

CASE LAW UPDATE

2022 CHANGES AND TRENDS AFFECTING
SPECIAL NEEDS TRUSTS - UT CLE

Law Office of John B. Henry, III, PLLC
Bellaire, Texas

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Focal Points

Increase in pro se appeals

Family trouble is afoot

Trusts are an important
protection

Proper estate planning is
important

Documenting advice should
be a routine practice for all
roles attorneys involved

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Albuquerque Pub. Schs v. Cooper

2021 U.S. Dist. LEXIS 62578 *; 2021 WL 1186706

(Stay in your lane...)

- The Coopers, parents of J.N., a child with autism, filed suit against Albuquerque Public Schools ("APS"), individually and on behalf of their son, and the New Mexico Department of Education who they allege physically restrained their son multiple times while attending APS.
- The Coopers reached a settlement with APS for \$50,000 for J.N.'s physical injuries and \$65,000 in attorney's fees and costs.
- The trial judge accepted the settlement but recommended \$2,400 of the settlement be allocated to cover a one-time mortgage payment for J.N.'s family and the remaining funds to be placed in a pooled trust administered by the Arc of New Mexico.
- APS cited *Hobbs ex rel. Hobbs v. Zenderman*, 542 F. Supp. 2d 1220 (D.N.M. 2008) in opposition to the allotment for the mortgage payment because it was not for "the sole benefit" of the child.
- The Court found *Hobbs* not to apply because Medicaid was not at issue.

Am. Gen. Life Ins. Co. v. Vogel

2021 U.S. Dist. LEXIS 246201 *; 2021 WL 6112787

(Get me outta here!)

- American General Life Insurance Co. brought a diversity action seeking declaration of the proper payee of payments due under an annuity contract.
- The underlying settlement agreement was executed by Mr. Rodriguez, the maternal grandfather, who was GAL for Esperanza Vogel.
- The settlement agreement neglected to define the annuity's payee and the defendants' assignment made future payments payable to Esperanza.
- Mr. Rodriguez requested that those future payments be made payable to the trustee of a special needs trust for the benefit of Esperanza appointing Mr. Rodriguez as trustee.
- In or around 2019, Esperanza alleged trustee misconduct and mismanagement of trust assets by Mr. Rodriguez.
- There was a disagreement between Esperanza and her grandfather about whether the trust was terminated.
- The trust provided termination at Esperanza's death or earlier court order.
- Esperanza and Mr. Rodriguez filed waivers of service to the action brought by American General but no answers.
- Because there were not sufficient facts, the Court found it could not grant American General's default judgment for deposit into the registry and would not grant leave to deposit the funds because of the administrative burden of annuity payments.

Berezo vs. Berezo

628 S.W.3d 737 *; 2021 Mo. App. LEXIS 592 **

(If he liked it, then he should have put a signature on it...)

- Decedent's second wife filed an action to receive an elective share of her late husband's estate.
- Michael Berezo ("Decedent") created a trust in 1996 when he was married to his first wife, Alene.
- Decedent and his first wife had an adult disabled daughter. Her care was also funded by a separate SNT and governmental assistance.
- After his first wife's passing in June of 2012, Decedent married his second wife, Patricia.
- Between March 2014 to November 30, 2014, Decedent retained attorneys to update his trust to name his second wife but unfortunately, did not complete the amendment prior to his death.
- Patricia filed a miscellany of legal arguments as to why she had an interest in Decedent's estate including the trust estate, including that she was a beneficiary, constructive trust and promissory estoppel.
- The court found none of her arguments availing and upheld attorney's fees against her in excess of \$500,000.

Borg v. Warren

2021 U.S. Dist. LEXIS 120443 *; 2021 WL 2657005

(Caveat emptor?!?)

- Criminal scheme involving several single-member shell companies that defrauded customers who were attempting to purchase trained dogs.
- Charles Warren and Jacob M. Dudek-Warren formed entities for various ostensible purposes, including real estate transactions, farm rentals, and much more.
- Included among Warren and Dudek's schemes was a Diabetic Alert Dog Program where they would provide customers with specially trained service dogs that would alert when the dogs detected altered blood sugar levels.
- Among the program's unwitting customers was the Rich Family who had an autistic child.
- Though the company was collapsing, Warren and Dudek promised Ms. Rich that she would receive her dog in record time.
- The court found that the Plaintiffs had complicated their case by pleading numerous causes of action, including RICO violations, and dismissed some but not all claims.

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