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## Court approves cy pres of trust to conversion foundation

An appellate court in Pennsylvania has approved a trial court decision awarding income from a charitable trust to a conversion foundation created upon the sale of a local nonprofit hospital. It denied the claim by another beneficiary that the income should be divided among three churches also benefiting from the trust.

When William J. Cohen died in 1947, he left the residuary of his estate to provide income equally for two churches in the City of Chester, a church in Philadelphia, and Chester Hospital, a private nonprofit local hospital. In 1964, after Crozer-Chester Medical Center succeeded to the interest of Chester Hospital, the court awarded the income interest to Crozer-Chester. In 2016, Crozer-Chester was sold to a for-profit hospital corporation and the Crozer-Chester Community Foundation was created to hold the assets and make grants for the improvement of the health and welfare of residents of Chester and Delaware County.

The Foundation filed a petition requesting the Orphans' Court to award the income to the Foundation. One of the churches objected and asked that it be divided equally among the churches. The state Attorney General filed a letter of no objection to the Foundation's request.

In the Orphans' Court, the church argued that since the money had been given for the benefit of a hospital, and the Foundation was not a hospital, the gift had failed and should be divided among the continuing churches. The Orphans' Court rejected the argument and awarded the income to the Foundation.

On appeal, the Superior Court affirmed. It cited Pennsylvania's adoption of the Restatement (Second) of Trusts Section 399, stating that if a gift becomes impossible, impracticable or illegal, a court will direct the application of property to some charitable purpose within the general charitable intention of the settlor. The concept, it said, had been embodied in the state's Decedents, Estates and Fiduciaries Code.

Applying a "deferential standard of review" to the findings of the Orphans' Court, the Superior Court said "we discern no abuse of the orphans' court's discretion" in crediting the testimony of the Foundation's president stating that the Foundation's mission is "to improve the health of the residents of Delaware County." It said the Orphans' Court's determination "rests upon solid ground."

"Reiterating that the testator's intent is paramount and charitable donations are favored," it said, "we conclude that the relevant factors

support the orphans' court's interpretation of Mr. Cohen's bequest to Chester Hospital as based on a desire to support the health and welfare of the Chester community. The orphans' court considered the significant number of health-related programs and services supported by [the Foundation] for Chester mothers, infants, toddlers, drug and alcohol addicts, low-income residents, and cancer patients, along with other relevant factors to determine with care what institution Mr. Cohen would have chosen had he been aware of the present situation." (*In Re: Trust Created Under the Will of William J. Cohen*, Superior Ct., PA, No. 2887 EDA 2017, 5/25/18.)