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SC Court of Appeals

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
)
 COUNTY OF CHARLESTON) CASE NO. 2017-ES-10-1946
)
 IN THE MATTER OF:) TEMPORARY RESTRAINING ORDER
)
THE ESTATE OF ROY E. MEVERS)

This matter comes before this Court on the motion of Alan Wilson, Attorney General for the State of South Carolina, pursuant to Rule 65, SCRPC, seeking this Court to enter a temporary restraining order against Minnie Lee Newman Mevers, surviving spouse of Roy E. “Sonny” Mevers Jr. (“Mr. Mevers”), deceased November 3, 2017, in respect of certain disputed distributions to Minnie Lee Newman Mevers from the Estate of Roy E. Mevers Jr. (the “Estate”).¹

For the reasons set forth below, the Court **GRANTS** the requests and issues this temporary restraining order.

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STANDING

The Attorney General, in his *parens patriae* capacity to protect the public interest under the powers granted to him under the constitution, statutory and common laws of the State of South Carolina, is a proper party to file this action and to seek the relief requested herein. Concerning charitable trusts, the Attorney General has the statutory and common law duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. The Attorney General is mandated by S.C. Code Ann. § 1-7-130 to “enforce the due application of funds given or appropriated to public charities within the state and prevent breaches of trust in the administration thereof...”; *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961) (“It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at

¹ The requirements of section 62-1-304 have been met.

large, as distinct from those having ‘immediate or peculiar interests.’ *Watson v. Wall*, 229 S.C. 500, 93 S.E.2d 918 (1956), establishes that the Attorney General can intervene in an action and participate to protect charitable devises even where a trust has not yet been established or there is a question as to the existence of the trust. As such, this Court finds that the Attorney General is an interested party as defined by S.C. Code Ann. § 62-1-201(23), has standing to seek this relief and this matter is properly before the Court.

FACTUAL BACKGROUND AND LEGAL AUTHORITIES

This action relates to a bequest made by Mr. Mevers in his Last Will and Testament and two codicils amending his Last Will and Testament (collectively “the Will”). The Will was executed on November 16, 2015. Codicils were executed on April 12, 2017 (“First Codicil”) and on August 4, 2017 (“Second Codicil”). On July 23, 2004, Mr. Mevers executed and filed with the Secretary of State, for the State of South Carolina, Articles of Incorporation for a Nonprofit Corporation named The Sonny Mevers Foundation (“Foundation”) in accordance with S.C. Code Ann. § 33-31-202. The stated purpose of the Foundation is to “receive and maintain a fund or funds of real or personal property, or both, and, subject to the restrictions and limitations hereinafter set forth, to use and apply the whole or any part of the income therefrom and the principal thereof exclusively for charitable, religious, scientific, testing for public safety, literary, or educational purposes either directly or by contributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revenue Code and its Regulations as they now exist or as they may hereafter be amended.”

On July 21, 2005 the Internal Revenue Service (“IRS”) issued a letter approving the tax exempt status of the Foundation under section 501(c) (3) of the Internal Revenue Code with an effective date of June 23, 2004. The Foundation was also “qualified to receive tax deductible

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bequests, devises, transfers or gifts under section 2055...of the Code.” Since its inception, the Foundation has made donations to numerous charities in the Charleston area, which is consistent with Mr. Mevers’s reputation of generosity throughout the community. Donations of twenty five thousand dollars (\$25,000.00) or more were made in multiple years along with numerous other donations to a variety of charities. Mr. Mevers made periodic contributions to the Foundation over the years to allow these donations and charitable gifts to take place.

The Will contained a residuary clause found in Article XII. This clause provided:

I give devise and bequeath my entire residuary estate, being all real and personal property, wherever situated, in which I may have any interest at the time of my death, not otherwise effectively disposed of, to **THE ‘SONNY MEVERS’ FOUNDATION**, if it is in existence at the time of my death and on the condition that it is an organization that is charitable within the meaning of Section 2055 of the Internal Revenue Code, as amended, and on the further condition that this gift is permitted as a charitable deduction from my Estate for Federal Estate Tax purposes, absolutely and in fee simple, forever.

By way of the First Codicil, Article XII of the Will was amended to add the following sentence at its conclusion: “Otherwise, I give, devise and bequeath my said entire residuary estate to my Spouse, MINNIE LEE NEWMAN MEVERS, absolutely and in fee simple, forever, on the condition that she shall survive me.”

The Articles of Incorporation of the Foundation vested Mr. Mevers or his nominee to appoint the members of the Foundation’s Board of Directors. Mr. Mevers’s Will nominated his “friend” Minnie Lee Newman as his successor with the right to appoint further successors to the Board of the Foundation.

Mr. Mevers passed away on November 03, 2017. Minnie Lee Newman Mevers, who had married Mr. Mevers in September 2016, thereafter replaced Mr. Mevers as President of the Board

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of the Foundation. She also petitioned the Court for appointment as Personal Representative and was named the Personal Representative of the Estate. The Attorney General asserts at the time of Mr. Mevers's death, the residuary clause of the Will leaving the remainder of the Estate to the Foundation devolved to the Foundation. S.C. Code Ann. § 62-3-101("Upon the death of a person, his real property devolves to the persons to whom it is left by his last will..."); S.C. Code Ann. § 62-2-602 ("a will is construed to pass all property which the testator owns at the testator's death..."). Specifically the Attorney General asserts that on the date of Mr. Mevers' death, the Foundation was in existence. It was recognized as a charitable organization within the meaning of Section 2055 of the Internal Revenue Code, as amended. Finally, the gift to the Foundation by way of the residuary clause of the Will was permitted as a charitable deduction from Mr. Mevers's estate for federal estate tax purposes. As such, the Attorney General takes the position the Foundation was entitled to the residuary of the Estate and the funds and assets were impressed with a charitable trust.

The Attorney General further states S.C. Code Ann. § 62-3-709 mandated that Minnie Lee Newman Mevers, as Personal Representative, "take all steps reasonably necessary for the management, protection and preservation of the estate in [her] possession" and that she failed to do so. Specifically, the verified Petition, Application and Motion filed with this Court set forth Minnie Lee Newman Mevers did not preserve or protect the Estate so she could improperly assert her entitlement to the residuary clause of the Will, enriching herself at the expense of the non-profit charitable foundation.

Minnie Lee Newman Mevers owed the Estate and the Foundation the same fiduciary and legal duties a trustee would owe a trust. It is alleged in her capacity as a secondary beneficiary of the residuary of the Estate, she placed her interest above those of the Foundation. She never sought

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the appointment of an independent personal representative or special administrator by this Court to remove herself from any potential conflict. Instead, she unilaterally decided with no permission or guidance from this Court or notice to this Court or the Attorney General that she was entitled to over Nineteen Million dollars (\$19,000,000.00) as the secondary beneficiary of the residuary clause.

Mr. Mevers' obituary stated "[i]n Lieu (*sic*) of flowers, **donations may be made to the Sonny Mevers Foundation**, Crescom Bank, Attn. Holly Edwards, 288 Meeting Street, Charleston SC 29401." (emphasis added). It further stated his funeral was held on November 11, 2017. Two days after his funeral, on November 13, 2017, Minnie Lee Newman Mevers filed this case by way of an Application for Informal Probate of Mr. Mevers' estate. She was appointed as Personal Representative of the Estate. Court records establish in the Application for Informal Probate, Minnie Lee Newman Mevers specifically listed that she was Mr. Mevers' wife and that she was left a bequest of "\$350,000 and all personal and household effects." She went on to list other bequests made under the Will, specifically noting the "**SONNY MEVERS FOUNDATION...CHARITY-All of the Rest and Residue of the Estate.**" These statements were verified by Minnie Lee Newman Mevers under oath.

The IRS issued an Auto-Revocation for the Foundation's non-profit status with a stated revocation date of November 15, 2017 and a Revocation Posting date of March 12, 2018. This action was taken by the IRS based on the Foundation's failure to file Forms 990-PF with the IRS for a three year period. The Attorney General alleges this was an administrative suspension and the Foundation's tax-exempt status was eligible to be restored retroactively at all times relevant. By taking no action, Minnie Lee Newman Mevers established a scenario where she took under the residuary clause of the Will as its secondary beneficiary, allowing her to take possession of over

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nineteen million dollars (\$19,000,000.00) which according to his Will, Mr. Mevers had specifically provided should pass to the Foundation.

A telephone meeting of the Foundation's Board of Directors was held and Minnie Lee Newman Mevers and the Board of Directors voted to dissolve the Foundation. The telephone vote of the Board took place on January 23, 2018 and Articles of Dissolution for a Nonprofit Corporation were filed with the Secretary of State were filed January 24, 2018. S.C. Code Ann. § 33-31-1403(a) provides in relevant part that a nonprofit organization "shall give the Attorney General written notice that it intends to dissolve at or before the time it delivers articles of dissolution to the Secretary of State. The notice shall include a copy or summary of the plan of dissolution." No such written or other notice was provided by Minnie Lee Newman Mevers or the Foundation to the Attorney General as mandated by the statute. Likewise, this Court was not apprised of the actions being taken by Minnie Lee Newman Mevers against assets which she indicated in her original probate filing under oath belonged to the Foundation. Had she done so, this Court would have required the Attorney General's involvement in the matter and at a minimum requested his position on such action as well as her failure to provide his office the required statutory notice.

In the Proposal for Distribution of the Estate dated November 15, 2018 and filed with this Court on November 18, 2018, the Foundation was no longer listed as receiving the residuary distribution as it was in the Application for Informal Probate. Rather, Minnie Lee Newman Mevers was listed as receiving the residuary distribution. The Proposal for Distribution contained no reference to the Foundation or its entitlement to assets under the residuary clause. The funds in the residuary were distributed to Minnie Lee Newman Mevers, not the Foundation. The Attorney General did not receive the mandated statutory notice relating to dissolving a non-profit

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foundation. Without notice as to the vested charitable interest, the Attorney General was not able to intervene and appear to protect the interest of the public at large as opposed to the immediate and pecuniary interest of Minnie Lee Newman Mevers.

Upon receiving the funds, public records establish Minnie Lee Newman Mevers began selling and transferring assets which she received by virtue of the residuary clause of the Will and which the Attorney General alleges legally belong to the Foundation. It is further stated, upon information and belief, she is further utilizing these assets for her own personal use and benefit.

As the personal representative of the Estate and as President of the Foundation, Minnie Lee Newman Mevers had an obligation to protect the non-profit foundation named as the residuary of Mr. Mevers' Will. This Court finds sufficient verified allegations in this Motion for a Temporary Restraining Order and the Verified Application and Petition which indicate Minnie Lee Newman Mevers may have taken actions inconsistent with the law, her fiduciary duties, and contrary to the vested interest of the non-profit foundation so as to circumvent the contents of the residuary clause for her own personal use and benefit.

The facts set forth in the Verified Petition and Application show that the Foundation and the Attorney General will likely succeed on the merits of this litigation. There are verified facts and allegations that Minnie Lee Newman Mevers breached her legal and fiduciary duties in taking possession of assets belonging to the Foundation. It is alleged she did so in a conscious effort to render the residuary clause of Mr. Mevers's Will meaningless, and thereby thwart his testamentary intent, so that she, rather than the non-profit charitable foundation, would receive in excess of Nineteen Million and 00/100 (\$19,000,000.00) Dollars.

There is no adequate remedy at law available if Minnie Lee Newman Mevers is allowed to continue to use Foundation assets to fund her lifestyle, travel, expenses, and gifts to others. Failing

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to issue a temporary restraining order against Minnie Lee Newman Mevers's use of the assets, to include any proceeds thereof, will irreparably harm the Foundation and the public interest it is meant to serve, each use of the assets by Minnie Lee Newman Mevers unduly diminishing the Foundation's chances of ever fully recovering that which she has purportedly taken from it.

A Special Administrator may be appointed informally by the Court to protect the Estate of the Decedent and to take appropriate actions involving Estate assets. S.C. Code Ann. § 62-3-614. A Special Administrator appointed by the Court in an informal proceeding has the duty to collect and manage, preserve, and account for the assets of the Estate. S.C. Code Ann. § 62-3-616. The Special Administrator has the power of a Personal Representative necessary to perform his duties. Id. Pursuant to S.C. Code Ann. § 62-3-614, J. James Duggan, Esq. shall be appointed as Special Administrator of the Estate of Roy E. Mevers, Jr.

Therefore, based upon the foregoing, it is hereby

ORDERED, ADJUDGED, AND DECREED that, pursuant to Rule 65 of the South Carolina Rules for Civil Procedure, Minnie Lee Newman Mevers is hereby restrained from using, disposing of, transferring, selling, gifting, mortgaging, or taking any other action of any kind that would encumber, sell, or impact the ownership of, the value of, or the ability of the Foundation to recover the full value of any/all assets (or the proceeds thereof) distributed to her under the residuary clause of Mr. Mevers's will and, to that end, requiring that she retain complete control over all monies, stocks, securities, and/or anything else of value already received from any sale, transfer, or other disposition of such assets for the duration of this temporary restraining order, or as may otherwise be ordered by this Court; it is further

ORDERED, ADJUDGED, AND DECREED that, pursuant to S.C. Code Ann. § 62-3-614, J. James Duggan, Esq. is hereby appointed as Special Administrator of the Estate of Roy E.

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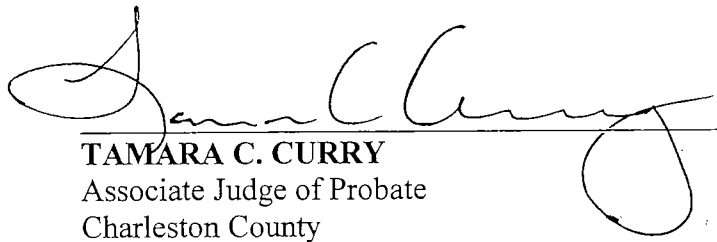
Mevers, Jr. in order to take any appropriate actions involving assets of the Estate of Roy E. Mevers, Jr.; it is further

ORDERED, ADJUDGED, AND DECREED that a hearing on the matter shall be held on March 23, 2020 at 11:00 AM at 84 Broad Street, Second Floor, Charleston, South Carolina 29401; it is further

ORDERED, ADJUDGED, AND DECREED that this Order shall be subject to further Orders of this Court as may become necessary.

IT IS SO ORDERED THIS 19th DAY OF MARCH, 2020 AT 4:30 PM IN CHAMBERS IN CHARLESTON, SOUTH CAROLINA.

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TAMARA C. CURRY
Associate Judge of Probate
Charleston County