

**Trusts & Estates
NEWS****TRUST PLANNING FOR THE FOLLIES OF YOUR CHILDREN;
PARENTING IN PERPETUITY**By *Natale A. Messina*

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The Perpetual Parent

You did your best to protect your children from the bumps and bruises of infancy. You survived the drama of adolescence, the terror of the teenage years and the economic peril of tuition. You thought your parenting responsibilities had ended. However, your estate planning attorney calls to chat. That is never good. It appears the recent Massachusetts ruling, *Pfannenstiehl v. Pfannenstiehl* (88 Mass. App. Ct. 121 (2015)), has set off alarms in the estate planning community, and your parenting respite has ended. You are told you need to revisit your estate plan and the trusts you created for your children in order to immunize them from *Pfannenstiehl*. You are thinking measles, chicken pox and now *Pfannenstiehl*. What is next?

Pfannenstiehl in Brief

In *Pfannenstiehl*, the Massachusetts Appeals Court affirmed a lower court's decision holding that a husband's interest in an irrevocable "spendthrift trust" (i.e. one presumed to be protected from creditors and divorcing spouses) that contained an ascertainable standards clause limiting distributions to a beneficiary for health, support and maintenance can be included as a marital asset for purposes of property division in a divorce.

The Facts

Curt and Diane Pfannenstiehl were married in 2000 and have two special needs children. Curt worked for his family's business and received compensation that well exceeded his marketable talents. Diane had been an officer in the United States Army Reserves but gave up her position just shy of 20 years of service and a vested pension at the request of Curt and his family, in order to care for their daughter. Curt also received distributions from a family trust created by his parents. The trust distributed thousands of dollars to Curt, his brother, his sister and their respective children between 2008 and 2010. Curt's brother, who also headed the family business, along with the family's long-time attorney, were the trustees. The distributions to Curt ended immediately before he filed for divorce, but continued for the other trust beneficiaries. The trust contained a standard spendthrift clause which provided that neither the principal nor the income of the trust be subject to transfer by the beneficiary or seizure under any legal or equitable process. The trust also contained ascertainable standard language which, in relevant summary, stated that the trustee shall distribute such amounts of income and principal as the trustee in its sole discretion may deem advisable, in equal or unequal shares, for the comfortable support, health and maintenance of each and all of the beneficiaries. The lower court decided that Curt had an enforceable right to demand distributions and therefore, his interest, notwithstanding the transfer restrictions of the spendthrift provisions, could be considered part of the marital estate and available to Diane.

Bad Facts Make Bad Law

It is often said that bad facts make for bad law. In this case, Curt was not a sympathetic litigant. He was supported by his wealthy family. He and his family caused Diane to give up her career and future security. Curt's family came to rely financially on distributions from the trust. Curt filed for divorce and his brother and the family attorney stopped making trust distributions. The lower court judge grew to dislike Curt and his counsel. Accordingly, the lower court went out of its way to decide for Diane, and the Appellate Court confirmed. Unfortunately, in the process, both courts ignored established trust law.

The Epilogue

The Supreme Judicial Court of Massachusetts overturned the lower court and Appellate Court decisions (*Pfannenstiehl v. Pfannenstiehl*, 475 Mass. 105 (2016)), and found that Curt's interest in the trust was speculative because the terms of the trust permitted unequal distributions among an evolving group of beneficiaries and that the trustees had discretion to make or not make the distributions. Accordingly, Curt's interest could not even be valued, let alone included as a marital asset.

So Why Tell the Story

There are a number of reasons why this story should be of interest:

1. This case illustrates the potential for courts to be swayed by specific facts, a willingness to consider perceived social injustice and to extend its reach over what were historically presumed to be protected trust assets.
2. Each state's law, and the potential for its subjective interpretation, can impact a trust beneficiary who comes to reside in that state.
3. The language of trusts is crucial, and a determination of whether or not a beneficiary has an interest in a trust sufficient to include it as a marital asset can hinge on something as apparently insignificant as the difference between "shall" and "may."
4. The choice of trustees should be given thorough consideration, as should the degree of their independence and the extent of their discretion.
5. Always plan for the worst and hope for the best.

Conclusion

If you are a movie fan, you will recognize the words of a father about a family (of sorts), "just when I thought I was out... they pull me back in." If you think the follies of your grown children no longer affect your life, you are wrong. Consider the story of *Pfannenstiehl* and consult with your Murtha Cullina attorney to assist you with drafting or revising of your trusts.

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