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WILLS - CHARITABLE TRUSTS - DOCTRINE OF APPROXIMATION - ACCUMULATION

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WILLS — CHARITABLE TRUSTS — DOCTRINE OF APPROXIMATION — ACCUMULATION — By his will of 1915 the testator, after providing for several legacies, left the residue of his estate to trustees, to expend the income therefrom in establishing and providing a home for the worthy aged poor of Waterbury, in the memory of his deceased wife. The income was not sufficient adequately to carry out this direction, the fund amounting to around $30,000 at the time of testator's death in 1920, and the trustees petitioned the court for instructions. *Held*, there being a general charitable intent, the fund should be administered cy pres by the court to relieve the aged poor of Waterbury through other agencies, and the fund should not be accumulated until sufficient to establish and provide a home, since to do so would require an indefinitely long time, and since there was currently much need for relief and no adequate agency to give it. *Citizens & Manufacturers Nat. Bank v. Guilbert*, (Conn. 1936) 186 A. 564.

It is generally agreed that courts of equity may apply the doctrine of approximation, or judicial cy pres, where for one reason or another there is a failure of the specific object of a charitable trust, or where it becomes impossible, impracticable, or inexpedient to administer the trust in the way specified by the testator, providing always that there can be found a general charitable intent.[1] And it is further generally recognized that insufficiency of the fund for the specific purpose expressed is one of the contingencies which may cause the doctrine to be invoked.[2] Where this is the case, a court has two alternatives: it may immediately apply the fund in some way which will as nearly as is reasonably possible conform to the expressed wishes of the testator, or will tend to serve the same ends that he desired to attain; or it may direct an accumulation of the income until the fund becomes large enough to carry out the project desired by the testator.[3] Several factors may influence the court's decision. Since the doctrine of approximation purports to be based upon intent, it is relevant to know whether the testator intended immediate action of some sort, or contemplated that some time would or might elapse before action would be possible.[4] However, these cases very often arise because the testator underestimates the amount necessary, or because the residuary estate is less than he contemplated at the time the will was drawn up,[5] and therefore a court can at best only guess what his intent would have been. A court must also consider practicability. If the fund is so small that a postponement of definite action would result in its being eaten up by costs and attorneys' fees, the court will order an immediate disposition.[6] Again, if the fund is so small that it would take an unreasonably

[1] 2 BOGERT, TRUSTS AND TRUSTEES, § 438 (1935). If it appears that the testator's intent was that the trust should be carried out according to its terms or not at all, the trust will fail.

[2] 2 BOGERT, TRUSTS AND TRUSTEES, § 438 (1935).

[3] 2 BOGERT, TRUSTS AND TRUSTEES, § 441 (1935). In the absence of statute, the rule against accumulations does not apply to charitable trusts. 2 PERRY, TRUSTS AND TRUSTEES, 7th ed., § 738 (1929). But a limitation of reasonableness has often been imposed. 2 BOGERT, TRUSTS AND TRUSTEES, § 353 (1935).

[4] Grimke v. Malone, 206 Mass. 49, 91 N. E. 899 (1910).

[5] ZOLLMAN, CHARITIES, § 157 (1924).

[6] Bruce v. Maxwell, 311 Ill. 479, 143 N. E. 82 (1924).

long time to build it up sufficiently, some other application will be ordered,[7] while if it is so nearly sufficient that a very short time would be required, the court should direct an accumulation.[8] But between these extremes, there are many possible fact situations where either result would be thinkable, and in the determination of the course to be pursued the court's feeling about the policy involved must be a factor. On this point the courts seem to be somewhat divided, though there is no express or sharply defined conflict. Some stress the uncertainties and vagueness surrounding the outcome of a directed accumulation, and the desirability of pressing available funds into the alleviation of present conditions.[9] Others, being more far-sighted or perhaps more visionary, adopt the position that most large and beneficial charitable institutions have grown from very small and dubious beginnings, such that if courts had been prone to direct an immediate disposition they would probably not have survived; concluding that in the long run it will be better to foster such beginnings, if the public need is great.[10] They suggest the possibility, attested by experience, that other donations may swell the fund. A factor which is really another phase of the same problem is the presence or absence in the community of an institution similar to the one proposed.[11] In view of the number of factors involved, and the endless variety of fact situations to which they may be applied, no dogmatic rules may be laid down, but it is suggested that the court in the instant case did not consider the possibility of directing an accumulation as fully as it might have.

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[7] Ely v. Malone, 202 Mass. 545, 89 N. E. 166 (1909).

[8] Tainter v. Clark, 87 Mass. (5 Allen) 66 (1862).

[9] Norris v. Loomis, 215 Mass. 344, 102 N. E. 419 (1913).

[10] Gilman v. Hamilton, 16 Ill. 225 (1854); Allen v. Trustees of Nasson Institute, 107 Me. 120, 125, 77 A. 638 (1910).

[11] Adams v. Page, 76 N. H. 96, 79 A. 837 (1911).