

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

McDONALD & COMPANY	:	CASE NO. C-97643
SECURITIES, INC., GRADISON	:	
DIVISION, As Custodian of the	:	
Individual Retirement Account	:	
of Fred W. Weisman,	:	
	:	<u>OPINION AND ENTRY</u>
Plaintiff	:	<u>GRANTING DECLARATORY</u>
	:	<u>JUDGMENT</u>
-vs-	:	
	:	
ALZHEIMER'S DISEASE AND	:	
RELATED DISORDERS	:	
ASSOCIATION INC., et al.	:	
	:	
Defendants	:	
	:	

This matter came before Judge Wayne F. Wilke on July 28 and July 29, 1999 on the merits of the complaint for declaratory judgment. Present were Stephen L. Black for Defendant Alzheimer's Research Center of the University of Cincinnati College of Medicine (hereinafter "UC-ARC"); American Health Assistance Foundation, represented by James H. Coogan; and Alzheimer's Disease Association, represented by Daniel P. Randolph. At the close of the evidence, the parties were granted six weeks to file closing arguments and replies to those closing arguments.

FACTS

The facts of this case may be summarized briefly. The decedent, Fred W. Weisman, died testate on April 20, 1996. The decedent designated six charitable

organizations to receive equal portions of an Individual Retirement Account ("IRA") that the decedent owned through McDonald & Company Securities, Inc., Gradison Division. One of the beneficiaries designated to receive a portion of the IRA is "Alzheimer's Research Center".

As stipulated by the parties, the decedent signed a check in the amount of \$15.00 made payable to "Alzheimer's Research" dated November 7, 1994. This check was sent to and negotiated by the American Health Assistance Foundation d/b/a Alzheimer's Disease Research.

On or about July 6, 1995, the decedent sent a \$20.00 check made payable to "Alzheimer's Disease Assn.". That check was mailed to and negotiated by the Alzheimer's Disease and Related Disorders Association.

Last, the decedent sent a \$25.00 check made payable to "Alzheimer's Disease Research" dated November 6, 1995. This check was mailed to and negotiated by American Health Assistance Foundation d/b/a Alzheimer's Disease Research.

The evidence adduced at trial indicated that the decedent and his investment advisor were rather anxious to complete the IRA beneficiary form. The evidence indicates that neither the decedent nor his advisor paid very particular attention to the words they used in naming the proposed beneficiaries. Moreover, the evidence indicates that by originally naming only "Alzheimer's" as a beneficiary, the decedent's sole desire was to provide a portion of his IRA to help those with Alzheimer's disease. The evidence indicates that the additional words "Research Center" were added later and that it could not be established that the decedent intended the portion earmarked for "Alzheimer's" to go to any particular group or organization.

## CONCLUSIONS OF LAW

Generally, courts presume that the intent of the parties to a contract resides in the language they chose to employ in the agreement. *Kelly v. Med. Life Ins. Co.* (1987), 31 Ohio St.3d 130, paragraph one of the syllabus. However, when the language of a contract is unclear or ambiguous, or when the circumstances surrounding the agreement invest the language of the contract with a special meaning, extrinsic evidence may be considered in an effort to give effect to the parties' intentions. *Shifrin v. Forest City Enterprises, Inc.* (1992), 64 Ohio St.3d 635, 638. This court is especially inclined to effectuate the decedent's intent since a probate court, when construing a testamentary document, has the duty to ascertain and effectuate the writer's intent within the bounds of the law. *Domo v. McCarthy* (1993), 66 Ohio St.3d 312, 314.

In this case, however, the language used on the beneficiary form is ambiguous with respect to the designation of "Alzheimer's Research Center" so that extrinsic evidence must be used in an effort to ascertain the decedent's intent. That is because that particular designation could reasonably apply to any one of a number of organizations, only one of which is a party to this litigation.<sup>1</sup> UC-ARC's contention that it must be the organization Fred Weisman chose when he completed his beneficiary designation form cannot be given serious consideration given the number of other organizations so similarly named. In fact, to positively identify UC-ARC from the rest of the pack, one

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<sup>1</sup> Organizations with the name of "Alzheimer's [Disease] Research Center" are numerous and include Harvard University's "Alzheimer's Disease Research Center"; the University of Michigan's "Alzheimer's Disease Research Center"; the Baylor College of Medicine's "Alzheimer's Disease Research Center"; as well as those of the University of Rochester, Duke University, Washington University of Missouri, Columbia University, Case Western Reserve University, and the University of Pittsburgh, to name just a few.

must take great care to state with specificity that one means the Alzheimer's Research Center of the University of Cincinnati College of Medicine, the name used by UC-ARC itself on its pleadings with the Court.<sup>2</sup> Since the ambiguity exists as to what organization the decedent actually meant, the Court received extrinsic evidence. Even after such evidence, however, the Court still cannot establish with any degree of certainty what organization the decedent intended to support.

In this case, the decedent's initial naming of "Alzheimer's" on the beneficiary designation form indicates only the decedent's general intent to leave money for an organization that assisted, in some way, those afflicted with Alzheimer's disease. Importantly, the evidence indicates that Fred Weisman originally simply put "Alzheimer's" on a piece of paper to be copied on the actual beneficiary designation form. The evidence establishes the decedent's general charitable intent to benefit everyone who suffers from the disease and not just one particular organization, in the same general terms that a testamentary bequest to "helping the poor" or "fighting poverty" would logically be construed.

Faced with such imprecise language, the designation of "Alzheimer's Research Center" would normally fail for being vague. Generally, however, charitable bequests are liberally construed, with a view toward accomplishing the testator's purpose. *Becker v. Fisher* (1925), 112 Ohio St. 284; *Findley v. City of Conneaut* (1945), 145 Ohio St. 480, 486. Although not a testamentary document, the same policy considerations compel Fred Weisman's beneficiary designation to be liberally construed in a similar manner. Fred Weisman clearly meant to improve the life of those afflicted with Alzheimer's disease,

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<sup>2</sup> There is evidence UC-ARC also calls itself the "University of Cincinnati College of Medicine Alzheimer's Research Center".

whether by the research of a cure or counseling for those affected by the disease. The designation of "Alzheimer's Research Center" was simply a means to accomplish this charitable objective. See, e.g. *Daloia v. Franciscan Health System of Central Ohio* (1997), 79 Ohio St.3d 98, 105. With regard to testamentary documents, courts have long used the *cy pres* doctrine as a "saving device" used to substitute another charitable object which is believed to approach the original purpose as closely as possible. *Id.* at 106. Since Fred Weisman's charitable beneficiary designation is analogous to a charitable trust, the Court should direct the 20% of his IRA to an organization that would approach his goal of benefiting Alzheimer's disease patients. For this court to choose one such organization from the many organizations formed to research, treat or assist Alzheimer's patients would be arbitrary and capricious in the least. Under R.C. §2101.24(C), however, the Court has plenary power in equity to dispose fully of any matter properly before the Court. Because the extrinsic evidence was of little help in ascertaining which organization the decedent truly intended to receive a portion of his IRA, equity calls for each of the parties to receive one-third of the 20% so designated for "Alzheimer's Research Center". Given that the decedent contributed to two of the parties during his lifetime and that all have expended resources in this proceeding, such a result is as equitable as possible in light of the ambiguity on the IRA beneficiary designation form.

It is therefore ORDERED, ADJUDGED AND DECREED that the Greater Cincinnati Foundation pay one-third of the proceeds from Fred W. Weisman's Gradison IRA that it is holding as custodian to each of the Alzheimer's Research Center of the University of Cincinnati College of Medicine, the American Health Assistance Foundation dba Alzheimer's Disease Research and the Alzheimer's Disease and Related

Disorders Association, Inc. Further, all unpaid court costs are to be paid by the Greater Cincinnati Foundation prior to making such distribution.

SO ORDERED.

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WAYNE F. WILKE, JUDGE

cc: Stephen L. Black /18161  
David C. Olson / 5597  
Douglas R. Folkert / 11181  
James R. Schaefer / 59195  
Seth Perlman  
James H. Coogan / 2770