

COURT OF COMMON PLEAS OF PHILADELPHIA  
ORPHANS' COURT DIVISION

Trust Established Under the Will of Mary Geschick,  
Deceased  
No. 1321 ST of 1965  
Control No. 112707

Sur First Account of Wells Fargo Bank, N.A. (formerly Wachovia Bank, N.A.), Trustee

The account was called for audit November 7, 2011  
Counsel appeared as follows:  
Debra Falk, Esquire for the Accountant

**Before: Herron, J.**

ADJUDICATION

Mary Geschick died on November 11, 1964. Prior to her death, she executed a Will dated May 5, 1960, with codicils dated May 5, 1960, April 13, 1964 and October 15, 1964. In Article Twenty-Sixth of her Will, Ms. Geschick created a residuary trust naming three trustees: her sister, Nettie Wurster; her friend, R. W. McIlvaine; and The First Pennsylvania Banking and Trust Company, whose successor in interest is Wells Fargo Bank, N.A ("Wells Fargo"). On October 3, 2011, Wells Fargo filed an account of its administration of the trust covering the period November 14, 1979 to June 30, 2011.

The dispositive terms of the will and the residuary trust it established are set forth at length in the petition for adjudication as well as in the annexed will and codicils. Article Twenty-Sixth of the Geschick Will provided that the net income of the trust should be distributed to Nettie Wurster together with as much principal necessary to assure her a monthly payment of \$1,000 for life. Upon Nettie Wurster's death, the trustees were directed to distribute the net income to specified individuals as life tenancies. The remainder of the income, and upon the termination of the life tenancies, the remainder of that income, was to be distributed as follows:

- (a) one fourth thereof to Delaware Valley Eye Bank, and if at any time it may cease to exist, to Wills Eye Hospital, Philadelphia, Pennsylvania;
- (b) and three -fourths thereof in equal shares to:
  - I. The Children's Seashore House in Atlantic City
  - II. River Crest Preventorium located at Mont Clare, PA

- III. Lutheran Home for Orphans' and Aged of Germantown, Philadelphia, PA
- IV. Germantown Dispensary and Hospital
- V. Chestnut Hill Hospital
- VI. St. Michael's Evangelical Lutheran Church of Germantown

All the individual income beneficiaries are now deceased. Delaware Valley Eye Bank is presently known as the Lions Eye Bank of Delaware Valley. The Children's Seashore House was acquired by Children's Hospital of Philadelphia in 1998. River Crest Preventorium has a successor in interest known as Ken-Crest Centers for Exceptional Persons. Trust income designated for The Lutheran Home for Orphans and Aged of Germantown is presently payable 50% to Germantown Home and 50% to Silver Springs-Martin Luther School ("Silver Springs School") pursuant to an Agreement dated May 13, 2002 among the Lutheran Home at Germantown Foundation, Silver Springs-Martin Luther School and the Germantown Home, that was approved by the Attorney General and is attached to the accountant's petition as Exhibit A. The beneficial interests of the Germantown Dispensary and Hospital, subsequently known as Germantown Hospital and Community Health Services, has been designated to the Albert Einstein Medical Center as the successor in interest by Orphans' Court decree dated June 14, 1999. See Ex. B.

The bequest of income to Chestnut Hill Hospital in Mary Geschick's Will raises a question for adjudication in light of the 2005 sale of the hospital and subsequent rulings by various Orphans' courts. In 2005, Chestnut Hill Hospital, which was a Pennsylvania non-profit charitable corporation, was sold to a subsidiary of Community Health Systems which is a for profit entity. This sale was approved following proceedings before Judge O'Keefe of the Philadelphia Court of Common Pleas, Orphans' Court Division. By decree dated February 8, 2005, Judge O'Keefe provided that "[w]ithout prejudice to the rights of any donor, estate or trust not a party to this proceeding," all "gifts, bequests, grants and principal or income from endowment funds or trusts that are payable to....Chestnut Hill Hospital...shall be paid to the Foundation...." According to the accountant, the "charitable assets of Chestnut Hill Hospital were excluded from the sale and transferred to Chestnut Hill Healthcare Foundation, now called Green Tree Community Health Foundation ("Green Tree")."<sup>1</sup>

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1 Rider B, Petition for Adjudication.

Based on the February 2005 decree, Wells Fargo initially distributed Chestnut Hill Hospital's one-eighth share of the Geschick Trust income to the Green Tree Community Health Foundation. It now raises this distribution as a question for judicial review because three Orphans' Court opinions have concluded that the Foundation should not receive funds that had been designated for Chestnut Hill Hospital. These rulings, however, were based on the specific language of the trusts before the court as well as the relevant factual record and are distinguishable. See, e.g., Rorer Trust, 26 Fid.Rep. 2d 307 (Mont. Cty. O.C. 2006); Lavino Trust, 27 Fid. Rep.2d 91 (Mont. Cty. O.C. 2007); Matthews Charitable Remainder Annuity Trusts, 1444 IV of 2007 (Phila. O.C. 2008). Upon review of the relevant language in Ms. Geschick's will, the factual background of record, and the cases cited by the accountant, the sums designated for Chestnut Hill Hospital by Ms.Geschick are properly paid to the Green Tree Community Health Care Foundation so long as that Foundation qualifies as an organization described in Section 501(c)(3) of the Internal Revenue code of 1986, as amended (the "Code") and as a public charity described in Section 509 of the Code..

The PEF code requires a trustee to administer a trust "in accordance with its provisions and purposes.... 20 Pa.C.S. § 7771. Likewise, under long standing Pennsylvania precedent, the polestar of every trust is the settlor's intent and "that intent must prevail." Estate of Warden, 2 A.3d 565, 572 (Pa. Super. 2010), *app. denied*, 17 A.2d 1255 (Pa. 2011). Each of the three cases cited by the accountant carefully focused on the trust language at issue which differs in significant respects from the language in Ms. Geschick's will.

In Lavino Trust, 27 Fid. Rep. 2d at 91, for instance, the settlor designated that \$20,000 should be paid to Chestnut Hill Hospital "to be used for maintenance purposes, such distributions to be designated to the Edwin M. Lavino Fund." As Judge Ott observed, with the sale of the hospital the "Foundation is charged with carrying out the charitable mission of the Hospital by the initiation and support of programs and activities which improve access to health care; however, it does not carry out the usual missions of a hospital and is not engaged in patient care." *Id.* at 95. Obviously, under such circumstances a bequest "to be used for maintenance purposes" of the hospital would fail. The Lavino trust, however, provides for an alternative distribution since it states that if "any of the named organizations is not in existence or does not

qualify” as a charity under the IRC, any bequest to it should be directed to another charity in existence for 60 months as selected by the trustees. Judge Ott therefore ordered that the shares of income previously distributed to Chestnut Hill Hospital should be distributed instead to the other qualified charitable organizations listed in the trust.

In Rorer Trust, 26 Fid. Rep. 2d at 308 the relevant trust language provided that if “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.” In light of this language, the Attorney General objected to distribution of trust assets to the Foundation, and the court concurred, ruling that the distribution designated to Chestnut Hill Hospital should be distributed instead to the 14 other charities designated in the trust. The deed of trust in the Matthews Trust case contained similar language to the Rorer Trust since the Matthews trust provides that 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, (hereafter, 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.” Matthews Charitable Trust Adjudication (4/29/2008, Herron, J.) at 2-3(emphasis added). In light of the “sole discretion” granted to the Trustees to select an organization that qualifies under the Internal Revenue Code if a named entity such as Chestnut Hill Hospital failed to so qualify, this court agreed with the Trustees that they had discretion to direct the bequest originally designated for Chestnut Hill College should be distributed instead to the two other designated beneficiaries.

In the present matter, the trustees take the position that the funds designated to Chestnut Hill Hospital should go to the Green Tree Community Health Care Foundation. The Attorney General does not object, and in fact has issued a Charitable Gift Clearance Certificate. The language of the Geschick Will supports the accountant’s position. Article Twenty-Sixth(B)(5) of the Geschick Will maps out the distribution of assets to the designated charities under a subsection (a) and a subsection (b). Subsection (a) provides for the distribution of income “one fourth thereof to Delaware Valley Eye Bank, and if at any time it may cease to exist, to Wills

Eye Hospital, Philadelphia, Pennsylvania.” Subsection (a) therefore provides a specific alternative charitable beneficiary if Delaware Valley Eye Bank ceases to exist. Subsection (b), in contrast, which provides for the distribution of income to Chestnut Hill Hospital, does not set forth alternative beneficiaries if a designated charity ceases to exist nor does it grant the trustees discretion to select an alternative charitable beneficiary. Instead, it merely lists six charities, one of which is Chestnut Hill Hospital. The accountant suggests that in the absence of an alternative provision that might save the charitable purpose of the trust, *cy pres* should be applied “to fulfill as nearly as possible the settlor’s charitable intention, whether general or specific.” 20 Pa.C.S. §7740.3(a)(3). In making a bequest of income to the Chestnut Hill Hospital, the accountant suggests, Mary Geschick’s ultimate beneficiaries were individuals residing in the surrounding community. Those interests would continue to be served by the Green Tree Foundation because its stated purpose is to improve the health and well being of communities in northwest Philadelphia and eastern Montgomery county by focusing on the frail, elderly, children, families as well as underinsured or uninsured individuals. This position is persuasive, and the proposed distribution of income in accordance with Mary Geschick’s will to the Foundation is hereby approved.

According to the accountant, Pennsylvania Transfer Inheritance Tax and Pennsylvania Estate Tax in the amount of \$66,500 was paid on February 4, 1965. The corporate trustee has taken total principal commissions and fees of \$968,635.42 during the accounting period based on its standard fee schedule that was in effect and applicable during that period. Of this amount, \$593,296.51 was charged to principal and \$375,338.91 was charged to income. The individual trustee, Stanley Thornton, received total principal commissions and fees of \$11,510.32 during the accounting period. Of that amount, \$4,131.18 was charged to principal and \$7,379.14 was charged to income. During the prior accounting period, the corporate trustee received \$2,045.91 in 1969 while the individual co-trustee received \$2076.52. A reserve of \$25,000 is request for counsel fees paid in connection with the filing of the account and any related proceedings.

No objections were filed to the account. According to the Account for the period November 14, 1979 through June 30, 2011, the balance of principal before distribution is

\$ 7,079,309.20 while the balance of income before distribution is \$4,838,826.59 for a total of \$ 11,918,135.79 . This sum, composed as stated in the account, plus income received since the filing thereof and subject to distributions already properly made or transfer inheritance tax which may be due, is awarded as set forth in the accountant's petition:

<u>Proposed Distributee(s)</u>	<u>Amount/Proportion</u>
<b>Income</b>	
Lions Eye Bank of Delaware Valley	1/4
The Children's Hospital of Philadelphia for The benefit of the Children's Seashore House	1/8
Ken-Crest Centers for Exceptional Persons	1/8
St. Michael's Evangelical Lutheran Church at Germantown	1/8
Green Tree Community Health Foundation	1/8
Albert Einstein Medical Center	1/8
Germantown Home	1/16
Silver Springs School	1/16
<b>Principal</b>	
Wells Fargo Bank, N.A., in its capacity as Trustee of the Trust Under the Will of Mary W. Geschick, Deceased	100%

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

AND NOW, this \_\_\_\_ day of NOVEMBER 2011, 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 7.1.A 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.