

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

IN RE: :
ESTATE OF EDWARD P. HEETHER, : No. 41-82-565
DECEASED :

OPINION and ORDER

In this case Keystone Financial has asked the court to determine the fate of an \$83,105.63 charitable bequest from the trust of Edward P. Heether. The trust agreement states that the funds should be distributed to "Bethune-Douglas Community Center, Williamsport, Pennsylvania, in memory of Edward P. Heether." Bethune-Douglas Community Center, however, is now a dormant corporation, following investigations that revealed financial mismanagement. In the meantime, STEP has been operating the center and administering its financial affairs. Although a new corporation has been formed to run the community center, it has not yet actually taken over the fiscal management of the facility. Given this unsettled state of affairs, Keystone Financial, the trustee, has asked this court to designate a beneficiary for the funds which would properly effectuate the intention of Mr. Heether.

Factual Background

On 18 November 1976, the City of Williamsport leased to Lycoming County a plot of land located at the corner of Memorial Avenue (formerly Erie Avenue) and

Campbell Street, on which to establish a community center. A structure was built with funds provided by the County and the building was rented to the Bethune-Douglas Community Center on 30 November 1978, for \$1 per year. The property was to be used exclusively as a community center.

On 5 October 1995, after the Bethune-Douglas Community Center had become a dormant corporation and vacated the premises, the County leased the building to the Lycoming-Clinton Counties Commission for Community Action (STEP), Inc., to operate the center. STEP took over the financial management of the facility at that time, and also conducted its community programs. STEP has maintained responsibility for running the facility to the present.

In turning over the operation of the center to STEP, the Lycoming County Commissioners also asked STEP to train a group of individuals in all aspects of the center's management so that they would eventually be able to operate it on their own. STEP began that process in 1995, setting up an informal Board which met every other week for the first three years and once a month thereafter. STEP acted as a mentor, training the Board members in fiscal management and other aspects of administration. The Board has also been involved in implementing and operating the center's programs.

In keeping with the Commissioners' plan, a non-profit corporation has now been formed for the purpose of taking over management of the center, called Campbell Street Family, Youth and Community Association, Inc. (Campbell Street Inc.) The Board of the new corporation is composed largely of the members of the old unofficial Board. Faye Rozenblad, President of the Board of Directors, testified that the individuals on the

Board had been effectively mentored to the point that they are able to stand on their own feet and operate the center, as well as manage its financial affairs. The Board is presently still using STEP as its fiscal agent, until its 501(c)(3) nonprofit application is approved.

Ms. Rozenblad testified that the center's funding will be provided mainly from the United Way, public grants, and private donations. The anticipated yearly budget is \$150,000.

She also stated that if awarded the Heether money, the Board planned to invest the principle and use the interest for its programs.

Counsel for Lycoming County, who was present at the hearing, indicated that the Commissioners would like the money to be placed under the care of the Williamsport-Lycoming Foundation and that the Foundation manage it under certain parameters.

Bernard Meyer, Executive Director of the Williamsport Housing Authority, testified that the Authority is currently functioning as landlord of the facility,¹ and has notified STEP it will not renew the lease on its present terms at the end of April, although it is open to renegotiating the terms. No one from STEP or Campbell Street Inc. has contacted the Authority in regard to the notice. Mr. Meyer further testified that the although the Authority has agreed to rent to STEP only, it would consider leasing to Campbell Street Inc.

Williamsport Police Chief Curley Jett, formerly President of the Bethune-Douglas Board, testified that the programs of the current Campbell Street Inc. Board are similar to those of the Bethune-Douglas Board. However, he wishes the Heether funds to be put

¹ On 30 December 1999, Lycoming County assigned all of its rights to the premises to the Lycoming County Housing Authority. The premises must be used to operate a community center.

into trust and the interest used to establish a scholarship fund.

DISCUSSION

All interested parties appear to agree that the Heether funds should not be given to the Bethune-Douglas Center, because that entity is dormant and no longer conducts the type of programs the funds were meant to support. Since this bequest cannot be carried precisely as stated in the trust, the trustee has requested the court to employ the doctrine of cy pres to ensure that the funds go to the most appropriate entity.

The age-old doctrine of cy pres acts to save a charitable bequest that has become impossible or impractical to fulfill by directing the funds to another charitable purpose in a manner that fulfills the intention of the donor as closely as possible. The doctrine has been codified at 20 Pa.C.S. § 61210. *See also* In re Women's Homeopathic Hospital of Philadelphia, 393 Pa. 313, 142 A.2d 292 (1958).

The question for the court to decide is therefore how best to fulfill the intention of Mr. Heether.

Although the bequest clause in the Heether trust is very short and simple, there is no question about its intent. The money is to be used to support the activities of the Bethune-Douglas Community Center. Since Mr. Heether did not dictate precisely how the money was to be used, he obviously intended to leave that to discretion of the center itself.

Obviously, the closest entity to the Bethune-Douglas Community Center is Campbell Street Inc., which has modeled itself on the former center in establishing its

purposes, goals, and activities.² However, this court is troubled by Campbell Street Inc.'s inexperience and lack of a track record in running the center. Although Board members have been mentored and trained by STEP, these individuals have not yet been thrown into the ring on their own. Once the reigns are turned over to this Board, its members will no doubt have their hands full developing and implementing programs, applying for funding, maintaining the facilities, hiring and supervising employees, managing the center fiscally, and keeping up with the many administrative demands of non-profit corporations.

Ms. Rozenblad, President of the Board, was an impressive witness, and radiated confidence in the Board's ability to weather the transition to power. Nonetheless, the court feels a strong responsibility to ensure that the Heether funds are not only given to the entity that runs the center, but also to ensure that entity has demonstrated the competence and expertise necessary to handle the funds.

We can achieve both these goals by depositing the money in trust with the Williamsport-Lycoming Foundation, an entity that has existed since 1916, controls 48 million dollars in assets, and has developed considerable expertise in investing money for charitable purposes. The interest generated by the principle, however, should be transferred to Campbell Street Inc. semi-annually, to use for its charitable purposes in whatever manner it sees fit.

² Its mission statement includes the following: (a) the support of family values, (b) the enhancement of personal growth and development, (c) the development of a socially, economically, and politically aware community, (d) the reinforcement of cultural awareness and understanding, (e) by operating educational programming for people of all ages, races, sexes, economic backgrounds, and sexual orientation, (f) by providing a drug and crime free environment, (g) by encouraging unity and positive leadership, and (h) by embracing and celebrating culture in all of its forms and traditions.

The court realizes that by ordering the principle to be held in trust rather than permitting it to be used immediately we are imposing a restriction not specified by Mr. Heether and perhaps not intended by him. However, since Mr. Heether did not direct that the funds be put to immediate use, we cannot say that investing the principle to generate interest would thwart his intentions, either. Furthermore, we note that Ms. Rozenblad stated the Board also intended to invest the principle and use the interest, if the money is transferred to Campbell Street Inc. And finally, we will mitigate the effect of this restriction by imposing it only for a limited period of time, until the Board has proven its capacity for fiscal management.

Mr. Heether left the actual use of the money to the discretion of the center, and that is precisely how we would direct it to be used, if a tried-and-proven Board existed with a demonstrated ability to conscientiously and effectively use the funds. Unfortunately, that is not the case and given the troubled history of the center, we are reluctant to hand over such a large amount of money to a fiscally inexperienced board of a brand new corporation. The need for a community center of this sort is too great, and its programs and goals too important, to place at risk such welcome and needed funds.³

The court certainly wishes the new Board great success, and considers it very likely that the Board will prove itself capable and effective in the years ahead. Therefore,

³ We note that in its brief submitted after the hearing Campbell Street Inc. itself stated it would be amenable to placing the funds with the Williamsport Foundation for three years, so long as the interest was disbursed to the corporation for use in its programs. Moreover, Lawrence Barth, of the Attorney General's Charitable Trusts department, also recommended this plan, with the provision that the funds be held by the Williamsport Foundation for at least three years, after which time Campbell Street, Inc. could apply to the court for their release.

we will permit the Board to petition this court to have the principle transferred to Campbell Street Inc. after ten years have elapsed. By that time the Board should be able to point to its impressive record of managing the center, and the facility will hopefully have become what it was always meant to be: a thriving community center that enriches the lives of area youth and families.

ORDER

AND NOW, this _____ day of April, 2000, for the reasons stated in the foregoing opinion, it is ordered that the funds constituting the bequest in the Inter-Vivos Trust Agreement of Edward P. Heether, sub-paragraph 2(c)(5), be disposed of as follows:

- (1) The entire amount shall be transferred to the Williamsport-Lycoming Foundation, to be held in trust for the Campbell Street Family, Youth and Community Association, Inc.
- (2) Semi-annually on dates to be determined by the Williamsport-Lycoming Foundation, beginning with the year 2001, the Williamsport-Lycoming Foundation shall transfer the interest earned on the principle to the Campbell Street Family, Youth and Community Association, Inc., to be used for the Association's charitable purposes as it sees fit.
- (3) Any interested party may petition the court to review these yearly transfers upon belief that the Campbell Street Family, Youth and Community Association, Inc. is failing to properly use the funds in support of the center's activities.

- (4) After 31 December 2010, the Campbell Street Family, Youth and Community Association, Inc. shall have the right to petition this court to transfer the principle to the accounts of the Association, to be used for its charitable purposes as it sees fit.

BY THE COURT,

Clinton W. Smith, P.J.

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