

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re: BKY 00-42785

KAREN LYNN HELD,

Debtor.

DORRAINE A. LARISON, Trustee,

ADV. 00-4225

Plaintiff,

v.

KAREN LYNN HELD,

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER FOR JUDGMENT

Defendant.

At Minneapolis, Minnesota, June 7, 2001.

The above-entitled matter comes before the court on the parties' stipulation to have this adversary proceeding decided on the trial memoranda submitted by the parties. Having reviewed the pleadings and the file and based on the papers submitted by the parties, the court makes the following:

FINDINGS OF FACT¹

Debtor Karen Lynn Held ("Debtor") filed a Chapter 7 bankruptcy petition on June 12, 2000. In her schedules, Debtor listed an interest in the Thomas Held Irrevocable Life Insurance Trust ("Life Insurance Trust") and further asserted

¹The parties' Stipulation is incorporated by reference into this section.

that such interest was excluded from her bankruptcy estate under § 541(c)(2). In addition, pursuant to § 522(d)(5), Debtor also claimed an exemption in the amount of \$6,130 in the Life Insurance Trust.

Dorraine Larison ("Trustee") was subsequently appointed as Chapter 7 trustee in this bankruptcy case. She objected to Debtor's claimed exemption in the Life Insurance Trust. Debtor and the Trustee entered into a stipulation extending the hearing date on the Trustee's objection indefinitely pending the outcome of this adversary proceeding.²

On October 23, 2000, Debtor's counsel notified the Trustee that Debtor had an interest in the inheritance estate of her late father, Thomas A. Held ("Held"). On November 2, 2000, Debtor amended her schedules to show an interest derived from the Last Will and Testament of Thomas A. Held ("Will"), including the Family Trust and Marital Trust created in the Will. Specifically, Debtor asserted that her interests derived from the Will were excluded from the bankruptcy estate under § 541(c)(2).

²Debtor raises the issue of the exemption amount of these various interests in her trial memorandum. In her reply memorandum, the Trustee properly points out that the issue of the exemption amount of any interest found to be property of the estate is not before the court as part of this adversary proceeding. Accordingly, the court has addressed only the issue of whether the interests are property of the estate.

Pursuant to Rule 7001(1),³ the Trustee commenced this adversary proceeding seeking a determination that Debtor's interests in the Life Insurance Trust and the Will are property of the estate under § 541 and for turnover under § 542. The Trustee maintains that Debtor's interests in the Life Insurance Trust and the Will, specifically the Family Trust, even if they are contingent, are property of the bankruptcy estate under § 541. Debtor's interests, according to the Trustee, are not subject to any applicable nonbankruptcy law transfer restrictions. See 11 U.S.C. § 541(c)(2) (1994). Debtor, in turn, asserts that her interests are contingent and restricted from transfer by virtue of the spendthrift nature of the Life Insurance Trust and the spendthrift provision in the Will and, therefore, properly excludable from the bankruptcy estate under § 541(c)(2). The parties agreed to submit this adversary proceeding to the court on the papers, mainly, the parties' trial memoranda and reply briefs, Stipulation, and copies of the Life Insurance Trust and the Will, as there were no witnesses or other testimony to be presented.

³Rule 7001(1) provides in relevant part that "a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee" is an adversary proceeding. Fed. R. Bankr. P. 7001(1).

Held died testate on October 5, 1999. Held is survived by his wife, Joan Held ("wife"), who was born on November 8, 1938, and six children, one of whom is Debtor. All of the children who are beneficiaries under the Life Insurance Trust or the Will attained thirty years of age prior to the petition filing date.

A. The Life Insurance Trust

Held created the Life Insurance Trust on April 1, 1994, at which time a trustee was appointed. The Life Insurance Trust corpus consisted of life insurance and other insurance policies contributed by Held alone. The trustee was subsequently named beneficiary of those policies and given certain rights and powers to maintain those policies and to distribute their proceeds. As of August 22, 2000, the Life Insurance Trust assets were worth an estimated \$718,143.

Generally speaking, the Life Insurance Trust contains three types of provisions: (1) those which govern distributions to Held's wife, the primary beneficiary; (2) those which govern distributions to Held's children, including Debtor; and (3) those detailing administration of the trust and the trustee's duties and powers. During Held's lifetime, pursuant to Paragraph 3, the trustee has the power to

distribute income and principal from the trust to Held's wife for her maintenance and support. See Life Insurance Trust ¶ 3.2. That same provision also enables the trustee to make similar payments from net income to Held's children during Held's lifetime. See Life Insurance Trust ¶ 3.3. Given Held's death in October 1999, these provisions are no longer operable or relevant.

The provisions most relevant to the resolution of this adversary proceeding are those governing distributions after Held's death because they set forth the rights and interests Debtor possessed on the petition filing date. Upon Held's death, the trustee is to pay to Held's wife the net income from the trust at least annually during her lifetime. See Life Insurance Trust ¶ 5.1.1. In addition, the trustee, at its discretion, has the ability to make periodic payments out of trust principal to provide for Held's wife's support and maintenance under certain circumstances. See Life Insurance Trust ¶ 5.1.2.

Upon the death of Held's wife, the trust provides that the trustee shall make certain distributions to Held's children:

The net income from the trust shall be paid to one or more of my children in such amounts and proportions as the Trustee deems advisable. Any income not so paid shall be accumulated and added to principal.

Life Insurance Trust ¶ 5.2.1. This provision makes clear that the amount to be distributed to Held's children is committed to the trustee's discretion; however, it does not place any qualifications or limitations on the purpose or uses of the distributions. In addition, the trustee may make certain other distributions of principal to Held's children upon the death of Held's wife:

The Trustee may pay to or apply directly for the benefit of the [sic] any of Trustor's children such sums from the principal of the trust as the Trustee deems necessary or advisable to provide for the child's proper care, support, medical and surgical attention, education and welfare.

Life Insurance Trust ¶ 5.2.2. This provision is very limited in scope and is the only provision which specifies for what purposes the trustee may make such principal distributions to Held's children.

By contrast, Paragraph 5.2.3 broadly and unequivocally states that the trustee is to distribute the remaining trust assets to Held's children upon the death of Held's wife:

At such time as the youngest living child has attained the age of 25 years, the remaining trust assets will be distributed in equal shares among my children as follows: To my son, Kenneth James Held, one-half of his share of the trust assets shall be distributed to him. The remaining one-half shall be retained in trust by the Trustee until he is thirty (30) years of age, at which time the balance of his share shall be distributed to him. The Trustee shall pay the income to him in periodic installments, but at least annually. No principal shall be distributed during the term of the trust in this

paragraph. To the remainder of my children, each child's share shall be distributed.

Life Insurance Trust ¶ 5.2.3. Other than the timing restrictions on the distribution to Kenneth, this provision does not place any restrictions on how or for what purpose such distributions are to be made, nor does it suggest that the trustee could refuse to distribute the trust assets to Held's children for any reason, including protecting a child's share from his or her creditors. See Life Insurance Trust ¶ 5.2.3.1. If one of Held's children dies before he or she receives complete distribution, the trustee is to distribute the remaining share to that child's issue by right of representation or, if no issue, to heirs at law subject to certain conditions detailed in Paragraph 5.3. See Life Insurance Trust ¶ 5.2.3.2. Again, however, this provision contains no limitations on the purpose for which the distribution is made or used.

The remaining provisions of the Life Insurance Trust address administration of the trust and set forth the trustee's powers. Several provisions, for example, make clear that the Life Insurance Trust is irrevocable and that Held has no interest in or control over the trust assets, nor will any portion of the trust corpus revert to Held or be used to satisfy any of his obligations. See Life Insurance Trust ¶¶

6, 7. Paragraph 8 provides that any beneficiary of the trust, including Held's wife or children, has the right to withdraw contributions to the trust in very limited circumstances. See Life Insurance Trust ¶ 8. Several provisions address trustee compensation and appointment of a successor trustee by the adult income beneficiaries. See Life Insurance Trust ¶¶ 10, 11. Paragraph 12 grants the "independent trustee" discretionary power of termination:

The independent trustee may terminate any trust, whenever such termination is deemed advisable by such trustee, by distributing the assets to my spouse, if my spouse is then a beneficiary of the trust, or if my spouse is not a beneficiary, to the beneficiary to whom income may then be distributed.

Life Insurance Trust ¶ 12. While this provision suggests that the distribution amount a beneficiary may receive is contingent, it does not, contrary to Debtor's assertion, suggest that such distributions would in any way be shielded from the beneficiary's creditors. Paragraph 18 provides that the trust document "shall be governed by the laws of the State of Minnesota." Life Insurance Trust ¶ 18.

Paragraph 9 details the powers of the trustee. See Life Insurance Trust ¶ 9. The trustee can retain assets "for as long as [it deems] advisable, even if [it is] personally interested in the assets or their retention results in a lack of diversification." Life Insurance Trust ¶ 9.1. The trustee

can "invest and reinvest in any assets [it deems] advisable." Life Insurance Trust ¶ 9.3. In addition, the trustee may "hold securities or other assets in [its] own name[], with or without disclosure of fiduciary capacity, or in the name of a nominee, or in bearer form." Life Insurance Trust ¶ 9.4. All of these trustee powers provisions contain boilerplate language giving the trustee wide discretion in managing the trust assets. They are, however, wholly devoid of instructions about how, when, or for what purpose the trustee must distribute those assets.

Overall, the Life Insurance Trust manifests Held's intent to treat his wife and children differently at different times. During his lifetime, Held gives the trustee the power to make certain limited distributions for specific purposes to Held's children who were, at the time, younger and financially dependent. Upon his death, with respect to his wife, the trust admittedly contains spendthrift-like provisions which make clear that distributions of principal and income are to be made for her maintenance and support. However, the trust does not contain similar provisions restricting the purpose and use of the distributions to Held's children upon the death of his wife. Rather, the trust provisions explicitly instruct the trustee to distribute the remaining assets in equal

amounts without any other limitations to the children who, by this time, are older and no longer financially dependent. This remainder interest to which Debtor is entitled under the provisions of the Life Insurance Trust upon her mother's death is the interest the Trustee seeks to include as property of the estate.

B. The Will

Held executed the "Last Will and Testament of Thomas A. Held" ("Will") on January 6, 1986. Held died testate on October 5, 1999. The Will is currently being probated in the Minnesota State District Court in Stearns County.

Article III of the Will provides that, if Held's spouse survives him, "the residue of my estate shall be divided into a Marital Trust and a Family Trust." Will Article III.A. The Marital Trust provides Held's wife income during her lifetime and allows her to invade the principal. See Will Articles IV.B, IV.C. The Marital Trust also gives Held's wife the right to designate in her will how the undistributed income from that trust should be distributed. See Will Article IV.D. Any remaining assets pour over into the Family Trust and are to be administered as if they had originally been part of such trust. See Will Article IV.F.

Article V of the Will governs the administration of the

Family Trust. That Article is divided into two sections, one of which addresses administration during Held's wife's lifetime, the other, administration upon her death. Article V.A provides that Held's wife is to receive at least annual net income distributions during her lifetime, as well as principal payments necessary for her maintenance and support. See Will Article V.A. In addition, while Held's wife is alive, the trustee "may distribute to any child of mine under age twenty-two (22) such portions of the principal of the Family Trust as the independent trustee deems advisable for the child's health, education, support, and maintenance." Will Article V.A.3.

Article V.B governs distributions upon the death of Held's wife. The trustee is authorized to make discretionary distributions from net income to Held's descendants. See Will Article V.B.1. In addition, the trustee has discretion to make payments from principal to Held's children for the limited purpose of providing for their support and only until they reach twenty-five years of age. See Will Article V.B. In that Article, Held makes clear that his purpose in creating the Family Trust was to provide for "the support, maintenance, health care and education of each of my financially dependent children who survive me" and instructs the trustee to keep

this purpose in mind "[i]n authorizing discretionary distributions." Will Article V.B.4.

Once all of Held's living children have reached twenty-five years of age and are presumed to be no longer financially dependent, the remaining Family Trust assets are to be distributed in equal shares among Held's children:

3. When no living child is under twenty-five (25), the remaining trust assets will be distributed in equal shares among my children as follows:

3.1. To my son, Kenneth James Held, one-half ($\frac{1}{2}$) of his share of the trust assets shall be distributed to him. The remaining one-half ($\frac{1}{2}$) shall be retained in trust by the trustee until he is thirty (30) years of age, at which time the balance of his share shall be distributed to him. The trust shall pay the income to him in periodic installments, but at least annually. No principal shall be distributed to him during the term of the trust.

3.2. To the remainder of my children, each child's share shall be distributed.

Will Article V.B.3. While there are certain age restrictions on disbursements to his son Kenneth, Held placed no restrictions, age or otherwise, on distributions to the other children. See Will Article V.B.3. If one of Held's children predeceases him, that child's share is to go to that child's issue by right of representation. See Will Article V.B.3.3. In other words, upon the death of their mother and the

attainment of a certain age, Held's children receive the remainder interest and assets in the Family Trust without limitation.

Article VII of the Will sets forth the powers of the trustee and personal representative. Held's personal representative and the trustee have wide-ranging powers to retain certain assets; to borrow money; to allocate receipts and disbursements between principal and income; and to invest and reinvest assets. See Will Article VI.B. As in the Life Insurance Trust, however, these powers do not go to when, how much, or for what purpose a trustee must distribute assets under the Family Trust. Indeed, the only trustee power which touches on distributions states that the trustee is "to make all payments of income or principal authorized hereunder directly to the beneficiary or for the beneficiary's benefit[.]" See Will Article VII.B.9.

Article VIII contains general governing provisions. Specifically, Article VIII.C.4 contains the following language designated as "Spendthrift Provisions":

Neither principal or income of any trust nor any beneficiary's interest therein shall be subject to alienation, assignment, encumbrance or anticipation by the beneficiary, to garnishment, attachment, execution or bankruptcy proceedings, to claims for alimony or support or any other claims of any creditor or other person against the beneficiary or to any other transfer, voluntary or involuntary, by or from any beneficiary;

provided that the foregoing shall not restrict the exercise of any testamentary power of appointment and that any principal distributable to any beneficiary by reason of having attained a specific age shall be fully alienable by such beneficiary after attaining such age.

Will Article VIII.C.4. This looks like a fairly typical spendthrift provision but for the important additional clause which gives each beneficiary a right to alienate his or interest upon reaching a certain age. Based on this so-called spendthrift provision, given that all of Held's children, including Debtor, are at least thirty years old, and were so as of the petition filing date, the remainder interest each will receive upon their mother's death is alienable and, therefore, reachable by or assignable to creditors. This limited remainder interest to which Debtor is entitled upon her mother's death is the interest the Trustee seeks to include as property of the estate.

CONCLUSIONS OF LAW

A. Statutory Provisions, Procedural Posture, and Standard for Summary Judgment

Pursuant to Federal Rule of Bankruptcy Procedure 7001(1),⁴

⁴Rule 7001(1) provides in relevant part: "The following are adversary proceedings: ... (1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee... ." Fed. R. Bankr. P. 7001(1).

the Trustee commenced this adversary proceeding against the Debtor to determine whether Debtor's interests as set forth in the trust and testamentary instruments of her late father are property of the estate under § 541 and, if appropriate, for turnover under § 542. See 11 U.S.C. §§ 541, 542 (1994). This adversary proceeding is now before the court on the parties' trial memoranda and Stipulation. As the parties have provided a stipulation of material facts and resolution of this adversary proceeding hinges on interpretation of Held's trust and testamentary instruments, the court finds that summary judgment is procedurally appropriate.

Summary judgment is governed by Federal Rule of Civil Procedure 56, which is made applicable to this adversary proceeding by Federal Rule of Bankruptcy Procedure 7056. Rule 56 provides in relevant part:

The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

Fed. R. Civ. P. 56(c). The moving party on summary judgment bears the initial burden of showing that there is an absence of evidence to support the nonmoving party's case. See Celotex Corp. v. Catrett, 477 U.S. 317, 325 (1986). If the

moving party is the plaintiff, it carries the additional burden of presenting evidence that establishes all of the elements of the claim. See id. at 325; see also United Mortgage Corp. v. Mathern (In re Mathern), 137 B.R. 311, 314 (Bankr. D. Minn. 1992), aff'd, 141 B.R. 667 (D. Minn. 1992). When the moving party has met its burden of production under Rule 56(c), the burden then shifts to the nonmoving party to produce evidence that would support a finding in its favor. See Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). This responsive evidence must be probative, and must "do more than simply show that there is some metaphysical doubt as to the material fact." Id. If the nonmoving party fails to come forward with specific facts showing that there is a genuine issue for trial, summary judgment is appropriate. See id. at 587; see also Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249-51 (1986).

In weighing the evidence, the court may address whether the respondent's theory on the facts is "implausible." Miller v. Pulos (In re Pulos), 168 B.R. 682, 689 (Bankr. D. Minn. 1994) (citing Street v. J.C. Bradford & Co., 886 F.2d 1472, 1480 (6th Cir. 1989)). The court may also gauge the reasonableness of competing inferences asserted on the same basic evidence. Id. (citing Barnes v. Arden Mayfair, Inc.,

759 F.2d 676, 681 (9th Cir. 1985); United Mortgage Co. v. Mathern (In re Mathern), 137 B.R. 311, 322 (Bankr. D. Minn. 1992), aff'd, 141 B.R. 667 (D. Minn. 1992)). The reasonableness of asserted inferences is measured against the viability of the legal theory which they are asserted to support, and is also controlled by the weight and probity of the evidence advanced to support them. Id. (citing Mathern, 137 B.R. at 322-33). The ultimate question is whether reasonable minds could differ as to the factual interpretation of the evidence on record. Id. (citing Mathern, 137 B.R. at 323). Thus, in some instances, a court may rely on inferences to grant a motion for summary judgment, even where subjective intent is an issue. Id. (citing Mathern, 137 B.R. at 322; Street, 886 F.2d at 1480).

B. Debtor's Interests Under the Life Insurance Trust and the Will Are Property of the Estate

The Trustee argues that Debtor's interests in the Life Insurance Trust—that portion of the remainder of the trust assets to which Debtor is entitled upon her mother's death—and the Will—the remainder interest in the Family Trust which Debtor will receive upon her mother's death—are property of the estate under § 541(a)(1). Specifically, the Trustee maintains that property of the estate is broadly defined and reaches even contingent or equitable interests such as those

Debtor now holds.

In response, Debtor asserts that these interests are not property of the estate for two reasons. Debtor first maintains that these interests are contingent on Debtor's mother predeceasing Debtor and that property of the estate does not include such contingent interests. Debtor also argues that these interests are subject to certain restrictions on transfer and, therefore, excludable from property of the estate under § 541(c)(2).

Property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1) (1994). Section 541 "defines 'property of the estate' broadly to include all of the debtor's interests, both legal and equitable." Potter v. Drewes (In re Potter), 228 B.R. 422, 423 (B.A.P. 8th Cir. 1999) (citing Matter of Yonikus, 996 F.2d 866, 869 (7th Cir. 1993) (citing United States v. Whiting Pools, Inc., 462 U.S. 198, 204-05 nn.8, 9 (1983))). See generally In re Swanson, 873 F.2d 1121, 1122 (8th Cir. 1989) (noting that § 541 is broadly-worded to encompass all kinds of interests). Contrary to Debtor's argument, § 541 also reaches contingent interests. See In re Potter, 228 B.R. at 424 (citing In re Neuton, 922 F.2d 1379, 1382-83 (9th Cir. 1990); see also In re Hejco,

Inc., 87 B.R. 80, 83 (Bankr. D. Neb. 1988) ("At the time the bankruptcy petition was filed, property of the estate under § 541 included the debtor's present leasehold estate and debtor's contingent future interest in the leased premises."). Courts have found contingent remainder interests in trusts and wills similar to those to which Debtor is entitled under the Life Insurance Trust and the Will upon surviving her mother to be property of the estate. See generally In re Anderson, 128 B.R. 850, 853 (D.R.I. 1991) (suggesting that property of the estate is broad in scope, reaching future, contingent, derivative, or otherwise speculative interests) (citations omitted)); In re Neuton, 922 F.2d 1379, 1382 (9th Cir. 1990)(finding that debtor's interest in trust which was conditioned on debtor surviving the grantor was property of the estate); In re Weddle, 43 B.R. 415, 416 (Bankr. W.D. Va. 1984) (finding that property of the estate "most definitely" includes remainder interests).

Debtor nevertheless cites three cases for the proposition that non-vested, contingent interests are not property of the estate. See In re Arney, 35 B.R. 668 (Bankr. N.D. Ill. 1983); In re Hannegan, 155 B.R. 209 (Bankr. E.D. Mo. 1993); In re Baydush, 171 B.R. 953 (E.D. Va. 1994). These cases, as the Trustee correctly points out, are readily distinguishable from

Debtor's case. In each of those cases, the court found that an explicit spendthrift provision in a will or trust excluded the debtor's interest from the bankruptcy estate. See In re Arney, 35 B.R. at 672 (finding that spendthrift provision in will excluded debtor's interest from the bankruptcy estate); In re Hannegan, 155 B.R. at 214 (stating that will contained spendthrift provision which, under Missouri law, operated to excluded debtor's contingent remainder interest from the bankruptcy estate); In re Baydush, 171 B.R. at 958 (holding that trust was spendthrift trust, provisions of which required that debtor's interest be excluded from the bankruptcy estate under § 541(c)(2)). Contrary to Debtor's assertion, these cases do not hold that remainder interests and other contingent interests are not property of the estate. Indeed, in In re Arney, the court noted that, having found that the spendthrift provision in a will operated to exclude debtor's interest from the bankruptcy estate, it did not have to reach the issue of whether such an interest would otherwise be property of the estate under § 541(a)(1). See In re Arney, 35 B.R. at 672. I, therefore, reject Debtor's argument and find that § 541 is sufficiently broad in scope to reach contingent remainder interests like those Debtor presently holds, leaving only the issue of whether such interests are excludable from

the bankruptcy estate by operation of applicable nonbankruptcy law restrictions on transfer under § 541(c)(2).

Section 541(c) provides:

(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law-

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

11 U.S.C. § 541(c) (1994). Under § 541(c)(2), a "debtor's interest in a trust is excluded from the estate if it is restricted from transfer under applicable nonbankruptcy law." Drewes v. Schonteich, 31 F.3d 674, 676 (8th Cir. 1994). See In re Potter, 228 B.R. at 424 ("Unless there is a valid spendthrift provision which exclude's [sic] the debtor's trust interest pursuant to Section 541(c)(2), 'every right of the debtor under the trust becomes property of the estate.'" (citing Collier on Bankruptcy § 541.11[6][a] (15th rev. ed. 1998))). The court may look to federal or state nonbankruptcy

law to determine whether the property in trust is excludable. See Drewes, 31 F.3d at 676 (citing Patterson v. Shumate, 504 U.S. 753, 758 (1992)). In this case, because the documents indicate that the various trusts are governed by Minnesota law and because they are administered in Minnesota, the court must look to Minnesota law to construe the Life Insurance Trust and the trusts under the Will to determine whether they contain spendthrift provisions which constitute valid restrictions on transfer. See Schwen v. Ramette (In re Schwen), 240 B.R. 754, 757 (Bankr. D. Minn. 1999) ("Accordingly, because the trust was established and is administered in Florida, I must look to Florida law to determine whether the spendthrift provision is a valid restriction on transfer so as to exclude the trust from Plaintiff's bankruptcy estate.").

Under Minnesota law, the "general rule" is that "the interest of a beneficiary in a trust is assignable, may be reached by creditors, and is subject to attachment in the absence of statutory provision or of provisions in the trust instrument providing otherwise." In re Moulton's Estate, 46 N.W.2d 667, 671 (Minn. 1951). Spendthrift trusts fall within the exception in the latter part of this general rule. A "spendthrift trust is a trust in which the power of alienation has been suspended." Morrison v. Doyle, 582 N.W.2d 237, 240

(Minn. 1998) (citing In re Moulton's Estate, 46 N.W.2d 667, 670 (Minn. 1951)). See generally Samore v. Graham (In re Graham), 726 F.2d 1268, 1271 (8th Cir. 1984) ("In general terms, a spendthrift trust is one in which the right of the beneficiary to future payments of income or capital cannot be voluntarily transferred by the beneficiary or reached by his or her creditors."), overruled on other grounds by Patterson v. Shumate, 504 U.S. 753 (1992). Spendthrift trusts are recognized and enforced "on the theory that the owner of property, in the free exercise of his will in disposing of it, may secure such benefits to the objects of his bounty as he sees fit and may, if he so desires, limit its benefits to persons of his choice, who part with nothing in return, to the exclusion of creditors and others." In re Moulton's Estate, 46 N.W.2d at 670. See In re McLaughlin, 361 N.W.2d 43, 45 (Minn. 1985) (stating that "[t]his court has long recognized the validity of spendthrift provisions"). To create a spendthrift trust, "the trust agreement must simply include a spendthrift clause." Morrison, 582 N.W.2d at 240. A spendthrift clause makes clear that a beneficiary's interest under the trust is not alienable or otherwise attachable by creditors. See, e.g., Morrison, 582 N.W.2d at 240 (citing as an example the spendthrift clause set forth in In re

McLaughlin, 361 N.W.2d 43, 45 (Minn. 1985)).

Minnesota courts have, however, "also provided the asset protections afforded in a spendthrift trust when the trust agreement did not include an express spendthrift provision." Morrison, 582 N.W.2d at 240-41 (citing In re Moulton's Estate, 46 N.W.2d at 675-76; First Nat'l Bank v. Olufson, 232 N.W. 337, 338 (Minn. 1930)). Put another way, "it is enough that the settlor manifest an intent to restrain alienation." Drewes v. Schonteich, 31 F.3d 674, 677 (8th Cir. 1994). See generally In re Moulton's Estate, 46 N.W.2d at 670 ("No particular form of words is necessary to create a spendthrift trust. It is sufficient if by the terms of the trust the settlor manifests an intention to impose the restrictions common to such trust."); Jones v. Harrison, 7 F.2d 461, 464 (8th Cir. 1925) ("It is now well established that no particular form of words is necessary to create the restriction. Nor is it necessary that the restriction be expressed directly in the language of the will. On the other hand, courts look at all of the provisions of the will, and the circumstances under which it was made, including the condition of the beneficiary, and, if the intent to restrict is reasonably plain from a consideration of all these features, courts will give effect to that intent." (citations

omitted)). Though Minnesota case law does not explicitly spell out the requisites for a spendthrift trust, courts have "contemplated that the settlor of a spendthrift trust cannot be the beneficiary and that the beneficiary cannot have control or dominion over the corpus." Drewes v. Schonteich, 31 F.3d at 677 (citing In re Moulton's Estate, 46 N.W.2d at 670-71; In re Swanson, 873 F.2d at 1123).

Where the trust agreement does not contain a specific spendthrift clause, the court looks to the settlor's intent as evidenced by the language used in the trust agreement. See Morrison, 582 N.W.2d at 241 (citing In re Moulton's Estate, 46 N.W.2d at 672); In re Moulton's Estate, 46 N.W. at 669 ("In that determination we are to be guided by the well-known principle that the entire instrument must be considered, 'aided by the surrounding circumstances, due weight given to all its language, with some meaning being given, if possible, to all parts, expressions and words used, discarding and disregarding no parts as meaningless, if any meaning can be given them consistently with the rest of the instrument.'" (citations omitted)); In re Tuthill's Will, 76 N.W.2d 499, 502 (Minn. 1956) ("'The cardinal rule of construction, to which all others must bend, is that the intention of the testator, as expressed in the language used in the will, shall prevail,

if it is not inconsistent with the rules of law. Such intention is to be gathered from everything contained within the four corners of the will, read in the light of the surrounding circumstances.'" (quoting In re Ordean's Will, 261 N.W. 706, 708 (Minn. 1935) (citation omitted)); McNiff v. Olmsted County Welfare Dep't, 176 N.W.2d 888, 891 (Minn. 1970) (same).

1. The Life Insurance Trust

The Life Insurance Trust does not contain an explicit spendthrift clause. Thus, applying the framework discussed above, the court must examine the provisions of the trust agreement itself to determine whether Held manifested an intent to create a spendthrift trust. Relying on the line of Minnesota cases defining implied spendthrift trusts, Debtor suggests that Held placed sufficient restraints on alienation of Debtor's interest and intended to protect that interest from creditors, pointing to, *inter alia*, the Life Insurance Trust provision which allows the trustee to apply principal for the limited purpose of providing for the education and maintenance of Held's children. In particular, Debtor equates her interest under the Life Insurance Trust with other beneficiaries' entitlements to lifetime income, purpose-

restricted distributions, and other such interests which Minnesota courts have traditionally protected from the reach of creditors via an implied spendthrift trust. See, e.g., Olufson, 232 N.W. at 338-39 (finding testator intended to protect lifetime income stream to beneficiary from creditor); In re Moulton's Estate, 46 N.W.2d at 668, 675 (imposing implied spendthrift trust to shield net income distributions for support and education to grandson while he was under twenty-one); Morrison, 582 N.W.2d at 240 (finding that instructions to trustee to "'pay the income and such amounts of the principal as the [t]rustee in its discretion may determine for the beneficiary's education, support, health, and maintenance' ... represent the kind of ascertainable standards that are sufficient to guide the actions of the beneficiary and against which his conduct can be measured").

Debtor's reliance on this line of cases is, however, misplaced on several grounds. In imposing spendthrift trusts, whether implied or explicit, the courts in all of those cases looked to and relied on manifestations of the testator's intent outside of the four corners of the trust document itself. For example, in Morrison, the court imposed a spendthrift trust, relying heavily, if not exclusively, on the testimony of the will preparer who stated that the settlor

expressly intended to disinherit her son to protect his share of the estate from his creditors. See Morrison, 582 N.W.2d at 241. Similarly, in Olufson, the court commented that surrounding events and circumstances manifested the grantor's intent to shield the beneficiary's assets from her husband. See Olufson, 232 N.W. at 337-38. By contrast, in this case, as set forth in the Stipulation, the parties agree there are no outside events or facts or independent witnesses which indicate an intent on Held's part to create a spendthrift trust through either the Life Insurance Trust or his Will. Rather, the only relevant indicia of Held's intent are the trust documents themselves.

The case law Debtor cites is distinguishable on another ground. The interests the courts protected in In re Moulton's Estate, Olufson, and Morrison were the beneficiaries' limited rights to income for specific purposes. The grandson in In re Moulton's Estate was entitled to net income distributions for his welfare while he was under twenty-one, just as the beneficiary in Olufson was entitled to income for her support during her lifetime. See, e.g., In re Moulton's Estate, 46 N.W.2d at 668; Olufson, 232 N.W. at 338. Here, however, given the factual circumstances, the only interest to which Debtor will be entitled, and the interest which the Trustee now

properly seeks as property of the estate, is an outright distribution of a portion of the remainder in the Life Insurance Trust corpus itself.

More importantly, the language of the Life Insurance Trust makes clear that Held did not intend to create a spendthrift trust as to his children, specifically Debtor. Certain provisions governing distributions to his wife both during his lifetime and after his death arguably suggest he may have intended to protect some interests from creditors during certain time periods, as do the provisions allowing his children to invade the trust principal for limited purposes while they are under twenty-five. However, as set forth in Paragraph 5.2.3, Held's intent that, upon his wife's death, his children, including Debtor, take the remainder interest in the Life Insurance Trust free and clear of any restrictions on alienation is equally clear. Paragraph 5.2.3. explicitly requires the trustee to distribute the remaining principal to Held's children upon the death of Held's wife and once they have all reached twenty-five. This provision contains no limitations on the purpose or nature of the distribution and does not give the trustee any leeway to refuse to distribute any child's share for any reason. Given that all of the children reached thirty years of age prior to the petition

date and that Debtor will most likely outlive her mother, Debtor will collect her portion of the remainder upon her mother's death sans restraints on alienation. Therefore, I find that Held did not intend to create a spendthrift trust; rather, he intended that his children take the remainder interest in the Life Insurance Trust without limitation. As such, the remainder interest to which Debtor is entitled upon the death of her mother, not being subject to any restrictions on transfer under § 541(c)(2), is property of the estate. Summary judgment will be entered in favor of the Trustee as to Debtor's interest in the Life Insurance Trust.

2. The Will

Unlike the Life Insurance Trust, the Will contains a clause labeled "Spendthrift Provisions." Debtor maintains that this spendthrift clause makes the Family Trust under the Will a spendthrift trust, thereby entitling Debtor to exclude from property of the estate her interest under that trust. To support her position, Debtor relies on case law which suggests that the only requisite for creation of a spendthrift trust is a spendthrift clause. See, e.g., Morrison, 582 N.W.2d at 240 ("Generally, to create a spendthrift trust, the trust agreement must simply include a spendthrift clause."). Debtor also suggests that the spendthrift clause in the Will looks

like spendthrift clauses Minnesota courts have deemed enforceable. See, e.g., In re McLaughlin, 361 N.W.2d 43, 45 (Minn. 1985). Finally, in a rather strained interpretation, Debtor suggests that the spendthrift clause in the Will wholly restrains Debtor's right to alienate her interest.

Specifically, Debtor argues that provisions allowing Debtor to assign her interest by virtue of having attained a specific age will never be operable. Because Debtor has reached a certain age and because her mother is still alive, Debtor asserts that any interest she receives under the Will will be a result of the death of her mother, not Debtor's attainment of a certain age.

In response, the Trustee argues that the spendthrift clause in the Will is not really a spendthrift clause at all because it contains additional language explicitly allowing beneficiaries to assign and alienate their interests.

Alternatively, the Trustee argues that the spendthrift provision in the Will has no application to Debtor or her interest. The provision restricting alienation of Debtor's interest is no longer operable because she has attained twenty-five years of age. In other words, once Debtor receives her interest under the Will upon the death of her mother, she can freely transfer or assign that interest.

The case law and the language of the Will itself support the Trustee's interpretation. Applying the case law, under Article V, Held's wife receives income and, in certain circumstances, principal during her lifetime. Under that same provision, during his wife's lifetime, any of Held's children who are under the age of twenty-two are also entitled to receive "such portions of the principal of the Family Trust as the independent trustee deems advisable for the child's health, education, support and maintenance." Will Article V.A.3. Upon the death of Held's wife, however, as in the Life Insurance Trust, Held's children, once they all reach twenty-five years of age, are entitled to the remainder interest in the Family Trust, which also includes any assets poured over from the Marital Trust, without limitation. See Will Article V.B.3.

Debtor disputes this result and suggests that Held placed certain limitations on the distributions as set forth in Article V.B.4. That provision states:

In authorizing discretionary distributions, the independent trustee shall consider the following: My primary purposes in creating this trust are to insure adequate provisions during the continuance of the trust for the support, maintenance, health care and education of each of my financially dependent children who survive me.

Will Article V.B.4. These limitations apply only to

"discretionary distributions." The distribution of the remainder of the trust assets is not discretionary as Article V.B.4 states that "the remaining trust assets will be distributed" when Held's wife dies and all of the children reach twenty-five. Moreover, this provision makes clear Held's intent to provide support and maintenance for his financially dependent children. Given that Held's children are all at least thirty years of age, they are no longer financially dependent, thereby making this additional limitation equally inapplicable.

Debtor further maintains that transfer or assignability of her interest is limited by the spendthrift provision in Article VIII of the Will. That provision provides:

Neither principal or income of any trust nor any beneficiary's interest therein shall be subject to alienation, assignment, encumbrance or anticipation by the beneficiary, to garnishment, attachment, execution or bankruptcy proceedings, to claims for alimony or support or any other claims of any creditor or other person against the beneficiary or to any other transfer, voluntary or involuntary, by or from any beneficiary; provided that the foregoing shall not restrict the exercise of any testamentary power of appointment and that any principal distributable to any beneficiary by having attained a specific age shall be fully alienable by such beneficiary after attaining such age.

Will Article VIII.C.4. As Debtor correctly points out, this provision contains the standard spendthrift language. Cf. Morrison, 582 N.W.2d at 240 ("Neither the principal nor income

of any trust nor any beneficiary's interest therein, while undistributed in fact, shall be subject to alienation, assignment, encumbrance, appointment or anticipation by the beneficiary, nor to garnishment, attachment, execution or bankruptcy proceedings, nor to any claims for alimony or support or any other claims of any creditor or other person against the beneficiary, nor to any other transfer, voluntary or involuntary, from the beneficiary." (quoting In re McLaughlin, 361 N.W.2d at 45)). However, unlike other spendthrift clauses, this spendthrift provision contains a caveat or addendum that severely limits, almost destroys, its operation. By stating that "any principal distributable to any beneficiary by reason of having attained a specific age shall be fully alienable by such beneficiary after attaining such age," the latter part of the spendthrift provision allows Debtor to alienate her interest under the Family Trust. Specifically, the interest Debtor will receive upon her mother's death as a result of all of the children being at least twenty-five years of age, which is the interest the Trustee seeks as property of the estate, is alienable and not otherwise covered by the spendthrift provision.

As the Trustee correctly points out, Debtor's reading of the spendthrift clause makes little sense. Debtor suggests

that it is the death of Held's wife, rather than the attainment of a certain age, which entitles Debtor to receive her interest. Debtor's interpretation essentially renders the additional language in the spendthrift provision meaningless and ignores Held's apparent intent to remove any restrictions on alienation once his children reached a certain age and were presumably considered mature enough to make decisions about the use of their portion of the trust assets.

In conclusion, reading the Will provisions as a whole, I find that as a result of her father's death and all of Held's children having reached twenty-five years of age, Debtor is entitled to a portion of the assets of the Family Trust upon her mother's death free and clear of the anti-alienation clause in the Will. As such, Debtor's interest is not subject to any restrictions on transfer under § 541(c)(2) and is, thus, property of the bankruptcy estate. Summary judgment will be entered in favor of the Trustee as to Debtor's interest under the Will as well.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

(1) the Trustee is entitled to summary judgment on all issues;

(2) Debtor's interest in the Life Insurance Trust is property of Debtor's bankruptcy estate under § 541(a)(1); and

(3) Debtor's interest in the Will is property of Debtor's
bankruptcy estate under § 541(a)(1).

LET JUDGMENT BE ENTERED ACCORDINGLY.

/e/ Nancy C. Dreher
Nancy C. Dreher
United States Bankruptcy Judge

Filed on	<u>6/12/01</u>
Patrick G. De Wane, Clerk	
By	<u>KK</u> Deputy Clerk

e15-1

STATE OF MINNESOTA

ss.

COUNTY OF HENNEPIN

I, Karen Krouch, hereby certify: I am a Deputy Clerk of the United States Bankruptcy Court for the District of Minnesota; on June 12, 2001, I placed copies of the attached

ORDER

in envelopes addressed to each of the following persons, corporations, and firms at their last known addresses, and had them metered through the court's mailing equipment:

Dorraine A. Larison, Esq.
Hall & Byers, P.A.
1010 West St. Germain, Suite 600
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Craig W. Andresen, Esq.
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Bloomington, MN 55437

I sealed and placed the envelopes in the United States Mail at Minneapolis, Minnesota.

/e/ Karen Krouch
Karen Krouch