

Steve Leimberg's Asset Protection Planning Email Newsletter - Archive Message #444

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From: Steve Leimberg's Asset Protection
Planning Newsletter

Subject: Jonathan G. Blattmachr, David G. Shafte
& Abigail E. O'Connor on Chapman v.
Chapman: Alaska Supreme Court
Imputes Income to Father for Child
Support but Leaves Self-Settled Trust
Intact

"In Chapman v. Chapman, the Alaska Supreme Court recently held that a trial court did not abuse its discretion in determining that it would look at the income of a self-settled trust which a parent created and under a structure where the parent controlled the underlying businesses he added to the trust as both manager of the assets (closely-held businesses) and as sole investment trustee. The Supreme Court did not suggest that the trust would have to pay the parent/grantor's obligations or that the trust would not achieve asset protection or estate tax planning goals of a properly drafted and administered self-settled trust."

Jonathan G. Blattmachr, David G. Shafte and **Abigail E. O'Connor** provide members with timely and important commentary on [Chapman v. Chapman](#).

Jonathan G. Blattmachr is the Director of Estate Planning for the **Alaska Trust Company**, a principal of **Pioneer Wealth Partners, LLC**, and co-developer, with Michael L. Graham, Esq., of Dallas, Texas, of **Wealth Transfer Planning**, and was the principal drafter of the Alaska Self-Settled Trust legislation.

David G. Shaftel is an attorney at **Shaftel Delman** in Anchorage and is admitted in Alaska, Washington, and California. He has been very involved in the drafting of Alaska's trust and estate statutes. His practice involves estate planning and estate and trust administration.

Abigail E. O'Connor is a trust and estate attorney in Alaska and the Chief Fiduciary Officer with **Peak Trust Company**. She is licensed in Alaska and Florida. All three are Fellows of ACTEC. Ms. O'Connor is the Alaska State Chair of ACTEC and a member of the Executive Committee of the Estate Planning and Probate Section of the Alaska Bar Association.

Here is their commentary:

EXECUTIVE SUMMARY:

The Alaska Supreme Court recently held that a trial court did not abuse its discretion in determining that it would look at the income of a self-settled trust which a parent created and under a structure where the parent controlled the underlying businesses he added to the trust as both manager of the assets (closely-held businesses) and as sole investment trustee. The Supreme Court did not suggest that the trust would have to pay the parent/grantor's obligations or that the trust would not achieve asset protection or estate tax planning goals of a properly drafted and administered self-settled trust.

COMMENT:

A recent child support case from the Alaska Supreme Court, [*Chapman v. Chapman*, S-18761](#) (February 15, 2025), held that imputing income to a father from a self-settled trust was appropriate due to the manner by which the father structured his wealth that resulted in the lowering of his income stream. Importantly, the Alaska Supreme Court made no suggestion that

the trust should be invaded or that the trustee of the trust should be responsible for satisfying the father's legal obligations. This case was about imputing income to a father under state law child support guidelines, which could happen in any state where applicable child support guidelines allow the imputation of income from outside sources. The holding of this case does not affect the asset protective nature of the trust, nor the transfer tax implications and savings afforded by the trust.

Self-Settled Domestic Asset Protection Trusts: Brief Overview

A trust one creates or settles for oneself is called a "self-settled" trust and, prior to the enactment of domestic asset protection trust statutes, its assets can be reached by the grantor's creditors. See Restatement (Third) of Trusts § 58. In 1997, Alaska passed legislation providing that a self-settled trust was not liable for claims against its grantor unless one of four conditions is present (each with some exception): (1) a creditor can establish the grantor's intent to defraud; (2) the grantor may revoke or terminate the trust; (3) the trust requires the income or principal to be distributed to the grantor; or (4) the grantor is in default of child support by 30 days or more when making a transfer to the trust. Alaska Statute ("AS") 34.40.110. Indeed, there are now 21 states that permit by legislation such asset protection trusts, commonly referred to as "domestic asset protection trusts" or "DAPTs".

Properly drafted and implemented, DAPT assets will be protected from future creditors. See David G. Shaftel, *Two Sides of a Coin: How to Defend, or Challenge, a DAPT*, in *Domestic Asset Protection Trusts: A Practice and Resource Manual* (American Bar Association, Real Property, Trust and Estate Law Section, 2021). All DAPT states deny asset protection for fraudulent transfers. *Thirteenth ACTEC Comparison of the Domestic Asset Protection Trust Statutes* (August 2022), available at <https://shaftellaw.com/articles.html>.

A DAPT may be designed so that contributions are completed gifts, and the trust assets will be excluded from the settlor's gross estate for federal transfer tax purposes. See Gideon Rothschild, Douglas M. Blattmachr, Mitchell M. Gans, Jonathan G. Blattmachr, *IRS Rules Self-Settled Alaska Trust Will Not Be In Grantor's Estate*, 37 Est. Plan. 3 (2010). See also PLR 200944002 (not precedent) and cf. Rev. Rul. 76-103, 1976-1 CB 293. Accordingly, DAPTs are popular trust arrangements for estate tax planning purposes.

The Child Support Dispute

Peter and Julia Chapman married in 2007 and divorced in 2020. They had one minor child. The divorce decree adopted as stipulated child support arrangement. The stipulated child support order was based on Peter having an income of \$45,000 per year.

A year after the divorce and child support stipulation, Peter created the “Cephas Trust” (“Cephas” is Greek for “Peter”) and transferred a used car business and real estate holding LLCs to the trust. Peter explained that he established the Cephas Trust on the advice of his attorney and accountant before he entered into a second marriage in case that marriage “didn’t work out.” The Supreme Court’s description of the Cephas Trust is consistent with an attempt to form a DAPT. The trust was an irrevocable inter vivos trust. Peter was the grantor, primary beneficiary, and investment trustee. Peter chose as an independent trustee a surveyor with whom he had worked.

In 2022, Julia moved to modify child support upon the belief that Peter’s income was more than \$45,000. The court ordered Peter to provide proof of all sources of income. Peter’s 2021 W-2 showed a salary of \$55,356.81. However, his federal income tax return indicated his adjusted gross income was \$861,382, because of the income attributable from the Cephas Trust that is a “grantor trust.” Julia argued that child support should be increased based on this change in circumstances. The trial court held an evidentiary child support hearing to determine whether to impute income to Peter. The Supreme Court described the trial court’s findings:

Peter was not hiding money, but that he exercised control over the trust. It explained that the money in trust was ‘his money’ that Peter could ‘get anything out of that trust he wants to’ and that the trust document allowed Peter to take a distribution ‘anytime he wants to.’ The trial court found that because Peter controls selection of the independent trustee, ‘it isn’t very independent.’”

The court next found, based on the businesses’ net profit of \$861,000, that Peter’s \$55,000 annual salary was an artificial distribution. It determined Peter was taking an artificially low salary from successful businesses so money could be reinvested. It found Peter had a legal obligation to support his

son “at a rate of income that truly reflects his resources” and concluded the appropriate amount should be calculated based on [the state rule’s] income cap of \$126,000 ‘because it’s clear he makes far more than that.’ The court observed that Peter ‘has access to a whole lot more money’ but based on the evidence presented, it could not ‘determine precisely how much.’

The trial court granted the motion to modify child support, requiring Peter to pay \$1,167.35 monthly. Alaska usually applies a maximum to a parent’s adjusted annual income for calculating child support, which is what happened here. Alaska Civil Rule 90.3(c)(2).

The Alaska Supreme Court’s Holding

Peter appealed the trial court’s modified child support order. The Alaska Supreme Court’s standard of review was whether the trial court’s determination to modify child support constituted an abuse of discretion. The Supreme Court found that the trial court had not abused its discretion and therefore affirmed.

The Supreme Court first focused on whether there was a material change in circumstances that triggered the modification. The Supreme Court noted that “Peter acquired new businesses and created the trust *after* the [initial child support] stipulation was adopted by the court.” [Emphasis added.] The Supreme Court further found:

Peter’s acquisition of new businesses and creation of the Cephas Trust significantly increased his available income. The creation of the trust alone marked a significant and material change in circumstances after the stipulation was entered. The superior court did not clearly err by finding a material change of circumstances.

The Supreme Court examined whether the superior court abused its discretion by imputing income to Peter. The Supreme Court noted that “[w]hen imputing income for child support calculations, the court must ensure that the imputed income is a ‘realistic estimate of an obligor’s adjusted annual income.’” (Citing *Nelson v. Nelson*, 914 P.2d 1268, 1273 (Alaska, 1996) (quoting *Zimin v. Zimin*, 837 P.2d 118, 123 (Alaska

1992)). Here, the trial court analogized the Cephas Trust to an underperforming asset. The Supreme Court noted:

And although the superior court recognized that Peter's reasons for building the trust's value were 'all laudable goals,' it was not reasonable for him to exclude the trust income from consideration of his child support obligation. Peter's decision decreased the funds available to support their child, and the court concluded that his treatment of the trust income was similar to an underperforming asset. Because the court imputed income on the basis of an underperforming asset, it did not err by failing to make findings that would have been required to impute income for underemployment.

The Supreme Court determined that the trial court did not clearly err by finding that Peter has control over the trust assets and independent trustee. The Alaska Supreme Court stated "Peter has, as the investment trustee, 'sole and absolute authority' over the investment of trust assets, permitting him to purchase and sell assets as he wishes. He also has a right to 'benefit from the things in the trust.'" The Alaska Supreme Court then stated:

No evidence was presented regarding any metric the independent trustee uses to determine whether to make a distribution. The trust document grants the independent trustee the authority to make distributions to Peter 'for any purpose,' and Peter received one distribution upon request in the past. Under the trust's terms, any net income not distributed is accumulated and annually added to the principal. Therefore, by declining to take distributions Peter is improving his own financial situation. The court did not clearly err by finding Peter had control over both the trust and the independent trustee and therefore had access to the funds despite choosing not to access them.

The Alaska Supreme Court affirmed the superior court's ruling of modified child support.

Observations About *Chapman*

The Alaska Supreme Court did not require the trust to pay Peter's child support. The court did not question the validity or asset protective nature of the trust, or the estate planning purpose of the trust. Nothing in the Court's holding suggests that the trust could be breached. Indeed, the trust remained intact.

Rather, the Court held that, due to Peter's direct control over the LLCs and the trust investments, the income of the trust could be considered as potential income to Peter in determining his support obligation to his child. Alaska law allows the court to consider the "potential income" of a parent. Alaska Civil Rule 90.3(a)(4). Peter's structuring of the Cephas Trust, according to the description, was that he was the investment trustee, and the manager of the LLCs held in trust. He therefore controlled his own compensation as manager, which he limited to approximately \$55,000 per year. He also controlled how much income flowed to the trust. The Alaska child support guidelines allow the court to consider potential income and impute income for a non-income or low-income producing assets. Alaska Civil Rule 90.3(a)(4). Here, the superior court found "that the trust document allowed Peter to take a distribution 'anytime he wants to.'" While this statement is inconsistent with a DAPT (a grantor cannot "take" a distribution from a DAPT), it seems that for purposes of "potential income," Peter's control of the LLCs was sufficient to trigger the child support imputation of income doctrine.

In *Chapman*, the Court focused solely on the law regarding child support. The Court never referenced AS 34.40.110 or even a single statute from Alaska trust law (AS 13.36, et seq.). This case was not about defending the integrity of a DAPT. For example, the superior court seemed to think that the Peter's ability to choose an independent trustee meant that the trustee "isn't very independent." For determining potential income to Peter, his ability to choose the trustee seemed relevant to the court. If this case was about defending the integrity of the DAPT, then AS 34.40.110(h)(1) expressly protects a DAPT even if the grantor has the power to appoint a trustee. Meaning, if this DAPT were attacked, Peter's ability to choose the trustee would not jeopardize the asset protection. Again, here, the court was not trying to breach the DAPT; it was

simply trying to look at what Peter could potentially earn and use to support his child.

Conclusion

The *Chapman* case was about imputing income to a father for child support purposes. The case only reflects that a parent may not avoid his or her obligations of support for a child by a subsequent transfer of assets to a self-settled trust. The case did not implicate the asset protection and transfer tax minimization purposes of DAPTs.

HOPE THIS HELPS YOU HELP OTHERS MAKE A *POSITIVE* DIFFERENCE!

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CITES:

[Chapman v. Chapman, S-18761 \(February 15, 2025\)](#); *Nelson v. Nelson*, 914 P.2d 1268, 1273 (Alaska, 1996); *Zimin v. Zimin*, 837 P.2d 118, 123 (Alaska 1992)); AS 34.40.110; *IRS Rules Self-Settled Alaska Trust Will Not Be In Grantor's Estate*, 37 Est. Plan. 3 (2010); PLR 200944002 (not precedent); Rev. Rul. 76-103, 1976-1 CB 293; *Two Sides of a Coin: How to Defend, or Challenge, a DAPT*, in *Domestic Asset Protection Trusts: A Practice and Resource Manual* (American Bar Association, Real Property, Trust and Estate Law Section, 2021); *Thirteenth ACTEC Comparison of the Domestic Asset Protection Trust Statutes* (August 2022); Restatement (Third) of Trusts § 58.