

## Child Support Liens: Who Is Liable for Distributions to Beneficiaries?

By Robert I. Aufseeser

**O**n Aug. 14, 2000, N.J.S.A. 2A:17-56.23b (commonly known as the child support judgment lien statute) became law in the state of New Jersey. This statute creates a lien against a beneficiary's inheritance for the purpose of satisfying a judgment against that beneficiary for unpaid child support. The statute codifies the strong public policy toward payment of child support obligations and gives preferential treatment to creditors. The statute explicitly places the burden of enforcing such liens on the estate's executors or administrators. With the increased popularity of testamentary transfers taking place outside of probate, such as with trusts and other transfer-on-death arrangements, the impact of this statutory framework on those non-testamentary transfers is less than clear.

### The Statute

The statute provides that "A judgment for child support

*Aufseeser is an associate with Greenberg Traurig in Florham Park. He focuses his practice on general tax law with an emphasis on trust and estate planning matters.*



entered pursuant to P.L. 1988, c. 111 (C. 2A:17-56.23a) and docketed with the Clerk of the Superior Court shall be a lien against the net proceeds of any settlement negotiated prior or subsequent to the [...] inheritance." The term "net proceeds" is defined as any amount of money, in excess of \$2,000, payable to the beneficiary after attorney fees and such other enumerated fees and costs.

The statute does not define "beneficiary" except to state that the term shall not include a partnership, corporation, limited liability partnership, financial institution, government entity or minor child. An "agent"—the party responsi-

ble for making the distribution—is defined to include the executor or administrator of the decedent's estate, an arbitrator, or any other person or entity if such person or entity is responsible for the distribution of net proceeds to a beneficiary.

The statute balances the satisfaction of a child support lien against the agent's duty to distribute assets to the beneficiary. This process can be summarized as follows: First, prior to any distribution, the beneficiary must provide the attorney or agent with a certification that includes the beneficiary's full name, mailing address, date of birth and social security number. Second, the attorney or agent must

initiate a search of child support judgments through a private search company to determine whether the beneficiary is a child support judgment debtor. The search fee cannot exceed \$10 for each name that is searched, and the fee is chargeable against the inheritance. Lastly, if the search comes back “clear,” the inheritance may be paid to the beneficiary immediately. If the search comes back “with judgments,” the attorney or agent that initiated the search must contact the Probation Division of the Superior Court to arrange for the satisfaction of the child support judgment.

In the case of a judgment, the attorney or agent is obligated to notify the beneficiary of the intent to satisfy the existing judgment from all or a portion of the beneficiary’s inheritance. Only after receiving a warrant of satisfaction for the child support judgment may the attorney or agent distribute any remaining amount to the beneficiary. Furthermore, if the inheritance is less than the amount of the child support judgment, the entire amount of the net proceeds must be paid to the Probation Division as partial satisfaction of the judgment.

Importantly, the attorney or agent will not be liable for relying on false information provided by the beneficiary in his or her initial certification. This protection is further incentive for the attorney or agent to require the beneficiary to provide the required information in the proper format. Furthermore,

the attorney or agent is expressly protected from any claim by the beneficiary or a creditor of the beneficiary for satisfying the judgment of child support.

In practice, this statutory framework must give executors and administrators (and their attorneys) pause before distributions are made from an estate. The statute, however, leaves several questions unanswered. For example, does a child support judgment search need to be performed every time a distribution is made from an estate? What about partial distributions? What happens if the executor is aware of a judgment against the beneficiary in a jurisdiction outside New Jersey? Can the requirements and liability be applied to non-probate transfers and distributions from trust?

### **Timing: When to Run the Search**

With regard to timing, the agent is required to run a child support judgment search prior to making any distribution, whether the distribution is partial or final. While not expressed in the statute, New Jersey courts have held that an agent is protected from making a distribution if it is made within 30 days of receiving a certification that no child support judgments are outstanding. *Strickland v. 212 Corp. of N.J.*, 380 N.J. Super. 248 (Law Div. 2005). If a new search is not performed for any distribution, partial or final, made beyond 30 days from the date of the previous

search, the agent could be liable under the statute.

### **Judgments Entered in Foreign Jurisdictions**

In *Strickland*, the court applied N.J.S.A. 2A:17-56.23b to the following facts: The plaintiff, who resided outside New Jersey, was injured in New Jersey and a personal injury claim arose. The plaintiff’s attorney negotiated a settlement and, prior to distributing the settlement monies to her client, initiated a child support judgment search in New Jersey. The search came back “clear.” The problem was that, in speaking with her client, the client mentioned that he had a child support judgment entered against him in North Carolina. His attorney then filed a motion with the court seeking instructions. The court held the statute does not require an attorney or agent to perform a judgment search in jurisdictions outside of New Jersey, stating that such a requirement would be both impractical and outside the scope of what was intended by the legislature. *Strickland* holds that so long as the New Jersey search shows “clear,” no child support judgment lien exists and the attorney or agent for the estate will not incur liability for making the distribution. *Strickland*, 380 N.J. Super. at 258-59.

*Strickland* should give comfort to both agents and their attorneys in that the statute does not require them to perform judgment searches in other jurisdictions. In fact, doing

so may expose them to professional liability concerns if the foreign judgment is docketed quickly in New Jersey as a result of their actions.

## Non-Probate Transfers

Generally, New Jersey law exempts the proceeds of life insurance from the claims of the decedent's creditors. N.J.S.A. 17B:24-6, -9. However, this broad exemption has been interpreted to protect beneficiaries from commercial creditors and not necessarily from support obligations. *DeCeglia v. Estate of Colletti*, 265 N.J. Super. 128 (App. Div. 1993).

In *DeCeglia*, the Appellate Division held that a mother may pursue a father's child support obligation from life insurance proceeds paid to third-party beneficiaries. There, the decedent fathered a child born post-mortem. The decedent, who was not married to the child's mother, died without providing for his child. The decedent's assets primarily consisted of three policies of life insurance, which named his mother and sister as beneficiaries. The child's mother brought a claim against the estate and the insurance company claiming that the policies should be applied to the decedent's child support obligation. The court held that the life insurance was available to satisfy the decedent's child support obligation. *DeCeglia*,

265 N.J. Super. at 138 (App. Div. 1993).

## Distributions from Trust

On its face, N.J.S.A. 2A:17-56.23b does not reference distributions in trust, whether testamentary or inter vivos, revocable or irrevocable. In addition, the statute makes only specific reference to executors and administrators. The statute does not use the term trustee. This ambiguity raises a question as to whether a trustee, prior to making a distribution from trust, must perform the same child support judgment search required of an executor prior to making a distribution from an estate.

While unclear, the answer may depend on how the trust was established. For example, where a decedent executes a will in which her estate is paid to a revocable living trust (which becomes irrevocable at her death), distributions from that trust can and probably should be viewed as an inheritance by the trust's beneficiaries from the decedent. The trustee is acting in similar fashion to that of an executor when making these distributions from trust to effect the decedent's testamentary intent.

In 2004, several years after N.J.S.A. 2A:17-56.23b was enacted, the New Jersey Probate Code was revised to bring greater uniformity to testamentary and non-testamentary transfers. As part of

this initiative, the term "governing instrument" was added to reference testamentary dispositions contained in wills, trusts and pay-on-death accounts. Over the past 10 years, the term "inheritance" has taken on a broader meaning under New Jersey law. While N.J.S.A. 2A:17-56.23b was not amended as part of these revisions, the definition of "inheritance" may now be broader.

As additional support, the statute places the burden of performing child support judgment searches on "an executor or administrator of a decedent's estate, an arbitrator, or any other person or entity if such person or entity is responsible for the distribution of net proceeds to a prevailing party or beneficiary" (emphasis added). The language "or any other person or entity" is important in this context because a trust is another entity that can carry out the testator's dispositive intentions.

## Conclusion

The New Jersey child support judgment lien statute presents a roadmap for agents and their attorneys to follow. The statute balances the interests of beneficiaries against those who are owed child support. Strong public policy exists to protect these judgment creditors, and deviating from standard practice in this regard only serves to expose the unwary agent or attorney to added risk. •