

1 YOUNG, APPELLEE, v. OHIO DEPARTMENT OF HUMAN SERVICES,

2 APPELLANT.

3 [Cite as *Young v. Ohio Dept. of Human Serv.* (1996), ___ Ohio

4 St.3d ____.]

5 *Public welfare -- Testamentary trust that expressly prohibits trustee*

6 *from making any distribution that would affect the beneficiary's*

7 *Medicaid benefits does not constitute a "countable resource"*

8 *under Ohio Department of Human Services Medicaid*

9 *Regulatory scheme set out in Ohio Adm.Code Chapter*

10 *5101:1-39.*

11 (No. 95-967 -- Submitted May 7, 1996 -- Decided

12 September 4, 1996.)

13 APPEAL from the Court of Appeals for Allen County, No. CA94-

14 07-0048.

15 Janet Lee Young, appellee, entered a nursing facility in August

16 1993. On October 12, 1993, she applied for Medicaid benefits. The

17 Allen County Department of Human Services ("ACDHS") denied her

18 application for the reason that Young was the beneficiary during her

1 lifetime of a \$53,000 irrevocable trust (“the Albright trust”) created by
2 her father George Albright. ACDHS determined that the trust
3 constituted an available resource that exceeded the \$1,500 resource
4 limitation established by the Ohio Department of Human Services
5 (“ODHS”) for Medicaid eligibility.

6 Young appealed the determination to ODHS, which upheld the
7 determination of the ACDHS.

8 Young then appealed the department’s order to the Court of
9 Common Pleas of Allen County pursuant to R.C. 5101.35 and
10 119.12. The court affirmed the administrative decisions and Young
11 appealed that decision to the Allen County Court of Appeals which
12 reversed the trial court, holding that the terms of the trust excluded it
13 from the definition of “countable resource” under the Ohio Medicaid
14 eligibility requirements.

15 The cause is now before this court upon the allowance of a
16 discretionary appeal.

1

2 *Martin, Pergram & Browning Co., L.P.A., and Dennis L.*
3 *Pergram*, for appellee.

4 *Betty D. Montgomery*, Attorney General, and *Margaret E.*
5 *Adams*, Assistant Attorney General, for appellant.

6

7 MOYER, C.J. The issue to be decided in this appeal is whether
8 a testamentary trust that expressly prohibits the trustee from making
9 any distributions that would affect the beneficiary’s Medicaid benefits
10 constitutes a “countable resource” under the ODHS Medicaid
11 regulatory scheme set out in Ohio Adm. Code Chapter 5101:1-39.

12 The Allen County Court of Appeals held that the Albright trust
13 corpus does not meet the definition of a “countable resource” and
14 therefore may not be relied upon by ODHS as a reason for denying
15 Young’s Medicaid application. For the reasons that follow, we agree.

16 The stated purpose of the Medicaid program is to provide

1 assistance to financially needy citizens in their efforts to procure
2 adequate health care. Ohio Adm. Code 5101:1-39-01(A). In view of
3 this objective, ODHS promulgated regulations, consistent with federal
4 law, which limit the available resources an individual may have if he
5 or she is to receive Medicaid. Former¹ Ohio Adm. Code 5101:1-39-
6 05 provided in pertinent part:

7 “(A) There are certain restrictions of value placed upon an
8 applicant/recipient’s resources in Medicaid. There is an overall
9 maximum placed upon total nonexempt resources, which is termed
10 the resource limitation. ***

11 “* * *

12 “(4) ‘Resources’ are defined as those assets, including both
13 real and personal property, which an individual or couple possesses.

14 ***

15 “(5) ‘Personal property’ is defined as those resources that are
16 available for the support or maintenance of a person’s physical

1 needs or medical care.

2 “(6) ‘Countable resources’ are those resources remaining
3 after all exemptions have been applied. These nonexempt resources
4 are applied, or counted, toward a resource limitation; thus, these
5 nonexempt resources are termed countable.

6 “(7) The ‘resource limitation’ is the overall maximum value
7 placed upon an applicant/recipient’s total countable resources. For
8 an individual, the resource limitation is one thousand five hundred
9 dollars. ***

10 “(8) Only those resources in which an applicant/recipient has
11 a legal interest and the legal ability to use or dispose of are counted.
12 If both legal interest and ability to use or dispose of the resources do
13 not exist, the value of the resources is not counted.”

14 The dispositional language of the trust at issue in this litigation
15 provides:

16 “(1) The share to be held for Grantor’s daughter, JANET LEE

1 YOUNG, shall be held, managed and distributed by the Trustee as
2 follows: The Trustee shall pay such amounts of the net income and,
3 if necessary, principal of this Trust as she deems necessary for the
4 benefit of JANET LEE YOUNG, provided, however, that the Trustee
5 shall not make any distributions of income or principal for the benefit
6 of JANET LEE YOUNG which shall render her ineligible or cause a
7 reduction in any benefit she may be entitled to receive, including, but
8 not limited to, the following: institutional care provided by the State
9 or Federal government, Social Security, Supplementary Security
10 Income, Medicare, and Medicaid. * * * Distributions of income or
11 principal to or for the benefit of JANET LEE YOUNG shall be made
12 liberally and generously, but not for the purpose of providing for
13 anything which could otherwise be provided for her by governmental
14 or other assistance.”

15 The language of the trust instrument clearly prohibits the
16 trustee from making distributions which would result in a reduction in

1 benefits or elimination of Young’s Medicaid eligibility. The restriction,
2 however, was held unenforceable by the trial court on the grounds
3 that it was an attempt to force Medicaid to accept primary liability for
4 Young’s nursing facility expenses despite the existence of substantial
5 personal financial resources. The trial court found the enforcement
6 of such a provision to be against public policy and therefore found
7 that term of the trust instrument to be unenforceable.

8 Under R.C. 119.12, the court of common pleas must review an
9 agency order to determine whether “the order is supported by
10 reliable, probative, and substantial evidence and is in accordance
11 with law.” Applying this standard, the trial court affirmed the
12 administrative decision and held the trust provision unenforceable as
13 a violation of public policy. In reversing the trial court, the court of
14 appeals concluded that no public policy considerations rendered the
15 trust provisions unenforceable.

16 ODHS argues that the court of appeals’ holding must be

1 reversed because it thwarts the fundamental purpose of Medicaid
2 which is to help those who are truly needy. ODHS also asserts that
3 the appellate court's interpretation will, if upheld, permit all citizens to
4 restrict the availability of their assets and defeat the Medicaid
5 eligibility criteria, converting Medicaid from a safety net to an estate
6 planning tool for the wealthy and middle income persons. Therefore,
7 ODHS urges that the court of appeals be reversed and the trust
8 provision held unenforceable as contrary to important public policy.
9 We do not agree.

10 The primary responsibility for the support of an individual lies
11 with that individual, and a trust created for the benefit of an individual
12 will be considered an available resource upon application for
13 Medicaid unless the applicant's access to the trust principal is
14 restricted. Former Ohio Adm. Code 5101:1-39-271(E). This principle
15 is well established and is not disputed by Young. It is Young's
16 position, however, that her use of and access to the trust is

1 restricted.

2 It is axiomatic that a grantor may dispose of his or her property
3 in any manner chosen so long as the disposition is not prohibited by
4 law or public policy. Neither party to this dispute contends that
5 George Albright was under any obligation to provide for the support
6 of his adult child. Had Albright not chosen to establish the trust and
7 name his daughter beneficiary, there would be no question as to her
8 eligibility to receive Medicaid benefits.

9 Though the issue before us is one of first impression in Ohio,
10 the majority rule from other jurisdictions appears to hold that if the
11 purpose of a trust is to supplement rather than supplant Medicaid (or
12 other government benefit programs), the instrument will be
13 enforceable as drafted. See *Trust Co. of Oklahoma v. State ex rel.*
14 *Dept. of Human Serv.* (Okla. 1991), 825 P.2d 1295; *Tidrow v. Dir. of*
15 *Family Serv.* (Mo. App. 1985), 688 S.W.2d 9.

16 In *Tidrow*, the trust at issue was created by a father for the

1 benefit of a retarded adult son. The instrument in *Tidrow*, a
2 testamentary trust, contained language expressing the settlor's
3 intent "that payments from the trust to or for [the beneficiary] were to
4 supplement, rather than supplant, the benefits to which [the
5 beneficiary] would otherwise be entitled." *Id.* at 12. The language of
6 the trust instrument was less restrictive than in the case at bar, yet
7 the court held that the intent of the settlor was controlling, and found
8 that his intent was to supplement state support. *Id.*

9 Evidence of the intent, in *Tidrow*, included language of the
10 instrument providing for payments to the beneficiary throughout his
11 life and a provision for the remainder of the trust to go to the
12 beneficiary's brother upon the beneficiary's death. The court
13 reasoned that these provisions clearly indicated that the settlor did
14 not intend the entire corpus of the \$175,000 trust to be dissipated
15 within a few years' time from paying for the beneficiary's institutional
16 care. Id. The court thus held that the trust did not constitute an

1 available asset under the federal law applicable both in Tidrow and
2 the case at bar.

3 The Tidrow court also observed that the effect of the trust was
4 only to continue providing what the father had provided for his son
5 while he was alive. Based on that reasoning, the court found: “The
6 conclusion is compelling that the father intended his trust estate, the
7 existence of which was triggered by his death, to do for [the
8 beneficiary] what his father did for him in life: to supplement the
9 benefits received from the State.” Tidrow at 12. The same is true of
10 the Albright trust.

11 In the case at bar, the language of the trust instrument is more
12 precise than in Tidrow. Albright expressly directed that “the Trustee
13 shall not make any distributions of income or principal for the benefit
14 of JANET LEE YOUNG which shall render her ineligible or cause a
15 reduction in any benefit she may be entitled to receive, including, * * *
16 Medicaid.” Albright clearly did not intend for the trust to take the

1 place of Medicaid. The court of appeals found that there was “no
2 practical difference” between the case at bar and those cases, such
3 as Tidrow and Trust Co. of Oklahoma, involving a trust instrument
4 expressly stating that the trust was intended to supplement Medicaid
5 benefits. We agree.

6 ODHS would have us treat “supplement” as a controlling word
7 without which the trust restriction may not be enforced. We reject
8 such a rigid and formalistic rule. We find that ODHS’s approach
9 would not serve the ends of justice and is not required in this case by
10 any special circumstances demanding that we raise form over
11 function. We prefer a standard analysis that requires us to determine
12 the intent of the settlor from the language of the instrument, rather
13 than to attribute intent on the basis of a magic words rule.

14 The plain meaning of the restrictive language in the present
15 case is that Albright intended to provide his daughter with a source of
16 supplemental support that would not jeopardize her access to basic

1 assistance from Medicaid. The absence of the word “supplement” is
2 not determinative of the settlor’s intent to supplement or supplant the
3 beneficiary’s Medicaid support.

4 Our resolution of this case, however, is guided most directly by
5 the language of the administrative regulations themselves, as was the
6 judgment of the court of appeals. Former Ohio Adm. Code 5101:1-39-
7 271(E) stated: “If the individual/beneficiary’s access to the trust
8 principal is restricted, the principal is not a resource to the individual.”
9 Under former Ohio Adm. Code 5101:1-39-05(A)(8), a resource will not
10 be counted unless the applicant has both a legal interest in the
11 resource and the legal ability to use or dispose of the resource. Janet
12 Young has neither.

13 First, Young's interest in the corpus of the trust is equitable
14 rather than legal. Maguire v. Trefry (1920), 253 U.S. 12, 16, 40 S.Ct.
15 417, 419, 64 L.Ed. 739, 751; Thornton v. Stanley (1896), 55 Ohio St.
16 199, 208, 45 N.E. 318. Second, the language of the trust gives the

1 trustee sole discretion over distributions made to Young (limited by the
2 proviso that the trustee may not make any distributions affecting
3 Young's Medicaid eligibility). We conclude, therefore, that because
4 Young has no control over the distributions that the trustee decides to
5 make for her benefit, she does not have the ability to use or dispose of
6 the resource. The Albright trust, thus meets neither the former Ohio
7 Adm. Code 5101:1-39-05(A)(8) nor former 5101:1-39-271(E)
8 requirements for countability.

9 Finally, we decline, as did the court of appeals, the invitation to
10 hold the Albright trust provision unenforceable on public policy
11 grounds. We prefer to rely on the plain regulatory language in effect at
12 the time this litigation arose.

13 The judgment of the court of appeals is affirmed.

14 Judgment affirmed.

15 RESNICK, PFEIFER and COOK, JJ., concur.

16 PFEIFER, J., concurs separately.

1 DOUGLAS, J., dissents.

2 F.E. SWEENEY and STRATTON, JJ., separately dissent.

3

4 FOOTNOTE

5 ¹ The relevant language of the Ohio Administrative Code has
6 recently been amended and now expressly provides that exclusionary
7 clauses such as the one at issue here may no longer be considered in
8 determining whether the trust constitutes a countable resource. See
9 Ohio Adm. Code 5101:1-39-271(A)(2)(e), effective April 27, 1995.

10 PFEIFER, J., concurring. I concur because of the limited effect
11 our decision today will have. The loophole exploited in this case has
12 been closed by the recently adopted Ohio Adm.Code 5101:1-39-
13 271(A)(2)(e). While exclusionary clause in the Albright trust
14 constituted a nifty piece of legal craftsmanship, it would make for
15 unacceptable public policy were it applicable in many cases beyond
16 this one. the world of Medicaid eligibility is rife with enough duplicity

1 and treachery without this court allowing a further opportunity for
2 abuse.

3 STRATTON, J., dissenting. I respectfully dissent from the majority
4 opinion. Where a child has reached the age of majority and the obligation
5 to support has ceased, I strongly believe it would be against public policy to
6 allow a parent to create a trust where the trust income or trust corpus can go
7 to the child at the discretion of the trustee, except when such distributions
8 would render the child ineligible for medical assistance from the
9 government.

10 The purpose of the trust, established by Young's father, was to
11 generously and liberally provide income to Young in all circumstances,
12 except where she might be entitled to receive Medicaid or Medicare
13 benefits. The trust contained the exclusionary provision which stated:
14 "The Trustee shall pay such amounts of the net income and, if necessary,
15 principal of this Trust as she deems necessary for the benefit of JANET LEE
16 YOUNG, provided, however, that the Trustee shall not make any

1 distributions *** which shall render her ineligible or cause a reduction in
2 *** Medicare, and Medicaid [benefits].”

3 The obvious thrust of this language is an attempt to bar the trustee
4 from making any distribution that would render Young ineligible for public
5 assistance. Otherwise, however, distributions of the trust income or
6 principal were to be made “liberally and generously.”

7 Young entered a nursing home in August 1993. The trustee was billed
8 for Young’s stay. The trustee, citing the trust language, refused to pay the
9 bill. The trust had a res of \$53,000. Young then sought Medicaid eligibility
10 to pay the bill. Under the provisions of the trust, the remainder of the trust
11 corpus would pass to any of Young’s surviving children upon her death. As
12 a result, Young had assets that were available to pay at least some of the
13 nursing home bill. However, pursuant to the trust, those assets would pass
14 to her children. The taxpayers were left with the burden of caring for
15 Young.

1 It would be a different scenario if such a child had already entered the
2 nursing home and a grantor chose not to give any of his assets to that child.
3 While certainly not commendable, a grantor is free to do with his
4 inheritance as he sees fit, as long as it is not contrary to public policy.
5 However, these assets had already transferred by trust to Janet Young and
6 were to be “liberally and generously” used for her benefit, unless the
7 government could pick up the tab. I would find that to allow a trust to
8 distribute income or principal for virtually any purpose except for purposes
9 that would eliminate or reduce Medicaid is against public policy because it
10 shifts the beneficiary’s financial responsibility to the taxpayers despite the
11 fact the beneficiary has the financial means to pay for his or her own
12 medical expenses. Medicaid is a safety net for those who are destitute, not
13 insurance coverage for those who can pay their medical expenses like
14 Young. Obviously, the limiting language of this trust is against public
15 policy because it circumvents the purpose behind Medicaid. Where trust
16 language is against public policy, the court has a duty to nullify such trust

1 language. See *Bob Jones Univ. v. United States* (1983), 461 U.S. 574, 591,
2 103 S. Ct. 2017, 2028, 76 L.Ed.2d 157; *United States. v. Taylor* (N.D.Cal.
3 1966), 254 F. Supp. 752.

4 F.E. SWEENEY, J., concurs in the foregoing dissenting opinion.