

ORIGINAL

IN THE SUPREME COURT OF OHIO

**Richard R. Heslet, Trustee of the
Raymond W. Artz Trust,**

Plaintiff/Appellee,

v.

**Edgar Artz, Jr., Administrator WWA
Of the Estate of Raymond W. Artz, et al.,**

Defendant/Appellees.

11-1306

**On Appeal from the Sandusky
County Court of Appeals,
Sixth Appellate District**

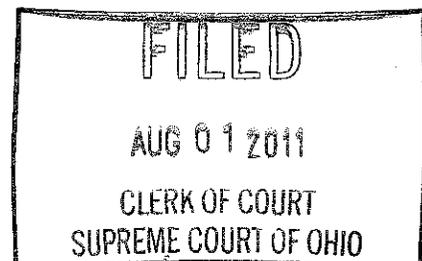
**Court of Appeals Consolidated
Case Nos. S-10-046 and S-10-047**

**[Hayes Memorial United Methodist
Church- Defendant/Appellant]**

**NOTICE OF APPEAL BY DEFENDANT/APPELLANT
HAYES MEMORIAL UNITED METHODIST CHURCH**

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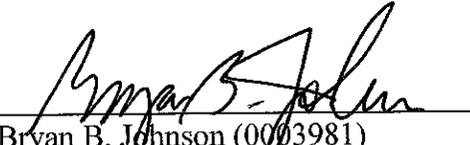
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NOTICE OF APPEAL OF APPELLANT
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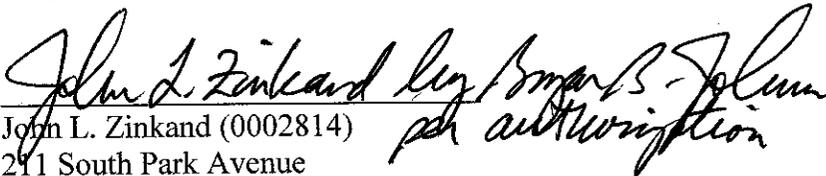
Defendant/Appellant United Memorial United Methodist Church hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Sandusky County Court of Appeals, Sixth Appellate District, entered in Court of Appeals consolidated case numbers S-10-046 and S-10-047 on June 17, 2011, a copy of which is attached hereto as Exhibit A.

This case raises a substantial constitutional question and is one of public or great general interest.

Respectfully submitted,


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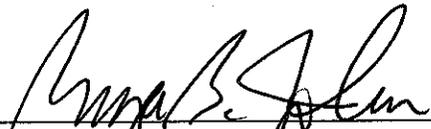
CERTIFICATE OF SERVICE

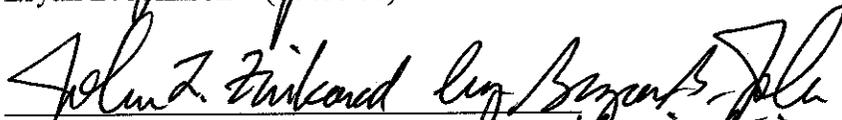
I, the undersigned, certify that a true copy of the foregoing pleading was served upon the following legal counsel, by ordinary U.S. Mail, postage pre-paid, this 1st day of August, 2011:

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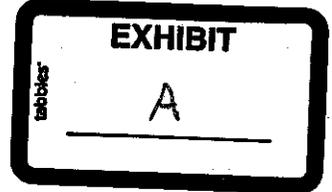
SANDUSKY COUNTY
COURT OF APPEALS
FILED

JUN 17 2011

State of Ohio, Sandusky County, SS:
I hereby certify that this is a true copy of
the original document now on file in my
office this 17 day of June
2011

TRACY M. OVERMYER
Sandusky County Clerk of Courts

By: Dea Hamme
Deputy Clerk



IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
SANDUSKY COUNTY

Richard R. Heslet, Trustee

Court of Appeals Nos. S-10-046
S-10-047

Plaintiff

Trial Court No. 20099002 A

v.

Edgar Artz, Jr., Administrator WWA
of the Estate of Raymond W. Artz, et al.

Appellees

DECISION AND JUDGMENT

[Hayes Memorial United Methodist
Church—Appellant]

Decided: JUN 17 2011

James H. Ellis III, for appellees.

John L. Zinkand and Bryan B. Johnson, for appellant.

OSOWIK, P.J.

{¶ 1} This is a consolidated appeal from two judgments of the Sandusky County
Court of Common Pleas, Probate Division, following trustee Raymond Heslet's

1.

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complaint for declaratory judgment seeking guidance concerning the distribution to be made following the death Raymond Artz, Sr. For the following reasons, the judgments of the trial court are affirmed.

{¶ 2} Appellant Hayes Memorial United Methodist Church sets forth the following assignments of error:

{¶ 3} "I. First Assignment of Error – The trial court erred in paragraph eight of its June 22, 2010 judgment entry by its declaration that assets in the possession of the trustee are estate assets, and ordering the trustee to deliver those assets to the estate.

{¶ 4} "II. Second Assignment of Error – The trial court erred in paragraphs ten and twelve of its June 22, 2010 judgment entry by its finding and order that the June 1, 1992 last will and testament of Raymond W. Artz was valid.

{¶ 5} "III. Third Assignment of Error – The trial court erred in paragraph fourteen of its June 22, 2010 judgment entry by dismissing appellant's counterclaim and crossclaim relating to claims for past due farm rent.

{¶ 6} "IV. Fourth Assignment of Error – The trial court erred in paragraph seven of its September 3, 2010 judgment entry by ordering the trustee to loan \$50,000 to the estate."

{¶ 7} The undisputed facts relevant to the issues raised on appeal are as follows. In September 1988, decedent Raymond Artz executed a Declaration of Trust. Richard Heslet was appointed trustee. In the trust, Raymond directed the trustee to pay Memorial United Methodist Church of Fremont, Ohio, \$400 per month from the trust interest. This

payment was to cease upon Raymond's death. The trust further directed that, upon Raymond's death and in compliance with certain other conditions in the trust, the trustee was to pay the church the sum of \$10,000. Then, after payment of any bequests in Raymond's probated will not paid out of funds or property in Raymond's estate (and payment of all fees and expenses), the balance of the trust principal was to be distributed to the church.

{¶ 8} Raymond's brother, Edgar J. Artz, Sr., an income beneficiary under the Raymond W. Artz Trust, died on January 16, 1990. The terms of the trust provide that the trust shall terminate upon the deaths of both Raymond and his brother.

{¶ 9} In April 1991, a guardianship was established for Raymond after his physical and mental health deteriorated due to an addiction to amphetamines. Appellee Edgar Artz, Jr., Raymond's nephew, was named guardian. The guardianship was terminated on October 15, 1991. On October 16, 1991, Raymond executed a Last Will and Testament. On February 6, 1992, Raymond filed a petition with the Sandusky County Court of Common Pleas, Probate Division, pursuant to R.C. 2107.081 requesting a judgment declaring the validity of the October 1991 will. However, for reasons not documented in the trial court record before us, Raymond executed a new will on May 1, 1992, directing the bulk of his estate to the surviving members of his family. The church was not listed as a beneficiary of the second will. In his will, Raymond directed in relevant part as follows: "I give and bequeath to the wife of my deceased brother, Gladys Artz, and to Edgar Artz, Jr., the sum of \$700,000, share and share alike. I acknowledge

that I presently have no money, however, under Paragraph IV.(b) of the Declaration of Trust dated September 1, 1988, the Trustee has a duty to pay any bequest in my probated Will not paid out of funds or property of my estate."

{¶ 10} An amended petition was then filed requesting a judgment as to the validity of the May 1, 1992 will and, by judgment entry filed June 2, 1992, the Sandusky County Probate Court declared the will to be valid in accordance with R.C. 2107.084. In so doing, the trial court found that the will was properly executed, that Raymond had the requisite testamentary capacity when he executed the will, and that Raymond was free from undue influence in the execution of his will.

{¶ 11} In May 1999, Memorial United Methodist Church and the Hayes United Methodist Church consolidated to become Hayes Memorial United Methodist Church. Once the churches consolidated, trustee Heslet discontinued making the monthly payments.

{¶ 12} Raymond died testate on May 9, 2008. The May 1992 will was admitted to probate on June 16, 2008 in Sandusky County. On June 22, 2009, trustee Heslet filed a complaint for declaratory judgment seeking a judgment construing the provisions of the Raymond W. Artz Trust dated September 1, 1988, and determining the rights of appellees Edgar Artz Jr. and Gladys Artz,¹ and appellant Hayes Memorial United Methodist Church ("the church"). On March 18, 2010, appellees filed a motion for summary

¹Gladys Artz is the sister-in-law of decedent Raymond Artz and mother of Edgar Artz, Jr.

judgment concerning allegations made by the church in its answer, counterclaim and cross-claim to the trustee's complaint. On May 10, 2010, the church filed a notice of dismissal without prejudice of certain claims and defenses concerning the validity of the will.

{¶ 13} By judgment entries filed June 22, 2010, and September 8, 2010, the trial court ruled on 19 pleadings that had been filed since the June 22, 2009 complaint for declaratory judgment. In relevant part, the trial court ordered the trustee to pay to Hayes Memorial United Methodist Church the sum of \$400 per month for each month from March 1999 (when the two churches were consolidated) until May 2008, when Raymond died, which amounted to \$44,000 plus interest. The trial court further ordered the trustee to pay the sum of \$10,000 to the church in satisfaction of the specific bequest in the trust. The trustee was ordered to then pay any specific bequests listed in Raymond's will that the fiduciary of the estate could not pay with estate assets. If there were any trust assets remaining after the specific bequests of the will were paid, the trustee was ordered to pay the remainder of those assets to the church.

{¶ 14} Appellant's first three assignments of error arise from the June 22, 2010 judgment entry. His fourth assignment of error arises from the September 8, 2010 judgment entry.

{¶ 15} In its first assignment of error, appellant Hayes Memorial United Methodist Church asserts that the trial court erred by ordering the trustee to distribute "certain assets" to the estate. The assets to which appellant refers appear to be certain savings

bonds and securities in the name of the decedent that were not titled in the name of the Raymond W. Artz Trust. The church believes that Raymond Artz intended that those assets be registered in the name of the trust since Raymond delivered them to the trustee.

{¶ 16} In his complaint for declaratory judgment, trustee Heslet stated that a dispute existed between Heslet, appellees and the church as to the registration of various assets and that, until the dispute was resolved, Heslet could not properly perform his duties as trustee. The trustee asked the court for guidance as to whether those assets were properly assets of the trust or assets of the estate. The following assets were at issue: 76 United States Savings Bonds, approximate redemption value \$250,000, registered variously in the names of Raymond Artz, Raymond W. Artz and Raymond W. Artz P.O.D. Estate; a \$20,000 State of Ohio Mental Health Facilities Bond, maturity date December 1, 1999, registered in the name of Raymond W. Artz; and miscellaneous shares of stock in Lin-Mor, Inc., and Rural Serv, Inc., value unknown, registered in the name of Raymond W. Artz.

{¶ 17} The trial court agreed that although Raymond delivered the assets set forth above to Heslet, Raymond had not transferred title to any of them to the trustee. The trial court concluded that if Raymond had intended for the bonds and securities to be added to the trust he would have transferred title before his death. Therefore, the trial court ordered that "any savings bonds, securities, or any other property, whether real or personal, tangible or intangible, titled or registered in the name of Raymond Artz, Raymond W. Artz, or Raymond W. Artz P.O.D. Estate, shall be delivered to Edgar Artz,

Jr., Administrator WWA of the Estate of Raymond W. Artz, so that they can be properly distributed as assets of the Estate of Raymond W. Artz."

{¶ 18} Appellant argues that none of the parties had moved for judgment on this issue so it was therefore not before the trial court. As stated above, this issue was clearly raised in the trustee's complaint for declaratory judgment and was therefore properly before the trial court.

{¶ 19} Appellant also claims that it did not receive notice that the issue of distribution of the assets listed above was before the trial court. The record reflects, however, that whether the assets described above were properly a part of the trust or the estate was clearly raised in paragraphs 19 and 20 of the trustee's complaint for declaratory judgment as set forth above. The record reflects that appellant was properly served with the trustee's complaint and thus received adequate notice of the action, including the issue of registration of and distribution of the assets. Further, appellant filed an answer to the trustee's complaint on September 15, 2009. This argument is without merit.

{¶ 20} Accordingly, appellant's first assignment of error is not well-taken.

{¶ 21} In its second assignment of error, appellant asserts that the trial court erred in its June 22, 2010 judgment entry by finding that the June 1, 1992 will was valid. In support, appellant argues that the issue of the validity of the will was no longer pending before the trial court and that by upholding the will's validity the court prevented appellant from receiving a substantial portion of its inheritance under the trust.

{¶ 22} The trial court's June 22, 2010 judgment does not contain a finding that Raymond's 1992 will was valid; that issue had already been determined. Rather, in paragraph 12 of the June 22, 2010 judgment entry, the trial court found that the June 2, 1992 judgment regarding the validity of the will was binding on all parties. In his complaint for declaratory judgment, the trustee asks for a judgment construing the provisions of the trust and determining the rights of the parties under the terms of the trust, including the trustee's duties and obligations with respect to the distribution of the assets under his control. Section IV(b) of the declaration of trust requires the trustee to "pay any bequests in Donor's Probate Will not paid out of funds or property in Donor's estate." Therefore, the trial court's construction of the will was central to the court's determination of the rights of the parties. The trial court's finding that the 1992 judgment regarding the will's validity was binding on the parties was a necessary step in the process of addressing the complaint for declaratory judgment. The probate court was bound by its previous judgment. *Baily v. McElroy* (1963), 120 Ohio App. 85, 95. Having recognized the validity of the 1992 judgment, the trial court was able to proceed with rendering a declaratory judgment regarding the application of the provisions of the trust.

{¶ 23} Appellant's second assignment of error is not well-taken.

{¶ 24} In its third assignment of error, appellant asserts that the trial court erred in its June 22, 2010 judgment entry by dismissing appellant's counterclaim and cross-claim because appellant had already dismissed both on May 10, 2010. Appellant has not shown how he was prejudiced by the trial court's dismissal. The trial court did not err by

including the dismissal in its judgment entry and appellant's third assignment of error is not well-taken.

{¶ 25} In its fourth assignment of error, appellant asserts that the trial court abused its discretion in its September 8, 2010 judgment entry by ordering the trustee to loan \$50,000 to the estate. Appellant argues that the probate court did not have jurisdiction to order the trustee to make such a distribution. In the paragraph in question, the trial court granted appellees' request for the trustee to distribute the sum of \$50,000 to the estate of Raymond Artz due to financial hardship this litigation has caused the estate. The trial court further ordered that Edgar Artz, Jr., in his individual capacity as well as in his capacity as Administrator WWA of the estate and Gladys Artz, in her individual capacity, sign a promissory note in favor of the trustee promising repayment of the distribution in the event that the church prevailed in its appeal and pending litigation action and also was able to produce a will signed by Raymond Artz giving the residue of his estate to the church. Payment of the note was to be secured by real property owned individually by Gladys Artz and not subject to any existing or future claim by the church.

{¶ 26} The probate court in Ohio is a court of limited and special jurisdiction and thus has only those powers specifically granted to it by statute. *Corron v. Corron* (1988), 40 Ohio St.3d 75, 77. R.C. 2101.24(B)(1)(b) authorizes the probate court to "hear and determine * * * any action that involves an inter vivos trust." R.C. 2101.24(C) confers broad authority to the probate court to address collateral matters, including "plenary power at law and in equity to dispose fully of any matter that is properly before the

court." R.C. 2101.24(C); *Rinehart v. Bank One Columbus* (1998), 125 Ohio App. 3d 719, 728, citing *Wolfrum v. Wolfrum* (1965), 2 Ohio St.2d 237, paragraph one of the syllabus. This plenary power authorizes the probate court to exercise complete jurisdiction over the subject matter to the fullest extent necessary. *In re Ewanicky*, 8th Dist. No. 81742, 2003- Ohio-3351, ¶ 8, citing *Johnson v. Allen* (1995), 101 Ohio App.3d 181, 185. See, also, *Zahn v. Nelson*, 170 Ohio App.3d 111, 2007-Ohio-667; *State ex rel. Sladoje v. Balskis* (2002), 149 Ohio App.3d 190.

{¶ 27} Accordingly, appellant's argument that the probate court in this case did not have jurisdiction to order a distribution by the trustee is without merit. The \$50,000 distribution made to appellees was significantly less than they were entitled to under the terms of the declaration of trust and will. Appellant's fourth assignment of error is not well-taken.

{¶ 28} On consideration whereof, the judgment of the Sandusky County Court of Common Pleas, Probate Division, is affirmed. Costs of this appeal are assessed to appellant pursuant to App.R. 24.

JUDGMENT AFFIRMED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Heslet v. Artz
C.A. Nos. S-10-046
S-10-047

Peter M. Handwork, J.

Arlene Singer, J.

Thomas J. Osowik, P.J.
CONCUR.

Peter M. Handwork

JUDGE

Arlene Singer

JUDGE

Thomas J. Osowik

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at: <http://www.sconet.state.oh.us/rod/newpdf/?source=6>.