

FILED

SEP 27 2019

**MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER**

**IN THE COMMON PLEAS COURT OF MERCER COUNTY, OHIO
PROBATE DIVISION**

THE CITY OF CELINA, OHIO
225 N. MAIN STREET
CELINA, OHIO 45822

Case No. 00014624A

Judge Mary Pat Zitter

Plaintiff

v.

**FIRST FINANCIAL BANK,
TRUSTEE OF THE ED. L. BRYSON TRUST
AND IN ITS CORPORATE CAPACITY
WHILE ACTING AS SUCH TRUSTEE
255 EAST FIFTH STREET, SUITE 2900
CINCINNATI, OHIO 45202**

**COMPLAINT FOR
DECLARATORY JUDGMENT,
MERGER OF TRUST AND
TRANSFER OF ALL ASSETS
TO PUBLIC CHARITY,
TERMINATION OF TRUST
AND REMOVAL OF TRUSTEE**

**DAVID YOST
ATTORNEY GENERAL
STATE OF OHIO
30 EAST BROAD STREET, 14TH FLOOR
COLUMBUS, OHIO 43215**

Defendants

Now comes Plaintiff, **THE CITY OF CELINA, OHIO** (hereinafter, "the City") for its Complaint against Defendant, **FIRST FINANCIAL BANK** (hereinafter, "Defendant," "First Financial" or "Trustee") and Defendant, **DAVID YOST, ATTORNEY GENERAL, STATE OF OHIO**, and states as follows:

Jurisdictional Statement

1. Jurisdiction is proper in the Probate Court of Mercer County, Ohio consistent with its jurisdiction, exclusive or concurrent, as recognized by provisions of the Ohio Revised Code including without limitation, the following: Ohio Revised Code §2101.24(A)(1)(b),(e),(k) through (o), §2101.24(B)(1)(a)-(b), §2101.24(C); the Ohio Probate Code, §§2109.303, 2019.24, 2109.68 and 2109.69; the Ohio Trust Code, Title 58 (Chapters 5801 to 5811); the Prudent Investor Act, Chapter 5812; and §§109.23, 109.231 and 109.232.

Parties

2. Plaintiff, The City of Celina (the "City") is an Ohio Municipal Corporation in Mercer County, Ohio. Plaintiff is the sole beneficiary of the Ed. L. Bryson Trust, a charitable trust. The Ed. L. Bryson Trust is hereafter referred to as the "Bryson Trust" or the "Trust" or the "Fund".
3. Defendant, First Financial Bank is a state incorporated financial institution, which is currently acting as Trustee of the Bryson Trust for the benefit of The City of Celina, Ohio.
4. David Yost, Attorney General of the State of Ohio is joined as a party Defendant hereto, as the statutorily designated guardian of public and charitable trusts in the State of Ohio in accordance with Ohio Revised Code Sections 109.23 to 109.33.

Factual Allegations and History of the Bryson Trust

5. Ed. L. Bryson ("Bryson") was a lawyer and resident of Mercer County, Ohio. He died on January 11, 1950.
6. Bryson's Last Will and Testament (the "Will") was admitted to probate in this Court on January 17, 1950 in Case No. 12419. A copy of Bryson's Will is attached hereto and incorporated herein as **Exhibit "A"**.
7. The Will established a testamentary trust for the benefit of the siblings of Bryson in Item Seven of the Will. Roscoe D. Riley and Gertrude Einfalt, who were employees of a local bank, The Commercial Bank Company of Celina, Ohio, were named in the Will as trustees of the siblings' trust. Said trustees had also been Co-Executors of the Bryson Estate in the above-referenced case.
8. Said trustees served as testamentary trustees for the benefit of said siblings in Case No. 12689 filed in this Court. The last sibling died in August 1959.

9. The Will provided in Item Eight that upon the last to die of Bryson's siblings –

... [S]aid trust shall terminate and said trustees shall have full power and authority to convey the whole or any part of the unconsumed portions for the purpose of winding up my estate, and that out of the remainder thereof, the same shall be distributed as follows: ... Sixth – It is my will and desire that any remainder of my estate not hereinbefore disposed of shall be paid to The Commercial Bank Company of Celina, Ohio for the use and benefit of the Public Play Grounds in Mercelina Park, Celina, Ohio, or to assist in the construction of a Public Swimming Pool by said city; said The Commercial Bank Company to determine the amount and manner in which said funds shall be expended for said civic improvement.

10. The Division of Banks of the Ohio Department of Commerce determined that The Commercial Bank Company did not have trust powers and therefore was unable to serve as trustee of the Bryson Trust.

11. On May 4, 1960, this Court appointed Roscoe D. Riley and Gertrude Einfalt to serve as initial trustees of the Bryson Trust established by Item Eight, paragraph Sixth of Bryson's Will. A copy of the Letters of Authority issued in this Court's Case No. 14624 to the said initial trustees is attached hereto and incorporated herein as **Exhibit "B"**.

12. On May 21, 1960, the initial trustees, Roscoe D. Riley and Gertrude Einfalt filed a Petition for Construction of Will in Case No 14624. The Court issued a twenty-page Opinion and Order, copies of which are attached hereto and incorporated herein as **Exhibit "C"**.

13. In its findings and Opinion, this Court stated at page 19:

... [t]he Court, under the cy pres doctrine preserving the charitable trust, can and does determine that the general intent of the testator, Ed. L. Bryson, was to provide wholesome recreation for all of the residents of Celina, Ohio which by its very nature constitutes a charitable trust.

14. The Court further found that the trustees were authorized to use the trust income "for the use and benefit of public play grounds as now existing and as hereafter established and also for the maintenance of Public Swimming Pools all in Celina, Ohio, and environs contiguous thereto; ..."

15. The Court also recognized in the Court's decision that principal could be used but requested an application and hearing to do so. In 1962 and 1963, the Court granted authority to use the principal of the Fund, including authorization to purchase and improve real property for a park (Eastview), and the Court granted authority to do so again in 2016 and 2017 for the purchase and improvement of the real property known as the Bryson Park District.

16. In the Probate Court's Opinion, Judge Homer J. Hinders added that it would have been preferable for this Trust to be established as a fund of a public charity in the form of a community foundation, but that such was not available to carry out the testator's intent. Judge Hinders' Addendum stated as follows:

It is regretful indeed, that Mercer County has no Charitable Corporation Foundation, to which public spirited citizens could leave trust funds, in the amount of their own choosing, to be applied to the course of their choice, and in that manner relieve themselves of the appointment of temporary trustees, whose lifespan is, of course limited, for the foundation would endure, and the funds continually applied, without a multiplicity of cases in the local Probate Court. May the Court suggest that such a Foundation be established to give an opportunity to those whose wealth and public spirit may have a well-regulated and legal atmosphere for the acceptance of their gifts.

17. In years following, additional individual trustees assumed the duties of trustees along with the initial trustees.
18. On June 30, 1978 the Court issued Letters of Authority to Trustee appointing "David K. Riley and Gertrude Einfalt as Trustee of Trust created by Item 8 of the Will of Ed L. Bryson and has subsequently appointed Citizens Commercial Bank & Trust Company as Additional Trustees (successors to Roscoe D. Riley and Bob L. Wurster)." A copy of the Letters of Authority issued to the said Trustees is attached hereto and incorporated herein as **Exhibit "D"**.
19. On September 25, 1978, David K. Riley and Gertrude Einfalt resigned as Co-Trustees.
20. On or about April 1, 1998, Citizens Commercial Bank & Trust Company changed its name to Community First Bank & Trust, which assumed the duties of trustee of the Bryson Trust.
21. Sometime in 2005, Community National Bank was acquired by and merged into First Financial Bank, which assumed the duties of Trustee of the Bryson Trust. First Financial is therefore a successor trustee by merger.
22. Prior to December 30, 2016, First Financial Bank was a national bank. On December 30, 2016, First Financial Bank converted from a National Bank to a state-chartered commercial bank, with its headquarters located in downtown Cincinnati, Ohio.
23. Until sometime in 2017, trust officers with the Defendant, First Financial Bank (and its predecessors) who resided in the community were responsible for the administration of the Bryson Trust. Since then, Defendant, First Financial Bank, has closed all but one branch in Mercer County, pulled the administration of the Trust from local trust officers and has re-located decisions concerning administration of the Bryson Trust to the headquarters of First Financial Bank in Cincinnati, Ohio.

24. As a result of the decision of First Financial Bank to re-locate decisions regarding trust administration to Cincinnati, Ohio, the City of Celina has had no representative of the Defendant acting as trust officer on behalf of the Trustee with whom it can communicate other than a local attorney. Such communications have resulted in unnecessary costs in the administration of the Bryson Trust and have not been productive, but rather, adversarial.
25. Further, during its administration of the Trust, the Defendant, First Financial Bank, has failed and refused to respond to the requests of the Plaintiff for information concerning the Trust to which it is entitled under the Ohio Trust Code, Title 58, Chapters 5801 to 5811 of the Ohio Revised Code and Chapter 2109 of the Ohio Revised Code, and specifically Sections 5808.13 and 2109.69 which makes the Ohio Trust Code applicable to testamentary trusts.
26. For example, on or about September 12, 2018, the City sent a request for tax returns for the Trust to the Defendant's local attorney. The local attorney replied that the returns "are not filed with the court as they are not public," which the City already knew. The Defendant's local attorney responded that "if you still desire to take this further please contact Paul [Schwarz]" at First Financial in Cincinnati. On October 4, 2018, the City sent a letter to Mr. Schwarz requesting three years' tax returns for the Bryson Trust. A copy of the letter is attached hereto and incorporated herein as **Exhibit "E"**.
27. After following the direction of the Defendant to contact Mr. Schwarz, the Law Director received no response. On December 11, 2018 he emailed the local attorney asking if she and Mr. Schwarz had received the letter. On the morning of December 12, 2018, the local attorney, after referring the City to the Cincinnati office to obtain the information, sent an email to the Law Director stating – "I followed up with the Trustee regarding your request. The policy of the bank for all trusts is to provide statements and a copy of the trust to beneficiaries. They do not provide tax returns. If you are looking for something specific, please let us know and the Trustee can look into it."
28. On the afternoon of December 12, 2018 after receiving the Trustee's response refusing to provide the requested information, the Law Director again emailed the Defendant's local attorney stating – "The City of Celina is requesting a copy of the last three (3) years of tax returns, and is also requesting information on the fees associated with the investment, management and distribution of the trust." The Trustee did not respond to that request.
29. On March 20, 2019, another letter was sent to Gregory A. Harris, Senior Vice-President for First Financial Wealth Management requesting a meeting with the Trustee to discuss concerns about the administration of the trust and the issues raised in this Complaint. The Trustee did not respond until fifty-six (56) days had elapsed, when on May 15, 2019 its Counsel, via email, declined the invitation to meet. Copies of the letter and email are attached as **Exhibit "F"** and **Exhibit "G"** respectively.
30. On June 11, 2019, another letter was sent to the First Financial Bank Counsel, confirming that the City intended to proceed despite the refusal of First Financial to discuss the issues addressed herein. No further response has been received by the City.

31. The Court accounting for the 58th partial account was due on July 31, 2019. The Court sent a reminder notice to the Trustee on June 28, 2019. The Trustee failed to file its partial account by July 31, 2019. A notice of overdue account was mailed by the Court on July 31, 2019. The Trustee filed the delinquent partial accounting on August 29, 2019. On September 11, 2019, the Trustee filed an amended 58th partial account. No explanation for the amendment was stated in the amended filing.
32. The Dayton Foundation is a community foundation doing business in both trust and corporate form, with its headquarters and principal place of business in Dayton, Ohio. It is organized under a Resolution and Declaration Trust dated April 15, 1921, and under Articles of Incorporation dated September 10, 1987 and filed in the State of Ohio, both as subsequently amended. The Dayton Foundation is duly organized and qualified as a tax-exempt, charitable foundation under §170(b)(1)(A)(vi) of the Internal Revenue Code of 1954 and is classified as a public charity pursuant to §509(a)(1) of the Internal Revenue Code. The Dayton Foundation is also a qualified community foundation, as defined in Ohio Revised Code Section 2109.303 (C) (2).
33. Said Foundation, acting under its Resolution and Declaration of Trust, operates many funds for the benefit of charitable organizations in the greater Miami Valley, and surrounding areas, with donors across the state of Ohio and throughout the United States, acting through designated funds within The Dayton Foundation, Inc. The Dayton Foundation ranks 39th nationwide for assets under management among over eight-hundred community foundations in the United States.

First Claim for Relief

Merger of Fund into Public Charity

34. Plaintiff hereby incorporates each previous allegation of the Complaint as if fully rewritten herein.
35. Pursuant to the Ohio Trust Code and Chapter 2109, it would be in the best interests of the Bryson Trust that the Trust be terminated and that the Fund be merged into the Dayton Foundation, a non-profit public charity, such Fund to be a component fund of the Dayton Foundation with annual distributions of income to the City in accordance with its distribution policies (a percentage of a 20-quarter rolling average) and with discretionary distributions of principal and assessment of the use of the distributions to be determined by a committee initially appointed by the Court to be composed of members who are residents of the City of Celina, Ohio.
36. Plaintiff alleges that the Court should order the transfer of all assets of the Fund to the Dayton Foundation. The merger is permissible under Ohio law and the Internal Revenue Code.
37. The merger will result in a more effective and economical administration of the Fund by allowing The Dayton Foundation to provide expertise, economy of scale, efficiency, investment management and regulatory management of the Bryson Trust, with regular annual distributions of income to the City, and with distributions of principal determined

through local expertise in identification and assessment of the charitable needs in the local community with respect to the use of the Trust funds for the benefit of the citizens of the City, keeping foremost the sustainability and viability of the Fund.

38. Such action by this Court would be in the best interests of the Fund, the City of Celina and its citizens, and is authorized by law. The merger of the Trust as demanded herein was envisioned by this Court in 1960 (as recited in paragraph 16 above) as a proper means to administer the Bryson Trust Fund.
39. Plaintiff states that said merger would be an amendment to the provisions of the Will and the Fund established therein and would constitute a variation from the provisions of the Will which is permissible as a result of changed circumstances, namely, the opportunity to administer the Fund in a more effective manner as a component fund of a public charity which is a qualified community foundation. Such merger and modification further the purposes of the Trust and the intent of the testator.
40. The merger will provide sufficient oversight in determining the “amount and manner” in which the Fund will be distributed and expended for civic improvement, as intended by the testator and stated in the Sixth paragraph of Item Eight of his Will.

Second Claim for Relief

Termination of Trust by Merger

41. For its Second Claim for Relief, Plaintiff hereby incorporates each and every previous allegation of the Complaint as if fully rewritten herein.
42. In order to facilitate the merger of the assets of the Trust into a public charity, the Court should remove the Trustee to benefit the community and the sole beneficiary, the City of Celina, Ohio “because the interest of the property, testamentary trust ... demands it, or for any other cause authorized by law.”
43. The merger of the trust assets into a public charity furthers the purposes of the Trust, preserves the vision and intent of the testator as broadened by this Court, and substantially enhances the management, investment and distribution of the Trust interest and principal in a more effective, efficient and sustainable manner, with input from the local community.
44. The termination of the Trust and its merger into a public charity is authorized by law, namely Sections 109.231 and 109.232 Ohio Revised Code; Sections 2109.303 and 2109.24 of the Ohio Revised Code; and the Ohio Trust Code, particularly Sections 5804.10, 5804.12, 5804.13 and 5804.16 of the Ohio Revised Code; and by the provisions of the Internal Revenue Code.

Third Claim for Relief

Modification of Trust and Cy Pres

45. For its Third Claim for Relief herein, Plaintiff incorporates each and every previous allegation of the Complaint as if fully rewritten herein.
46. Continuation of the Trust on its existing terms has become impracticable and impairs the Trust's administration and the Trust's purpose.
47. Plaintiff requests the Court, to the extent necessary to do so, to exercise the doctrines of *cy pres*, modification, variation and/or deviation to terminate the Trust and merge it into a public charity for the uses and purposes intended by the testator and as previously broadened by this Court to include the recreational needs of all of the residents of the City of Celina, Ohio; to grant a declaratory judgment confirming the uses of the Fund; and to exercise said doctrines to grant Plaintiff's Claims for Relief in the Complaint.
48. Those doctrines have previously been exercised by the Court, most recently in 2016 and 2017, and previously by the Court in 1960 when the Court found the intent of the testator was "to provide wholesome recreation for all of the residents of Celina, Ohio," a very broad use of the Fund for the purposes intended by Mr. Bryson.

Fourth Claim for Relief

Breach of Fiduciary Duties and Prudent Investor Act

49. For its Fourth Claim for Relief herein, Plaintiff incorporates each and every previous allegation of the Complaint as if fully rewritten herein.
50. Defendant, First Financial owes the City an unwavering duty of good faith, fair dealing, loyalty, and owes the City timely responses to inquiries, diligence, the duty to provide the City with material information it has requested to protect its interests, and the duty to properly manage, invest and diversify the Fund pursuant to the Ohio Prudent Investor Act and the duty to comply with the Ohio Probate Code, the Ohio Trust Code and Ohio law.
51. The Ohio Trust Code applies to testamentary trusts, and particularly Section 5808.13.
52. The Ohio Trust Code allows the beneficiary to make the determination of the relevance of information about the Trust requested by the beneficiary. Section 5808.13 (A) provides that "A trustee shall keep the current beneficiaries of the trust reasonably informed about the administration of the trust and of the material facts necessary for them to protect their interests. Unless unreasonable under the circumstances, a trustee shall promptly respond to a beneficiary's request for information related to the administration of the trust."
53. The onus is on the Trustee to comply with this section. The Trustee has failed and intentionally refused to comply with Section 5808.13 (A) by, among other things, having a blanket policy to refuse to provide any trust beneficiary with trust tax returns. That policy

violates the Ohio Trust Code. The refusal of the Trustee to give the City copies of trust tax returns violates the Ohio Trust Code.

54. The Trustee has violated the Ohio Trust Code by failing to respond promptly to inquiries by the City concerning the Trust, including requests for information regarding the Trustee's fees and the Trust tax returns. The refusal of the Trustee to disclose material information to the City likewise violates the Ohio Trust Code.
55. The Trustee has violated the Ohio Trust Code by refusing to timely respond to a request to meet and by refusing to meet with the City.
56. The Trustee has violated the Ohio Trust Code by failing to file a timely accounting or to request an extension to do so.
57. The Fund portfolio consists in part of three parcels of farmlands described as follows: two parcels in Mercer County, Section 12 and 13 Center Township, Ohio consisting of 180 acres and farm buildings located at 8735 Mercer Auglaize County Line Road, and one 40 acre parcel just north and adjacent to the 180 acre parcel; and one parcel in Auglaize County, Section 18, Noble Township, Ohio located at 17632 Mercer Line Road, consisting of 95 acres. The 180-acre parcel has farm buildings on it. There is no residence on any of the parcels.
58. All three parcels of farmland are still held in the name of the previous successor trustee, Citizens Commercial Bank & Trust. The Trustee has failed to file an Affidavit of Successor Trustee.
59. The Will of Ed. Bryson permits the Trustee to liquidate the real estate assets of the Trust. Such assets are not assets normally carried on the books of a trust if it is possible to sell such assets. Such assets are relatively cumbersome, risky and unproductive, earning a paltry estimated return of 2.73% per the 2017 accounting. However, the average annual net return over the 3-year period of the two latest accountings based on averaged fair market value of the farmlands is .58%. In the 58th partial account (as amended), the farmlands comprise 34.3% of the portfolio, almost equal to the equities in the Fund.
60. The most recent amended 58th partial accounting filed September 11, 2019 reveals the return on the farmlands is fallow. The Trustee has failed to disclose the terms of any lease for the farmlands, which is apparently referenced in said account as a transaction on October 3, 2017 valued at \$1. In the two-year period of the 58th partial account, the only income receipts shown for the farmlands is the sum of \$28,084.00, with total expenses of \$27,777.15 (taxes, insurance, maintenance, and farm management), a two-year net profit of \$306.85, a net annual return of .0047% on the \$3.285 million farmlands. Yet, the account shows a current annual yield of 2.43%, which is clearly false. The gross profit is approximately .85%. Accordingly, based on the gross receipts received by the Trust from the lease, it appears that the lease is not productive, and the tenant may be receiving substantial and material preferential treatment on the lease terms while the Trust receives very little. Upon information and belief, the City alleges that is the case.

61. The Trustee, upon information and belief, has taken no action to liquidate the farmlands in violation of its duties to properly invest the assets of the Trust. The Trustee has violated the Ohio Trust Code and the Ohio Prudent Investor Act by failing to liquidate the farmlands and invest the proceeds.
62. The Trustee has breached its fiduciary duties under the Ohio Trust Code and otherwise under Ohio law to wisely and prudently invest the assets of the Trust and by its failure to sell the farmland, all in violation of Chapter 5809 of the Revised Code. In addition, around fifty-five percent (55%) of the Fund is invested in farmland, cash and fixed income investments, a composition of investments which is not economical and not a diversification of the Fund that is beneficial to the City and to sustainability of the Fund, as required by the Prudent Investor Act and by the common law.
63. The Trustee has committed serious, flagrant breaches of its fiduciary duties under the Ohio Trust Code and otherwise under Ohio law to place the interests of the beneficiary before those of the Trustee. The Trustee has failed and refused to promptly respond to requests for information, to meet and communicate with the beneficiary, to provide information about the Trust (such as tax returns) requested by the City so that the beneficiary can protect its interest, to file the court-ordered account due on July 31, 2019, and to otherwise act diligently in carrying out its duties and responsibilities as Trustee as alleged in this Complaint. Such refusal by the Trustee to communicate and address the beneficiary's interests renders the Trustee unfit and incapable of serving as Trustee. By acting in such manner, the Trustee has rendered the City's best interests subservient to the interests of the Trustee and caused damage to the City in amounts to be proven at trial.
64. The Trustee, through gross negligence, reckless indifference and/or disregard of its duties, neglect, unwillingness, persistent failure to administer and manage the Trust effectively, or otherwise, has acted or failed to act in a manner which is not in the best interests of the City or the administration, management and investment of the Trust. In addition, the Trustee has acted in bad faith by intentionally refusing to provide and not disclosing material information to the City and refusing to meet with the City.
65. The Trustee's violations and breaches of fiduciary duties and The Prudent Investor Act are continuing and constitute exceptions to the 58th partial account and previous accounts of the Trustee.
66. The Ohio Probate Code Section 2109.24 applies to testamentary trusts.
67. The interest of the Trust demands the removal of the Trustee and the Court has discretion to remove the Trustee and should do so pursuant to the Probate Code.
68. Removal of the Trustee pursuant to Section 5807.06 (B) serves the best interests of the City and the citizens of Celina, the intended recipients of the benevolence of Ed L. Bryson.

69. The Court has authority under the Ohio Trust Code to remove the Trustee and should remove the Trustee and grant the Plaintiff remedies for the breaches in accordance with Chapter 5810 of the Ohio Trust Code and Ohio law.
70. The merger and termination of the Trust as requested in the previous Claims for Relief will accomplish the reformation of the Fund and replace the Trustee with a public charity skilled in managing and investing the assets of the Fund and carrying out the fiduciary duties owed to the City and the residents of Celina, Ohio.

Fifth Claim for Relief
Order for Sale of Real Estate

71. For its Fifth Claim for Relief herein, Plaintiff incorporates each and every previous allegation of the Complaint as if fully rewritten herein.
72. The sale of the farmlands should have occurred long ago, yet the Trustee continues to hold said real estate, contrary to the mandates of the Prudent Investor Act.
73. Plaintiff requests that the Court order that the recipient of the Fund has full power and authority to sell the real estate (farmlands) to advance and sustain the gift of the Ed L. Bryson Fund.

WHEREFORE, Plaintiff, The City of Celina, Ohio prays for judgment against the Defendant, First Financial Bank, as follows:

- 1) that the assets of the Bryson Trust be merged into the Dayton Foundation, a public charity, with Fund performance and discretionary distributions to be coordinated through a committee-advised fund or other mechanism that permits local involvement;
- 2) that the Court issue an order to the Trustee to transfer all assets in the Fund to the public charity to accomplish the merger and to take all actions necessary to accomplish the same and wind up the Trust and file a final accounting;
- 3) that the Court confirm for the recipient of the Fund that the testator's intent permits distribution of principal of the Fund as well as income of the Fund to the City for the broad purposes of parks and recreation for all of the residents of Celina, Ohio, as previously recognized and authorized by the Court, and that further orders of the Court to administer and distribute the Fund will not be needed;
- 4) that the Court order that upon completion of the merger, the Trust and the Trustee's services be terminated due to such merger, as such services are no longer necessary or proper;
- 5) that the Court grant the doctrine of *cy pres*, modification or deviation to the extent necessary to accomplish such merger and termination of the Trust and the intent of the testator, Ed. Bryson, as determined by the previous orders of this Court "to provide wholesome recreation for all of the residents of Celina, Ohio which by its very nature constitutes a charitable trust;"

6) that the Court order the appraisal of the farmlands held in the Fund, and grant a declaratory judgment that the recipient of the farmlands pursuant to the merger has authority under the terms of the Trust to accomplish the sale;

7) that if the Court does not terminate the Trust and merge it with the public charity, that the Court remove the Trustee, First Financial Bank, and replace it with another Trustee and order the sale of the farmlands;

8) that the Court find that Defendant, First Financial Bank has breached its fiduciary duties to the sole beneficiary, The City of Celina, Ohio and determine the remedies and assess any damages resulting from the same; and that the Court find and determine that the Trustee has breached the Ohio Prudent Investor Act and determine the damages for such breach;

9) that the Court grant the Plaintiff reasonable attorney fees and assess them to Defendant, First Financial Bank and determine that no attorney fees for First Financial Bank with respect to this action shall be charged to the Trust Fund; and

10) that the Court grant the Plaintiff such other and further relief, legal and equitable, to which Plaintiff may be entitled.

Respectfully submitted,



Edward M. Smith, Esq. (#0010272)

Attorney for Plaintiff

Nolan, Sprowl & Smith

500 Performance Place

109 N. Main Street

Dayton, Ohio 45402

edsmith@nsslawyers.com

(937) 228-7104 Telephone

(937) 260-4201 Facsimile



Jack A. Pook, Esq. (#0098337)

Attorney for Plaintiff

500 Performance Place

109 N. Main Street

Dayton, Ohio 45402

jpook@nsslawyers.com

(937) 228-7104 Telephone

(937) 260-4201 Facsimile

Last Will and Testament

10-11-1990

A

FILED

SEP 27 2019

2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

IN THE NAME OF THE BENEVOLENT FATHER OF ALL: I, Ed. L. Bryson being of sound and disposing mind and memory and considering the uncertainties of life, do make, ordain and publish this to be my last will and testament, hereby revoking and declaring null and void all other last wills and testament by me heretofore made.

ITEM ONE - It is my will and desire that all my just and lawful debts be paid by my executors hereinafter named as soon after my demise as they may conveniently do so, including estate and inheritance taxes, from the source best available out of the assets of my said estate, and it is my will and desire that no bequest or devise hereinafter made be charged with the determination of any inheritance or estate's tax.

ITEM TWO - I give and bequeath to Erie Sweigart, Robert W. Sweigart, Betty Sweigart Fishbaugh and Jack Sweigart, children of my esteemed friend, the late William Sweigart, each the sum of one hundred dollars, to be paid within one year from my demise.

ITEM THREE - I give and bequeath to Roscoe D. Riley, five shares of stock in The Commercial Bank Company, Celina, Ohio, and being the same stock as bequeathed to me by the will of his father, the late A. M. Riley, together with any future stock dividends thereon.

ITEM FOUR - It is my will and desire that the diamond ring which belonged to my deceased wife, Stella H. Bryson, be given to her niece, Dorothy Harms Matzinger, in accordance with the request of my said wife.

ITEM FIVE - I give, devise and bequeath to Gertrude Einfeldt as an appreciation for her faithful services while in my employ, the sum of fifteen hundred dollars, to be paid to her within two years from the date of my demise, and said bequest to bear no interest; and I also give to said Gertrude Einfeldt all of the abstracts on file in my office, together with typewriter, typewriter desk, safe, filing cabinets and such other office furniture as she may desire in the conduct of an abstract office in the event she may wish to carry on the same.

ITEM SIX - I give, devise and bequeath to Elmer Bryson and Lela M. Thompson and to the survivor upon the death of either of said parties, and his or her heirs and assigns forever, the brick dwelling property occupied by me at this time, together with all the furniture and contents therein; and also to include the bungalow dwelling as occupied by Guy Bryson, said buildings being situated on Lot Two Hundred (200) in the original plat to the Village of Celina, Ohio, and the same is devised to them in fee. However, it is my wish and desire that they shall permit Guy Bryson to occupy the dwelling on the west side of said lot where he now resides for and during his natural life without any charge or expense in connection therewith, together with the use of one half of the garage as situated thereon. This devise is made for the reason that it is impossible to make a division of said property because of the location of the garage and dwellings thereon; and I give and bequeath to Guy Bryson stocks, bonds or moneys to the amount of \$6000. in lieu of his interest in said real estate, to be paid in six annual instalments.

ITEM SEVEN - I give, devise and bequeath unto Roscoe D. Riley and Gertrude Einfalt as trustees in trust for the benefit of Elmer Bryson, Lela M. Thompson and Guy Bryson, all the remainder of my property, real, personal and mixed, wheresoever situated, with full power and authority to lease, rent, manage and control said property, collect the rents, issues and profits therefrom, pay the taxes thereon and make such repairs and improvements are necessary for the upkeep of said property, and by and with the consent of a majority of the aforesaid beneficiaries to mortgage or sell the whole or any part of said property as it may become

14
necessary to carry out the terms of said trust as hereinbefore set forth, and to execute notes, mortgages and deeds for said property, all without the intervention and approval of the Probate Court. It is my purpose and intention to create a continuing power in said trustees to either mortgage or sell the whole or any part of said property, in as ample a manner as I might have done in my lifetime, and the mortgagee, purchaser or purchasers are not required to see that the monies paid to said trustees shall be applied for the purposes provided in said trust. Said trust is created for and during the lifetime of Elmer Bryson, Lela M. Thompson and Guy Bryson, and to continue as much longer thereafter as may be necessary to carry out the provisions of said will; and said trustees are required to render to each of the aforesaid beneficiaries annually, a written statement of all receipts and expenditures in connection with the administration of said trust; said trust is created to relieve my said brothers and sisters, due to their advancing years, from the burden and cares of looking after said property, and the said Gertrude Einfalt is best qualified to look after the same by reason of her keeping the books relating to said property for several years and having knowledge of the transactions with farm tenants relating to the management of said property. It is my will that Guy Bryson shall assist in the management of the property and be paid his necessary expenses incident thereto.

Said trust is created further for the uses and purposes as follows: said trustees or successors shall from the rent, income, profits, sale or mortgage of said property, real, personal and mixed, pay monthly to each of my brothers and sister, viz: Elmer Bryson, Lela M. Thompson and Guy Bryson, the sum of one hundred and fifty dollars per month, beginning ninety days after the appointment of such trustees or executors, and continuing for and during the natural lives of said brothers and sister; and upon the death of the first one of said brother and sister, said sum of one hundred and fifty dollars per month as here tofore paid to him or her shall be divided equally between the survivors; and the last survivor shall receive the sum of four hundred and fifty dollars per month for and during his or her natural life.

It is my further wish and desire that my said trustees shall pay all taxes insurance, upkeep and repairs to the buildings on Lot Number Two Hundred as devised to Elmer Bryson and Lela M. Thompson out of the general fund and without any charge or deduction from the monthly sums as above set forth; and upon the death of said beneficiaries said trustees are to pay all expense incident to the last sickness and funeral expenses and erect a marker at the grave of each one, similar to the markers on the family plot in The North Grove Cemetery.

Upon the death of either of said trustees or the resignation of said trustees then the remaining trustee shall have full power and authority to do and perform any and all acts that have been invested jointly in said Roscoe D. Riley and Gertrude Einfalt, trustees herein named.

It is my will and desire that the farms on which the William Sweigart family resides shall not be sold unless it becomes necessary to consume the corpus of the estate in carrying out the purposes of the aforesaid trust.

ITEM EIGHT - It is my will and desire that at the death of the last one of my said brothers and sister, that said trust shall terminate and said trustees have full power and authority to convey the whole or any part of the unconsumed portions for the purpose of winding up my estate, and that out of the remainder thereof, the same shall be distributed as follows:

First - There shall be first paid to Minnie Bryson, the wife of Guy Bryson, if she be living at the termination of said trust, the sum of two thousand dollars, otherwise said bequest to lapse.

Second - There shall next be paid to Dorothy Harms Matzinger, if living, the sum of one thousand dollars, and if deceased, the bequest to lapse.

Third - There shall next be paid to Raymond Harms, if living, the sum of one thousand dollars, and if deceased, the said bequest to lapse.

Fourth - There shall next be paid to the Masonic Lodge of Celina, Ohio, the sum of five hundred dollars.

Fifth - There shall next be paid to The North Grove Cemetery Association, the sum of one thousand dollars, for the upkeep of the Bryson family lot and urns thereon.

Sixth - It is my will and desire that any remainder of my estate

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTE

15
not hereinbefore disposed of shall be paid to The Commercial Bank Company of Celina, Ohio, for the use and benefit of the Public Library Grounds in Mercelina Park, Celina, Ohio, or to assist in the construction of a Public Swimming Pool by said city; said The Commercial Bank Company to determine the amount and manner in which said funds shall be expended for said civic improvement.

ITEM TEN - I hereby appoint Roscoe D. Riley and Gertrude Einfalt also as executors of this my last will and testament, and hereby authorize and empower them to compromise, adjust, release and discharge any and all obligations owing to my estate, and to make full settlement of all debts and claims owing by my estate; and further authorize them if necessary, for the purpose of settling said estate to sell and convey any part of my property, without the intervention of the Probate Court, and to execute and deliver good and sufficient deeds for the premises so sold; and it is my wish and desire that my said executors be not required to give any bond for the administration of said estate, and further that said trustees be not required to give any bond for the management and conduct of the settlement of my said estate for the uses and purposes hereinbefore provided. In the event one of said executors should be deceased or should resign, then in such event the remaining executor shall have all the powers herein vested in said executors in the settlement of said estate.

IN TESTIMONY WHEREOF I have hereunto subscribed my name to this my last will and testament on this thirtieth day of January A. D. 1947.



Signed by the said Ed. L. Bryson as and for his last will and testament in our presence, and signed by us in his presence and at his request and in the presence of each other on this thirtieth day of January A. D. 1947.

Minnie Dwyer residing at Celina, Ohio
Roseann E. Paffenbarger residing at Celina, Ohio

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

10

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Last Will
and
Testament
of

Ed. L. Bryson.

Dated January 30, 1947.

Will Rec 26
Page 70

No. 14624 Doc. 20 Page. Issued 19 Filed 19

EXHIBIT

B

LETTERS OF AUTHORITY TO TRUSTEE

(TESTAMENTARY)

Revised Code, Sec. 2100.11, 2109.04

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTERThe State of Ohio, Mercer County.

To All to Whom These Presents May Come:

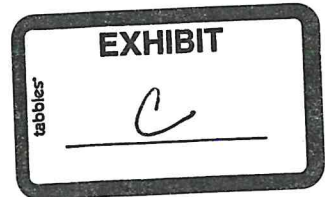
*Know ye, That the Probate Court of said County has appointed.....*ROSCOE D. RILEY and GERTRUDE EINFALT*Trustee.s. of the Estate of Ed. L. Bryson in respect to a charitable
trust created under Item Eight, paragraph sixth**..... ~~beneficiary~~ under the last
Will and Testament of Ed. L. Bryson deceased,
late of City of Celina
Mercer County, Ohio; and the said Trustee^s shall**1. Make and return to the Court, on oath, within the time required by law, a
true inventory of all moneys, goods, chattels, rights, credits and real estate belong-
ing to the trust, which come to ...their.....possession or knowledge;**2. Administer and distribute according to law and the will of the Testator,
all moneys, goods, chattels, rights, credits and real estate belonging to the trust,
which come to the possession of the Trustee^s or to the possession of any other person
for.....them.....;**3. Render upon oath, a just and true account of their administration at any
time or times required by the Court or the law;**Faithfully and honestly discharge the duties devolving upon.....them..... as
such Trustee.s.**IN TESTIMONY WHEREOF, I have hereunto affixed the seal of said Court**at Celina, Ohio, this 4th day of May, 1960..*

CERTIFICATE OF COPY

THE STATE OF OHIO, MERCER ss

*I, Mary Pat Zitter, Judge and ex-officio Clerk of the
Court of Common Pleas, Probate/Juvenile Division, within and
for the aforesaid County and State having the custody of the
Files, Journals and Records of said Court, do hereby certify
that the foregoing is a true and correct copy of the original
Letters of Authority to Trustee (dated May 4, 1960)**H. J. Henderson
Judge and ex-officio Clerk**Deputy Clerk**now on file in said office in the cause.**IN TESTIMONY WHEREOF, I have hereunto set my hand and
affixed the seal of said Court, at Celina, Ohio, this 26th
day of June A.D. 2019**MARY PAT ZITTER, Judge**Brenda Kaiser**Deputy Clerk*

18



IN THE PROBATE COURT OF MERCER COUNTY, OHIO.

No. 14624

IN THE MATTER OF THE WILL AND ESTATE OF ED. L. BRYSON, DECEASED.

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Hoscoe D. Riley and Gertrude Einfalt,
Trustees of the Estate of Ed. L. Bryson,
deceased,

PETITION FOR CONSTRUCTION
OF WILL

Plaintiffs,

vs.

July 14, 1960

Mark McElroy, Attorney General of the
State of Ohio; The City of Celina, Ohio,
and The Citizens Commercial Bank of
Celina, Ohio,

Defendants.

1. WILLS. West Ohio Digest, 439

The cardinal rule in will construction cases is to ascertain the intention of testator and give effect thereto,

2. West Digest, Sec. 481

In construing a Will, court will place itself in position of testator at time of execution of will giving effect to testator's intention as of date of death.

3. CHARITIES. West Ohio Digest, Sec. 37

Where instrument creating trust discloses a general charitable intent, under "cy pres doctrine" the trust will not fail by reason of failure of the specific gift made by the settlor, but court will direct the application of the gift to some charitable purpose within the general charitable intent of the settlor.

4. CHARITIES. West Ohio Digest, Sec. 37.

"Cy pres doctrine" means that where literal execution of the trusts of a charitable gift is inexpedient or impracticable, equity will execute them as nearly as it can according to original plan, but doctrine applies only where donor manifested general charitable intent.

5. CHARITY. 1. Page Ohio Digest, 491
GENERALLY

"Charity is not strained, is unlimited, is not alone aid to the needy, is rather, broad; means love, the brotherhood of man, and embraces, includes, all which aids mankind and betters his condition. Profanely, the chief end of man is a sound mind in a sound body. The one depends upon the other. Therefore everything which tends to produce this end aids mankind, is love, brotherhood---charity.

6. CHARITY. 3. Trusts Page's Ohio Digest

Trusts for charity are subject to the American Cy pres doctrine, a rule of property in this state, which allows them to be liberally construed and operated to the end that the intention of the donor may be carried out, when impossible or impracticable to the letter, as near as can be done under all circumstances. They are highly favored by the law and should receive such construction as will tend to preserve rather than destroy them

19

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

C.A. Stubbs, Attorney for Plaintiffs,
Celina, Ohio

Mark McElroy, Attorney General, State
of Ohio

OPINION

John D. Barricklow, Ass't. Attorney
General, State of Ohio, Columbus,
Ohio, Attorney for Defendant.

HINDERS, J.

- - - - -

This matter comes on to be heard on the Petition for Construction of the Will of Ed. L. Bryson, deceased, brought by Roscoe D. Riley and Gertrude Einfalt, Trustees under said Will, the answer of certain of the defendants, the evidence, brief of plaintiffs, and Memorandum of the Attorney General of the State of Ohio.

Ed. L. Bryson died January 11th., 1950; his Last Will and Testament was admitted to Probate in this Court, January 17th., 1950, and is recorded in Will Record 26, page 70, in Case No. 12419. Final Account filed by the Executors June 26, 1951, and Final Distribution approved October 23, 1951.

The Last Will and Testament reads as follows:

LAST WILL AND TESTAMENT

"IN THE NAME OF THE BENEVOLENT FATHER OF ALL: I, Ed. L. Bryson being of sound and disposing mind and memory and considering the uncertainties of life, do make, ordain and publish this to be my last will and testament, hereby revoking and declaring null and void all other last wills and testament by me heretofore made.

ITEM ONE - It is my will and desire that all my just and lawful debts be paid by my executors hereinafter named as soon after my demise as they may conveniently do so, including estate and inheritance taxes, from the source best available out of the assets of my said estate, and it is my will and desire that no bequest or devise hereinafter made be charged with the determination of any inheritance or estate's tax.

ITEM TWO - I give and bequeath to Erie Sweigart, Robert H. Sweigart, Betty Sweigart Fishbaugh and Jack Sweigart, children of my esteemed friend, the late William Sweigart, each the sum of one hundred dollars, to be paid within one year from my demise.

ITEM THREE - I give and bequeath to Roscoe D. Riley, five shares of stock in The Commercial Bank Company, Celina, Ohio, and being the same stock as bequeathed to me by the will of his father, the late A.M. Riley, together with any future stock dividends thereon.

ITEM FOUR - It is my will and desire that the diamond ring which belonged to my deceased wife, Stella H. Bryson, be given to her niece, Dorothy Harms Matzinger, in accordance with the request of my said wife.

20
FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

ITEM FIVE - I give, devise and bequeath to Gertrude Einfalt as an appreciation for her faithful services while in my employ, the sum of fifteen hundred dollars, to be paid to her within two years from the date of my demise, and said bequest to bear no interest; and I also give to said Gertrude Einfalt all of the abstracts on file in my office, together with typewriter, typewriter desk, safe, filing cabinets and such other office furniture as she may desire in the conduct of an abstract office in the event she may wish to carry on the same.

ITEM SIX - I give, devise and bequeath to Elmer Bryson and Lela M. Thompson and to the survivor upon the death of either of said parties, and his or her heirs and assigns forever, the brick dwelling property occupied by me at this time, together with all the furniture and contents therein; and also to include the bungalow dwelling as occupied by Guy Bryson, said buildings being situated on Lot Two Hundred (200) in the original plat to the Village of Celina, Ohio, and the same is devised to them in fee. However, it is my wish and desire that they shall permit Guy Bryson to occupy the dwelling on the west side of said lot where he now resides for and during his natural life without any charge or expense in connection therewith, together with the use of one half of the garage as situated thereon. This devise is made for the reason that it is impossible to make a division of said property because of the location of the garage and dwellings thereon; and I give and bequeath to Guy Bryson stocks, bonds or moneys to the amount of \$6000. in lieu of his interest in said real estate, to be paid in six annual instalments.

ITEM SEVEN - I give, devise and bequeath unto Roscoe D. Riley and Gertrude Einfalt as trustees in trust for the benefit of Elmer Bryson, Lela M. Thompson and Guy Bryson, all the remainder of my property, real, personal and mixed, wheresoever situated, with full power and authority to lease, rent, manage and control said property, collect the rents, issues and profits therefrom, pay the taxes thereon and make such repairs and improvements as are necessary for the upkeep of said property, and by and with the consent of a majority of the aforesaid beneficiaries to mortgage or sell the whole or any part of said property as it may become necessary to carry out the terms of said trust as hereinafter set forth, and to execute notes, mortgages and deeds for said property, all without the intervention and approval of the Probate Court. It is my purpose and intention to create a continuing power in said trustees to either mortgage or sell the whole or any part of said property, in as ample a manner as I might have done in my lifetime, and the mortgagee, purchaser or purchasers are not required to see that the monies paid to said trustees shall be applied for the purposes provided in said trust. Said trust is created for and during the lifetime of Elmer Bryson, Lela M. Thompson and Guy Bryson, and to continue as much longer thereafter as may be necessary to carry out the provisions of said will; and said trustees are required to render to each of the aforesaid beneficiaries annually, a written statement of all receipts and expenditures in connection with the administration of said trust; said trust is created to relieve my said brothers and sisters, due to their advancing years, from the burden and cares of looking after said property, and the said Gertrude Einfalt is best qualified to look after the same by reason of her keeping the books relating to said property for several years and having knowledge of the transactions with farm tenants relating to the management of said property. It is my will that Guy Bryson shall assist in the management of the property and be paid his necessary expenses incident thereto.

Said trust is created further for the uses and purposes as follows: said trustees or successors shall from the rent, income, profits, sale or mortgage of said property, real, personal and mixed, pay monthly to each of my brothers and sister, viz: Elmer Bryson, Lela M. Thompson and Guy Bryson, the sum of one hundred and fifty dollars per month, beginning ninety days after the appointment of such trustees or executors, and continuing for and during the natural lives of said brothers and sister; and upon the death of the first one of said brother and sister, said sum of one hundred and fifty dollars per month as heretofore paid to him or her

21
FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

shall be divided equally between the survivors; and the last survivor shall receive the sum of four hundred and fifty dollars per month for and during his or her natural life.

It is my further wish and desire that my said trustees shall pay all taxes insurance, upkeep and repairs to the buildings on Lot Number Two Hundred as devised to Elmer Bryson and Lela M. Thompson out of the general fund and without any charge or deduction from the monthly sums as above set forth; and upon the death of said beneficiaries said trustees are to pay all expense incident to the last sickness and funeral expenses and erect a marker at the grave of each one, similar to the markers on the family plot in The North Grove Cemetery.

Upon the death of either of said trustees or the resignation of said trustees then the remaining trustee shall have full power and authority to do and perform any and all acts that have been invested jointly in said Roscoe D. Riley and Gertrude Einfalt, trustees herein named.

It is my will and desire that the farms on which the William Sweigart family resides shall not be sold unless it becomes necessary to consume the corpus of the estate in carrying out the purposes of the aforesaid trust.

ITEM EIGHT - It is my will and desire that at the death of the last one of my said brothers and sister, that said trust shall terminate and said trustees have full power and authority to convey the whole or any part of the unconsumed portions for the purpose of winding up my estate, and that out of the remainder thereof, the same shall be distributed as follows:

First - There shall be first paid to Minnie Bryson, the wife of Guy Bryson, if she be living at the termination of said trust, the sum of two thousand dollars, otherwise said bequest to lapse.

Second - There shall next be paid to Dorothy Harms Matzinger, if living, the sum of one thousand dollars, and if deceased, the bequest to lapse.

Third - There shall next be paid to Raymond Harms, if living, the sum of one thousand dollars, and if deceased, the said bequest to lapse.

Fourth - There shall next be paid to the Masonic Lodge of Celina, Ohio, the sum of five hundred dollars.

Fifth - There shall next be paid to The North Grove Cemetery Association, the sum of one thousand dollars, for the upkeep of the Bryson family lot and urns thereon.

Sixth - It is my will and desire that any remainder of my estate not hereinbefore disposed of shall be paid to The Commercial Bank Company of Celina, Ohio, for the use and benefit of the Public Play Grounds in Mercelina Park, Celina, Ohio, or to assist in the construction of a Public Swimming Pool by said city; said The Commercial Bank Company to determine the amount and manner in which said funds shall be expended for said civic improvement.

ITEM TEN - I hereby appoint Roscoe D. Riley and Gertrude Einfalt also as executors of this my last will and testament, and hereby authorize and empower them to compromise, adjust, release and discharge any and all obligations owing to my estate, and to make full settlement of all debts and claims owing by my estate; and further authorize them if necessary, for the purpose of settling said estate to sell and convey any part of my property, without the intervention of the Probate Court, and to execute and deliver good and sufficient deeds for the premises so sold; and it is my wish and desire that my said executors be not required to give any bond for the administration of said estate, and further that said trustees be not required to give any bond for the management and conduct of the settlement of my said estate for the uses and purposes hereinbefore provided.

In the event one of said executors should be deceased or should resign, then in such event the remaining executor shall have all the powers herein vested in said executors in the settlement of said estate.

IN TESTIMONY WHEREOF I have hereunto subscribed my name to this my last will and testament on this thirtieth day of January A.D. 1947.

ED L. BRYSON

Signed by the said Ed. L. Bryson as and for his last will and testament in our presence, and signed by us in his presence and at his request and in the presence of each other on this thirtieth day of January A.D. 1947.
MINNIE DWYER, residing at Celina, Ohio.

ROSEANN E. PFEFFENBERGER, Residing at Celina, Ohio. "

On April 12th., 1951, the Executors filed a Petition for Construction of the Will, under Case No. 12419, with reference to paragraph three of Item Seven thereof, and the agreement thereto attached. The prayer of said petition reads as follows:

"The Plaintiff is in doubt as to the true construction of said Will in the following particulars, and can not safely proceed without the direction of the Court:

Paragraph three of Item Seven of said Will is as follows:

"It is my further wish and desire that my said trustees shall pay all taxes, insurance, upkeep and repairs to the buildings on Lot Number Two Hundred as devised to Elmer Bryson and Lela Thompson but of the general fund and without any charge or deduction from the monthly sums as above set forth; and upon the death of said beneficiaries said trustees are to pay all expense incident to the last sickness and funeral expenses and erect a marker at the grave of each one, similar to the markers on the family plot in The North Grove Cemetery."

"Upon the basis of this paragraph and upon search of the law by the attorney for the estate the agreement hereto attached was entered into as being in compliance with the interpretation of the Ohio Law. The Executors therefore pray that such payments be approved as complying with the terms of said Will.

Further: the last part of Item I in said Will reads "and it is my will and desire that no bequest or devise hereinafter made be charged with the determination of any inheritance or estate's tax." Inasmuch as under Item Six and Item Seven of said will expenses of and payments to Lela Thompson and Guy Bryson are to be made out of income or principal if necessary, it is petitioned that such payments be considered legacies under Item One of said Will and that any income tax payable thereon be considered as inheritance tax and payment of said income tax by the Executors be approved."

The Agreement filed with the Petition for Construction reads as follows:

"On interpretation of The Last Will and Testament of Ed. L. Bryson, deceased. This agreement is mutually entered into by and between Guy Bryson and Lela Thompson, beneficiaries and Roscoe D. Riley and Gertrude Einfalt, Executors and Trustees, under the last will and testament of Ed. L. Bryson, deceased.

Paragraph three of Item Seven of said Will is as follows:-

"It is my further wish and desire that my said trustees shall pay all taxes, insurance, upkeep and repairs to the buildings on Lot Number Two Hundred as devised to Elmer Bryson and Lela M. Thompson but of the general fund and without any charge or deduction from the monthly sums as above set forth; and upon the death of said beneficiaries said trustees are to pay all expenses incident to the last sickness and funeral expenses and erect a marker at the grave of each one, similar to the markers on the family plot in the North Grove Cemetery."

23
FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

It is hereby mutually agreed and understood by the parties hereto that the interpretation of the phrase "upkeep and repairs to the buildings on Lot Number Two Hundred" shall include the following items:

1. Any needed repair and upkeep to the buildings, walks, drive and lawn.
2. Labor for removing and installing storm windows and screens.
3. Labor for cleaning out spouting.
4. Labor for cleaning windows.
5. Labor for taking care of lawn, shrubs and trees.
6. Labor for cleaning off walks and driveways.
7. To pay all fuel (coal and oil) and gas bills.

The above items apply to all the buildings on said lot two hundred. It is mutually agreed and understood that the beneficiaries, Guy Bryson and Lela Thompson, will not contract any major bills, other than current bills, without the approval of the trustees, Roscoe D. Riley and Gertrude Einfalt.

Signed this 1st. day of August, 1950.

/s/ Guy Bryson
/s/ Lela M. Thompson
/s/ Roscoe D. Riley
/s/ Gertrude Einfalt "

Waiver of summons was duly signed by all of the defendants as follows: "Dorothy Harms Matzinger; Village of Celina, Ohio, by Lee R. Dabbelt, Solicitor; Masonic Lodge of Celina, by D.B. Spangler, Secy.; The North Grove Cemetery Association, by A.W. Nickel; Lela M. Thompson; Guy Bryson; Minnie Bryson.

ORDER ON CONSTRUCTION OF WILL was filed May 12th, 1951 as follows: (Caption Omitted)

"This day this cause came on for hearing on the petition of the plaintiff asking the direction and judgment of the Court in construing the will of Ed. L. Bryson, deceased, and upon certain questions presented in said petition.

The Court finds that all interested parties have been served with summons as provided by law or have entered their appearance herein and that the following defendants have filed answers to said petition:- None

And thereupon, the Court after careful consideration finds and adjudge that the true intention and construction of said will is as follows, to-wit:--

Under Item Seven the executors are authorized under "upkeep and repairs to the buildings on Lot Number Two Hundred" to pay the following items:-

1. Any needed repair and upkeep to the buildings, walks, drive and lawn.
2. Labor for removing and installing storm windows and screens.
3. Labor for cleaning out spouting.
4. Labor for cleaning windows.
5. Labor for taking care of lawn, shrubs and trees.
6. Labor for cleaning off walks and driveways.
7. To pay all fuel (coal and oil) and gas bills.

Further under Item one "inheritance or estate's tax" be interpreted to include payment of income tax of Lela Thompson and Guy Bryson for income received under Item seven of said will.

/s/ John Mesarvey, Probate Judge "

FILED
SEP 27 2019
 MERCER COUNTY
 PROBATE COURT
 JUDGE MARY PAT ZITTER

On July 9th, 1951, under Case No. 12689 of this Court, In the Matter of the Trust Created by the Will of Ed. L. Bryson, deceased, Application for the appointment of Testamentary Trustees was filed by Roscoe D. Riley and Gertrude Einfalt, who were designated as such Trustees under the Will, said Testator having expressed a wish that said Trustees may execute the Trust without Bond; the Court thereupon appointed them as such Trustees.

The second paragraph of ITEM SEVEN of the Will reads as follows:

"Said trust is created further for the uses and purposes as follows: said trustees or successors shall from the rent, income, profits, sale or mortgage of said property, real, personal and mixed, pay monthly to each of my brothers and sister, viz: Elmer Bryson, Lela M. Thompson and Guy Bryson, the sum of one hundred and fifty dollars per month, beginning ninety days after the appointment of such trustees or executors, and continuing for and during the natural lives of said brothers and sister; and upon the death of the first one of said brother and sister, said sum of one hundred and fifty dollars per month as heretofore paid to him or her shall be divided equally between the survivors; and the last survivor shall receive the sum of four hundred and fifty dollars per month for and during his or her natural life."

Elmer Bryson predeceased the Testator, Nov. 16, 1949; his estate was administered and settled under Case No. 12381 of this Court; Lela M. Thompson died March 6, 1954 and her estate was administered and settled under Case No. 13245 of this Court; Guy Bryson died Aug. 17, 1959, and his estate was administered and settled under Case No. 14454 of this Court. The three estates of the trust beneficiaries were settled in accordance with the provisions of the second paragraph of ITEM SEVEN of the will as above set forth, the Trustees having complied with the same.

On May 4th., 1960, Roscoe D. Riley and Gertrude Einfalt, filed their application under Case No. 14624 of this Court, with reference to the Estate of Ed. L. Bryson, deceased (Case No. 12419) and as successors to Roscoe D. Riley and Gertrude Einfalt, Trustees of the Testamentary Trust under the Will of Ed. L. Bryson, (Case No. 12689) as trustees under ITEM EIGHT of said Will, and in connection with said application, a certified copy of the Resolution of the Board of Directors of The Citizens Commercial Bank, Celina, Ohio, was filed, which reads as follows:

15

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

RESOLUTION OF
THE BOARD OF DIRECTORS
THE CITIZENS COMMERCIAL BANK
Celina, Ohio.
May 3, 1960

RESOLVED: That whereas the Will of Ed. L. Bryson, Celina, Ohio, provided in Paragraph Sixth of ITEM EIGHT as follows:

"Sixth: It is my will and desire that any remainder of my estate not heretofore disposed of shall be paid to The Commercial Bank Company of Celina, Ohio, for the use and benefit of the Public Play Ground in Mercelina Park, Celina, Ohio, or to assist in the construction of a public swimming pool by said city; said The Commercial Bank Company to determine the amount and manner in which said funds shall be expended for said civic improvement."

That whereas The Commercial Bank Company was succeeded by The Citizens Commercial Bank of Celina, Ohio.

That whereas The Citizens Commercial Bank of Celina, Ohio, does not have trust powers as part of its purpose clause in the articles of incorporation, and cannot act in a trust capacity with reference to the Estate of Ed. L. Bryson, deceased.

Whereas said The Citizens Commercial Bank is ready and willing to act in an advisory capacity to trustees of the Ed. L. Bryson Estate appointed by the Probate Court of Mercer County, Ohio.

Be it therefore resolved that this The Citizens Commercial Bank of Celina, Ohio, recommend to Homer J. Hinders, Probate Judge of Mercer County, Ohio, the appointment of Roscoe D. Riley and Gertrude Einfalt as trustees for the Estate of Ed. L. Bryson, for the purpose of carrying out the terms of Paragraph Sixth, Item Eight, in the Will of Ed. L. Bryson, deceased.

THE CITIZENS COMMERCIAL BANK

By Roscoe D. Riley,
President

By L.J. Hierholzer,
Secretary

May 4, 1960

This is to certify that the above is a true copy of Resolution passed by the Board of Directors of The Citizens Commercial Bank, Celina, Ohio, on May 3, 1960.

L.J. HIERHOLZER
L.J. Hierholzer, Secretary

24

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

The necessity for the foregoing Resolution is evidenced by the following copy of the communication from the Superintendent of Banks, of the State of Ohio, as filed in this Court, May 4, 1960:

"DEPARTMENT OF COMMERCE
DIVISION OF BANKS
65 South Front St.
Columbus, O.

August 28, 1959

Mr. C.A. Stubbs,
108 W. Market St.,
Celina, O.

Dear Mr. Stubbs:

Reference is made to our conversation in my office this morning relative to the provisions of the Will of Ed. L. Bryson, and more specifically in regard to the sixth paragraph of Item Eight of said Will, whereby there was a provision for the creation of a fund to be used for the benefit of public playgrounds, etc., and that the Commercial Bank, Celina, Ohio (now The Citizens Commercial Bank, Celina, Ohio), was to be the custodian of such funds.

It is the opinion of this office that the creation of such a fund would be a trust operation and as The Citizens Commercial Bank does not have trust powers as part of its purpose clause in the articles of incorporation, that the bank could not act in a strict sense to administer this fund.

This office would interpose no objection should the Court appoint one or more individuals as trustees of such a fund and name the bank as a depository of the funds, specifying the terms and conditions under which such trustees would operate but which would be in a manner not to be construed as violating the trust laws of the State of Ohio.

Very truly yours,

R.H. WILLETT

Superintendent of Banks

"

21

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Waiver of Notice and Consent to the appointment of the Applicants, Roscoe D. Riley and Gertrude Einfalt, was filed by The City of Celina, by D.E. Spangler, Mayor, R.W. Barkley, Service Director, and Max J. Lincoln, President of the Council, and also by The Citizens Commercial Bank, Celina, Ohio.

At this point, the Court cannot refrain from complimenting both counsel and applicants for appointment as Trustees of the estate of Ed L. Bryson, deceased, under ITEM EIGHT OF THE WILL, for their prior service as Executors of the estate in Case No. 12419, and as Testamentary Trustees in Case No. 12689, their duties being both arduous and voluminous and in complete compliance of the Will.

In view of the fact that Ed. L. Bryson, UNDER ITEMS SEVEN, EIGHT AND TEN, of his last will and testament, placed implicit confidence in Roscoe D. Riley and Gertrude Einfalt, both as Executors and Trustees, without Bond, and their services having been completely satisfactory and in compliance with the Will for more than ten years last past, the Court feels obligated to them, and for that reason, they have been appointed and qualified without bond and have assumed their duties under ITEM EIGHT of the Will.

On May 21, 1960, the Trustees as heretofore appointed filed their Petition for Construction of the Will of Ed. L. Bryson, as follows:

"Probate Court, Mercer County, Ohio.

Roscoe D. Riley and Gertrude Einfalt,
Trustees of the estate of Ed. L.
Bryson, deceased,

No. 14624

Plaintiffs,

vs

Petition for the
Construction of Will

Mark McElroy, Attorney General of the
State of Ohio.
The City of Celina, Ohio,
The Citizens Commercial Bank of
Celina, O.

Defendants.

The Plaintiff represents that on the 11th day of January, 1950, one Ed. L. Bryson died leaving a Will, which was duly admitted to probate by the Probate Court of Mercer County, Ohio, and on the 4th day of May, 1960, Letters of Trusteeship were issued by said Court to Roscoe D. Riley &

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Gertrude Einfalt, who are now the duly qualified and acting trustees of said estate.

That a copy of said Will, marked Exhibit A, is attached hereto and made a part hereof.

(Said Copy is already shown in this Opinion)

That the following defendants are the legatees and devisees named in said Will:

<u>Name</u>	<u>Address</u>
The City of Celina	Celina, Ohio

That the following defendants claim to have an interest in said estate as creditors:

<u>Name</u>	<u>Address</u>
-------------	----------------

The Plaintiff is in doubt as to the true construction of said will in the following particulars, and can not safely proceed without the direction of the Court:-

Paragraph Sixth of ITEM EIGHT of the will of Ed L. Bryson, deceased reads as follows:

Sixth - It is my will and desire that any remainder of my estate not hereinbefore disposed of shall be paid to The Commercial Bank Company of Celina, Ohio, for the use and benefit of the Public Play Grounds in Mercelina Park, Celina, Ohio, or to assist in the construction of a Public Swimming Pool by said city; said The Commercial Bank Company to determine the amount and manner in which said funds shall be expended for said civic improvement.

The above clause creates a charitable trust by the words "for the use and benefit of the Public Play Grounds in Mercelina Park, Celina, Ohio." The method of carrying out the provisions of this will in respect to confining the benefits to the play grounds in Mercelina Park is wholly impractical although the testator's charitable intent for the money to be used for playgrounds is clear. The petitioners herein pray that the Court so construe the will as to apply to play grounds of a public nature anywhere in Celina, and environs.

Further, the above clause in the will creates a further charitable trust to "or assist in the construction of a Public Swimming Pool by said City". Since Celina now has a municipal swimming pool, the petitioners

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

herein pray that the Court so construe the above clause as to permit said funds to be used for the maintainance as well as to assist in the construction of a public swimming pool.

Further that the above paragraph Sixth of Item Eight be interpreted so that said funds may be used for play grounds and/or a public swimming pool.

The testator, Ed L. Bryson was a person of broad vision and would want the play ground and swimming pool in the community of Celina, Ohio, to expand and carry on recreation indefinitely. The above requested construction would accommodate the charitable trust to changed conditions, and which could not have been known to the testator at the time of making his will.

Plaintiff, therefore, prays the judgment and direction of the Court in regard to the true construction of said Paragraph Sixth, Item Eight in said Will.

Roscoe D. Riley

Gertrude Einfalt

The State of Ohio, Mercer County, SS.

Roscoe D. Riley and Gertrude Einfalt the within named Plaintiffs being duly sworn, says that the various matters and things set forth in said petition are true, to the best of their knowledge and belief.

Roscoe D. Riley

Gertrude Einfalt

Sworn to before me and signed in my presence, this 16th day of May
A.D. 1960.

(SEAL)
C.A. Stubbs, Notary Public,
State of Ohio.
My commission expires Aug. 7, 1960

C.A. Stubbs

WAIVER OF SUMMONS

We, the undersigned parties Defendant to the Petition in the above entitled action, do each of us hereby waive the issuing and service of Summons, and voluntarily enter our appearance as such Defendants.

May 16 A.D. 1960.

30

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

THE CITY OF CELINA, OHIO.

By D.B. Spangler, Mayor

R.W. Barkley, City Manager

MARK MCELROY, JDB
Mark McElroy
Attorney General
State of Ohio.

Max J. Lincoln, President of Council

THE CITIZENS COMMERCIAL BANK

By Roscoe D. Riley, President

JOHN D. BARRICKLOW
John D. Barricklow
Ass't. Attorney General

Louis J. Hierholzer, Secretary

The cardinal principle governing construction of wills is determination of testator's intention from words used by him in will.

Dean v. Hart, 23 O.L.A. 617; Pailor v. Schmiedel, 18 O.L.A. 106;
Skillman v. Skillman, 11 O.L.A. 427; Fitzgerald v. Bell, 6 Ohio
Supp. 119.

Wills are liberally construed to give effect to testator's intentions.

Wagner v. Schrems, 44 O.A.R., 44; Shively v. Ferrine, 67 N.E.,
32.

No one can doubt that the trust created under paragraph sixth of ITEM EIGHT of Testator's will, is a charitable one. The testator himself knew Celina, when it had no play ground under proper supervision, the only place the youth had for recreation were a few vacant lots, streets and alleys. The testator although childless throughout his married life, was interested in children, not only of Celina, but in fact, children everywhere, he loved to see them try their prowess in competitive games, and he assisted financially during his life time to satisfy his love and interest in children.

As stated in plaintiffs' petition, the total value of the trust estate as of April 20, 1966, amounted to \$541,596.74; the appraised value at the time of testator's death January 11, 1950, was fixed at \$232,521.23, an increase of \$309,075.51. The Court also recognizes the population of Celina as of April 1, 1950 was 5703, and as recently announced by the Census Bureau the population as of April 1, 1966, is 7646. Approximately 90% of this increase has been the birth of children, necessitating two elementary schools, and the town will need a new high school in the near future, all subsequent to the demise of testator.

31

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

With forty-three teams of soft ball and hard ball playing twice a week and practicing twice a week, and with a conservative estimate that some eight hundred children will be playing hard ball and soft ball, and over two hundred in tennis and other sports, the court is well aware of the fact that Mercelina Park cannot accommodate that number of participants the court is also cognizant of the fact that the school grounds at the two elementary schools and the present high school have greatly augmented the play ground facilities of Celina, but even these facilities although they may be sufficient at this time, cannot continue to be so.

All of these things and conditions the testator, although possessing a broad vision, could not, nor could any of the citizens of Celina, in 1950, have anticipated the population out burst of the late forties and the past fifties. If the testator were living today, he would be sadly disappointed with the trust estate created, and would have made liberal provisions to satisfy his desire to provide ample facilities for the children. The Court feels, as did the testator, that the future of America, beginning with his own Celina, depends upon its youth.

In *Gymnasium v. Edmondson*, 13 Nisi Prius, (W.S.) 491, the Court says this:

" "Charity" is not strained, is unlimited, is not alone aid to the needy; means love, the brotherhood of man, and embraces, includes all which aids mankind and betters his condition. Profanely, the chief end of man is a sound mind in a sound body. The one depends upon the other, cannot survive without the other. Therefore everything which tends to produce this end aids mankind, is love, brotherhood, charity."

Again there seems to be no question as to whether testator created a charitable trust. Suffice to say that the Court finds that a charitable trust was created.

In order to ascertain whether the prayer of plaintiffs' petition can be accepted by the Court as being within the spirit and intent of testator's will, it is necessary to determine whether the equitable doctrine of cy pres can be applied.

On page 123 of *Addams & Horsford*, Ohio Probate Practice, under note 3, we find the following statement:

"Cy pres doctrine means where the literal execution of the trusts of a charitable gift is inexpedient or impossible, equity will execute them as nearly as it can, according to the original plan, but this doctrine only applies where the testator has manifested a GENERAL INTENTION to give to charities."

32

The Court has already settled the question as to the charitable trust, since the testator herein is definite as to the intention to give to charities.

In Gearhart v. Richardson, 109 O.S. 418, the second paragraph of its syllabus reads as follows:

"2. Gifts for charitable purposes have always been favored in equity, and trusts created for such purposes are carried into effect upon broad principles of equity jurisprudence under circumstances where a purely private trust might fail."

14 L.R.A. (N.S.) 53 reads as follows:

"Trusts for public charitable purposes, being for objects of permanent interests and benefit to the public, and perhaps being perpetual in their duration, are upheld under circumstances under which private trusts would fail."

Again referring to the case of Gearhart v. Richardson, where the will provided a home for the poor in the farm dwelling. Here the Court ruled that actual "residence" at that farm home was not required, that the farm income was sufficient to maintain eligible aged and destitute residents of the township, in homes other than the farm home. The Court here cited McIntire v. Zanesville, 17 O.S. page 363:

"We must look deeper than the mere words of this donation, and, through them, see its spirit. We must inquire what the donor himself would now direct, had he lived to witness the present ALTERED CIRCUMSTANCES of the case."

An examination of the authorities discloses that there are two pre-requisites to the application of the equitable doctrine of cy pres; namely a failure of a specific gift made by the settlor and a general charitable intent disclosed in the instrument creating the trust. In such cases the trust will not fail, but the Court will direct the application of the gift to some charitable purpose which falls within the general charitable intention of the settlor. For a complete discussion Vol. 9 of the doctrine see Ohio Jurisprudence 2d. page 123; Restatement of the Law on Trusts, page 1203, Sec. 399.

In Niles Post No. 2074 of Veterans of Foreign Wars, Appellee v. Niles Memorial Hospital Ass'n. Appellant, 65 O.A.S. 238, the syllabus of the Court states:

"1. Under the doctrine of cy pres a trust created for the purpose of providing war relief during hostilities may be so altered as to allow the providing of relief to needy participants in the war and their dependents, after cessation of hostilities."

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Again in Craft Eryn. et al, Appellees v. Schroyer et al., Appellants
31 O.L.A., 254, the 12th paragraph of the syllabus is as follows:

"12. Where it appears that compliance with the terms of the trust is impossible, illegal, impracticable or inexpedient, or that owing to circumstances not known to the settlor and not anticipated by her, compliance would defeat or substantially impair the accomplishment of the purpose of the trust, the court, in the exercise of its general equity powers over the administration of the trust, will order a deviation."

In the case at bar, no such drastic action is deemed necessary, the cy pres doctrine being far more practicable.

In Murr v. Youse et al. 86 N.E. 2d. 788, Syllabi 7 and 8 read as follows:

"7. Charities

Where instrument creating trust discloses a general charitable intent, under "cy pres doctrine", the trust will not fail by reason of failure of the specific gift made by settlor, but court will direct the application of the gift to some charitable purpose which falls within the general charitable INTENTION of settlor."

"8. Charities.

"Cy pres doctrine" means that where literal execution of the trusts of a charitable gift is inexpedient or impracticable, equity will execute them as nearly as it can according to original plan, but doctrine applies only where donor manifested GENERAL CHARITABLE INTENT."

Another case in point is that of Cleveland Museum of Art, Plaintiff, v. O'Neill, Attorney General, Common Pleas Court Cuyahoga County, 82 O.L.A., 11 where the Court approved use of funds left for acquiring works of art, FOR A BUILDING ADDITION to house works of art so acquired, and with regard to Trusts had this to say:

"TRUSTS - (Abs. & C.J.) 128 - 2. Where the evidence shows that the purpose of the settlors in creating certain trust was the creation of an art museum through the acquisition of objects of art, which endure indefinitely for the benefit of the community at large, and the evidence further shows that due to the expansion of the collection there is a pressing and vital need for larger accommodations, in order that such objects may be permanently displayed, THE MONEY FROM SUCH TRUSTS MAY BE DIVERTED INTO A BUILDING FUND EVEN THOUGH THE PRIMARY PURPOSE OF THE TRUSTS WAS FOR THE COLLECTION OF WORKS OF ART, AND SUCH DEVIATION WILL NOT ACT TO CAUSE A REVERSION FOR NON-COMPLIANCE OF SUCH TRUSTS, SINCE THERE WILL BE NO FAILURE TO OBSERVE THE TERMS AND CONDITIONS IMPOSED BY THE TRUSTS, NAMELY THE MAINTENANCE OF AN OUTSTANDING ART MUSEUM."

Again in Kingdom et al., v. Record et al., No. 34005 Ashtabula County, 133 N.E. 2d. 921, the Court said:

34

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

"4. Charities. 30 - Charitable trusts must be construed so as to give them effect, if possible and carry out donor's general intention, when clearly manifested, even if form and manner pointed out by him cannot be followed."

The Court cannot refrain from quoting Vol. 4, Scott on Trusts, Section 370.2 at page 2644, as follows:

"Physical Training. A trust for educational purposes need not be limited to the training of the mind but may include training of the body. A trust to provide athletic facilities in a school is charitable. Such a trust is none the less charitable although it is not connected with a particular educational institution. Thus a bequest to a city to provide suitable playgrounds for children is charitable, as is also a trust to provide an annual field day for school children. A trust to maintain playgrounds or athletic fields for the public generally is a charitable trust, and it is immaterial that the enjoyment of the facilities thus afforded is not limited to children but extends to adults. Such trusts can be upheld not merely on the ground that they are educational, but also on the broader ground that they are a benefit to the community, particularly for the benefit of the underprivileged in the community." - ***

Again in Restatement of the Law "TRUSTS" Sec. 399, at page 1208, FAILURE OF PARTICULAR PURPOSE WHERE SETTLOR HAD GENERAL CHARITABLE INTENTION. THE DOCTRINE OF CY PRES.

If property is given in trust to be applied to a particular purpose, and it is or becomes impossible or impracticable or illegal to carry out the particular purpose, and if the settlor has manifested a more general intention to devote the property to charitable purposes, the trust will not fail but the court will direct the application of the property to some charitable purpose which falls within the general charitable intention of the settlor.

Again in Restatement of the Law. "TRUSTS", Ch. 11, Sec. 399, page 1213, we read the following:

"f. Initial and subsequent failure of particular purpose. If property is given in trust to be applied to a particular charitable purpose, and at the time when the property is given it is possible and practicable and legal to carry out the particular purpose, BUT SUBSEQUENTLY OWING TO A CHANGE OF CIRCUMSTANCES IT BECOMES IMPOSSIBLE OR IMPRACTICABLE OR ILLEGAL TO CARRY OUT THE PARTICULAR PURPOSE, it is easier to find a more general charitable intention of the settlor than it is where the particular purpose fails at the outset. The court can fairly infer an expectation on the part of the settlor that in course of time circumstances might so change that the particular purpose could no longer be carried out, and that in such case the settlor would prefer a modification of his scheme rather than that the charitable trusts should fail and the property distributed among his heirs who might be very numerous and only remotely related to him. The courts are therefore more ready to apply the doctrine of cy pres where the particular purpose fails at some time after the creation of the trust than they are where the particular purpose fails at the outset." * * *

FILED
SEP 27 2019
 MERCER COUNTY
 PROBATE COURT
 JUDGE MARY PAT ZITTER

163 American Law Reports, Annotated, under the heading "Cy Pres Doctrine", has this to say, with reference to Gearhart v. Richardson, 109 O.S. 418:

***"We think the rule to be well established in this country, in construing charitable trusts, that if the founder thereof describes in the instrument by which he creates the charitable trust the general nature thereof and names the class of beneficiaries, he may leave the details of its administration to be settled by the trustees under the guidance of a court of equity . . . and that where exact conformity to the plan of the person who has provided in his will for the charitable trust cannot be carried out in exact detail such object will be attained and duty performed with as close approximation to the original plan as is reasonably practicable, provided the same is in conformity and consistent with the charitable purposes named by the founder; that at least, a court of equity will not permit such trust to fail because of some slight deviation or change from the original plan, if the GENERAL PURPOSE named by the creator of the trust is still attained."

Vol. 10 American Jurisprudence at page 678, under Section 127,

"Title" AS DEPENDENT ON CHARITABLE INTENTION.

"127. Where the method of execution of a trust defined by the terms of the instrument creating it is impracticable or illegal, the trust will not be permitted to fail if the overriding purpose of the donor, that the property be devoted to charitable purposes regardless of the peculiar method of execution, is manifest from the instrument. Any other course would sometimes defeat the very purpose of the trust, disappoint just expectations, and destroy gifts of great public importance and utility. Therefore where a main charitable purpose is disclosed with reasonable clearness, directions of the donor relating to management of the trust, not intended as limitations, will be regarded as DIRECTORY ONLY, and NOT MANDATORY, if necessary to preserve the trust and carry out its leading purpose. In such cases, it will be presumed that specified details of management were meant to be governed by circumstances; and this whether they are either impracticable or illegal. Administrative duties may be varied, details changed and the main purpose carried out cy pres, or as nearly as possible according to the plan prescribed by the trust instrument."

Also Vol. 10 American Jurisprudence at page 682, Section 133:

"133. TO METHOD OF ADMINISTRATION.

If for any reason it should be impossible to administer a charitable gift by the method selected by the donor, the gift will not fail, but a court of equity will apply the cy pres doctrine and provide some other method of administering the charity to accomplish substantially the same result. Thus where the dominant purpose of the donor of a fund in trust is the founding of a school, but by his will he directs the income of the fund to be used for the payment of wages of the teachers, a court of equity will apply a part of the income to the necessary expenses of maintaining the school.

This principal is frequently applied in changing the location of a charity. Where a charitable gift is made for the purpose of establishing and maintaining a hospital, if the particular site selected by the donor for the hospital is unsuitable, a

360

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

court of equity will direct the erection of the hospital on a suitable location, for it will not be held that the donor intended that his charitable gift should utterly fail unless the hospital was erected on the exact site selected by him. Similarly, it has been determined that no condition, failure to comply with which causes the trust to fail, is imposed by a provision in a will creating a trust fund for the maintenance of a high school, free to all scholars of the town over twelve years of age, that the school "is to be kept within one hundred rods of the present townhouse."

If at the time a gift takes effect the trustee is incapable of taking and executing the trust, a court of equity acting under the cy pres doctrine will appoint another trustee to take and execute the terms of the trust.

As already noted, however the courts will not decree a radical change in the administration of a trust where the scheme devised by the donor is capable of being carried out."

In the case of *The City of Cincinnati et al., v. Andrew McMicken, et al.*, Vol. 6, O.C.C. 188, Charles McMicken provided in his will for a school, and college, of the highest character for white girls and boys, to be erected upon the premises on which he then resided in Cincinnati. The plaintiffs prayed the advice and direction of the Court as to whether they could remove the University of Cincinnati from its present site on the homestead of the testator, to a site of 40 acres donated to them by the Cincinnati, about one-half mile from the present location, and in said city, because of noises and smoke, etc., making it unsuitable for the purposes of a university.

Here the Court held: (Syllabus)

"1. That the desire and intention of the testator was to found a COLLEGE OF THE HIGHEST CHARACTER, but not to restrict the location to ONE spot. That if the site selected by the testator was at THAT TIME a proper one, but should for any reason THERE-AFTER become unsuitable, the trustees under the will would be authorized to erect buildings and conduct the institution on other suitable grounds. "

The case of *German Reformed Church v. Weikel*, Vol. 7, N.E. (New Series) page 377, is one in which the Court applied the trust in a manner most advantageous to the beneficiary.

The syllabus reads as follows:

"1. The fact that a gift is made to a particular religious denomination does not deprive it of its character as a public charity or eliminate it from the rule which applies to gifts for pious uses.

2. Where the gift is in the form of a parsonage, and the property enhances greatly in value and becomes unsuitable for its original purpose by reason of encroachments of

31

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

business, the church may sell the property and invest so much of the proceeds as is necessary to provide a new parsonage in another locality, and may treat the balance remaining on hand as a maintenance fund for keeping the newly acquired property in repair and making necessary improvements and paying taxes.

3. The purchaser of the property thus sold under the direction of the court is not bound to see to the application of the proceeds."

For a succinct definition for the Court's adoption of the cy pres doctrine, we turn to Professor John E. Sullivan, as recorded in 18 Ohio State Law Journal, 1957, second paragraph at page 202:

"Ohio courts seem to follow the traditional view that before the Cy Pres Doctrine can be applied by a court these three essentials must be present:

1. There must be a valid charitable trust and one that is invalid will not be cured by application of the Doctrine (Cy Pres).
2. It must be established that it is impossible or impracticable to carry out the specific purpose of the trust.
3. It must be established that the donor evinced a general charitable intent."

The Court's opinion thus far, by citations and annotations discloses this case to be one qualifying under the above essentials for the application of the Cy pres doctrine.

Coming now to the crux of the prayer of the petition of the trustees for construction of the trust created by the testator under Paragraph Sixth of ITEM EIGHT of the Will; the answers of The Attorney General of Ohio, The City of Celina, Ohio, and The Citizens Commercial Bank, Celina, Ohio, the Court, under the cy pres doctrine preserving the charitable trust, can and does determine that the general intent of the testator, Ed. L. Bryson, was to provide wholesome recreation for all of the residents of Celina, Ohio, which by its very nature constitutes a charitable trust.

The Court further determines that the words in the Will, "for the use and benefit of the Public Play Grounds in Mercelina Park, Celina, Ohio, or to assist in the construction of a Public Swimming Pool by said City" are words of description only, the Public Play Grounds in Mercelina Park, Celina, Ohio, were the only "Public Play Grounds" existent, and The City of Celina, having no public swimming pool when the will was executed.

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

At this time, Celina has a public municipal swimming pool, the Court has no difficulty in determining under the cy pres doctrine in order to comply as nearly as possible with the charitable trust, that the words in the will, "or to assist in the Construction of a Public Swimming Pool by said City", also include the maintenance of the pool.

The Court further determines that the mere fact that the Public Play Grounds in Mercelina Park, have since the trust was established become wholly inadequate, that this should not operate to defeat the testator's general intention to provide wholesome supervised recreation for all of Celina, so that the Court finally determines and authorizes the trustees to use the income from the trust for the use and benefit of public play grounds as now existing and as hereafter established and also for the maintenance of Public Swimming Pools all in Celina, Ohio, and environs contiguous thereto; any use of the principal of the trust to require a formal application and hearing before the Court.

Counsel may draw the proper Entry.

ADDENDUM

It is regretful indeed, that Mercer County has no Charitable Corporation Foundation, to which public spirited citizens could leave trust funds, in the amount of their own choosing, to be applied to the cause of their choice, and in that manner relieve themselves of the appointment of temporary trustees, whose life span is, of course limited, for the Foundation would endure, and the funds continually applied, without a multiplicity of cases in the local Probate Court. May the Court suggest that such a Foundation be established to give an opportunity to those whose wealth and public spirit may have a well regulated and legal atmosphere for the acceptance of their gifts.

63

FILED

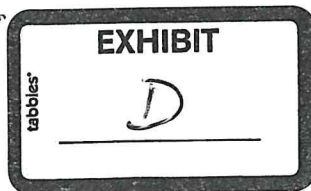
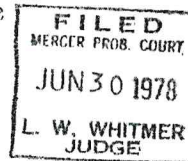
SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

FILED
JUL 14 2019

Vol 146 Int 188

Letters of Authority to Trustee



The State of Ohio, Mercer County.

To All to Whom These Presents May Come:

Know Ye, that the Judge of the Probate Court of the County of Mercer, and State of Ohio, has appointed, and by these presents does appoint David K. Riley and Gertrude Einfalt as Trustee of Trust created by Item 8 of the Will of Ed L. Bryson and has subsequently appointed Citizens Commercial Bank & Trust Company as Additional Trustees (Successors to Roecoe D. Riley and Bob L. Wurster)

hereby granting to said Trustee all and singular the power necessary and by law required to enable them fully to do, act and perform all and singular the duties of Trustee as aforesaid, according to the statute in such case made and provided.

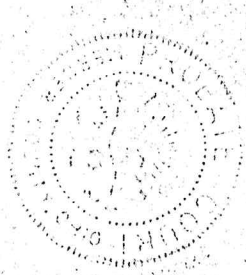
IN TESTIMONY WHEREOF, I have hereunto affixed

my signature and the seal of said Probate Court at

Celina Ohio, this 30th

day of June 1 A. D. 19 78

L. W. Whitmer
Judge of the Probate Court



The State of Ohio, _____ County.

I, Sole Judge and ex-officio Clerk of the Probate Court, in and for said County of _____ do hereby certify that the foregoing is a true copy of the original Letters of Trusteeship granted in the premises by said Court, and remaining on file and of record therein. And I further certify that said Letters are unrevoked and at the date hereof are in full force and effect.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at _____ Ohio.

CERTIFICATE OF COPY

THE STATE OF OHIO, MERCER ss this _____ day of _____ 19 _____

I, Mary Pat Zitter, Judge and ex-officio Clerk of the Court of Common Pleas, Probate/Juvenile Division, within and for the aforesaid County and State having the custody of the Files, Journals and Records of said Court, do hereby certify that the foregoing is a true and correct copy of the original Letters of Authority to Trustee (filed Jun 30, 1978)

Probate Judge and ex-officio Clerk of said Probate Court

now on file in said office in the cause.
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court, at Celina, Ohio, this 26th day of June A.D. 20 19

MARY PAT ZITTER, Judge

Brenda Haiser

Deputy Clerk

FILED

SEP 27 2019

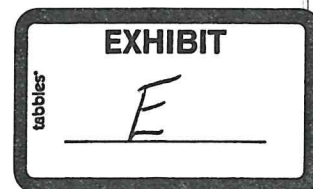
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

41

Celina City Law Director
GEORGE ERIK MOORE, ESQ.

225 N. Main St.
Celina, OH 45822
CelinaLawDirector@gmail.com

Tel: (419) 942-4529 (4LAW)
Fax: (419) 942-4530



FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

October 4, 2018

VIA U.S. Mail

Mr. Paul Schartz, Esq.
First Financial Bank, Wealth Management
255 East Fifth Street, Suite 700
Cincinnati, Ohio 45202

RE: Bryson Trust

Dear Attorney Schwartz:

I am writing to inquire as to the Bryson Trust tax returns. The Bryson Trust Attorney Molli Schleucher directed my inquiry to you.

The City of Celina is requesting a copy of the last three (3) years' tax returns for the Bryson Trust.

Please forward these at your earliest convenience.

As always, should you have any questions or wish to discuss this matter in further detail please do not hesitate to contact our office.

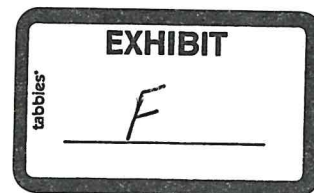
Very truly yours,

George E. Moore, Esq.
City of Celina Law Director

GEM/kd
CC: Molli Schleucher, Esq.

48
NOLAN, SPROWL & SMITH

LAW OFFICE
500 Performance Place
109 North Main Street
Dayton, Ohio 45402
(937) 228-7104 (Telephone)
(937) 260-4201 (Fax)
(937) 609-2835 (Mobile)
www.nsslawyers.com (Website)



EDWARD M. SMITH
E-Mail: edsmith@nsslawyers.com

MILTON L. SPROWL
(1950-1997)

NICHOLAS F. NOLAN
(1946-1982)

March 20, 2019

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Mr. Gregory A. Harris
Senior Vice-President
First Financial Wealth Management
First Financial Center
255 East Fifth Street
Cincinnati, Ohio 45202

Re: *Ed. L. Bryson Charitable Trust (Mercer County, Celina, Ohio)*

Dear Mr. Harris:

I represent the City of Celina, which is the beneficiary of the Ed. L. Bryson Trust, a gift from one of Celina's leading citizens, whose vision has created a valuable charitable resource for the community.

The City has several concerns about the administration of the Trust, and the costs associated therewith. Among those concerns is that historically the Trustee has had a presence in the local community. That is no longer the case.

Representatives of the Celina City Council and its administration and I would like to meet with you to discuss the Trust. We would also include in that meeting representatives from the Dayton Foundation to discuss your anticipated cooperation with the termination of the trust by merger into the Dayton Foundation, with management and grant authority delegated by contract to the Mercer County Civic Foundation, Inc. The City believes this would be a course of action that would benefit the community immensely.

Please let me know if you have some dates available when it would be convenient to meet with you regarding the future administration of the Trust.



Ohio State Bar Association Certified Specialist ~ Estate Planning, Trust & Probate Law

43
NOLAN, SPROWL & SMITH.

Mr. Gregory A. Harris

Re: Ed. L. Bryson Charitable Trust

March 20, 2019

Page 2 of 2

I look forward to hearing from you soon.

Very truly yours,

Edward M. Smith

Edward M. Smith

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

44
REDACTED COPY

Ed Smith

EXHIBIT

tabbles

G

From: Hogg, Miranda
Sent: Wednesday, May 15, 2019 10:40 AM
To: Ed Smith
Subject: Ed. L. Bryson Charitable Trust

FILED

SEP 27 2019

MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

Good Morning, Mr. Smith.

We are in receipt of your letter dated March 20, 2019. In your letter you are proposing to terminate and merge the trust into the Dayton Foundation. At this time, First Financial Bank, as trustee, does not believe this is an appropriate course of action under the trust and respectfully declines your invitation.

Sincerely,
Miranda Hogg

Miranda Hogg
First Financial Bank
Bank Counsel

255 East Fifth Street,
Suite 2900
Cincinnati, OH 45202

The information contained in this message from First Financial Bancorp or its affiliates and any attachments are confidential. It is not intended for transmission to, or receipt by, anyone other than the addressee(s), or a person authorized to deliver it to the named addressee(s). If you have received this message in error, you are prohibited from copying, distributing or using the information. Please contact the sender immediately by return email and delete the original message.

115

IN THE MERCER COUNTY PROBATE COURT
MERCER COUNTY, OHIO

The City of Celina,

Plaintiff,

v.

First Financial Bank, Trustee of the
Ed Bryson Trust, *et al.*,

Defendant.

:
:
:
:
:
:
:
:
:
:

Case No. 00014624A

Judge Mary Pat Zitter

FILED
SEP 27 2019
MERCER COUNTY
PROBATE COURT
JUDGE MARY PAT ZITTER

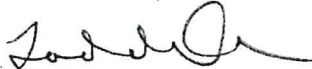
**APPEARANCE AND WAIVER OF SERVICE OF SUMMONS OF
OHIO ATTORNEY GENERAL AND CONSENT TO RELIEF REQUESTED**

Ohio Attorney General Dave Yost, a Defendant in the above-captioned matter hereby waives service of process and voluntarily enters his appearance herein.

This answering Defendant further hereby consents to the Court's grant of the relief requested by the Plaintiff in the prayer of the Complaint for Declaratory Judgment, Merger of Trust, Transfer of Assets to Public Charity, Termination of Trust and Removal of Trustee; and such other orders as the Court may make in the furtherance of granting the relief requested in the Complaint.

Respectfully submitted,

DAVE YOST, OHIO ATTORNEY GENERAL



Todd K. DeBoe (0072034)
Principal Assistant Attorney General
Charitable Law Section
150 East Gay Street, 23rd Floor
Columbus, OH 43215
(614) 466-4462-telephone
(614) 466-9788-facsimile
todd.deboe@ohioattorneygeneral.gov