

in trust to Brookline School Committee for benefit of Brookline High School, held to be public charitable trust); *Peirce v. Atwill*, 234 Mass. 389, 391 (1920) (trust for benefit of town of Middleborough held to be public charity); *Trustees of Dartmouth College v. Quincy*, 331 Mass. 219, 225 (1954) (trust established to support school for Quincy girls held to be “a charitable trust for the benefit of the public”); *Burbank v. Burbank*, 152 Mass. 254 (1890) (even if benefits “are confined to specified classes, as decayed seamen, laborers, farmers, etc., of a particular town, it is well settled that it is a public charity”).

Black letter law establishes that when, as here, a public charity benefits a specified class of the public, such as the townspeople and schoolchildren of Ipswich, the individual members of the beneficiary class lack standing to challenge any aspect of the charity’s operations. To establish standing an individual must show a distinct and separate interest in the trust – such as an individual right to hold office that is being denied. Only the Attorney General of the Commonwealth has standing to protect the public’s generalized interest in the operations of the charity. *E.g.*, *Rogers v. Roman Catholic Archbishop of Boston*, 72 Mass. App. Ct. 1117 (2008) (unpublished opinion attached as Exhibit A) (church parishioners lacked standing to stop sale of real estate held for benefit of parish); *Cassell v. Christian Science Board of Directors*, 67 Mass. App. Ct. 1119 (2006) (unpublished opinion attached as Exhibit B) (church member lacked standing to vindicate a generalized interest in church operations shared with all church members); *Garland v. The Beverly Hospital Corp.*, 48 Mass. App. Ct. 913 (1999) (rescript) (Gloucester resident lacked standing to challenge operation of charitable trust established to benefit Gloucester residents); *Weaver v. Wood*, 425 Mass. 270 (1997) (members of Christian Science Church lacked standing to challenge church’s alleged violation of deeds of trust); *Worcester Memorial Hospital v. Attorney General*, 337 Mass. 769 (1958) (trustees and members

of hospital lacked standing to appeal hospital merger); *Dillaway v. Burton*, 256 Mass. 568 (1926) (trustees under settlors' will lacked standing to prevent breaches of trust in administration of charitable corporation created under the will); *Burbank v. Burbank*, 152 Mass. 254 (1890) (Pittsfield residents lacked standing to challenge settlement pursuant to which real estate left in trust for Town's benefit was instead sold to Town).

The proposed interveners do not claim that they or their children have some special rights under the William Paine trust distinct from the interest held by other parents, children and citizens of Ipswich. They do not claim that they have any special right to make decisions, as do the Superintendent and School Committee, concerning if, how, and when funds received from the trust are to be expended. Rather, they claim that what distinguishes them from other parents in Ipswich, and gives them a special and distinct right to substitute their judgment for that of the Attorney General, is that they are active in town affairs. Thus, paragraph 13 of their proposed Counterclaim describes their "separate and distinct" interest in the trust as follows: "The interest of the Applicants for Intervention and their minor children is separate and distinct from that of the general public because, inter alia, of their active involvement in the town of Ipswich and town governance generally and the Ipswich Public Schools specifically."

The would-be interveners cite to no case holding that activism in town affairs confers upon them rights greater than those held by other members of the general public. Indeed, in each of the cases in which standing was found to be wanting, the individuals who sought to intervene were, by definition, activists – individuals who were active in their church, or in their hospital, or in their community. It was perhaps because of the multitude of such activists in every community that the Legislature deemed it necessary to designate a single authority – the

Attorney General – to act as the sole and exclusive representative of the community’s generalized interest in overseeing the operations of charitable trusts.

These principles were explained in the seminal case of *Burbank v. Burbank*, 152 Mass. 254 (1890), which involved strikingly similar facts to those here. There, a decedent left in trust certain land, which was eventually to go to the town of Pittsfield for use as a hospital and public park, but only after the decedent’s heirs died many years in the future. In the meantime, the town would have to comply with onerous and expensive conditions. The town and heirs were able to reach a compromise agreement pursuant to which the town was able to buy the land immediately. The attorney general assented to the settlement, and a judge approved it. But as in the instant case, a group of citizens sought to scuttle the settlement, claiming on appeal that they, not the attorney general, represented the beneficial interest of the citizens of Pittsfield. The Supreme Judicial Court dismissed their claims, stating as follows:

The petitioners, R.W. Adam and others, show no other interest in these charitable devises and bequests than that of the general public, and of all other citizens of Pittsfield. They appear to have filed their petition without any leave of court so to do, and have sought to bring here by appeal the decree sanctioning the proposed compromise which was rendered by a single judge after a hearing to which the attorney general was a party. They claim the right to represent the beneficiaries of this charitable trust, and complain that this decree has been rendered “without the appointment of trustees to act for the beneficiaries, and without the concurrence or assent of the beneficiaries, and without such beneficiaries or trustees for them being made parties thereto,” etc. But the law has provided a suitable officer to represent those entitled to the beneficial interest in a public charity. It has not left it to individuals to assume this duty, or even to the court to select a person for its performance. *Nor can it be doubted that such a duty can be more satisfactorily performed by one acting under official responsibility than by individuals, however honorable their character and motives may be.*

152 Mass. at 256 (emphasis added). The Court went on to say, in language that is just as true today as it was then,

No proceedings in regard to a public charity, no matter how general the assent of those beneficially interested, would bind [the attorney general] if not made a party; *nor can any proceeding in regard to a public charity to which he has been made a party be*

invalidated by those beneficially interested, but having no peculiar and immediate interests distinct from those of the public.

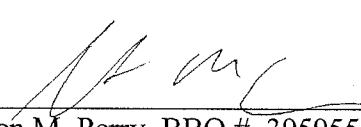
Id. (emphasis added).

Here, the would-be interveners claim to be beneficially interested in the trust, but they possess no peculiar and immediate interests distinct from those of the public. Their allegation that they are civically active parents of current Ipswich schoolchildren establishes only that they are among the many members of the general public for whose benefit the trust was created. This generalized interest does not give them standing, nor does it permit them to hold up the sale of the property. It is the exclusive role of the Attorney General to protect the public's generalized beneficial interest in the operation of the trust. And the Attorney General, who has been intimately involved in the case, has concluded, as have the parties, that the proposed sale and restructuring of the trust pursuant to the Agreement for Judgment – rather than engaging in years more of expensive and wasteful litigation – is in the best interests of the Ipswich Schools.

CONCLUSION

For the foregoing reasons, the proposed intervenors' motion to stay the entry or enforcement of the judgment should be denied.

Respectfully submitted,
IPSWICH SCHOOL COMMITTEE and
RICHARD KORB
By their attorneys,

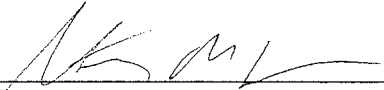


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Dated: January 26, 2012

CERTIFICATE OF SERVICE

I hereby certify that on January 26, 2012, I caused a copy of the foregoing document to be served by first class mail upon all counsel of record and upon Mark E Swirbalus, Day Pitney LLP, One International Place, Boston MA 02110.



Stephen M. Perry

EXHIBIT A

Unpublished Disposition
72 Mass.App.Ct. 1117
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.
Jon ROGERS & others,¹
v.
ROMAN CATHOLIC ARCHBISHOP OF BOSTON.

No. 07-P-629. | Sept. 19, 2008.

By the Court (LENK, DUFFLY & GREEN, JJ.).

Opinion

**MEMORANDUM AND ORDER PURSUANT TO
RULE 1:28**

*1 This is an appeal from the dismissal of a complaint brought by three plaintiffs, Jon Rogers, James Donahue, and James Clifford, parishioners of the St. Frances X. Cabrini Parish (parish), seeking declarative and injunctive relief allegedly on behalf of themselves and other parishioners of the parish. They seek to permanently enjoin the defendant, Roman Catholic Archbishop of Boston (RCAB), from transferring, converting, securing, or conveying real estate and personal property held in the name or for the benefit of the parish, and a declaration that, pursuant to G.L. c. 67, §§ 44–46, the RCAB holds such property in trust for the sole benefit of the parishioners of the parish. The complaint was dismissed for failure to state a claim. Mass.R.Civ.P. 12(b)(6), 365 Mass. 755 (1974).

As alleged in the amended complaint, the parish was created in the late 1950's in Scituate; parishioners gave money and other goods to outfit the first rectory and provided the funds for the purpose of purchasing parcels of land for church buildings and for the cost of building the church, rectory, and parish center. The parish is fully self-supporting and owes no indebtedness to the RCAB or vendors of the parish. Parishioners pay for the upkeep of the church, all maintenance, renovation, and repair, and for the salary and benefits of the pastor and other parish employees.

Rogers is chairperson of the Friends of St. Frances X. Cabrini Parish, which was established to represent the parishioners; all decisions were made by a vote of its members. RA 15. Following suppression of the parish, effective October 29, 2004, bank accounts and items of property were seized by the RCAB. Thereafter, members

of the Friends of St. Frances X. Cabrini Parish voted unanimously to initiate this suit. RA 17

The three named plaintiffs have not alleged claims that are “readily distinguishable from those of the general class of parishioner-beneficiaries” or claims that are “personal, specific, and exist apart from any broader community interest in keeping [the church] open.” *Maffei v. Roman Catholic Archbishop of Boston*, 449 Mass. 235, 245, 867 N.E.2d 300 (2007). The plaintiffs claim generally that they bring this action on behalf of all parishioners as beneficiaries of a trust in which all parish property is held under G.L. c. 67, §§ 44–46.2

Even assuming that under §§ 44–46, the RCAB holds parish property in trust for the parishioners, principles of standing articulated in *Maffei* apply; such a trust is a charitable trust subject to G.L. c. 12, § 8, unless the plaintiffs allege personal interests in the property distinct from those of the general public and from those of parishioners generally.³ *Maffei v. Roman Catholic Archbishop of Boston*, *supra* at 244–245, 867 N.E.2d 300. “A public charity can arise in two general ways, either by being organized with the intent to limit the organization’s use of its funds to charitable purposes, or by engaging in conduct which results in the entity holding funds for charitable purposes. Such conduct includes accepting funds on express trust for charitable purposes as well as holding the entity out as charitable and soliciting and accepting donations on the basis of a charitable appeal.” *Attorney Gen. v. Weymouth Agric. & Indus. Soc.*, 400 Mass. 475, 477, 509 N.E.2d 1193 (1987). “When a trust is charitable, and is created not to benefit one or more individuals but is devoted to purposes that are beneficial to a broader community, the Legislature has determined that the Attorney General is responsible for ensuring that its charitable funds are used in accordance with the donor’s wishes.” *Weaver v. Wood*, 425 Mass. 270, 275, 680 N.E.2d 918 (1997).

*2 We also disagree that allegations that the RCAB has engaged in “several illegal actions [that] have directly affected them as individuals,” Appt.Br. at 10, and that two of the plaintiffs “hold official positions at the church,” *ibid.*, suffice to confer standing. See *Weaver v. Wood*, *supra* at 276–277, 680 N.E.2d 918. “[W]e have never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted ultra vires.” *Id.* at 277, 680 N.E.2d 918.

Because the plaintiffs lack standing, we affirm the judgment of dismissal.

So ordered.

Footnotes

- 1 As set forth in the caption of the amended complaint, the plaintiffs are: "Jon Rogers, As Chairperson of the Friends of Saint Frances X. Cabrini Parish, and Individually, James Donohue, As Parish Councilor of Saint Frances X. Cabrini Parish, and Individually, and James Clifford, Individually and on behalf of the other members of Saint Frances X. Cabrini Parish." RA 13
- 2 The plaintiffs argue on appeal that all such gifts were conditional and made "with a specific purpose rather than a general charitable intent.... These gifts were not made for the benefit of the general public or for the Roman Catholic Church in general, nor were they made with the object of generally advancing the religion; rather they were made specifically for Saint Frances X. Cabrini Parish, and for the benefit and enjoyment of the other parishioners." Appt.Br. at 8.
- 3 Although we do not reach the issue, we are not persuaded by the plaintiffs' arguments that by application of §§ 44-46, all parish property is subject to principles of trust law not circumscribed by First Amendment considerations.

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EXHIBIT B

Unpublished Disposition
67 Mass.App.Ct. 1119
NOTICE: THIS IS AN UNPUBLISHED OPINION.
Appeals Court of Massachusetts.

Maryfrances CASSELL,
v.
CHRISTIAN SCIENCE BOARD OF DIRECTORS.

No. 06-P-285. | Dec. 11, 2006.

Opinion

MEMORANDUM AND ORDER PURSUANT TO
RULE 1:28

*1 The plaintiff, Maryfrances Cassell, a member of the First Church of Christ, Scientist, in Boston (Church), sought removal of the defendant Christian Science board of directors (board), alleging that in allowing trust property to be used for a peace rally, the board violated the terms of the 1892 deed of trust, executed by Mary Baker G. Eddy, conveying land on which to build a church wherein the doctrines of Christian Science would be practiced. A judge of the Probate and Family Court granted the board's motion to dismiss the plaintiff's complaint for lack of subject matter jurisdiction. The plaintiff now appeals.

In 1997, when analyzing a similar claim by Church members, the Supreme Judicial Court stated that "the Church is a public charity established by Eddy under a series of charitable trusts." *Weaver v. Wood*, 425 Mass. 270, 274 (1997).¹ Pursuant to G.L. c. 12, § 8, the Attorney General is responsible for enforcing the terms of charitable trusts.² See *id.* at 275 ("the Legislature has determined that the Attorney General is responsible for

ensuring that [a trust's] charitable funds are used in accordance with the donor's wishes"). Indeed, "it is the exclusive function of the Attorney General to correct abuses in the administration of a public charity by the institution of proper proceedings." *Id.* at 276, quoting from *Dillaway v. Burton*, 256 Mass. 568, 573 (1926). As enforcement of charitable trust terms is the exclusive domain of the Attorney General, the plaintiff has "no enforceable legal interest in the administration of the charity, and [has] no standing to pursue such claims." *Weaver, supra* at 278. Compare *Krauthoff v. Attorney Gen.*, 240 Mass. 88, 92 (1921).

It is true that an individual plaintiff may have standing to sue a public charity when her complaint articulates an interest in the charity that is distinguishable from those interests in the charity held by the public at large. *Weaver, supra* at 276. See *Lopez v. Medford Community Center, Inc.*, 384 Mass. 163, 167 (1981). However, the plaintiff here seeks to vindicate a generalized interest presumably shared with all members of the Church. The Supreme Judicial Court has "never held that membership in a public charity, alone, is sufficient to give standing to pursue claims that a charitable organization has been mismanaged or that its officials have acted ultra vires." *Weaver, supra* at 277.

For the reasons stated herein and by the judge below, the dismissal of the plaintiff's complaint is affirmed.³ Because we hold that the plaintiff lacks standing to bring her claim, we do not reach the board's second argument.

Judgment affirmed.

Parallel Citations

858 N.E.2d 316 (Table), 2006 WL 3592969 (Mass.App.Ct.)

Footnotes

- 1 The plaintiff is correct that, unlike her claim, the *Weaver* plaintiffs also challenged actions undertaken by the Christian Science Publishing Society. See *Weaver v. Wood*, 425 Mass. at 271. However, this distinction is not material for purposes of ascertaining whether the plaintiff here has standing to pursue her claim. The defendants in *Weaver* included present and past directors of the Church's board, and the court determined that the Church as a whole was a public charity. *Id.* at 270, 274, 277. Its finding in this regard was not confined to the Christian Science Publishing Society, a particular arm thereof.
- 2 General Laws c. 12, § 8, inserted by St.1979, c. 716, states: "The attorney general shall enforce the due application of funds given or appropriated to public charities within the Commonwealth and prevent breaches of trust in the administration thereof."
- 3 At oral argument, the plaintiff requested relief in the nature of certiorari. That request, whether or not construed as a request for a report, is inappropriate in view of the plaintiff's opportunity to petition for further appellate review, and therefore is denied. See Mass.R.A.P. 27.1, as amended, 426 Mass. 1602 (1991).