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## **Parents Removed As Trustees of Special Needs Trust After Commingling Funds**

Parents of children with special needs who receive an inheritance or lawsuit settlement often believe they can serve effectively as trustees of a special needs trust for the child. But being a trustee of such a trust imposes strict legal obligations of good faith on the trustees that may be too much for family members to manage. In a May 2009 decision\*, a Rhode Island court removed the parents as co-trustees of a supplemental needs trust established for the co-trustees' son after the parents, who are getting divorced, commingled trust funds with their own bank accounts and spent trust funds on alcohol and their own rent and groceries.

Matthew Goodness was born with cerebral palsy and received a deferred "structured settlement" annuity as part of a settlement agreement. The annuity payments began on Matthew's 18th birthday and were deposited into a special needs trust established by his parents for his sole benefit. His parents, Mary and Francis Goodness, were named as co-trustees of the trust, and Fleet Bank (now Bank of America) was named as successor trustee.

As soon as the annuity payments began, both parents, who were separated and seeking a divorce, started withdrawing the annuity payments from the trust and placing the funds into their separate bank accounts. Mrs. Goodness, who lived next door to Matthew, used funds from the trust to pay for her rent and grocery bills, while Mr. Goodness spent trust funds on beer. Neither parent coordinated Matthew's care with the other, although they did succeed in paying Matthew's necessary expenses. Mrs. Goodness eventually filed a petition to remove Mr. Goodness as co-trustee, and Mr. Goodness filed a counterclaim to remove Mrs. Goodness. At the court hearing, both parents testified that they had not kept records of the trust's activities.

The Rhode Island Superior Court removed both parents as trustees and appointed the Bank of America as successor trustee. The court concluded that "both Francis and Mary have (1) breached their duty of loyalty to the Trust; (2) impermissibly commingled Trust funds with their personal funds; (3) wasted and depleted Trust fund assets; and (4) breached their fiduciary duty to the Trust."

[\**In Re Matthew W.T. Goodness Trust* (R.I. Sup. Ct., No. PM/08-7349, May 14, 2009). For the full text of this decision, go to: <http://www.courts.ri.gov/superior/pdf/08-7349.pdf>]

As a special needs planning expert and the parent of a child with special needs, Richard Courtney has the knowledge and experience to help you with special needs trust planning and administration. Call today at 1-866-ELDERLAW.