Michigan Law Review

Volume 45 | Issue 7

1947

TRUSTS.....CHARITABLE ACCUMULATIONS-PROVISION FOR INDEFINITE ACCUMULATION

John A. Huston S.Ed.
University of Michigan Law School

TRUSTS—CHARITABLE ACCUMULATIONS—PROVISION FOR INDEFINITE ACCUMULATION—Testatrix left real and personal property in trust with directions that one half of the income should be paid to nine designated charities and that the other half should be "invested and reinvested . . . for the preservation of the . . . Memorial Fund in perpetuity." In a suit for instructions filed by the executor and the trustee, *held*, reversing the decision below, the trust is void as a private trust created to endure longer than the period limited by the rule against perpetuities. The dominant purpose of the testatrix, as revealed in the provision for accumulation, was not to benefit charity but to secure the perpetual preservation of the fund. *Porter v. Bayard*, (Fla. 1946) 28 S. (2d) 890.

There is authority for the proposition that the duration of private trusts is limited by the period prescribed by the rule against perpetuities.[1] Since *Woodford v. Thellusson*[2] it has generally been accepted that a provision for accumulation in a private trust is subject to the rule.[3] The duration of charitable trusts, however, is relieved from the limitations of the rule; [4] and accumulation pro-

[1] 2 SIMES, FUTURE INTERESTS, § 553 (1936).

[2] 11 Ves. 112, 32 Eng. Rep. 1030 (1805).

[3] 2 SIMES, FUTURE INTERESTS, § 589 (1936). See also the elaborate discussion and citation of authorities in Gertman v. Burdick, (App. D.C. 1941) 123 F. (2d) 924.

[4] 2 SIMES, FUTURE INTERESTS, § 591 (1936).

visions in charitable trusts have always been upheld though of extended or even of indefinite duration,[5] so long as the beneficial interests of the charities were vested.[6] This has been the result whether there was a direction to accumulate the entire trust fund before the charity came into use and enjoyment[7] or to accumulate a part only of the trust income, as in the principal case, while the charity was admitted to immediate enjoyment of the remainder.[8] Customarily it is said that accumulation provisions of extended duration are subject to the control of a court of equity empowered to terminate the accumulation if the trust res should become unduly large.[9] In 1936 Professor Simes was able to

[5] Ibid; 2 BOGERT, TRUSTS AND TRUSTEES, § 353 (1935); 3 SCOTT, TRUSTS, § 401.9 (1939). One of the leading American cases is Odell v. Odell, 92 Mass. (10 Allen) 1 (1865). See also the discussion in Wardens of St. Paul's Church v. Attorney General, 164 Mass. 188, 41 N.E. 231 (1895) and in Ingraham v. Ingraham, 169 Ill. 432, 48 N.E. 561, 49 N.E. 320 (1897). The position taken by the Restatement is more qualified. There it is said the accumulation will be sustained "if under all the circumstances, the period is not an unreasonable one." 2 TRUSTS RESTATEMENT, § 401, comment l (1935). Professor Gray took the view that there were policy objections to permitting unlimited charitable accumulations. GRAY, THE RULE AGAINST PERPETUITIES, 4th ed., § 677 ff. (1942). See also 41 HARV. L. REV. 514 (1928), a discussion favoring Professor Gray's conclusions.

[6] Of course, in the typical case, the interest of the charity must become vested within the limitations of the rule. This point is well illustrated by the contrasting Georgia cases of Murphy v. Johnstone, 190 Ga. 23, 8 S.E. (2d) 23 (1940), and Perkins v. Citizens & Southern Natl. Bank, 190 Ga. 29, 8 S.E. (2d) 28 (1940). See also First Camden Natl. Bank & Trust Co. v. Collins, 114 N.J. Eq. 59, 168 A. 275 (1933).

[7] Franklin's Estate, 9 Pa. Co. Ct. 484 (1891); Benjamin Franklin's Administratrix v. The City of Philadelphia, 2 Pa. Dist. Ct. 435 (1893); Woodruff v. Marsh, 63 Conn. 125, 26 A. 846 (1893); Frazier v. Merchant's Natl. Bank of Salem, 296 Mass. 298, 5 N.E. (2d) 550 (1936); Penick v. Bank of Wadesboro, 218 N.C. 686, 12 S.E. (2d) 253 (1940).

[8] The City of Philadelphia v. The Heirs of Stephen Girard, 45 Pa. St. 9 (1863); Dexter v. Harvard College, 176 Mass. 192, 57 N.E. 371 (1900); Olfield v. Atty. General, 219 Mass. 378, 106 N.E. 1015 (1914); Reasoner v. Herman, 191 Ind. 642, 134 N.E. 276 (1922); Lyme High School Assn. v. Alling, 113 Conn. 200, 154 A. 439 (1931); Conway v. Third Natl. Bank & Trust Co. of Camden, 118 N.J. Eq. 61, 177 A. 113 (1935), affd., 119 N.J. Eq. 575, 182 A. 916 (1936); Quinn v. Peoples Trust & Savings Co., 223 Ind. 317, 60 N.E. (2d) 281 (1945).

[9] Woodruff v. Marsh, 63 Conn. 125, 26 A. 846 (1893); Wardens of St. Paul's Church v. Attorney General, 164 Mass. 188, 41 N.E. 231 (1895); Olfield v. Attorney General, 219 Mass. 378, 106 N.E. 1015 (1914); Reasoner v. Herman, 191 Ind. 642, 134 N.E. 276 (1922); Lyme High School Assn. v. Alling, 113 Conn. 200, 154 A. 439 (1931); Conway v. Third Natl. Bank & Trust Co. of Camden, 118 N.J. Eq. 61, 177 A. 113 (1935); Quinn v. Peoples Trust & Savings Co., 223 Ind. 317, 60 N.E. (2d) 281 (1945); 2 BOGERT, TRUSTS AND TRUSTEES, § 441 (1935); 4 PROPERTY RESTATEMENT, § 442, comment a (1944). The author of the comment in 41 HARV. L. REV. 514 (1928) deprecated the practical usefulness of the equity court's supervision of charitable accumulations, stating (at p. 516) ". . . no case has yet been found where a court of equity, having once allowed an accumulation to begin, later limited or terminated it." If this is true it may simply indicate how little founded are the fears of those who argue a conflict with public policy in unlimited charitable accumulations. Waterbury Trust Co. v. Porter, 131 Conn. 206, 38 A. (2d) 598 (1944), is a case, however, where the court terminated charitable accumulations on the

write: "No American cases have been found where a provision for an accumulation for charity has been held void." [10] The general rules governing trust for accumulation appear to be recognized and approved in Florida.[11] The court in the principal case did not rule on the question of accumulations for charity, however, for it reasoned that the trust was private rather than charitable because of the provision for accumulation. Treating the trust as a private trust created to endure longer than the period of the rule against perpetuities, the court held the entire disposition void. It is submitted that in so deciding the court erred, for there is no authority in Florida or elsewhere for the proposition that a charitable trust is divested of its charitable character by the addition of an accumulation provision designed to preserve and increase the fund. Other courts have characterized a direction to accumulate as a provision for the management of the fund and have emphasized that it in no way negates a vested interest of the beneficiary in the entire trust res.[12] Thus the Ohio court has upheld a trust by the terms of which the entire income was to be accumulated until the trust estate equalled two hundred and fifty thousand dollars, and thereafter three fourths of the income was to be distributed to the charitable beneficiary while the remaining one fourth was to be accumulated forever.[13] In *Reasoner v. Herman*,[14] the Supreme Court of Indiana sustained trust provisions nearly identical with those of the principal case. The Massachusetts court found no objection to the validity of the trust even where the direction was to accumulate 95 per cent of the income for one hundred years and 80 per cent thereafter forever.[15] In the principal case, the court thought its result followed logically from its own earlier holding in *Pelton v. First Savings & Trust Co. of Tampa*.[16] That case concerned a testamentary trust by the terms of which one half of the income was to go to a named charity and the other half to be accumulated. Arguing that no beneficiary had been designated for the income directed to be accumulated, the court held the provision void and permitted that portion of the income to go by intestacy. Although there is no authority, and it is submitted without hesitation, no rational basis, for the notion that the beneficiary of a trust is not equally the beneficiary of any accumulation provision, it is significant that the court in the *Pelton* case did not void the trust as non-charitable but upheld the gift of the

ground that too long a time must here elapse before the fund had increased sufficiently to accomplish the charitable purpose.

[10] 2 SIMES, FUTURE INTERESTS 509 (1936). However, dictum in Webb v. Webb, 340 Ill. 407, 172 N.E. 730 (1930), suggests that charitable accumulations in Illinois would be subject to the twenty-one year limitation imposed by the state Thellusson act.

[11] Pattillo v. Glenn, 150 Fla. 73, 7 S. (2d) 328 (1942).

[12] Reasoner v. Herman, 191 Ind. 642, 134 N.E. 276 (1922); Webb v. Webb, 340 Ill. 407, 172 N.E. 730 (1930); Schreiner v. Cincinnati Altenheim, 61 Ohio App. 344, 22 N.E. (2d) 587 (1939). In Dexter v. Harvard College, 176 Mass. 192, 57 N.E. 371 (1900), the court, discussing a provision for the perpetual accumulation of 5 per cent of the trust income, stated (at p. 197): "The effect of the requirement is to take money from one part of the property held for charity and put it with another part of the property held for the same charity."

[13] Schreiner v. Cincinnati Altenheim, 61 Ohio App. 344, 22 N.E. (2d) 587 (1939).

[14] 191 Ind. 642, 134 N.E. 276 (1922).

[15] Olfield v. Attorney General, 219 Mass. 378, 106 N.E. 1015 (1914).

[16] 98 Fla. 748, 124 S. 169 (1929).

remaining one half of the income to charity. It is not, therefore, authority for the result in the principal case. *John A. Huston, S.Ed.*