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Special Needs Trust Update

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Special Needs Trust Update

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Cases

In re: Guardianship of James P. Dwyer, 2024-Ohio-2544 (Ohio Ct. App., 1st Dist., July 3, 2024). Coordinating care for a sibling with special needs can be difficult and, when disputes among family members arise related to caregiving and the management of resources, Ohio Court of Appeals held that it will consider the best interests of the protected person and the terms of the trust.

James has Down Syndrome and his parents created a third-party special needs trust (SNT) before they died. They named one of his siblings, his sister, Mary Anne, a trust advisor. James' other sister, Suzanne, was named as an alternate trust advisor. Another one of James's sisters, Maureen, was appointed Guardian for James when their parents died. She and James lived in their parents' home and she was also responsible for overseeing his STABLE account and funds in a Medicaid payback trust account for his benefit.

The siblings disagreed over James's care and management of his finances, leading to multiple court motions, settlement agreements, and removals of Maureen as guardian and from various financial roles. Among other things, the settlement agreements addressed how Maureen and Suzanne (now serving as a co-guardian for James) would coordinate his care, what information related to James' accounts she was required to share and what funds were required to be used by Maureen for James' benefit. The probate court ultimately found that Maureen had breached settlement agreements, failed to provide requested financial information, and acted against James's best interests. The court

removed her as co-guardian, from James's financial accounts, and ordered her to pay the siblings' attorney fees.

On appeal, Maureen challenged her removal from James's financial accounts and the attorney fee awards. The appeals court found that the probate court's rulings to remove Maureen as guardian and from matters related to James' financial accounts did not have any bearing on whether she could (or should) be removed as trustee of his SNT. The Court of Appeals affirmed the probate court's rulings, finding no abuse of discretion in removing Maureen from James' financial accounts given her beaches of the terms of the settlement agreements and failures to act in James' best interests. Maureen's appeal of the attorney fee awards was dismissed as moot since the fees had been paid via garnishment and Maureen had not sought a stay.

Black as Trustees of Black v. Black, ___ N.E.3d ___, 2024 IL App (1st) 221667 (Ill. App. Ct., 1st Dist., February 9, 2024). Illinois Appellate Court affirmed trial court's vacation of its own judgement once it was informed that Bernard Black and Samuel Black, as trustees of the Trust for the Benefit of the Issue of Renata Black, got the judgment without proper notice to the intervenors.

Some background facts from the numerous prior cases, to set the stage for this new one.

The Black siblings' mother died in New York in 2012. Mother's Will devised two-thirds of her estate to an SNT ("Supplemental Needs Trust") for her daughter, Joanne, who suffers from schizophrenia, and one-third to a trust ("Issue Trust") for her son ("Mr. Black") and his children. Mother's estate consisted of multiple accounts with a total value of approximately $3 million. Shortly before her death, mother designated 95% of the value of the accounts payable-on-death ("POD") directly to Joanne, and 1% POD to each of Mr. Black's five children from his first marriage.

This situation did not sit well with Mr. Black, or with Mr. Black's second wife, with whom he had two children. Mr. Black, is a tenured law professor who has written on the subject of corporate directors' fiduciary duties. His wife, Katherine Litvak, is also a tenured law professor. Mr. Black decided that the best course of action was to seek appointment as Joanne's conservator. Then, acting on Joanne's behalf, he could "disclaim" the money in the POD accounts, and the money would revert to the estate and be distributed as mother originally intended. In this way, Mr. Black could correct the "mistake" made in mother's designation of the POD accounts.

Joanne was in Denver, so Mr. Black initiated the conservatorship action there. He told the court that the assets were at risk of being "wasted and dissipated" because mother had

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