



AlaFile E-Notice

03-CV-2023-900219.00

Judge: GREG GRIFFIN

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NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

TYRA LINDSEY V. MABEL AMOS MEMORIAL FUND ET AL
03-CV-2023-900219.00

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MONTGOMERY COUNTY, ALABAMA
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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

LINDSEY TYRA,)	
ATTORNEY GENERAL STEVE)	
MARSHALL,)	
Plaintiffs,)	
)	
V.)	Case No.: CV-2023-900219.00
)	
REGIONS BANK, TRUSTEE,)	
ALBRITTON TOM,)	
BELL JOHN CLARKE,)	
CLIFTON RICK ET AL,)	
Defendants.)	

ORDER APPOINTING SPECIAL FIDUCIARY TO TEMPORARILY TAKE POSSESSION OF THE TRUST PROPERTY OF THE MABEL AMOS MEMORIAL FUND, ADMINISTER THE TRUST, AND PROVIDE THE COURT WITH AN ACCOUNTING

THIS MATTER comes before the court after the ruling by the Supreme Court in the consolidated cases, Marshall v. Carmack, SC-2023-0894, and Marshall v. Lindsey, SC-2023-0895. On July 11, 2024, this court held a status conference to consider the Supreme Court’s ruling in the above-referenced cases and to decide on further proceedings in this matter. Based on the parties’ pleadings, matters contained in official records, and arguments of counsel, this court makes the following:

FINDINGS OF FACT and CONCLUSIONS OF LAW

1. The court has before it the tax filings (Form 990-PF’s) by the Mabel

Amos Memorial Fund (“Trust”) for the years 2002-2022 and a verified copy of the Last Will and Testament and Codicil of Mabel S. Amos, which contains the terms of the Mabel Amos Memorial Fund (the “Trust”). These documents were proffered by Petitioner, Tyra Lindsey.

2. The Trust’s tax filings were sworn by the Trust to contain true and accurate information concerning the Trust’s disbursements and other operations. They were filed by the Trust under oath with the Internal Revenue Service. These records thus contain information whose accuracy cannot reasonably be questioned and are hereby judicially noticed pursuant to Rule 201, Ala. R. Evid.

3. The information contained in the Trust’s tax filings disclose that the Trust distributed \$135,000 in scholarship funds to the children of Thomas Albritton, a trustee of the Trust. These disbursements clearly violated the Trust’s prohibition on private inurement and self-dealing on the part of the trustees, set forth in Article V, part E of the Trust. The tax filings also reveal that the trustees distributed Trust funds directly to third parties that were not “young men and women of the State” as required by the Trust. The tax filings indicate that in some cases these distributions were not for scholarships, but “general purposes”; in other cases, where the disbursements went to universities and foundations to create scholarship

funds at their respective institutions, the scholarship recipients would be chosen by individuals other than the Board Members of the Trust, a violation of the explicit terms of the Trust.[\[1\]](#)

4. In addition to the improper scholarship awards to non-individuals, it has been specifically and credibly alleged that the Trust awarded scholarships to individuals who were explicitly identified by Petitioner Lindsey as being the children and grandchildren of staff members of the trustees' law firm, to the child of a former partner and judge before whom the trustees practiced law, and to the children of wealthy clients of their law firm. These scholarships would have served to benefit personally the trustees and would constitute a violation of the private inurement provisions of Article V, part E of the Trust. The extent of these improper disbursements is not currently ascertainable as, unlike the scholarship awards to Thomas Albritton's children and to the third-party entities, they have not been disclosed in the Trust's tax filing.

5. The Trust's tax filings also indicate that after the Trust became wealthy from oil revenue in 2010, Regions Bank greatly increased its charges to the Trust for its administrative services although it spent the same amount of time working on Trust matters both before and after the Trust became wealthy.

6. All parties seeking to remove the trustees in this case have requested that this court appoint a Special Fiduciary to administer the Trust and that the Special Fiduciary perform an accounting. This includes the Alabama Attorney General, Tyra Lindsey, and Megan Carmack/Leigh Manning.^[2]

7. Alabama's Uniform Trust Code provides that this court may intervene in the administration of a trust when invoked to do so by an "interested person." Ala. Code 19-3B-201(a). Additionally, Ala. Code 19-3B-706(a) provides that a "settlor, a co-trustee, or a beneficiary" may request that a court remove a trustee, or that the court on its own initiative may remove a trustee, and thereafter order further relief pursuant to Ala. Code 19-3B-1001(b).

8. The Supreme Court decided in this case that this court had subject matter jurisdiction over the Trust.^[3] Slip Opinion in SC-2023-0894, p. 26 ("the circuit court has properly assumed control of the trust."). The Supreme Court did not decide the issue of whether Lindsey and Carmack/Manning had standing to also invoke the court's jurisdiction, nor did it decide what role they would have in the litigation. *Id.* at slip opinion p.27, fn.1. At this point in the litigation, it is unnecessary to decide the issue of standing of Lindsey and Carmack/Manning, as their presence adds no more additional

authority to the court than it already has to intervene in the administration of the Trust, and neither Lindsey nor Carmack/Manning are seeking any personal claim in this matter.

9. The Supreme Court's decision came after this court entered an Amended Order Appointing a Special Master, Doc. #260 in CV-2022-9000830. This referral order appointed Ret. Circuit Judge Charles Price as a Special Master, to be assisted by an accountant, James White, CPA. The Supreme Court vacated this Amended Order, holding that it did not comply with the requirements of Ala. R. Civ. P., Rule 53 that concerns the appointment of Special Masters. Slip Opinion, SC-2023-0894 at pp. 37-38.

10. Having subject matter jurisdiction in this matter, the court has authority under Ala. Code 19-3B-1001(b)(5) to appoint a special fiduciary "to take possession of the trust property and administer the trust," and under subpart (b)(4) to "order a trustee to account." Under Ala. Code 19-3B-706(c), the appointment of a special fiduciary may be made, "pending a final decision on a request to remove a trustee." This authority to appoint a Special Fiduciary is in addition to, and an alternative to, the appointment of a Special Master.

11. Rather than appoint a Special Master bound by Rule 53 to make findings only on specifically delegated matters, the court has decided to

appoint a temporary Special Fiduciary under Ala. Code 19-3B-1001(b) to take possession of the trust property and administer the Trust pending a final decision on the removal of the trustees, and to conduct an accounting of the Trust's books and records for purposes of determining the full extent of the trustees' breaches.

12. There are several bases for this decision. First, it is impossible to determine at this point the extent of the trustees' breaches of duty, as only the tip of an apparent iceberg of impropriety can be seen. Second, having a Special Fiduciary take possession of the records of the Trust would be superior to identifying in a referral order the specific facts that a Special Master would be limited to addressing. Doing the latter would limit the inquiry into the trustees' potential misconduct to a "laundry list" that would not include improper scholarship awards and other disbursements not yet known.^[4] The court takes note that the Trust's tax filings reveal that prior to 2014, the Trust disclosed the names of its scholarship recipients, but beginning in 2014 the trustees did not disclose these names. This failure to reveal the identity of the recipients of the scholarship awards beginning in 2014 allows the inference that it was done for the purpose of impeding any discovery of improper awards. Whether intended or not, this failure to disclose the recipients had the effect of preventing the identification of

improper awards without judicial intervention.

13. Further, the Attorney General and trustees previously announced to the court a proposed settlement “in principle,” but no terms of any proposed final settlement have been filed with or otherwise tendered to the court. A determination by a Special Fiduciary of the extent of the trustees’ breaches of duty would help inform the court’s decision whether to approve any proposed settlement or order other relief, as well as prevent any additional breaches in the interim.

14. An appointment of a Special Fiduciary rather than the referral to a Special Master would also best serve to protect the sensitive financial and personal information of the scholarship applicants, recipients, and their families, as these records would remain in the possession of the Trust.

IT IS THEREFORE ORDERED:

15. James C. White, Sr., CPA, of Birmingham, Alabama, Phone: 205-907-9532, email: jimwhite@bfcwcpa.com, is hereby appointed as a Special Fiduciary to the Mabel Amos Memorial Fund pending the final outcome of the court’s decision as to whether to remove the current trustees.

16. As a temporary Special Fiduciary, Mr. White shall take possession of the property of the Trust, including its books and records, and administer the Trust until further order of the court. Mr. White shall have all the

authorities and powers that the Trust instrument provides to the current trustees, and he shall be compensated by the Trust in an amount reasonable under the circumstances, subject to the court's review and approval.

17. The temporary Special Fiduciary is directed to audit the books and records of the Trust to determine the monetary amount, if any, of all disbursements made by the trustees, including both scholarships and other disbursements, that were in violation of the terms of the Trust. This accounting shall also include the amount of net income, if any, the trustees may have improperly diverted to the Trust's principal instead of using these funds to provide scholarships as required in accordance with Article 5 of the Trust. This accounting shall further include the amount of fees, if any, charged by the current administrative trustee, Regions Bank, that were not "reasonable under the circumstances," as required by Ala. Code 19-3B-708(a). If the Special Fiduciary determines that there were trustee fees charged to the Trust that were not reasonable under the circumstances, he shall set forth the methodology he used to make that determination, and the amount considered unreasonable. The temporary Special Fiduciary shall also recommend to this court whether the breaches, if any, discovered by his accounting constitute a "serious breach of trust" within the meaning of

Ala. Code 19-3B-706(b)(1), making them of sufficient gravity to remove the trustees.

18. The temporary Special Fiduciary shall commence his duties forthwith and shall submit his accounting back to this court within 90 days, unless this deadline is extended by this court.

19. Upon receipt of the temporary Special Fiduciary's accounting, this court shall conduct further proceedings to determine if the current trustees of the Trust should be removed and whether the court should order the trustees to make monetary recompense to the Trust, and whether attorney fees and other relief are appropriate.

[1] According to the Trust's Form 990-PF's, the Trust in 2012 distributed funds to LBW Jr. College, Troy University, and the University of Alabama (UA), and in 2013 made distributions to UA and the Auburn University Foundation (AUF) for "general support." Article V, part B of the Trust requires that the income of the Trust must be used only "...to provide scholarships for deserving young men and women of this State...." The Trust in each year from 2004-2008 distributed funds to the "general scholarship fund" of AUF. Commingling Mabel Amos Trust funds with a university's general scholarship fund makes it impossible to know who received Mabel Amos Trust scholarships and whether these individuals met the specific criteria for an award of a scholarship required by the Trust. Similar distributions appear to have been made to UA and AUF from 2014-2016, and again to AUF in 2019. In 2018, the Trust distributed funds to the Crimson Tide Foundation to create an endowed athletic scholarship at UA, and in 2019 and again in 2021 distributed additional funds directly to UA for this athletic scholarship. Under Article V, part C of the Trust, scholarships

must be awarded only to “young men and women of the state,” who are selected by the Board established by the Trust. Individuals who are not Board Members of the Trust are not allowed to determine the recipients of the scholarships.

When combined with the funds distributed for “general support” purposes, these distributions appear to amount to \$374,157 (as best as the court can ascertain) and are in addition to the \$135,000 awarded to the children of trustee Thomas Albritton.

[2] Doc. #36, in CV-2023-900219, p. 7 (AG); Doc. #107, in CV-2022-900830, p. 25 (Lindsey); and Doc. #170 in CV-2023-900219, p.5 (Carmack/Manning).

[3] The Supreme Court, citing Ex parte Howell Eng’g & Surveying, Inc., 981 So.2d 413 (Ala. 2006) and Bernalis, Inc. v. Kessler-Greystone, LLC, 70 So. 3d 315 (Ala. 2011), stated that “standing” was a matter of subject matter jurisdiction, and that due to the AG’s complaint this court clearly had subject matter jurisdiction in this case and thus sufficient authority to proceed in this matter. Slip Opinion in SC-2023-0894, p. 27, fn. 1.

[4] The Trust’s Form 990-PF’s contain information concerning Regions’ trustee fees. Other than being able to observe that the fees skyrocketed after the Trust became wealthy, it is impossible to determine the basis that Regions used in making these charges, as there appears to be no consistent basis on either an hourly rate or a percentage of net assets that Regions used in charging its fees to the Trust.

DONE this 8th day of August, 2024.

/s/ GREG GRIFFIN
CIRCUIT JUDGE
