Michigan Law Review

Volume 37 | Issue 7

1939

CHARITIES - INDEFINITENESS - CONSTRUCTION OF STATUTE VALIDATING INDEFINITE TRUSTS FOR CHARITY

John M. Ulman
University of Michigan Law School

CHARITIES — INDEFINITENESS — CONSTRUCTION OF STATUTE VALIDATING INDEFINITE TRUSTS FOR CHARITY—The testator's will contained a bequest of $10,000 to executors to be held in trust by them and paid out "to such corporations or associations of individuals as will in their judgment best promote the cause of preventing cruelty to animals in the vicinity of Asheville." A state statute [1] provided that no charitable trust should be declared invalid by reason of any indefiniteness or uncertainty of the object or beneficiaries of the trust or because the trustee is given discretionary power in the selection and designation of the objects or beneficiaries of the trust or in carrying out the purpose thereof. *Held*, that the trust is void for indefiniteness of purpose and the statute does not purport to cure that defect. *Woodcock v. Wachovia Bank & Trust Co.*, 214 N. C. 224, 199 S. E. 20 (1938).

There is apparently no doubt at the present time that trusts for the protection of, and prevention of cruelty to, animals is a valid charitable purpose, since it tends to promote the well-being of man.[2] A requisite of a charitable trust is the indefiniteness of the beneficiaries,[3] but it is necessary to create a certain class of beneficiaries or at least create a means by which it may be done.[4] But the universal rule is that the purpose of a charitable trust must be pointed out with reasonable definiteness and certainty.[5] Although the general rule, that the trust will be sustained if the charitable purpose is so far defined as to be capable

[1] "That no gift, grant, bequest or devise, whether in trust or otherwise, to religious, educational, charitable or benevolent uses or for the purpose of providing for the care or maintenance of any part of any cemetery, public or private, shall be invalid by reason of any indefiniteness or uncertainty of the object or beneficiaries of such trust, or because said instrument confers upon the trustee or trustees discretionary powers in the selection and designation of the objects or beneficiaries of such trust or in carrying out the purpose thereof, or by reason of the same contravening any statute or rule against perpetuities." N. C. Pub. Laws (1925), c. 264, § 1.

[2] 2 BOGERT, TRUSTS AND TRUSTEES, § 379, p. 1210 (1935). See In re Forrester's Estate, 86 Colo. 221, 279 P. 721 (1929).

[3] For a discussion of the varying degrees of indefiniteness, see 2 BOGERT, TRUSTS AND TRUSTEES, § 362 (1935).

[4] ZOLLMAN, AMERICAN LAW OF CHARITIES, § 417 (1924).

[5] Ibid., §§ 356, 357, 358.

of being executed by the court according to the intent of the donor,[6] seems comparatively simple, there is much confusion in the application of the rule to the various expressions of purpose set out in the bequests. To attempt to review the multitude of decisions would be impracticable as well as useless. However, although the purposes of the trust might otherwise be held to be too indefinite, that defect may be cured by investing the trustee with a discretion to select the particular purpose. The real problem arises, as in the principal case, in regard to the latitude of discretion in selecting the purpose that may be conferred on the trustee. One group of courts hold that investing the trustee with discretion in the selection of the particular object or purpose of the trust will cure the defect of indefiniteness without regard to the scope of discretion given to the trustee.[7] This view seems more in accord with the general desire of the courts to uphold charitable trusts [8] and appears to be the better view.[9] On the other hand, some courts hold that the power to select from the entire field of charity or a very large part thereof is invalid either because it is in effect a posthumous power of attorney to make a will for the testator [10] or because it amounts to making the trustee owner.[11] The North Carolina court apparently has followed this latter group in the past.[12] Viewed in the light of past decisions, the obvious purpose of the statute in the principal case must have been to change their effect so that a valid charitable trust might be created by vesting in the trustee the power to select the particular purpose of the trust from the general purpose stated by the

[6] John v. Smith, (D. C. Ore. 1899) 91 F. 827; Crim v. Williamson, 180 Ala. 179, 60 So. 293 (1912); In re Evenson, 161 Wis. 627, 155 N. W. 145 (1915).

[7] In re Thompson's Estate, 282 Pa. 30, 127 A. 446 (1925) (to such charitable purposes as may commend themselves to executors in their discretion); Quinn v. Shields, 62 Iowa 129, 17 N. W. 437 (1883) (to such religious institutions of Catholic faith as the trustee may determine); Minot v. Baker, 147 Mass. 348, 17 N. E. 839 (1888) (to such charitable purposes as the trustee shall think proper); In re Stewart, 26 Wash. 32, 66 P. 148 (1901) (to such charitable purposes and uses as the trustees may see fit in their discretion); St. James Orphan Asylum v. Shelby, 60 Neb. 796, 84 N. W. 273 (1900) (to some charity according to the trustee's judgment); In re Planck's Estate, 150 Wash. 301, 272 P. 972 (1928) (to such charitable purposes and such beneficiaries as the trustee may believe fit and proper); Martinson v. Jacobson, 200 Iowa 1054, 205 N.W. 849 (1925); Prime v. Harmon, 120 Me. 299, 113 A. 738 (1921) (to such other moral and useful associations as my trustee shall think advisable); In re Werner's Will, (Surr. Ct. 1919) 181 N. Y. S. 433 (to use of any church or charitable association as the trustee sees fit); Glover v. Baker, 76 N. H. 393, 83 A. 916 (1912) (to repair church and balance for effectuating a religion as taught by testator).

[8] See 2 BOGERT, TRUSTS AND TRUSTEES, § 369 (1935).

[9] See In re Planck's Estate, 150 Wash. 301, 272 P. 972 (1928).

[10] Johnson v. Johnson, 92 Tenn. 559, 23 S. W. 114 (1893); Tilden v. Green, 130 N. Y. 29, 28 N. E. 880 (1891); Utica Trust & Deposit Co. v. Thomson, 87 Misc. 31, 149 N. Y. S. 392 (1914); Wentura v. Kinnerk, 319 Mo. 1068, 5 S. W. (2d) 66 (1929).

[11] Jones v. Patterson, 271 Mo. 1, 195 S. W. 1004 (1917).

[12] Discussion in Keith v. Scales, 124 N. C. 497 at 516, 32 S. E. 809 (1899). See also Gaston County United Dry Forces v. Wilkins, 211 N. C. 560, 191 S. E. 8 (1937).

testator.[13] Even under the stricter view to which the North Carolina court adheres, the trust will be upheld if the trustee's discretion is limited to a defined class [14] so that the court's construction of the statute renders it nearly meaningless. It is submitted that the trust in the principal case should have been sustained not only under the statute but even in the absence of statute. Certainly the general purpose of "preventing cruelty to animals" along with the power in the trustee to select the means would be sustained by most authorities.[15] The beneficiaries in the principal case are neither the corporations nor the animals but rather mankind generally.[16] That the details of carrying out the purpose of the trust are left unprovided for is no objection.[17] The fact that the testator provided more definite means of carrying out the trust by confining the trustee's expenditures to corporations or associations should not have the effect of making the trust purpose more indefinite. It is provision for details in carrying out the trust that the court finds indefinite in the principal case [18] and not the trust purpose that is indefinite.

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[13] Chicago Bank of Commerce v. McPherson, (C.C.A. 6th, 1932) 62 F. (2d) 393. Michigan statute covering indefiniteness of object or beneficiaries. See also In re Cunningham's Will, 206 N. Y. 601, 100 N. E. 437 (1912).

[14] See ZOLLMAN, AMERICAN LAW OF CHARITIES, §§ 413-415 (1924).

[15] Cases cited supra, note 7, which are much more indefinite. See 38 YALE L. J. 1144 (1929). Two of the North Carolina cases cited by the court in the principal case are not really in point. In Thomas v. Clay, 187 N. C. 778, 122 S. E. 852 (1924), money was to be invested by the trustee "in such worthy objects of charity as he shall determine upon as being in accord with what my wishes and tastes in that direction were when living." In Weaver v. Kirby, 186 N. C. 387, 119 S. E. 564 (1923), the bequest was to the "person or persons who have been kindest to us." It is obvious that in those two cases the court would have no way of deciding whether the trustee had acted within the limits set out because those limits were too vague. But it seems equally clear that the court could determine whether the trustee in the principal case had given to associations so that prevention of cruelty to animals would result.

[16] 2 BOGERT, TRUSTS AND TRUSTEES, § 379 (1935).

[17] Smith v. Gardner, 36 App. D. C. 485 (1911); John v. Smith, (D. C. Ore. 1899) 91 F. 827; Hoyt v. Bliss, 93 Conn. 344, 105 A. 699 (1919); Gearhart v. Richardson, 109 Ohio St. 418, 142 N. E. 890 (1924); Endicott v. Bratzel, 145 Ore. 654, 27 P. (2d) 883 (1934).

[18] "By what means is the promotion of the cause to be effectuated? The executors are required to pay $10,000 to an unnamed non-existent beneficiary for the indefinite purpose of promoting the cause of preventing cruelty to animals, with no directions to the corporation or association to be selected, or means of assurance that the ultimate recipients will use the fund for the purpose indicated, with no power of control or supervision over its administration." Principal case, 199 S. E. 20 at 24. But since the ultimate recipients are neither the corporation or association, they are only a means of reaching the purpose of the trust and that the means may fail to accomplish the desired end is always true.