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Right Answer to the Wrong Question: Estate of Stevens and What "Support" Means for South Carolina Trust Beneficiaries

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RIGHT ANSWER TO THE WRONG QUESTION: *ESTATE OF STEVENS* AND WHAT "SUPPORT" MEANS FOR SOUTH CAROLINA TRUST BENEFICIARIES

I. INTRODUCTION

Jeremy Bentham, the eighteenth and nineteenth century English philosopher and political radical, spent most of his life critiquing the existing common law and strongly advocating legal reform.[1] He criticized the common law approach for not being a clear, comprehensive, rational code built upon general principles. Instead he saw it as a sea of "'non-cognoscible' and trackless" decisions.[2] He referred to common law as "dog-law" because it does not tell a man beforehand what it is that he should not do, just as a master waits for a dog to misbehave and then punishes him:

> It is the Judges (as we have seen) that make the common law:—Do you know how they make it? Just as a man makes laws for his dog. When your dog does any thing you want to break him of, you wait till he does it, and then beat him for it. This is the way you make laws for your dog: and this is the way the Judges make law for you and me. They won't tell a man before hand what it is he *should not do*, they won't so much as allow of his being told: they lie by till he has done something which they say he should not *have done*, and then they hang him for it.[3]

At no time does this criticism prove truer than when a court faces a novel issue of law, as up to that point in time, the parties may have no indication from the courts on how to appropriately transact. The South Carolina Court of Appeals recently faced an issue of first impression in *Estate of Stevens v. Lutch*[4]: "[W]hat considerations are appropriate under [a] trust's terms when determining whether to make a [discretionary] distribution for a beneficiary's 'support?'"[5]

The case involved a testamentary trust that permitted the trustees to use their sole discretion to invade the principal for the support of the beneficiaries if the trustees believed the income derived from the principal, along with other

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1. JAMES E. CRIMMINS, ON BENTHAM 1, 45 (2004).

2. H. L. A. HART, ESSAYS ON BENTHAM 73 (1982).

3. JEREMY BENTHAM, TRUTH VERSUS ASHHURST; OR, LAW AS IT IS, CONTRASTED WITH WHAT IT IS SAID TO BE 11 (1823).

4. 365 S.C. 427, 617 S.E.2d 736 (Ct. App. 2005), *cert. denied*, 2006 S.C. LEXIS 380 (Nov. 14, 2006).

5. *Id.* at 431, 617 S.E.2d at 738.

financial sources, failed to support the beneficiaries.[6] Paul Stevens, one of two beneficiaries of the trust, asked the trustees to exercise their discretionary authority by distributing funds to enable the private education of his two children, who were "remainder beneficiaries of the trust."[7] A master-in-equity held that based on an ordinary-meaning analysis of the will, the trustees were "not authorized to make distributions to the [beneficiaries] for the health, support, maintenance and education of their current or future children."[8] The South Carolina Court of Appeals reversed the master's decision, holding that "consideration of a beneficiary's familial obligations falls within a trustee's discretion when determining what constitutes a proper distribution for *the beneficiary's* 'support.'"[9]

This Note argues the Court of Appeals wrongly decided *Estate of Stevens* and should have affirmed the master-in-equity's decision: The terms and circumstances involved in the creation of the trust reflect the testator's intent for the trust funds to support only the named beneficiaries and not their current or future children. This Note does not argue that South Carolina courts should always narrowly interpret the term *support* to exclude support of a beneficiary's children; however, the peculiar terms and circumstances of the Stevens trust call for such a narrow interpretation.

Part II of this Note provides the factual background for *Estate of Stevens*, focusing particularly on important details absent from the opinion. Part III reviews the court's analysis and explains why the court failed to answer the issue of this case based on the terms of the Stevens trust. Part IV further discusses why the terms and circumstances surrounding the trust, along with South Carolina case law and other legal authorities, should have led the court to affirm the master-in-equity's decision. Part V concludes by discussing the effect *Estate of Stevens* will have on South Carolina testators and beneficiaries.

II. THE FACTUAL AND PROCEDURAL BACKGROUND OF *ESTATE OF STEVENS*

Niles Stevens died February 24, 1984 and left a will (Will) that established the Stevens testamentary trust.[10] The court recited the language of the trust:

> [M]y trustee may pay to or apply for the benefit of my said children, LAURA STEVENS and PAUL STEVENS, such sums from the principal or accumulated income of this trust as in his sole discretion shall be necessary or advisable from time to time for the health, education, support and maintenance of my said children, LAURA STEVENS and PAUL STEVENS,

6. *Id.* at 429–30, 617 S.E.2d at 737.
7. *Id.* at 430, 617 S.E.2d at 737.
8. *Id.*
9. *Id.* at 433, 617 S.E.2d at 739.
10. *Id.* at 429, 617 S.E.2d at 737.

> taking into consideration to the extent my trustee deems advisable any other income or resources of my said children . . . known to my trustee.[11]

The court used ellipses near the end of the quoted language to replace "LAURA STEVENS and PAUL STEVENS," a third use of the testator's children's names in all capital letters.[12] The court's decision not to include these important terms in its opinion evidences its failure to base its holding on the particular terms of the trust in question. The court then noted that

> upon the death of either [beneficiary], the trust directs that the decedent's one-half interest shall be distributed to the issue of the deceased beneficiary. Should either die leaving no issue, the trust would remain intact for the benefit of the survivor and ultimately distributed to the issue of the surviving beneficiary.[13]

Although the court of appeals recited only this language of the Will in its opinion, the Will contained several other significant provisions. The Will left the balance of the residuary estate to be held in trust:

> 1. One-half (½) of the net income therefr[ro]m shall be paid to or applied for the benefit of my daughter, LAURA STEVENS, during her lifetime.
> 2. The sum of Five Thousand Dollars ($5,000) per annum, not to exceed one-half (½) the net income of this trust, shall be paid to or applied for the benefit of my son, PAUL STEVENS, from the net income of the trust during his lifetime.[14]

While the court stated the approximate value of the trust was $6 million,[15] it failed to note that Laura, because of this trust provision, receives substantially more income per year than Paul. While Laura receives $116,000 to $125,000, Paul receives only $8,000 to $17,000.[16]

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11. *Id.* at 429–30, 617 S.E.2d at 737 (alteration in original).

12. Record on Appeal at 114, *Estate of Stevens*, 365 S.C. 427, 617 S.E.2d 736 (Ct. App. 2005), *cert denied*, 2006 S.C. LEXIS 360 (Nov. 14, 2006) (No. 3993).

13. *Estate of Stevens*, 365 S.C. at 430, 617 S.E.2d at 737. This Note argues the court mislabeled the beneficiaries' interests. *See infra* Part III.A.

14. Record on Appeal, *supra* note 12, at 114.

15. *Estate of Stevens*, 365 S.C. at 430, 617 S.E.2d at 737.

16. Record on Appeal, *supra* note 12, at 41. These figures include the amount of income payable to the beneficiaries according to the trust terms, as well as any additional income or principal the trustee deemed necessary for the health, support, education, and maintenance of the specific beneficiaries.

The Will's spendthrift provision[17] stated that "[a]ll payments of principal and i[n]come payable or to become payable to the beneficiary of any trust created hereunder shall not be . . . subject to the debts, contracts, obligations, liabilities or torts of any beneficiary."[18] The Will defined "children" as "the lawful blood descendants in the first degree of the parent designated."[19] The court noted that at the time of the litigation, Paul Stevens had two minor children and Laura Stevens had no children;[20] however, at the time of Niles Stevens's death, both of the two beneficiaries of the trust were unmarried and had no children.[21] Paul Stevens's annual income was usually less than $25,000, and the cost of the private education he wished to provide his minor children was usually less than $5,000 annually.[22]

Paul Stevens requested the trustees distribute trust funds to pay for the private education of his two minor children.[23] Uncertain of whether they could make the requested distribution, the trustees sought a declaratory judgment from the probate court to determine the extent of their discretionary authority.[24] The case was removed to the circuit court and then referred to the master-in-equity.[25]

The master narrowly construed the trustees' discretionary power. Under "the ordinary meaning of the language used in the Will, the Trustees are not authorized to make distributions to [the beneficiaries] for the health, support, maintenance and education of their current or future children."[26] The court of appeals reversed the master's decision,[27] holding that "consideration of a beneficiary's familial obligations falls within a trustee's discretion when determining what constitutes a proper distribution for *the beneficiary's* 'support.'"[28]

This Note refers to this more complete factual background (facts cited in the opinion plus facts from the Record on Appeal) throughout its analysis of *Estate of Stevens* to support the conclusion that the South Carolina Court of Appeals should have affirmed the master-in-equity's decision; under the peculiar terms of the trust, the testator did not intend for the trust's funds to support the beneficiaries' current or future children.

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17. A spendthrift trust prohibits the beneficiary from assigning her interest, while also preventing a creditor from attaching that interest. BLACK'S LAW DICTIONARY 1552 (8th ed. 2004). *See generally* 1 S. ALAN MEDLIN, ESTATE PLANNING IN SOUTH CAROLINA: THE LAW OF WILLS AND TRUSTS § 508.2(a) (2002) (providing an analysis of spendthrift provisions and their use under South Carolina law).

18. Record on Appeal, *supra* note 12, at 119.

19. *Id.*

20. *Estate of Stevens*, 365 S.C. at 430, 617 S.E.2d at 737.

21. Record on Appeal, *supra* note 12, at 28.

22. *See id.* at 37.

23. *Estate of Stevens*, 365 S.C. at 430, 617 S.E.2d at 737.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 434, 617 S.E.2d at 739.

28. *Id.* at 433, 617 S.E.2d at 739.

III. UNDERSTANDING THE TERMS OF THE TRUST IN *ESTATE OF STEVENS*, THE FACTUAL CIRCUMSTANCES SURROUNDING THEM, AND THE ISSUE THEY CREATE

The South Carolina Court of Appeals gave the right answer to the wrong question. This phrase comes from the opening sentence of Justice O'Connor's dissent in *Arizona v. Hicks*.[29] Just as Justice O'Connor viewed the majority in *Hicks* as answering a question different from the one presented to the Court,[30] this Note suggests the same regarding the court of appeals's decision in *Estate of Stevens*. Although the court of appeals correctly stated the issue as "what considerations are appropriate *under the trust's terms* when determining whether to make a distribution for a beneficiary's 'support,'"[31] the court resolved the issue without referring to the trust's meticulous terms or considering the situation-specific facts. Instead, the court answered the different question of what distributions are appropriate for a beneficiary's support under traditional trust terms, where a single beneficiary or multiple beneficiaries with equal interests take from the trust. The court's mislabeling of the beneficiaries' interests in the trust and the cases cited to support its holding show the court's failure to discern the testator's intent from the particular terms of the trust.

A. The Court of Appeals Erroneously Construed the Trust Terms as Giving Each Beneficiary a One-Half Interest in the Trust

When describing the remaindermen's provision in the trust, the court stated, "Upon the death of either [beneficiary], the trust directs that the *decedent's one-half interest* shall be distributed to the issue of the deceased beneficiary."[32] However, the beneficiaries never had a one-half interest in the trust. The trust terms give one beneficiary, Laura Stevens, one-half of the net income from the trust during her lifetime, while giving the other beneficiary, Paul Stevens, only $5,000 per year ("not to exceed one-half . . . the net income of the trust") during his lifetime.[33] Upon the death of either beneficiary, the trustee shall distribute one-half of the trust *to the issue* of the deceased beneficiary.[34] Should either of the beneficiaries die and leave no issue, the entire trust would remain for the benefit of the surviving beneficiary and ultimately be paid in full to the issue of that surviving beneficiary.[35]

Thus, the issue of each beneficiary have a one-half remainder interest in the principal of the trust, and Paul and Laura, the beneficiaries, clearly do not have one-half interests in the trust as a whole. Paul Stevens's income interest will

29. 480 U.S. 321, 333 (1987) (O'Connor, J., dissenting).
30. *Id.*
31. *Estate of Stevens*, 365 S.C. at 431, 617 S.E.2d at 738 (emphasis added).
32. *Id.* at 430, 617 S.E.2d at 737 (emphasis added).
33. Record on Appeal, *supra* note 12, at 114; *see supra* text accompanying note 16.
34. *Id.* at 114–15.
35. *Id.* at 115.

never exceed $5,000 of the income derived from a $6 million principal, plus any additional amount of income or principal the trustee is authorized to distribute for his health, education, support, and maintenance, even if Laura dies before him. This error by the court reveals it overlooked the terms of the trust—the testator intentionally gave significantly more financial interest to one beneficiary than to the other. The court instead resolved the issue of this case based on the terms of a more traditional trust, where two beneficiaries share equally.

B. The Court Erroneously Relied on Distinguishable Cases to Support its Holding

Further proof that the court of appeals did not resolve *Estate of Stevens* based on the peculiar terms of the trust exists in the cases cited in the opinion. The court began to justify its holding by stating, "[W]e are persuaded by the rationale of several other jurisdictions deciding similar, if not identical, matters,"[36] but the court misidentified the cases as "similar, if not identical." This part will explain the distinguishing characteristics of the cases. In fact, the court's analysis of these cases proves analogous to a movie preview that pulls every great one-liner out of the script to convince viewers it is worthwhile—when it only proves to be a bust.

The most distinguishable factors between *Estate of Stevens* and the cited cases are the terms of the trusts and the testator's knowledge of a beneficiary's family at the time of the testator's death. Not one case the court cited dealt with a trust that gave two beneficiaries unequal amounts of income derived from the principal; nor does any case the court cited include a beneficiary who was unmarried and childless at the creation of the trust as well as at the time of the testator's death. Following are discussions of the four cases the court found persuasive.[37]

1. Robison v. Elston Bank & Trust Co.

The South Carolina Court of Appeals cited *Robison v. Elston Bank & Trust Co.*[38] as follows:

> [T]he Indiana Court of Appeals, interpreting a trust for the support, maintenance, and enjoyment of a beneficiary, approved distributions to the beneficiary even though they

36. *Estate of Stevens*, 365 S.C. at 432, 617 S.E.2d at 738.

37. The court follows *Robison v. Elston Bank & Trust Co.*, 48 N.E.2d 181 (Ind. Ct. App. 1943) (en banc); *Eaton v. Lovering*, 125 A. 433 (N.H. 1924); *Finch v. Wachovia Bank & Trust Co.*, 577 S.E.2d 306 (N.C. Ct. App. 2003); and *First National Bank of Beaumont v. Howard*, 229 S.W.2d 781 (Tex. 1950). *See Estate of Stevens*, 365 S.C. at 432, 617 S.E.2d at 738. These cases involved testamentary trusts, and the courts used various terms to refer to the person who created the trust. Where practical, this Note will refer to the person who created the trust as the testator.

38. 48 N.E.2d 181.

> predominately benefited his wife and children. Explaining its conclusions, the court held, "[t]he needs of a married man include not only needs personal to him, but also the needs of his family living with him and entitled to his support."[39]

However, the Indiana Court of Appeals did not interpret the language "support, maintenance, and enjoyment" as the South Carolina Court of Appeals believed, because this language did not come from the provision considered by the *Robison* court.[40] *Robison* discussed the final paragraph of Item J of the will in question, which authorized the trustees, in their discretion, to use the principal of the beneficiary's trust should the beneficiary "be stricken by some serious illness or disease, or overtaken by some accident, misfortune or disaster and require for his . . . *care, attendance or support* a sum or sums in excess of all of his . . . income provided for in this will . . . [as is] proper and reasonably required for his . . . welfare and proper care."[41] The South Carolina Court of Appeals's failure to cite the relevant provision in *Robison* supports the assertion that the court did not address the issue before it based on the particular terms of the Stevens trust, but instead upon general terms used by traditional trusts.

Because the South Carolina Court of Appeals incorrectly cited the language before the *Robison* court, further analysis of the terms and circumstances of the trust involved in that case is necessary. In *Robison*, the testator established a trust for her nephew as the sole beneficiary.[42] In 1927, physicians diagnosed the beneficiary with dementia praecox[43] based on information provided by his wife, and the disease became increasingly worse with no signs of recovery.[44] Physicians advised the beneficiary to travel to California in the hope that "a quiet outdoor life might retard the progress of the malady";[45] however, the beneficiary lacked funds for the move as well as the ability to earn the funds by

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39. *Estate of Stevens*, 365 S.C. at 432, 617 S.E.2d at 738.

40. The language cited by the South Carolina Court of Appeals comes from the provision of the Robison will authorizing the trustee to pay "the whole net income . . . devoted solely to the support, maintenance and enjoyment" of the beneficiary. *Robison*, 48 N.E.2d at 183. However, the issue in *Robison* centered on the final paragraph of Item J of the testator's will, which authorized the trustee to invade the principal of the trust upon the occurence of an unforeseen emergency, rather than the provision authorizing the payment of income as the South Carolina Court of Appeals cited. *Id.*

To be sure of this distinction, this Note cites *Robison* directly: "The appellant complains that the trustee improperly expended portions of the *corpus* of the trust for the benefit of Alexander's wife and children, and that this contravened the terms of the will, since such expenditures are limited to those for the personal needs of Alexander alone while stricken." *Id.* at 189 (emphasis added). Then the court proceeded to indicate the needs of a married man also include the needs of his family living with him, *id.*, as the South Carolina Court of Appeals noted.

41. *Robison*, 48 N.E.2d at 183 (emphasis added).

42. *Id.*

43. Dementia praecox was a label formerly used for schizophrenia. STEDMAN'S MEDICAL DICTIONARY 410 (25th ed. 1990).

44. *Robison*, 48 N.E.2d at 187–88. The court also noted that the beneficiary "was never too alert mentally" and had a complete nervous breakdown. *Id.*

45. *Id.* at 188.

either mental or physical endeavor.[46] The beneficiary's entire family asked the trustee to provide $10,000 to establish a home for the beneficiary and his family in California.[47] The family asserted to the trustee that an emergency requiring the use of part of the trust corpus existed.[48] Before acting, the trustee submitted the issue to the court.[49] The court found that an emergency existed, a condition required for the trustee to invade the principal.[50] The court permitted an advance of a maximum of $10,000 and authorized payment to the beneficiary.[51]

The trustee brought suit to construe the trust, naming the beneficiary and all his adult children—remaindermen of the trust—as defendants.[52] Two of the children responded with a cross-claim against the trustee on several grounds, including inappropriate distributions of the trust for the benefit of the beneficiary's wife and children.[53] The trial court ruled that all of the trustee's actions were appropriate, and the direct payment of $10,000 of the principal to the beneficiary was "authorized under the terms of the will."[54] Evidence later proved the beneficiary never knew the California house had been built on a portion of the real estate owned by the beneficiary's wife,[55] and the court admitted that some doubt existed as to whether the beneficiary ever actually suffered from dementia praecox.[56] Nevertheless, the Indiana Court of Appeals affirmed the trial court's decision that the $10,000 invasion of the principal occurred in good faith.[57]

The most significant distinguishing factor in this case, as compared to *Estate of Stevens*, lies in the language of the provisions in question. The *Robison* testator gave the beneficiary an interest in the principal of the trust, contingent on the beneficiary becoming mentally, physically, and financially helpless.[58] No such emergency contingency existed in the terms of the trust before the South Carolina Court of Appeals. The *Robison* court even noted the uniqueness of the trust language when it stated:

> Under the *peculiar wording* of the clause in question, it is necessary, before any part of the principal may be used, that the beneficiary must not only have suffered some misfortune or disaster, but he must also require for his support *and* care sums

46. *Id.*
47. *Id.* at 184.
48. *Id.*
49. *Id.*
50. *Id.* at 188.
51. *Id.*
52. *Id.* at 183.
53. *Id.* at 183, 189.
54. *Id.* at 185.
55. *Id.* at 184.
56. *Id.* at 188. The court may have been troubled in part because the physicians relied so heavily on information from his wife, who was "unhappy" in the marriage. *See id.* at 187–88.
57. *Id.* at 188–89.
58. *Id.* at 188.

> in excess of the income from the trust and from other sources . . . .[59]

Thus, the principal could be invaded by the trustee only to support the beneficiary as his welfare required.

The unique contingent interest of the beneficiary in *Robison* evinced an intent that the trustee may invade the principal to support the beneficiary's family—the testator required the beneficiary to be incapable of supporting himself financially before invasion of the principal could take place. The South Carolina Court of Appeals incorrectly recited the language before the *Robison* court as "support, maintenance, and enjoyment of a beneficiary."[60] Thus, the court of appeals may not have recognized the *Robison* beneficiary's contingent interest as a manifestation of the testator's intent to include the beneficiary's family, a manifestation of intent that did not exist in the Stevens trust.

Other important factors in *Robison* that distinguish it from *Estate of Stevens* include not only the testator's knowledge, at the creation of the trust and at her death, that the beneficiary had a wife and children to support,[61] but also the testator's anticipation that the beneficiary would suffer from mental illness.[62] In summary, *Robison* involved several indicators of the testator's intent: the requirement that the beneficiary be stricken by illness or disease, the requirement that income from the trust must be insufficient before authorizing the trustee to invade the principal, the testator's knowledge that the beneficiary had a family to support at the time of the creation of the testamentary trust, and the testator's knowledge and anticipation of the beneficiary's mental illness. Thus, the totality of the circumstances in *Robison* strongly supports the conclusion that "it is hardly probable that the testatrix intended to provide for his needs and let his wife and children go without."[63] None of these insightful factors into the testator's intent existed in *Estate of Stevens* to support the South

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59. *Id.* at 187 (emphasis added).

60. *Estate of Stevens v. Lutch*, 365 S.C. 427, 432, 617 S.E.2d 736, 738 (Ct. App. 2005), *cert denied*, 2006 S.C. LEXIS 360 (Nov. 14, 2006).

61. The testator executed the will in 1920 and died in 1923. *Robison*, 48 N.E.2d at 184. The court stated that in 1926, the beneficiary was 46 years old and married with three children who were "each of full age" in 1943. *Id.* This short timeframe implies the testator knew the beneficiary had a family to support at the time she created the will.

62. The *Robison* court indicated this when it stated the following:

> We are convinced that the primary and controlling purpose of the testator was to provide for the [beneficiary], whose weaknesses, failings and probable future requirements *were known to her*, such care, attention and support as was reasonably required to provide for [his] welfare so long as [he] might live, having in mind [his] station in life and the size of the fund.

Id. at 187 (emphasis added). The beneficiary's sister also experienced unfortunate circumstances; the court noted that Lydia Crawford suffered from "spastic paralysis at or before birth" and was a "physically helpless invalid all of her life, though mentally alert." *Id.* at 188. The court found that the trustee could properly extract principal funds from the beneficiary's sister's trust to support her since the income she already received proved insufficient. *Id.*

63. *Id.* at 189.

Carolina Court of Appeal's conclusion that the testator intended, when using the phrase "support . . . of my said children," to include "familial obligations" of the beneficiary.[64]

The *Robison* testator's creation of two testamentary trusts in her will, one for her nephew, whose trust was subject to litigation, and one for her niece,[65] also distinguishes *Robison* from *Estate of Stevens*. The intentional split of the testator's funds ($65,000 for the nephew and $85,000 for the niece)[66] into two trusts also evinces the testator's intent to allow the trustee to use the principal for the beneficiary's wife and children. This division allows the trustee to generously apply, in his or her discretion, as much of the principal as is needed to support the beneficiary without affecting the interest of another income beneficiary. This situation differs from the trust in *Estate of Stevens*, as the testator in that case created substantially unequal income interests in a single trust for two beneficiaries.[67] Thus, the South Carolina Court of Appeal's approval of Paul Stevens' request for invasion of the principal can affect the amount of income Laura, the second income beneficiary to the trust, receives.

The final distinguishing factor of *Robison* relates to the the nature of the authorized distribution. The distribution to build a house differs from distribution for the private education requested in *Estate of Stevens*. The *Robison* court authorized the distribution due to the beneficiary's mental condition and its direct benefit on the beneficiary for his support.[68] *Robison* noted the trial court's finding:

> [T]he payment of the $10,000 was justifiably *made directly* to [the beneficiary] in good faith after careful investigation and after [the trustee] satisfying itself that his condition was such as to require it to be made from the *corpus* and was used in the purchase of the land and in necessary living expenses.[69]

Although the beneficiary's wife appeared to have fraudulently induced this distribution, the distribution remains distinguishable from the one approved in *Estate of Stevens*. The beneficiary in *Robison* requested the funds for his intended use and not solely for the use by a non-beneficiary, like the request to fund the private education of the beneficiary's minor children in *Estate of Stevens*.

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64. *Estate of Stevens*, 365 S.C. at 429–30, 617 S.E.2d at 737.
65. *Robison*, 48 N.E.2d at 183.
66. *Id.*
67. *See supra* notes 13–16 and accompanying text.
68. *Robison*, 48 N.E.2d at 185.
69. *Id.* (emphasis added).

2. Eaton v. Lovering

The *Estate of Stevens* court also cited *Eaton v. Lovering*[70] to support its holding.[71] In *Eaton*, the testator created a trust for his son, whom he knew was a spendthrift.[72] *Eaton* dealt with whether the son's ex-wife could recover alimony from the son's interest in the trust, which was protected by a spendthrift provision.[73] The Supreme Court of New Hampshire held she could not.[74] The court also noted that when the testator created the trust "for the benefit of my said son, as his needs may require,"[75] the beneficiary had the right to have it used for his benefit and the benefit of his family.[76] Like *Robison*, the terms and factual circumstances of the trust in *Eaton* differ from the trust presented to the South Carolina Court of Appeals.

The language used by the testator in the *Eaton* trust differs from the language used by the testator in *Estate of Stevens*. In fact, the trust in *Eaton* never used the word "support" in its terms, but it used the word "needs" instead.[77] *Need* is defined as "necessary duty."[78] *Support* is defined as "to supply with the means of maintenance; . . . to provide a basis for the existence or substinence of."[79] Because *need* encompasses the notions of duty and obligation, using *need* manifested the testator's intent to include support of the beneficiary's minor in authorized distributions of the trust funds. A parent's financial duty to provide reasonable support to his or her minor child is a need of the parent that may arise. The use of the term *support* does not manifest the same intent because its definition does not include or refer to a duty or obligation owed to one's children.

The Eaton trust had a sole beneficiary, and the testator knew the beneficiary had a wife and daughter dependent on the beneficiary for support.[80] The testator's knowledge distinguishes *Eaton* from *Estate of Stevens*. The *Eaton*

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70. 125 A. 433 (N.H. 1924).

71. *Estate of Stevens*, 365 S.C. 427, 432, 617 S.E.2d 736, 738 (Ct. App. 2005), *cert. denied*, 2006 S.C. LEXIS 380 (Nov. 14, 2006).

72. *Eaton*, 125 A. at 433.

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Compare supra* text accompanying note 11 *with supra* text accompanying note 73–74.

78. WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1512 (2002).

79. *Id.* at 2297. The master-in-equity in *Estate of Stevens* stated the definition of "support":

> That which furnishes a livelihood; a source or means of living; subsistence, sustenance, [maintenance] or living. In a broad sense the term includes all such means of living as would enable one to live in the degree of comfort suitable and becoming to his station in life. It is said to include anything requisite to housing, feeding, clothing, health, proper recreation, vacation, traveling expense, or other proper cognate purposes; also[,] proper care, nursing, and medical attendance in sickness, and suitable burial at death.

Record on Appeal, *supra* note 12, at 5 (citing BLACK'S LAW DICTIONARY 1439 (6th ed. (1990))).

80. *Eaton*, 125 A. at 433.

court clearly indicated that it based its holding on the totality of the evidence presented.[81] The court stated,

> It is clear, therefore, that when the words of the will are read in the light of these facts, the testator intended to . . . [give] his son . . . the right to require the trustee to use this fund for his benefit and the benefit of those dependent on him for support, for, as the *needs* of a married man are *sometimes* construed, they include not only his needs, but also the needs of his family . . . .[82]

This analysis of the needs of a married man presents a different issue than an analysis for the support of a beneficiary unmarried and childless at the creation of a trust. Because of the differing terms of the *Eaton* trust and facts surrounding them, which facts did not exist in *Estate of Stevens*, the South Carolina Court of Appeals should not have used *Eaton* to support its holding.[83]

3. First National Bank of Beaumont v. Howard

The South Carolina Court of Appeals also cited to *First National Bank of Beaumont v. Howard*[84] as its final support in concluding the trustee may consider the needs of the beneficiary's family.[85] The testator in *Howard* created a trust for his two daughters, granting each of them a one-half interest in the net income.[86] The trust further provided that, in the event either daughter died, her surviving issue would receive the mother's interest in the net income.[87] The trust also permitted the trustee to invade the principal of the trust in specified circumstances:

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81. The court noted, "The evidence relevant to this issue consists of the words the testator used read in the light of the situation of the parties, together with his knowledge of his son's habits." *Id.*

82. *Id.* (emphasis added).

83. This argument also applies to the South Carolina Court of Appeals's use of *Finch v. Wachovia Bank & Trust Co.*, 577 S.E.2d 306 (N.C. Ct. App. 2003), to support its holding in *Estate of Stevens v. Lutch*, 365 S.C. 427, 432, 617 S.E.2d 736, 738 (Ct. App. 2006), *cert denied*, 2006 S.C. LEXIS 360 (Nov. 14, 2006). *Finch* includes distinguishable facts similar to those in *Eaton*. *Finch*, 577 S.E.2d at 307, 309. Interpreting a trust for the "reasonable needs" of a beneficiary, the *Finch* court concluded the trustee erred in determining that the invasion of the trust funds for the purpose of funding the beneficiary's familial gift giving was beyond its discretion. *Id.* The testator in *Finch* established the trust for his wife, the sole income beneficiary, and authorized the trustee to invade the principal of the trust if the income proved insufficient to meet her "reasonable needs." *Id.* at 307. The testator also knew he and his wife had children when he created the trust, and he made them remaindermen to the trust. *Id.* Thus the language mirrors that of the *Eaton* trust and is distinguishable from the facts of *Estate of Stevens*.

84. 229 S.W.2d 781 (Tex. 1950).

85. *Estate of Stevens*, 365 S.C. at 432, 617 S.E.2d at 738.

86. *Howard*, 229 S.W.2d at 783.

87. *Id.*

> In the event the net income from [the trust] shall be insufficient in the discretion and judgment of the Trustee to properly maintain and support those persons who, under the preceding paragraph are entitled to portions of said net income and to enable said persons to procure necessary and reasonable medical care, aid and assistance, and to give said persons proper educational advantages[,] [then the Trustee may invade the corpus for those purposes.][88]

The *Howard* court also noted a third provision to the trust, which stated, "In the event payments of principal are made to any of the beneficiaries under the above provision, such payments shall be charged against the interest of the persons to whom payments are made."[89]

The issues in *Howard* revolved around the construction of these provisions. The two beneficiaries sued the trustee, contending that the trust language demonstrated their father's intent to have the trustee pay them out of the corpus if the net income proved insufficient to maintain them, regardless of any other property or income they or their husbands may have had.[90] The court concluded the testator's intention concerning payments from the principal of the trust was unclear and looked at several factors to discern the testator's intent.[91] These factors included "the value of the estate, the previous relations between [the testator] and the beneficiaries, and all the circumstances in regard both to the estate and the parties existing when the will was made and when the settlor died."[92] After reviewing these factors, the court concluded that, on the basis of need only, the trustee may invade the principal to provide a college education for the beneficiaries' sons.[93]

Like the previously discussed cases cited by the South Carolina Court of Appeals in *Estate of Stevens*, the *Howard* trust terms are distinguishable from the terms of the *Stevens* trust. Although the *Howard* trust and the *Stevens* trust both included two beneficiaries, the language creating the trusts and the interests granted differed significantly. The testator in *Howard* granted his daughters equal income interests in the trust,[94] unlike the substantially unequal income interests the testator in *Estate of Stevens* created.[95] The testator also manifested his intent for continuing his practice of impartiality between the beneficiaries through the third paragraph of the trust, which ordered the trustee to charge principal distributions against the beneficiary requesting such payments.[96] Thus,

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88. *Id.*
89. *Id.*
90. *Id.* at 784.
91. *Id.* at 783.
92. *Id.*
93. *Id.* at 786.
94. *Id.* at 783.
95. *See supra* text accompanying notes 14–16.
96. *Howard*, 229 S.W.2d at 786.

one beneficiary could not invade the principal and affect the other beneficiary's income interest.[97] In contrast, no impartiality existed in the *Estate of Stevens* trust, as the testator clearly favored one beneficiary over the other by granting a substantially unequal income interest in the trust.

Another distinguishing factor in the language used in the *Howard* trust as opposed to the *Stevens* trust is the testator's direction to the trustee to apply principal funds for the maintenance and support of "those persons who, under the preceding paragraph are entitled to portions of said net income . . . and to give said persons proper educational advantages."[98] This language creates an ambiguity regarding for whose benefit the testator intends to allow the trustee to invade the principal, because the trust entitles the beneficiaries and their sons to net income, even though the sons only have a remainder interest. The use of the ambiguous phrase "said persons" in *Howard*[99] differs from the clear direction given by the testator in *Estate of Stevens* that authorizes the invasion of the principal for the support and maintenance "of my said children, LAURA STEVENS and PAUL STEVENS."[100]

A final distinguishing factor reviewed by the *Howard* court lies in the circumstances between the testator and beneficiaries at the creation of the trust. The *Howard* court concluded that the testator, at the creation of the testamentary trust, knew that each of his daughters had a son in high school and that he intended for his grandsons to have a college education, just as he had provided for his daughters.[101] These factual circumstances did not exist between the parties in *Estate of Stevens* because neither beneficiary was married nor had children at the creation of the will or at the testator's death.[102]

Because the differing terms of the *Howard* trust and facts surrounding its creation did not exist in *Estate of Stevens*, the South Carolina Court of Appeals should not have cited *Howard* in reaching its holding in *Estate of Stevens*.

C. The Issue Created by the Terms of the Trust in Estate of Stevens

In its analysis in *Estate of Stevens*, the South Carolina Court of Appeals failed to distinguish the specific terms of the trusts and to harmonize the differing factual circumstances of the cases followed by the court. In addition, the court misidentified the beneficiaries' interests in the *Estate of Stevens*. These factors show the court failed to properly address the issue before it. Thus, *Estate of Stevens* presented an issue based on the particular terms and factual circumstances of the trust in question. The court should have addressed whether a testator, who established substantially unequal income interests in a trust for

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97. *Id.*

98. *Id.* at 783.

99. *Id.*

100. *See supra* text accompanying notes 11–12; *see also infra* Section IV (discussing the testator's intent through the use of the term "children" and the legal significance attached to the term).

101. *Howard*, 229 S.W.2d at 786.

102. *See supra* text accompanying note 21.

his two specifically named children, intended for a trustee to distribute portions of the principal and accumulated income for funding his grandchildren's private education, when distributions are permitted "for the support and maintenance of my said children," even though neither beneficiary had a spouse or children at the creation of the trust.

IV. DISCOVERING THE TESTATOR'S INTENT UNDER THE PARTICULAR TERMS OF THE TRUST IN *ESTATE OF STEVENS*

The court should have affirmed the master-in-equity's decision and held the terms and circumstances involved in the creation of the trust reflected the testator's intent for the trust funds to support only the named beneficiaries and not the beneficiaries' current or future children.

A. South Carolina Law Concerning Construing Terms of a Trust

The primary consideration in construing a trust is to discern the testator's intent.[103] In ascertaining the testator's intent, a court must first look to the language of the instrument, and if the language "is perfectly plain and capable of legal construction, such language determines the force and effect of the instrument.[104] "[I]n arriving at the intention of the testator every [i]tem must be considered in relation to other portions of the will . . . ."[105] "If the intention of the settlor appears on the face of the agreement, then the court will effectuate it, unless it is in conflict with principles of law."[106] "In such circumstances, construction of the trust instrument is a question of law and the court should not resort to extrinsic evidence to determine the purpose of the trust."[107] In ascertaining the testator's intent, the language used will be given its ordinary meaning.[108]

B. The Terms of the Estate of Stevens *Trust Reflect the Testator's Intent*

Although the *Estate of Stevens* court concluded "the questioned distributions fall within the discretionary authority of the trustees, subject of course to traditional judicial oversight of possible abuse of trustee discretion,"[109] it did so

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103. Chiles v. Chiles, 270 S.C. 379, 383, 242 S.E.2d 426, 429 (1978).

104. *Id.* at 383–84, 242 S.E.2d at 429 (quoting Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973)).

105. Black v. Gettys, 238 S.C. 167, 174, 119 S.E.2d 660, 663 (1961) (citing Rikard v. Miller, 231 S.C. 98, 102, 97 S.E.2d 257, 259 (1957)).

106. Germann v. N.Y. Life Ins. Co., 286 S.C. 34, 38, 331 S.E.2d 385, 388 (citing Citizens & S. Nat'l Bank of S.C. v. Auman, 259 S.C. 263, 269, 191 S.E.2d 511, 513–14 (1972)).

107. *Id.* at 38, 331 S.E.2d at 388.

108. First Nat'l Bank of Springfield v. Hutson, 142 S.C. 239, 242, 140 S.E. 596, 597 (1927).

109. Estate of Stevens v. Lutch, 365 S.C. 427, 432, 617 S.E.2d 736, 738 (Ct. App. 2005), *cert. denied*, 2006 S.C. LEXIS 380 (Nov. 14, 2006).

without any discussion about the testator's intent behind the phrase "support . . . of my said children." The court declared it the testator's intent to vest discretionary authority in the trustees and held that a trustee may consider the familial obligations of a beneficiary "when determining what distributions" of the principal would be "necessary and advisable for the beneficiary's support."[110] However, "no matter how broad and absolute the attempted grant of discretion to the trustee, a court may always review the trustee's performance in light of the standards of good faith and proper regard for the settlor's intent."[111]

Although the testator in *Estate of Stevens* intended to vest broad discretion in the trustees, such discretion authorized the trustees to determine only what distributions were appropriate for the beneficiaries' support and did not authorize discretion to make payments for the support of the beneficiaries' current or future children. The clear and unambiguous language used in the trust provision in question requires a plain reading under South Carolina law.[112] Thus, under the plain meaning of the trust language, "support and maintenance of my said children," the court should have affirmed the master-in-equity's decision and held the trustees lack authorization to make distributions from the principal for the private education of the beneficiary's minor children.

1. The Ordinary Meaning of the Specific Terms of the Estate of Stevens *Trust Supports the Master-in-Equity's Decision.*

The testator in *Estate of Stevens* identified his beneficiary-children specifically by name three times, each time in capital letters.[113] Thus, it is reasonable to conclude that if the decedent wanted to benefit his then unborn grandchildren during his children's lifetimes, he would have clearly and specifically stated so. Because the testator used the phrase "support and maintenance of my said children, LAURA STEVENS AND PAUL STEVENS," he instead intended to benefit only his children, whom he specifically named during his lifetime. In fact, when the testator intended to benefit the issue of his children (after the death of a child) he was quite clear and specific in saying so.[114]

Further evidence that the testator intended to authorize the trustee to invade the principal only for the beneficiaries of the trust, and not the beneficiaries' children, comes from Article VI of the Will. The testator defined children as "the lawful blood descendants in the first degree of the parent designated."[115] The testator's effort to define the specific term that he used in the support provision

110. *Id.* at 432–33, 617 S.E.2d at 738–39 (internal punctuation omitted).

111. 1 S. ALAN MEDLIN, ESTATE PLANNING IN SOUTH CAROLINA: THE LAW OF WILLS AND TRUSTS § 508.2(b) (2002) (citing Sarlin v. Sarlin, 312 S.C. 27, 30, 430 S.E.2d 530, 532 (Ct. App. 1993); Page v. Page, 243 S.C. 312, 315, 133 S.E.2d 829, 831 (1963)).

112. *See supra* Part IV.A.

113. *See supra* text accompanying notes 11–12.

114. *See supra* text accompanying note 34.

115. Record on Appeal, *supra* note 12, at 119.

clearly indicates his intent to support only those persons included in such definition with the principal of the trust.[116]

In *Black v. Gettys*,[117] the South Carolina Supreme Court interpreted a trust that, after a certain period of time, gave one-half of the income of the trust "to my wife, Ola, . . . and one-half . . . or such part of said income not paid to my wife, to my children, Nancy Jean Lovick, Anna, John and Betty (*per stirpes*)."[118] One issue before the court was whether or not the use of *per stirpes* in the will caused the distribution to be to a class, which would postpone vesting of the contingent remainder and thus invalidate the will under the rule against perpetuities.[119] The court held that the children were to take as individuals because they were specifically named as the beneficiaries of a portion of the trust.[120] The court went on to state the following:

> The word "children" is not ordinarily construed as including grandchildren. Moreover, this gift is not to "children" as a class, but to named individuals. We find nothing to indicate that the testator intended to make a gift . . . to grandchildren. It is apparent that he knew how to express his intention when his purpose was to provide for a grandchild as evidenced by [his devising of $1,000 to each of them].[121]

Like the trust in *Black*, the language of the *Estate of Stevens* trust also uses the term *children* and specifically names each child to take under the trust.[122] By including a beneficiary's familial support obligations within the meaning of *support*, the court of appeals destroyed the plain meaning of the terms in the *Stevens* trust. While the court does not confuse the terms *children* and *grandchildren*, the court implies that so long as a direct benefit to the grandchild can be recharacterized as a familial obligation of the child-beneficiary, then the trust can fund this obligation. This construction runs counter to the trust's singular emphasis on the children.

The testator's intentional granting of substantially unequal income interests in the trust also manifests the testator's intent that only the named beneficiaries may receive principal funds from the trust. As previously discussed, the South

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116. The *Restatement (Second) of Property (Donative Transfers)* also supports this notion:

> When the donor of property describes the beneficiaries thereof as "children" of a designated person, the primary meaning of such class gift term excludes descendants of such person more remote than those of the first generation. It is assumed, in the absence of language or circumstances indicating a contrary intent, that the donor adopts such primary meaning.

RESTATEMENT (SECOND) OF PROP.: DONATIVE TRANSFERS § 25.1 (1988).

117. 238 S.C. 167, 119 S.E.2d 660 (1961).

118. *Id.* at 175, 119 S.E.2d at 663 (emphasis added).

119. *Id.* at 173, 119 S.E.2d at 662, 664.

120. *Id.* at 177–78, 119 S.E.2d at 665.

121. *Id.* at 181, 119 S.E.2d at 666 (citations omitted).

122. *See supra* text accompanying notes 10–11.

Carolina Court of Appeals appeared to answer the issue presented before it based on generalized notions of traditional trust terms.[123] However, the inclusion of multiple beneficiaries by the testator in *Estate of Stevens* complicates the issue beyond generalized standards.[124] It is unlikely the testator granted his daughter favored status in the income of the trust while granting his son the right to invade the principal for numerous familial obligations; the son's actions could reduce the amount of principal and, in turn, the income the daughter received.

Finally, the ordinary meaning of the spendthrift provision used in the trust manifests the clear intent of the testator to not allow trust funds to be used for the payment of "obligations" of the beneficiaries.[125] The South Carolina Court of Appeals's holding permitting the trustee to invade the principal for the familial obligations of the beneficiary completely contradicts the specific language of the spendthrift provision and provides no reasoning for its disregard of the provision.

Together, the ordinary meaning of these terms, including the use of the specific beneficiaries' names three times in capital letters, the specific use of the word *children*, and the inclusion of its definition; the substantially unequal income interests created by the trust; and the inclusion of a spendthrift provision indicate that the testator did not intend for the trustee to invade the principal of the trust for the support of anyone besides the testator's "said children, LAURA STEVENS and PAUL STEVENS."

2. *Cases from Other Jurisdictions Support the Master-in-Equity's Decision*

A decision from Massachusetts, *Burrage v. Bucknam*,[126] supports the argument that the plain meaning of the phrase "support and maintenance of my said children" does not include a beneficiary's children. *Burrage* involved a suit against the trustee for the trustee's denial of a request for support by and on behalf of the former wife and child of a beneficiary from the beneficiary's trust[127] The Supreme Judicial Court of Massachusetts concluded the following:

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123. *See supra* text accompanying notes 29–41.

124. The *Restatement (Third) of Trusts* addresses issues presented by multiple beneficiaries:

> Questions about the presumed meaning of standards and the significance of beneficiaries' other resources are complicated when a trust has multiple discretionary beneficiaries, whether of the same or different generations. *Difficulty of generalization through rules or preferences is aggravated* by the number and interrelatedness of issues and alternative meanings to be considered, and by diversity in the terms of these discretionary powers, in the purposes and size of trusts, and in the beneficiaries' circumstances and their relationships to the settlor and to one another.

RESTATEMENT (THIRD) OF TRUSTS § 50 cmt. f (2003) (emphasis added).

125. *See supra* note 17 and text accompanying notes 17–18.

126. 16 N.E.2d 705 (Mass. 1938).

127. *Id.* at 705.

> We are not convinced that the straightforward and unqualified direction to pay the income to [the beneficiary] can be construed to mean that part of the income shall be paid to his former wife or to a guardian of his child. Neither the wife nor the (then unborn) child is mentioned anywhere in the will as the recipient of such payments. To read their names into this clause of the will is to do violence to the plain words of the testatrix.[128]

The language the *Burrage* court interpreted mirrors the language used in the trust in *Estate of Stevens*.[129] Violence also is done to the plain words used in the *Stevens* trust, when the South Carolina Court of Appeals reads Paul Stevens's minor children into the will. Now Paul Stevens may invade the principal for reasons the testator did not intend and reduce the amount of income the testator intended for Laura Stevens to receive from the trust.

In re Wells' Will[130] also supports a narrow interpretation of the term *support*. In *Wells*, the decedent created equal trusts for the support of her grandchildren.[131] The trust terms "authorize[d] the use by the executor of any part or all of the principal and accumulations of any one of said equal parts of said trust funds for the support of any one of the beneficiaries if, in the opinion of the executors, it is advisable to do so."[132] The trustee petitioned the court for an order permitting payments for the beneficiary's education.[133] The court concluded the provision was unambiguous[134] and stated that *support*, as a word of general welfare, "import[s] the welfare of the body, while the word 'education' imports the cultivation of the mind."[135] Thus, "'[t]o support' is not to educate," although the court recognized that "in many cases, as between parent and child, support also includes the expenses of education."[136]

However, the court noted under the Personal Property Law of New York, when income accumulates from personal property for the benefit of an otherwise destitute minor, a court may order the funds to be used for the minor's support or education.[137] Thus, the court concluded the trustee had authority to apply accumulated income for the educational purposes of the minor based on state law, but the terms of the trust permitted the trustee to apply the principal of the trust only for the support of the beneficiary, which did not include education

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128. *Id.* at 706.

129. Compare the language in *Estate of Stevens*, *supra* text accompanying note 12, with the provision in question before the *Burrage* court, authorizing the trustee "to expend so much of the net income of said fund as is in their judgment necessary or proper for the education, maintenance or support of my said son." *Burrage*, 16 N.E.2d at 706.

130. 300 N.Y.S. 1075 (Sur. Ct. 1937).

131. *Id.* at 1077.

132. *Id.* (emphasis removed).

133. *Id.* at 1079.

134. *Id.* at 1077–78.

135. *Id.* at 1078–79.

136. *Id.* at 1079.

137. *Id.* (quoting N.Y. PERS. PROP. Law § 17 (1909)).

expenses.[138]

The interpretation in *In re Wells' Will* correctly articulates the testator's intent, which the South Carolina Court of Appeals should have recognized in *Estate of Stevens*. If *support* does not include the education of a beneficiary directly benefiting from a trust, then it logically should not include the educational expenses for a beneficiary's child. Even though the *Wells* court noted that *support*, when used in the context of parent and child, may include the expense of education, such a context does not exist in the *Estate of Stevens* trust. The testator clearly authorized the trustee to apply principal and accumulated income for the "support . . . of my said children." This phrase makes no reference to any duty the beneficiaries may have regarding their own children, and in fact, neither of the beneficiaries had a spouse or children at the time of the testator's death.[139]

The similarity of the terms of the trusts in these cases to the terms of the *Stevens* trust should have led the South Carolina Court of Appeals to apply similar reasoning. These cases support the conclusion that the plain meaning of the phrase "support and maintenance of my said children" does not include a beneficiary's child.

3. Extrinsic Evidence Supports a Holding That the Testator Did Not Intend for the Principal of the Trust to Support the Beneficiaries' Current or Future Children.

Even if the language of the *Stevens* trust is deemed ambiguous, extrinsic evidence supports the master-in-equity's holding. The lack of spouse or children by both beneficiaries at the time of the testator's death evidences the testator's intent to support only his children. Section 19.04 of *Trust Administration and Taxation* states the following:

> The fact that the beneficiary is supporting a family is an element to be taken into account in determining the amount necessary for his support. However, if the beneficiary's family obligations were acquired long after the trust was drawn or became effective, then this fact may cause the court to decide not to take family needs into account.[140]

To support the proposition that a court may not take the beneficiary's familial obligations into account if acquired long after the trust was drawn or became effective, Nossaman and Wyatt cite *Cavett v. Buck*,[141] noting when the testator

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138. *Id.* at 1079–80.

139. *See supra* text accompanying note 21.

140. 1 WALTER L. NOSSAMAN & JOSEPH L. WYATT, JR., TRUST ADMINISTRATION AND TAXATION, § 19.04[2] (2006) (citations omitted).

141. 397 P.2d 901 (Okla. 1964).

drew the will and when he died, the beneficiary was a small child.[142] The rationale of *Cavett* was part of the basis for the master-in-equity's decision in *Estate of Stevens* that the trustees were not authorized to make the distribution in question.[143]

In *Cavett*, which relied on *Burrage v. Bucknam*,[144] a testator created a trust for the benefit of his five children.[145] The trust further stated that if any of the testator's children should die leaving surviving children, then the executors were authorized "to make payments from the income of [the testator's] estate . . . they shall deem reasonably necessary, just and proper for the care, maintenance, support and education of each such grandchild of [the testator's]."[146] In addition, the trust also provided it was "the purpose and intention of this trust to create a fund for payments to the beneficiaries thereof for their individual support and maintenance."[147]

The plaintiff in *Cavett* was the grandson of the testator and son of a deceased beneficiary.[148] The testator died in 1938.[149] The plaintiff did not marry until 1959, then adopted his wife's three children in 1960 before having two more children.[150] The plaintiff sought a substantial increase in monthly income.[151] The trustees and beneficiaries contended that under the terms of the trust, the discretionary support was applicable only to the plaintiff, and they could not consider the plaintiff's family when deciding whether to increase his funds.[152] The court concluded that the trust provisions for the "discretionary care, maintenance and support" of the beneficiary cannot include the beneficiary's wife and children.[153]

The factor the *Cavett* court emphasized most was that, in cases relied on by the plaintiff for the proposition that support of a beneficiary also includes support of his wife and children, the beneficiary was already married or the testator anticipated the beneficiary would marry.[154] The fact that the court specifically mentioned the twenty-one years between when the testator died and when the plaintiff beneficiary married demonstrates the reasoning of the *Cavett* court that the plaintiff beneficiary could not rely on those cases.[155]

With facts strikingly similar to *Cavett*, the South Carolina Court of Appeals

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142. 1 NOSSAMAN & WYATT, *supra* note 140, § 19.04[2].

143. Estate of Stevens v. Lutch, 365 S.C. 427, 432 n.2, 617 S.E.2d 736, 738 n.2 (Ct. App. 2005), *cert. denied*, 2006 S.C. LEXIS 380 (Nov. 14, 2006).

144. 16 N.E.2d 705 (Mass. 1938); *see supra* note 129 and text accompanying notes 126–129.

145. *Cavett*, 397 P.2d at 903.

146. *Id.*

147. *Id.* at 904.

148. *Id.* at 903.

149. *Id.*

150. *Id.* at 903–04.

151. *Id.* at 903.

152. *Id.* at 904.

153. *Id.* at 905.

154. *Id.*

155. *See id.* at 903–04.

could have followed the rationale of *Cavett* in *Estate of Stevens* to affirm the master-in-equity's decision that "support and maintenance of my said children" does not include private education expenses for a beneficiary's minor. However, the court decided to follow the rationale of other jurisdictions.[156] In a footnote, the court of appeals stated the *Cavett* court acknowledged that other cases (including those cases the South Carolina Court of Appeals found persuasive)[157] included the needs of a beneficiary's family in interpreting the term support, but the *Cavett* court distinguished its case based on trust language specifically limiting distributions to those made for the "individual support" of the beneficiary.[158] Since the limiting language of the trust in Cavett was not employed in the trust in *Estate of Stevens*, the South Carolina Court of Appeals believed the *Cavett* court would not necessarily decide the issue in *Estate of Stevens* differently than it was decided.[159]

Thus, the *Cavett* court would probably decide *Estate of Stevens* to exclude familial obligations not contemplated by the testator. In *Estate of Stevens*, the testator died before either of his children married or had children,[160] and as Nossaman and Wyatt conclude, Paul Stevens's familial obligations need not be taken into account.

V. CONCLUSION

Niles Stevens, testator of the trust in *Estate of Stevens*, did not intend for the trustee to invade the principal to support the familial obligations of his intended beneficiaries. The master-in-equity correctly held that the trustees are not authorized to make distributions to the beneficiaries for the health, support, maintenance, and education of their current or future children.[161] The South Carolina Court of Appeals followed cases which dealt with distinguishable trust terms and factual circumstances. The plain meaning of the specific trust terms used by Niles Stevens, along with the precedent discussed by this Note, support a narrow interpretation of the term *support* to include only the named beneficiaries.

Following *Estate of Stevens*, however, consideration of a beneficiary's familial obligations falls within a trustee's discretion when determining what constitutes a proper distribution for the beneficiary's support.[162] Unfortunately, this holding does not provide useful guidance to trustees in South Carolina. In fact, the decision may complicate matters for South Carolina trustees, as the

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156. *See* Estate of Stevens v. Lutch, 365 S.C. 427, 432, 617 S.E.2d 736, 738 (Ct. App. 2005) (citations omitted), *cert. denied*, 2006 S.C. LEXIS 380 (Nov. 14, 2006).

157. Cases include *Robison v. Elston Bank & Trust Co.*, discussed *supra* Part III.B.1, and *Eaton v. Lovering*, discussed *supra* Part III.B.2. *Cavett*, 397 P.2d at 905.

158. *Estate of Stevens*, 365 S.C. at 432 n.2, 617 S.E.2d at 738 n.2.

159. *Id.* at 432 n.2, 617 S.E.2d at 738 n.2.

160. *Id.* at 737.

161. *Id.*

162. *Id.*

court opened up a vast array of reasons for a beneficiary to request the invasion of the principal of a trust, failing to limit the scope of allowable familial obligations. The interpretation of the vague familial obligations standard will likely be the subject of future litigation.

Maybe it is only ironic that Niles Stevens granted his son $5,000 of income from the trust each year—the exact amount requested by Paul Stevens for the private education of his children.[163] Then again, perhaps Niles Stevens knew exactly what he was doing. Whether or not Niles Stevens intended for this trust money to be used to send his grandchildren to private school will remain a mystery; however, one thing is certain: testators in South Carolina should beware, for as Jeremy Bentham once analogized common law to the "dog law" of a master hitting a dog as punishment after the fact,[164] testators have been beaten.

Joey Bowers

163. Record on Appeal, *supra* note 12, at 37.

164. *See* BENTHAM, *supra* note 3 and accompanying text.