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# CONNECTICUT APPELLATE COURT ISSUES GUIDANCE ON ASSET-PROTECTION TRUSTS IN DIVORCE

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A recent Connecticut Appellate Court case provides guidance on an important issue in many high-net-worth divorce cases: whether property in asset-protection trusts is "marital property" subject to equitable distribution. This issue has increasing significance for Connecticut residents following the recognition of creditor-protection trusts under the Connecticut Qualified Dispositions in Trust Act, or QDTA.

The case involved four trusts for the benefit of the husband in which the wife had no current interest. All four trusts were governed by South Dakota law and qualified as "spendthrift" trusts under that state's laws. (Broadly, spendthrift trusts limit beneficiaries' control over trust distributions and are protected against beneficiaries' creditors.) While the husband had direct or indirect authority over trust investments, independent trustees controlled distributions from all four trusts.

One trust, Six Cataracts, was created and funded by the husband's father before the marriage. But the other three were created and funded by the husband himself – i.e., "self-settled" – during the marriage. The trusts collectively held assets worth at least $180 million.

Finding that the husband effectively controlled all four trusts, the trial court awarded $50 million to be paid from the trusts to the wife. On appeal, the Appellate Court made several key findings:

- Assets in the Six Cataracts trust were not marital property. That trust was created before the marriage by the husband's father, so it was not self-settled. And even though the husband controlled trust *investments*, it was undisputed that *distributions* were controlled by an independent trustee. The husband thus lacked a presently-enforceable right to trust distributions, the relevant legal standard.

- By contrast, assets in the three self-settled trusts were marital property. Although the trusts qualified as creditor-protected spendthrift trusts under South Dakota law, they were "not valid trust instruments" under Connecticut law because they did not comply with the QDTA by, for instance, failing to specify that Connecticut law governed the trusts.

- Even if the self-settled trusts were valid, the Court found their assets would be marital property because the husband funded the trusts when he knew that the marriage was in trouble and divorce was imminent. Sustaining the trusts' creditor protections against the wife would, the Court held, violate public policy prohibiting dissipation of assets in contemplation of divorce.

Although the decision involved particularly bad facts and trusts predating the QDTA, it raises questions of broad concern. Critically, it's now unclear whether self-settled spendthrift trusts governed by the laws of other jurisdictions – and thus not qualified under the QDTA – enjoy any protections against division in a Connecticut divorce action. And that's a potentially widespread issue: many Connecticut residents are beneficiaries of such trusts, created either pre-QDTA or to take advantage of perceived benefits available under other jurisdictions' laws. We thus expect this issue to be frequently litigated in years to come. In the meantime, Connecticut residents concerned about division of trust assets in divorce should consider whether trusts created under the Connecticut QDTA best serve that purpose.

For the complete decision, see *Netter v. Netter*, 235 Conn. App. 774 (2025).

If you have any questions regarding this alert, please contact your Cummings & Lockwood private clients attorney or fiduciary and probate litigation attorney.