

**IN THE COURT OF APPEALS OF OHIO**

SEVENTH APPELLATE DISTRICT  
MAHONING COUNTY

FARMERS TRUST COMPANY (fka BUTLER WICK TRUST COMPANY),  
TRUSTEE OF THE  
ANNE KILCAWLEY CHRISTMAN FOUNDATION,  
Plaintiff,

v.

LAKE ERIE COLLEGE,  
Defendant,

and

OHIO LIVING FOUNDATION,  
Defendant-Appellee,

and

CANFIELD PRESBYTERIAN CHURCH, ET AL,  
Defendants-Appellants.

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**OPINION AND JUDGMENT ENTRY**  
**Case No. 23 MA 0015**

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Civil Appeal from the  
Court of Common Pleas, Probate Division, of Mahoning County, Ohio  
Case No. 2020 CI 20

**BEFORE:**

Mark A. Hanni, Judge, Jennifer Hensal, Betty S. Sutton, Judges of the  
Ninth District Court of Appeals, Sitting By Assignment.

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**JUDGMENT:**  
Reversed.

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*Atty. Matthew G. Vansuch*, Brouse McDowell, LPA, for Plaintiff and

*Atty. Richard N. Selby, II*, Dworken & Bernstein Co., LPA, for Defendant and

*Atty. Brandon A. Borgmann*, Carlile Patchen & Murphy, LLP, for Defendant-Appellee and

*Atty. Thomas F. Hull, II*, *Atty. Jeffrey D. Heintz*, and *Atty. Martha L. Bushey*, Manchester Newman & Bennett, LPA, for Defendants-Appellants.

Dated: December 20, 2023

**HANNI, J.**

{¶1} Appellants, Canfield Presbyterian Church, Hospice of the Valley, Inc., The Butler Institute of American Art, The Mahoning Valley Historical Society, and The Henry H. Stambaugh Auditorium Association, appeal from a Mahoning County Probate Court judgment granting summary judgment in favor of Appellee, Ohio Living Foundation, and determining that Plaintiff, Farmers Trust Company (fka Butler Wick Trust Company), Trustee of the Anne Kilcawley Christman Foundation, shall make distributions to Appellee Ohio Living Foundation.

{¶2} In 1993, Anne Kilcawley Christman created The Anne K. Christman Living Trust (the Trust), which established the Anne Kilcawley Christman Foundation (the Foundation). At the time it was created, the Foundation had eight charitable beneficiaries: (1) Canfield Presbyterian Church; (2) the Ohio Presbyterian Home, commonly called Park Vista; (3) the Youngstown Health Foundation of the Western Reserve Care System<sup>1</sup>; (4) Lake Erie College<sup>2</sup>; (5) Hospice of the Valley, Inc.; (6) The Butler Institute of American Art; (7) The Mahoning Valley Historical Society; and (8) The Henry H. Stambaugh Auditorium. (Trust ¶ 5(a)). The trustee of the Foundation is Plaintiff Farmers Trust

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<sup>1</sup> The Youngstown Health Foundation of the Western Reserve Care System has since been dissolved and its share of the Trust's net income is now divided among the remaining seven beneficiaries pursuant to ¶ 5(c) of the Trust.

<sup>2</sup> Lake Erie College has remained neutral and takes no position as to the issues in this case. The parties stipulated that Lake Erie College will remain a qualified beneficiary entitled to its proportionate share of the funds from the Foundation regardless of the outcome of the dispute that is the subject of this litigation.

Company (fka Butler Wick Trust Company), Trustee of the Anne Kilcawley Christman Foundation (the Trustee).

{¶3} The Trust directs the Trustee to distribute the net income of the Trust property each year equally among the beneficiaries.

{¶4} The Trust contemplated that the structure of the beneficiaries might change over time, so it provides:

Successor Organizations. If any of the specific charitable, religious or educational beneficiaries named herein shall merge with or otherwise become a part of another organization carrying on the work of the specific beneficiary, then the share net income payable to such specific beneficiary shall continue to be paid to such successor.

(Trust ¶ 5(b)).

{¶5} The Trust also contemplated what is to happen if any of the named beneficiaries dissolves without a successor to its work:

Charitable Dissolution. If any of the charitable, religious or educational beneficiaries named herein shall dissolve without a successor to its work, the share of the net income set forth herein for such charity shall terminate and the net income which would have otherwise been payable to such dissolved organization shall be divided equally among the remaining charitable organizations.

(Trust ¶ 5(c)).

{¶6} Additionally, the Trust provided what is to happen if any beneficiary ceases to operate as a not-for-profit organization:

Qualified Organizations. Notwithstanding anything in this Agreement to the contrary, the provisions and limitations of this paragraph shall control in the administration of this Trust following my death:

\* \* \*

iv. If any beneficiary of any residuary Trust or any specific annuitant or any successor to any of them shall fail to maintain their tax exempt purpose under Section 501(c)(3) of the Internal Revenue Code, or any corresponding Section of any future Federal Tax Code, then such beneficiary or specific annuitant shall be treated as having dissolved without a successor to its work and the Trust property shall be held administered and distributed as provided by paragraph (c) hereof.

(Trust ¶ 5(d)(iv)).

{¶7} The Park Vista retirement community, also known as the Ohio Presbyterian Home, has been located at 1261 Park Avenue in Youngstown since the 1960's. It was acquired by Appellee in 2016 or 2017, after which time the Trustee treated Appellee as the successor organization to Ohio Presbyterian Home and distributed the proportionate share of the annual net income of the Trust to Appellee. In 2020, Appellee sold the operations and real estate at Park Vista to a for-profit limited liability company, Natick HCG, LLC. Thus, Appellee no longer owns or operates Park Vista. Appellee has proposed to the Trustee that it will nonetheless still serve the residents of Park Vista through various programs.

{¶8} On September 25, 2020, the Trustee filed a declaratory judgment action asking the probate court to decide whether Appellee is eligible to receive distributions from the Trust and for further instructions on how to distribute the net income of the Trust property. The Trustee did not take a position on the issue; it was simply looking for direction from the court.

{¶9} Appellants and Appellee filed competing motions for summary judgment. Appellants argued that Appellee is no longer a beneficiary of the Foundation under the terms of the Trust and Appellee argued that it is still a beneficiary.

{¶10} The probate court granted Appellee's motion, denied Appellants' motion, and ordered the Trustee to continue to make distributions to Appellee. Appellants filed a timely notice of appeal on February 2, 2023.

{¶11} The probate court granted Appellants' motion for a stay of execution pending this appeal. Appellants now raise three assignments of error for our review.

{¶12} Appellants' first and second assignments of error share a common basis in law and fact. Thus, we will address them together.

{¶13} Appellants' first assignment of error states:

THE TRIAL COURT ERRED BY GRANTING APPELLEE, OHIO LIVING FOUNDATION'S MOTION FOR SUMMARY JUDGMENT.

{¶14} Appellants' second assignment of error states:

THE TRIAL COURT ERRED IN NOT GRANTING APPELLANTS' MOTION FOR SUMMARY JUDGMENT.

{¶15} A court may grant summary judgment only when (1) no genuine issue of material fact exists; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence can only produce a finding that is contrary to the non-moving party. *Mercer v. Halmbacher*, 2015-Ohio-4167, 44 N.E.3d 1011, ¶ 8 (9<sup>th</sup> Dist.); Civ.R. 56(C). The initial burden is on the party moving for summary judgment to demonstrate the absence of a genuine issue of material fact as to the essential elements of the case with evidence of the type listed in Civ.R. 56(C). *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996). A "material fact" depends on the substantive law of the claim being litigated. *Hoyt, Inc. v. Gordon & Assoc., Inc.*, 104 Ohio App.3d 598, 603, 662 N.E.2d 1088 (8th Dist.1995), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247-248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

{¶16} If the moving party meets its burden, then the burden shifts to the non-moving party to set forth specific facts to show that there is a genuine issue of material fact. *Id.*; Civ.R. 56(E). "Trial courts should award summary judgment with caution, being careful to resolve doubts and construe evidence in favor of the nonmoving party." *Welco Industries, Inc. v. Applied Cos.*, 67 Ohio St.3d 344, 346, 617 N.E.2d 1129 (1993).

{¶17} Appellants argue that because Park Vista is no longer a non-profit entity, pursuant to the plain terms of the Trust, its share of the funds must now be distributed to the remaining six beneficiaries. They assert the terms of the Trust specifically set out that if a beneficiary fails to maintain its tax-exempt status, then that beneficiary shall be treated as if it dissolved.

{¶18} Appellants contend the probate court’s decision was entirely, and erroneously, based on the use of the adverb “presently” preceding the beneficiary’s address.

{¶19} The Trust provides that each year the Trustee shall distribute the net income of the Trust property equally among the named charitable, religious, or education organizations including: “THE OHIO PRESBYTERIAN HOME, commonly called “PARK VISTA”, *presently* of 1216 Fifth Avenue, Youngstown, Ohio.” (Emphasis added; Trust ¶ 5(a)(ii)).

{¶20} The probate court found that Park Vista was sold to a for-profit company. But Appellee, who previously owned Park Vista, is still currently operating as a valid non-profit organization and is still in existence as defined by ¶ 5(b) of the Trust. The court, therefore, opined that by the express reading of the Trust language, Ms. Christman understood that the original beneficiary (Park Vista) could possibly move in the future since she used the term “presently” before Park Vista’s address. The court then found:

By the Testator using the word “*presently*” in the bequest to the beneficiary, the Court finds that she specifically understood that the facility known as *Park Vista* may cease to be located there and in existence and stated in paragraph 5(b) of the trust that if it became part of another organization carrying on the work of the specific beneficiary then that share shall be paid to its successor. The Defendant, *Ohio Living Foundation*, is clearly continuing the purpose of the Ohio Presbyterian Home, formerly known as *Park Vista* and continuing the charitable purposes of **Anne Kilcawley Christman**.

(Emphasis sic.).

{¶21} Appellants point out this is not a situation where Park Vista simply relocated to a new address. Instead, it is a situation where Park Vista, formerly owned by a non-profit organization, is now owned by a for-profit organization. They assert the Trust made a gift to Park Vista, not to the entity owning Park Vista. Because Park Vista is no longer owned by a non-profit organization, Appellants argue that the Trust directs that its share of the net proceeds must be distributed among the remaining beneficiaries.

{¶22} In response, Appellee agrees with the probate court that by using the word “presently” before “located” in stating Park Vista’s address, Ms. Christman anticipated that Park Vista could move sometime in the future. It goes on to argue that the use of “presently” along with the inclusion of Trust ¶ 5(b), speaking about what is to happen if any beneficiary merges with or becomes part of another organization, demonstrates that Ms. Christman understood that her beneficiaries might go through changes in the future. Appellee goes on to argue that the Trust language indicates that Ms. Christman intended to support the work of her chosen beneficiaries regardless of their location. Because it is carrying on the work of Park Vista, despite the sale of the facility, Appellee contends it is to remain a beneficiary.

{¶23} A court’s purpose when interpreting a trust is to effectuate the settlor’s intent. *Domo v. McCarthy*, 66 Ohio St.3d 312, 318, 612 N.E.2d 706 (1993). When the language of the instrument is not ambiguous, a court can generally ascertain intent from the express terms of the trust itself. *Id.* at 314.

{¶24} Here, the Trust language is unambiguous. The terms of the Trust are clear as to Ms. Christman’s intent.

{¶25} Ms. Christman named eight specific beneficiaries of the Foundation. The Trust is to distribute the net income of the Trust to the beneficiaries on a yearly basis. (Trust ¶ 5(a)). She anticipated that the Foundation and the Trust would continue past her death by stating in Trust ¶ 5(d) that “the provisions and limitations of this paragraph shall control in the administration of this Trust following my death[.]”

{¶26} Ms. Christman made clear that the Trust proceeds were only to be distributed to non-profit organizations. In Trust ¶ 5(d)(i), it provides that the Trust “shall be organized exclusively for charitable, religious, educational, and scientific purposes[.]” And in Trust ¶ 5(d)(iii), it provides that all distributions “shall be for one or more exempt purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code [for non-profit organizations]” Most importantly, Trust ¶ 5(d)(iv) provides that if any beneficiary or successor beneficiary fails to maintain their tax exempt purpose, “then such beneficiary or specific annuitant shall be treated as having dissolved without a successor to its work and the Trust property shall be held administered and distributed as provided by

paragraph (c) hereof.” Thus, Ms. Christman’s clear intent was that if a beneficiary, or its successor, ceases to be a non-profit organization, it shall be treated as having dissolved.

**{¶27}** The Trust is also unambiguous as to what is to happen if a beneficiary merges with or becomes a part of another non-profit organization. In that case, that beneficiary’s share of the net income shall continue to be paid to such successor. (Trust ¶ 5(b)). And the Trust is unambiguous as to what is to happen if any of the named beneficiaries dissolves without a successor. In that case, that beneficiary’s share of the net income shall terminate and the net income that would have been payable to the dissolved organization shall be divided equally among the remaining charitable organizations. (Trust ¶ 5(c)).

**{¶28}** From these provisions, Ms. Christman’s intent is clear. The Trust proceeds are to be distributed to the eight named beneficiaries. If any of those beneficiaries ceases to remain a non-profit organization, its share of the Trust’s net proceeds is then to be distributed to the remaining beneficiaries. If a beneficiary merges with or becomes a part of another non-profit organization, its share of the Trust’s net proceeds shall be distributed to the successor organization.

**{¶29}** Applying the Trust terms and Ms. Christman’s clear intent to the facts at hand indicates that the trial court erred in granting summary judgment to Appellee.

**{¶30}** In identifying the beneficiaries, Ms. Christman named each one by its proper name except for Park Vista, which it named as, “THE OHIO PRESBYTERIAN HOME, commonly called ‘PARK VISTA’, presently of 1216 Fifth Avenue, Youngstown, Ohio.” (Trust ¶ 5(a)). In other words, Park Vista is the Ohio Presbyterian Home Ms. Christman intended to benefit as opposed to another Ohio Presbyterian home located somewhere else in the state. Ms. Christman named the specific facility of Park Vista, which is a retirement community located on Fifth Avenue in Youngstown where her mother resided at the end of her life and where Ms. Christman also lived out her last years.

**{¶31}** Appellee is not a successor organization to Park Vista. Likewise, Park Vista did not merge into Appellee. Thus, Trust ¶ 5(b) is not implicated here. Instead, the for-profit entity that purchased Park Vista from Appellee is the successor organization. And under the terms of Trust ¶ 5(d), which directs what is to happen if a beneficiary or



successor fails to remain non-profit, Park Vista is to be treated as having dissolved without a successor.

{¶32} Moreover, Appellee admits in its summary judgment motion that “[w]hile Ohio Living [Appellee] no longer provides charitable services at the [Park Vista] Property, it does continue its charitable work [in other capacities at other locations].” (Appellee’s Summary Judgment Motion, p. 2-4). Thus, by Appellee’s own admission and the fact that it sold Park Vista to a for-profit organization, there is no longer a non-profit organization operating at Park Vista (Ms. Christman’s named beneficiary).

{¶33} Under these circumstances, Trust ¶ 5(c) and (d)(iv) are invoked here so that Park Vista’s share of the Trust’s net income shall terminate and the net income which would have otherwise been payable to Park Vista shall be divided equally among the remaining charitable organizations. Therefore, the trial court should have denied Appellee’s motion for summary judgment and instead granted Appellants’ motion for summary judgment.

{¶34} Accordingly, Appellants’ first and second assignments of error have merit and are sustained.

{¶35} Appellants’ third assignment of error states:

ALTERNATIVELY, THE TRIAL COURT ERRED IN NOT APPLYING RESTRICTIONS ON THE USE OF THE GIFT BY OHIO LIVING TO ENSURE THE FUNDS ARE USED IN THE MANNER MS. CHRISTMAN INTENDED.

{¶36} Here, Appellants contend that should this Court determine that the probate court correctly made Ohio Living a beneficiary of the Trust, then we should find the probate court erred in not ordering that Ohio Living must use the Trust funds in the Youngstown, Ohio area for substantially similar services.

{¶37} Given our resolution of Appellants’ first and second assignments of error, Appellants’ third assignment of error is rendered moot.

{¶38} For the reasons stated above, the trial court's judgment is hereby reversed and summary judgment is entered in favor of Appellants.

Hensal, J., concurs.

Sutton, J., concurs.

For the reasons stated in the Opinion rendered herein, the first and second assignments of error are sustained, the third assignment of error is moot, and it is the final judgment and order of this Court that the judgment of the Court of Common Pleas, Probate Division, of Mahoning County, Ohio, is reversed and summary judgment is entered in favor of Appellants. Costs to be taxed against the Appellee.

A certified copy of this opinion and judgment entry shall constitute the mandate in this case pursuant to Rule 27 of the Rules of Appellate Procedure. It is ordered that a certified copy be sent by the clerk to the trial court to carry this judgment into execution.

**NOTICE TO COUNSEL**

**This document constitutes a final judgment entry.**