

## Publications

### Ohio Court of Appeals Rules That a Beneficiary's Interest in an Irrevocable Trust Is Not Subject to Equitable Division in a Divorce

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The following article was featured in the August 2017 edition of *Legacy*, the Vorys newsletter focused on wealth planning.

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One of the many reasons that clients consider trusts in their estate planning is to protect assets from the creditors of their beneficiaries. In this regard, a situation that is frequently a concern to clients is the possibility that a child will get divorced and the divorcing spouse will seek assets given to or inherited by the child.

Earlier this year, the Ohio Court of Appeals for Allen County (Court) ruled that a beneficiary's interest in an irrevocable trust, of which such person was both a beneficiary and trustee, was not subject to equitable division in a divorce. *Guagenti v. Guagenti*, 2017-Ohio-2706 (Ohio Ct. App., Allen County May 8, 2017)

In the case, after the Guagentis were married, but prior to the filing of their divorce, Mr. Guagenti's father established an irrevocable trust for the benefit of Mr. Guagenti and his children and also named Mr. Guagenti as trustee. As trustee, Mr. Guagenti was permitted to distribute the income generated from the trust to himself and his children for their health, education, maintenance and support. Mr. Guagenti was also permitted to distribute principal to himself and his children, but only with the consent of an independent three-person "Protector Committee." Because Mr. Guagenti was both a beneficiary and trustee, Mrs. Guagenti argued that her husband had the unfettered ability to reach trust assets, and therefore, the property held in the trust should be considered marital property and subject to equitable division. The principal asset of the trust was stock in an Anheuser-Busch distributorship that also employed Mr. Guagenti.

The trial court held that the trust was not marital property, and, therefore, the trust was not subject to equitable division. On appeal, the Court held that the circumstances in the case were insufficient to support Mrs. Guagenti's contention that the trust was marital property

subject to division and upheld the trial court's decision. In reaching this conclusion, the Court was influenced by the fact that, although Mr. Guagenti was a trustee and a beneficiary of the trust, the restrictions on distributing income and principal to himself and the fact that the trust included other beneficiaries, did not give Mr. Guagenti unfettered access to the trust assets. Therefore, the court determined, the trust was not marital property subject to equitable division.

Although the trust was respected, the case illustrates the importance of careful structuring and administration of a trust in order to achieve the protection sought in establishing it. The Court made clear in its analysis that any similar case should be evaluated using a "case-by-case approach based upon the intent and conduct of the relevant parties with regard to the formation and operation of the trust ...."

If you have questions about the applicability of this case to your existing estate plan or about creditor and marital rights and protections for trust assets, please feel free to contact your Vorys attorney.