

Offices in
Suffolk and
Virginia Beach, Virginia
Tel: 757-399-7506
Fax: 757-397-1267
Web: www.oasthook.com



MEMBER



Special needs require special lawyers.

INSIDE THIS ISSUE

- Trust Divisions and Terminations
- Ask Allie
- Announcements
- Distribution of This Newsletter

Editor
Sandra L. Smith,
Certified Elder Law Attorney

TRUST DIVISIONS AND TERMINATIONS

The Supreme Court of Virginia recently reviewed a case regarding the circuit court's division and commutation of a testamentary charitable remainder unitrust over the objection of a charitable beneficiary.

In *Ladysmith Rescue Squad Inc. v. Donald H. Newlin et al*, (Record No. 091388, June 10, 2010), the testator died in 2004, unmarried with no descendants. His March 2, 1998, will and September 25, 2002, codicil were admitted to probate. The will's fourth article gave all of the testator's bonds, stocks, and other securities to trustees to hold in a charitable remainder unitrust. The trustees were to invest and manage the assets for the benefit of four income beneficiaries; these beneficiaries were to receive the net income of the trust or 6% of the value of the trust assets, whichever was less. At the death of the last surviving income beneficiary, the two charitable beneficiaries, The Upper Caroline Volunteer Fire Department (Upper Caroline) and the Ladysmith Volunteer Rescue Squad (Ladysmith), were to receive the residue of the trust assets in equal shares. The will also contained a standard spendthrift clause.

The executors/trustees filed a complaint for advice and guidance that asked the circuit court to determine which assets of the estate were the residue subject to the payment of taxes, debts, and costs of administration. The trustees said that the assets that were to pass under the fourth article were insufficient to pay those expenses, and asked the court to determine if other bequests should abate to pay them.

In April 2009, the trust corpus was valued at between \$5 million and \$6 million, and two of the income beneficiaries were still alive. The trustees, the two income beneficiaries, and Upper Caroline moved the court to authorize the trustees to divide the trust. The two equal trusts would be the "Upper Caroline Trust" and the "Ladysmith Trust." Ladysmith objected to this proposed division. The parties also asked the court to allow the trustees

to commute and terminate the Upper Caroline Trust, pay the commuted value of their interests in the trust to the income beneficiaries, and distribute the remainder of the trust to Upper Caroline.

The moving parties relied on Virginia Code § 55-544.17 regarding the combination and division of trusts that states, “After notice to the qualified beneficiaries, a trustee may combine two or more trusts into a single trust or divide a trust into two or more separate trusts, if the result does not materially impair rights of any beneficiary or adversely affect achievement of the purposes of the trust.” The moving parties also relied upon Virginia Code § 55-544.12(A) that states, “A court may modify the administrative or dispositive terms of a trust or terminate the trust if, because of circumstances not anticipated by the settlor, modification or termination will further the purposes of the trust. To the extent practicable, the modification shall be made in accordance with the settlor’s probable intention.”

The Supreme Court of Virginia first addressed the question whether the division of the trust would “materially impair the rights of any beneficiary or adversely affect achievement of the purposes of the trust.” If the answer to that question was yes, then the circuit court did not have the authority to make such a division. The Supreme Court reviewed the terms of the will and determined that the authority to divide the trust was not contained in the will, and therefore had to be found within Virginia Code § 55-544.17. The Supreme Court discussed Virginia’s adoption of the Uniform Trust Code (“UTC”) in 2005, and it concluded that the UTC “has not altered the fundamental principles that in construing, enforcing and administering wills and trusts, the testator’s or settlor’s intent prevails over the desires of the beneficiaries, and that intent is to be ascertained by the language the testator or settlor used in creating the will or trust.” The Supreme Court went on to state that “[t]he UTC has not so altered the law as to permit beneficiaries, after the death of a testator, to defeat the terms of his will that postpone their enjoyment of his bounty, merely because they ‘would rather have [their] money today than wait.’”

The Supreme Court concluded that the modifications made by the circuit court did not “further the purposes of the trust,” and in fact were contrary to the settlor’s purposes for the trust and completely frustrated them. Those purposes included obtaining favorable estate tax treatment, providing a stream of income for the income beneficiaries with spendthrift protection, but “in no event was payment of their benefits to be accelerated,” nor was the corpus of the trust to be invaded for their benefit. The Supreme Court also concluded that the “division of the trust was merely a device to accomplish the moving parties’ desires without having to seek the approval of Ladysmith, the only party expressing a desire to defend the settlor’s intent.” That step “adversely affect[ed] achievement of the purposes of the trust’ . . . and therefore contravened the provisions of Code § 55-54.17.” The Supreme Court held that the circuit court erred in granting the moving parties’ motions to divide the testamentary trust and commute and terminate the Upper Caroline trust and reversed the judgment of the circuit court.

The attorneys at Oast & Hook can assist clients and their families with their fiduciary litigation, estate planning, estate and trust administration, veterans’ benefits and life care planning needs.

Ask Allie

O&H: Allie, we had to put your emergency preparedness tips to work last week during Hurricane Earl. Please give us some further information on traveling with your cat.

Allie: Sure! Fortunately, most of us did not have to evacuate last week, but even if we are only traveling to the vet, there are some tips for helping your cat, and you, have as pleasant a trip as possible. We've discussed some travel essentials, such as a proper cat carrier, documentation, ID tags, and medication. If traveling by car, you may also need a small litter box, toys, a leash, and food and water. To simplify travel, keep all of your pet-related items together in a box or suitcase, go the shortest distance, and plan well. You might want to do a practice run, especially for first-time travelers or distances greater than to the vet. You can get the cat acclimated to being in the carrier in its spot in the car, riding in the care for short trips, and gradually increasing the length of the car ride. I know I don't really like to ride in the car, but I try to be polite when I have to do it. OK, I might not always be successful, but I do try! Time to go find my mom and play. See you next week!

Announcements

Oast & Hook attorney Letha McDowell will speak on the topic of life care planning from 9:45 a.m. to 11:30 a.m., Tuesday, September 14th to the staff at Sentara Virginia Beach General Hospital located at 1060 First Colonial Road, Virginia Beach, Virginia 23451. For more information about this presentation, please phone Paula Mala at 757-882-5222.

Oast & Hook attorney Brian A. Boys will speak on the topic of legal issues affecting senior adults from 7:00 p.m. to 9:00 p.m., Tuesday, September 14th at the meeting of the South Norfolk Baptist Association located at 1101 Chesapeake Avenue, Chesapeake, Virginia 23324. For more information about this presentation, please phone Robert Lee at 757-621-1019.

Oast & Hook attorney Sandra L. Smith will speak on the topic of veterans benefits from 5:00 p.m. to 6:30 p.m., Tuesday, September 14th at Leigh Hall Assisted Living located at 890 Poplar Hall Drive, Norfolk, Virginia 23502. For more information about this presentation, please phone Jennifer Knighten at 757-461-5956.

Oast & Hook attorney Letha McDowell will speak on the topic of estate planning from 10:00 a.m. to 12:00 p.m., Wednesday, September 15th at the Pasquotank office of the North Carolina Extension Service located at 1209 McPherson Street, Elizabeth City, North Carolina 27909. For more information or to register for this event, please phone the Pasquotank Cooperative Extension Service at 252-338-3954.

Distribution of This Newsletter

Oast & Hook encourages you to share this newsletter with anyone who is interested in issues pertaining to the elderly, the disabled and their advocates. The information in this newsletter may be copied and distributed, without charge and without permission, but with appropriate citation to Oast & Hook, P.C. If you are interested in a free subscription to the *Oast & Hook News*, then please e-mail us at mail@oasthook.com, telephone us at 757-399-7506, or fax us at 757-397-1267.