

Case Law & Legislative Update

2021 CHANGES AND TRENDS AFFECTING
SPECIAL NEEDS TRUSTS – UT CLE

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1

Trends form 2021

- Remember the basics
- People are people
- The administrative state may be unpredictable
- Inter-state planning and awareness is critical to a mobile population
- Procedure is critical

2

Wilson v. Bimestefer

2020 U.S. Dist. LEXIS 90242; 2020 WL 2615535
(There's gotta be a solution out there...)

- Denver Probate Court terminates special needs trust due to language in the trust agreement pursuant to Colorado state law following beneficiary's move to another state.
- Parker Wilson's father established the Parker James Wilson Disability Trust in compliance with C.R.S. § 15-14-412.8 and 10 C.C.R. 2505-10, §§ 8.100.7.E.6.b.i.e-h with funds from an automobile accident that rendered Parker disabled.
- The trust stated that it "...shall [emphasis added] terminate upon the death of the primary beneficiary or if the trust is no longer required for Medicaid eligibility in Colorado."
- Wilson appealed contending Colorado statute violates the federal Medicaid statute, due process and the right to travel under the Fourteenth Amendment.
- Dismissed to due to standing and jurisdiction issues under Rooker-Feldman Doctrine.

Geness v. Pennsylvania

2020 U.S. Dist. LEXIS 134431; 2020 WL 4350239
(Secure your bag...up front...in writing...with a party competent to sign!)

- Civil attorney represents Craig Genness, a mentally disabled man.
- Genness was in Fayette County custody awaiting a competency hearing on his ability to stand for trial for a homicide charge.
- The Commonwealth later conceded it could not prove the case against Mr. Geness.
- His counsel with notable experience after months of trying to bring civil rights claims that were untimely, changed course in the Fall of 2016 to explore claims under the Americans with Disabilities Act.
- The court was presented with a decision concerning allocation of the initial settlement between Mr. Geness special needs trust and his counsel's attorney's fees.
- The court limited attorney recovery in quantum meruit instead of contingency fee agreement.

Peter W. v. Saul

2020 U.S. Dist. LEXIS 189281; 2020 WL 6044297
(Run for the hills!)

- Peter's parents brought a medical malpractice suit on his behalf after his infantile glaucoma went undiagnosed until he was one year old.
- The suit settled for \$20,000, and the proceeds were placed in a certificate of deposit.
- On October 25, 2022, the probate court of Will County, Illinois, granted the parents' petition to create a special needs trust naming them as trustees.
- Peter's application for SSI was denied, as his trust assets were deemed available due to language in his trust making it a countable asset.

Peter W. v. Saul

2020 U.S. Dist. LEXIS 189281; 2020 WL 6044297
(Run for the hills!) (Cont.)

- At reconsideration, the ALJ rejected the first two bases from the reconsideration level but agreed the "taxes and fees" language was unclear and could permit an undetermined kind of taxes and fees to be paid prior to termination of the trust.
- Peter argued that his incorporation of "statute or regulations now in existence or hereafter enacted or issued" included the POMS, which has a limited definition of allowable taxes and expenses at termination including taxes due to state and federal government because of the death of the beneficiary and reasonable fees for administration for wrapping and termination of the trust. POMS SI 01120.203(E)(2).
- The court, however, disagreed saying that the trust's reference to "...regulations" does not incorporate the POMS because the POMS does not have the status or the enforceability of a regulation issued by the SSA.

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