest, but ruled against the divorced wife, saying:

"Execution cannot be had against a spendthrift trust in payment of alimony awarded to a divorced wife."

To reach this conclusion, the Court cited the Wills Act of 1917, the Act of 1921, and the decisions in Moorehead's Estate and Stewart's Estate, all to the effect that the use of the word wife in each referred to a woman then married to a man in lawful wedlock; not to a former wife, an ex-wife, or a divorced wife.

With the termination of the marriage the husband's duty of support, and the State's interest as a third party, ceases. Thus the reason for denying a spendthrift trust ascendency in such a situation ceases when public policy no longer exists. To quote the Court:

"After such complete and final separation it is not considered that any public policy requires the allowance of such an extraordinary and drastic remedy as seizure by execution against the desire and intent of the creator of that trust."

Therefore the Court treated the New York judgment for permanent alimony to the divorced wife as a judgment for an ordinary debt, and open only to the usual remedies given in Pennsylvania to judgments of ordinary creditors.

Pennsylvania appellate courts have not had occasion to pass upon the claim of deserted or neglected children for support against a father's spendthrift trust interest. It is submitted that the Statutes of 1917 and 1921 specifically, and case law since, by implication, give the minor children the same right as the wife has. Furthermore, the bare fact that a divorce may nullify the wife's right, will not affect the minor children's right to continue to secure satisfaction for their support orders after the divorce, since the father's duty to support minor children ordinarily survives divorce.

It is interesting to note in many of the cases since 1921, that while denting the armor of the spendthrift trust in favor of the deserted wife, the Court has continued to attempt to remain loyal to the idea of a spendthrift trust and the policy of giving a donor the right to condition his gift, by clutching at straws to find in each spendthrift trust no intent on the donor's part to exclude such wife's claims but merely an intent to exclude the claims of all other creditors.

In Moorehead's Estate\(^{27}\) the Court found that, upon analysis of the trust instrument, the donor-testator's intent was not to preclude the husband-beneficiary's interest from support claims of his wife.

In Stewart's Estate\(^{28}\) the Court by dicta mentioned again the donor's intent as not having been contra claims by the wife against the husband-beneficiary's interest. In a negative statement it said that nowhere in the trust instrument could be found any proof that the settlor intended to exclude support claims by the wife. However, the Court concluded that even if affirmatively expressed, public policy had now shifted against recognizing such an express intent.

In Lippincott v. Lippincott\(^{29}\) the Court again saluted the donor-settlor's intent, attempting to imply from the absence of express language to the contrary in the trust instrument an intent on the part of the mother-settlor to free the son's interest from his divorced wife's claims for alimony, but not to bar any claim his second deserted wife might make. Whether such intent actually existed in the donor's mind is questionable. Anyway, this is a situation in which it is more advisable to look at what the courts do, rather than the language of their opinions.

The conclusion is inevitable that regardless of the increasing use of spendthrift provisions in trusts, they are of no avail against the claims for support and maintenance by a deserted or neglected wife and children. For this purpose such a trust, inter vivos or testamentary, will be treated as an ordinary trust so far as the wife and children of the beneficiary are concerned. They can proceed against it with full confidence.

\(^{27}\)Supra, note 17.  
\(^{28}\)Supra, note 21.  
\(^{29}\)Supra, note 26.