
Trust Law—Beneficiary’s Interest in Open-Class Discretionary Trust Amounts to Mere Expectancy Despite Ascertainable Standard—*Pfannenstiehl v. Pfannenstiehl*, 55 N.E.3d 933 (Mass. 2016).

Settlor’s intent is sacred in trust law; the fundamental role of the trustee consists of executing the trust in accordance with the settlor’s prescribed terms.¹ In a discretionary trust, the settlor empowers the trustee with control over the frequency and magnitude of distributions, which generally renders the beneficiary’s interest an expectancy interest without the power to compel payments.² Nevertheless, a discretionary trust may contain an “ascertainable standard” that governs the trustee’s discretion, and could enable the beneficiary to force distributions.³ In *Pfannenstiehl v. Pfannenstiehl*,⁴ the Massachusetts Supreme Judicial Court (SJC) examined, for the purposes of a divorce proceeding, whether a discretionary trust’s ascertainable standard rendered the beneficiary’s interest an enforceable property right.⁵ The SJC held that despite the existence of an ascertainable standard, the beneficiary’s interest remained

1. See RESTATEMENT (THIRD) OF TRUSTS § 76 (AM. LAW INST. 2016) (outlining duties of trustee); Bradley E.S. Fogel, *Terminating or Modifying Irrevocable Trusts by Consent of the Beneficiaries—A Proposal to Respect the Primacy of the Settlor’s Intent*, 50 REAL PROP. TR. & EST. L.J. 337, 369-70 (2016) (emphasizing importance of settlor’s intent in trust construction). The settlor is the individual who established the trust, and the trustee holds property in trust for the benefit of the beneficiary. See RESTATEMENT (THIRD) OF TRUSTS § 3 (AM. LAW INST. 2016). Naturally, in addition to the intent of the settlor, the trustee must execute the trust according to the law. See RESTATEMENT (THIRD) OF TRUSTS § 76 (AM. LAW INST. 2016).

2. See *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964) (holding beneficiary unable to oblige trustee of discretionary trust to distribute trust property); 76 AM. JUR. 2D *Trusts* § 541, Westlaw (database updated Feb. 2017) (outlining trustee’s broad authority to withhold discretionary trust payments); Helene S. Shapo, George Gleason Bogert, & George Taylor Bogert, *Law of Trusts and Trustees* § 228 (3d ed. Update 2016) [hereinafter *Bogert on Trusts*, 3d ed. Update 2016] (defining discretionary trust). An expectancy interest is “a mere hope or expectation, however well founded or likely to materialize. By all traditional and current concepts of property, expectancies are not property interests.” RESTATEMENT (THIRD) OF TRUSTS § 41 cmt. a (AM. LAW INST. 2016). Yet, if a beneficiary can establish that the trustee is acting unreasonably, in bad faith, or arbitrarily in conflict with the trust’s purpose, a court will interfere. See JESSE DUKEMINIER & ROBERT H. SITKOFF, *WILLS, TRUSTS, AND ESTATES* 610-11 (9th ed. 2013) (providing overview of trustee discretion).

3. See MASS. GEN. LAWS ch. 203E, § 103 (2016) (defining ascertainable standard). The statute defines an ascertainable standard as “a standard relating to an individual’s health, education, support or maintenance.” *Id.* If the beneficiary of a discretionary trust, subject to an ascertainable standard, can establish that the trustee is not abiding by the trust’s terms, he or she may have the ability to compel disbursements. See *Dana v. Gring*, 371 N.E.2d 755, 759-60 (Mass. 1977) (holding ascertainable standard limits trustee’s discretion to distribute payments); 76 AM. JUR. 2D *Trusts* § 541, Westlaw (database updated Feb. 2017) (explaining ascertainable standard may compel trustee to make payments in accordance with trust’s support provisions). A trust containing an ascertainable standard may also be called a “support trust” or “discretionary support trust.” See CHARLES E. ROUNDS, JR. & CHARLES E. ROUNDS, III, *LORING AND ROUNDS: A TRUSTEE’S HANDBOOK* § 5.3.3.3(a), at 351-52 (2016 ed.) (describing discretionary and support trusts).

4. 55 N.E.3d 933 (Mass. 2016).

5. See *id.* at 939-41.

an unenforceable expectancy.⁶

Frederick Pfannenstiehl—the father of Curt Pfannenstiehl (Curt)—executed the irrevocable “Frederick G. Pfannenstiehl 2004 Trust” (2004 Trust), which named Curt’s brother and the family attorney as co-trustees (Trustees).⁷ Under its terms, the 2004 Trust is discretionary, subject to an ascertainable standard, and both Trustees must approve any distributions.⁸ Additionally, the 2004 Trust contains a spendthrift provision and benefits an “open class of beneficiaries” consisting of the “lawful blood descendants” of Curt’s father.⁹

Following over a decade of marriage, Curt filed for divorce from Diane Pfannenstiehl (Diane) in 2010.¹⁰ In August 2012, the probate court adjudicating the divorce found that the Trustees had paid distributions only to Curt and his two siblings, who constituted just three out of eleven eligible beneficiaries.¹¹ The Trustees ceased Curt’s distributions in August 2010, just prior to his divorce proceedings.¹² Taking into consideration the number of

6. *Id.* at 942.

7. *Pfannenstiehl v. Pfannenstiehl*, 37 N.E.3d 15, 16 n.4, 20-21 (Mass. App. Ct. 2015) (providing background of case), *vacated*, 55 N.E.3d 933 (Mass. 2016). Curt’s father funded the 2004 Trust with “shares of two for-profit education corporations, several life insurance policies, and a cash account.” 55 N.E.3d at 936. The Pfannenstiehl family controlled the for-profit-education corporations. *Pfannenstiehl v. Pfannenstiehl*, 37 N.E.3d 15, 20 (Mass. App. Ct. 2015), *vacated*, 55 N.E.3d 933 (Mass. 2016).

8. *See* 55 N.E.3d at 936-37 (outlining terms of 2004 Trust). If the Trustees elected to distribute trust property, then they would make payments to, or apply for the benefit of, the beneficiaries in “such amounts of income and principal as the Trustee[s], in [their] sole discretion, may deem advisable from time to time, whether in equal or unequal shares, to provide for the comfortable support, health, maintenance, welfare and education of each or all members of [the class of beneficiaries].” *Id.*

9. *Id.* A spendthrift provision precludes a beneficiary’s creditors from “attaching the beneficiary’s interest in the trust until it becomes possessory and prevents the beneficiary from assigning [his or] her interest.” Martin D. Begleiter, *Taming the “Unruly Horse” of Public Policy in Wills and Trusts*, 26 QUINNIPIAC PROB. L.J. 125, 133 (2012). Without a spendthrift clause, a “court may authorize a creditor or assignee of the beneficiary to reach the beneficiary’s interest by attachment of present or future distributions . . . or other means.” MASS. GEN. LAWS ch. 203E, § 501 (2016). A spendthrift clause alone, however, does not categorically protect a beneficiary’s interest from assignment. *See Lauricella v. Lauricella*, 565 N.E.2d 436, 439 (Mass. 1991) (holding husband’s interest in trust assignable upon divorce despite spendthrift clause). An “open class of beneficiaries” is a class where presently entitled members may have their interest partially reduced due to the future birth of individuals who, under the trust’s terms, are also eligible to become beneficiaries. *See* Bogert on Trusts, 3d ed. Update 2016, *supra* note 2, § 182.

10. 55 N.E.3d at 935. In Massachusetts, trial judges have broad authority to assign property individually owned by one spouse to the other spouse at the time of divorce. *See* MASS. GEN. LAWS ch. 208, § 34 (2016) (labeling all property owned by either spouse part of marital estate and reassignable at divorce); *see also* Hanify v. Hanify, 526 N.E.2d 1056, 1059 (Mass. 1988) (considering pending damages from lawsuit divisible upon divorce). A spouse has sufficient ownership of property for inclusion in the marital estate, which may then be divided at divorce, if they have an enforceable legal right to that property. *See* Hanify v. Hanify, 526 N.E.2d 1056, 1059 (Mass. 1988). In some instances, trust interests are sufficiently enforceable for inclusion in the marital estate. *See* Comins v. Comins, 595 N.E.2d 804, 806 (Mass. App. Ct. 1992) (holding wife’s trust interest subject to equitable division).

11. 55 N.E.3d at 937 (noting Curt received monthly distributions totaling \$800,000 over twenty-nine months).

12. *See* *Pfannenstiehl v. Pfannenstiehl*, 37 N.E.3d 15, 21-22 (Mass. App. Ct. 2015) (setting forth chart illustrating continued payments to Curt’s siblings despite termination of Curt’s distributions), *vacated*, 55 N.E.3d 933 (Mass. 2016).

living beneficiaries, the probate court found that Curt was entitled to a one-eleventh interest in the 2004 Trust.¹³ Based on a determination that the 2004 Trust “augmented” Curt and Diane’s standard of living, the probate court concluded that Curt’s interest should be included in the marital estate and subject to an equitable division.¹⁴

By way of a divergent opinion, the Massachusetts Appeals Court (Appeals Court) upheld the inclusion of Curt’s beneficial interest in the marital estate.¹⁵ Justice Berry’s majority opinion concluded that the ascertainable standard enabled Curt to compel distributions in order to maintain his quality of living.¹⁶ In the dissenting opinion, Justice Fecteau asserted that the uncertainty surrounding the number of beneficiaries and their respective needs, as well as the Trustees’ ability to distribute payments unequally, rendered Curt’s interest an expectancy despite the ascertainable standard.¹⁷ The SJC agreed with Justice Fecteau’s dissent, holding Curt’s interest in the 2004 Trust was too speculative to be enforceable.¹⁸

Section 103 of the Massachusetts Uniform Trust Code (MUTC) defines an ascertainable standard as a provision “relating to an individual’s health,

13. 55 N.E.3d at 937 (summarizing probate judge’s valuation of 2004 Trust at \$24,920,217.37, with Curt’s one-eleventh interest equaling \$2,265,474.31).

14. *Id.* at 937-38 (explaining Diane’s award of sixty percent of Curt’s interest in the 2004 Trust, totaling \$1,168,794.41).

15. *See* Pfannenstiehl v. Pfannenstiehl, 37 N.E.3d 15, 24 (Mass. App. Ct. 2015) (holding interest “vested in possession, with a presently enforceable right to the trust distributions”), *vacated*, 55 N.E.3d 933 (Mass. 2016).

16. *See* Pfannenstiehl v. Pfannenstiehl, 37 N.E.3d 15, 24 (Mass. App. Ct. 2015) (distinguishing 2004 Trust from “wholly discretionary trusts”), *vacated*, 55 N.E.3d 933 (Mass. 2016). In a wholly discretionary trust, the trustee’s discretion is not limited by an ascertainable standard, and the trustee has complete authority over distributions. *See* Bogert on Trusts, 3d ed. Update 2016, *supra* note 2, § 228. Because Curt could enforce distributions, the Appeals Court held his interest was includable in the marital estate. *See* Pfannenstiehl v. Pfannenstiehl, 37 N.E.3d 15, 25 (Mass. App. Ct. 2015), *vacated*, 55 N.E.3d 933 (Mass. 2016). Justice Berry’s decision also addressed other issues, including whether the spendthrift clause alone barred the 2004 Trust from inclusion in the marital estate, and whether the division of the marital estate was equitable. *See id.* at 23, 25-26. The majority opinion eroded former principles of trust law in holding that the ascertainable standard created an enforceable property right. *See* Brief of Plaintiff/Appellant at 31, Pfannenstiehl v. Pfannenstiehl, 55 N.E.3d 933 (Mass. 2016) (No. SJC-12031), 2016 WL 943890 (arguing Appeals Court negated previous decisions and upset settled expectations); Brief of the Amicus Curiae at 7-8, Pfannenstiehl v. Pfannenstiehl, 55 N.E.3d 933 (Mass. 2016) (No. SJC-12031), 2016 WL 1423877 (advocating for reversal of Appeals Court’s decision). Practitioners also criticized the opinion for overlooking the law in favor of Diane, as she elicited more sympathy. *See* Harry S. Margolis, *Does Pfannenstiehl Case Undermine Asset Protection in Massachusetts?*, MARGOLIS (Sept. 22, 2015), <http://www.margolis.com/our-blog/does-recent-divorce-undermine-centuries-of-spendthrift-trust-law> [<http://perma.cc/X7KK-KP4U>] (discussing potential impact of Appeals Court decision); *see also* Robert J. O’Regan, Pfannenstiehl: *Out of a Mistake Comes Clarity*, WEALTH MGMT. (Aug. 9, 2016), <http://www.wealthmanagement.com/estate-planning/pfannenstiehl-out-mistake-comes-clarity> [<http://perma.cc/6TC2-U8KJ>] (criticizing Appeals Court’s opinion).

17. *See* Pfannenstiehl v. Pfannenstiehl, 37 N.E.3d 15, 28-29 (Mass. App. Ct. 2015) (Fecteau, J., dissenting) (emphasizing trial judge erred in assigning one-eleventh valuation in 2004 Trust), *vacated*, 55 N.E.3d 933 (Mass. 2016).

18. 55 N.E.3d at 941-42 (holding “ascertainable standard does not render [future interest] . . . sufficiently certain”).

education, support or maintenance.”¹⁹ An ascertainable standard calls for the trustee to pay or apply distributions to maintain the quality of life the beneficiary enjoyed before becoming an eligible beneficiary.²⁰ In Massachusetts, an ascertainable standard is incorporated as a default clause into every trust unless it is explicitly rejected.²¹ Whether a beneficiary possesses an enforceable property right and may compel distributions following a violation of the ascertainable standard is a regularly litigated issue.²² To determine if such an interest is enforceable or is so speculative as to constitute an expectancy, Massachusetts courts closely examine the individual provisions of the trust at issue.²³

19. See MASS. GEN. LAWS ch. 203E, § 103 (2016). See generally MASS. GEN. LAWS ch. 203E, §§ 101-1013 (2016) (codifying MUTC). Massachusetts adopted the MUTC in July of 2012. JOHN H. CLYMER ET. AL., MASSACHUSETTS ESTATE PLANNING, WILL DRAFTING AND ESTATE ADMINISTRATION FORMS 1-26.6 (2d ed. 2016) (explaining Massachusetts enacted MUTC to simplify existing laws and reduce litigation). Subject to a few limitations, the MUTC governs all trusts executed before, during, or after July 2012. See *Massachusetts Uniform Trust Code Enacted*, GOODWIN L. (July 10, 2012), <http://www.goodwinlaw.com/viewpoints/2012/07/massachusetts-uniform-trust-code-enacted> [http://perma.cc/V8RX-3AV3] (providing overview of MUTC’s changes to Massachusetts trust law). The MUTC was based on the Uniform Trust Code (UTC), which, as of June 2016, has been “adopted in 23 states and the District of Columbia.” See PATRICIA M. ANNINO, 23 MASS. PRAC., ESTATE PLANNING § 13.0.10 (3d ed. 2016) (outlining MUTC and adoption of UTC).

20. See *Woodberry v. Bunker*, 268 N.E.2d 841, 844 (Mass. 1971) (defining responsibility owed to beneficiary under ascertainable standard).

21. MASS. GEN. LAWS ch. 203E, § 814(b)(1) (2016) (outlining duties and powers of trustees); 55 N.E.3d at 940 n.17 (providing overview of ascertainable standards); see also Brief of Plaintiff/Appellant, *supra* note 16, at 30 (discussing default status). This default clause ensures that trust property is not mistakenly attributed to the trustee or beneficiary for taxation. See Brief of Plaintiff/Appellant, *supra* note 16, at 30.

22. See, e.g., *Dana v. Gring*, 371 N.E.2d 755, 760 (Mass. 1977) (declaring provision requiring maintenance of beneficiary’s “happiness” ascertainable standard); *Old Colony Trust Co. v. Rodd*, 254 N.E.2d 886, 889 (Mass. 1970) (holding discretionary trustee acted improperly in withholding funds due to ascertainable standard); *Marsman v. Nasca*, 573 N.E.2d 1025, 1030 (Mass. App. Ct. 1991) (concluding ascertainable standard granted beneficiary enforceable property right).

23. See *D.L. v. G.L.*, 811 N.E.2d 1013, 1021-24 (Mass. App. Ct. 2004) (considering husband’s interest in several trusts for inclusion in marital estate). The equitable division of property during divorce is often a vehicle for determining the enforceability of trust interests. See *supra* note 10 (examining relationship between marital estate and enforcement of beneficiary’s interest); see also *Lauricella v. Lauricella*, 565 N.E.2d 436, 437 (Mass. 1991) (debating includability of husband-beneficiary’s interest in his marital estate for divorce). In *Lauricella v. Lauricella*, the settlor executed a trust lasting twenty-one years after his death, and the closed-class of beneficiaries were his son, daughter, and wife. 565 N.E.2d 436, 437 (Mass. 1991). Twenty-one years after the settlor’s death, the property was to be distributed in equal shares to the beneficiaries. *Id.* When the son’s wife filed for divorce in 1988, the son and daughter were the only two remaining beneficiaries. *Id.* The *Lauricella* court did not explicitly state whether the subject trust was wholly discretionary or governed by an ascertainable standard. See *id.* Furthermore, whereas the 2004 Trust benefitted an open class of future generations, the *Lauricella* trust was to terminate roughly sixteen years after the SJC’s decision. See *id.*; *supra* note 9 and accompanying text (outlining 2004 Trust terms). In *Lauricella*, the SJC held that enforceability of trust interests depends on “the attributes of the respective disputed interests [rather] than on principles of general application.” *Lauricella v. Lauricella*, 565 N.E.2d 436, 439 (Mass. 1991). Due to the finite nature of the *Lauricella* trust in terms of beneficiaries and duration, the interest was “present, enforceable, and valuable,” and was “unlike mere expectancy.” See *id.* (ruling interest determinable). But see *S.L. v. R.L.*, 774 N.E.2d 1179, 1182 (Mass. App. Ct. 2002) (holding remainder interest in trust expectancy due to living testator’s ability to retract appointment).

The SJC considered this issue in a pair of decisions during the 1960s.²⁴ In *Spalding v. Spalding*²⁵ and *Town of Randolph v. Roberts*,²⁶ the subject discretionary trusts were limited by ascertainable standards, and benefited closed classes of beneficiaries.²⁷ The *Roberts* court held that the beneficiary could only force payments by proving that the “trustees had abused their discretion by acting arbitrarily, capriciously, or in bad faith,” resulting in her quality of life falling beneath the ascertainable standard.²⁸ Although a premature claim was dispositive in *Spalding*, the court noted that an ascertainable clause did not give the beneficiary’s creditor “an enforceable claim against the trust for [the creditor’s] support.”²⁹

The Appeals Court considered the effect of an ascertainable standard on a discretionary trust in *Comins v. Comins*.³⁰ Similar to *Pfannenstiehl* and *Spalding*, the key issue in *Comins* was whether the divorcing wife’s interest in a trust was enforceable and therefore includable in the marital estate.³¹ The

24. See *Spalding v. Spalding*, 253 N.E.2d 869, 870 (Mass. 1969) (prohibiting divorcing wife from compelling distributions out of husband’s trust); *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73-74 (Mass. 1964) (holding Town of Randolph could not recover disability assistance costs from beneficiary’s trust).

25. 253 N.E.2d 869 (Mass. 1969).

26. 195 N.E.2d 72 (Mass. 1964).

27. See *Spalding v. Spalding*, 253 N.E.2d 869, 870 (Mass. 1969) (listing trust’s terms); *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964) (describing relevant clauses of trust at issue). In *Roberts*, the beneficiary’s aunt had executed the trust to provide for “the support” of the beneficiary. *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964). The trustees were to pay the trust income to the beneficiary, and had the sole discretion to extract principal if necessary to accomplish the settlor’s intent. *Id.* The Town of Randolph paid the beneficiary roughly \$18,000 in disability benefits. *Id.* Accordingly, the Town of Randolph filed suit to compel an invasion of principal to satisfy that debt. *Id.* In *Spalding*, the deceased settlor established the trust to provide for the benefit of his widow during her lifetime and their children after her death. *Spalding v. Spalding*, 253 N.E.2d 869, 870 (Mass. 1969). During the widow’s lifetime, the trustee was tasked with paying both the income to the widow, as well as paying her such principal as the trustee may deem necessary “in its uncontrolled discretion . . . for her maintenance and support or for the maintenance and support or education of any child . . . of [the settlor].” *Id.* The settlor’s son’s spouse filed suit to compel payment from the trustee upon the couple’s divorce. *Id.* At the time of the SJC’s decision, the settlor’s widow was still alive. *Id.*

28. *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964). There was no evidence in the record to suggest that the trustees had abused their discretion, or that Ms. Roberts’s quality of life had fallen beneath the ascertainable standard. See *id.* at 73-74. Considering that “[h]er creditors would have no greater rights,” the court denied the Town of Randolph’s claim for principal payments. See *id.* at 74.

29. See *Spalding v. Spalding*, 253 N.E.2d 869, 870 (Mass. 1969) (considering claim premature, and concluding ascertainable standard prevented wife from accessing beneficiary’s interest).

30. 595 N.E.2d 804, 806 (Mass. App. Ct. 1992). The ascertainable standard at issue stated that the trustee should “pay to [the wife] so much or all of the income and principal of [the trust] as in its discretion it deems advisable to provide for the *comfort, welfare, support, travel and happiness* of [the wife].” *Id.* (alteration in original) (emphasis original) (internal citation omitted).

31. See *Comins v. Comins*, 595 N.E.2d 804, 805-06 (Mass. App. Ct. 1992) (discussing interest’s includability in equitable division); *supra* notes 7-18 and accompanying text (detailing relevant *Pfannenstiehl* facts); *supra* note 27 (outlining *Spalding* facts); see also *supra* note 10 (explaining connection between enforceability of trust interest and equitable division). Diane’s argument to uphold the Appeals Court’s ruling heavily relied upon *Comins*. See Brief of the Defendant/Appellee at 22-23, *Pfannenstiehl v. Pfannenstiehl*, 55 N.E.3d 933 (Mass. 2016) (No. SJC-12031), 2016 WL 1423874 (advocating for inclusion of 2004 Trust interest).

wife in *Comins* was the sole beneficiary in a closed class, and the interest would terminate upon her death if not assigned by her will.³² Giving strong emphasis to the mere presence of the ascertainable standard, the *Comins* court determined that the beneficiary had a “present, enforceable, [and] equitable right to use the trust property for [her] benefit.”³³ Accordingly, the interest was enforceable and includable in the marital estate.³⁴

In *Pfannenstiehl v. Pfannenstiehl*, the SJC examined the 2004 Trust to determine whether Curt’s interest was enforceable or amounted to an expectancy.³⁵ The SJC explained that an interest in a discretionary trust generally constitutes mere eligibility for payments subject to trustee discretion; the beneficiary cannot induce payments, and this interest is typically an expectancy.³⁶ Addressing Diane’s assertion that *Comins* controlled due to the present ascertainable standard, the SJC distinguished the 2004 Trust from the facts of *Comins*.³⁷ Whereas the beneficiary in *Comins* was the sole beneficiary of the trust, Curt was one of eleven living beneficiaries in an open class.³⁸ Additionally, the terms of the 2004 Trust expressly permitted the Trustees to make unequal disbursements to the beneficiaries.³⁹ Considering these differences, the SJC concluded that despite the ascertainable standard, Curt could not legally compel trust payments for himself or for the benefit of Diane, rendering Curt’s interest in the 2004 Trust an expectancy.⁴⁰

Estate planning practitioners widely criticized the Appeals Court’s *Pfannenstiehl* decision for abandoning precedent and disregarding settlor’s intent.⁴¹ Particularly, many attorneys believed the court’s interpretation of an ascertainable standard infringed upon the discretion that the settlor invested in

32. See *Comins v. Comins*, 595 N.E.2d 804, 805 n.4 (Mass. App. Ct. 1992) (listing trust’s terms).

33. *Comins v. Comins*, 595 N.E.2d 804, 806 (Mass. App. Ct. 1992) (alteration in original) (quoting *Lauricella v. Lauricella*, 565 N.E.2d 436, 439 (Mass. 1991)).

34. See *Comins v. Comins*, 595 N.E.2d 804, 806 (Mass. App. Ct. 1992) (holding closed-class, discretionary trust enforceable due to ascertainable standard).

35. See 55 N.E.3d at 939 (outlining standard for determining enforceability). Justice Duffly’s majority opinion also held that, even if the interest is an expectancy, the trust could be considered when determining how to equitably divide the property that was includable in the marital estate. See *id.*

36. See *id.* at 940 (citing *Lauricella* and *Roberts*).

37. See *id.* at 941 (relaying Diane’s argument and contrasting case at hand).

38. *Id.* (explaining Trustees needed to consider “long-term needs” of beneficiaries and possibility of more).

39. 55 N.E.3d at 941 (stressing speculative nature of interest).

40. *Id.* at 942 (concluding trust language and circumstances justified expectancy determination).

41. See Brief of the Amicus Curiae, *supra* note 16, at 9-10 (arguing decision distorted Trustees’ duty of loyalty owed to settlor); Margolis, *supra* note 16 (suggesting decision “undermines centuries of established trust law”); see also Brief of Plaintiff/Appellant, *supra* note 16, at 35-36 (claiming Appeals Court’s *Pfannenstiehl* holding eroded settled expectations of trust law); *supra* note 1 and accompanying text (outlining importance of settlor’s intent). Instead of the 2004 Trust serving the settlor’s intent of benefiting his children, grandchildren, and further issue, the intermediary appellate decision would enable unintentional beneficiaries, such as Diane, to receive payments. Brief of Plaintiff/Appellant, *supra* note 16, at 34 (stating Appeals Court exposed beneficiary interests to myriad of unintended takers).

the Trustees.⁴² The Appeals Court's ruling, which could have had significant and widespread implications, seemed motivated by the desire to manufacture an equitable result for Diane, who made greater sacrifices during the marriage.⁴³ This intermediary *Pfannenstiehl* decision was possible due to confusion surrounding the impact of ascertainable standards, and because neither the SJC nor the Appeals Court had previously addressed the enforceability of a trust with analogous terms.⁴⁴

Whereas the Appeals Court seemingly emphasized an equitable result over established principles, the SJC engaged in a sober, rational analysis of the 2004 Trust's provisions under existing case law.⁴⁵ With the 2004 Trust, Curt's father intended to take care of his descendants.⁴⁶ He sought to accomplish this goal by granting the Trustees broad discretion to distribute funds in the amounts, and at times, they saw fit.⁴⁷ By simply examining the subject instrument and honoring the settlor's intent—the golden rule of trust law—the SJC succeeded where the Appeals Court failed.⁴⁸ While the SJC stopped short of reprimanding the Appeals Court, they unambiguously expressed their disapproval by vacating the intermediary decision.⁴⁹ The SJC, however, barely went further than returning the law to where it had been before Curt and Diane's divorce judgment.⁵⁰

42. See Brief of the Amicus Curiae, *supra* note 16, at 7 (arguing Appeals Court's decision "dismantles the [T]rustee[s'] discretion as described by the 2004 [T]rust"); Margolis, *supra* note 16 (suggesting Appeals Court decision only gave trustee discretion to determine amount and timing of distributions); see also Brief of Plaintiff/Appellant, *supra* note 16, at 25 (stating "Appeals Court essentially rewrote the trust to eliminate the [T]rustees' discretion").

43. See 55 N.E.3d at 936 (providing factual background of Curt and Diane's relationship); Margolis, *supra* note 16 (suggesting sympathy for Diane may have unduly impacted decisions); see also *supra* note 19 (discussing how Massachusetts adopted UTC used in other states); *supra* note 21 (highlighting ascertainable standard's default status in Commonwealth). Diane served as a member of the United States Army Reserves before marrying Curt and for the first few years of their marriage. 55 N.E.3d at 936. Following the birth of their daughter, who has Down syndrome, Curt and his family pressured Diane to retire, causing her to forfeit her nearly-earned pension. See *id.*

44. See *Lauricella v. Lauricella*, 565 N.E.2d 436, 437, 439 (Mass. 1991) (analyzing closed-class trust); *Spalding v. Spalding*, 253 N.E.2d 869, 870 (Mass. 1969) (discussing discretionary, closed-class trust subject to ascertainable standard); *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964) (examining closed-class, discretionary trust with ascertainable standard); *Comins v. Comins*, 595 N.E.2d 804, 805-06 (Mass. App. Ct. 1992) (considering closed-class trust interest where trustee discretion limited by ascertainable standard). Compare *Comins v. Comins*, 595 N.E.2d 804, 806 (Mass. App. Ct. 1992) (holding ascertainable standard renders interest enforceable), with *Town of Randolph v. Roberts*, 195 N.E.2d 72, 73 (Mass. 1964) (ruling beneficial interest only enforceable if beneficiary could prove breach of fiduciary duty).

45. See Margolis, *supra* note 16 (proposing sympathy for Diane motivated Appeals Court decision); O'Regan, *supra* note 16 (applauding SJC's decision). It is important to note that Attorney O'Regan represented Curt during his SJC appeal. See 55 N.E.3d at 934.

46. See *supra* notes 7-9 and accompanying text (providing overview of 2004 Trust's key terms).

47. 55 N.E.3d at 941 (discussing authority granted to Trustees).

48. See O'Regan, *supra* note 16 (arguing SJC discerned "settlor's intent based on terms of the instrument"); see also *supra* note 1 (discussing importance of settlor's intent).

49. 55 N.E.3d at 942 (vacating and remanding to probate court).

50. See *id.* at 940-42 (analyzing Curt's interest in 2004 Trust under precedent and holding it constitutes

Justice Duffly elected a conservative rule that may fail to curtail future litigation.⁵¹ Sticking to precedent, the SJC reiterated that each trust's terms must be individually assessed to determine whether there is an enforceable right to payments.⁵² Individual analysis is proper, but the SJC should have expressly established that a discretionary trust with an open class of beneficiaries is always an expectancy as a matter of law, regardless of an existing ascertainable standard.⁵³ Conversely, the decision ought to have clarified that closed-class beneficiaries, in an otherwise similar trust, possess an enforceable property interest.⁵⁴ The Appeals Court's decision was the product of understandable confusion, but reversal without instituting any firm rules gives Massachusetts courts enough leeway to commit similar mistakes during individual trust analyses.⁵⁵

Settlors choose to empower trustees with payment discretion for a variety of reasons. The settlor may be concerned that their beneficiaries are financially incompetent, or, like Curt's father, they may wish to benefit a large class with variable needs. Under the Appeals Court's decision in *Pfannenstiehl*, any such beneficiary—or their divorcing spouse—could compel distributions by proving that the trustee failed to satisfy the ascertainable standard. Through its *Pfannenstiehl* decision, the SJC calmed the frenzy caused by the Appeals Court's family-law-oriented suffocation of discretionary power and settlor's intent. Yet this conservative, intentionally fact-specific holding may not provide lower courts with sufficient guidance to determine when an ascertainable standard renders the trust interest an enforceable property right.

Michael Stephen Hayes

expectancy).

51. See *id.* at 939 (holding trust provisions assessed individually instead of applying broader rule).

52. See *id.*; see also *supra* note 22 and accompanying text (discussing individual analysis standard).

53. See Brief of Plaintiff/Appellant, *supra* note 16, at 4, 25 (suggesting discretionary trusts with "multiple beneficiaries" always produce unenforceable interests).

54. See 55 N.E.3d at 941 (distinguishing but not overturning *Comins*); *Comins v. Comins*, 595 N.E.2d 804, 806 (Mass. App. Ct. 1992) (asserting enforceability of closed-class, discretionary trust interest with ascertainable standard).

55. See *supra* note 44 (highlighting uncertainty surrounding ascertainable standards).