Special Needs Trust Case Law Update

ROBERT W. FECHTMAN
FECHTMAN LAW OFFICE
8555 RIVER ROAD, SUITE 420
INDIANAPOLIS, IN 46240
(317) 663-7200

In re SNT for Moss, (Mich. Ct. App., July 14, 2022), p. 1

At age 16, Talonda suffered a TBI in auto accident. Family established SNT with arbitration award when Talonda was age 24. Over next 10 years, Talonda completed high school and college, obtained gainful employment, married, and managed her own money.

At age 34, Talonda filed a petition to terminate the SNT (and reimburse the state 44K). Talonda's mother/trustee opposed the petition, arguing termination violated the purpose of the trust. Probate court granted petition based on change in circumstances. Talonda's mother appealed.

State appeals court affirmed trial court decision. Termination honored purpose of trust by enabling Talonda's self-sufficiency.

Gallardo By and Through Vassallo v. Marstiller, (S.Ct., June 6, 2022), p. 2

Gallardo suffered catastrophic injuries when hit by truck stepping off school bus. Florida Medicaid paid 862K. Personal injury settlement of 800K, with 35K designated for past medicals. No allocation for future medicals.

Florida 3rd-party Liability Act entitled state to 300K for past and future medicals. Gallardo sued, claiming Florida statute violated anti-lien provision of federal Medicaid Act. U.S. District Court granted summary judgment. U.S Circuit Court reversed and remanded.

U.S. Supreme Court cited *Ahlborn* and *Wos.* Distinction should be between medical and non-medical expenses, not past and future medical expenses. Dissent said decision undercuts Congress on SNTs.

Daniel C. v. White Memorial. Med. Center, (Cal.Ct.App., Sept. 28, 2022)

Medical malpractice settlement. $1.25 million settlement. $13 million life care plan. Court approved SNT, ordered trial attorney to hold 358K pending determination of Medicaid subrogation lien. Medi-Cal sought recovery of 229K.

Daniel argued federal Medicaid Act allowed no subrogation, or, in the alternative, limited subrogation to 9% or 32K, corresponding to his settlement as apposed to life care plan. Trial court determined lien amount at 229K. Daniel appealed.

Court of appeals determined that state law allows subrogation only as to past medical expenses. Trial court therefore erred in not determining amount of settlement allocated to past medicals. Reversed and remanded.

JPMorgan Chase Bank v. Black (N.D. Ill., September 29, 2021), p. 4

Bank is holding millions of dollars that are the subject of extensive litigation in Colorado, Illinois, and New York. Bank sought order regarding interpleader assets, permanent injunction, and discharge. Bernard and son, Samuel, sought injunction and filed motion to compel. Dain (cousin and co-trustee) and Goodwin (Joanne's Colorado conservator) filed motion to dismiss. Dal (Bernard's wife's cousin) filed motion to proceed to collect judgment.

All requests and motions were granted and/or denied, partly in part. The millions of dollars will continue to be held by the bank until all of this extensive litigation is finally concluded. The fun continues!

Black v. Black (Unreported, Colo. Ct. App., April 28, 2022), p. 5

ORDERS AFFIRMED.

In re Omega Trust, (N.H., May 12, 2022), p. 6

Grantor established Trust in 2005 and reserved right to revoke or amend the trust by filing notice with the Trustee, with amendments being effective when "executed" by the Grantor. Amended trust twice in 2015.

In July of 2016, Grantor informed Trust Protector that he was in poor health and asked for her assistance with the third amendment. Grantor also informed Trustee that he was contacting his attorney to make changes. Several e-mail exchanges with attorney in August of 2016. Attorney promised he would prepare the proposed revisions. Two days later, Grantor died without having signed the third amendment.

In re Omega Trust, (N.H., May 12, 2022), p. 6, cont.

Petition filed to declare that e-mails constituted valid amendment. Special trustee filed motion to dismiss. Court dismissed petition. On appeal, state supreme court said UTC allows amendment by means other than those expressed in trust. Reversed and remanded.

Matter of James H. SNT, (N.Y., January 11, 2022), p. 8

Background: Mother died in 2014. She left her estate to son John (a lawyer) and to John as trustee of two SNTs for son James. Five years later, nothing had been done to distribute the estate. John was also the trustee of third, self-settled SNT, and he did not handle this job very well.

James' guardian successfully moved to remove John as trustee of all three SNTs. Guardian was granted attorney fees of 17K, guardian fees of 36K, and guardian's attorney's fees of 30K, all from SNT. John appealed. State appellate division affirmed the award of fees from SNT.

Update: New York's highest court dismissed as untimely John's motion for leave to appeal.

In re Marriage of Biewer and Biewer., (Unpub., IL App., Feb. 1, 2022), p. 10

Heidi and Jace divorced in 2012. Jace to pay $75 per week child support. Heidi petitioned for increase in 2016 based on Jace's income from trust. Child support reset at $1,267.

In 2019, Jace petitioned for decrease alleging his trust income had gone way down. In 2020, Heidi filed petition because Jace had stopped paying child support. Hearing on both petitions. Evidence showed significant income from trust and Jace's attempts to get bank trustee to pay child support. Court denied Jace's petition and found him in contempt.

Jace appealed. At hearing, bank trust officer testified Jace had tried to get trustee to pay child support, but bank made discretionary decision not to pay. Turns out Jace's trust is an SNT!

Stern by Stern v. Sullum (N.Y. App. Div., March 31, 2022), p. 12

Tara Stern was born with neurological damage. Injury lawsuit settled with infant compromise order. Tara's portion included three annuities. Annuities funded SNT with order directing guaranteed payments after Tara's death to her estate.

Tara became a Medicaid beneficiary when she turned 22. Several years later, upon motion by DSS, court amended original infant compromise order directing guaranteed annuity payments after Tara's death to the SNT rather than Tara's estate. Tara appealed.

Appellate division found trial court had not relied on retroactive application of the DRA and had properly rejected assertions of laches, res judicata, and collateral estoppel.

People v. Lapoint, (N.Y. App Div., January 27, 2022), p. 13

Mother indicted for misappropriating funds from daughter's SNT. Pleaded guilty to reduced charge of grand larceny in the third degree and agreed to waive her right to appeal.

County court sentenced mother pursuant to terms of plea agreement to prison term of 20 to 60 months. Court also issued permanent order of protection prohibiting harassment by mother against daughter. Mother appealed, arguing sentence was excessive and protection order unfounded.

Appellate division found that appeal was precluded by plea agreement. Also found challenge of protection order without merit as trial court had stated intention to prevent mother from interfering in daughter's everyday life.

Matter of Discipline of an Attorney., (Mass., May 9, 2022), p. 14

Bar counsel petition for discipline against attorney, alleging misconduct in roles as PR of estate for elderly client, guardian for her disabled grandson, and trustee of SNT for grandson. Hearing in front of committee. Allegations of conflict of interest, incompetence, and failure to deposit grandson's income and benefits into SNT. Committee recommended private admonition.

Upon appeal by attorney and bar counsel, full board recommended three-month suspension. Single justice of state's highest court recommended private admonition. Bar counsel appealed.

Full court found lack of diligence but no malfeasance, and held private admonition was appropriate sanction.