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broad spectrum of rights loosely grouped under and around the "fabled" right to treatment will be enforced, at least in this court. In so doing the court avoided the problems some of the well-meaning efforts of other courts have created or exacerbated¹⁰⁰ by taking a minimally obtrusive posture. The court appears deliberately to have refrained from issuing detailed standards as was done in *Wyatt* and its progeny, but by retaining jurisdiction has indicated a commitment to solving the problems found.

Eckerhart v. Hensley stands for the proposition that if the task of caring for mental patients is neglected by the other branches, the means yet exist for a vigorous judiciary to see that the job is done. If the need for such a right does not disappear with the spread of statutes requiring adequate treatment, and if the courts are as carefully self-restrained as was the *Eckerhart* court, the right to treatment may yet survive.

WILLIAM JAY POWELL

SPENDTHRIFT TRUSTS—THE PUBLIC POLICY EXCEPTION

*Electrical Workers, Local No. 1 Credit Union
v. IBEW-NECA Holiday Trust Fund*¹

In 1885 the United States Supreme Court shocked many legal scholars and most of the courts of this country by upholding a restraint in a trust upon the alienation of the interest of an income beneficiary.² The court stated it saw no reason why "a testator who 'gives' . . . may not attach to that gift the incident of continued use, of uninterrupted benefit of the gift, during the life of the donee."³ A trust subject to such a restraint is known as a spendthrift trust. Stated simply, a spendthrift trust is one in which the interest of a beneficiary cannot be assigned by him or reached by his creditors.⁴ American courts had followed the traditional English view

100. Stone, *Recent Mental Health Litigation: A Critical Perspective*, 134 AM. J. PSYCH. 273 (1977). See generally Note, *The Wyatt Case: Implementation of a Judicial Decree Ordering Institutional Change*, 84 YALE L.J. 1338, 1373-79 (1975).

1. 583 S.W.2d 154 (Mo. En Banc 1979).

2. *Nichols v. Eaton*, 91 U.S. 716 (1875).

3. *Id.* at 727.

4. See *McNeal v. Bonnel*, 412 S.W.2d 167, 170 (Mo. 1967); *Kessner v. Phillips*, 189 Mo. 515, 523, 88 S.W. 66, 68 (1905); *Gentemann v. Dyer*, 140 S.W.2d 75, 78 (St. L. Mo. App. 1940). See generally E. GRISWOLD, SPENDTHRIFT TRUSTS § 1 (2d ed. 1947); 2 A. SCOTT, THE LAW OF TRUSTS § 151 (3d ed. 1967); Comment, *Spendthrift Trusts in Missouri*, 22 U. KAN. CITY L. REV. 166 (1954); see also

of these trusts, disallowing the spendthrift provisions on the theory that to permit one to enjoy the benefits of property without any of the responsibilities of ownership was unjust, bred idleness, and promoted fraud.⁵ Since the decision in *Nichols*, most American jurisdictions, including Missouri, have recognized spendthrift provisions in trusts as valid restraints on alienation.⁶

Acceptance of the validity of spendthrift trusts has been qualified by legislative and judicial adoption of various exceptions to their enforcement. Missouri has recognized exceptions for claims by a wife or child for support or by a wife for alimony,⁷ claims for necessary services or goods,⁸ claims

Annot., 34 A.L.R.2d 1335, 1336 (1954); RESTATEMENT (SECOND) OF TRUSTS § 152 (2) (1959).

A spendthrift trust should not be confused with other trust devices which place restraints on the beneficiary's interest. One such device is a provision for forfeiture and reversion to the settlor or some other named party in case of attempted alienation by the beneficiary. See *Garrison v. Garrison*, 354 Mo. 62, 188 S.W.2d 644 (1945). See generally E. GRISWOLD, *supra* note 4, § 12; 2 A. SCOTT, *supra* note 4, § 150.

A related device is the discretionary trust, whereunder the trustee pays the income and/or principal to the beneficiary as the trustee in his discretion deems necessary or advisable. See *Winkel v. Streicher*, 295 S.W.2d 56 (Mo. En Banc 1956); *Smith v. Smith*, 188 S.W. 1111, 194 Mo. App. 309 (K.C. 1916). See generally E. GRISWOLD, *supra* note 4, § 17; 2 A. SCOTT, *supra* note 4, § 155.

Another device is the support trust. This provides that the income or principal of the trust be used for the support of the beneficiary, allowing distributions ranging from that amount necessary for minimal support to the entire amount of the trust. See generally E. GRISWOLD, *supra* note 4, § 18; 2 A. SCOTT, *supra* note 4, § 154. Other related types of trusts are discussed in E. GRISWOLD, *supra* note 4, §§ 421-450.

5. See G.G. BOGERT & G.T. BOGERT, LAW OF TRUSTS § 40 (5th ed. 1973) [hereinafter cited as BOGERT]; 2 A. SCOTT, *supra* note 4, § 151. See also *Nelson v. California Trust Co.*, 33 Cal. 2d 501, 202 P.2d 1021 (1949).

6. Spendthrift trusts have been upheld in the following Missouri cases: *St. Louis Union Trust Co. v. Basset*, 337 Mo. 604, 85 S.W.2d 569 (1935); *Bixby v. St. Louis Union Trust Co.*, 323 Mo. 1014, 22 S.W.2d 813 (1929); *Kessner v. Phillips*, 189 Mo. 515, 88 S.W. 66 (1905); *Jarboe v. Hey*, 122 Mo. 341, 26 S.W. 968 (1894); *Lampert v. Haydel*, 96 Mo. 439, 9 S.W. 780 (1888); *Lackland v. Garesche*, 56 Mo. 267 (1874); *Mullin v. Trolinger*, 237 Mo. App. 939, 179 S.W.2d 484 (St. L. 1944); *Gentemann v. Dyer*, 140 S.W.2d 75 (St. L. Mo. App. 1940); *Potter v. Whitten*, 170 Mo. App. 108, 155 S.W. 80 (Spr. 1913). See also cases cited in note 25 *infra*. Holding the spendthrift provision valid means the court will hold that the corpus as well as the income of the trust is protected from involuntary alienation. See *Williams v. Frisbee*, 419 S.W.2d 99 (Mo. En Banc 1967); *Pugh v. Hays*, 113 Mo. 424, 21 S.W. 23 (1893); *Partridge v. Cavender*, 96 Mo. 452, 9 S.W. 785 (1888); *Brant v. Brant*, 273 S.W.2d 734 (St. L. Mo. App. 1954).

While the majority of states recognize spendthrift trusts, a sizeable minority do not. See BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, §§ 151-235; 2 A. SCOTT, *supra* note 4, § 151.

7. RSMo § 456.080 (1978). See *Howard v. Jennings*, 56 F. Supp. 193 (E.D. Mo.), modified, 146 F.2d 132 (8th Cir. 1944); *Brant v. Brant*, 273 S.W.2d 734 (St. L. Mo. App. 1954). See also BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, § 333; 2 A. SCOTT, *supra* note 4, § 157.1; Note, *Reaching the Interest of the Beneficiary of a Spendthrift Trust*, 43 HARV. L. REV. 63 (1929); RESTATEMENT (SECOND) OF TRUSTS § 157 (1) (1959).

8. See *Cooper v. Carter*, 145 Mo. App. 387, 129 S.W. 224 (K.C. 1910). See

for services which preserve or benefit the interest of the beneficiary,⁹ and claims based on a trust made in fraud of creditors.¹⁰ Other exceptions not explicitly dealt with in Missouri are related to claims in satisfaction of a debt to the United States or of a state,¹¹ tort claims,¹² and claims for breach of trust where the beneficiary is also a trustee.¹³

A recent Missouri Supreme Court decision carves out a broad exception to the enforcement of spendthrift trusts for those deemed to be against public policy. In *Electrical Workers, Local No. 1 Credit Union v. IBEW-NECA Holiday Trust Fund*¹⁴ (*Holiday Trust Fund*), a trust to provide holiday pay benefits for electrical workers was established by a collective bargaining agreement. The beneficiaries often worked for several employers during the year and therefore did not accumulate vacation pay from any single employer. Employers contributed 8½% of their gross monthly labor payroll and employees received annual and quarterly benefits from the fund.¹⁵ Plaintiff credit union obtained a judgment against an employee-beneficiary and sought to garnish the employee's interest in the trust. The trustees¹⁶ refused, citing the trust's spendthrift provision.¹⁷

also BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, §§ 347, 364; 2 A. SCOTT, *supra* note 4, § 157.2; Comment, *Trusts: Creditors' Claims Against Beneficiaries of Spendthrift and Support Trusts*, 3 GA. S.B.J. 356, 359 (1967); Note, *supra* note 7; RESTATEMENT (SECOND) OF TRUSTS § 157 (2) (1959).

9. See *Cooper v. Carter*, 145 Mo. App. 387, 129 S.W. 224 (K.C. 1910). See also BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, §§ 346, 348; 2 A. SCOTT, *supra* note 4, § 157.3; RESTATEMENT (SECOND) OF TRUSTS § 157 (3) (1959).

10. See *State ex rel. Auchincloss, Parker & Redpath v. Harris*, 349 Mo. 190, 159 S.W.2d 799 (1942); *Lackland v. Garesche*, 56 Mo. 267 (1874). See also BOGERT, *supra* note 5, § 40.

11. See BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, §§ 342-345; 2 A. SCOTT, *supra* note 4, § 157.4; Note, *supra* note 7; RESTATEMENT (SECOND) OF TRUSTS § 157 (4) (1959).

12. See *UMWA v. Boyle*, 418 F. Supp. 406 (D.D.C. 1976); BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, § 365; 2 A. SCOTT, *supra* note 4, § 157.5.

13. E. GRISWOLD, *supra* note 4, § 362.

14. 583 S.W.2d 154 (Mo. En Banc 1979).

15. Employers also had to submit reports containing the name of each employee, the hours worked, and wages earned by employees for whom contributions were made. To be eligible for benefits an employee must have worked at least 100 hours during a plan year and have filed a timely application for benefits. An annual benefit of 4% of the employee's gross earnings received in his name was paid once a year, and quarterly benefits aggregating 4½% of the gross earnings were paid in four installments during the year following the plan year. 583 S.W.2d at 156-57.

16. The Board of Trustees was composed of three employer (NECA) trustees and three employee (IBEW) trustees. The trustees held and managed the contributions and also had the authority to invest the funds in their control. *Id.* at 156.

17. The specific provision involved was § 5.02 of the trust which provided: No benefits or money payable from this Fund shall be subject to any manner of anticipation, alienation, sale, transfer, assignment, pledge, encumbrance by any person claiming or entitled to benefits hereunder; nor shall any benefit payment nor the right to any benefit payment . . . be subject to seizure by any creditor of any person entitled to an interest herein under any execution, writ, or proceedings at law or in equity.

Id. at 157.

The circuit court in the garnishment proceeding ruled that the spendthrift provision was no bar to garnishment of the worker's quarterly benefits, which had become due during the period of garnishment.¹⁸ The court of appeals reversed. The case was transferred to the Missouri Supreme Court, which employed a three-step approach in agreeing with the circuit court. First, it found that contrary to the garnishee's contention, the state laws relating to garnishment of payments made under employee benefit plans had not been preempted by the Employee Retirement Income Security Act (ERISA) and its policy of protecting employee pension plans from garnishment.¹⁹ Next, it construed the payments made by the employers to the fund to be wages, which are garnishable under the express terms of the Missouri garnishment statute.²⁰ Thus, the court concluded, the spendthrift provision purporting to prevent garnishment of such wages was a fortiori contrary to public policy and therefore invalid.²¹

Spendthrift trusts have been the subject of spirited debate. The argument for allowing such trusts is that a donor should be free to give upon any restrictions he chooses.²² The trust originated as a means of providing for people referred to as spendthrifts (infants, mental incompetents, married women, etc.), although it is no longer necessary that the beneficiary be a spendthrift.²³ Spendthrift provisions are given effect because of a desire to honor a settlor's wishes and to give stability to a provision which seeks to afford security to a beneficiary, and which injures and defrauds no one.²⁴

A true spendthrift clause restrains both voluntary and involuntary alienation by the beneficiary. Restraints on voluntary alienation prevent the beneficiary from assigning his beneficial interest. Restraints on in-

18. *Id.*

19. *Id.* at 159.

20. *Id.* at 160. See also RSMo § 525.030 (1978), which provides in part:

(2) The maximum part of the aggregate earnings of any individual for any workweek . . . which is subjected to garnishment may not exceed (a) twenty-five percentum, or, (b) the amount by which his aggregate earnings for that week . . . exceed thirty times the federal minimum hourly wage . . . , or, (c) if the employee is the head of a family and a resident of this state, ten percentum, whichever is less. . . .

The term "earnings" as used herein means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

21. 583 S.W.2d at 162.

22. Estate of Kelsey, 393 Pa. 513, 519, 143 A.2d 42, 45 (1958).

23. See Jones v. Harrison, 7 F.2d 461, 463 (8th Cir. 1925), cert. denied, 270 U.S. 652 (1926). See also RESTATEMENT (SECOND) OF TRUSTS § 152, Comment g (1959). See generally BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, § 262; 2 A. SCOTT, *supra* note 4, § 151.

24. See Jones v. Harrison, 7 F.2d 461 (8th Cir. 1925), cert. denied, 270 U.S. 652 (1926); Jamison v. Mississippi Valley Trust Co., 207 S.W. 788 (Mo. 1918); Lampert v. Haydel, 96 Mo. 439, 9 S.W. 780 (1888); Pickens v. Dorris, 20 Mo. App. 1 (St. L. 1885).

voluntary alienation prevent others from reaching the beneficiary's interest for payment of his debts. The courts do not require a special form of words to create a spendthrift trust, but will enforce a restraint on alienation whenever the intent of the settlor to impose such a restraint can be found.²⁵ The basic fact pattern from which the intent will be inferred is present where a gift to the donee is of income only, the donee takes no estate and has no right to possession, the legal title is vested in the trustee, and the trust is an active trust.²⁶ The most important restriction placed on the creation of spendthrift trusts, both in Missouri and other jurisdictions, is that one cannot settle a spendthrift trust upon himself.²⁷

The heaviest criticism of spendthrift trusts is spawned by the immunity of the beneficiary's interest from involuntary alienation by attachment and garnishment.²⁸ The argument is that one should not be able to enjoy wealth without its responsibilities; because the beneficiary need not be an incompetent, the protection allowed him certainly should not exceed that given to incompetents, as it does under a spendthrift provision.²⁹ This view has served to create some exceptions to enforcement of spendthrift trusts. One such exception applies where the trust does not specifically state that it is a spendthrift trust. In this situation courts may permit garnishment on the theory that there was no notice to creditors

25. See *McNeal v. Bonnel*, 412 S.W.2d 167 (Mo. 1967); *Kerens v. St. Louis Union Trust Co.*, 248 Mo. 601, 223 S.W. 645 (En Banc 1920). Some courts will look at what interest the beneficiary received. See *Higbee v. Brockenbrough*, 191 S.W. 994 (Mo. En Banc 1916); *Graham v. More*, 189 S.W. 1186 (Mo. 1916). Other courts will consider all of the circumstances under which the will and trust instrument were made. See *Jones v. Harrison*, 7 F.2d 461 (8th Cir. 1925), cert. denied, 170 U.S. 652 (1926). But simple devises in trust or the use of the words "for support and maintenance" alone are insufficient. See *Kingman v. Winchell*, 20 S.W. 296 (Mo. 1892); *Heaton v. Dickson*, 153 Mo. App. 312, 327, 133 S.W. 159, 164 (St. L. 1910).

26. *Graham v. More*, 189 S.W. 1186 (Mo. 1916); *Kessner v. Phillips*, 189 Mo. 515, 523, 88 S.W. 66, 68 (1905).

27. See RSMo § 428.010 (1978) (invalidating trust for benefit of settlor as to creditors); *Stephens v. Moore*, 298 Mo. 215, 249 S.W. 601 (1923); *Jamison v. Mississippi Valley Trust Co.*, 207 S.W. 788 (Mo. 1918); *Roden v. Helm*, 192 Mo. 71, 90 S.W. 798 (1905). See also *Arizona Bank v. Morris*, 6 Ariz. App. 566, 435 P.2d 73 (1967), modified, 7 Ariz. App. 107, 436 P.2d 499 (1968); *Bank of Dallas v. Republic Nat'l Bank*, 540 S.W.2d 499 (Tex. Ct. App. 1976). See generally BOGERT, *supra* note 5, § 40; E. GRISWOLD, *supra* note 4, §§ 471-499; 2 A. SCOTT, *supra* note 4, § 156; Note, *Trusts: Rights of a Settlor-Co-Beneficiary to Exhaust the Other Beneficiary's Interest*, 30 BAYLOR L. REV. 163 (1978); RESTATEMENT (SECOND) OF TRUSTS § 156 (1959).

28. Missouri cases holding that funds under control of a trustee of a spendthrift trust cannot be garnished include: *Partridge v. Cavender*, 96 Mo. 452, 9 S.W. 785 (1888); *Citizens Bank v. Buford*, 232 Mo. App. 676, 108 S.W.2d 1062 (K.C. 1937). See also *Brasser v. Hutchison*, 549 P.2d 801 (Colo. App. 1976). See generally 38 C.J.S. *Garnishment* § 76 (1943).

29. 2 A. SCOTT, *supra* note 4, §§ 151-152; Note, *A Rationale for the Spendthrift Trust*, 64 COLUM. L. REV. 1323, 1327 (1964). For perhaps the best known criticism of spendthrift trusts, see J. GRAY, *RESTRAINTS ON THE ALIENATION OF PROPERTY* (1895).

that the funds were so held.³⁰ The same theory underlies the exceptions allowing garnishment for claims for torts,³¹ and claims against a trust created in fraud of creditors.³² Judicial application of the exceptions³³ is generally to hold the trust valid and the restraint invalid.³⁴ This approach is ostensibly logical, but where the spendthrift provision is the essence of the trust, which is often the case, if it is invalid, it would seem that the whole trust should be invalid, its purpose having been defeated.³⁵

The exception pronounced in *Holiday Trust Fund* is that where upholding a spendthrift provision would be contrary to the garnishment statute, enforcement is against public policy and the spendthrift clause must fail.³⁶ The factual setting providing the stage for such a conflict arises as a result of the modern use of the spendthrift device in trusts connected with wage agreements.³⁷ Many courts have held that money put in benefit trusts in conjunction with wage agreements are wages.³⁸ Because wages are garnishable by law, invalidation of the spendthrift provision automatically subjects such funds to garnishment. In a similar holding on virtually identical facts, a New York court rationalized the exception by saying the goal of frustrating creditors in such an agreement is merely one aspect of the larger purpose of insuring "that the moneys paid by employers be available for the purpose for which paid."³⁹ This seems a poor rationale for creating an exception which virtually invalidates the spendthrift clause. The trust would surely not have been drafted to include spendthrift provisions were the settlors not specifically intending to protect the funds from creditors.

In order to find that enforcement of the spendthrift provisions in *Holiday Trust Fund* was contrary to the garnishment statute, the court first had to address the problem of whether the state garnishment law was preempted by ERISA.⁴⁰ ERISA is a federal statute which sets forth standards for reporting, disclosure, and fiduciary responsibility for pension and welfare benefit plans. All employee benefit plans are subject to the

30. *Dunephant v. Dickson*, 153 Mo. App. 309, 133 S.W. 165 (St. L. 1910); *Pickens v. Dorris*, 20 Mo. App. 1 (St. L. 1885). See generally 2 A. SCOTT, *supra* note 4, § 152.

31. See note 12 *supra*.

32. See note 10 *supra*.

33. For other exceptions to the no-garnishment rule, see notes 7-13 *supra*.

34. See BOGERT, *supra* note 5, § 40.

35. This view is suggested in an annotation dealing with the invalidity of spendthrift provisions as affecting other provisions of a trust, but has received little judicial recognition. Annot., 9 A.L.R.2d 1361 (1950).

36. 583 S.W.2d at 162.

37. The use of spendthrift trusts does not appear to have been litigated in Missouri in connection with wage agreements prior to *Holiday Trust Fund*. See note 48 and accompanying text *infra*.

38. See note 48 *infra*.

39. *Laborers Union Local 1298 v. Frank L. Lyon & Sons, Inc.*, 323 N.Y.S.2d 229, 237, 238, 66 Misc. 2d 1042, 1049, 1050 (Sup. Ct. 1971).

40. 29 U.S.C. §§ 1001-1381 (1974).

statute,⁴¹ which was enacted for the purpose of protecting benefit rights.⁴² One express provision of ERISA requires qualifying *pension* plans to include a spendthrift-type clause.⁴³ The *Holiday Trust Fund* trustees argued that the garnishment statute, to the extent it was inconsistent with ERISA's spendthrift provision, was preempted under the federal preemption doctrine. The court, however, held that the ERISA provision did not apply to the vacation trust because it was not a pension plan.⁴⁴ Next, the court examined the distinction drawn under cases interpreting ERISA's own preemption provisions⁴⁵ between laws which "relate" to or directly affect the benefit plan, and are preempted by ERISA, and laws which merely "affect" the benefit plan and are not preempted.⁴⁶ It held that ERISA did not preempt Missouri garnishment laws, first, because they do not directly relate to benefit plans and second, because creditor rights is an area of legitimate state concern which was left totally unregulated by ERISA's welfare plan provisions.⁴⁷

The court held that the funds constituting the trust corpus were wages within the meaning of the state garnishment statute. There is abundant precedent for this holding. Many courts have held that paid vacations or holidays constitute a form of additional earnings.⁴⁸ The interposition of a trust as a device for collection and disposition of the funds, however, makes this determination more complex. The courts look to the scheme under which the employer's contributions are made to determine whether such contributions are wages. Indications of wages are: basing the amounts on a percentage of the employee's wages; putting the money into

41. *Id.* § 1003. See also *Gast v. Oregon*, 585 P.2d 12 (Or. App. 1978).

42. *Bucyrus-Erie Co. v. Department of Indus., Labor & Human Relations*, 453 F. Supp. 75, 77 (E.D. Wis. 1978); *Hewlett-Packard Co. v. Barnes*, 425 F. Supp. 1294, 1297 (N.D. Cal. 1977).

43. 29 U.S.C. § 1056(d)(1) (1974) provides: "Each pension plan shall provide that benefits provided under the plan may not be assigned or alienated." But see *AT&T Co. v. Merry*, 592 F.2d 118, 121 (2d Cir. 1979) ("a garnishment order used to satisfy court ordered family support payments is impliedly excepted from . . . the alienation and assignment proscription of ERISA"). As the *Holiday Trust Fund* court noted, ERISA does not require such a spendthrift provision to be included in welfare plans, which are dealt with less comprehensively than pension plans under the Act. 583 S.W.2d at 159.

44. 583 S.W.2d at 159.

45. The general preemption section of ERISA, 29 U.S.C. § 1144(a) (1974) provides: "The provisions of this subchapter and subchapter III of this chapter shall supersede any and all state laws insofar as they . . . relate to any employee benefit plan. . . ."

46. See, e.g., *Stone v. Stone*, 450 F. Supp. 919, 932 (N.D. Cal. 1978).

47. 583 S.W.2d at 159.

48. See Annot., 30 A.L.R.2d 351, 352 (1953). See also *In re Educational Fund v. United States*, 426 F.2d 1053, 1056 (2d Cir. 1970) (wages include all remuneration for services performed by an employee for his employer even though taken from a Vacation Expense Fund); *Sulmeyer v. Southern Cal. Pipe Trades Trust Fund*, 301 F.2d 768 (9th Cir. 1962) (wages include money put in Vacation and Holiday Benefit Fund); *In re Otto*, 146 F. Supp. 786, 789 (S.D. Cal. 1956) (wages include vacation pay).

a separate account for each employee; and taking payroll deductions out of the contributions.⁴⁹ The *Holiday Trust Fund* trust had the first two of these characteristics.⁵⁰ Moreover, the finding that funds in a vacation trust are wages is further suggested by Missouri's garnishment statute itself.⁵¹

The court then held the spendthrift provisions of the trust to be contrary to the public policy embodied in the Missouri statute permitting garnishment of wages.⁵² This holding is irreconcilable with the federal public policy evinced by ERISA, which protects employee *pension* funds from assignment and alienation.⁵³ Because ERISA was enacted to protect employee benefit rights,⁵⁴ logic and federal policy would mandate an extension of the protection given pension plans to welfare benefit plans such as the vacation fund in the instant case: both are types of employee benefit plans. By fashioning a different rule to govern nonpension benefit plans, the court simply implemented its conclusion that state, and not federal policy should control, except in clear cases of preemption.

The *Holiday Trust Fund* court feared that to uphold the spendthrift provision would afford greater protection to some wage earners than others, in violation of the intent of the garnishment statute.⁵⁵ This argument does not withstand close scrutiny. The court could have identified these funds as wages for the purposes of calculating the ten percent maximum under Mo. Rev. Stat. section 525.030, yet still immunized them from garnishment through an exception to the garnishment statute for spendthrift clauses. After all, an "exception" is made to the normal rules of execution every time a spendthrift provision is upheld.⁵⁶ Garnishment of wages, though it be a creature of statute, surely reflects no weightier public policy than any other execution device, *e.g.*, the ordinary creditor's bill in equity.⁵⁷

Given the court's characterization of the trust moneys as wages, no inherent inequity would result from upholding the spendthrift provision in such a case. Creditors would be allowed to garnish ten percent of the employee's *total* weekly wages (including allocable trust funds), yet be

49. 583 S.W.2d 154. See also cases cited note 48 *supra*.

50. 583 S.W.2d at 156.

51. See RSMo § 525.030 (2) (1978) which provides in part: "The term 'earnings' as used herein means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement plan." Because pension and retirement plans are types of benefit plans, extending this definition to funds held in all types of benefit plans, such as a vacation fund, would reach the above discussed result by statute. Also, were the funds to be considered "compensation paid or payable for personal services," they would likewise be covered by the statute.

52. 583 S.W.2d at 162. RSMo § 525.030 (1978).

53. See note 43 *supra*.

54. See note 42 *supra*.

55. 583 S.W.2d at 162.

56. See note 28 and accompanying text *supra*.

57. See generally 21 C.J.S. *Creditors Suits* § 1 (1940).

prohibited from extracting the garnishable amount from the spendthrift-protected trust corpus. As a result, the amount garnishable against an employee if the spendthrift clause were upheld would be identical.⁵⁸ The difference is that the creditor would have to seek garnishment against the employee's employer—just as he would if there were no trust—rather than against the trustee.

It is doubtful that there exists a public policy reason for insisting the garnishor have access to the funds in the trust itself. On the contrary, the policy of promoting employee security through the use of devices such as the vacation trust arguably outweighs that of transforming the trust into an easy-access pool for creditors. The *Holiday Trust Fund* result will penalize responsible employees who participate in a benefit plan. Their creditors now have the windfall advantage of one-stop garnishment (upon the trustee) rather than ordinary garnishment (upon each of an employee's employers).

The *Holiday Trust Fund* court's fear that an employee's entire salary could be sheltered from the claim of creditors by a device similar to the vacation trust⁵⁹ has a strangely familiar ring. Such objections were raised 100 years ago to the use of spendthrift trusts for any purpose.⁶⁰ Yet these trusts are now valid in the majority of American jurisdictions,⁶¹ giving rise to the inference that they have not caused the problems originally feared. The court failed to present cogent support for its decision giving different treatment to the trust in question simply because it was incident to a wage agreement. In any case, the abuses feared by the court could be dealt with more appropriately by legislation placing restrictions on the

58. See RSMo § 525.030 (2) (1978), set out at note 20 *supra*. To illustrate this argument assume that worker *A* makes \$200 per week in regular wages, and worker *B* makes \$180 per week in regular wages and \$20 per week which goes into a vacation trust with a spendthrift provision. For the purpose of garnishment worker *A*'s total weekly wages are \$200, and the creditor can reach ten percent, or \$20. Worker *B*'s total weekly wages are \$180 plus \$20, since this \$20 is wages under the court's second holding, or a total of \$200, and the creditor can reach ten percent, or \$20. In each case only \$180 of the worker's total weekly wages is protected, but with worker *B* the creditor is restrained from getting this \$20 from the trust funds. In the normal situation, only a small percentage of the employee's wages will be held in a benefit trust (e.g., 8½% in *Holiday Trust Fund*) while the bulk of the wages (e.g., 91½% in *Holiday Trust Fund*) will be paid in the regular manner, assuring the creditor an adequate—accrued wages in the hands of the debtor's employers—source from which to obtain his 10%.

Only in an extremely unusual situation would upholding the spendthrift provision give greater protection to an employee-beneficiary than to any other employee. Because a creditor is allowed to reach 10% of the employee's weekly wages, only in the rare case where worker *B* puts more than 90% of his wages in a spendthrift fund would he be given greater protection by upholding the spendthrift provision. See text accompanying notes 59-62 *infra*.

59. 583 S.W.2d at 162.

60. See note 5 *supra*.

61. See note 6 *supra*.

amount of money that could be placed in such a trust⁶² than by a blanket invalidation.

A broad application of the *Holiday Trust Fund* public policy exception could severely decrease the usefulness of spendthrift provisions in Missouri. Other exceptions to the enforcement of spendthrift trusts can be defended on the grounds that to enforce them is actually to promote the purpose of the settlor,⁶³ or that the creditor did not have prior notice that the funds were so held.⁶⁴ No such justification exists for the *Holiday Trust Fund* court's public policy exception, however. Where a creditor by proper diligence might have ascertained the existence of the restriction on the beneficiary's interest, the creditor is not defrauded and enforcement of the spendthrift provision should not automatically be deemed to be against public policy.⁶⁵ Unless it is *per se* against public policy to utilize spendthrift provisions in connection with employment agreements, the result in the instant case is difficult to justify. The difficulties are compounded by the fact that federal law requires spendthrift clauses in pension agreements, a type of benefit plan.⁶⁶

If, as stated in *Nichols v. Eaton*,⁶⁷ there is no reason why one who gives may not attach to that gift the incident of uninterrupted enjoyment, an employer should be able to compensate his employees on the same terms. Missouri's recognition of the validity of spendthrift trusts⁶⁸ is tautologically a declaration that when rules permitting execution upon a trust beneficiary's interest conflict with a spendthrift clause, public policy favors the spendthrift clause. Yet the *Holiday Trust Fund* court has divined that some different public policy operates when the execution device employed is Missouri's garnishment statute. If the desire is to enforce spendthrift trusts, but only under limited circumstances, this should be provided for by statute.⁶⁹ But to allow the enforceability of the spendthrift trust to rest on whether or not it contravenes public policy—and to say that it does so whenever it is inconsistent with a statute—is needlessly to destroy the security provided by the spendthrift trust.

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62. The restrictions placed by some states on spendthrift provisions are noted in BOGERT, *supra* note 5, § 40.

63. Such an argument has been proposed regarding exceptions for claims for necessities, claims by dependents, and claims for benefits to the beneficiary's interest. See 2 A. SCOTT, *supra* note 4, §§ 157.1 to .3.

64. Such would be the case where the claim is based on commission of a tort or where the trust was made in fraud of creditors.

65. See discussion of the public policy issue in 2 A. SCOTT, *supra* note 4, §§ 151-152.

66. See notes 52-54 and accompanying text *supra*.

67. 91 U.S. 716, 727 (1875).

68. See note 28 and accompanying text *supra*.

69. See, e.g., KY. REV. STAT. § 381.180 (Supp. 1978), which provides that the interest of the beneficiary shall be subject to satisfaction of enforceable claims against the beneficiary by a spouse or child for support, by the United States or Kentucky for taxes on account of the interest in the trust, and by claims for necessary services.