THE "TRUE" SPENDTHRIFT TRUST

It may be somewhat anticlimatic to comment on the Iowa law of spendthrift trusts,[1] but a recent decision of the Supreme Court contains certain assumptions which require most careful consideration. The case upholds for once and for all in Iowa the "true" spendthrift trust,[2] a label deemed necessary to distinguish the device from its more-favored kin, the discretionary and support trusts.[3] The testator devised property in trust, "the income arising therefrom to be paid to [the named beneficiary] quarterly or yearly as may seem best to said trustees". There followed a provision which gave the trustees discretionary power to pay any part of the corpus to the beneficiary, and the usual clauses to the effect that the interest of the beneficiary was non-assignable and beyond the reach of his creditors. Provision was also made for the distribution of the corpus upon the death of the beneficiary. The trustee applied for a construction of the trust to determine whether any interest of the beneficiary could be reached by his former wife who, as a creditor, claimed unpaid installments of child support under a divorce decree rendered in 1932. The Court construed the will as giving the beneficiary an absolute right to the income from the trust, and held that this income could not be reached by this creditor.[4]

In its discussion of the validity of the trust, the Court divided its opinion into three sections. In the first, the Court erroneously ascribed to opponents of the spendthrift trust the notion that "ownership must include power to alienate and consequent subjection to legal process in favor of creditors".[5] The Court's answer was: "Alienability is not an essential attribute of an equitable life estate."[6] Since John Chipman Gray reviewed the whole field in

---

[1] No attempt is made to reanalyze the Iowa cases. They are reviewed in Horack, *Spendthrift Trusts in Iowa,* 4 IOWA L. BULL. 139 (1918); 9 IOWA L. BULL. 305 (1924); 36 IOWA L. REV. 391 (1951); GRISWOLD, SPENDTHRIFT TRUSTS 188-191 (2d ed. 1947).

[2] *In re* Bucklin's Estate, 51 N.W.2d 412 (Iowa 1952).

[3] The distinction between support, discretionary and spendthrift trusts is made in RESTATEMENT, TRUSTS §§ 150-155 (1935).

[4] The Court apparently regarded the beneficiary's interest as an equitable life estate and expressed no opinion as to the validity of a spendthrift trust of the entire beneficial interest. The payment of the corpus to the beneficiary appeared to be within the discretion of the trustees in any event.

[5] *In re* Bucklin's Estate, *supra* at 415.

[6] *Ibid.* The Court quoted from Seymour v. McAvoy, 121 Cal. 438, 53 Pac. 946, 947, 41 L.R.A. 544 (1898), but failed to note that the rest of the sentence read: "and there is nothing in the *policy* of the law prohibiting a donor from providing that his bounty shall be enjoyed only by those to whom he intends to extend it . . . . " (Italics added).

his *Restraints on Alienation* in 1895, no one has seriously contended that ownership of an estate, whether legal or equitable, necessarily involves a concomitant right of free alienability. True, forfeiture restraints on the alienability of legal fees simple are in general void,[7] not because a condition is inconsistent with the estate[8] but because of a policy favoring free transferability.[9] Valid forfeiture restraints on alienation may, on the other hand, be attached to legal life estates[10] and terms for years.[11] Ownership of these estates carries no immunity from such restrictions and public policy permits their use, at least within limits. What is the carry-over to the law of trusts? The absolute right to receive trust income for life is as much "ownership" as is a legal life estate. It cannot be asserted that an equitable interest necessarily carries with it absolute alienability any more than does a legal life estate, but, in the absence of an effective restraint, equitable interests are as freely alianable as are legal interests.[12] In the spendthrift trust, the question is: may the equitable interest be made inalienable by a disabling restraint or a "mere direction" which would not be valid if appended to a legal estate?[13] The principal case answers the question in the affirmative.[14] This is supported by considerable authority,[15] but the result does not follow from the Court's assumption that legal interests are and equitable interests are not immune from restraints on alienation.

---

[7] 4 RESTATEMENT, PROPERTY § 406 (1944).

[8] See Bordwell, *Alienability and Perpetuities III*, 23 IOWA L. REV. 1, 14 (1937).

[9] See 4 RESTATEMENT, PROPERTY, Intr. Note, 1609 (1944).

[10] Luther v. Patman, 200 Ark. 853, 141 S.W.2d 42 (1940); 4 RESTATEMENT, PROPERTY § 409 (1944).

[11] Snyder v. Bernstein Brothers, 201 Iowa 931, 208 N.W. 503 (1926).

[12] RESTATEMENT, TRUSTS §§ 132, 133 (1935).

[13] Numerous Iowa cases have invalidated disabling restraints on legal estates. Ogle v. Burmister, 146 Iowa 33, 124 N.W. 758 (1910) (fee simple); McCormick Harvesting Machine Co. v. Gates, 75 Iowa 343, 39 N.W. 657 (1888) (life estate); Bogengrief v. Law, 222 Iowa 1303, 271 N.W. 229 (1937) (remainder for life).

In Graham v. Johnston, 49 N.W.2d 540 (Iowa 1951), the grantor conveyed land in fee simple to his sons, reserving a life estate. See IOWA CODE § 557.6 (1950) (estates in futuro). The deed recited that the land could not be mortgaged by the grantees and was not liable for present or future debts of the grantees. There was no reservation of a right of entry or other forfeiture in the event the restriction was violated. The court properly held that these restrictions were disabling restraints —mere directions—and therefore without legal effect. The decision is not to be taken to mean that a forfeiture restraint on a fee simple in futuro would be valid if the restraint is limited to continue after the fee becomes possessory. Whether it would be valid if limited to endure only so long as the fee remains nonpossessory is uncertain. These problems are discussed in SIMES, FUTURE INTERESTS 349 (1951).

[14] The disabling restraint on the equitable interest must be clearly expressed. See GRISWOLD, *op. cit. supra* note 1, at 302-304. The Minnesota court has gone far in implying restraints, a position which has received considerable criticism. See *In re* Moulton's Estate, 46 N.W.2d 667, 673 (Minn. 1951) reaffirming earlier cases and listing the writers who have regarded the view critically.

[15] GRISWOLD, *op. cit. supra* note 1, at 38-43.

The second part of the opinion raises the question whether the spendthrift trust is void on grounds of public policy. The Court seemed to feel that the policy question involved here is primarily a legislative matter, but it nevertheless added that there is no "threat to public morality or welfare" in the spendthrift trust.[16] The latter may be quite correct, but a somewhat less-inclusive policy consideration is nevertheless the crux of the problem of the validity of this type of trust.[17] Should the settlor be permitted to give his beneficiary unlimited income which cannot be reached by creditors, at least before it is in the hands of the beneficiary? Or, should the beneficiary have an absolute right only to so much of the income as is reasonably necessary for his support? Should certain creditors be permitted to reach the income despite the existence of the restraint if the policy behind protecting their claims outweighs whatever policy may justify the spendthrift trust? Perhaps here is an area for legislative action.[18]

In the third part of the opinion, the Court felt that counsel had not properly raised the question[19] whether the former wife possessed any special advantage by reason of the fact that her claim was for accrued and unpaid child support. Accordingly, the court declined to review prior cases denying the right of dependents to reach the income from discretionary trusts in violation of the terms of the restraint.[20] The right of dependents to reach income from a true spendthrift trust thus remains open. The Court does not appear to be kindly disposed toward according a special advantage where the dependents are now adults but suggests the possibility of permitting dependents who are in "present need of support" to reach the income.[21] The latter at least would be a highly desirable qualification on the spendthrift trust doctrine.[22]

---

16 *In re* Bucklin's Estate, *supra* at 416. Compare GRAY, RESTRAINTS ON ALIENATION v (2d ed. 1895).

17 GRISWOLD, *op. cit. supra* note 1, at 634.

18 Model legislation is recommended by GRISWOLD, *op. cit. supra* note 1, at 647-651.

19 Much of the brief appears to have been devoted to this question, although apparently counsel did not expressly make it a specific ground for reversal in the brief or in oral argument.

20 Roorda v. Roorda, 230 Iowa 1103, 300 N.W. 294 (1941); *see* Wagner v. Wagner, 240 Iowa 1113, 1118, 38 N.W.2d 609 (1949).

21 *In re* Bucklin's Estate, *supra* at 417.

22 The cases in other jurisdictions are in conflict. In some the beneficiary's interest cannot be reached for alimony, wife support or child support. *In re* Moulton's Estate, 46 N.W.2d 667 (Minn. 1951); Schwager v. Schwager, 109 F.2d 754 (8th Cir. 1940); Burrage v. Buckman, 301 Mass. 235, 16 N.E.2d 705 (1938). In Wisconsin, income may be reached to pay a divorced wife's alimony. Dillon v. Dillon, 244 Wis. 122, 11 N.W.2d 628 (1942); *but cf.* Will of Razall, 245 Wis. 416, 14 N.W.2d 764 (1944). In Pennsylvania, an undivorced wife may reach income for support. Lippincott v. Lippincott, 349 Pa. 501, 37 A.2d 741 (1944); *cf.* Moorhead's Estate, 289 Pa. 542, 137 Atl. 802, 52 A.L.R. 1251 (1927). Many states indicate that the income is not exempt from child support. For a review of the cases, see GRISWOLD, *op. cit. supra* note 1, at 388-400.

THE LEGAL AID SOCIETY OF POLK COUNTY

The legal profession is becoming increasingly aware of the necessity of providing facilities so that the indigent may obtain the same high quality of legal assistance they might expect to receive from a good lawyer in private practice. The Survey of the Legal Profession recently sponsored the publication of a complete account of the availability in this country of lawyer's services to persons who are unable to pay attorney's fees or whose claims are unremunerative on a contingent-fee basis.[1] This study reveals that considerable progress has been made since the first legal aid society was organized in New York City in 1876. By the end of 1949, 92 legal aid offices organized in various ways had been established throughout the United States.[2] Only 37 of these were organized as legal aid societies. The remainder included departments of social agencies, bar association offices, public bureaus and law school clinics.[3] While progress in legal aid has been steady, it has been comparatively slow in many parts of the country. In 1939 the Polk County Bar Association appointed a legal aid committee which functioned on a volunteer basis, and it was not until January of 1950 that the first legal aid society in Iowa was established in Des Moines.[4]

The Legal Aid Society of Polk County is sponsored by the Polk County Bar Association and receives nearly all of its financial support from the Community Chest in Council of Greater Des Moines. It is supervised by a committee consisting of 24 lawyers and laymen. The office is staffed by a part-time attorney and a full-time secretary. The law students of Drake University have contributed to the success of the program by offering their services to the society. Despite the fact that work in the legal aid office is required as part of the law course, the students have accepted this responsibility eagerly. Approximately 30 senior students contribute their services each month, two of them counseling each afternoon.

---

[1] BROWNELL, LEGAL AID IN THE UNITED STATES (1951).

[2] *Id.* at 26, 87.

[3] *Id.* at 88. For a convenient map showing the location of legal aid offices in the United States and the cities and communities with populations in excess of 100,000 and 200,000, respectively, which do not have legal aid offices, see 35 J. AM. JUD. SOC'Y 87, 88 (1951). The map indicates that legal aid centers should be established in Iowa in Sioux City, Cedar Rapids and Davenport.

[4] There was great need for legal aid in Iowa. The survey of lay opinion, sponsored by the Iowa State Bar Association in 1949, revealed that three out of four people knew of no source of low-cost legal services. See Riley, *The Lay Opinion Survey of Iowa Lawyers, Courts and Laws*, 33 J. AM. JUD. SOC'Y 38, 40 (1949). The layman's "ignorance" does not seem astonishing: there were practically no sources of low-cost legal aid in Iowa at that time.

In determining whether an applicant's financial condition is such that the services of the society should be available to him, the counselor considers such obvious factors as income, illness in the family, debts, and the age and number of children and other dependents. The legal aid office does not accept clients who are financially able to pay for legal services or who have claims which may be collected by a practicing attorney on a contingent-fee basis. Although the legal services are free, the applicant is asked to pay court costs.

Detailed records are kept at the office. The secretary fills out a card for each client showing his name and address, his financial and marital status, the nature of his problem, and the names and addresses of other persons involved. If he qualifies for assistance, the client is then introduced to a student counselor who obtains the facts of the case. Advice to the client is given only after consultation with the attorney in charge of the office. It is the responsibility of the student to do the necessary research and to follow the case through to its final disposition. Trial work is handled by the attorney in charge of the office, but the student is expected to do the "leg work" as well as the research and to act as assistant counsel throughout the trial.

Since its organization, the society has received 1,214 cases. New cases in 1951 totalled 675 as compared with 539 in 1950, an increase of more than 25%. As the public becomes acquainted with the work of the society, the volume of cases is expected to increase. The cases may be classified into four groups according to the types of problems involved:

A. *Personal-financial.* This includes salary deductions, eligibility for hospitalization in the county hospital, withholding of wages, automobile guarantees, personal debts, contracts of various types, insurance and automobile financing 24%

B. *Family.* Divorces, separate maintenance, advice with respect to divorce decrees, modification of decrees, and support payments. (Divorce and support payments constitute two-thirds of this group) 43%

C. *Property.* Eviction notices, abstracts, advice on titles, landlord-tenant problems, miscellaneous property questions 20%

D. *Miscellaneous* 13%

The Legal Aid Society also classifies cases according to their source:

Referrals from practicing attorneys or county attorneys.... 35%

Referrals from social agencies, such as the Red Cross, Veterans Administration, Polk County Soldiers Relief Commission, and the Polk County Welfare Department 30%

Referrals from employers and clients previously served by the society..... 4%

Other sources: legal aid societies in other cities, neighbors, friends, union officials, and the Federal Housing Administration 31%

In addition to records detailing the type and source of each case, the office maintains accurate records showing the disposition or services rendered in each case that is closed. Since the organization of the Legal Aid Society, 1,133 cases have been disposed of as follows:[5]

Cases requiring consultation only.....375 or 33%
Cases involving some service rendered before the client wishes the matter dropped.....318 or 28%
Cases requiring consultation and referral[6].....265 or 24%
Cases requiring court work (90% of these are divorce cases)[7]..... 76 or 6%

The Legal Aid Society of Polk County is to be congratulated on the efficient way in which the office has been managed and the valuable service which it has rendered to the community. The society is now firmly established in Des Moines and all indications point to a successful future.

---

[5] On December 31, 1951, there were 81 cases pending.

[6] "Consultation and referral" involves situations where the client does not need legal help but does require reference to a social agency, or, if legal services are needed, he can only pay part of the average attorney's fee for the work. In the latter situation, the client is referred to a private attorney. A card file is kept of lawyers who have expressed a willingness to cooperate in this program and who are willing to accept reduced fees.

[7] Before divorce litigation is approved, the legal aid attorney confers with officials of the various agencies of the Polk County Welfare Department and the Family Service-Travelers Aid of Des Moines to determine whether these agencies recommend divorce.

Criminal cases and damage suits are not accepted by the society. The facilities of the society are not adequate to take care of the former, and many attorneys accept the latter on a contingent-fee basis. The case is referred to a private attorney whenever it is of the type which could be taken on a contingent-fee arrangement.