

1968

# Trusts: Construction of Remainder Interest of Testamentary Trust

Minn. L. Rev. Editorial Board

Follow this and additional works at: <https://scholarship.law.umn.edu/mlr>



Part of the [Law Commons](#)

---

## Recommended Citation

Editorial Board, Minn. L. Rev., "Trusts: Construction of Remainder Interest of Testamentary Trust" (1968). *Minnesota Law Review*. 2898.

<https://scholarship.law.umn.edu/mlr/2898>

This Article is brought to you for free and open access by the University of Minnesota Law School. It has been accepted for inclusion in Minnesota Law Review collection by an authorized administrator of the Scholarship Repository. For more information, please contact [lenzx009@umn.edu](mailto:lenzx009@umn.edu).

by an *in personam* action which will not only be free of arbitrary value limits but will be available in all types of actions. Also, jurisdiction will now be available in many tort actions against nonresidents who could not be reached under the Corporate Statute. The contacts required when the tort occurs outside the state are no more restrictive than what has been judicially required in the past. The statute as a whole, therefore, represents a legislative attempt to expand the jurisdiction of the state courts over nonresidents to the utmost extent which due process will allow.<sup>56</sup>

### Trusts: Construction of Remainder Interest of Testamentary Trust

Testator's will created a trust which provided that each of two beneficiaries was to receive up to \$2,000 per year out of principal and income. The trustee was given sole discretionary power to terminate the trust when its existence was no longer justifiable nor practical. No provision was made for the remainder interest in the corpus on the death of the beneficiaries. In a suit brought by the beneficiaries to compel termination of the trust, or, in the alternative, to obtain a declaration of the meaning of the trust instrument, the Minnesota Supreme Court held, *inter alia*, that the beneficiaries failed to sustain their burden of proof in urging termination of the trust, that the entire beneficial interest in the trust corpus passed to the beneficiaries subject only to a postponement of enjoyment imposed by the trust provisions, and that upon the death of both beneficiaries any remaining corpus should be equally divided between the estates of the beneficiaries. *In re Trust of Tufford*, 275 Minn. 66, 145 N.W.2d 59 (1966).

The rule in most American jurisdictions is that if all beneficiaries consent and are under no incapacity they can compel termination of a trust, provided the continued existence of the trust is not necessary to carry out a material purpose for which it was created.<sup>1</sup> If the provisions of the trust instrument are

---

56. *Majekus v. Walk*, Doc. No. 67-268 (D. Minn. 1967), held that the new statute cannot be retroactively applied.

1. *Smith v. National Sav. & Trust Co.*, 245 F. Supp. 532 (D.D.C. 1965); *Heifetz v. Bank of America Nat'l Trust & Sav. Ass'n*, 147 Cal. App. 2d 776, 305 P.2d 979 (1959); *Guttman v. Schiller*, 39 Ill. App. 2d

ambiguous, extrinsic evidence will be considered to clarify the ambiguity.<sup>2</sup>

The scope of this rule in Minnesota is not clear. The proposition that all beneficiaries can terminate a trust provided its continuation is not necessary to carry out a material purpose of the settlor is supported by statute<sup>3</sup> and was recognized by the Minnesota Supreme Court in *Simmons v. Northwestern Trust Company*.<sup>4</sup> The court in *Simmons* considerably weakened the rule by expressing doubt as to the propriety of considering extrinsic evidence to ascertain the purpose of the settlor in creating the trust where that purpose does not expressly or by fair implication appear on the face of the trust instrument.<sup>5</sup> However, in *In re Declaration of Trust by Bush*,<sup>6</sup> the court, in determining whether the settlor had intended to create a trust, freely admitted parol evidence for the purpose of interpreting ambiguous provisions of the alleged trust instrument. The court ignored the earlier doubts it had expressed in *Simmons* regarding the admissibility of extrinsic evidence.

---

58, 187 N.E.2d 315 (1963); *Gibson v. Gibson*, 122 Ind. App. 559, 106 N.E.2d 102 (1952); *Allen v. First Nat'l Bank & Trust Co.*, 319 Mass. 693, 67 N.E.2d 472 (1946). See RESTATEMENT (SECOND) TRUSTS § 337 (1959); G. BOGERT, TRUSTS AND TRUSTEES § 1002 (2d ed. 1962); A. SCOTT, TRUSTS § 337 (2d ed. 1956); Note, *Termination of Trusts*, 46 YALE L.J. 1005, 1008 (1937). But see *Saunders v. Vautier*, 4 Beav. 115, 49 Eng. Rep. 282 (1841) (all beneficiaries can terminate the trust without regard to its purpose in England); 38 HALSBURY, LAWS OF ENGLAND 883 (3d ed. 1962).

2. *Wooster Rubber Co. v. Commissioner*, 189 F.2d 878 (6th Cir. 1951); *Ingalls v. Ingalls*, 256 Ala. 321, 54 So. 2d 296 (1951); *Holter v. First Nat'l Bank & Trust Co.*, 135 Mont. 27, 336 P.2d 701 (1959); *In re Hooker's Trust*, 233 N.Y.S.2d 947 (Sup. Ct. 1962). See RESTATEMENT (SECOND) TRUSTS § 337, comment e (1959).

For a general discussion of the problem of interpreting wills and trusts, see Halbach, *Stare Decisis and Rules of Construction in Wills and Trusts*, 52 CALIF. L. REV. 921 (1964); Power, *Wills: A Primer of Interpretation and Construction*, 51 IOWA L. REV. 75 (1965).

3. MINN. STAT. § 501.40 (1965) provides: "When the purposes for which an express trust is created cease, the estate of the trustee shall also cease."

4. 136 Minn. 357, 162 N.W. 450 (1917).

5. However, the court in *Simmons* concluded that since the plaintiff had obtained the entire beneficial interest in the trust property following the death of the settlor, she could compel termination of the trust. The court in the instant case read *Simmons* as holding that where there is a merger of successive interests following the death of the settlor there is a presumption that the settlor's sole purpose in imposing the trust limitations was to safeguard the remainder interest.

6. 249 Minn. 36, 81 N.W.2d 615 (1957). In *First Nat'l Bank v. Olufson*, 181 Minn. 289, 232 N.W. 337 (1930), extrinsic evidence was utilized by the court for the purpose of showing an intent by the testator to create a spendthrift trust.

In the instant case the beneficiaries presented affidavits in support of their petition purporting to show that the testator's sole purpose in imposing the trust limitations was to insulate the trust funds from the beneficiaries' relatives.<sup>7</sup> The corporate trustee opposed the proposed termination, urging, without offering any evidence, that the testator's purpose was to protect the beneficiaries from their financial indiscretions.<sup>8</sup> The court, apparently resolving earlier doubts expressed in *Simmons*, considered the beneficiaries' affidavits but found that they had failed to sustain their burden of proof.<sup>9</sup> It reasoned that since the trust gave the beneficiaries the entire interest in the trust property subject only to restrictions as to the manner of enjoyment of the property, the settlor's intent was to place the trust corpus beyond the control of the beneficiaries.<sup>10</sup> The beneficiaries' affidavits were held insufficient to overcome this presumption.<sup>11</sup>

Even where the trustee is given appropriate power by the settlor, the court will overrule the trustee's decision either to

---

7. 275 Minn. at 68, 145 N.W.2d at 62.

8. This construction seems doubtful since the beneficiaries were both responsible middle-aged adults experienced in handling money. There was no apparent need to protect either one from financial recklessness. Record at 17-20.

9. As authority for placing the burden of proof on the beneficiaries seeking to terminate the trust, the court cited *Sherman v. Hibernia Sav. & Loan Soc'y*, 129 Cal. App. 795, 20 P.2d 138 (1933); *Cazallis v. Ingraham*, 119 Me. 240, 110 A. 359 (1920); *Blake v. Johnson*, 180 Wis. 485, 193 N.W. 388 (1923). The burden of proof had been placed on the beneficiaries in *Blacque v. Kalman*, 225 Minn. 258, 30 N.W.2d 599 (1948).

10. The court concluded that this was a proper purpose, citing *Estate of Easterday*, 45 Cal. App. 2d 598, 114 P.2d 669 (1941). There the court refused to terminate the trust as to a life beneficiary despite the life beneficiary's acquisition of the remainder and the absence of a spendthrift provision. However, unlike *Tufford* where the beneficiaries appear to be capable of handling money, the beneficiary in *Easterday* had a history of financial irresponsibility. Furthermore, there was ample parol evidence to indicate that the primary purpose of the settlor in *Easterday* in creating the trust was to keep control of the trust property out of the hands of the irresponsible beneficiary during his life. There is nothing in *Tufford* to indicate a similar intent by the testator.

11. The court concluded that the testator probably knew well before his death that there was no danger of the beneficiaries' relatives receiving any control over the funds in question. The fact that the testator subsequently failed to make a codicil to his will was seen as an indication that the purpose of the trust was not solely to keep the control of the trust property away from the wife and the stepfather. 275 Minn. at 72-73, 145 N.W.2d at 64-65.

terminate<sup>12</sup> or not to terminate<sup>13</sup> the trust if the decision amounts to an abuse of discretion. Nevertheless, the trustee is generally given ample latitude in exercising his discretion. Except in clear cases of abuse a court will not substitute its judgment for that of the trustee.<sup>14</sup> While the court's holding in the instant case indicates that the trustee's refusal to exercise its discretion to terminate the trust was not so unreasonable as to constitute an abuse of discretion, it apparently recognized the closeness of the issue when it strongly suggested that the trustee should exercise its discretion to terminate.<sup>15</sup>

The court's refusal to order termination emphasizes a greater reluctance to terminate a trust where nonsuccessive beneficiaries are given the entire beneficial interest in the trust corpus as compared to the situation where, as in *Simmons*, successive interests are created which subsequently merge. Where there are successive interests it seems reasonable to conclude that the settlor's purpose in imposing the restrictions on the initial beneficiary was to conserve the remainder interest in the trust corpus. If the life interest merges with the remainder interest the need for continuing the trust restrictions ceases. On the other hand, in the case of nonsuccessive beneficiaries, there is no remainder interest to be protected. It therefore seems reasonable to presume that the testator's intent was to place the trust property beyond the control of the beneficiaries. Consequently, the distinction drawn by the court between termination by successive and nonsuccessive beneficiaries is a valid one, though the result reached on the facts of the instant case may be a harsh one.

The Minnesota court then found that notwithstanding the

---

12. *Cloket v. St. Louis Union Trust Co.*, 52 F.2d 390 (8th Cir. 1931); *Conway v. Emeny*, 139 Conn. 612, 96 A.2d 221 (1953); *Woodward v. Jolbert*, 94 N.H. 324, 52 A.2d 641 (1947); *In re Abert's Estate*, 118 N.Y.S. 2d 864 (Sur. Ct. 1950).

13. *Beede v. Old Colony Trust Co.*, 321 Mass. 115, 71 N.E.2d 882 (1947); *Yeates v. Box*, 198 Miss. 602, 22 So. 2d 411 (1945); *In re Estate of Roth*, 154 Misc. 5, 276 N.Y.S. 435 (1934), *aff'd*, 244 App. Div. 791, 280 N.Y.S. 967 (1935). See *In re Manahan's Estate*, 255 Iowa 1060, 125 N.W.2d 135 (1963); RESTATEMENT (SECOND) TRUSTS § 334, comment d (1959).

14. *Pinckard v. Ledyard*, 251 Ala. 648, 38 So. 2d 580 (1949); *Damon v. Damon*, 312 Mass. 268, 44 N.E.2d 657 (1942); *Scully v. Scully*, 162 Neb. 368, 76 N.W.2d 239 (1956). This is also the rule in Minnesota. *In re Trusts under the Will of McCann*, 212 Minn. 233, 3 N.W.2d 226 (1942); *In re Trust of Watland*, 211 Minn. 84, 300 N.W. 195 (1941); *In re Ordean's Will*, 195 Minn. 120, 261 N.W. 706 (1935). See *Halbach, Problems of Discretion in Discretionary Trusts*, 61 COLUM. L. REV. 1425 (1961).

15. 275 Minn. at 78, 145 N.W.2d at 68.

absence of any express provision regarding the remainder interest in the trust fund, the beneficiaries were entitled to the entire beneficial interest in the trust fund<sup>16</sup> subject only to a postponement of enjoyment because of the trust provision providing them with an annual payment.<sup>17</sup> In support of its holding that the testator intended the total beneficial interest to pass, the court noted that there were no residuary legatees of the estate other than the trustee.<sup>18</sup> If the remainder interest did not go through the trustee to the beneficiaries it would pass by intestacy. Such a result would violate a presumption<sup>19</sup> against an intent by the testator that any portion of his property pass by intestacy.<sup>20</sup>

After deciding that the beneficiaries took the entire beneficial interest in the trust property, the court then sought to determine the proper disposition of the trust property on the death of one beneficiary.<sup>21</sup> The beneficiaries proposed the creation of separate accounts with the trust terminating as to each beneficiary on his death, and the remainder in the account being

---

16. The problem is ascertaining and carrying out the donor's intent. See G. BOGERT, TRUSTS AND TRUSTEES § 182, at 230 (2d ed. 1965). The Minnesota court followed the majority rule that where there is a gift of income without an express or implied limitation as to time or amount an intent to transfer the entire beneficial interest can be inferred. *Plymouth Congregational Church v. Young's Trustee*, 299 S.W.2d 807 (Ky. 1957); *Goodwin v. New England Trust Co.*, 321 Mass. 502, 73 N.E.2d 890 (1947); *In re Roeser's Will*, 155 N.Y.S.2d 108 (Sur. Ct. 1956); *Ross v. Stiff*, 47 Tenn. App. 355, 338 S.W.2d 244 (1960).

17. A literal application of MINN. STAT. § 501.19 (1965) which provides that "every estate and interest not embraced" in an express trust and not "otherwise disposed of" reverts to the settlor or his estate, would arguably have led to a different result. The court apparently concluded that the construction of the will required the remainder to pass under the trust instrument so that the statute was inapplicable.

18. 275 Minn. at 74, 145 N.W.2d at 65.

19. See *In re Johnson's Estate*, 233 Cal. App. 2d 785, 43 Cal. Rptr. 913 (1965); *In re Tweedie's Will*, 234 Minn. 444, 48 N.W.2d 657 (1951); *In re Estate of Briggs*, 51 Misc. 2d 580, 273 N.Y.S.2d 590 (1966).

20. On the facts of this case, the court's holding that the entire beneficial interest in the trust corpus passes to the beneficiaries is undoubtedly a correct one. The two beneficiaries are the testator's only heirs at law (Brief for Respondent at 6) and would take the remainder interest even if it were to pass by intestacy.

21. The court also faced the problem of properly allocating the inheritance tax burden, since the trust instrument made no provision for it. The court held that the inheritance taxes attributable to each beneficiary should be deducted from the first annual payment to that beneficiary. It declined to order payment of the inheritance taxes from the corpus because that would result in the survivor of the two beneficiaries paying the entire tax. Nevertheless, the court declared that the beneficiaries should be permitted to waive this inequity and if each consents to payment of the other's tax from the corpus the court will order the entire tax deducted from the corpus.

paid over to the beneficiary's estate. The beneficiaries' argument that the testator's primary intent was to have them each share equally in the trust fund was rejected by the court on the ground that there is no authority for compelling a trustee to create separate accounts where several beneficiaries are given an equal interest in the entire trust property.<sup>22</sup> Instead, the court held that on the death of one beneficiary the remainder of the corpus should constitute a single fund for the surviving beneficiary. Upon the death of the surviving beneficiary the remainder of the corpus, if any, would be equally divided between the estates of the two beneficiaries.<sup>23</sup> This conclusion was based upon the premise that the primary intent of the testator was to provide the maximum annual stipend to each living beneficiary for as long as possible.<sup>24</sup> Any intent to benefit either beneficiary's estate was thought to be secondary. Therefore, the court reasoned that its construction should be preferred to one which would more quickly terminate the payments in order to benefit the estate of a deceased beneficiary.<sup>25</sup>

Neither the reasoning of the beneficiaries nor that of the court is entirely satisfactory. Had the testator been solely concerned with dividing the trust fund equally, as was contended by the beneficiaries, he would probably have created two specific funds. The result reached by the court is also unsatisfactory, even if the correctness of the court's assumption regarding the

---

22. However, it is frequently stated that courts will try to effectuate the intention of the settlor as expressed in the trust instrument. *E.g.*, *In re Butler's Trusts*, 223 Minn. 196, 26 N.W.2d 204 (1947). If creating separate accounts will effectuate the settlor's intent as inferred from the trust instrument, there seems to be no compelling reason why separate accounts should not be established.

23. The court analogized its holding to the rule adopted by some jurisdictions that cross remainders will be implied where, for example, property is placed in trust with income payable to A and B during their joint lives with the remainder passing to C on the death of both A and B. Thus, if A dies, the presumption will be that the settlor intended A's income interest to pass to B during B's life. See *Hartford-Connecticut Trust Co. v. Gowdy*, 141 Conn. 546, 107 A.2d 409 (1954); *Kiesling v. White*, 411 Ill. 493, 104 N.E.2d 291 (1952); *Wachovia Bank & Trust Co. v. Miller*, 223 N.C. 1, 25 S.E.2d 177 (1943). These cases are based upon a presumed intent by the testator to benefit the life beneficiary at the expense of the remainderman.

24. The court's premise is open to question since the trust instrument expressly allows the trustee to make annual payments to the beneficiaries in any amount up to \$2,000. Furthermore, the trustee is given virtually unlimited discretion to terminate the trust. These provisions are inconsistent with an intent by the testator to assure the continuation of the maximum annual payments for as long as possible.

25. 275 Minn. at 75, 145 N.W.2d at 65.

testator's intent is accepted. Since the testator made no express provision for the remainder interest in the trust fund, he probably assumed that the fund would be exhausted by the annual payments to the beneficiaries and that each beneficiary would receive half of the total trust fund through these annual payments. Therefore, it seems reasonable to conclude that along with an intent to perpetuate the annual payments, the testator also entertained a second, conflicting intent to treat the beneficiaries equally.<sup>26</sup> Unless the two beneficiaries die simultaneously the court's construction will result in a greater portion of the trust fund going to one beneficiary and his heirs than to the other.

A preferable solution to the problem would be a modification of the beneficiaries' proposal for the creation of separate accounts. Upon the death of one beneficiary the remainder of his account should remain in trust while the stipends to the surviving beneficiary should continue to be deducted from the survivor's account. Upon the death of the surviving beneficiary, the remaining corpus in each beneficiary's account should be paid over to his estate. If during his lifetime, however, the surviving beneficiary should exhaust his share of the trust fund, his stipend would then be deducted from the deceased beneficiary's account. This construction best reconciles what are inferred to be the testator's conflicting intents. Regardless of what contingency occurs, the maximum stipends will continue to be paid to each living beneficiary for the longest possible period of time.

---

26. One commentator has stated that where there is doubt as to the extent of each beneficiary's share, a construction of the trust instrument will be favored which will permit the beneficiaries to share equally in the trust property, particularly where they are related to the settlor in the same degree. G. BOGERT, TRUSTS AND TRUSTEES § 182, at 232 (2d ed. 1965). See *Shaul v. United States*, 161 F.2d 891 (D.C. Cir. 1947); *Biggs v. Fidelity & Columbia Trust Co.*, 273 Ky. 54, 115 S.W.2d 298 (1938); *B.M.C. Durfee Trust Co. v. Borden*, 329 Mass. 461, 109 N.E.2d 129 (1952); *Fidelity Trust Co. v. Robert*, 36 N.J. 561, 178 A.2d 185 (1962).