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Duvall v. McGee:**Tort Judgment Creditors Are Not Included in the Narrow Class of Creditors Entitled to Invade a Spendthrift Trust**

By : Kevin Trogon

The Court of Appeals of Maryland held tort judgment creditors are not included in the narrow class of creditors entitled to invade a spendthrift trust. *Duvall v. McGee*, 375 Md. 476, 826 A.2d 416 (2003). The court determined the rationale underlying decisions permitting invasion of a spendthrift trust for payment of alimony, child support, or taxes are not applicable to an obligation owed to ordinary creditors. *Id.*

James McGee ("McGee") was convicted of felony murder for his participation in a robbery that resulted in the death of Katherine Ryon ("Ryon"). Robert Duvall ("Duvall"), Personal Representative of Ryon's Estate, brought suit in the Circuit Court for Anne Arundel County seeking compensatory and punitive damages. The parties executed a settlement agreement for a judgment against McGee.

The settlement agreement acknowledged McGee as the beneficiary of a spendthrift trust ("Trust") established by his deceased mother. Under the Trust's terms, McGee was prohibited from alienating Trust principal or any other portion of the Trust while in the hands of the Trustee, and specifically shielded Trust principal and income from McGee's creditors. Additionally, periodic income payments were made

to McGee by the Trustee. Pursuant to the settlement agreement, Duvall was prohibited from attaching or garnishing the periodic payments made to McGee by the Trustee.

To satisfy the judgment entered pursuant to the settlement agreement, Duvall served a Writ of Garnishment on the Trustee to invade the Trust principal. Duvall moved for summary judgment, arguing as a matter of public policy tort judgment creditors should be deemed a special class of creditors entitled to invade a spendthrift trust. The court denied Duvall's motion for summary judgment and granted McGee's cross-motion. Duvall appealed to the Court of Special Appeals of Maryland; however before it was heard, the Court of Appeals of Maryland granted certiorari.

The court of appeals began its analysis by recognizing spendthrift trusts are valid instruments under Maryland law. *Id.* at 483-84, 826 A.2d at 420. The court concluded principal of a spendthrift trust is not subject to garnishment while in the hands of a trustee. *Id.* (citing *Smith v. Towers*, 69 Md. 77, 14 A. 497 (1888)). The court reasoned although the right to sell and dispose of property is a necessary incident to absolute ownership of property, "the reasons on which the rule is founded do not apply to the transfer of

property in trust." *Id.* at 485, 826 A.2d at 421 (quoting *Smith*, 69 Md. at 87, 14 A.2d at 499). Moreover, the court determined the only restraint on the right to dispose of trust property is when it is in the best interest of the community. *Id.*

As such, the court identified three circumstances where it had held, on public policy grounds, spendthrift trusts may be invaded for indebtedness: (1) alimony arrearage; (2) child support; and (3) income tax. *Id.* at 489, 826 A.2d at 423-24. The court recognized a fundamental difference between these obligations and those of ordinary creditors. *Id.* at 489, 826 A.2d at 424. The court reasoned a beneficiary's wife and children are not creditors and the beneficiary's liability to support them is not a debt. *Id.* at 493, 826 A.2d at 426. "The obligation to pay alimony in a divorce proceeding is regarded not as debt, but as a duty growing out of the marital relation and resting upon sound public policy." *Id.* at 491, 826 A.2d at 425. Similarly, the court recognized the obligation to pay taxes is not considered debt, nor is the government viewed as a mere creditor. *Id.* at 493, 826 A.2d at 426. The court reasoned the obligation owed to ordinary creditors, however, grows out of contract, not statutory, duty. *Id.* at 492, 826 A.2d at 425.

Upon finding Ryon was only an

Recent Developments

ordinary creditor, the court held McGee's obligation was dissimilar to cases where invasion of a spendthrift trust was allowed for payment of alimony, child support, or taxes. *Id.* at 493, 826 A.2d at 426.

Therefore, the court concluded the Trust had no duty to Ryon's estate. *Id.* The court reasoned to allow the invasion of the Trust for payment of the tort judgment against McGee frustrates the Trust donor's intent and would, in effect, impose liability on the Trust for the beneficiary's wrongful acts. *Id.*

The court rejected Duvall's next argument that certain creditors' interests are great enough to usurp spendthrift trust terms. *Id.* at 494, 826 A.2d at 427. The court opined ordinary creditors are on notice of a spendthrift trust when they voluntarily extend credit and are able to regulate conduct in light of this information. *Id.* at 499, 826 A.2d at 429. Although the court admitted tort judgment creditors are not on notice, "that fact alone does not make the claim . . . anything other than a debt or make its exemption from the bar of a spendthrift trust, a matter of public policy." *Id.* at 500, 826 A.2d at 430. To support this conclusion, the court focused on a Uniform Trust Act section 503 comment that specifically does not support including tort judgment creditors among creditors who can invade a spendthrift trust. *Id.* at 500, 826 A.2d at 416 n. 15.

Finally, the court addressed Duvall's argument that, as a matter of public policy, McGee should not be allowed to receive benefits from the Trust to the exclusion of his creditors.

Id. at 500, 826 A.2d at 430. The court agreed Maryland public policy does not endorse a system where criminals derive financial benefit from their illegal activity, as evidenced by the "slayer's rule." *Id.* The court concluded, however, that any benefit McGee received from the Trust vested prior to the commission of his criminal acts and was completely independent of his criminal conviction. *Id.* at 500-01, 826 A.2d at 430. The court stated situations where criminals were rewarded for criminal acts by way of book, television, and movie royalties were unlike this case because McGee derived no benefit from his criminal act. *Id.* Instead, the court concluded McGee only benefited as a life beneficiary under the Trust executed by his deceased mother. *Id.* at 501, 826 A.2d at 430-31.

In *Duvall v. McGee*, the Court of Appeals of Maryland declined to expand the narrow class of creditors allowed to invade spendthrift trusts. By doing so, the court drew a "duty-debt" distinction for determining what is commensurate with public policy. As a result, this ruling preserves the right of spendthrift trust beneficiaries from having trust principal attached by tort judgment creditors. Thus, the court sent a message that unless a beneficiary has a statutory duty, the intent of a spendthrift trust settlor trumps creditors' interests.

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