

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

*JAW*

NUMBER 2006 CA 1753

*ETB by JAW*

IN THE MATTER OF  
THE MASHBURN MARITAL TRUSTS

CONSOLIDATED WITH

NUMBER 2006 CA 1754

IN THE MATTER OF  
THE MASHBURN FAMILY TRUST

Judgment Rendered: December 28, 2006

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Appealed from the  
Twenty-First Judicial District Court  
In and for the Parish of Tangipahoa, Louisiana  
Trial Court Number 2001-003,363 c/w Probate Number 71,684

Honorable Ernest G. Drake, Jr., Judge

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BEFORE: GUIDRY, GAIDRY, AND WELCH, JJ.

*Guidry, G. concurs in the result.*

WELCH, J.

This is an appeal by Joseph Patton (“Pat”) Mashburn and Richard A. Mashburn, in their capacities as the co-trustees of the Mashburn Family Trust (“family trust”) from a trial court judgment ordering them to pay Timothy R. (“Tim”) Mashburn, one of the nine beneficiaries of the family trust, the sum of \$2,000 per month from the assets of the trust. For reasons that follow, we reverse the judgment of the trial court.

### I. FACTUAL AND PROCEDURAL HISTORY

The background facts of this case are more fully set forth in this court’s opinion in the companion case, also rendered this date, **In Re Mashburn Marital Trust**, 2006-0741, 2006-0742 (La. App. 1<sup>st</sup> Cir. 12/28/06), \_\_\_ So.2d \_\_\_, (“**Mashburn Marital Trust (II)**”)<sup>1</sup> wherein the managing co-trustees of the Jack and Sadie Pugh Mashburn Marital Trust (“marital trust”) challenged a judgment of the trial court ordering them to pay Tim Mashburn the sum of \$2,000 per month from the income of the marital trust, and if necessary, from its principal.<sup>2</sup>

After the co-trustees suspensively appealed the judgments in **Mashburn Marital Trust (II)**, on November 4, 2005, Tim Mashburn filed a motion and order for emergency distributions from his family trust, alleging that he was one of nine principal and income beneficiaries of the family trust, that the fair market value of the assets of the family trust was approximately \$5,400,000.00, that he had not received a distribution from either of his trusts since May 2005, that he was destitute, handicapped, unable to work, and in need of medical attention, and that

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<sup>1</sup> We refer to **In Re Mashburn Marital Trust**, 2004-1678 (La. App. 1<sup>st</sup> Cir. 12/29/05), 924 So.2d 242, writ denied, 2006-1034 (La. 9/22/06), 927 So.2d 384 as “**Mashburn Marital Trust (I)**.”

<sup>2</sup> Additionally, in that appeal, the managing co-trustees of the marital trust and the co-trustees of the family trust challenged a trial court judgment declaring that the family trust and the marital trust each created nine separate trusts (for a total of eighteen trusts) to which different trustees could be appointed, removed the co-trustees from two of the trusts established by the marital trust, removed the co-trustees from two of the trusts established by the family trust, and appointed the beneficiaries of those four trusts as the successor trustee for each trust.

his resources, without distributions from the assets of the trust (*i.e.*, its principal), were insufficient to provide for his necessary support, maintenance, medical expenses, and welfare, during the suspensive appeals by the co-trustees in **Mashburn Marital Trust (II)**. Therefore, he requested to receive “emergency distributions” from the assets (principal) of his family trust pursuant to La. R.S. 9:2067.

On January 23, 2006, the trial court ordered the co-trustees of the family trust to make distributions from the trust in the amount of \$2,000 per month to Tim Mashburn. The trial court further ordered that the award was retroactive to November 8, 2005, with each monthly distribution to be accounted for and deducted from Tim Mashburn’s family trust, and that such distributions were not to be duplicative of the previously ordered monthly distributions from Tim Mashburn’s marital trust. A written judgment to this effect was signed by the trial court on January 31, 2006, and it is from this judgment that the co-trustees of the family trust have appealed.

## **II. LAW AND DISCUSSION**

On appeal, the trustees assert that trial court erred in ordering invasions of the principal of Tim Mashburn’s interest in the marital trust under La. R.S. 9:2067 because: the trust instrument does not allow for the invasion of principal under any circumstance, Tim Mashburn will never be entitled to enjoy the principal of the trust during his lifetime, and Tim Mashburn failed to prove his needs in accordance with La. R.S. 9:2067.

Louisiana Revised Statutes 9:2067 provides:

The proper court may direct or permit a trustee to pay income or principal from the trust property for the necessary support, maintenance, education, medical expenses, or welfare of a beneficiary before the time he is entitled to the enjoyment of that income or principal, if the interest of no other beneficiary of the trust is impaired thereby.

In construing a trust, the settlors' intention controls and is to be ascertained and given effect, unless opposed to law or public policy. **In Re James C. Atkinson Clifford Trust**, 2000-0253 (La. App. 1<sup>st</sup> Cir. 6/23/00), 762 So.2d 775, 776, writ denied, 2000-2262 (La. 10/27/00), 772 So.2d 655. Parol or extrinsic evidence may be admitted to aid in construing the trust instrument only if the instrument is ambiguous and uncertain and only to explain, not contradict the instrument. *Id.*

First and foremost, we note that the family trust instrument does not provide for (and therefore, the settlors, Jack and Sadie Mashburn, did not intend for) the principal of the family trust to be invaded by any of the nine beneficiaries of the family trust for any reason. Further, we note that the family trust instrument provides (and therefore, the settlors intended) only for the payment of *income* to the beneficiaries on an *annual* basis. With these intentions controlling and being given effect, we find the following provisions of the family trust instrument relevant.

At the outset, the settlors stated in the family trust instrument that it was their "intent for this Trust to satisfy the legal requirements for a Class Trust and a Trust that satisfies the legitime due any beneficiary from the Settlers." Paragraphs 1.2 and 1.3 provide that the settlors' nine children are the beneficiaries of both income and principal, and Paragraph 5.1 provides: "Each trust created by this instrument shall be held subject to the maximum restraint on voluntary or involuntary alienation by the beneficiary permitted by the provisions of the Louisiana Trust Code."

Additionally, Paragraph 1.5 provides that "[t]he descendants of a deceased child of the Settlers shall succeed to the income interest of that child, unless that child's income or principal interest ... has been disposed of in the Last Will and Testament of that child." Additionally, Paragraph 1.6 provides that "[i]n any case

where a substituted beneficiary or beneficiaries succeed to an interest in this Trust, such beneficiary's, or beneficiaries', interest in the principal of this Trust shall be held pursuant to this Trust until the Trust termination date hereinafter provided," and Paragraph 4.1 provides that "[t]he term of each of the Trusts established pursuant to this instrument shall be for the maximum time allowed by the Louisiana Trust Code for the existence of class trusts."

In this case, since the family trust included all of the settlors' nine children, it is a class trust which was closed upon the death of Jack Mashburn, the second parent (and settlor) to die. See La. R.S. 9:1891 and 9:1896. When the class members of a trust are the beneficiaries of both income and principal, as in this case, "[t]he trust shall continue with respect to the share of a class member for his lifetime unless the trust instrument stipulates a shorter term." La. R.S. 9:1906; see also La. R.S. 9:1901.

Considering these relevant provisions and the settlors' intentions, we find that the principal interest of each beneficiary in the family trust was to be held in trust until the termination of the trust, which will occur when the last of the settlors' nine children/beneficiaries die. As such, Tim Mashburn will never be entitled to the principal interest of his trust during his lifetime, because it will not be distributed until the trust terminates after his death (and the deaths of his eight siblings).

Although La. R.S. 9:2067 does allow for the payment or "invasion" of the principal of the trust in certain limited circumstances involving objective needs of the beneficiary, and then, only if such invasion does not impair the interest of any other beneficiary,<sup>3</sup> before a court can order the invasion of the principal of the trust for the reasons permitted under La. R.S. 9:2067, the beneficiary must, at some point in the future, be "entitled to the enjoyment of that ... principal." La. R.S.

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<sup>3</sup> See Read v. U.S., Dep't of Treasury, 169 F.3d 243, 251 (5<sup>th</sup> Cir. 1999).

9:2067; see also **Mashburn Marital Trust (II)**, 2006-0741, p. 12, \_\_\_ So.2d at \_\_\_\_\_. In this case, Tim Mashburn will never be entitled to the “enjoyment” or the use of the principal of the trust, because the trust instrument does not provide for the payment of the principal interest until the trust terminates at the death of the last of its nine beneficiaries.

Accordingly, we find that Tim Mashburn was not entitled to distributions from the principal of the trust under the provisions set forth in La. R.S. 9:2067. Since the trial court incorrectly determined otherwise, we hereby reverse the January 31, 2006 judgment of the trial court.<sup>4</sup>

### **III. CONCLUSION**

For the above and foregoing reasons, the January 31, 2006 judgment of the trial court is hereby reversed.

All costs of this appeal are assessed to the appellee, Timothy R. Mashburn.

**REVERSED.**

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<sup>4</sup> Since we have determined that the family trust instrument does not allow for the invasion of principal under any circumstance, and that Tim Mashburn is not entitled to invade the principal of the family trust under the provisions set forth in La. R.S. 9:2067 (because Tim Mashburn will never be entitled to enjoy the principal of the trust during his lifetime), we pretermitted discussion of whether Tim Mashburn sufficiently proved the necessity for such distributions under La. R.S. 9:2067.