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U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

ORDERED PUBLISHED

**UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT**

In re:) BAP No. CC-11-1433-HPaD
)
RICK H. REYNOLDS,) Bk. No. 09-14039
)
) Adv. No. 09-01205
)
Debtor.)

SANDRA BENDON, Chapter 7)
Trustee,)
)
Appellant,)

v.)

O P I N I O N

RICK H. REYNOLDS; JOHN M.)
)
CARMACK, CO-TRUSTEE OF THE)
)
REYNOLDS FAMILY TRUST and CO-)
TRUSTEE OF THE REYNOLDS FAMILY)
TRUST-SURVIVOR'S TRUST, as)
)
amended; JOHN MORRIS, CO-)
)
TRUSTEE OF THE REYNOLDS)
)
FAMILY TRUST and CO-TRUSTEE)
)
OF THE REYNOLDS FAMILY TRUST-)
)
SURVIVORS TRUST, as amended,)
)
)
Appellees.)
_____)

Argued and Submitted on May 17, 2011
at Pasadena, California

Filed - August 24, 2012

Appeal from the United States Bankruptcy Court
for the Central District of California

Honorable Meredith A. Jury, Bankruptcy Judge, Presiding

Appearances: Jesse S. Finlayson, of Finlayson Williams
Toffer Roosevelt & Lilly LLP, argued for the Appellant.

Before: HOLLOWELL, PAPPAS and DUNN, Bankruptcy Judges.

1 HOLLOWELL, Bankruptcy Judge:
2

3 The bankruptcy court granted the debtor's summary judgment
4 motion, concluding that the bankruptcy estate was entitled to no
5 more than 25% of the debtor's beneficiary interest in a
6 spendthrift trust. The chapter 7 trustee appealed. For the
7 reasons explained below, we AFFIRM.

8 **I. FACTS**

9 In 2005, Rick Reynold's (the Debtor's) parents, Freddie Hugo
10 Reynolds (Freddie) and Patsy R. Reynolds (Patsy), established the
11 Reynolds Family Trust. Patsy died in November 2007. Upon her
12 death, the Reynolds Family Trust was split into three sub-trusts:
13 (a) the Bypass Trust; (b) the Marital Trust; and, (c) the
14 Survivor's Trust. Freddie retained the right during his lifetime
15 to receive all the income from each of the trusts. While the
16 Bypass Trust and the Marital Trust (together, the Family Trust)
17 were vested and not subject to further amendment, the Survivor's
18 Trust (Survivor's Trust) was amended from time to time by
19 Freddie. He died on March 3, 2009.

20 Once the Debtor survived Freddie by thirty days, he was
21 entitled to receive distributions from the Family Trust and the
22 Survivor's Trust. From the Family Trust, he was entitled to
23 \$250,000. Additionally, the Debtor was a one-third beneficiary
24 of the Survivor's Trust, along with his sisters, entitled to
25 receive \$100,000 per year for ten years. The assets in the
26 Survivor's Trust are interests of undeveloped real property,
27 which do not generate income. Thus, the distributions to the
28 Debtor are expected to be paid from trust principal. The terms

1 of the last amended Survivor's Trust provided that after the
2 Debtor survived Freddy for ten years, he would receive a final
3 distribution of one-third of the remaining principal. Although
4 the exact amount of the Debtor's interest in the Survivor's Trust
5 is unknown, the bankruptcy trustee believes it could be as much
6 as several million dollars.

7 The Family Trust and the Survivor's Trust are "spendthrift"
8 trusts, containing provisions that "[n]o interest in the income
9 or principal of any trust created under this instrument shall be
10 voluntarily or involuntarily anticipated, assigned, encumbered,
11 or subjected to creditor's [sic] claim or legal process before
12 actual receipt by the beneficiary."

13 The Debtor filed a voluntary chapter 7 petition on March 4,
14 2009.¹ Sandra L. Bendon was appointed the chapter 7 bankruptcy
15 trustee (the Trustee). On April 28, 2009, John Carmack, sole
16 trustee of the Family Trust and co-trustee, with John Morris, of
17 the Survivor's Trust, filed an adversary proceeding seeking a
18 declaratory judgment determining whether and to what extent the
19 bankruptcy estate held an interest in the Family Trust and the
20 Survivor's Trust.

21 On January 14, 2010, the Debtor filed a motion for partial
22 summary judgment (MSJ). The Debtor sought a partial summary
23 adjudication and judicial declaration that pursuant to California
24 Probate Code §§ 15300 et seq. (referred to herein as the Probate

25
26 ¹ The Debtor was unaware of the trusts or that he was a
27 beneficiary of the Trust. Thus, the Debtor did not list his
28 interest in the Trust on his bankruptcy schedules. On August 6,
2009, the Debtor amended the bankruptcy schedules to list his
vested interest in the Survivor's Trust.

1 Code or by the sections 15300-15307), particularly 15306.5, a
2 maximum 25% of a beneficiary's interest in a spendthrift trust is
3 property of a bankruptcy estate. Therefore, the Debtor argued
4 that the estate was entitled to reach no more than 25% of the
5 Debtor's interest in the Family Trust and the Survivor's Trust.

6 The Trustee opposed the MSJ. The Trustee acknowledged that
7 Probate Code 15306.5 capped a judgment creditor's² recovery at
8 25% of a beneficiary's interest in a spendthrift trust. However,
9 she argued that distributions of principal amounts payable to a
10 beneficiary under a trust, even if the trust contains a
11 spendthrift provision, are not protected under Probate Code
12 15301(b). Thus, the Trustee asserted that because the
13 distributions from the Family Trust and the Survivor's Trust were
14 expected to be made from principal, the estate could potentially
15 reach all of the Debtor's interests. Alternatively, the Trustee
16 asserted that, under Probate Code 15307, the estate could reach
17 the Debtor's interest in all amounts from the Family Trust and
18 the Survivor's Trust over and above what he required for his
19 education and support.

20 At the hearing on the MSJ, the bankruptcy court disagreed
21 with the Trustee's interpretation of the Probate Code. It
22

23 ² A bankruptcy trustee may not "step into the shoes" of
24 individual creditors to seize a spendthrift trust's assets.
25 Garrett v. Finley (In re Finley), 286 B.R. 163, 166 (Bankr. W.D.
26 Wash. 2002). However, a bankruptcy trustee is considered a
27 hypothetical lien creditor and can recover assets of the estate
28 for the benefit of general creditors under 11 U.S.C. § 544(a)(1).
Cutter v. Seror (In re Cutter), 398 B.R. 6, 21 (9th Cir. BAP
2008); Neuton v. Danning (In re Neuton), 922 F.2d 1379, 1383 (9th
Cir. 1990).

1 interpreted the Probate Code as allowing the estate a maximum of
2 25% of a debtor's interest in a spendthrift trust, less any
3 amount the debtor needed for his support or support of his
4 dependents. The bankruptcy court entered its order granting the
5 MSJ on June 6, 2011. A final judgment was entered on July 29,
6 2011. The Trustee timely appealed.

7 **II. JURISDICTION**

8 The bankruptcy court had jurisdiction over this proceeding
9 under 28 U.S.C. §§ 1334 and 157(b)(2)(A). We have jurisdiction
10 under 28 U.S.C. § 158.³

11 **III. ISSUE**

12 Did the bankruptcy court err in determining that the estate
13 was entitled to a maximum of 25% of the Debtor's interests in the
14 Family Trust and the Survivor's Trust?

15 **IV. STANDARD OF REVIEW**

16 We review orders granting summary judgment de novo. Bamonte
17 v. City of Mesa, 598 F.3d 1217, 1220 (9th Cir. 2010). We review
18 questions of California statutory construction de novo.
19 Ehrenberg v. S. Cal. Permanente Med. Group (In re Moses), 167

20
21 ³ On April 11, 2012, the Panel issued an order requesting
22 the Trustee to address whether the appeal was moot since it was
23 unclear whether the proceeds from 25% of the Debtor's interest in
24 the Family Trust and Survivor's Trust were adequate to satisfy
25 all allowed claims. The Trustee filed a response on April 18,
26 2012, stating that she estimates she needs \$600,000 to pay
27 allowed claims in full. The 25% limitation on the Debtor's
28 interests would give the Trustee \$62,500 and \$25,000/year for 10
years, or \$312,500 plus whatever unknown amount would be paid out
after 10 years. If we were to reverse the bankruptcy court, the
Trustee could potentially satisfy creditor claims in full.
Because we could provide the Trustee effective relief, the appeal
is not moot and we have jurisdiction to reach its merits.

1 F.3d 470, 473 (9th Cir. 1999). Whether property is included in a
2 bankruptcy estate is a question of law reviewed de novo.
3 Birdsell v. Coumbe (In re Coumbe), 304 B.R. 378, 381 (9th Cir.
4 BAP 2003); Cisneros v. Kim (In re Kim), 257 B.R. 680, 684 (9th
5 Cir. BAP 2000), aff'd, 35 Fed. Appx. 592 (9th Cir. 2002); see
6 also Butner v. United States, 440 U.S. 48, 55 (1979) ("Property
7 interests are created and defined by state law.").

8 V. DISCUSSION

9 Summary judgment may be granted when the record shows that
10 "there is no genuine issue as to any material fact and the movant
11 is entitled to judgment as a matter of law." Fed. R. Civ.
12 P. 56(a) (made applicable by Rule 7056). There is no issue as to
13 any material facts in this case, therefore, we address the legal
14 question of what portion of the Debtor's beneficial interests in
15 the Family Trust and the Survivor's Trust may be reached by the
16 Trustee.

17 A. The Bankruptcy Estate

18 The bankruptcy estate includes "all legal or equitable
19 interests of the debtor in property as of the commencement of the
20 case." 11 U.S.C. § 541(a)(1). However, property containing "[a]
21 restriction on the transfer of a beneficial interest of the
22 debtor in a trust that is enforceable under applicable
23 nonbankruptcy law" is excluded from the estate. 11 U.S.C.
24 § 541(c)(2); In re Cutter, 398 B.R. at 19; In re Kim, 257 B.R. at
25 688. There is no dispute in this case that the Family Trust and
26 the Survivor's Trust were spendthrift trusts, which restricted
27 the transfer of the Debtor's interests.

28 California law recognizes the validity of spendthrift

1 trusts. In re Moses, 167 F.3d at 473; In re Neuton, 922 F.2d at
2 1383. The validity of a spendthrift provision is predicated on
3 the consideration that a person is free to make any desired
4 disposition of his property. Crocker-Citizens Nat'l Bank v.
5 Johnston (In re Estate of Johnston), 252 Cal. App. 2d 923, 925-26
6 (Cal. Ct. App. 1967). Nevertheless, California has imposed
7 qualifications and restrictions on spendthrift trusts, which are
8 set forth in the Probate Code.

9 The Trustee asserts that the Probate Code allows her to
10 reach the Debtor's full interest in the Family Trust and the
11 Survivor's Trust in order to satisfy the claims of the estate's
12 creditors. Therefore, she argues that the bankruptcy court erred
13 in its conclusion that the Probate Code limited the estate to 25%
14 of the Debtor's interests. Our decision therefore depends on the
15 construction and interpretation of the Probate Code.

16 **B. Principles Of Statutory Construction**

17 "When presented with a question of statutory construction,
18 our primary task is to ascertain legislative intent to effect the
19 purpose of the statute." Ventura Cnty. Dep't Of Child Support
20 Servs. v. Brown, 117 Cal. App. 4th 144, 149-50 (Cal. Ct. App.
21 2004). We must ascertain the legislative intent starting with the
22 language of the statute itself. Young v. McCoy, 147 Cal. App.
23 4th 1078, 1083 (Cal. Ct. App. 2007). If the terms of the statute
24 are unambiguous, we presume the lawmakers meant what they said,
25 and the plain meaning of the language governs. Doner-Griswold v.
26 See (Estate of Griswold), 25 Cal. 4th 904, 911 (2001). Only if
27 the statute is ambiguous do we consult extrinsic sources such as
28 legislative history. Id.

1 In reading a statute, we keep in mind that interpretations
2 that render any part of a statute superfluous are to be avoided.
3 Sonoma Cnty. Human Servs. Dep't v. J.H. (In re S.H.), 197 Cal.
4 App. 4th 1542, 1552 (Cal. Ct. App. 2011); Young, 147 Cal. App.
5 4th at 1084. Moreover, the various parts of a statute must be
6 harmonized by considering the particular clause or section in the
7 context of the statutory framework as a whole in order to
8 determine the scope and purpose of the provision. People v.
9 Mendoza, 23 Cal. 4th 896, 907-08 (2000). "We must promote,
10 rather than defeat, the general purpose of the statute." Ventura
11 Cnty., 117 Cal. App. 4th at 150. Furthermore, we "must avoid a
12 construction that would produce absurd consequences, which we
13 presume the Legislature did not intend." Mendoza, 23 Cal. 4th at
14 908.

15 **C. The Probate Code**

16 The Probate Code sets forth the rules regarding restrictions
17 on voluntary and involuntary transfers. It was substantially
18 revised by the California Legislature in 1986 to improve and
19 coordinate the law relating to spendthrift trusts. Ventura
20 Cnty., 117 Cal. App. 4th at 150-51. "There were two objectives:
21 1) to reduce the ability of a general creditor to reach a
22 beneficiary's interest in a trust; and 2) to give greater rights
23 to support creditors." Id. at 151.

24 The Probate Code first sets out California's recognition
25 that a restraint on the transfer of trust income is valid. Cal.
26 Prob. Code § 15300. If so restrained, the beneficiary's interest
27 in trust income "may not be transferred and is not subject to
28 enforcement of a money judgment until paid to the beneficiary."

1 Id. Probate Code 15301 provides identical protections to the
2 principal of spendthrift trusts. Cal. Prob. Code § 15301(a).
3 Thus, in California, a beneficiary's interest in the income and
4 principal of a spendthrift trust is protected from the claims of
5 creditors as long as the income and/or principal remains in the
6 trust. Once the income or principal of a spendthrift trust is
7 distributed to a beneficiary, however, it can be reached by
8 creditors. Cal. Prob. Code §§ 15300, 15301.

9 That said, there are stated exceptions that allow certain
10 creditors to reach trust income or principal that is payable, but
11 not yet paid, to a beneficiary. The exceptions are listed in
12 15304-15307. Cal. Prob. Code § 15300, 15301.

13 The Trustee asserts that each exception is independent and
14 provides alternate means for a creditor to seek the maximum
15 amount of a beneficiary's interest in order to satisfy its claim.
16 She contends the first exception is actually contained in
17 15301(b) and allows a creditor to reach all principal amounts
18 that are due and payable to the beneficiary in order to satisfy a
19 money judgment. The Trustee argues that "[t]here are no
20 limitations on creditors' rights under section 15301(b)." We
21 disagree.

22 **1. Probate Code 15301(b)**

23 Probate Code 15301 states:

24 (a) Except as provided in subdivision (b) and in
25 Sections 15304 to 15307, inclusive, if the trust
26 instrument provides that a beneficiary's interest in
27 principal is not subject to voluntary or involuntary
transfer, the beneficiary's interest in principal may
not be transferred and is not subject to enforcement of
a money judgment until paid to the beneficiary.

28 (b) After an amount of principal has become due and

1 payable to the beneficiary under the trust instrument,
2 upon petition to the court under Section 709.010 of the
3 Code of Civil Procedure by a judgment creditor, the
4 court may make an order directing the trustee to
5 satisfy the money judgment out of that principal
6 amount. The court in its discretion may issue an order
7 directing the trustee to satisfy all or part of the
8 judgment out of that principal amount.

9 Cal. Prob. Code § 15301 (emphasis added).

10 Probate Code 15301(a) references exceptions – those listed
11 in 15301(b) and in 15304-15307 – to the general rule that trust
12 principal enjoys spendthrift protection. If, as the Trustee
13 contends, 15301(b) allows a creditor the ability to satisfy its
14 judgment in full from the principal amount that has become due
15 and payable to the beneficiary, then there is little reason for
16 15301 to reference any of the other exceptions in 15304-15307,
17 particularly because the other exceptions also provide that a
18 creditor can reach trust principal that is “due and payable.”
19 Any of the other exceptions would be inapplicable and superfluous
20 if 15301(b), by itself, provided a creditor the means to satisfy
21 her judgment in full. Moreover, reading 15301(b) to mean that a
22 creditor can reach the entire principal amount of a trust
23 effectively eviscerates the spendthrift protection recognized by
24 15301(a).

25 Accordingly, a fair reading of 15301(b) is that it sets out
26 the procedure that a creditor must follow to satisfy her claim
27 from the principal of a spendthrift trust once it is payable but
28 not yet distributed to the beneficiary. First, she must file a
petition with the court under Cal. Civ. Proc. Code (C.C.P.)
§ 709.010 (procedure for enforcement of a money judgment against
interest in trust). DeMille v. Ramsay, 207 Cal. App. 3d 116,

1 126-27 (Cal. App. 1989). The court then has the discretion to
2 order the trustee to satisfy the claim to the extent allowable
3 under 15304-15307. Id.

4 C.C.P. § 709.010 emphasizes that the court's discretion to
5 order satisfaction of a judgment does not affect the limitations
6 on the enforcement of a debtor's interest in a trust under the
7 Probate Code. C.C.P. § 709.010(c). Thus, Probate Code 15304-
8 15307 "governs the rights of transferees and creditors of the
9 beneficiary of a trust to reach the beneficial interest in the
10 trust." See Official Law Commission Comments, C.C.P.

11 § 709.010(c). Consequently, whether and to what extent the
12 Trustee may reach the Debtor's beneficial interests in the Family
13 Trust and the Survivor's Trust is determined by the application
14 of 15304-15307, not 15301(b).

15 **2. Probate Code 15304-15306**

16 The exceptions contained in 15304-15307 are important in
17 understanding the statutory framework and general purpose of the
18 Probate Code because they reflect a policy recognition that
19 certain creditors should have greater rights to a beneficiary's
20 interest in order to satisfy their claims. To that end, 15305
21 provides special rights for creditors who hold claims for child
22 or spousal support. Support creditors are considered "preferred"
23 creditors "entitled to rights unavailable to a general creditor."
24 Ventura Cnty., 117 Cal. App. 4th at 151. A support creditor may
25 reach a beneficiary's interest in a spendthrift trust and be paid
26 from payments (either from income or principal) "as they become
27 due and payable, presently or in the future" in an amount that
28 the court determines is equitable and reasonable. Cal. Prob.

1 § 15305(b). A court may even overcome a trustee's discretion to
2 make or withhold payments to the beneficiary if the trustee acts
3 dishonestly or with an improper motive.

4 The same is true for payment of restitution judgments. Cal.
5 Prob. Code § 15305.5; Young, 147 Cal. App. 4th at 1084-85.

6 Similarly, if the beneficiary is liable for reimbursement to the
7 state for public support benefits, the court may direct the
8 trustee to satisfy all or part of the liability out of payments
9 (from trust income or principal) due and payable, presently or in
10 the future. Cal. Prob. Code 15306.

11 These exceptions reflect a clear policy position, which
12 permits particularly identified creditors to reach a
13 beneficiary's interest in a spendthrift trust with little
14 restriction (the only limiting factor depends on what the court
15 finds to be reasonable and equitable). Consequently, the
16 Trustee's argument that any creditor should similarly be able to
17 satisfy its claim from trust principal under 15301(b) is
18 unavailing.

19 **3. Probate Code 15306.5 and 15307**

20 Probate Code 15306.5 and 15307 address two other exceptions
21 to the anti-alienation provisions of a spendthrift trust, which
22 are central to this appeal. Probate Code 15306.5 allows a money
23 judgment creditor to satisfy its judgment out of the payments to
24 which the beneficiary is entitled under the spendthrift trust "so
25 long as the payment does not 'exceed[] 25% of the payment that
26 otherwise would be made to . . . the beneficiary.'" In re
27 Neuton, 922 F.2d at 1383, citing Cal. Prob. Code § 15306.5(b).
28 However, "any amount that the court determines is necessary for

1 the support of the beneficiary and all the persons the
2 beneficiary is required to support" is exempt from the payments
3 to which a creditor would be entitled under 15306.5. Cal. Prob.
4 Code § 15306.5(c).

5 The Ninth Circuit, in In re Neuton, held that because a
6 bankruptcy trustee is a hypothetical judgment creditor under 11
7 U.S.C. § 544(a)(1), a debtor/beneficiary's bankruptcy estate was
8 entitled to an interest in one-fourth of the payments due to the
9 beneficiary. Id. at 1383. "The relevance of § 15306.5 is that
10 it removes 25% of the debtor's interest in the trust from
11 traditional spendthrift status." Id. Even though a bankruptcy
12 trustee may reach 25% of what the debtor/beneficiary is entitled
13 to receive, that amount may be reduced by whatever amount the
14 court determines is necessary for the beneficiary's (and his
15 dependents') support. Cal. Prob. Code § 15306.5(c); In re
16 Neuton, 922 F.2d at 1384.

17 The Trustee agrees that 25% of the Debtor's interest in the
18 Family Trust and the Survivor's Trust constitutes property of the
19 bankruptcy estate. Nevertheless, she argues that the estate's
20 interest is not limited to what it can reach under 15306.5. The
21 Trustee asserts that the estate may alternatively use 15307 to
22 reach any amount to which the beneficiary is entitled that is in
23 excess of what the beneficiary needs for his own education and
24 support.⁴

26 ⁴ The difference here would be that under 15306.5, the
27 Trustee would be limited to 25% of the \$250,000 distribution from
28 the Family Trust and 25% of each 100,000 distribution from the
Survivor's Trust, or \$312,500 over 10 years (not considering the
(continued...)

1 Probate Code 15307 is titled "Income in excess of amount for
2 education and support; application to creditors' claim." It
3 reads:

4 Notwithstanding a restraint on transfer of a
5 beneficiary's interest in the trust under Section 15300
6 or 15301, any amount to which the beneficiary is
7 entitled under the trust instrument or that the
8 trustee, in the exercise of the trustee's discretion,
9 has determined to pay to the beneficiary in excess of
10 the amount that is or will be necessary for the
11 education and support of the beneficiary may be applied
12 to the satisfaction of a money judgment against the
13 beneficiary. Upon the judgment creditor's petition
14 under Section 709.010 of the Code of Civil Procedure,
15 the court may make an order directing the trustee to
16 satisfy all or part of the judgment out of the
17 beneficiary's interest in the trust.

18 Cal. Prob. Code § 15307.

19 This section lacks clarity. For instance, its title
20 suggests that it provides creditors the ability to reach
21 trust income. But the text of the statute states that it
22 applies notwithstanding restraints on both income and
23 principal by its reference to 15300 or 15301. Thus, the
24 language of 15307 seems to allow a money judgment creditor
25 to satisfy its claim from any amount, either income or
26 principal, that is in excess of what the beneficiary needs
27 for his own education and support.

28 However, that reading is inconsistent with 15306.5,
29 which limits a money judgment creditor to 25% of the
30 beneficiary's interest in a spendthrift trust. Indeed, if

31 ⁴(...continued)
32 unknown potentially large final distribution from the Survivor's
33 Trust). Under the Trustee's interpretation of 15307, she could
34 reach \$1,250,000 (10 x 100,000 + 250,000) less any amounts
35 necessary for the Debtor's education and support.

1 the Probate Code sections are separate avenues for
2 collection, 15306.5 would make no sense: Why would a
3 judgment creditor ever choose to satisfy its claim under
4 15306.5, which is limited not just by the 25% cap on the
5 beneficiary's interest but by the needs of the debtor and
6 his or her dependents, when 15307 is only limited by the
7 debtor's own educational and support needs?

8 The language of a statute should not be given a literal
9 meaning if doing so would result in absurd consequences.

10 People v. Broussard, 5 Cal. 4th 1067, 1071 (1993) (internal
11 citation omitted); People v. Mendoza, 23 Cal. 4th at 912,
12 n.7. In such circumstances, the "intent prevails over the
13 letter" and the statute is read to conform to the statute's
14 intention. Broussard, 5 Cal. 4th at 1071-72. Interpreting
15 15307 as providing the Trustee the ability to satisfy
16 creditor's claims with all trust income and principal over
17 what the Debtor requires for his education and support would
18 result in absurd consequences. As noted, it would render
19 15306.5(a)-(f) meaningless. It also would allow a general
20 creditor to satisfy its claim to nearly the same extent as a
21 preferred creditor.

22 The Trustee complains that the bankruptcy court's
23 interpretation -- that 15306.5 caps the amount of trust
24 income or principal that a judgment creditor may reach --
25 makes 15307 superfluous. But the Trustee's interpretation
26 renders 15306.5 superfluous. Therefore, because 15307 is
27 capable of differing interpretations, it is ambiguous, and
28 we may review legislative history or other extrinsic sources

1 to aid in our interpretation.

2 The official Law Revision Commission Comments to 15307
3 state that “[w]hile sections 15305 and 15306 permit only
4 preferred creditors to reach the beneficiary’s interest in
5 the trust, Section 15307 permits an ordinary creditor to
6 reach income under limited circumstances.” (Emphasis
7 added). Despite the language in 15307, “notwithstanding a
8 restraint on transfer of a beneficiary’s interest in the
9 trust under Section 15300 or 15301,” which refers to both
10 trust income and principal, it is more consistent with
11 legislative intent to read 15307 as limiting a non-preferred
12 creditor to only income payments that are in excess of what
13 is necessary for the beneficiary’s support.

14 This interpretation is bolstered by earlier versions of
15 the Probate Code. In Canfield v. Sec.-First Nat’l Bank of
16 Los Angeles, 13 Cal. 2d 1, 11 (1939), the court explained
17 that spendthrift trusts were initially recognized under
18 California law without limitation. Id. In 1872, California
19 law imposed a singular limitation on spendthrift trusts:
20 where a trust was created to receive the rents and profits
21 of real property, the surplus of the rents and profits
22 (i.e., the income from the real property) over what was
23 necessary for the education and support of the beneficiary
24 was liable to claims of creditors. Id. at 12. The Probate
25 Code’s immediate predecessor, Cal. Civ. Code § 859, followed
26 the same principle. It permitted creditors to reach a
27 beneficiary’s income distributions except for amounts
28 necessary for the beneficiary’s education and support. Id.;

1 Estate of Johnston, 252 Cal. App. 2d at 926.

2 The Probate Code replaced Cal. Civ. Code § 859 in 1986.
3 Prior to 1986, even though there was a recognition that
4 certain creditors, such as support creditors, should be
5 preferred creditors, they could not reach a beneficiary's
6 interest in a spendthrift trust without a determination that
7 there was income in excess of the amount needed by the
8 beneficiary for his support and education. Id. at 928. The
9 Probate Code codified public policy concerns and provided
10 certain creditors the ability to reach a greater amount of a
11 beneficiary's interest in a spendthrift trust than general
12 creditors and coordinated a "patchwork" of existing law on
13 spendthrift trusts. Ventura Cnty., 117 Cal. App. 4th at
14 151. Based on this history, Probate Code 15307 appears to
15 be a vestige of the root limitation on a creditor's reach
16 solely to income distributions.

17 The more plausible reading of 15307, which is
18 consistent with the legislative intent, is that it restricts
19 the reach of a non-preferred creditor to income payments,
20 notwithstanding its reference to 15301. As with the
21 Trustee's interpretation of 15301(b), an interpretation that
22 reads 15307 as an avenue for money judgment creditors to
23 satisfy claims from income and principal with the only
24 restriction being the educational and support needs of the
25 debtor would elevate "ordinary creditors" to "preferred"
26 status. It would therefore render sections of the Probate
27 Code meaningless and superfluous and would not promote the
28 purpose of the Probate Code.

1 PAPPAS, Bankruptcy Judge, Dissenting:

2
3 I reluctantly decline to join my colleagues' opinion
4 because I do not believe the California legislature intended
5 that a debtor, without exception, should have access to
6 potentially large distributions of cash from a trust not
7 needed for his support or education in preference to the
8 legitimate claims of his creditors.

9 The California Probate Code provisions dealing with the
10 rights of a spendthrift trust beneficiary's creditor to
11 access income and principal distributions are opaque.
12 However, in this case, I do not think those statutes prevent
13 the Trustee from asserting a right to more than 25% of the
14 distributions to be made to the Debtor. In coming to this
15 conclusion, and in contrast to the majority, I would
16 reconcile the Probate Code as follows.

17 Sections 15300 and 15301(a) generally validate the
18 inclusion of "spendthrift" provisions to protect trust
19 income and principal from the reach of a beneficiary's
20 creditors while the assets remain in the trust. As the
21 statutes note, there are the several exceptions to the
22 general rule authorizing spendthrift trusts, which are
23 codified in section 15301(b) and sections 15304 through
24 15307.

25 For example, section 15301(b) allows a California
26 court, upon petition of a beneficiary's judgment creditor
27 (or in this case, the beneficiary's bankruptcy trustee), in
28 the exercise of its discretion, to order the trustee of the

1 trust to pay an amount of the principal of the trust, which
2 has become "due and payable" to the beneficiary, to the
3 creditor. Under sections 15305 and 15305.5, creditors
4 holding support or restitution claims are, with an
5 appropriate court order, not restricted by the spendthrift
6 restrictions of a trust, and may reach either present or
7 future distributions to a debtor of trust income or
8 principal.

9 The Probate Code contains other relevant provisions
10 concerning a court's power to order that trust distributions
11 be made to a beneficiary's creditors. For example, section
12 15306.5, like section 15301(b), allows a court, upon a
13 creditor's petition, to order the trustee to pay a creditor
14 instead of the beneficiary. But unlike section 15301(b), a
15 court order under this section of the Probate Code may
16 impact amounts of both principal and income that "the
17 trustee, in the exercise of the trustee's discretion, has
18 determined or determines in the future to pay to the
19 beneficiary."

20 However, under section 15306.5(b), the court's
21 authority under subsection (a) is limited, and a
22 beneficiary's rights are protected. This statute provides,
23 as a general rule, that the court may not order more than
24 25% of the payment that otherwise would go to the
25 beneficiary be paid to the creditor. Section 15306(c) is
26 another beneficiary protection. It prohibits any payment to
27 a creditor of amounts necessary for the support of the
28 beneficiary and his or her dependents. In other words, via

1 this provision, an impecunious debtor may be able to
2 persuade a court to prevent a creditor from reaching even
3 the 25% of a distribution generally allowed under section
4 15306.5(b).

5 Finally, section 15307 plays a critical role in
6 protecting creditors' rights in this context. It allows a
7 court, "[n]otwithstanding" the general validity of
8 spendthrift provisions allowed in sections "15300 or 15301,"
9 upon petition of a judgment creditor, to order payment to
10 the judgment creditor from "any amount to which the
11 beneficiary is entitled under the trust or that the trustee,
12 in the exercise of trustee's discretion, has determined to
13 pay the beneficiary" of amounts "in excess of the amount
14 that is or will be necessary for the education and support
15 of the beneficiary"

16 Viewed collectively, to me, the California statutory
17 scheme attempts to balance the rights of a beneficiary's
18 creditors, the trustor, and a beneficiary's needs for
19 financial support. Under the Probate Code, a spendthrift
20 trust may be created by a trustor to protect the payments to
21 which the beneficiary may be entitled from the trust from
22 the reach of the beneficiary's creditors. While this is an
23 obviously valid legislative goal, absent exceptions to this
24 general rule, the use of such trusts could prove abusive
25 where beneficiaries with unpaid creditors have no legitimate
26 need for trust distributions. To balance the scales, the
27 California legislature allows creditors, in some cases, to
28 reach some, or perhaps even all, of those distributions.

1 For most creditors (i.e., not those holding claims for
2 support or restitution creditors), that amount will be 25%
3 of the distribution. However, the statutes allow either a
4 creditor or the beneficiary to petition the state court and
5 to perhaps persuade it, in the exercise of its discretion,
6 to either increase or decrease the amount going to the
7 creditor depending upon the beneficiary's financial needs.

8 Interpreting the statutes in this fashion makes good
9 sense. Spendthrift trusts are generally allowed, but they
10 are subject to the exercise of judicial discretion to
11 prevent them from being used to inequitably shield
12 financially independent beneficiaries from the legitimate
13 claims of creditors. Putting this policy in context, why
14 would the California legislature favor a testator's goal of
15 providing cash payments to a beneficiary over the rights of
16 a beneficiary's creditors when the facts show that the
17 beneficiary does not need the money? In particular, when
18 according to the trust instrument, or in the trustee's
19 discretion, it is time to distribute principal to a
20 beneficiary, why insulate those distributions from the
21 claims of creditors of an affluent beneficiary?

22 Unlike my colleagues, I do not believe this reading of
23 section 15307 renders section 15306.5 superfluous. On the
24 other hand, as my colleagues concede, the majority's
25 interpretation does indeed render section 15307 surplusage
26 unless we take the extraordinary step of judicially limiting
27 section 15307's application solely to trust income
28 distributions. As the majority acknowledges, to reach their

1 result, they must ignore the express language of section
2 15307 which makes it applicable "[n]otwithstanding a
3 restraint under . . . 15300 [income] or 15301 [principal]."
4 (Emphasis added). Doing so violates many of the same canons
5 of statutory construction upon which the majority relies to
6 support its interpretation.

7 Because I decline to believe that the California
8 legislature intended us to read the Probate Code in a manner
9 implementing a bad, perhaps even an absurd policy, I
10 respectfully dissent. We should vacate the bankruptcy
11 court's order limiting the right of the Trustee to 25% of
12 the trust distribution, and remand for consideration by the
13 bankruptcy court of what amounts are truly necessary for the
14 education and support of the debtor as required by section
15 15307.