

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

TRUST UNDER WILL OF HARRIET E.
WOODWARD, DECEASED

IN THE SUPERIOR COURT OF
PENNSYLVANIA

APPEAL OF: GREEN TREE COMMUNITY
HEALTH FOUNDATION, FORMERLY
KNOWN AS CHESTNUT HILL HEALTH
CARE FOUNDATION

No. 1159 EDA 2013

Appeal from the Decrees dated February 27, 2013
In the Court of Common Pleas of Philadelphia County
Orphans' Court at No(s): 2110 of 1989 (Control No. 121397)

BEFORE: BENDER, P.J.E., PANELLA, J., and LAZARUS, J.

MEMORANDUM BY LAZARUS, J.:

FILED JULY 22, 2014

Green Tree Community Health Foundation ("Green Tree" or "the Foundation") appeals from the decrees of the Court of Common Pleas of Philadelphia County, Orphans' Court Division, granting partial summary judgment in favor of Objecting Charities¹ and denying Green Tree's motion for reconsideration of the court's previous order granting partial summary judgment in favor of Objecting Charities. After careful consideration, we affirm.

The Honorable Matthew D. Carrafiello set forth the relevant factual and procedural history of this matter as follows:

¹ The "Objecting Charities" are the Trustees of the University of Pennsylvania, The Philadelphia Orchestra, the Pennsylvania Academy of Fine Arts, the Philadelphia Museum of Art, and the Academy of Natural Sciences.

Harriet E. Woodward died on January 21, 1989 and was predeceased by her husband, George Woodward, Jr., who died on January 26, 1967. Harriet Woodward was the beneficiary of a Marital Deduction Trust created under paragraph THIRD of George Woodward, Jr.'s Will, which also gave her testamentary power of appointment over the principal of said trust.

This power of appointment was used throughout Harriet Woodward's Will dated April 21, 1980. Paragraph SIXTEENTH of her Will directs that, after certain specific distributions and disbursements, the balance of the principal and accumulated income of the Marital Deduction Trust be held in trust ("the Woodward Trust") for the benefit of the Chestnut Hill Hospital, the Church of St. Martin-in-the Fields [Chestnut Hill], the Trustees of the University of Pennsylvania, the Academy of Fine Arts, the Academy of Natural Sciences, the Philadelphia Museum of Art, and the Philadelphia Orchestra, hereinafter referred together as the "Objecting Charities." The terms of the Trust stated that if any of the named charities ceased to be a charity recognized by the Internal Revenue Service [as a tax-exempt organization], [its] share would instead be directed to the remaining charities [in equal shares].

Harriet Woodward's Will was probated in Philadelphia County on January 27, 1989 and the Woodward Trust was funded on December 24, 1993.

The [i]nitial Trustees of the Woodward Trust were The Fidelity Bank (now Wells Fargo Bank, N.A.), Richard K. Stevens, and Richard K. Stevens, Jr. James H. Stevens replaced Richard K. Stevens as co-Trustee upon Richard K. Stevens' resignation in 1990. Emory A. Wyant, Jr., replaced Richard K. Stevens, Jr., as co-Trustee upon Richard K. Stevens, Jr.'s death in 2007. The current co-Trustees of the Woodward Trust are thus Wells Fargo Bank, N.A., James H. Stevens, and Emory A. Wyant, Jr.

In 2005, substantially all of the assets of Chestnut Hill Hospital (hereinafter referred to as "CHH") were sold to a for-profit entity. A tax-exempt entity named "CHH Liquidating Company" was created to satisfy the outstanding liabilities of [CHH]. In February 2005, [the Honorable] Joseph D. O'Keefe, Administrative Judge of Philadelphia Orphans' Court, decreed that, without prejudice to the Woodward Trust (among others)

the charitable monies previously paid to CHH should be directed to the Foundation.^[2]

In May 2005, the Trustees for the Woodward Trust drafted a letter to the remaining charitable beneficiaries enclosing [Judge O'Keefe's] decree and stating their proposal to pay what was previously CHH's share to the Foundation.

From 2005 until 2009, the Foundation received quarterly distributions from the Woodward Trust totaling \$825,000. Commencing January 2009, the Woodward Trust began placing the quarterly distributions of income payable to the Foundation into escrow, out of concern over the legitimacy of those distributions in light of the terms of the Trust, the sale of CHH, and related recent Orphans' Court decisions.

On February 26, 2010, the co-Trustees of the Woodward Trust filed a Petition for Adjudication and Accounting raising the question of whether the Foundation is entitled to receive the one-seventh portion of income once paid to CHH. The Trustees stated in the Petition that they were neutral "stakeholders" but, in the interest of stating a position for the [c]ourt, suggested that the Foundation no longer receive distributions from the Trust. The Foundation filed Objections. The Objecting Charities joined in the Trustees' position that the Foundation was not entitled to receive[] a [one-seventh] income distribution.

On August 6, 2010, the Objecting Charities filed a Petition for Partial Summary Judgment. On February 23, 2011, the [Orphans' Court] issued a decree granting partial summary

² The 2005 sale of CHH to a subsidiary of Community Health Systems ("CHS") was memorialized in a document entitled the Contribution and Sale Agreement ("CASA"). **See generally** Contribution and Sale Agreement, 1/20/05. Pursuant to the CASA, certain assets of CHH were excluded from the sale. **See id.** at ¶ 2.2. Included in these excluded assets were charitable bequests or gifts to CHH. **Id.** CHH retained these assets and, pursuant to the CASA, caused to be established an entity called the Chestnut Hill Healthcare Foundation. In accordance with the CASA, the charitable assets of CHH were transferred to the Foundation. **See id.** at ¶ 16.28. The Foundation changed its name to Green Tree Community Health Foundation in 2009. **See** Joint Stipulation of Facts, 10/13/11, at ¶ 2.

[j]udgment in favor of the Objecting Charities, stating that, "except for the operation of any cognizable affirmative defenses, Green Tree Health Foundation is not entitled to receive [a] one-seventh ("1/7") share of the income formerly payable to [CHH]"

On May 7, 2012, the Foundation filed a Motion for Reconsideration of the February 2[3], 2011 [d]ecree, granting partial [s]ummary [j]udgment to the [Objecting] Charities. On February 27, 2013, the [Orphans' Court] issued a decree granting [s]ummary [j]udgment in favor of Objecting Charities, and a decree denying the Foundation's [m]otion for [r]econsideration.

Orphans' Court Opinion, 5/22/13, at 1-4.

Green Tree filed a timely notice of appeal on March 27, 2013, followed by a statement of errors complained of on appeal on April 24, 2013. The Orphans' Court filed two opinions, dated May 22, 2013, and June 17, 2013, in support of its orders.

On appeal, Green Tree raises the following issues for our consideration:

1. Did the Orphans' Court err in 2011 and 2013 when it ruled that Green Tree could not continue to receive distributions from the Woodward Trust even though neither the Chestnut Hill Hospital charity nor Green Tree ever failed to qualify as a tax exempt organization?
2. Did the Orphans' Court err in 2011 and 2013 when it ruled that the language in Mrs. Woodward's will unambiguously prevents use of Mrs. Woodward's gift to benefit healthcare in Chestnut Hill by any entity other than a hospital, even though (a) the Foundation was approved in 2005 by the Attorney General and Orphans' Court as the proper recipient of the charitable assets of the charity formerly named "Chestnut Hill Hospital", and (b) the Woodward Trustees in 2005 determined that distributions to Green Tree were consistent with the terms of the Woodward Trust?

3. Did the Orphans' Court err in failing to recognize the latent ambiguity in the purpose of the "gift-over" language and its applicability to the Foundation where the entity formerly known as "Chestnut Hill Hospital" has never ceased to be a tax-exempt entity and has been merged into the Foundation, and where the "gift-over" language is acknowledged by the Internal Revenue Service, Mrs. Woodward's lawyers and the Woodward Trustees as standard language inserted in wills creating trusts to insure that the Trust not lose its tax-exempt status by making a distribution to a for-profit entity?

4. Did the Orphans' Court err by failing to consider extrinsic evidence of Mrs. Woodward's intent which unequivocally demonstrates Mrs. Woodward's intent that her gift continue to benefit healthcare in Chestnut Hill and not be distributed to other charities?

5. Did the Orphans' Court err in holding that the Objecting Charities are not barred from objecting to the distributions by Green Tree, by application of the doctrines of acquiescence, waiver, estoppel or laches, where an Orphans' Court Order from 2005 placed the burden on the Objecting Charities to show that distributions to Green Tree violated their rights under the Trust, the Objecting Charities were given notice of the 2005 Order and the intention of the Woodward Trustees to distribute the funds formerly distributed to Chestnut Hill Hospital to the Foundation, and the Objecting Charities delayed for over five years in raising any issue regarding the distributions, and where Green Tree was substantially prejudiced by the Objecting Charities' delay in raising any issue regarding the distributions?

Brief of Appellants, at 5-7.

Our standard of review of the grant of summary judgment is well settled:

A reviewing court may disturb the order of the trial court only where it is established that the court committed an error of law or abused its discretion. Upon appellate review, we are not bound by the trial court's conclusions of law, but may reach our own conclusions. As with all questions of law, our review is plenary. Furthermore, in deciding a motion for summary judgment, we will view the record in the light most favorable to

the nonmoving party, and accept as true all well-pleaded allegations, giving that party the benefit of all reasonable inferences that can be drawn from those allegations. In evaluating the trial court's decision to enter summary judgment, we focus on the legal standard articulated in the summary judgment rule[, which] states that where there is no genuine issue of material fact as to a necessary element of the cause of action and the moving party is entitled to relief as a matter of law, summary judgment may be entered. **See** Pa.R.C.P. 1035.2(1).

In re Estate of Scharlach, 809 A.2d 376, 380-81 (Pa. Super. 2002) (punctuation and citation omitted).

Green Tree first asserts that the Orphans' Court erred in ruling that Green Tree could not continue to receive distributions from the Woodward Trust even though neither CHH nor Green Tree ever failed to qualify as a tax-exempt organization. Green Tree argues that it, as the successor entity to CHH, is the proper charity to step into the Hospital's shoes and act as successor beneficiary to the Woodward Trust income. Green Tree attempts to bolster this position by noting its June 2012 merger with the Chestnut Hill Hospital Liquidating Company, the entity formed from CHH during the sale. Green Tree posits that the merger evidences a continuity of charitable organizations, further supporting its claim to the Woodward Trust funds.

The Orphans' Court concluded that Green Tree's connection to CHH is merely "vestigial" and, as such, it no longer qualifies as a beneficiary of the Woodward Trust. Judge Carrafiello found that Green Tree "may be the progeny of the charitable Chestnut Hill Hospital, but [one] which has not assumed its identity or its functions as a hospital." Orphans' Court Opinion,

6/17/13, at 19-20. Moreover, with regard to Green Tree's merger with CHH Liquidating Company, the court

considered this allegation with great care, [but] can only conclude that the merger, occurring so far after the grant of partial summary judgment, was a purely tactical move to link the charitable nature of the original Chestnut Hill Hospital with [Green Tree].

Orphans' Court Opinion, 5/22/13, at 13.

We agree with Judge Carrafiello that Green Tree cannot, merely by engaging in an eleventh-hour merger with CHH Liquidating Company and remaining a tax-exempt organization, demonstrate that it is entitled to receive the funds previously distributed to Chestnut Hill Hospital. The two entities do not share a charitable purpose. CHH was a non-profit hospital that rendered acute patient care with medical staff and specialized equipment. Green Tree is a grant-distributing foundation that, while providing substantial support for healthcare-related organizations, also supports entities running after-school clubs, providing food for the homeless, funding playgrounds, and providing legal aid for low-income adults, among other things. It cannot be said to have stepped into the charitable void left when CHH was sold to a for-profit corporation. Accordingly, this issue is meritless.

Green Tree next asserts that the Orphans' Court erred in finding that Mrs. Woodward's will unambiguously prevents use of Mrs. Woodward's gift to benefit healthcare in Chestnut Hill by any entity other than a hospital, even

though (a) the Foundation was approved in 2005 by the Attorney General and Orphans' Court as the proper recipient of the charitable assets of the charity formerly named "Chestnut Hill Hospital", and (b) the Woodward Trustees in 2005 determined that distributions to Green Tree were consistent with the terms of the Woodward Trust.

Green Tree's argument that Judge O'Keefe's 2005 decree establishes its right to the distributions under the Woodward Trust fails for two reasons. First, the Woodward Trust was not a party to the proceeding in which the decree was entered; in fact, the decree was entered explicitly "[w]ithout prejudice to the rights of any donor, estate or trust not a party to this proceeding, including but not limited to the entities listed on the document that was marked as Exhibit P-4 at a hearing before this [c]ourt on February 8, 2005[.]" Orphans' Court Decree, 2/8/05. The Woodward Trust, as one of the entities listed on Exhibit P-4, was therefore not bound by Judge O'Keefe's decree.

Moreover, Green Tree mischaracterizes Judge O'Keefe's decree as determining that Green Tree is *the* proper recipient of the charitable assets of the charity formerly named Chestnut Hill Hospital. In fact, Judge O'Keefe's decree did no such thing. Rather, the purpose of Judge O'Keefe's 2005 decree was to satisfy the requirements of both the Nonprofit Corporation Act and the Probate, Estates and Fiduciaries Code with respect

to the nondiversion of charitable property in the context of a sale to a for-profit entity.

[W]hen a nonprofit community hospital sells its assets to a for-profit hospital system, the sale plainly diverts the assets sold from charitable purposes. In such a situation, the parties commonly try to deal with the issue of diversion by transferring assets or funds of a total value equal to those diverted to a charitable foundation established to serve the health care interests of the affected community.

Marc S. Cornblatt & Bruce P. Merenstein, *Charities and the Orphans' Court*, 46 DUQ. L. REV. 583 (Summer, 2008). Section 5547(b) of the Nonprofit Corporation Act applies to such a situation and requires as follows:

(b) Nondiversion of certain property. --Property committed to charitable purposes shall not, by any proceeding under Chapter 59 (relating to fundamental changes) or otherwise, be diverted from the objects to which it was donated, granted or devised, unless and until the board of directors or other body obtains from the court an order under 20 Pa.C.S. Ch. 77 (relating to trusts) specifying the disposition of the property.

15 Pa.C.S.A. § 5547(b). Pursuant to section 5547(b), CHH was required to obtain Orphans' Court approval for the transfer of certain property it held, such as endowment funds and other restricted assets.

Judge O'Keefe's resulting ruling, that payment to the Foundation would neither be a diversion of property committed to charity pursuant to section 5547 nor trigger a *cy pres* proceeding pursuant to 20 Pa.C.S.A. § 6110(a), does not equate to a finding that the Foundation is the proper recipient of the Woodward Trust's distributions *under the particular terms of Mrs.*

Woodward's will.³ **See *Estate of Elkins***, 888 A.2d 815, 826 (Pa. Super. 2005) (in similar factual scenario, distinguishing between trust distributions, such as those at issue here, and endowment and other funds formerly held by hospital prior to sale to for-profit entity). Each trust distribution formerly received by CHH was made under a different governing instrument, each with its own particular terms. While Green Tree may have been a proper successor recipient under the terms of some trusts, under others – such as the Woodward Trust – it was not.

Moreover, the fact that, in 2005, the Woodward Trustees concluded that distributions to Green Tree were consistent with Mrs. Woodward's charitable goals is of no moment. The Woodward Trust is subject to the jurisdiction of the Orphans' Court, which is the final arbiter of all questions or disputes related to the terms of the trust and distribution thereof. **See** 20 Pa.C.S.A. § 711(2) (granting Orphans' Court mandatory jurisdiction over administration and distribution of real and personal property of testamentary trusts, and reformation and setting aside of any such trusts); **see also** 20 Pa.C.S.A. § 7740.1 (charitable trust may not be modified without court

³ Likewise, the receipt by CHH of a clearance certificate evidencing no objection by the Office of Attorney General as *parens patriae* for charities is similarly non-dispositive of the Foundation's entitlement to Woodward Trust income. Like the Orphans' Court, the Office of Attorney General merely rendered an opinion that payment to the Foundation would not constitute a diversion of charitable assets under section 5547; it was not asked to, and did not, make a specific determination as to whether the Foundation was the appropriate beneficiary under the particular terms of Mrs. Woodward's will.

determination that modification not inconsistent with material purpose of trust). The fact that the trustees may have erroneously believed that distributions to Green Tree were proper is not binding on the court and does not support Green Tree's claim.

Green Tree's next two issues involve its belief that the language of Mrs. Woodward's will is ambiguous. As a result, Green Tree asserts that the Orphans' Court erred in failing to consider extrinsic evidence to prove Mrs. Woodward's alleged intent that her gift continue to benefit healthcare in Chestnut Hill and not be distributed to the Objecting Charities. Green Tree also argues that the "gift-over" language in question is merely standard language inserted in testamentary trusts to insure that the Trust not lose its tax-exempt status by making a distribution to a for-profit entity. As such, Green Tree claims that the language is only applicable if CHH no longer exists as a tax-exempt entity, and under the circumstances provides no basis for redirecting CHH's share of income to the Objecting Charities.

We begin with the well-settled premise that

[w]hen interpreting the provisions of a trust, the polestar in every trust is the settlor's intent and that intent must prevail. . . . The settlor's intent must be ascertained from a consideration of (a) all the language contained in the four corners of the instrument[;] (b) the distribution scheme[;] (c) the circumstances surrounding the testator or settlor at the time the will was made or the trust was created[;] and (d) the existing facts.

Technical rules or canons of construction should be employed only if the language of the instrument is ambiguous or conflicting or the intent of the settlor or testator is for any reason

uncertain. . . . [C]ourts cannot rewrite a settlor's deed of trust or distort his language or the language of a statute in order to attain what is believed to be beneficial or wise or even what it is believed that the settlor would or should have provided if he or she possessed a knowledge of all presently existing circumstances.

In re Scheidmantel, 868 A.2d 464, 488 (Pa. Super. 2005) (internal punctuation and citations omitted). Moreover, when interpreting a will or a trust,

we must give effect to every word and clause where reasonably possible so as not to render any provision nugatory or mere surplusage. Further, technical words must ordinarily be given their common legal effect as it is presumed these words were intentionally and intelligently employed, especially where they are used by someone learned in probate law.

In re Estate of Harrison, 689 A.2d 939, 943 (Pa. Super. 1997) (citations omitted).

The relevant language of Mrs. Woodward's will is as follows. Paragraph SIXTEENTH establishes the "George Woodward, Jr. and Harriet E. Woodward Trust" for the benefit of the seven charities named above and directs that net income be paid "equally to and among" those charities,

Provided, however, that if any of the said charities does not at any time qualify as a tax exempt organization described in Section 170(c) of the Internal Revenue Code of 1954 and for which a charitable deduction would be allowed for estate tax purposes under Section 2055, or corresponding tax exempt provisions in effect at the time, the share of such charity shall be added equally to the share of the foregoing charities that do so qualify; and if none such charities qualify, Trustees shall pay the said income to other charities which do so qualify and which Trustees, in their sole discretion, may select.

Will of Harriet E. Woodward, 4/21/80, at ¶ SIXTEENTH.

Green Tree's claim is based on the alleged ambiguity of the words "Chestnut Hill Hospital." Green Tree asserts that Mrs. Woodward could either have meant the charitable legal entity or the facility that was operated by that legal entity. Green Tree argues that, if Mrs. Woodward meant the legal entity, then the gift-over provision is inapplicable, because Green Tree is the successor legal entity to CHH.

"[A] latent ambiguity arises from extraneous or collateral facts which make the meaning of a written agreement uncertain although the language thereof, on its face, appears clear and unambiguous." **Steuart v. McChesney**, 444 A.2d 659, 663 (Pa. 1982) (citation omitted).

The usual instance of a latent ambiguity is one in which a writing refers to a particular person or thing and is thus apparently clear on its face, but upon application to external objects is found to fit two or more of them equally. In holding that an ambiguity is present in an agreement, a court must not rely upon a strained contrivance to establish one; scarcely an agreement could be conceived that might not be unreasonably contrived into the appearance of ambiguity. Thus, the meaning of language cannot be distorted to establish the ambiguity.

Id. (internal citations and quotation marks omitted).

Here, Green Tree's argument is based on a "strained contrivance," **see id.**, that stretches credulity to the breaking point. It is unreasonable to attempt to separate Chestnut Hill Hospital, the legal entity, from Chestnut Hill Hospital, the buildings and machines. We agree with the Objecting Charities that this argument "imposes an artificial division between the charitable entity and that entity's implementation of its charitable mission."

Brief of Appellees, at 28. Once the entity formerly known as Chestnut Hill Hospital was sold, it no longer operated as the non-profit, tax-exempt charitable hospital for which Mrs. Woodward provided in her will. It became no more than a shell, existing as a legal entity for no purpose other than to liquidate and wind up. In a purely technical sense, Green Tree may be a “successor legal entity” to CHH. However, it is not a successor to the charitable purposes Mrs. Woodward so clearly intended to benefit under her will.

As Judge Carrafiello aptly stated:

Despite the charitable purposes of the original Chestnut Hill Hospital and the Foundation, one fact remains undisputable: Mrs. Woodward left her bequest to a specific hospital that was required to be and remain not for profit. While a not for profit corporation, Green Tree Community Health Foundation has never asserted, let alone attempted to document[,] that it performs the functions of a not-for-profit hospital.

. . .

[Mrs. Woodward’s] wishes were embodied in unequivocal terms. [The] bequests were to benefit identifiable charitable goals and people within the then charitable institution of Chestnut Hill Hospital. Those goals no longer exist and neither does Chestnut Hill Hospital, as a not-for-profit corporation, and a vestigial successor in interest no longer qualifies as a beneficiary.

Orphans’ Court Opinion, 5/22/13, at 10, 14 (emphasis in original). As stated above, CHH was a hospital; Green Tree is a grant-distributing foundation. The charitable purposes of the two entities are clearly not in any meaningful way the same.

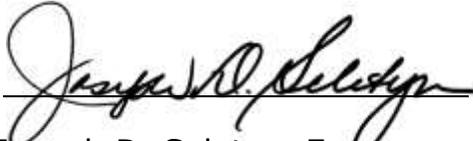
Moreover, Green Tree's argument regarding the "boilerplate" nature of the trust language requiring that the beneficiaries remain qualified as tax-exempt organizations under the IRC is no more than a red herring. Indeed, most trusts, wills and other legal documents contain a significant amount of what Green Tree would likely classify as "boilerplate" language, utilized repeatedly for the very reason that it has proven effective to achieve the desired ends. However, such language is no less enforceable as the product of the settlor's intent merely because it may be commonly used language inserted primarily for tax purposes. Indeed, one of the main objectives of estate planning – and, indeed, of much charitable giving – is to optimize the transfer of wealth to the objects of one's bounty while minimizing tax liability. The language of Mrs. Woodward's will is clear and unambiguous: if Chestnut Hill Hospital ceases to qualify as a tax-exempt organization, it no longer is entitled to distributions from the trust. As of today, the entity known as "Chestnut Hill Hospital" no longer exists as a not-for-profit entity. Accordingly, the gift-over provision of the trust is triggered.

Green Tree's final issue asserts that the Objecting Charities are barred by numerous equitable doctrines, including acquiescence, waiver, estoppel and laches, from asserting a claim to the share of income previously distributed to CHH. We have reviewed the parties' briefs, the record and the relevant law and conclude that Judge Carrafiello's opinion *sur* appeal dated June 17, 2013 correctly and thoroughly disposes of Green Tree's final claim.

See Orphans' Court Opinion, 6/17/13, at 7-12. Accordingly, we affirm based upon Judge Carrafiello's analysis. The parties are directed to attach a copy of that opinion in the event of further proceedings in this matter.

Orders affirmed.

Judgment Entered.

A handwritten signature in black ink, appearing to read "Joseph D. Seletyn", written over a horizontal line.

Joseph D. Seletyn, Esq.
Prothonotary

Date: 7/22/2014