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Under Texas Trust law, the Center for Meditation Studies would not have legal standing to bring a suit to compel the designation of a new beneficiary. Additionally, Annette would not have the power to designate the Animal Shelter as a new beneficiary, the Court did not err in setting aside the agreement, and the court should overrule Annette's challenge to Susan's legal standing.

The Center for Meditation Study's Standing:

Under the Texas Trust Code, potential charitable beneficiaries do not have standing to intervene in a proceeding to designate a new beneficiary within the purpose of the trust. Here, the trust established by Susan was designed to promote "the study of meditation techniques". It specifically designated an individual beneficiary within that purpose, the Institute for the Advancement of Spiritual Endeavors. Upon closing down, a new beneficiary must be designated to continue to receive the benefits assigned by Susan's trust. The trustee can designate such a beneficiary (provided its within the purpose of the trust; see below) without a court hearing, or a court can do it. However, the Texas Trust Code does not allow potential beneficiaries of a charitable trust to intervene in those proceedings in an attempt to name themselves the new beneficiary. The Code bases this principle on several ideas, one being that no specific charity, if designated, has any right to expect a distribution from a trust. To allow them to petition as if they did could lead to the inference that all charities have such rights. Second, to allow such standing would invite a flood of intervening parties and lawsuits against charitable trusts that would potentially result in the draining of trust resources in an unexpedient matters. In a world where a settlor creates a charitable trust for the express purpose of "cancer research", but then the specific beneficiary listed went out of business, every single kind of cancer research facility could initiate suit in order to have itself designated beneficiary. The trustee could be forced to expend tremendous amounts of resources in order to sort out the litigation and come to a satisfactory conclusion. In that case, trust resources would be wasted and the charitable purpose would be defeated. Since the existence of the Code is designed to effect the settlor's intent in most instances, the Meditation Center, while certainly a candidate to be designated as a beneficiary, has no standing to intervene in an attempt to make it so.

Designation of the Animal Shelter:

Under the Texas Trust Code, Annette will not have the power to designate the Animal Shelter as the new trust beneficiary, as such a designation would defeat the motive and purpose of the trust, which was to promote the study of meditation techniques. While trustees have a wide base of potential discretion, they cannot substitute their own judgment and personal research goals for that of the settlor. Thus, Annette cannot have this power. When there is a charitable trust and a particular beneficiary is no longer in existence, the trustee is usually allowed to name a substitute beneficiary without a court

proceeding on the manner, provided that the proper notice of such a beneficiary is provided to the Attorney General's Office. However, in order to have this protection, the trust must name a beneficiary within the purpose of the trust as originally designated by the settlor. Thus, if Annette had named the Center for Meditation Study as the new beneficiary, she would be well within her rights to do so, even without a court hearing. However, since the Animal Shelter is not even close to being within the purpose of the trust, Annette's action was invalid. Even if all meditation techniques had ceased, Annette would still not be allowed to designate the animal shelter as a beneficiary. In that case, in a cy pres reformation, the court and only the court would attempt to designate a new purpose as close to the extinguished one as possible. As a result, only a designation of a charity dedicated to a study of other relaxation techniques would apply in that setting. Regardless, it is clear that Annette's actions go far beyond her power, and thus she cannot designate the animal shelter as a trustee.

Rejection of Settlement:

The Court did not err in setting aside the judgment in favor of the settlement agreement. It was absolutely correct to grant the Attorney General's motion. Once again, the primary purpose of the Texas Trust Code is to give rights to the settlor's intent as to the purpose of the trust. In this case, the settlement agreement would still grant half of the trust corpus to the animal shelter, which is not in line with the purpose that Susan has set up. To allow such a settlement to proceed is tantamount to an abdication of all trust responsibilities, as it would allow a renegade trustee to buy off potential beneficiaries within the stated original purpose with a fraction of the trust corpus while keeping the rest for her improperly designated beneficiary, the shelter. This would substitute the judgment of the trustee for the settlor, albeit in a mitigated way, and is thus improper. The Attorney General's office, which has standing in these cases to enforce the purpose of a charitable trust has the right to sue and enjoin this settlement from going through. It makes sense that since the Center for Meditation Study does not have standing, and that Annette improperly designated the animal shelter as the new beneficiary, those parties cannot force an agreement upon the settlor through a settlement agreement. The court was right to uphold the motion striking down the settlement as a violation of the settlor's intent.

Annette's Standing:

The Court should overrule Annette's challenge to Susan's standing. Under the Texas Trust Code, a settlor always has the ability to change the designated trustee or, in the alternative to revoke the trust entirely. A trust is created only when the settlor intends to deliver trust property to a trustee to hold for a beneficiary or a charity, assuming a lawful purpose. Thus, a settlor, given that they surrendered legal title to the trustee, always has standing to challenge the actions of a trustee that do not conform to the purposes of the trust. This is not a discretionary trust, which provide wide authority to the trustee to use

her personal judgment in making distributions for the purpose. in which case Susan would lose. This is a charitable trust with a specific purpose needing a new beneficiary, and both Susan and the Attorney General have the standing to sue to make sure that the trust purpose is enforced, as is the will of the Texas Probate Code. Additionally, there is no evidence here that this trust is considered irrevocable, which leads to the presumption under Texas law that it is, in fact a revocable trust. Given that reality, the Court could not possibly deny a settlor the right to remove a trustee when they could revoke the trust altogether. In this case, Annette has no possible reason to object to Susan's standing to bring suit. Susan is the person who created and designated the trust, and now that its lawful charitable purpose is being usurped by the personal feelings of the trustee, of course she has standing to bring suit against Annette.

END OF EXAM

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(1) The Center did not have legal standing to bring suit challenging Annette's designation of the new trust beneficiary. The issue is whether a third party charity has standing against a private trust arrangement between a trustee and the charity of the Settlor's choice.

The Trust Code states that a third party has no sufficient legal interest in the goings on of a charitable trust. Standing is reserved for parties with a financial stake in the outcome. While "The Center" may claim that it does in fact have interest in the outcome, this is not the type of interest which should be allowed to create standing to challenge a trust arrangement. Doing so would give standing to challenge a Trustee's designations to any charity with a similar purpose as the one stated in the trust. Because this creates too much of a burden on trust agreements, the Center should not have standing to challenge Annette's designation.

(2) It was not in Annette's powers as Trustee to designate the Animal Shelter as the new trust beneficiary. The issue is whether Annette had the power to change the intended charitable beneficiary of the trust.

A trust is created when a settlor transfers ownership of personal property to a trustee, for the benefit of beneficiaries, with the intent to create a trust. A trust can be made for a charitable purpose and will not be subject to the rule against perpetuities. Additionally, a charitable trust is subject to the doctrine of 'cy pres,' which means that the intent of the settlor will be followed through as closely as possible. If the intent of the settlor regarding the charity of their choice is frustrated somehow, for example, through the charity or particular charitable cause no longer being in existence, the trustee can and may alter the named charity. However, the Texas Attorney General is automatically involved in these types of trusts. If the new charitable trust named by the trustee has a similar or same purpose, the trustee may change the designation without a court order for the purposes of satisfying the Settlor's intent. However, notice must be given to the Texas Attorney General so that he/she may review such changes. Completely new designations, such as when the initial designation is frustrated or the charity no longer exists, can only be made through court order and the direct involvement of the Texas Attorney General.

Here, the intent of Susan's trust was frustrated because the charity is no longer in existence. A new charity may be assigned but it must be done through the doctrine of cy pres, by picking a charity that is close to the intent of the Settlor. Annette, as Trustee, did not make even a slight attempt to satisfy the intent of the charitable trust, instead simply designating the charity of her own choice. Animals, while a noble cause, do not relate to the cause intended by the trust, namely meditation. Annette was required to notify the Texas Attorney General so that a new charity could be named to properly carry out Susan's

trust's intent.

(3) The court did not err in setting aside the settlement agreement. The issue is whether when a third party challenges the new designation of a charitable trust, that third party can end up receiving a portion of the trust.

The Attorney General has the final stamp of approval on charitable trusts. As such, he has authority to set aside new trust designations that do not properly adhere to the doctrine of cy pres. Since the settlement between The Center and The Animal Shelter is improper, the Attorney General had authority to revoke the settlement.

(4) The court should allow removal of Annette as Trustee. At issue is whether the Trustee of a trust may be removed at the Grantor's request when the Trustee does not properly carry out the purpose and designation of the Trust.

A trust is revocable unless it is stated as being irrevocable. Additionally, when the trustee can no longer appropriately carry out the duties required, they may be removed by court order. Here, Susan expressly disapproved of Annette's actions. Thus, she may revoke Annette's duties as Trustee.

END OF EXAM

5) Question 5

Selected Answer #3

July 2011

1. The Center did not have legal standing to bring suit challenging Annette's designation of the Animal Shelter as the new beneficiary. AT issue in this question is whether an organization or person that is not a settlor or beneficiary of a trust has standing to challenge the trustee's designation of a new beneficiary. Texas Trust law provides that a suit that challenges a trustee's designation of a new trust beneficiary may only be brought by the current trustee, the settlor or the Attorney General. The suit in this case was brought by the Director of the Center for Meditation Study. The Director of the Center has alleged that the Center's purpose is more in line with the settlor's intent. This may very well be true but as the Center is not a designated beneficiary or the settlor of the trust the Center does not have standing to challenge Annette's designation of the new beneficiary. Even if Annette was required to get court approval to name a new beneficiary the Center still lacked standing as it was not the original beneficiary or the settlor of the trust. These parties plus the Attorney General are the only parties who can seek to challenge a designation of a new trustee. The Center was not a beneficiary of the trust but merely an outsider attempting to determine trust business and potentially be named beneficiary and therefore lacked standing to challenge Annette's designation of the new trustee.

2. It was not within Annette's powers as Trustee to designate the Animal Shelter as the new trust beneficiary. At issue is whether the trustee has power to designate a new beneficiary when the trust document does not contain any provisions for a successor beneficiary. The Texas Trust Code provides for a trustee to appoint a new trust beneficiary with or without court approval. A trustee may appoint the successor beneficiary as trustee without corde order when the successor trustee is named in the trust settling documents, when the trustee has been given that power by the settlor or when the trustee makes a showing that the successor beneficiary designated by the trustee is substantially similar in purpose so as to carry out the settlor's original intent.

In the present facts Annette did not seek court approval for changing the beneficiary of the trust nor did she file notification with the State. As Annette did not have the power to designate the successor beneficiary she must get court approval of the new designation or file paperwork with the Secretary of State designating the new beneficiary and setting forth the reasons why the new beneficiary is named and how the designation of the new beneficiary will continue the settlor's purpose and intent when establishing the trust. Annette did nto get court approval nor did she file the appropriate notifications with the state. Had she filed the appropriate notifications she would still be exceeding her authority as trustee. A trustee can only designate a successor beneficiary, when the settling documents do not provide for one, if the trustee makes a showing that the new beneficiary will continue the purpose and intent of

the settlor had when creating the trust. Here that designation exceed Annette's powers because her designation would not continue Susan's intent. Susan established the trust to promote the study of meditation techniques. Annette designated a new beneficiary, an Animal Shelter. This successor beneficiary has no relation to Susan's original purpose and intent when establishing the trust.

Therefore Annette exceed her authority in establishing the successor beneficiary by not following the proper procedures and in designating a new beneficiary that did not align with the settlor's intent

3. The court did not err in setting aside the settlement agreement. At issue is whether a timely motion by the Attorney General is sufficient to revoke the settlement agreement. In trust law, the trustee has legal title to the corpus of the trust and is free to distribute the trust in the manner established by the settlor or if the specific manner is not proscribed in a manner that is in alignment with the settlor's intent. Because this authority to distribute the corpus is so limited the trustee does not have the authority to distribute the trust corpus but in a manner that is in adherence to the settlor's intent. Susan had no intent to provide for an animal shelter but instead promote the study of meditation. The court did not err in setting aside the settlement agreement because Annette had no power to designate a new beneficiary and distribute the corpus of the trust. Upon proper motion by the Attorney General the court may set aside any settlement agreement between a trust and the successor beneficiaries if the settlement agreement is not in accordance with the settlor's intent. Any settlement agreement must align with the settlor's intent. This settlement agreement did not align with Susan's intent and therefore the court rightfully set it aside.

4. The court should overrule Annette's challenge to Susan's standing. At issue is whether the settlor of a charitable trust has standing to challenge the trustee's distribution of trust property in a manner that is inconsistent with the settlor's intent and have the trustee removed. As established Susan's intent when establishing the trust was to promote the study of meditation. As Susan established the trust, she as settlor has standing to challenge the trustee's actions. The settlor may challenge an action by the trustee when the trustee is not operating in accordance with the reason for establishing the trust. Annette has begun distributing property to organizations that were not designated in the trust and that are not in accordance with Susan's intent. Susan as settlor retains the ability to sue the trustee for not operating the trust in a manner that is consistent with the settlor's intent. The settlor of a trust has standing to have a trustee removed when the trustee violates its fiduciary duties to the trust and exceeds its authority as trustee. As Annette exceeded her authority Susan, the settlor has standing to remove her as trustee.

END OF EXAM
