

Muddy Water

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For years, trust attorneys have wrestled with the issue of whether a trustee must provide information to a beneficiary whose interest in the trust is contingent. If a married couple creates a trust that would pass to their children when they die, then their children would typically have no current interest in the trust. Many trust lawyers will say that these contingent remainder beneficiaries should not have a right to information about their parents' trust, at least during the parents' lifetimes. But the courts have slowly eroded this expectation of privacy.

The courts and commentators have noted that trust settlors should enjoy some level of privacy regarding their financial affairs. Trustees must weigh these privacy interests when deciding whether a contingent remainder beneficiary should be allowed access to trust information. But even if a contingent remainder beneficiary should be allowed access to trust records, should the trustee be required to disclose trust information to a family member who is not a trust beneficiary?

On June 24, 2014, the Oklahoma Supreme Court appears to have changed the debate on this issue, at least when the trust's settlor is the subject of guardianship proceedings. In *Guardianship of Berry*, a daughter brought guardianship proceedings regarding her mother and father, Mr. and Mrs. Berry. The Berrys' assets were held in their trust. Mr and Mrs. Berry's nephew, joined by their son, requested the trust's financial records. The trial court refused to address their request.

The Oklahoma Supreme Court noted the statutory requirement that guardians must file annual reports disclosing "a complete financial statement of the financial resources of the ward under the control and supervision of the guardian or limited guardian." The annual report "shall contain an accounting of any receipts and disbursements received, or expenditures made by the guardian...on behalf of the ward."

Based upon this statutory language, the Court suggested that trust information should be disclosed to all parties to the guardianship proceedings, even if the parties are not trust beneficiaries. Even while noting "[t]he confidentiality of every trust provision is not negated by a guardian's duty to file a financial report," the Court held that "a guardian may not decline to account for expenditures made on behalf of the ward by a trustee. Both the financial resources of the ward and expenses of the ward must be reported in a guardian's report."

The decision could significantly change trust settlors' privacy expectations.

Attorneys

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