COURT OF COMMON PLEAS OF PHILADELPHIA
ORPHANS' COURT DIVISION

Katharine S. Matthews Charitable Remainder Annuity Trust
Under Deed Dated December 20, 1991
As Amended and Restated October 25, 1995

No. 1444 IV of 2007
Control No.075764

Sur Second and Final Accounting of The Glenmede Trust Company, N.A., and Donald B. Pritchard, Trustees

The account was called for audit November 5, 2007 **Before: Herron, J.**
Counsel appeared as follows:

John J. Lombard, Jr., Esquire – for Accountants
D. Barry Pritchard, Jr., Esquire – for Accountants
Paula M. Jones, Esquire – for Accountants
Kathleen Stephenson, Esquire – Chestnut Hill Health Care Foundation
Alison Gross, Esquire – Chestnut Hill Health Care Foundation
Gregory Heller, Esquire - Presbyterian Church of Chestnut Hill
Harry M. Spaeth, Esquire – Presbyterian Church of Chestnut Hill
Lawrence Barth, Esquire – Attorney General for the Commonwealth as parens patriae

ADJUDICATION

Katharine S. Matthews created a charitable remainder annuity trust under a revocable intervivos trust agreement dated December 20, 1991, as amended and restated on October 25, 1995 ("Trust"). The Trust named Katharine Matthews and The Glenmede Trust Company as trustees during the settlor's lifetime, and upon her death, Donald Pritchard was designated to serve as substitute trustee. During her lifetime, Ms. Matthews was the beneficiary of the Trust. Upon her death, her cousin, Janet Drake, was the annuitant beneficiary of the trust for her lifetime. Ms. Drake died on March 1, 2007, and the trust terminates. An issue has been raised as to the distribution of the remaining principal and income as among three designated charitable beneficiaries.

On October 3, 2007, the trustees filed an account of their administration of the Trust covering the period July 9, 1998 through July 31, 2007. The Chestnut Hill Health Care Foundation ("Foundation") filed objections to the accountants' statement of proposed distribution to assert that the amounts designated for Chestnut Hill Hospital in the Matthews Trust should be distributed to it. The trustees had taken the contrary position that Chestnut Hill Hospital no longer exists as a charitable organization under the relevant Internal Revenue Code provisions as required by the Matthews Trust. They therefore propose that the assets designated for the Hospital should be distributed instead to the other two named charitable beneficiaries: the Presbyterian Church of Chestnut Hill (2/3 share) and the Philadelphia Orchestra (1/3) based on the wording of the deed of trust.

A conference was scheduled to explore this issue, after which all parties in interest were given an opportunity to file memoranda of law. Memoranda were subsequently filed by the accountants, the Foundation, and the Presbyterian Church of Chestnut Hill. The Attorney General, as parens patriae, submitted a charitable gift clearance certificate, certifying that he had no objection to confirmation of the account based on the facts contained in the Notice.

The accountants premise their proposed distributions on the language of the Matthews deed of trust. That agreement provides that upon the death of the settlor's cousin, Janet Drake, the remaining principal and interest shall be distributed to three specific charities:

> Upon the death of Janet M. Drake, Trustees shall distribute all of the then principal and income of the Trust, other than any amount due Janet M. Drake, as follows: fifty percent (50%) to THE PRESBYTERIAN CHURCH OF CHESTNUT HILL; twenty-five (25%) to THE PHILADELPHIA ORCHESTRA; and twenty-five (25%) to THE CHESTNUT HILL HOSPITAL. In the event that any of the organizations designated above is not an organization described in Sections 170(c) and 2055(a) of the Internal Revenue Code of 1986, as amended, (hereinafter, the "Code") at the time when any principal or income of the Trust is to be distributed to it, Trustees shall distribute such principal or income to

> one or more organizations described in Sections 170(c) and 2055(a) of the Code as Trustees shall select in their sole discretion.
> Matthews Trust, Section Third (A)(2).

As the accountants emphasize, the trust agreement specifically requires a designated charity to qualify as an organization described under Section 170(c) or 2055 of the Internal Revenue Code at the time of distribution. The Chestnut Hill Hospital, however, did not meet this qualification because it was sold to a for-profit corporation in 2005, as was approved by a February 2005 decree of Judge O'Keefe. In this decree, Judge O'Keefe approved the transfer of proceeds from the sale of the Chestnut Hill HealthCare System (including Chestnut Hill Hospital) to the Chestnut Hill Health Care Foundation (the "Foundation). While Chestnut Hill Hospital continues to function, it does not qualify as a charity as under the terms of the Matthews trust.[1]

The Matthews trust explicitly provides for the possibility that one of the designated beneficiaries might no longer qualify under the IRC code. It states, for instance, that "[i]n the event that any of the organizations designated above is not an organization described in Sections 170(c) and 2055(a) of the Internal Revenue code of 1986, as amended, (hereinafter the "Code") at the time when any principal or income of the Trust is to be distributed to it, Trustees shall distribute such principal or income to one or more organizations described in Sections 170(c) and 2055(a) of the Code ***as the Trustees shall select in their sole discretion."***[2] In exercising this discretion, the Trustees seek court approval of their decision to award the 25% share of trust assets that were designated to Chestnut Hill Hospital to be distributed 2/3 to the Presbyterian Church of Chestnut Hill and 1/3 to the Philadelphia Hospital.

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1 1/29/2008 Trustees Memorandum at 2. See also 1/30/2008 Foundation Memorandum at 2 (stating that the

In arguing against this proposed distribution, the Foundation seizes upon the February 8, 2005 decree by Judge O'Keefe. Although it concedes that "the assets of the Chestnut Hill Hospital were purchased by a for-profit entity" on March 1, 2005, it states that the Foundation "is the charitable successor to the Hospital."[3] Moreover, it emphasizes that with the February 8, 2005 order, "the Philadelphia Orphans' Court was required to determine that under 15 Pa.C.S.A §5547, the transfer of the Hospital's charitable assets to the Foundation did not constitute a diversion of the charitably committed assets and did not render the charitable purpose impossible or impracticable of fulfillment under 20 Pa.C.S.A. § 6110(a)(now 20 Pa.C.S.A. § 7740.3).[4] It then asserts that since the Foundation meets the sole requirement imposed under the terms of the Matthews trust as an organization qualified under the relevant IRC Code provisions, it should be substituted for the hospital and receive the assets designated for it under the Matthews trust.[5]

There are several problems with this argument. First, the February 8, 2005 decree by Judge O'Keefe was carefully crafted to avoid the sweeping result advocated by the Foundation that it, in essence, should be substituted for Chestnut Hill Hospital as to bequests that take effect after February 2005. This order specifically stated:

> Without 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 Court on February 8, 2005, all gifts, bequests, grants, and principal or income from endowment funds or trusts that are payable to any one or more of CCHC, Chestnut Hill Hospital, Chestnut Hill HealthCare Medical Associates, Chestnut Hill Buildings Corporation, Chestnut Hill Hospital Springfield Center, Springfield Retirement Residence, Chestnut Hill Rehabilitation Hospital, or to any of the above entities by reference to such entity by any of its former names or any registered fictitious names (the "CHHC Gifts") shall be paid to the Foundation, and such payments

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Foundation "is the charitable successor of the Hospital").

2 Matthews Trust, Section Third (A)(2) (emphasis added).

3 1/30/2008 Foundation Memorandum at 2.

4 1/30/2008 Foundation Memorandum at 2.

5 1/30/2008 Foundation Memorandum at 3.

> are not diversions of property within the meaning of 15 Pa.C.S. § 5547(b) and do not render the charitable purposes of any of the CHHC Gifts to become indefinite or impossible or impractical of fulfillment within the meaning of 20 Pa.C.S. § 6110(a). 8 February 2005 Decree, In re: Chestnut Hill Healthcare, a Pennsylvania Nonprofit Corp., O.C. No. 3041 NP of 1985 (O'Keefe, J.)(emphasis added), ¶ 6.

By its express terms, the February 8, 2005 decree does not apply to the Matthews Trust since the decree was explicitly "[w]ithout prejudice to the rights of any donor, estate or trust not a party to this proceeding." It cannot be invoked to bypass a careful analysis of the specific terms of the Matthews Trust.

It is axiomatic that any analysis of dispositions under a trust agreement must begin with its words to determine the settlor's intent. In re: Trust Under Will of McFadden, 705 A.2d 930, 931 (Pa. Super. 1998). The testator or settlor's intent is the "polestar" and must be discerned by focusing on the language within the four corners of her trust agreement. Id., citing In re Burleigh's Estate, 405 Pa. 373, 175 A.2d 838, 839 (1961). See also In re: Devine, 2006 Pa. Super. 294, 910 A.2d 699, 703 (2006)("the touchstone in construing a trust is the settlor's intent; the language of the trust deed itself is the best and controlling evidence of such intent").

The Matthews trust agreement unambiguously names three specific charitable organizations to receive the principal and income of the trust upon the death of Janet Drake: The Presbyterian Church of Chestnut Hill, The Philadelphia Orchestra and Chestnut Hill Hospital. It then clearly gives the Trustees the "sole discretion" to select an organization that qualifies under the Internal Revenue Code if any of the named entities fail to so qualify at the time for distribution:

> In the event that any of the organizations designated above is not an organization described in Sections 170(c) and 2055(a) of the Internal Revenue Code of 1986, as amended, (hereinafter, the "Code") at the time when any principal or income of the Trust is to be distributed to it, Trustees shall distribute such principal or income to one or more

organizations described in Sections 170(c) and 2055(a) of the Code as Trustees shall select in their sole discretion.
Matthews Trust, Section Third (A)(2)

The Foundation asserts that it should receive the assets designated for the Hospital because the "sole requirement imposed by the terms of the Matthews Trust is that the charitable remainder beneficiaries be organizations" described by the IRC Code and it meets that definition.[6] This leap from Chestnut Hill Hospital to the Foundation ignores two critical elements of the trust agreement. First, the settlor's requirement that a designated charitable beneficiary satisfy the IRC code was specifically linked to Chestnut Hill Hospital and the two other designated beneficiaries. It was not a distinct basis for claiming the status of beneficiary so long as the three identified charities satisfied those IRC code requirements. But once one of the specifically designated beneficiaries failed to qualify under the specified sections of the IRC Code, the trust agreement gives the Trustees the "sole discretion" to select a beneficiary that did so qualify. In suggesting that the lapsed gift for the Hospital should go to the Presbyterian Church and the Philadelphia Orchestra, the trustees were acting within the authority granted to them under that trust agreement.

This conclusion that the provisions of the trust agreement must determine the disposition of bequests to Chestnut Hill Hospital after the sale of its assets is supported by two recent opinions by the Montgomery County Orphans' Court. In both the Rorer Trust, 26 Fid. Rep. 2d 307 (Mont.Cty.O.C. 2006) and Lavino Trust, 27 Fid. Rep. 2d 91 (Mont. Cty. O.C. 2007), Judge Ott carefully analyzed the terms of the individual will or trust agreement at issue to determine the disposition of assets that had been designated to Chestnut Hill Hospital prior to its sale. In

6 1/30/2008 Foundation Memorandum at 3 & 5.

so doing, he rejected the argument that this issue was predetermined by the February 8, 2005 order by the Philadelphia Court of Common Pleas approving the sale and transfer of hospital assets to the Foundation.

The will creating the trust at issue in the Rorer Trust had been executed in 1961, with a 1962 codicil. In 2006, the trustees petitioned the court for a determination that the Foundation should receive the share of income previously designated to Chestnut Hill Hospital. The court noted that the "Hospital was sold to a for-profit corporation in 2005, after the plan was approved by the Honorable Joseph O'Keefe of the Philadelphia Orphans' Court." Id. at 307. It then focused on the following language of the will to conclude that the Foundation should not receive the assets designated to the Hospital:

> In the event that any of the foregoing [charities] have discontinued the operations they are presently engaged in, whether or not such operations are assumed by another organization, the share provided for such institution shall be divided pro rata among the other continuing organizations. For the purpose of this paragraph, an institution which merges with another institution of a similar nature is not to be considered as having discontinued operations.
> Rorer Trust, 27 Fid. Rep. 2d at 308

By focusing on the language of the will to discern the testator's intent, Judge Ott explicitly rejected the argument that this issue was resolved by the February 8, 2005 decree by Judge O'Keefe because that "decree approving the Foundation as the appropriate recipient of gifts to the Hospital was obviously and necessarily entered 'without prejudice to any donor, estate or trust not subject to [the] proceeding that was before him.'" Id. at 311. Instead, the determinative factor was the cessation of hospital operations, since the will had explicitly precluded a distribution if "any of the foregoing [charities] have discontinued the operations they are presently engaged in." Id. at 308 & 311. In the instant case, it is not necessary to consider

the nature of the operations since the Mathews trust so explicitly designated the particular entity, Chestnut Hill Hospital, but only for as long as it retained its qualifications under the specific sections of the IRC code.

The analysis of Lavino Trust likewise focused on the specific language of a trust to determine the fate of assets designated to Chestnut Hill Hospital. The Lavino trust provided that $20,000 would be paid to Chestnut Hill Hospital "to be used for maintenance purposes, such distributions to be designated the Edwin M. Lavino Fund." It also contained a provision that would preclude such a distribution to any organization that ceased to exist or to qualify as a charity under the relevant IRC code sections. Once again, the court noted that after the Hospital was sold to a for-profit corporation in 2005, the sale proceeds were transferred to the Foundation. Although the Foundation carried on the "charitable mission" of the Hospital with programs designed to improve health care access, the court emphasized that "it does not carry out the usual missions of a hospital and is not engaged in patient care." 27 Fid. Rep. 2d at. at 95. The court then approved the trustees' reading of the trust agreement that the settlor's intent was "to benefit specific aspects of hospital's operating costs. " Accordingly, the trustees' decision to pass over the Foundation to distribute income to other beneficiaries was "an appropriate exercise of their discretion." 27 Fid. Rep. 2d at 96. Similarly, the Matthews Trust gave the trustees the discretion to pass over the Foundation to distribute the assets to the two other named charitable beneficiaries that qualified under the relevant provisions of the IRC code.

The Foundation invokes various statutory provisions to support its claim, but upon analysis they provide little support. First, it cites 15 Pa.C.S.A. § 5550 as directing "that a gift to a charity that has changed its name or focus must be paid to its successor upon a finding by the

Court that the gift has not become indefinite or impossible or impractical of fulfillment within the meaning of 20 Pa.C.S.A. 6110(a)." According to the Foundation, "[t]his court has issued such a finding in the Decree, which must be persuasive authority in the resolution of the current matter."[7]

The February 8, 2005 Decree, however, clearly states that its scope is limited and is "[w]ithout prejudice to the rights of any donor, estate or trust not a party to this proceeding."[8] Moreover, Section 5550 merely provides a mechanism by which future bequests to a nonprofit corporation that has been sold can remain effective by obtaining court approval:

> §5550. Devises, bequests and gifts after certain fundamental changes
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> A devise, bequest, or gift to be effective in the future, in trust or otherwise, to or for a nonprofit corporation which has:
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> (1) changed its purposes;
> (2) sold, leased away or exchanged all or substantially all its property and assets;
> (3) been converted into a business corporation;
> (4) become a party to a consolidation or a division;
> (5) become a party to a merger which it did not survive; or
> (6) been dissolved;
> after the execution of the document containing such devise, bequest or gift shall be effective only as a court having jurisdiction over the assets may order under the Estates Act of 1947 or other applicable provision of law.
> 15 Pa.C.S. § 5550

Based on the language in the Matthews Trust, the trustees have discretion to select an alternative charitable beneficiary once the bequest to the Hospital lapsed. Therefore, they are not compelled to obtain court approval for a distribution to the Foundation pursuant to section 5550.

The Foundation also argues that the trustees' position "rewrites the Matthews Trust"

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7 1/30/2008 Foundation Memorandum at 3-4.

8 February 8, 2005 Decree, In re: Chestnut Hill Healthcare, A Pennsylvania Nonprofit Corp., O.C. 3041 NP of 1985 (O'Keefe, J.).

because that trust "imposed only one requirement on the remainder beneficiaries: that they be organizations described in sections 170(c) and 2055(a) of the Code."[9] It leaps to the argument that because the Foundation is a "properly organized nonprofit entity" under the code, it satisfies the terms of the trust and should receive the funds designated for the Hospital.[10] This approach skips over the clear language of the trust agreement that explicitly designated "The Chestnut Hill Hospital" as a charitable beneficiary so long as it satisfies the relevant sections of the Code.

Finally, the Foundation invokes two precedents to support its position. It notes that the adjudication in Charitable Remainder Trust under Deed of Henry Flagler Harris, No. 07-1740 (O.C. Mont. Cty. Sept. 14, 2007) recognized the Foundation as the successor beneficiary of the Hospital where the only requirement for qualification as a beneficiary was that it be an organization described in sections 170(c) and 2055(a) of the Code. In its adjudication, however, the court agreed to this interpretation "because the Attorney General filed a Charitable Gift Clearance Certificate and because no person objected at audit."[11] In the instant case, the Attorney General filed a Charitable Gift Clearance expressing no objection to the accountants' position that the Foundation should not be the recipient of the bequest to the Hospital, and the issue of the distribution to the Foundation was explicitly raised as an issue for adjudication. Moreover, the unpublished adjudication is of persuasive force only.

The other precedent cited by the Foundation, Baker Estate, 7 Fid. Rep. 328 (O.C. Phila. Cty. 1957), is also distinguishable. In her will, Lillie Baker provided for a trust that would distribute income to the Trudeaux Sanatorium "for the general purposes of the sanatorium." 7

9 1/30/2008 Memorandum at 5.
10 1/30/2008 Memorandum at 5.
11 9/14/2007 Adjudication, Charitable Remainder Trust Under Deed of Henry Flagler Harris, No. 07-1740 (Mont.Cty O.C.).

Fid. Rep. 328. Due to the general success in treating tuberculosis, the sanatorium subsequently ceased treating patients but continued doing research focusing on pulmonary diseases. When presented with the issue of whether the sanatorium was still entitled to payments of income, the court focused on the language of the trust and concluded that the continued research activities by the sanatorium fell into the parameters of "the general purposes of the sanatorium" set forth in the trust agreement as a prerequisite for distribution. The Matthews trust agreement, in contrast, designated distribution to the three specifically identified charitable entities and not to their general purposes. For these reasons, the trustees' proposed distribution is approved.

According to the accountants, Pennsylvania Transfer Inheritance Tax and Estate Tax have been paid by the executor of Ms. Matthews estate. The accountants submitted official receipts in the amount of $3,874.18 for July 13, 1998 and $129,200 for January 9, 1998.

The account shows a balance of principal before distribution of $ 2,806,850.25 and a balance of income before distribution of $ 1,724,672.11 for a total of $ 4,531,522.36. This sum, composed as stated in the account, plus income received since the filing thereof, subject to distributions already properly made, and subject to any additional transfer inheritance tax as may be due and assessed, is awarded as set forth in the Proposed Statement of Distribution as follows:

Proposed Distributees	**Amount/Proportion**
Income	
The Presbyterian Church of Chestnut Hill	66.5%
The Philadelphia Orchestra	33.5%

Principal

The Presbyterian Church of Chestnut Hill	66.5%
The Philadelphia Orchestra	33.5%

Leave is hereby granted to the accountants to make all transfers and assignments necessary to effect distribution in accordance with this adjudication.

A schedule of distribution, containing all certifications required by Phila. O.C. Rule 6.11.A(2), and in conformity with this Decree of Distribution, shall be filed with the clerk within ninety (90) days of absolute confirmation of the account.

AND NOW, this _____ day of APRIL 2008, the account is confirmed absolutely.

Exceptions to this Adjudication may be filed within twenty (20) days from the date of the issuance of the Adjudication. An Appeal from this Adjudication may be taken to the appropriate Appellate Court within thirty (30) days from the issuance of the Adjudication. See Phila. O.C. Rule 7.1A and Pa. O.C. Rule 7.1 as amended, and Pa.R.A.P. 902 and 903.

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John W. Herron, J.