

Matter of United Methodist Women
2020 NY Slip Op 33014(U)
September 14, 2020
Supreme Court, New York County
Docket Number: 152263/2020
Judge: Eileen A. Rakower
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SUPREME COURT OF THE STATE OF NEW YORK – NEW YORK COUNTY

PRESENT: Hon. EILEEN A. RAKOWER

PART 6

Justice

**In the Matter of the Application of
UNITED METHODIST WOMEN,**

**INDEX NO. 152263/2020
MOTION DATE
MOTION SEQ. NO. 1
MOTION CAL. NO.**

Petitioner,

Recipient of Gift known as

DECISION AND ORDER

SARAH E. WHITEHEAD BEQUEST

**For relief under Section 555(c) of the Non-for Profit
Corporation Law of the State of New York**

The following papers, numbered 1 to _____ were read on this motion for/to

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause – Affidavits – Exhibits ...

Answer – Affidavits – Exhibits _____

Replying Affidavits

Cross-Motion: Yes No

Petitioner United Methodist Women (“Petitioner”) brings this action pursuant to Not-for-Profit Corporation Law (“NPCL”) § 555(c) for an Order approving a modification of the terms governing of a restricted fund known as the Sarah E. Whitehead Bequest (“Whitehead Bequest”). The Attorney General of the State of New York has no objection to the relief sought in the Petition

Factual Allegations/Relevant Background

Petitioner is a New York not-for-profit corporation, which was incorporated in 1942 as the Woman's Division of Christian Service of the Board of Missions and Church Extension of the Methodist Church (“WDCS”). Since the date of its incorporation, Petitioner has changed its name several times. It was known as Women’s Division of the General Board of Global Ministries of The United Methodist Church (“Women’s Division”) and in 2012 it was known as United Methodist Women. Petitioner’s “mission is to advocate for the oppressed and dispossessed with special attention to the needs of women, children and youth.” (Amended Petition at 2).

In 1869, the Woman's Foreign Missionary Society of the Methodist Episcopal Church ("WFMS") was formed as an Ohio nonprofit organization "to engage and unite the efforts of Christian women in sending female missionaries to women in the foreign mission fields of the Methodist Episcopal Church, and in supporting them and native Christian teachers and Bible-readers in those fields." (Amended Petition at 2).

In 1939, a conference was held among three denominations, to wit: The Methodist Episcopal Church; the Methodist Episcopal Church, South; and the Methodist Protestant Church. The three denominations agreed to merge into a single new denomination to be known as The Methodist Church and all of the properties, trust funds, permanent funds, and endowment funds of WFMS, including the Whitehead Bequest, were transferred to the WDCS.

UMW is the fiduciary of the Whitehead Bequest, which UMW received in the 1950s from WFMS, UMW's predecessor organization. Petitioner contends that UMW's archives do not contain a copy of the Donor's will or other original donor records. Petitioner further contends that there are few other records available to UMW to provide background information about the fund, its donor, or its purpose. A memorandum in UMW's archives dated March 7, 1972, indicates that the Whitehead Bequest was left to the Columbia River Branch of the WFMS in 1951, and based on its correspondence with the Columbia River Branch indicating that it was following the desire of Mrs. Whitehead, WDCS used the income from the bequest "for the training of young women in Kolar, India and especially ... nurses from the Kolar School of Nursing." (Petition, Exhibit A). A correspondence in UMW's archives dated February 5, 1979 from Women's Division discusses the purpose of the Whitehead Bequest, stating: "The letter of the legal counsel of the funds states that the funds be applied 'for the support of native workers of the woman's society in India.'" (Petition, Exhibit B). Lastly, A record in UMW's archives dated August 3, 1995, indicates that the Whitehead Bequest was funded with an initial bequest of \$61,026.41; was to be maintained as a "permanent fund"; and that "interest [sic] to be used for the support of native workers of the said missionary society in India." (Petition, Exhibit C).

Modification of Bequest

NPCL § 555(c) states in relevant part:

If a particular purpose or restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the purposes expressed in the gift instrument.

“[U]nlike other trusts, a charitable trust will not necessarily fail when the settlor's specific charitable purpose or direction can no longer be accomplished.” *Matter of Estate of Wilson*, 59 N.Y.2d 461, 471-72 [1983]. “Cy pres, now codified as part of Article 8 of the Estates, Powers and Trusts Law (s 8-1.1(c)), is: ... the principle that equity will make specific a general charitable intent of a settlor; and will when an original specific intent becomes impossible or impracticable of fulfillment, substitute another plan of administration which is believed to approach the original scheme as closely as possible.” *Lefkowitz v. Lebensfeld*, 68 A.D.2d 488, 494 n. 2 [1st Dept 1979], *aff'd*, 51 N.Y.2d 442 [1980].

Cy pres can be applied when (1) the gift or trust was created for a charitable purpose; (2) the donor established a general charitable intent; and (3) circumstances have changed that render the donor's specific charitable intent “impossible or impracticable”. *Matter of Estate of Wilson*, 59 N.Y.2d at 471-72.

Petitioner argues that “although there is no gift instrument available, the restrictions on the Whitehead Bequest historically recognized and applied by UMW have become impracticable.” Petitioner contends that to its information and belief, the Whitehead Bequest was established to provide support for native workers of WFMS in India, which is consistent with Article II of WFMS’s Constitutions. Petitioner asserts that WFMS’s purpose was “to engage and unite the efforts of Christian women in sending female missionaries to women in the foreign mission fields of the Methodist Episcopal Church, and in supporting them and native Christian teachers and Bible-readers in those fields.” Petitioner further asserts that WFMS focused its missionary efforts and resources on India where it established and operated hospitals, clinics, schools and colleges.

Petitioner asserts that the number of missionaries declined by 50% in the 1960s. Petitioner contends that the Methodist Church of India was “recognized as an affiliated autonomous church distinct from the United Methodist Church in the 1980s. Petitioner argues that as a result, “UMW-owned properties and UMW’s responsibility to manage the institutions that it and its missionaries had established

were transferred to MCL and that, in turn, led to a declining role abroad for UMW missionaries.” Petitioner contends that UMW no longer trains local women in India to serve as missionaries of The United Methodist Church, but instead provides funding support for organizations with programs and projects related to women, children and youth around the world, including programs and projects in India. Therefore, Petitioner argues that “it is impracticable to follow the donor’s restrictions on the use of income generated by the Bequest, namely, to support native workers of WFMS in India because native workers of the organization per se, now known as UMW, do not exist.”

Petitioner argues that by expanding the scope of the modification to include women, children and youth, UMW will be supporting the performance of the kinds of work the native workers would have been doing at the time the Whitehead Bequest was established. Petitioner argues that the proposed modification would provide UMW with the discretionary authority to determine which programs or institutions would best advance UMW’s mission goals and objectives with respect to women, children and youth in India.

Petitioner asserts that the memorandum in UMW’s archives dated March 7, 1972, indicates that Mrs. Whitehead may have wished to support “training of young women in Kolar, India and especially ... nurses from the Kolar School of Nursing.” Petitioner argues that Kolar School of Nursing referred to is likely now known as the Ellen Thoburn Cowen Memorial Institution of Nursing, in Kolar, India. Petitioner contends that UMW already has a current relationship with this school, and supports its students through UMW’s International Scholarship Program, therefore, the income from the Whitehead Bequest to support the students at this school is not needed. Petitioner argues that if UMW’s alternative resources are insufficient to meet the current needs at the Ellen Thoburn Cowen Memorial Institution of Nursing, this school would certainly be the type of program UMW would support using the income from the Whitehead Bequest.

Petitioner contends that the Whitehead Bequest has been “on hold” and no distributions have been made since 2012, in order for UMW to review the file and obtain the necessary approvals before spending from the fund again. On October 6, 2019, UMW's Board of Directors adopted the Resolutions Related to Modification of the Whitehead Bequest. The affidavit of the Treasurer of UMW indicates that as of December 31, 2019, the fund has a market value of \$424,957.21. Petitioner contends that UMW intends to maintain the fund as a permanently restricted endowment fund, and does not seek to modify the donor-imposed spending

restriction on the Whitehead Bequest. Petitioner asserts that the donor died in the 1950s, therefore the written consent of the donor to release the restriction cannot be obtained.

Discussion

Petitioner has demonstrated that cy pres can be applied in this circumstance. Petitioner has shown that Whitehead Bequest is charitable in nature, that the intent of the original donors was general charitable intent, and that circumstances have changed which render compliance impossible or impracticable. *See Matter of Estate of Wilson*, 59 N.Y.2d at 471-72. The Whitehead Bequest was established to provide support for native workers of WFMS in India, which is consistent with WFMS's purpose "to engage and unite the efforts of Christian women in sending female missionaries to women in the foreign mission fields of the Methodist Episcopal Church, and in supporting them and native Christian teachers and Bible-readers in those fields." Petitioner asserts that UMW no longer trains local women in India to serve as missionaries of The United Methodist Church, but instead provides funding support for organizations with programs and projects related to women, children and youth around the world, including programs and projects in India. Thus, it is impracticable to follow Ms. Whitehead's restrictions on the use of income generated by the Bequest, to support native workers of WFMS in India because native workers of the organization per se, now known as UMW, do not exist. Expanding the scope of the modification to include women, children and youth, will allow UMW to support the performance of the work the native workers would have been doing at the time the Whitehead Bequest was established. Therefore, Petitioner's request for an Order approving a modification of the restrictions of the Whitehead Bequest is granted.

Wherefore, it is hereby

ORDERED that Petitioner's motion pursuant to §555(c) of the New York Not-for-Profit Corporation Law to permit Petitioner to modify the terms governing a restricted fund known as the Sarah E. Whitehead Bequest is granted without opposition. The Attorney General of the State of New York has no objection to the relief sought in the Petition; and it is further

ORDERED that the restriction on the use of the Sarah Whitehead Bequest is impracticable; and it is further

ORDERED that the written consent of the donor to release the restriction cannot be obtained because the donor is deceased; and it is further

ORDERED that the use of income generated by the fund from the aforesaid restrictions is released; and it is further

ORDERED that the modification of the purpose of this fund so that income generated by the fund shall be distributed to programs and projects related to women, children and youth is approved.

This constitutes the Decision and Order of the Court. All other relief requested is denied.

Dated: September 14, 2020

ENTER: 
J.S.C.

HON. EILEEN A. RAKOWER

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION