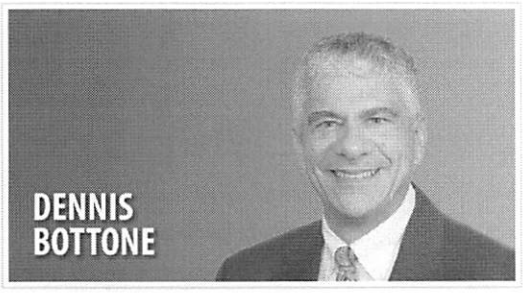
Assets of divorce-created trust subject to PI claim

Husband's estate can't protect his share of ex-wife's property

By: Pat Murphy July 5, 2018



The assets of an irrevocable spendthrift trust established on behalf of a disabled man in his 2007 divorce can be used to satisfy any damages arising from his liability for a 2014 car accident that he did not survive, the Appeals Court has found.

The trustee argued that because the trust consisted mainly of assets that had been the property of beneficiary Brian K. McInerney's wife, it should be deemed a trust created by a third-party settlor, placing those assets beyond the reach of his creditors under well-established Massachusetts law.

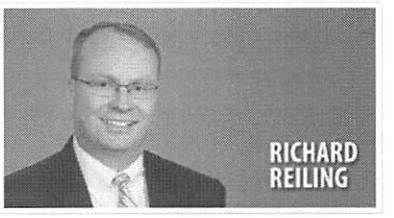
But the court found instead that the trust was "self-settled," making it subject to creditor claims.

"McInerney's legal and equitable rights in the settlement of the parties' rights and obligations upon dissolution of the marriage was the impetus behind the creation of the trust and, therefore, he properly is considered the settlor," Judge Amy L. Blake wrote for the unanimous panel.

The ruling reversed a summary judgment granted by a Superior Court judge.

The 18-page decision is *Calhoun, et al. v. Rawlins, et al.*, Lawyers Weekly No. 11-078-18. The full text of the ruling can be found here.

'Public policy' ruling?



Boston lawyers Dennis M. Bottone and Richard B. Reiling represented the plaintiffs, Shonna Calhoun and her son.

"The law in this area in Massachusetts really hasn't changed since the early '50s," Reiling said. "It's not possible to protect the assets of the trust in the event the settlor puts in his own money and tries to rely on a spendthrift provision in order to protect those funds from his creditors."

Reiling lauded the court for protecting creditor rights while also preserving the sanctity of Probate & Family Court decisions regarding division of marital assets.

"Given the fact that this trust was funded with no other assets other than what he was awarded in the divorce, it clearly should be seen as self-settled, regardless of what vehicle you put it in," Reiling said.

Wellesley Hills family law attorney Sheryl J. Dennis agreed, finding it also significant that the terms of the trust allowed the trustee to pay the beneficiary both principal and interest during his lifetime.

Boston's Sheila B. Giglio said the defendants may have had a stronger case had the trust been set up as an income-only trust. But Giglio said it was hard to argue with the court's finding of a self-settled trust.

"These were assets to which the ex-husband was entitled," the trusts and estates lawyer said. "It wasn't a gift; [the wife] wasn't doing this out of the goodness of her heart."

Andover trusts and estates attorney Timothy D. Sullivan said the decision came down to public policy.

"Massachusetts is among those states which will not allow a person to put his property beyond the reach of a creditor and yet still enjoy the property," Sullivan said. "That has clearly been the general principle for years."

Sullivan found it significant that the court resolved the issue about whether the same public policy principle extended the general rule to those who are disabled, indicating the panel's reasoning would apply to special needs trusts.

Stephen M. LaRose represented the defendant corporate trustee, KeyBank National Association. The Boston attorney, through his firm, declined to comment.

Spendthrift trust on defense

McInerney married Sharon J. Stone in 1987. A judge later appointed co-guardians to manage McInerney's affairs after he suffered a traumatic brain injury in a 2001 car accident. McInerney subsequently filed for divorce in 2005.

Stone held significant assets during the marriage, including certain KeyBank accounts funded partly from a trust created for her benefit by her grandfather. The couple lived primarily from income derived from those assets and Stone's modest income from work as an artist and mental health counselor.

Under a separation agreement incorporated in a final judgment of divorce entered in 2007, Stone agreed to transfer approximately 35 percent of her KeyBank accounts to an irrevocable spendthrift trust created for McInerney's benefit. In accordance with the agreement, she later transferred $3.5 million in stocks and bonds into the trust. She also transferred into the trust a Plymouth home valued at $540,000. McInerney placed $120,000 of his own assets into the trust.

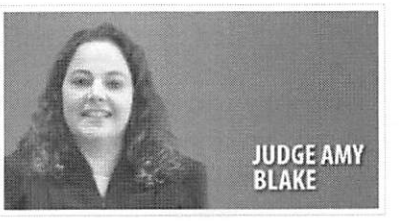
The terms of the trust identified Stone as the settlor, McInerney as the beneficiary, and their two children as remainder beneficiaries. The original named trustees included McInerney's sister, who also served as his guardian. The current corporate trustee is KeyBank. Under the terms of the trust, the trustees were afforded complete discretion to distribute income and principal as they deemed necessary to meet the reasonable needs of McInerney.

McInerney was involved in a car accident with the plaintiffs in 2014. The plaintiffs allege that McInerney crossed the yellow line to pass another vehicle, striking the plaintiffs' vehicle head on. The plaintiffs further allege McInerney was speeding at the time of the crash, traveling 75 mph in a 35 mph zone.

McInerney died in the accident, and the plaintiffs suffered serious injuries. The plaintiffs sued McInerney's estate for negligence in Superior Court, further seeking a declaration that the assets of the trust were available to satisfy any judgment.

Judge Robert C. Cosgrove found that only the assets that McInerney contributed to the trust were reachable. Cosgrove determined that the assets contributed by Stone were not reachable because she was their sole owner up until the point they entered the trust.

> *The husband's "legal and equitable rights in the settlement of the parties' rights and obligations upon dissolution of the marriage was the impetus behind the creation of the trust and, therefore, he properly is considered the settlor."*
>
> *— Judge Amy L. Blake*



Self-settled trust

In addressing the lower court judgment, Blake said Massachusetts courts have historically distinguished between spendthrift trusts created by third parties and spendthrift trusts that are self-settled by an individual who is both settlor and beneficiary.

"It has long been the law in this Commonwealth that a trust created by a third-party settlor may protect a beneficiary's interest in the trust from creditors through spendthrift provisions," she wrote.

On the other hand, Blake wrote, it was clear, too, that under state law a settlor cannot place property in trust for his own benefit to keep it beyond the reach of creditors. She pointed to G.L.c. 203E, §505(a)(2). That section of the Massachusetts Uniform Trust Code provides that, notwithstanding the presence of a spendthrift provision, "[w]ith respect to an irrevocable trust, a creditor or assignee of the settlor may reach the maximum amount that can be distributed to or for the settlor's benefit."

Blake said the "heart" of the parties' dispute was whether the McInerney trust was self-settled or settled by Stone. The fact that the terms of the trust identified Stone as the "settlor" was not dispositive, she said.

"It would be anomalous indeed if a settlor could avoid the well-settled principle that one cannot avoid creditors through a self-settled trust by the simple expedient of identifying another person in the trust instrument as the settlor," Blake wrote. "Rather, in determining whether the trust was self-settled, we look to the facts surrounding the creation of the trust."

She found decisive the reason behind Stone's decision to fund the trust.

"McInerney's agreement to settle his rights and obligations pursuant to the dissolution of the marriage was the consideration for the creation of the trust," Blake wrote. "Stone was not gifting her money to McInerney; she was satisfying her obligations arising from the dissolution of the marriage."

Though finding no cases on point, Blake said Massachusetts case law supported a determination that the McInerney trust was self-settled. For example, she cited the Supreme Judicial Court's 1996 decision in *Cohen v. Commissioner of the Division of Medical Assistance*. In that case, the court rejected a beneficiary's argument that, for the purpose of qualifying for Medicaid, she was not the settlor of a trust established by her conservator and pursuant to a court order from the proceeds of a medical malpractice settlement.

Blake also noted that in a 2008 case, *In re Tosi*, a U.S. Bankruptcy Court judge in Massachusetts found no merit to an argument that a discretionary trust was settled by a third party because the debtor's share of his father's estate passed directly from the estate's executors to the trustees of the debtor's trust.

"We see no meaningful distinction between the facts considered in *Cohen*, those considered in *In re Tosi*, and the facts here," Blake wrote.

She said the panel also found it unavailing that the parties to the divorce settlement may have intended to create a valid spendthrift trust that would protect trust assets from creditors.

"If, as it would appear, their intent was to keep McInerney's funds out of the hands of his creditors, they could not do so by transferring his share of the marital estate into a spendthrift trust over which the trustees had discretion to pay to him both the principal and the interest of the trust during his lifetime," Blake wrote. "Here, the proper application of G. L. c. 203E, §505(a)(2), allows the plaintiffs to access the trust in the circumstances presented."

Calhoun, et al. v. Rawlins, et al.

THE ISSUE: Are the assets of an irrevocable spendthrift trust established on behalf of a disabled husband in his 2007 divorce available to satisfy any damages arising from his liability for a 2014 motor vehicle accident?

DECISION: Yes (Appeals Court)

LAWYERS: Dennis M. Bottone and Richard B. Reiling, of Bottone Reiling, Boston; Richard C. Woods Jr. of Stoneham (plaintiffs)

Stephen M. LaRose and Charles Dell'Anno, of Nixon Peabody, Boston; Edward M. Joyce Jr. of Pembroke (defense)

RELATED JUDICIAL PROFILES

COSGROVE, ROBERT C.

BLAKE, AMY L.

LAWYERS WEEKLY NO. 11-078-18

Massachusetts Lawyers Weekly

Wills and trusts – Spendthrift trust – Divorce

Full-text Opinions

Calhoun, et al. v. Rawlins, et al. (Lawyers Weekly No. 11-078-18)

Issue: JULY 9 2018 ISSUE

YOU MIGHT ALSO LIKE

Witness intimidation conviction reversed

July 18, 2018

Challenger to Plymouth DA Cruz forced to run sticker campaign

July 17, 2018

Jury and jurors – Bias – Mistrial

July 17, 2018

0 Milk Street, Suite 1000,

oston, MA 02108

617) 451-7300