

IN THE CHANCERY COURT FOR KNOX COUNTY, TENNESSEE

In the Matter of
THE UNIVERSITY OF TENNESSEE,)
)
As devisee of a charitable gift of)
real property under the Last Will and)
Testament of Eugenia F. Williams,) Case No. 198278-I
Deceased.)
)
Petitioner.)

**ORDER GRANTING THE PETITION OF
THE UNIVERSITY OF TENNESSEE**

This case is before the Court upon the Petition of The University of Tennessee (the "University") pursuant to sections 35-13-114 and 35-15-413 of the Tennessee Code Annotated to modify the restrictions on the disposition of real property devised by Eugenia F. Williams to the University. The Attorney General of the State of Tennessee has an interest in the subject matter of the Petition pursuant to Tenn. Code Ann. § 35-13-110 and has filed a response to the Petition in which the Attorney General assents to the relief sought.

I. **FACTS**

On May 13, 1981, Miss Williams executed a will in which she devised her home at 4848 Lyons View Pike, Knoxville, Tennessee, and the surrounding land (the "Property") to the University. (A copy of the will is attached to the Petition as Exhibit A.) The Will specified that the Property was to be designated the Dr. David Hitt Williams Memorial in honor of Miss Williams's father and that

said land will not be subdivided nor sold, in whole or in part, so long as there is a state operated university in the vicinity of Knoxville. Said home and acreage may be used as the Board of Trustees of The University of Tennessee may determine, such use to be commensurate with the retention of the natural beauty of the land, it being my desire that the residence on said land will be used for some educational, residential, social, cultural or business purpose as will promote an interest of The University of Tennessee System or of

The University of Tennessee Knoxville, and it being my further desire that any additions to said residence or other structures or buildings built on the premises will be constructed in such a manner and location as will maintain the present architectural integrity of the residence. At such time in the distant future as the Board of Trustees of The University of Tennessee may determine that said residence can no longer be used for a purpose that will be of practical benefit to The University of Tennessee System or to The University of Tennessee Knoxville, then it is my desire that the residence be demolished and replaced by another building or buildings, or that the vacant property be utilized for The University of Tennessee System or The University of Tennessee Knoxville without buildings.

(Exh. A to Petition, ¶ II.) This language indicates that Miss Williams had a general charitable intent in devising the property to the University.

Miss Williams moved out of the house in 1983 and died on February 26, 1998. At the time of her death, the house had been vacant and boarded up for some fifteen years and was in substantial disrepair. Later that year, the administration of the University recommended to the Board of Trustees that the house be converted to a residence for the President of the University; however, the effort to raise private gift funds to accomplish this fell short. At that time, the University owned residences that were provided for the use of the President and the Chancellor of the University's Knoxville campus. The University discontinued this practice in 2007 and 2009 and now provides a housing allowance for the President and the Chancellor. There is thus no longer a need for the University to own a residence in Knoxville for the President or the Chancellor.

Since accepting the property in 1998, the University has explored many other possible uses for the Property but without success. For example, in 2007 the University engaged the architectural firm of McCarty Holsaple McCarty to perform a utilization study of the Property. The study was completed, but the University did not have the funding to implement the plans. In later years, the University looked into several proposals for the use of the Property, including offices for The University of Tennessee Foundation, a 99-year lease with a requirement to restore the house, an assisted living

facility, a residential project with a local firm, and a lease to a Knoxville charitable foundation. The University has convened two separate committees to consider possible uses for the Property. Unfortunately, budgetary constraints have prevented the University from renovating the house for any purpose. The University has received estimates of the cost of renovation as a single family residence of approximately five million dollars and even more to retrofit it for another educational, social, cultural, or business purpose that would be of “practical benefit” to the University. In 2014 - 2015, the University issued a formal Request for Proposal for the long-term lease of the Property. No proposals were received.

Although the University has the right under the Will to demolish the house if the Board of Trustees determines it “can no longer be used for a purpose that will be of practical benefit to The University of Tennessee System or to The University of Tennessee Knoxville,” the University has no viable use for the Property either with or without the house. At the same time, the University has significant educational, social, cultural, and business needs that could be promoted and funded with proceeds from the sale of the Property. The University alleges and the Court finds that the best way to realize Miss Williams’s charitable intent would be to allow the University to sell the Property and use the proceeds to fund an endowment in a way that memorializes her father.

II. Legal Analysis

The Will executed by Miss Williams expresses in precatory terms her general charitable intent. Only the prohibition against either the sale or the subdivision of the Property “so long as there is a state operated university in the vicinity of Knoxville” is mandatory. Under the provisions of Tenn. Code Ann. § 35-14-413 (Tennessee’s statutory

version of the common-law doctrine called *cy pres*), when a particular charitable purpose specified by a gift, *see* Tenn. Code Ann. § 35-13-114, becomes “unlawful, impracticable, impossible to achieve or wasteful,” the Court may “modify or terminate the trust [or gift] by directing that the ... trust [or gift] property be applied or distributed ...in a manner consistent with the settlor’s charitable purposes.” As set out above, the University alleges, and the Court finds that it has become impracticable and arguably impossible for the University to use the Property in strict accordance with the terms of the Will.

The University asks the Court for permission to sell the Property with the proviso that the property may be subdivided into no more than two parcels and that each parcel contain no more than one single-family residence. If the purchaser decides to keep the house currently on the Property, only one additional house may be built and only on the parcel on which the current house is not situated. If the purchaser demolishes the current house, two houses—one on each parcel—may be built. The Court finds that this proposal would honor Miss Williams’s desire that the “natural beauty of the land” be preserved,” and that it would be in accordance with the general charitable intent expressed in her Will.

In addition, the Petition alleges that an adjacent landowner has encroached on the Property to the extent of approximately 3,000 square feet and asks for permission to sell that plot to the encroaching landowner. (Petition, ¶ 20.) The Court finds that the sale of this small plot would have a *de minimis* effect on the value of the Property (the Property comprises twenty-four acres or over one million square feet) and it should be allowed.

In accordance with the foregoing, the Court finds and ORDERS the following:

1. The University is permitted to sell the Property known as 4848 Lyons View Pike, Knoxville, Tennessee, with the provision that the Property may be divided into no more than two parcels by the purchaser or subsequent owner of the Property. The house currently on the Property may be demolished, in which case two houses—one on each parcel—may be built. If the purchaser or subsequent owner decides to retain the house currently on the Property, only one additional house may be built and that house must be situated on the subdivided plot other than the one on which the current house is situated.
2. The University is permitted to sell the approximately 3,000 square foot plot of land that is being encroached upon to the encroaching landowner.
3. This Order shall constitute a Final Judgment in this matter pursuant to Rule 54.01.
4. Statutory court costs are assessed against the University, but no litigation taxes shall be assessed. Tenn. Code Ann. § 67-4-603(c).

Entered this ____ day of _____, 2019.

John F. Weaver, Chancellor

PREPARED BY:

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing was served via email and U. S. Mail upon Janet M. Kleinfelter, Deputy Attorney General of the State of Tennessee, the ____ day of _____, 2019.

T. Harold Pinkley