

PRESENTED AT

2021 Changes and Trends Affecting Special Needs Trusts
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Case Law and Legislative Update

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1. **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. In 2017, Parker moved with his family to South Carolina. The Colorado Department of Health Care Policy & Financing filed a petition to terminate Parker's trust in Denver County probate court, because after leaving the state, Mr. Wilson was no longer eligible for Colorado Medicaid. In July 2018, the probate judge ruled that the trustee could not make any distributions from the trust until she ruled on the Department's petition to terminate the trust. The trust named Parker the primary beneficiary and the Department the remainder beneficiary, and pursuant to C.R.S. § 15-14-412.8 and 10 C.C.R. 2505-10, §§ 8.100.7.E.6.b.i.e-h, 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." On December 26, 2018, the probate court ordered the trust be terminated with reimbursement to the Department of the remaining trust funds—a total of \$31,758.18. Parker did not file an appeal of the probate order before the February 13th deadline, and the probate judge ordered disbursement of the funds to the Department on March 29, 2019.

Nevertheless, on July 15, 2019, Parker filed an appeal on a separate but related case in which Parker had requested that the probate court decant the trust and eliminate the Department's remainder interest, which is pending.

On June 6, 2019, Parker filed a complaint under 42 U.S.C. § 1983 seeking to enjoin defendants Kim Bimestefer, Tom Massey, David Smith, and Ashley DiRienzo, Department representatives, from enforcing C.R.S. § 15-14-412.8 and 10 C.C.R. 2505-10:8.100.7.E.6.b and the return of the disbursed funds from his trust. Parker claimed that the State of Colorado's termination of his trust and the Colorado statutes that permit such termination violate the federal Medicaid statute, due process and the right to travel under the Fourteenth Amendment. Due to standing issues related to his already terminated trust and jurisdictional constraints set forth under the *Rooker-Feldman* doctrine, the court granted Defendants' motion to dismiss Parker's complaint. The Court did acknowledge Parker's being "understandably frustrated," but reiterated that the lower federal courts cannot serve as appellate forums for state court decisions as contemplated in *Rooker-Feldman* doctrine.

**2. 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 mentally disabled man. He successful brings claims under the American with Disabilities Act but neglects to have an agreement with a client representative.

Craig Geness was a fifty-three-year-old man with a mental disability. Rather than receiving services in facility under the auspices of the Pennsylvania Department of Human Services, he spent nearly ten years 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. Before adding the Department in of March 2019, his counsel sued several Commonwealth parties. Surviving the Department's motion to dismiss, Mr. Geness' counsel negotiated a \$375,000 settlement with the Department. Mr. Geness still has pending claims in the trial court against other Commonwealth defendants and the Administrative Office of Pennsylvania Courts.

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 voiced no hesitation about the settlement amount but did express concerns about a contingency fee of forty percent without a valid agreement. Mr. Geness' counsel admitted that his client did not have capacity to enter into the client agreement with him. Even with the support of a replacement limited guardian who was a former Orphan's Court Division of the Court of Common Pleas of Fayette County judge, the court was not convinced of the propriety of enforcing a contingent fee on a recovery for a person who could not consent. The court instead permitted Mr. Geness' counsel to recover in quantum meruit for his services rendered by an hourly rate totaling \$118,260.

3. 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. The trust had the following provision:

*Unless sooner terminated by exhaustion of corpus, this Trust shall terminate upon [Claimant's] death. Specifically, in accordance with 42. U.S.C. [§]1396p(d)(4)(A),2 any amount remaining in the trust at [Claimant's] death (up to the amount expended by the State of Illinois, or any other [*3] state, for [Claimant's] medical assistance) shall be paid to the appropriate State agencies, as reimbursement to the State of Illinois or such other*

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