

CASE UPDATES

BHBA Trusts & Estates Section – September 2017 Luncheon program

Bankruptcy – *In re Reynolds*, U.S. Court of Appeals for the Ninth Circuit, August 15, 2017, 2017 S.O.S. 12-60068

The debtor is a beneficiary of a spendthrift trust, and the trust payments he receives come from trust principal. The panel determined that the issue of whether and to what extent creditors may reach trust distributions is not clear in the California Probate Code, so the panel certified the question to the California Supreme Court. The California Supreme Court, in *Carmack v. Reynolds*, 391 P.3d 625, 628 (Cal. 2017): Cal. Prob. Code § 15301(b). In that case, the California Supreme Court determined that “[w]ith limited exceptions for distributions explicitly intended or actually required for the beneficiary’s support, a general creditor may reach a sum up to the full amount of any distributions that are currently due and payable to the beneficiary even though they are still in the trustee’s hands, and separately may reach a sum up to 25 percent of any payments that are anticipated to be made to the beneficiary.”

Based on the California Supreme Court’s opinion, the panel determined that the bankruptcy estate is entitled to the full amount of spendthrift trust distributions due to be paid as of the petition date, but that the estate may not access any portion of the money that the beneficiary needs for his support or education, as long as the trust instrument specifies that the funds are for that purpose. The panel also held that the bankruptcy estate may reach 25 percent of expected future payments from the spendthrift trust, reduced by the amount the beneficiary needs to support himself and his dependents. The panel remanded so that the bankruptcy court could apply *Carmack* to the case.

Guardianship and Termination of Parental Rights – *In re D.H.*, 4th District, August 22, 2017, 2017 S.O.S. 4202

D.H. was born in 2008. His paternal grandparents became his legal guardians in 2010 under a probate order. In March 2014, the Department of Social Services (DPSS) received a report alleging that the grandparents were neglecting D.H. and that drug activity was taking place in the garage of the home, where D.H.’s father and father’s girlfriend resided. The report asserted that father had a history of drug abuse and domestic violence. Grandmother admitted to using methamphetamine but said that father’s girlfriend had given it to her and that it was the first time she used the drug.

DPSS took D.H. into custody and filed a dependency petition under Welfare and Institutions Code Section 300(b) (failure to protect). The petition alleged that the grandmother abused methamphetamine and was under the influence while caring for D.H. The petition also alleged that the grandparents allowed the father and girlfriend to

live in the garage when they “knew or reasonably should have known that they both abuse controlled substances and engage in domestic violence disputes.” The court ordered DPSS to provide family reunification services and approved the grandparents’ case plan, which prohibited them from using drugs, allowing drug use in their home or allowing D.H.’s father to reside in the garage.

Although the grandparents initially followed the plan, during the 12 month review period, the social worker learned that the grandparents were violating their case plan by allowing father to live in the garage and have unsupervised time with D.H. At the 12 month review hearing, the court found that the grandparents had failed to benefit from services. The services were terminated, and the court found that returning D.H. to the grandparents would be detrimental to his welfare.

In the ensuing months, DPSS sought to have father’s parental rights terminated. Father objected, arguing instead for a legal guardianship. Approximately ten months later, father’s parental rights were terminated, and father appealed.

The Court of Appeal held that the juvenile court must make a finding of parental unfitness or detriment by clear and convincing evidence before terminating father’s parental rights. The Court of Appeal noted that no such finding was made in this case and that all of the allegations in the petition concerned the grandparents, not father. Rather, the decision to terminate parental rights was based on a “best interest of the child” analysis (Probate Code § 1516.5), which is the applicable standard for establishing a guardianship but is not the appropriate standard for terminating parental rights. Accordingly, the Court of Appeal reversed the termination order and remanded to the juvenile court “to determine whether there is clear and convincing evidence to support a finding of parental unfitness or detriment, based on the facts as they currently exist. If the court finds detriment, the order terminating parental rights shall be reinstated.”