**Title:** Unforseen Consequences - The Case, Tannen v. Tannen

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**Raw Content:** The New Jersey Supreme Court considered the issue of whether income from a <a href="http://en.wikipedia.org/wiki/Discretionary\_trust" target="\_blank" rel="noopener noreferrer">discretionary trus</a>t could be imputed as support for purposes of computing alimony in a divorce action
The case, <em>Tannen</em> <em>v</em>. <em>Tannen </em><span style="text-decoration: underline;"><a href="http://lawlibrary.rutgers.edu/collections/courts/appellate/%20a4211-07.opn.htm">http://lawlibrary.rutgers.edu/collections/courts/appellate/ a4211-07.opn.htm</a></span> is of interest for two reasons. First, it demonstrates the impact that changes in one area of law have upon another area. In this instance, a change in trust law impacts family law. Second, the case also demonstrates that trusts established many years ago may face challenges that were unanticipated at the time of the creation of wholly discretionary trusts.
The trial court had held that a beneficiary’s interest in a discretionary trust could be considered in calculating support available to the beneficiary and thereby reduce the non-beneficiary spouse’s alimony obligation. The Appellate Division overturned, noting that the Trial Court’s holding upset well-settled case law<strong>.</strong> The Supreme Court affirmed the Appellate Division decision for the reasons expressed in that Appellate Division opinion, and, significantly, without issuing its own opinion. The result is that the status quo is maintained, at least for now.<!--more-->
The facts are relatively clear-cut. The wife in this matrimonial action was the beneficiary of a trust where the trustee had complete discretion to make distribution for the beneficiary’s health, support, maintenance, education and general welfare. The trust instrument stated that the Trustee was permitted to consider other resources available to the beneficiary, and the Trustee could not be compelled by the beneficiary to distribute income or principal. The husband sought to have the income from this trust reduce his support obligation by being deemed available to the wife. In order to achieve this result, the husband needed to convince the trial court to use the<strong> </strong>revised guidance, contained in the <em>Restatement (Third) of Trusts</em>. The revised guidance would deem the income from the trust available to the wife and thus reduce the husband’s alimony obligation.
The <em>Restatement (Second) of Trusts</em> provides such<strong> </strong>guidance to interpret trust provisions and has been used by New Jersey courts in various cases over the years. The <em>Restatement (Third) of Trusts</em> made changes to this, most notably in eliminating the distinction between a support and a discretionary trust. Thus, the <em>Restatement (Third) of Trusts</em> gives a beneficiary a right to income from a discretionary trust as one where distributions to the beneficiary are mandatory. In <em><span style="text-decoration: underline;">Tannen</span></em>, the trial court judge used the <em>Restatement (Third) of Trusts</em> in holding that the beneficiary-wife had the right to income from the trust. The right to income was all that the trial judge needed to impute this income to her for purposes of the alimony calculation.
The Appellate Division declined to adopt the <em>Restatement (Third) of Trusts</em>, stating that the dramatic impact that its adoption would have upon other areas of law should be left to the Supreme Court. The Supreme Court similarly declined to take this opportunity to adopt the <em>Restatement (Third) of </em>Trusts. Thus, we are left with the status quo. Now is the time to plan for the future and review trust agreements that we once thought were impervious.
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