

**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.,**

**Defendants/Appellees.**

**Case number 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]**

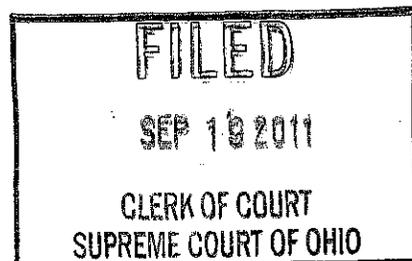
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**MOTION OF APPELLANT  
HAYES MEMORIAL UNITED METHODIST CHURCH  
TO CONSOLIDATE APPEALS**

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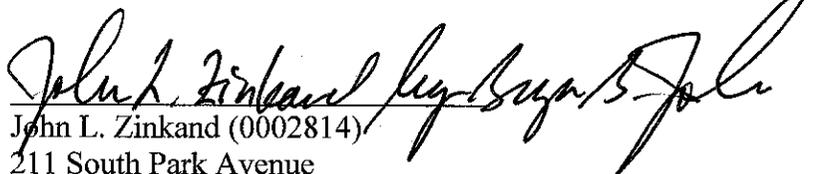
**MOTION OF APPELLANT**  
**HAYES MEMORIAL UNITED METHODIST CHURCH**  
**TO CONSOLIDATE APPEALS**

Now comes appellant Hayes Memorial United Methodist Church which moves this honorable Supreme Court, pursuant to Civ.R. 42(A), to consolidate this appeal with the companion appeal involving these identical parties and identical issues being filed today in this Supreme Court in the case entitled *Hayes Memorial United Methodist Church v. Edgar Artz, Jr., Administrator WWA of the Estate of Raymond W. Artz, et al.* The reasons for this motion are more particularly set forth in the below memorandum in support.

Respectfully submitted,



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**MEMORANDUM IN SUPPORT**

## **I. BACKGROUND**

These cases involves Raymond W. Artz, a lifelong member of the Hayes Memorial United Methodist Church. On September 22, 1982 he executed a Will bequeathing one-half of his estate outright to the church, if then existing, otherwise to the West Ohio Conference of the United Methodist Church for the Ministers' Retirement Fund, and the other half to be held in trust for the benefit of his brother and sister-in-law, Edgar Artz, Sr., and Gladys Artz, whereby they would receive income for their lives, and upon their death the corpus was then to be distributed outright to the church or its retirement fund. He confirmed these bequests in a Codicil he executed on July 27, 1984.

On September 1, 1988, Raymond executed and partially funded an inter vivos, irrevocable and non-amendable Declaration of Trust, in which he appointed Richard Heslet as his trustee. In it he instructed his trustee to pay his church a \$400 monthly tithe from the trust during Raymond's lifetime. Upon his death the monthly tithes were to cease, the church was to be paid \$10,000 outright, any bequests in his probated Will which the estate could not pay were then to be paid from the trust, and the balance was to be held in trust for the benefit of Raymonds' brother, Edgar, who was to receive the income for his lifetime. Upon Edgar's death the balance of the trust corpus was to be distributed outright to the church. Essentially, Raymond retained a power of appointment over his trust assets which could only be exercised by his Will.

Raymond's health then began to deteriorate, although he continued to live independently in his own home. On January 16, 1991 Edgar Artz, Sr. died, and that same month his son, Edgar Artz, Jr. (Raymond's nephew), removed Raymond from his home and moved him into an upstairs bedroom in Edgar, Jr.'s home. He and his family thereafter isolated Raymond from his

friends at the church. In April 1991, Edgar, Jr. filed for guardianship over Raymond, and was appointed as Raymond's guardian. Six months later, on October 15, 1991, Edgar, Jr. had the guardianship abruptly terminated. On the next day, October 16, 1991, Raymond executed a new Will, naming Edgar, Jr. and his mother, Gladys Artz (Raymond's sister-in-law) as sole beneficiaries, thereby disinheriting the church from his entire probate estate and from almost all of his non-probate trust assets.

On February 6, 1992, a pre-probate petition was then filed in the Probate Court requesting a judgment declaring the October 16, 1991 Will to be valid. The only parties named were Raymond, Edgar, Jr., and Gladys, because R.C. 2107.081(A) only required the testator as party plaintiff, and as parties defendant "all persons named in the will as beneficiaries, and all of the persons who would be entitled to inherit from the testator under Chapter 2105. of the Revised Cod had the testator died intestate on the date the petition was filed." Edgar, Jr. and Gladys were both named in the Will, and were also the only blood relatives entitled to inherit from Raymond's probate estate if he died intestate. The church was not named in this Will, and was not a blood relative as identified in Chapter 2105, however, it was entitled to inherit from Raymond's non-probate trust if he died intestate, in that its distributions from the trust were affected by what Raymond's probate Will said.

That Will was apparently lost by the Probate Court, because Raymond executed a new Will on May 1, 1992, again naming Edgar, Jr. and Gladys as sole beneficiaries. The church was not listed as a beneficiary in this Will either. In it Raymond exercised his power of appointment over the trust assets to pay them all over to this estate for inheritance by Edgar, Jr. and Gladys. An amended petition was then filed requesting the court declare the May 1, 1992 Will valid. Once again the only parties named were Raymond, Edgar, Jr., and Gladys. The church again was

omitted as a party, was not notified, and was not even aware of this proceeding. By judgment entry filed June 2, 1992, the Probate Court declared the valid.

Raymond died on May 9, 2008, and on June 16, 2008 his May 1, 1992 Will was admitted to probate in the Probate Court.

**Declaratory Judgment Proceeding** - On June 22, 2009 Trustee Richard Heslet then filed a complaint for declaratory judgment in the Probate Court seeking a judgment construing the provisions of Raymond's September 1, 1988 trust as affected by the exercise of his power of appointment in his May 1, 1992 pre-probated Will, and the effect of the June 2, 1992 judgment entry in the pre-probate action which declared that Will valid. The trustee sought the court's determination of the rights of the parties resulting therefrom. He also asked the court to declare the rights of the parties in various securities Raymond had delivered to the trustee during his lifetime but which the trustee had never re-titled into the name of the trust. Joined as defendants were Edgar, Jr., Gladys, the church, and the Ohio Attorney General.

By judgment entries filed June 22, 2010, and September 8, 2010, the Probate Court ruled in relevant part in the declaratory judgment action, that since the church was not a party required by R.C. 2107.081 to be joined to the pre-probate proceeding, it was barred by R.C. 2107.084(A) and (E) and by R.C. 2107.71(B) from challenging the pre-probated Will, and was bound the judgment entry issued therein which determined the Will to be valid. The church appealed both of these judgment entries, which were consolidated by the Sixth District Court of Appeals. On June 17, 2011, the Court of Appeals issued a decision affirming the trial court, finding specifically at paragraphs 21 through 23 that the Probate Court was bound by its June 2, 1992 judgment in the pre-probate proceeding, citing *Baily v. McElroy* (1963), 120 Ohio App. 85, 95,

and that the church was likewise bound by that judgment. A notice of appeal of this decision and memorandum in support of jurisdiction were timely filed in this instant case, and remains pending, in this Supreme Court.

**Will Contest Proceeding** - In the meantime, on May 3, 2010 the appellant church filed a will contest complaint in the Probate Court seeking to set aside Raymond's May 1, 1992 Will. On June 23, 2010 the Probate Court dismissed the church's complaint, making the identical finding in relevant part, that since the church was not a party required by R.C. 2107.081 to be joined to the pre-probate proceeding, it was barred by R.C. 2107.084(A) and (E) and by R.C. 2107.71(B) from challenging the pre-probated Will, and was bound the judgment entry issued therein which determined the Will to be valid. The church appealed this decision to the Sixth District Court of Appeals. On August 5, 2011, the Court of Appeals issued a Decision and Judgment affirming the trial court, finding in its two sentence decision only that "substantial justice" had been done by the trial court. A notice of appeal of this decision to this Supreme Court and a memorandum in support of jurisdiction are being timely filed contemporaneously with this motion in a separate appeal entitled *Hayes Memorial United Methodist Church v. Edgar Artz, Jr., Administrator WWA of the Estate of Raymond W. Artz, et al.*

Appellant church now seeks to consolidate both these appeals pursuant to Civ.R. 42(A).

## **II. LAW AND ARGUMENT**

Ohio Civ.R. 42(A) permits consolidation of actions involving a common question of law or fact, in order to avoid unnecessary costs or delay. Appellant submits that consolidation will accomplish this. This author cannot find any applicable rule in the Rules of Practice of the Supreme Court.

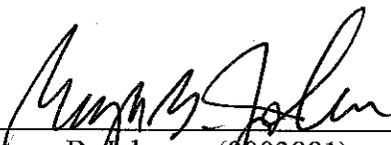
The common question of law and fact contained in both of these appeals is the trial and

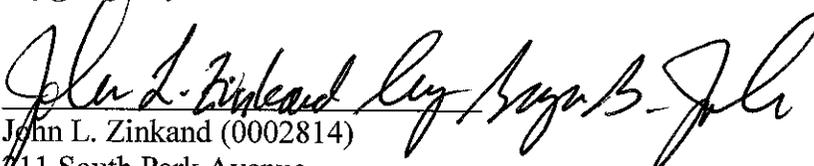
appellate courts' determination that Raymond's 1992 pre-probate of will proceeding precludes appellant from challenging Raymond's May 1, 1992 Will which essentially disinherits appellant. The parties in both actions are identical, as well.

### III. CONCLUSION

For all of the foregoing reasons, the appellant's two pending appeals in this Supreme Court should be consolidated.

Respectfully submitted,

  
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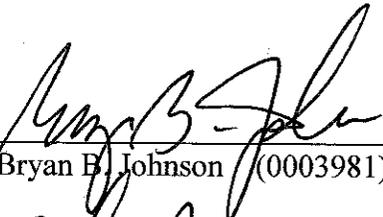
### CERTIFICATE OF SERVICE

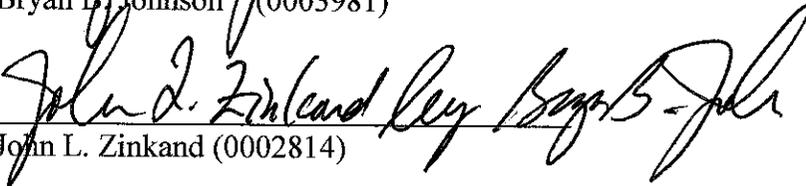
I, the undersigned, certify that a true copy of the foregoing pleading was served upon the following legal counsel, by ordinary U.S. Mail, postage pre-paid, this 19<sup>th</sup> day of Sept, 2011:

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COUNSEL FOR DEFENDANT/APPELLANT  
HAYES MEMORIAL UNITED METHODIST  
CHURCH

## **APPENDIX OF EXHIBITS**

### **Exhibit**

Exhibit 1 – Probate Court’s June 22, 2010 judgment entry in declaratory judgment action

Exhibit 2 - Probate Court’s September 8, 2010 judgment entry in declaratory judgment action

Exhibit 3 – Sixth District Court of Appeals decision and judgment affirming trial court

Exhibit 4 - Probate Court’s June 22, 2010 judgment entry in will contest action

Exhibit 5 - Sixth District Court of Appeals decision and judgment affirming trial court



**FILED**

SANDUSKY COUNTY

**COURT OF COMMON PLEAS  
SANDUSKY COUNTY, OHIO  
PROBATE DIVISION**

JUN 22 2010

PROBATE COURT  
Bradley J. Smith  
JUDGE

*In The Matter Of:*

**Case No. 20099002 A**

**Richard R. Heslet, Trustee**  
*Plaintiff,*

vs.

**JUDGMENT ENTRY**

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

**Date: June 22, 2010**

This matter came before the Court this date for decision upon the following pleadings:

- *Complaint for Declaratory Judgment*, filed June 22, 2009 by Attorney William A. Wingard, counsel for Richard R. Heslet, Trustee of the Raymond W. Artz Trust.
- *Answer of State of Ohio el rel. Richard Cordray Attorney General*, filed July 24, 2009 by Attorneys Meghan Fowler and Milton Sutton, Asst. Attorneys General for State of Ohio.
- *Answer of Defendants Edgar Artz, Jr. and Gladys Artz*, filed August 11, 2009 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- *Answer to the Complaint for Declaratory Judgment, Counterclaim & Crossclaim: Jury Demand Endorsed Hereon*, filed September 16, 2009 by Attorneys John Zinkand and Chris Steiner, Counsel for Hayes Memorial United Methodist Church.
- *Answer to Crossclaim of Defendant Hayes Memorial United Methodist Church*, filed September 28, 2009 by Atty. James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- *First Amended Answer to Answer and Crossclaim of Defendant Hayes Memorial United Methodist Church*, filed October 9, 2009 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- *Answer to Counterclaim of Defendant, Hayes Memorial United Methodist Church*, filed October 9, 2009 by Attorney William A. Wingard, counsel for Richard R. Heslet, Trustee.
- *Motion for Summary Judgment*, filed March 18, 2010 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.

- *Request to Enter Upon Land*, filed March 18, 2010 by Attorney John L. Zinkand, counsel for Hayes Memorial United Methodist Church.
- *Memorandum in Partial Support of Defendants' Motion for Summary Judgment*, filed March 31, 2010 by Attorneys Meghan Fowler and Milton Sutton, Asst. Attorneys General.
- *Reply to Attorney General's Partial Support of Motion for Summary Judgment*, filed April 5, 2010 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- *Motion for Protective Order*, filed April 9, 2010 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- *Notice of Dismissal Without Prejudice of Certain Claims and Defenses of Defendant / Counterclaimant / Cross-Claimant Hayes Memorial United Methodist Church*, filed May 10, 2010 by Attorneys John L. Zinkand and Bryan B. Johnson, Counsel for Hayes Memorial United Methodist Church.

In rendering a decision in this action, the Court also takes Judicial Notice of the following related matters: the *Guardianship of Raymond W. Artz*, Sandusky County Probate Court Case No. 19910135; the *Estate of Raymond W. Artz*, Sandusky County Probate Court Case No. 20081180; the will contest action Hayes *Memorial United Methodist Church v. Edgar Artz, et al.* Sandusky County Probate Court Case No. 20081180B; and the action to validate the *Last Will and Testament of Raymond W. Artz*, which was completed on June 2, 1992, under Sandusky County Probate Court Case No. 92CI000066.

*Based upon the foregoing pleadings and related cases, the Court hereby finds as follows:*

1. The *Complaint for Declaratory Judgment* states that there are various assets, many of which are savings bonds, in the name of the decedent that are not titled in the name of the Raymond W. Artz Trust. The Trustee is asking the Court for guidance as to whether those assets are properly assets of the Trust or if they would be assets of the estate. It is the Church's belief that it was the intention of Mr. Artz that these assets be registered in the name of the Trust due to Mr. Artz delivering them to the Trustee and that legal precedent in the State of Ohio establishes that the registration of those assets in the name of the Trustee may be accomplished following the death of the decedent. However, 31CFR Ch. 11, §353.5(a) the Code of Federal Regulations, which governs the issuance, ownership, registration, transfer and redemption of United States Savings Bonds states:

“Registration is conclusive of ownership. Savings bonds are issued only in registered form. The registration must express the actual ownership of, and interest in, the bond. The registration is conclusive of ownership, except as provided in §353.49.”

2. The *Complaint for Declaratory Judgment* further states that as Trustee, Richard Heslet was ordered by the Trust instrument to give \$400 per month to the Memorial United Methodist Church. Trustee Heslet affirms that for several years after being appointed Trustee, he made said monthly payments. However, in May of 1999, Memorial United Methodist Church and the Hayes United Methodist Church consolidated, (herein referred to as "the Church"), as evidenced by Exhibit A in Plaintiff's complaint. Once the churches consolidated, Trustee Heslet discontinued making the monthly payments to the Church.
3. The *Declaration of Trust of Raymond W. Artz* indicates that upon the death of Raymond W. Artz and his brother, Edgar J. Artz, Sr., the trust would terminate. The Church would receive \$10,000.00, and the Trustee was ordered to pay any bequests in the Donor's Probated Will not paid out of funds or property in Donor's estate. The Church would then receive the remainder of the Trust assets.
4. The *Last Will and Testament of Raymond W. Artz* indicates that all real property would pass to Edgar Artz, Jr., the sum of \$700,000.00 would be paid to Gladys Artz and Edgar Artz, Jr., share and share alike, and the remainder of the estate would be paid to Edgar Artz, Jr.
5. The *Last Will and Testament of Raymond W. Artz* was validated by the Sandusky County Probate Court pursuant to ORC §2721.10 on June 2, 1992, under case number 92CI000066. The Church asserts that the Judgment of this Court validating the will is not binding upon them as they were not included as parties of that action. However, the Church was not listed as a beneficiary of that will, nor would they be entitled to benefit from Mr. Artz's estate had he died intestate. The Church goes on to assert that Mr. Artz was incompetent at the date of the writing of the will. In reviewing the *Guardianship of Raymond W. Artz*, Sandusky County Probate Court Case No. 19910135, Mr. Artz was the subject of a guardianship from April 9, 1991 until October 15, 1991 when he was found to be no longer incompetent. The will in question was dated May 1, 1992, after Mr. Artz was declared to be competent. Further, the allowable time for a will contest action has passed.
6. The Church, in its *Request to Enter Upon Land*, asks the Probate Court for an order to "permit persons acting on behalf of Defendant Hayes, to enter upon the land in the possession or control of Defendants which is the subject of this action..." The land that was owned by Raymond W. Artz is listed as an asset of the estate. Since the trust is not a beneficiary of the will, there is no land that is the subject of this action.
7. That the Church's claim of a loan between Mr. Artz and the Church, and all items, claims and allegations related to this, have been resolved through the Notice of Dismissal of these claims filed by the Church, through Counsel.

Based upon the foregoing, it is hereby **ORDERED** as follows:

8. It is the opinion of this Court that if Mr. Artz intended for the savings bonds and securities to have been added to the trust, he would have titled them in the name of the trust prior to his death. It is the Court's opinion that it was not Trustee Heslet's intention to breach his fiduciary duty by not putting these assets in the name of the trust as Mr. Artz would have had to sign said assets over to him in order for him to do so. Therefore, even though Mr. Artz delivered the assets to Trustee Heslet, Mr. Artz did not transfer title to Trustee Heslet. Therefore, 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.
9. That while the Memorial United Methodist Church ceased to exist in 1999, it merged with the Hayes United Methodist Church to become the Hayes Memorial United Methodist Church. A Certificate of Consolidation for the two churches was filed with the Ohio Secretary of State. The Trust Agreement states that the Trustee was to pay \$400 per month to the Memorial United Methodist Church. It is the Court's opinion that it was not Trustee Heslet's intention to breach his fiduciary duty by failing to make said payments to the Church, but his belief that if the Church no longer existed as it was named in the Trust, that he was no longer obligated to pay said payments to the Trust. The Court disagrees and as such, it hereby Orders that Richard W. Heslet, Trustee of the Raymond W. Artz Trust, shall promptly pay to Hayes Memorial United Methodist Church the sum of \$400 per month for all months from March of 1999 until the month of death of Raymond W. Artz, being May of 2008. Therefore, Richard W. Heslet, Trustee, shall pay from Trust funds the sum of \$44,000.00 plus interest. The interest shall be calculated on an annualized basis for the amount that should have been paid each year, using the statutory interest rate then in affect for each year, and shall not be compounded in any fashion.
10. Further, Richard W. Heslet, Trustee of the Raymond W. Artz Trust shall also promptly pay the sum of \$10,000.00 to the Hayes Memorial United Methodist Church in satisfaction of the specific bequest in the Trust. The Trustee shall then pay any specific bequests listed in the Last Will and Testament of Raymond W. Artz that the fiduciary of the Estate cannot pay with estate assets. If there are trust funds remaining after the specific bequests of the will are paid, then the Trustee shall pay the remainder of the trust assets to the Hayes Memorial United Methodist Church.
11. In the event there are sufficient assets in the Estate of Raymond W. Artz, after the payment of the specific bequest to Edgar Artz, Jr. and Gladys Artz, the remainder shall be paid to Edgar Artz, Jr.

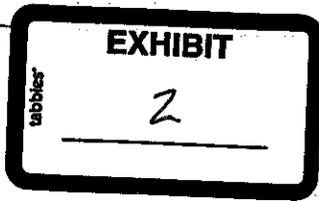
12. Due to the prior validation of this Court of the will of Raymond W. Artz, and the fact that the original Church would not have been a necessary party to that validation action, the Judgment of this court of June 2, 1992 declaring the will valid is binding on all parties. Due to Mr. Artz being found to be competent more than six (6) months prior to the signing of the will, the will already having been found to be valid, and this not being a will contest action, Defendant Edgar Artz, Jr. and Gladys Artz's Motion for Summary Judgment is **Granted** as it relates to this issue. In turn, the Church's Crossclaim as it relates to Defendants Artz possible undue influence on Mr. Artz in the drafting of his will is **Dismissed**.
13. Due to there not being any land that is subject to this action, the Church's Request to Enter Upon Land is hereby **Denied**. In turn, Defendants Artz Motion for Protective Order is hereby **Granted**.
14. That the Church's Counterclaim and Crossclaim as they relate to farm rent from Defendants Artz are hereby **Dismissed** as there is no real property that is an asset of the Trust.
15. That Trustee Richard Heslet shall complete an **Inventory and Accounting** of the assets of the Trust, file the same with the Court and provide copies to all beneficiaries and their counsel.
16. That the Church's Crossclaim as it relates to an alleged loan from the Trustee to the Defendants Artz, in the amount of \$40,000.00, has been **Dismissed** by the Church.
17. That any & all prayers for attorney fees by all parties are hereby **Denied**.
18. That the Plaintiff shall be assessed the **Court Costs** in this matter.
19. That this is a **Final Order** concluding all pending issues in this matter, or rendering them moot.

It is so **ORDERED**.

  
\_\_\_\_\_  
Bradley J. Smith ~ Judge

*Copies to:*

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Atty. Zinkand, counsel for Defendant Church  
Atty. Steiner, counsel for Defendant Church  
Atty. Johnson, counsel for Defendant Church  
Attys. Fowler & Sutton, counsel for Defendant Attorney General



COURT OF COMMON PLEAS  
SANDUSKY COUNTY, OHIO  
PROBATE DIVISION

FILED  
SANDUSKY COUNTY

SEP - 8 2010

PROBATE COURT  
Bradley J. Smith  
JUDGE

*In The Matter Of:*  
  
Richard R. Heslet, Trustee  
Plaintiff,

vs.

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

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Case No. 20099002 A

JUDGMENT ENTRY

Date: September 8, 2010

This matter came before the Court this date for decision upon the following pleadings:

- Motion of Plaintiff to Stay Enforcement of Judgment, filed August 27, 2010 by Attorney William A. Wingard, counsel for Richard R. Heslet, Trustee of the Raymond W. Artz Trust.
- Motion of Defendant Hayes Memorial United Methodist Church to Stay Enforcement of Judgment, filed August 23, 2010 by Lisa K. Meier, John L. Zinkand and Bryan B. Johnson, Attorneys for Defendant Hayes Memorial United Methodist Church (hereinafter referred to as "the Church").
- Opposition to Motion of Hayes Memorial United Methodist Church for Stay and Motion for Sanctions, filed August 30, 2010 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- Affidavit of Edgar Artz, Jr. in Support of Opposition to Plaintiff's Motion for Stay, filed August 30, 2010 by Attorney James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- Opposition to Plaintiff's Motion for Stay, filed August 30, 2010 by Atty. James H. Ellis III, counsel for Edgar Artz, Jr. and Gladys Artz.
- The Court's own Motion Regarding the Inventory and Accounting Ordered in the June 22, 2010 Judgment Entry.

After a review of the pleadings, this Court hereby finds as follows:

1. Due to the Court of Appeals dismissing the appeal in this matter, the Motion of the Church to Stay Enforcement of Judgment is no longer appropriate.

2. Due to the pending litigation in the Court of Common Pleas of Sandusky County, the Motion of Trustee Heslet is still appropriate, even though Defendants Artz feel that said litigation is frivolous. Until the Court of Common Pleas makes its determination, it would not be appropriate to enforce the June 22, 2010 Judgment.
3. However, because of the financial hardship this litigation has caused the Estate of Raymond W. Artz, the Court finds the Artz Defendants' request for a distribution from the trust to be well taken.
4. Based upon a further review of the file, and the Court of Appeals dismissing the appeal on the June 22, 2010 Judgment Entry, this Court reconsiders its order in paragraph 15 requiring Trustee Heslet to file an Inventory and Accounting with the Court.

Based upon the foregoing, it is hereby **ORDERED** as follows:

5. The Motion of Defendant Hayes Memorial United Methodist Church to Stay Enforcement of Judgment is Denied.
6. The Motion of Plaintiff to Stay Enforcement of Judgment is Denied as it relates to the appeal as this issue is moot; but is **Granted** as it relates to the pending litigation in the Court of Common Pleas of Sandusky County, subject to the order listed in paragraph 7 below, in place of the Court requiring the posting of a supersedeas bond..
7. The proposal of Defendants Artz that a distribution in the amount of \$50,000.00 to the Estate of Raymond Artz be made is hereby **Granted**. Trustee Helset is hereby **ORDERED** to distribute to Edgar Artz, Jr., Administrator WWA of the Estate of Raymond W. Artz, the sum of \$50,000.00. Edgar Artz, Jr., in his individual capacity as well as in his capacity as Administrator WWA of the Estate of Raymond W. Artz, and Gladys Artz, in her individual capacity, shall sign a promissory note in favor of the Trustee promising repayment of the distribution in the event that the Church prevails in its appeals and the Church prevails in its pending litigation action and the Church is able to produce a will signed by Raymond Artz giving the residue of his estate to the Church. Payment of this note will be secured by real property owned individually by Defendant Gladys Artz that is not subject to any claim being made by the Church or which could be the subject of such a claim.
8. Paragraph 15 of this Court's Judgment Entry of June 22, 2010 is hereby reconsidered and is deleted in its entirety. The Church's Motion for an Inventory and Accounting is therefore **Denied**. The remainder of this Court's June 22, 2010 entry remains in full force and effect, subject to the provisions of this decision.
9. The Motion for Sanctions filed by Defendants Artz shall be scheduled for hearing as soon as the Court's calendar permits. This hearing will be held in conjunction with a similar hearing to be scheduled in the Estate of Raymond W. Artz, Sandusky County Probate Court, Case No. 20081180.

10. This is a Final Appealable Order as it relates to all matters in this action except for the Motion for Sanctions and, pursuant to Civ.R. 54(B), there is no just reason for delay.

It is so **ORDERED**.



---

Bradley J. Smith ~ Judge

*Copies to:*

Atty. Wingard, counsel for Plaintiff  
Atty. Ellis, counsel for Defendants Artz  
Atty. Zinkand, counsel for Defendant Church  
Atty. Steiner, counsel for Defendant Church  
Atty. Johnson, counsel for Defendant Church  
Attys. Fowler & Sutton, counsel for Defendant Attorney General

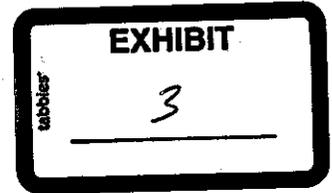
**SANDUSKY COUNTY  
COURT OF APPEALS  
FILED**

**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: Tracy 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.

JOURNALIZED  
6-17-11 LHM  
706996

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,<sup>1</sup> and appellant Hayes Memorial United Methodist Church ("the church"). On March 18, 2010, appellees filed a motion for summary

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<sup>1</sup>Gladys 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

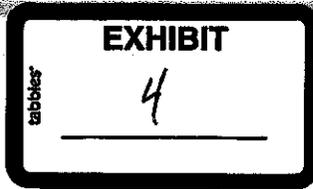
*Arlene Singer*

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>.



COURT OF COMMON PLEAS  
SANDUSKY COUNTY, OHIO  
PROBATE DIVISION

FILED  
SANDUSKY COUNTY

JUN 28 2010

PROBATE COURT  
Bradley J. Smith  
JUDGE

*In The Matter Of:*

Hayes Memorial United Methodist Church  
*Plaintiff,*

vs.

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

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Case No. 20081180 B

JUDGMENT ENTRY

Date: June 22, 2010

This matter came before the Court this date upon the following pleadings:

- Complaint Of Hayes Memorial United Methodist Church To Contest Last Will and Testament of Raymond W. Artz, Deceased, filed May 3, 2010 by Attorney John L. Zinkand, counsel for Hayes Memorial United Methodist Church.
- Answer, filed May 28, 2010 by Attorney James H. Ellis III, counsel for Defendants Artz.
- Answer To Complaint of Hayes Memorial United Methodist Church, filed June 3, 2010 by Attorney William A. Wingard, counsel for Richard R. Heslet, Trustee.
- Answer of State of Ohio ex rel. Richard Cordray Attorney General, filed June 3, 2010 by Attorneys Megan Fowler and Milton Sutton, Assistant Attorneys General for State of Ohio.
- Motion for Summary Judgment, filed June 4, 2010 by Attorney James H. Ellis III, counsel for Defendants Artz.
- Memorandum in Partial Support of Defendants' Motion for Summary Judgment, filed June 17, 2010 by Attorneys Megan Fowler and Milton Sutton, Assistant Attorneys General for State of Ohio.
- Memorandum of Plaintiff Hayes Memorial United Methodist Church in Opposition to Defendants' Motion for Summary Judgment, filed June 21, 2010 by Attorney John L. Zinkand, counsel for Hayes Memorial United Methodist Church.
- Motion of Hayes Memorial United Methodist Church for Delegation of Defense of Litigation Pending Against This Estate, filed June 21, 2010 by Attorney John L. Zinkand, counsel for Hayes Memorial United Methodist Church.

After a review of Estate Case File, and the foregoing pleadings & arguments, this Court hereby finds as follows:

1. That the Last Will and Testament of Raymond W. Artz was previously found to be valid by this Court on June 2, 1992 under Case No. 92CI000066.
2. Plaintiff was not given notice of the Will Validation Action, or of the Probate of the Last Will and Testament, as it was not a necessary party, or otherwise entitled to notice.
3. The Certificate of Service of Notice of Probate of Will was filed in the Estate of Raymond W. Artz, Case Number 20081180 on June 16, 2008. Therefore, the time for filing a Will Contest action in this Court has expired.

Based upon the foregoing, it is hereby **ORDERED** as follows:

4. That Summary Judgment is hereby **Granted** and the Complaint of Hayes Memorial United Methodist Church to Contest Last Will and Testament of Raymond W. Artz, Deceased, is hereby **Dismissed**.
5. That the Motion for Delegation of Defense of Litigation against the Estate is hereby **Denied** by the Court.
6. That any & all prayers for attorney fees in this matter are hereby **Denied**.
7. That the Plaintiff shall be assessed the **Court Costs** in this matter.
8. That this is a **Final Order** concluding all pending issues in this matter, or rendering them moot.

  
Bradley J. Smith ~ Judge

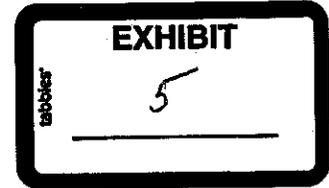
*Copies to:*

Atty. Zinkand, counsel for Plaintiff  
Atty. Steiner, counsel for Plaintiff  
Atty. Johnson, counsel for Plaintiff  
Atty. Wingard, counsel for Defendant Heslet  
Atty. Ellis, counsel for Defendants Artz  
Attys. Fowler & Sutton, counsel for Defendant Attorney General

**JOURNALIZED**

JUN 23 2010

SIXTH DISTRICT COURT OF APPEALS  
SANDUSKY COUNTY, OHIO



DATE: 8/5/2011

C.A. NUMBER: S-10-033

HAYES MEMORIAL UNITED METHODIST CHURCH, 1 VS ARTZ, EDGAR JR.

The following entry has been made upon the docket in the above entitled case:

DECISION & JUDGMENT FILED 08/05/11 - THE COURT FINDS SUBSTANTIAL JUSTICE HAS BEEN DONE THE PARTY COMPLAINING & THE JUDGMENT OF THE PROBATE DIVISION OF THE SANDUSKY COUNTY COURT OF COMMON PLEAS IS AFFIRMED. APPELLANT IS ORDERED TO PAY THE COSTS OF THIS APPEAL.  
MLP/PMH SAY

TRACY M. OVERMYER  
CLERK OF COURTS

By: *T. Reyes*  
Deputy Clerk

CC:

JAMES H. ELLIS III ESQ.

FILE COPY

MEGHAN K FOWLER

BRYAN B JOHNSON

SIXTH DISTRICT COURT OF APPEALS

WILLIAM A. WINGARD ESQ.

JOHN L. ZINKAND ESQ.

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