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Recommended Citation
Available at: https://researchrepository.wvu.edu/wvlr/vol44/iss1/6

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Spendthrift Trusts in West Virginia

Although one authority has stated that an exact definition of a spendthrift trust "seems neither possible nor useful,"¹ the definition in the Restatement of Trusts will be found of value as a starting point for discussion of the problem. According to the Restatement,

"A trust in which by the terms of the trust a valid restraint on the voluntary and involuntary transfer of the interest of the beneficiary is imposed is a spendthrift trust."²

It is obvious that this definition taken alone is of little value because the important question whether a particular restraint is valid is left unanswered. However, this objection is met by the

¹ GRISWOLD, SPENDTHRIFT TRUSTS (1936) 2.
² RESTATEMENT, TRUSTS (1935) § 152 (2) (Italics supplied).
Restatement definition of a valid restraint in this connection. It is stated that, with certain exceptions,\(^3\)

"... if by the terms of a trust the beneficiary is entitled to the income from the trust property for life or for a term of years and it is provided that his interest shall not be transferable by him and shall not be subject to the claims of his creditors, the restraint on the voluntary and involuntary transfer of his right to the income accruing during his life is valid."\(^4\)

Thus, if A transfers property to B in trust, the income to be paid to C for life, and it is provided that C shall have no right to assign his interest and that he shall enjoy the income free from the claims of his creditors, C is the beneficiary of a valid spendthrift trust.

The validity of such a trust has long been recognized in West Virginia. In the leading case of Guernsey v. Lazear,\(^5\) Judge Brandon in a characteristically able opinion reviewed the decisions and the arguments for and against the validity of such a restraint on the alienation of an equitable interest and concluded that at common law such restraints were valid, the policy in favor of free alienability of property being outweighed by the desirability of allowing owners of property to provide protection for their friends and relatives who may be unable to make provision for themselves. However, although our court placed its decision largely on this ground, and although most of the spendthrift trust cases which have come before it have involved beneficiaries who either were true spendthrifts or were persons like minors, mental incompetents or widows lacking in business experience, all of whom may fairly be said to need such protection, it should be noted that spendthrift trusts are generally not limited to the protection of such persons and that they "may be created equally well for the able-bodied and thrifty and for those who could easily earn a living, manage their own property, and pay their debts at maturity."\(^6\) Whether our court, if left free to develop its own doctrine, would have placed

\(^3\) One exception, to be discussed later, is a case where the creator of the trust is himself a beneficiary, Restatement, Trusts § 156. The other exception deals with claims against the beneficiary by particular classes of claimants, such as claims by wife or child for support, and claims by persons who have supplied the beneficiary with necessaries or who have rendered services or furnished materials which preserve or benefit his interest in the trust. Restatement, Trusts § 157. These and many other problems concerning spendthrift trusts have not yet arisen in this state and are not discussed in this note.

\(^4\) Id. § 152 (1).

\(^5\) 51 W. Va. 328, 41 S. E. 405 (1908).

\(^6\) 1 Bogert, Trusts and Trustees (1935) 721.
any limitation on the use of spendthrift trusts, confining them to the protection of true spendthrifts or others in actual need of protection, is arguable, but since 1931 when legislative sanction was given to spendthrift trusts it is clear that no such limitation may now be imposed by the court.7

In reaching the decision in Guernsey v. Lazear that spendthrift trusts are valid, the court had to dispose of a statutory provision which in some states has been held to prohibit such trusts. According to the West Virginia Code then in effect,

"Estates of every kind, holden or possessed in trust, shall be subject to debts and charges of the persons to whose use or to whose benefit they are holden or possessed, as they would be if those persons owned the like interest in the things holden or possessed as in the uses or trusts thereof."8

This legislation was copied from Virginia which had held in Hutchinson v. Maxwell9 that this statute prevented the creation of an equitable interest which could be enjoyed free from the claims of creditors, the Virginia court refusing to follow a dictum in an earlier case10 that spendthrift trusts were valid. The West Virginia court placed a different construction on the statute and held that it did not prohibit the creation of a spendthrift trust, pointing out that prior to its enactment no equitable interests were subject to debts and that this statute, procedural in nature, was passed in order to make equitable interests in general liable, but that it had no bearing on the question whether an equitable interest might be created which would be inalienable and hence immune from liability.11 The legislature subsequently approved this construction

7 W. Va. Rev. Code (1931) c. 36, art. 1, § 18 provides: "... where the creator of the trust has expressly so provided in the instrument or conveyance creating the trust, real or personal property may be held in trust upon condition that the income therefrom shall be applied by the trustee to the support and maintenance of a beneficiary or beneficiaries of the trust in being at the time of the creation of the trust, other than the creator of the trust, for the life of such beneficiary or beneficiaries, without being subject to the liabilities of, or alienation by, such beneficiary or beneficiaries." Although, as will be seen by reference to the Revisers' Note, this purported to do no more than codify existing decisions on the subject, it clearly permits the creation of a spendthrift trust for the benefit of any person, which point may have been open under the decisions themselves.
9 100 Va. 159, 40 S. E. 655 (1902), 57 L. R. A. 384 (1903).
of the statute by adding thereto as an exception the present provision authorizing the creation of spendthrift trusts.\textsuperscript{12}

It was stated in \textit{Guernsey v. Lasear} that the doctrine of spendthrift trusts would be inapplicable to an equitable estate in fee. This was expressly so held in a later case.\textsuperscript{13} It is also clear that any attempt directly to restrain the alienation of a legal estate is ineffectual.\textsuperscript{14} However, the attempted restraint on alienation sometimes takes the form of a forfeiture upon alienation. While such a forfeiture is valid if attached to a legal life estate, if attached to a fee simple or to an absolute interest in personality, it is void.\textsuperscript{15}

Probably no rule concerning spendthrift trusts is better established than the rule that a settlor may not create such a trust for himself, and that if he attempts to do so, his equitable interest is alienable and may be reached by his creditors.\textsuperscript{16} The West Virginia court in \textit{Hoffman v. Beltshoover}\textsuperscript{17} by overlooking the rule that a forfeiture upon alienation of a fee simple is void, upheld a spendthrift trust which in fact had been created by the settlor for his own benefit. The facts of \textit{Hoffman v. Beltshoover} are unique. \textit{T} devised land to \textit{A} in fee, with a provision that if \textit{A} should sell the land, "there shall remain in the hands of the purchaser and as a lien upon said land the sum of Twenty-Five Hundred Dollars for the sole use and support and for no other purpose, of the said ... [\textit{A}] during the term of his natural life," and my Executor or his successor, is hereby appointed and constituted a Trustee for the collection of the interest accruing on the above twenty-five hundred dollars in the hands of the purchaser of the said land, and I do direct that no part of the principal of the twenty-five hundred dollars shall be used for the support of the said ... [\textit{A}] but the interest only during his natural life."\textsuperscript{18} \textit{A} sold the land to \textit{B}, who by a deed of trust created a lien on the land to secure the payment to \textit{E} in trust for \textit{A} of the interest on the $2,500 during \textit{A}'s life and

\begin{itemize}
\item \textsuperscript{12} W. VA. REV. CODE (1931) c. 36, art. 1, § 18.
\item \textsuperscript{13} McCreery v. Johnston, 90 W. Va. 80, 110 S. E. 464 (1922). See Comment on this case, (1922) 31 YALE L. J. 759.
\item \textsuperscript{14} McClure v. Cook, 39 W. Va. 579, 20 S. E. 612 (1894) (life estate); Kerns v. Carr, 82 W. Va. 73, 95 S. E. 606 (1918) (same); Bluefield Bank v. Alexander, 53 W. Va. 573, 98 S. E. 804 (1919) (same); Deepwater Railway Company v. Homaker, 66 W. Va. 136, 66 S. E. 104 (1900) (fee simple); Cobb v. Moore, 80 W. Va. 63, 110 S. E. 468 (1921) (same).
\item \textsuperscript{15} Gray, \textit{RESTRAINTS ON ALIENATION} (2d ed. 1895) Summary § 279.
\item \textsuperscript{16} Griswold, \textit{SPENDTHRIFT TRUSTS} c. VII; \textit{RESTATEMENT, TRUSTS} § 156.
\item \textsuperscript{17} 71 W. Va. 72, 76 S. E. 966 (1912).
\item \textsuperscript{18} Id. at 73.
\end{itemize}
the payment at A’s death of the principal as provided in T’s will. A then assigned his interest under the trust to C. B filed a bill of interpleader to determine whether he should pay the interest to A or to C. It was held that A was the beneficiary of a valid spendthrift trust and that payment should be made to him.

To begin with, it is not at all clear that B had any right to relief by a bill of interpleader. B’s sole obligation was to pay to E in trust for A. So far as B was concerned it was immaterial whether A’s assignment was valid. This point, however, was not raised and the court did not mention it in the opinion. Of more importance is a point which was raised, namely, that the clause of the will which purported to create the trust was void because repugnant to the fee, and hence that A, being owner in fee of the land and not being subject to any valid restriction by reason of the provision in the will, had in effect created the trust for his own benefit. The court disposed of this argument in a summary fashion, apparently without appreciating the real issue involved:

"The argument that the trust was created by the beneficiary himself . . . is not tenable. The testator created the trust. We can not see it in any different light than if he had directly created such trust in the first instance. . . ."

This, of course, assumes that the restriction in the will was valid, whereas, it would appear to be too clear for argument that the clause in question provided for a partial forfeiture of A’s interest in the land or of his interest in the proceeds to the extent of $2,500, A being left with only a right to the income from the $2,500 for life. Applying the rule that a forfeiture upon alienation, if attached to a fee simple, or to an absolute interest in personality, is void, which is only another way of stating the argument of counsel that the clause was void because repugnant to the fee, it necessarily follows that A was the owner of the land free of all restrictions. Hence, when he sold to B he furnished the consideration for the trust, which in legal effect is the same as if he had created the trust himself. In view of these considerations, it “seems unlikely

19 Although all of this does not clearly appear in the report of the case, it may be found in the Record, p. 18, SUPREME COURT RECORDS AND BRIEFS, Vol. 71-E.
20 Appellant’s Brief, pp. 5-8 and pp. 17-19, SUPREME COURT RECORDS AND BRIEFS, Vol. 71-E.
21 Hoffman v. Beltzhooever, 71 W. Va. 72, 75, 76 S. E. 968 (1912).
that this case would be extended beyond its facts and it is even doubtful that the court would follow it.

Even if the case should be followed it would only be authority that such a restriction on a fee is valid and would not stand for the proposition that one may create a spendthrift trust for his own benefit. Although such would seem to be the actual holding, the statute now in force expressly provides that the creator of a spendthrift trust may not be a beneficiary.\(^{23}\) Hoffman v. Beltzhoffer is, however, authority for the generally accepted rule that no particular form of words is necessary for the creation of a spendthrift trust, it being sufficient that the terms of the trust as a whole manifest the settlor’s intention to create such a trust.\(^{24}\) Query whether this rule has in any way been modified by our statute which provides that the interest of the beneficiary will not be subject to claims of creditors and may not be aliened “where the creator of the trust has expressly so provided in the instrument or conveyance creating the trust.”\(^{25}\)

It has already been mentioned that the Virginia court held that the statute subjecting equitable interests to liability for debts prohibited the creation of spendthrift trusts in that state. The Virginia legislature subsequently authorized their creation in cases where the principal of the trust does not exceed $100,000.\(^{26}\) When our Code was revised in 1931 it was suggested that a similar limitation be imposed in this state, but the legislature refused to follow the suggestion.\(^{27}\) This is to be regretted. While admittedly spendthrift trusts are socially desirable when they are used to provide a moderate income for persons who need their protection, they become at best a mixed evil when used for any other purpose.\(^{28}\) The question to what extent spendthrift trusts should be upheld is purely one of policy, and it has been suggested that the proper policy, and one which for the most part reconciles the arguments for and against such trusts, is the adoption of legislation which either directly limits the income which may be kept out of the

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\(^{22}\) This is Griswold’s conclusion after detailed consideration of the case.

Griswold, Spendthrift Trusts 224 and 425-427.


\(^{26}\) Va. Code (1919) § 5157.

\(^{27}\) Id. Revisers’ Note and Committee’s Note.

\(^{28}\) For arguments against the unrestrained use of spendthrift trusts, see Griswold, Spendthrift Trusts § 555.
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reach of creditors as in New York, or, as in Virginia, indirectly does so by limiting the principal which may be tied up in a spendthrift trust. Since, as has already been pointed out, it is no longer possible for the court itself to guard against the abuses which are inherent in the unrestrained use of spendthrift trusts by imposing some such reasonable limitation, it is to be hoped that the legislature may see fit to reconsider its refusal to limit their use.

C. L. C.

20 In New York creditors may reach 10 per cent of the income of any trust which exceeds $12 per week. CLEVENGER, PRACTICE MANUAL OF N. Y. (15th ed. 1937) Civil Practice Act § 684. They may also reach all the surplus income beyond a sum necessary for the education and support of the beneficiary. 49 N. Y. CONSOL. LAWS (McKinney, 1937) §§ 98, 103; 40 Id. § 15.

80 GRISWOLD, SPENDTHrift TRUSTS § 556.