

In the Matter of the

INSTITUTIONAL FUND CREATED BY  
THE WILLIAM V. BENJAMIN TRUST  
f/b/o THE SHOREWOOD FOUNDATION, INC.

04PR001348  
File No. \_\_\_\_\_

**FILED**

**28 JUN 17 2004 28**

VERIFIED PETITION TO BROADEN  
PERMISSIBLE PURPOSES OF INSTITUTIONAL FUND  
CIRCUIT COURT  
MILWAUKEE COUNTY

TO THE CIRCUIT COURT OF MILWAUKEE COUNTY:

The Shorewood Foundation, Inc. ("Petitioner"), by Michael Schulte, the President of its Board of Directors, being sworn, petitions the Court for an Order expanding the permissible purposes for which certain funds received from the William V. Benjamin Trust may be expended. Petitioner informs the Court as follows:

INTRODUCTION

1. Petitioner is the recipient of a distribution made pursuant to the terms of the William V. Benjamin Trust (the "Benjamin Trust"), which was created by a declaration made by William V. Benjamin ("Mr. Benjamin") on April 3, 1990, as amended on January 4, 1996.

2. The original restricted purpose for which these funds may be expended has become impractical in that it is unlikely the funds may be used in accordance with the original restriction.

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MILWAUKEE COUNTY~~

3. Pursuant to Wisconsin Statutes Chapter 112.10(1)(f), this distribution is an institutional fund.

4. Pursuant to Wisconsin Statutes section 112.10(7), the governing board of an institution (such as the Board of the Shorewood Foundation, Inc.) which is the recipient of a gift which is an institutional fund (such as the distribution received from the Benjamin Trust) may apply to the Circuit Court for release of a restriction imposed by the applicable gift instrument on the use of an institutional fund.

5. Petitioner is hereby requesting relief pursuant to Wisconsin Statutes section 112.10(7).

6. Petitioner believes that the Probate Court is the proper venue for this matter as the question for the Court involves the language of a trust document. Further, the requested modification of the restrictions placed on the institutional fund is closely related to Wisconsin Statutes section 701.10, which addresses the construction and modification of Charitable Trusts.

#### BACKGROUND

7. Mr. Benjamin was a long-time resident of Shorewood, Wisconsin, and was an active participant at the Shorewood Senior Center (now known as the Shorewood Senior Resource Center), in Shorewood, Wisconsin.

8. During his lifetime, Mr. Benjamin was very conscious of needs of seniors in the Shorewood community and was aware of the limited resources available to the Shorewood Senior Resource Center to meet those needs.

9. On January 4, 1996, Mr. Benjamin amended his trust to provide as follows as to his residuary trust estate:

Twenty-five percent (25%) to the SHOREWOOD CIVIC IMPROVEMENT FOUNDATION in Shorewood, Wisconsin, to be used to provide additional facilities at the SHOREWOOD SENIOR CENTER in Shorewood, Wisconsin, including, but not limited to, additional floor space and additional equipment, so as to increase the types of activities provided by said SHOREWOOD SENIOR CENTER. (Subparagraph IV(B)(3) of the Benjamin Trust.)

10. In 2001, the Village of Shorewood began construction of a new Village Center. The ultimate cost of the Village Center, which opened in January 2003, was approximately \$6 million. Space in the Village Center is dedicated to or available for use by the Shorewood Senior Resource Center.

11. Mr. Benjamin died on March 22, 2002, without making any changes to the terms of his Trust as set forth in paragraph 9.

12. On September 25, 2002, Petitioner received \$750,000 from the Trustee of the Benjamin Trust and on October 22, 2003, received \$435,375.22, which together comprised payment in full satisfaction of its share of the trust.

13. On information and belief, the Benjamin Trust has subsequently been terminated according to its terms.

14. The Shorewood Civic Improvement Foundation changed its name to The Shorewood Foundation, Inc. on January 15, 2001.

15. The Shorewood Senior Center became the Shorewood Senior Resource Center in April 2000. The Elder Services Advisory Board ("ESAB") makes recommendations for the operation and administration of the Shorewood Senior Resource Center. The ESAB is a seven-member board appointed by the Village Board of the Village of Shorewood to determine and review the service needs of elder residents, provide guidance to the Village Board and administration in dealing with these matters, and to evaluate the delivery of services to elder residents.

## ACTIONS OF PETITIONER

16. Since receiving the Benjamin distribution, the Foundation has kept the assets segregated from other Foundation funds in accordance with the restrictions placed on institutional funds.

17. The assets are conservatively invested in money market funds and U.S. Treasury Bills at Bank One Securities Corporation; the March 31, 2004 statement is attached hereto and shows a balance of \$1,131,215.36.

18. Since receiving the Benjamin distribution, Petitioner has been uncertain as to the extent of the restrictions on the assets but initially determined that expenditures for equipment were clearly authorized.

19. In September 2002, the Elder Services Advisory Board ("ESAB") and the Village of Shorewood requested use of some of the Benjamin distribution for equipment for the kitchen and audio/visual equipment for the community room in the Village Center which are used by the Shorewood Senior Resource Center.

20. On November 12, 2002, Petitioner approved this request and authorized use of up to \$75,000 of the Benjamin distribution for such equipment.

21. On June 6, 2003, Petitioner distributed \$29,154.00 pursuant to the November 12, 2002 approval; this sum was requested and used for program expansion and enhancement of the Shorewood Senior Resource Center.

22. On April 22, 2004, Petitioner distributed \$38,353.21 pursuant to the November 12, 2002 approval which was used for the purchase of equipment for the kitchen and a/v equipment for the community room.

23. Petitioner takes its duties with respect to the Benjamin distribution seriously and wants to ensure that it complies with the restriction on the use of the funds it has received but also wants to ensure that the Benjamin distribution is used to accomplish Mr. Benjamin's objectives to the maximum extent practicable.

24. Petitioner believes that due to the change in circumstances which has occurred since the creation of the Benjamin Trust, it is unlikely that the funds it has received can be used to provide additional facilities for the Shorewood Senior Resource Center in Shorewood, Wisconsin, within the foreseeable future.

25. Petitioner has examined this issue over the last nine months and has received advice from counsel, consulted with individuals who knew Mr. Benjamin and has recently held two "listening sessions" to elicit input from Shorewood residents, particularly those residents who use the Shorewood Senior Resource Center.

26. Specifically, on Tuesday, April 27, 2004, from 4:30 p.m. to 6:30 p.m., and on Monday, May 3, from 11:00 a.m. to 1:00 p.m., the Board of Directors of the Shorewood Foundation gave a brief presentation on the background of the Benjamin Trust and then opened the floor for questions and comments from the audience.

27. Both sessions enjoyed good participation, and the overwhelming majority of participants supported the effort to broaden the purposes for which the Benjamin distribution can be used.

28. On June 3, 2004, the ESAB reviewed this Petition and voted unanimously to express its support for the expansion of the restriction on the use of the funds from the Benjamin Trust as requested in this Petition.

29. The Shorewood Senior Resource Center receives funding from the Village of Shorewood, but due to local, state and federal funding cutbacks, the Shorewood Senior Resource Center has many immediate needs that the Benjamin distribution could help address if the restrictive language is broadened to include uses in addition to providing additional facilities for the Shorewood Senior Resource Center in Shorewood, Wisconsin.

## RELEVANT PROVISIONS OF STATE LAW

30. Under Wisconsin Statutes section 112.10, the Wisconsin version of the Uniform Management of Institutional Funds Act (UMIFA), the Benjamin distribution is an "institutional fund" but is not an "endowment fund."

31. Section 112.10(1)(f) provides that an institutional fund is "a fund held by an institution for its exclusive use, benefit or purposes . . ."

32. As stated above, Wisconsin Statutes section 112.10(7)(b) allows an institution that has received a restricted gift to apply to Circuit Court for release of some or all of the restrictions imposed by the terms of a gift instrument (here, the Benjamin Trust).

33. Specifically, the statute provides:

(b) If written consent of the donor cannot be obtained by reason of death, disability, unavailability or impossibility of identification, the governing board may apply in the name of the institution to the circuit court for release of a restriction imposed by the applicable gift instrument on the use or investment of an institutional fund. The attorney general shall be notified of the application and shall be given an opportunity to be heard. If the court finds that the restriction is obsolete, inappropriate or impracticable, it may by order release the restriction in whole or in part. A release under this paragraph may not change an endowment fund to a fund that is not an endowment fund.

34. The Benjamin distribution is not an endowment fund because it does not, by its terms, provide that it may not be completely spent by Petitioner on a current basis. Therefore, the statutory restrictions applicable to "endowment funds" set forth in Wisconsin Statutes section 112.10 do not apply.

35. Wisconsin Statutes section 112.10(7)(d) specifically condones the use of the *cy pres* doctrine in this context.

36. Wisconsin has codified the *cy pres* doctrine under Wisconsin Statutes section 701.10(2).

37. Specifically, Wisconsin Statutes section 701.10(2)(b) provides:

If any administrative provision of a charitable trust or part of a plan set forth by the settlor to achieve the settlor's charitable purpose is or becomes impractical, unlawful, inconvenient or undesirable and a modification of such provision or plan will enable the trustee to achieve more effectively the basic charitable purpose, the Court may by appropriate order modify the provision or plan.

#### QUESTION FOR THE COURT

38. The language of the Benjamin Trust suggests that Mr. Benjamin's intent was that the gift be expended to fulfill its ultimate purpose of increasing the types of activities offered by the Shorewood Senior Resource Center.

39. The language of the Benjamin Trust was written before the Village of Shorewood committed to build the new Village Center building that includes space used by the Shorewood Senior Resource Center.

40. Given the change in circumstances which has occurred since the creation of the Benjamin Trust, Petitioner wishes to broaden the permissible purposes of Mr. Benjamin's distribution for the benefit of the Shorewood Senior Resource Center.

41. The ESAB and Petitioner believe that Mr. Benjamin's intent was to enhance the overall effectiveness of the Shorewood Senior Resource Center by increasing the types of activities offered and that expenditure of the funds from the Benjamin Trust for that purpose is in keeping with this intent.

42. Mr. Benjamin's charitable purpose was clearly to benefit the Shorewood Senior Resource Center, but his specific directives as to the use of the funds may not best achieve his purpose in light of the change in circumstances since the date of the Benjamin Trust.

43. In light of the foregoing, Petitioner requests that the Court substitute the following language for the original Benjamin Trust language:

Twenty-five percent (25%) to The Shorewood Foundation, Inc., in Shorewood, Wisconsin, to be used to enhance the facilities of (including providing additional floor space) the Shorewood Senior Resource Center and the activities provided by the Shorewood Senior Resource Center, including, but not limited to, providing additional facilities and equipment for the Shorewood Senior Resource Center, and supporting and enhancing the activities provided by the Shorewood Senior Resource Center, or any successor organization. This gift shall be distributed, managed, and administered over such time period, or in perpetuity, as the Shorewood Foundation, in its sole discretion, deems advisable to achieve this charitable purpose.

44. Petitioner requests the above modification in order to fulfill Mr. Benjamin's ultimate purpose of increasing the types of activities provided by the Shorewood Senior Resource Center by allowing expenditures for support and enhancement of existing activities in addition to expenditures for additional floor space and equipment.

#### INTERESTED PERSONS

45. Michael Schulte, as President of the Shorewood Foundation, Inc., is an interested party and shall receive notice of this proceeding at the following address:

The Shorewood Foundation, Inc.  
3930 North Murray Avenue  
Shorewood, WI 53211

46. Additionally, in accordance with Wisconsin Statutes section 112.10(7), the Attorney General of the State of Wisconsin shall receive notice of this proceeding at the following address:

Department of Justice  
P.O. Box 7857  
Madison, WI 53707-7857



47. Although the Elder Services Advisory Board may not technically be an interested party, Petitioner has kept the ESAB informed of the Foundation's actions and will give the ESAB notice of this proceeding at the following addresses:

Elder Services Advisory Board  
c/o Leeann Butschlick  
Village Hall  
3930 North Murray Avenue  
Shorewood, WI 53211

Elder Services Advisory Board  
c/o Shirley Spelt  
Village Hall  
3930 North Murray Avenue  
Shorewood, WI 53211

WHEREFORE, Petitioner requests that the Court:

1. Hear this matter on notice and publication to all interested parties;
2. Modify the language to which the Shorewood Foundation institutional funds received from the Benjamin Trust is subject;
3. Approve the distributions made to date from the Benjamin distribution as in keeping with the purpose of the gift;
4. Order that reasonable attorney fees and costs in this matter are properly payable from the Benjamin distribution; and
5. Grant such other relief as may be appropriate.

All statements herein are true to my own knowledge unless indicated to be upon information and belief.

Dated at Shorewood, Wisconsin, this 16 day of June, 2004.

THE SHOREWOOD FOUNDATION,  
INC.

By Michael R Schulte  
Michael Schulte, President

Attest:

Julius R. D'Alto

VERIFICATION

State of Wisconsin )  
: SS  
Milwaukee County )

Michael Schulte, being first duly sworn, on oath deposes and says that he is President of the Shorewood Foundation, Inc., which is the Petitioner above-named, and makes this Verification on behalf of the Petitioner, being duly authorized to do so; that he has read the foregoing Petition and that to the best of his knowledge, information, and belief the foregoing Petition is true.

Michael R Schulte  
Michael Schulte

State of Wisconsin )  
: SS  
Milwaukee County )

This instrument was acknowledged before me on June 16, 2004, by Michael Schulte, known to me to be the person who signed this Petition as President of the Shorewood Foundation, Inc.

[Seal]

( James R. Holt )  
Notary Public, State of Wisconsin  
My Commission is present