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John Ward Hindman

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USE OF THE TRUST PRINCIPAL FOR THE BENEFICIARY

Not infrequently in the administration of a trust, the income arising from the trust principal is insufficient to meet the needs of the beneficiary. Usually the cause of this situation is some circumstance not contemplated by the settlor at the time the trust was created which has placed a heavier burden upon the trust or rendered the trust incapable of meeting the needs of the beneficiary.

A marked example of this occurred during the early 1930's when the value of securities depreciated greatly and the income from such securities also suffered correspondingly, rendering a trust, which at the time of its inception was capable of satisfying the needs of the beneficiary, now incapable of meeting his barest requirements. Regardless of the cause of the situation, the basic problem is what can be done to aid the beneficiary so that the settlor's purpose in creating the trust will not be wholly or partly frustrated.

When this problem has come before the courts, they have, under certain circumstances, decreed that a portion of the trust principal be sold and added to the income arising from the trust so that the combined amount will be better able to meet the needs of the beneficiary. In taking such action, the courts have first determined the settlor's main intent and purpose in creating the trust and following this have taken the action which they feel the settlor would have taken had he contemplated the situation when creating the trust. By doing this, they feel they are merely changing the mode of the administration of the trust but not the trust itself.

Before such action can be taken, however, the interests to which the trust principal is subject must be considered, for attached to most trusts are remainder interests, and any action that would defeat or limit these interests will not be taken in most cases. Also the age of the beneficiary is given weight for the courts seem more prone to permit an invasion of the trust principal when the beneficiary is an infant than when he is an adult.

The Pennsylvania legislature has taken a marked step toward giving relief to the beneficiary in this instance by a provision in the Estates Act of 1947 whereby a trust may be wholly or partially terminated or a portion of the trust principal may be used to rectify the inadequacies of the trust. It must be noted, however, that provisions in the Estates Act are applicable only to trusts created after 1947. Thus, the only relief available to the beneficiary of a trust created prior to 1947 is by an express provision in the trust instrument permitting such use of the principal or by court action.

The purpose here will be to consider briefly the action which the Pennsylvania courts have taken to relieve this situation and also the possible effects of the Estates Act upon this problem. We will first consider the effect of a specific provision in the trust instrument permitting invasion of the principal, then the effect of the age of the beneficiary and lastly the effect of the Estates Act of 1947.

Relief Available to Trusts Created Prior to 1948.
(1) When the trust instrument expressly permits use of the trust principal.

No great difficulty is encountered when the trust instrument contains an express provision permitting the use of a portion or all of the trust principal for the beneficiary should the income not be sufficient to meet his needs. The courts, time after time, have stated that the trust instrument will be governing in matters with regard to the trust and, so long as the settlor's intent is not in conflict with the established rules of law, it will be given effect.\(^1\)

The courts will go far to follow the direction and intention of the settlor as illustrated by a recent lower court decision.\(^2\) The testatrix left her residuary estate in trust to pay the net income to her sister for life, with the following provision:

"... to pay to her out of the principal whatever may be proper for her maintenance, support or comfort, she to be the sole judge thereof."

The beneficiary petitioned for a payment from the principal of $5,000 to enable her to take a trip with a nursing companion, so that she might enjoy a complete rest and change of scene. At the time the petition was made, the beneficiary was eighty-one years of age and in ill health. The remainderman took exception to this asking that the master deny the petition on the ground that it was made in bad faith as the beneficiary had other means of income. The master found that the petition was not made in bad faith and granted the petition. The court upheld the master's ruling and stated:

"Petitioner is the sole judge of what sums are necessary to provide properly 'for her maintenance, support or comfort.' When she acts in good faith and not for the purpose of defeating testatrix's intention, her request must be granted."

The problem is thus greatly simplified and a settlor with foresight after considering the necessary tax questions may better insure that his primary purpose in creating the trust will not be frustrated by an unforeseen exigency by inserting a provision in the trust instrument permitting use of the trust principal if the income from the trust should not be sufficient to provide for the beneficiary's needs.

(2) When the beneficiary is an infant.

The clearest illustration of the courts' willingness to decree that a portion of the trust principal be used to aid in the maintenance of a beneficiary is in the cases where the beneficiary is an infant. These cases seem to fall into two general categories. The first is where the settlor of the trust is the parent of the beneficiary or one in loco parentis to the beneficiary; and the second is where the beneficiary has a present interest in the trust principal to which there are no remainder interests attached, but where his enjoyment of the principal has been delayed until some future time, e.g., when he reaches majority.

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\(^1\) Scott's Trust, 322 Pa. 1; Reck's Appeal, 78 Pa. 432.

The willingness of the court to decree that the infant beneficiary receive funds toward his maintenance from his trust where the settlor is his parent or one in loco parentis to him is based upon the common law rule that a parent is responsible for the care and maintenance of his children. And where a settlor occupied this position and left a legacy to his child with instructions that the child was not to receive the principal or accumulated income until he reached a certain age (the legacy being in the form of an accumulation) and where the settlor made no provision for the maintenance of the child until reaching this specified age, the courts have permitted the child to receive the interest on the legacy for his support. The courts take this action not on the basis of any wording in the will; but rather, consider that the testator, bound by his obligation to support his children, intended that the child be provided for until he reaches the specified age.

The child may get the income whether his interest is "particular and vested, or particular and contingent, or whether it be residuary and vested or contingent." The broad wording used by the court is indicative of the extent to which it will go to provide for an infant beneficiary under these circumstances.

However, where such a trust has been created, or another trust has been created, where income is to be paid to the beneficiary for his maintenance, and such income is not sufficient to cover the maintenance needs of the beneficiary, and a parent of the beneficiary augments these funds with funds of his own, the court will not permit reimbursement to the parent out of the trust principal. It is presumed in such cases that funds so used by a parent are given gratuitously without thought of reimbursement.

Where the infant is the beneficiary of a trust created not by a parent or one in loco parentis, the courts also have permitted invasion of the trust principal to increase the present income to the beneficiary, but only under certain circumstances. The beneficiary's interest must be a present interest and not a remainder interest. There may not be any remainder or contingent interests attached to the trust.

However, where the beneficiary is one of a group, some of whom would absolutely take the principal, and all have a common interest in it and an equal chance of taking or surviving; the court will permit an invasion of the principal to aid a beneficiary in a case of clear and manifest urgency for maintenance or education. The situation to which this would apply would be where property is left in trust for a number of children, they all to take in equal shares when the.

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4 Seibert's Appeal, n. 3, supra.
6 Ibid.
6 Paine Estate, 9 Kulp. 297; Seitz's Appeal, n. 3, supra.
10 Newport v. Cook, 2 Ashmead 332; RESTATEMENT OF TRUSTS, § 168.
youngest child reaches majority. Should one of the infants be in need of funds, he may be given a portion of the trust principal.

Thus, where the infant beneficiary has the sole interest in the trust, the court, upon showing that the income derived from the trust is not sufficient to meet his maintenance and educational needs, will permit an invasion of the trust principal to augment the income.\(^1\)

In an early Pennsylvania case,\(^2\) the court, when this question was presented to it, stated:

"In the last class of cases, viz., those of absolute and unqualified legacies to infants payable \textit{in futuro}, . . . our right, nay, our duty to order a trustee to appropriate a suitable sum for their support, is clear. A fund so circumstanced is the absolute property of the infant; and neither reason nor law require that he should starve, or remain in benighted ignorance, for the benefit of his personal representatives, should he die before it is payable."

This is certainly indicative of the strength with which the courts took this position as early as 1838 when the \textit{Corbin} case was decided.

This same position has been taken in the \textit{Restatement of Trusts} in Section 168, which provides:

"The court may permit or direct the trustee to apply income and principal from the trust estate for the necessary support of a beneficiary of the trust before the time when by the terms of the trust he is entitled to the enjoyment of such income or principal, if the interest of no other beneficiary of the trust is impaired thereby."

A recent lower court case\(^3\) has adopted this section and permitted payment from the trust principal to an infant beneficiary.

\((3)\) When the beneficiary is an adult.

In considering the acquiescence of the courts to permit the use of a portion of the trust principal for the needs of the beneficiary, we are confronted with greater reluctance when the beneficiary is an adult. The authorities in the field of trusts are in agreement that while the courts many times will permit an invasion of the trust principal when the beneficiary in need is an infant, they are more hesitant to permit such an invasion when the needy beneficiary is an adult.\(^4\)

Although this seems to be the general practice, we have at least two cases in Pennsylvania which have permitted such payments to an adult beneficiary.\(^5\) While these cases resemble each other to the extent that there was no remainder interest attached to the trust, they differ in other respects, and it will be necessary to examine them separately.

\(^1\) \textit{In re} Potts, 1 Ashmead 340.
\(^2\) \textit{Corbin} v. Wilson, 2 Ashmead 178, 209.
\(^3\) Mathews' Estate, 35 D. & C. 242.
\(^4\) Bogert, \textsc{Trusts and Trustees}, vol. 4(1), § 815; Scott, \textsc{Scott on Trusts}, vol. 2, 168.
\(^5\) Norris v. Fischer, 2 Ashmead 411; Griffith's Estate, 147 Pa. 274.
The first of the two was that of *Norris v. Fischer*\(^1\) decided in 1841 in the Court of Common Pleas of Philadelphia County. Here there were a number of beneficiaries four of whom were adults. None were to take until the youngest reached the age of 21 years. The court permitted payment to the four adult beneficiaries to provide for their maintenance and in doing so used rather strong language in granting the petition. The opinion states that:

"... it is both our right and our duty to make the decree prayed for, so far as respects the adult plaintiffs."

The second case, *Griffith's Estate,*\(^2\) is not as strong authority, however. The beneficiary also was the settlor and fearing that he was losing his mental faculties, he deeded his property in trust but reserved the power to devise. The trust instrument contained the following provision:

"... shall pay to said James C. Griffith, each and every year, and as often as he may need the same, such sum or sums as may be necessary, in the judgment of the said Louisa C. Griffith for the comfortable and proper maintenance of the said James C. Griffith."

The court permitted payment to be made from the trust principal, but based their decision primarily upon interpretation of the wording of the trust instrument, and not upon their ability to decree that the trust principal may be invaded.

The *Restatement of Trusts* at Section 168 also may be argued as authority for making such an invasion, for it sanctions such action for "a beneficiary" not designating that he be an infant. However, all material after the rule concerns itself with instances where the beneficiary is an infant, and again we must concede that the authority is weak. As stated earlier, this section has been followed by a Pennsylvania court but in that case the beneficiary was an infant.\(^3\)

**Effect of the Estates Act of 1947**

The applicable provision in the Estates Act of 1947 provides:\(^4\)

"The court having jurisdiction of a trust, regardless of any spendthrift or similar provision therein, in its discretion may terminate such trust in whole or in part, or make an allowance from principal to a conveyor, his spouse, issue, parents, or any of them, who is an income beneficiary, provided the court after hearing is satisfied that the original purpose of the conveyor cannot be carried out or is impractical of fulfillment and that the termination, partial termination, or allowance more nearly approximates the intention of the conveyor, and notice is given to all parties in interest or to their duly appointed fiduciaries. But, distributions of principal under this section, whether by termination, partial termination, or allowance, shall not exceed an aggregate value of twenty-five thousand dollars from all trusts created by the same conveyor."

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2. 147 Pa. 274.
3. *N. 13, supra.*
It must be noted that this provision is only applicable to trusts created on or after the effective date of this act, January 1, 1948.\textsuperscript{20}

As to trusts created on or after the effective date, however, the act takes a long step toward a realistic solution to the problem. Under the act, a beneficiary, whether infant or adult, may gain relief which had previously been unavailable. In order to obtain the relief offered by the act, the court in exercising its discretion must feel such action will better effectuate the purposes of the settlor, the beneficiary requesting the action must be in one of the designated classes, he must be an income beneficiary, notice must be given to all parties in interest and the amount distributed must not exceed $25,000. The act does away with the requirement of consent of all interested parties and merely requires that notice be given to them or their duly appointed fiduciaries. This in itself is a marked change from existing law and would seem to permit such action even though there be remainder or contingent interests attached to the trust.

The applicability of the act is limited, however, to only those trusts which are created for the settlor, his spouse, issue, or parents, and the beneficiary who does not come within this class would have to rely upon relief available beyond the act.

John Ward Hindman
Member of the Senior Class

\textsuperscript{20} Estates Act of 1947, § 21, 20 P.S. 301.21.