

CIVIL NO. 23, 5112 911 LOT COURT, TRAVIS COUNTY
10th day of February th 1974
NO. 206,779

E. M. FULKES, JR., ET AL
VS.
ROUND MOUNTAIN COMMUNITY, ET AL

IN THE DISTRICT COURT OF
TRAVIS COUNTY, TEXAS,
201ST JUDICIAL DISTRICT

ORDER

On the 11th day of February, 1974, came to be heard the above entitled and numbered cause, wherein E. M. Fulkes, Jr., Roscoe Faubion, R. Morris Faubion, and Edd M. Fulkes are Plaintiffs, and the members of Round Mountain Community, Morris Chamberlain and Rachel Chamberlain are Defendants, on Plaintiffs' petition to permanently enjoin Defendants from administering certain real estate and to declare and adjudicate the rights of all parties herein. Came the parties in person and by and through their respective attorneys of record and announced ready for trial on said petition; thereupon, a jury of twelve good and lawful men and women were duly impaneled and sworn and after the pleadings were read and the evidence begun, the attorneys of record, with the consent of the respective parties announced and made the following stipulations in open court, as follows:

1. That a charitable trust was created by that certain deed dated January 19, 1900, wherein J. A. Faubion and May J. Faubion are grantors and T. T. Hamilton, J. A. Smith and D. Landy, Trustees, are grantees, and such deed declared that such trustees are to hold the real property described therein in trust for the sole use and benefit of the members of Round Mountain Community, a copy of such deed being attached hereto, marked Exhibit "A" and incorporated herein by reference; and such trust is to be declared by the Court to be a valid and subsisting, charitable trust; and

2. That all of the said trustees named in said deed are now dead and that said charitable trust is now without successor trustees to manage and administer the said charitable trust; and

3. That, pursuant to the provisions of Article 7425b-37 of V.A.C.S. the court should increase the number of offices of trustee from three (3) to five (5) because a necessity exists therefor and the Court should appoint Don Lucenbill, Winston Travis Hays, Roscoe Faubion, E. M. "Buster" Fulkes, Jr., and O. K. Riley as successor trustees to fill such

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office with the power and authority to manage and administer said charitable trust; and

4. That good and indefeasible title as conveyed in the certain deed contained in Exhibit "A" to said real property shall be in and rest with said trustees and their successors in office; and

5. That the court shall reform and amend that certain deed of January 19, 1900, contained in Exhibit "A", pursuant to the Doctrine of Cy Pres and under its equitable powers by adding the following provisions for appointment of successor trustees.

"Should any office of trustee as herein provided be vacant by reason of the death, incapacity, act, or resignation, the majority of the remaining trustees shall have the power at any time during the existence of this trust to fill such vacancy by the appointment of a successor, such appointment to be in writing, executed by the persons making same and acknowledged as deeds are required to be acknowledged under the laws of the State of Texas, and any successor trustee so appointed shall have all the powers and authority of any of the trustees named herein and appointed hereunder, including the power to appoint another trustee to fill a vacancy."

6. That the court, pursuant to the Doctrine of Cy Pres and under its equitable powers, shall reform and amend that certain deed of January 19, 1900, contained in Exhibit "A", by adding the following provisions relating to the management and administration of the said charitable trust:

"a. The trustees appointed hereunder, and their successors in office, shall in connection with the management and administration of the trust hereof have the duty to exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion and intelligence would exercise in the management of their own affairs, in regard to the preservation, continuance, and improvement of the trust estate.

"b. The trustees in their sole discretion shall have the power and duty to continue the operation and management of the trust estate in to make the use of said trust estate available to the members of Round Mountain Community or others at convenient times and without discrimination or favoritism.

"c. The trustees shall have the power to charge for the use of the trust estate, to levy assessments against the beneficiaries, or

otherwise generate income out of the usufruct of the said trust estate, and from the income thus made and received, the trustees shall set aside a fund to defray the expenses of administration or protection of the trust; in addition, the trustees shall set aside from such income a reserve fund for the purpose of making improvements, repairs, modification or changes to the trust estate as determined by the trustees in the discretion of the trustees to be in the best interest of the said beneficiaries."

7. That E. M. Fulkes, Jr., Roscoe Faubion, R. Morris Faubion, and Edd M. Fulkes execute and file with the Deed Records of Travis County, Texas, a special warranty deed naming the herein designated successor trustees as grantees conveying the real property comprising the trust estate described as:

Beginning at a st mound the S.W. corner of said Jesse T. Smith survey, thence S. 60E. 237 vs a st mound. Thence N 12° W 173 vs. Then S. 84W. 150 vs a st mound in the East line of the Martha G. Morrow survey. Thence S. 30 W 40 vs with said Morrow east line to the beginning.

8. That the attorneys, having previously obtained the consent of their respective parties, request the court to enter judgment in conformity with the foregoing stipulations to which they have agreed and that such stipulations settle all of the disputed matters in this suit.

The court, on request of the parties, finds that it has jurisdiction of the parties and subject matter of this suit; that there is a bona fide dispute between the parties; that the settlement of that dispute reflected herein is fair, reasonable, and just; and that it would be in the best interest of the parties and the charitable trust involved if the court approved the stipulations and render judgment accordingly;

It is, therefore, ORDERED, ADJUDGED AND DECREED:

1. That a charitable trust was created by that certain deed dated January 19, 1900, wherein J. A. Faubion and May J. Faubion are grantors and T. T. Hamilton, J. A. Smith, and D. Landy, trustees, are grantees, and such trust is declared by the court to be a valid and subsisting charitable trust; and

2. That all of the said trustees named in said deed are now dead and that said charitable trust is now without successor trustees to manage and administer the said charitable trust; and

3. That the number of offices of trustees shall be increased from three (3) to five (5) because a necessity exists therefor, and the Court hereby appoints Don Lucenbill, Winston Travis Hays, Roscoe Faubion, E. M. "Buster" Fulkes, Jr., and O. K. Riley as successor trustees to fill such office with the power and authority to manage and administer said charitable trust; and

4. That good and indefeasible title as conveyed in that certain deed contained in Exhibit "A" to said real property shall be in and rest with said trustees and their successors in office; and

5. That certain deed of January 19, 1900, contained in Exhibit "A", is hereby reformed and amended by adding the following provisions for appointment of successor trustees:

"Should any office of trustee as herein provided be vacant by reason of the death, incapacity, act or resignation, the majority of the remaining trustees shall have the power at any time during the existence of this trust to fill such vacancy by the appointment of a successor, such appointment to be in writing, executed by the persons making same and acknowledged as deeds are required to be acknowledged under the laws of the State of Texas, and successor trustee so appointed shall have all of the powers and authority of any of the trustees named herein and appointed hereunder, including the power to appoint another trustee to fill a vacancy."

6. That that certain deed of January 19, 1900, contained in Exhibit "A" is hereby reformed and amended by adding the following provisions relating to the management and administration of the said charitable trust:

"a. The trustees appointed hereunder, and their successors in office, shall in connection with the management and administration of the trust hereof have the duty to exercise the judgment and care under the circumstances then prevailing which men of ordinary prudence, discretion, and intelligence would exercise in the management of their own affairs, in regard to the preservation, continuance, and improvement of the trust estate.

"b. The trustees in their sole discretion shall have the power and duty to continue the operation and management of the trust estate in such a manner as to benefit the members of Round Mountain Community and to make the use of said trust estate available to the members of Round Mountain Community or others at convenient times and without discrimination or favoritism.

"c. The trustees shall have the power to charge for the use of the trust estate, to levy assessments against the beneficiaries, or otherwise generate income out of the usufruct of the said trust estate, and from the income thus made and received, the trustees shall set aside a fund to defray the expenses of administration or protection of the trust; in addition, the trustees shall set aside from such income, a reserve fund for the purpose of making improvements, repairs, modification or changes to the trust estate as determined by the trustees in their discretion to be in the best interests of the said beneficiaries."

7. E. M. Fulkes, Jr., Roscoe Faubion, R. Morris Faubion, and Edd M. Fulkes are hereby ordered to execute and file with the Deed Records of Travis County, Texas, a special warranty deed naming the herein designated successor trustees as grantees, conveying the following described real property:

Beginning at a st mound the S.W. corner of said Jesse T. Smith survey, thence S. 60E. 237 vs a st mound. Thence N 12° W 173 vs. Then S. 84 W. 150 vs a st mound in the East line of the Martha G. Morrow survey. Thence S. 30 W 40 vs with said Morrow east line to the beginning.

All costs of suit shall be taxed against Plaintiffs, for which let execution issue if not timely paid.

SIGNED AND ENTERED this 25th day of JUNE, 1974.

David S. McAngus
DAVID S. McANGUS, JUDGE PRESIDING

APPROVED AS TO FORM:

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