

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

SARAH EDWARDS,)
)
 PETITIONER,)
)
 V.) Case No. CV2012-903414
)
 GIRL SCOUTS OF NORTH-)
 CENTRAL ALABAMA, INC., an)
 Alabama non-profit corporation,)
)
 RESPONDENT.)

MEMORANDUM OF FACTS AND LAW IN SUPPORT OF
RESPONDENT'S MOTION TO TRANSFER,
OR IN THE ALTERNATIVE, MOTION TO DISMISS,
OR IN THE ALTERNATIVE, MOTION FOR SUMMARY JUDGMENT

I. UNDISPUTED FACTS

1. The Affidavit of Patricia Coghlan is attached hereto as Exhibit "1", and the following undisputed facts are set forth in her Affidavit.
2. The Girl Scouts of North Central Alabama, Inc. (GSNCA) is a 501(c)(3) corporation, operating in North Central Alabama. GSNCA is a result of a merger that took place in 2007, between various Girl Scout Councils in North Central Alabama. GSNCA is currently serving 36 counties in North Central Alabama.
3. The mission of GSNCA is for girls and young women to develop skills, values and ideas to reach their fullest potential in becoming caring, competent, contributing members of society.
4. The vision of GSNCA centers around four (4) initiatives, financial literacy, healthy living, STEM (science, technology, engineering, math) and leadership. See GSNCA's Mission and Vision Statement attached to Coghlan Affidavit as Exhibit "1".

5. In membership year 2011, GSNCA had 13,700 members. In membership year 2012, GSNCA had 15,081 members.

6. During membership year 2011, GSNCA had 5,013 adult members, and in membership year 2012, GSNCA had 5,048 adult members. See Exhibit "2" to Coghlan Affidavit.

7. GSNCA currently owns six (6) camping properties, Camp Cottaquilla, KPC, Camp Coleman, Trico, Anderel, and Camp Tombigbee.

8. In membership year 2011, the total number of girl registrations for residential campers at the four (4) residential camps, Coleman, Trico, KPC and Cottaquilla, totaled 560. For membership year 2012, the total number of girl registrations at these four (4) camps totaled 472. The total registration numbers include girls who attended residential camp for more than one week.

9. The unduplicated number of girls attending these four (4) residential camps in membership year 2011 was 462, or, 3.4% of all Girl Scouts belonging to GSNCA. In 2012, the unduplicated number of girls attending these four (4) residential camps was 418, or 2.8% of all Girl Scouts belonging to GSNCA.

10. For all six (6) camp properties, the total net loss in 2010 was \$1,120,307.00. The total net loss for 2011 was \$925,113.00. The total net loss in 2012 was \$868,779.00. Over the past three (3) years, the six (6) camps have lost a total of \$2,914,199.00. See Coghlan's Affidavit.

11. At the time of the merger that resulted in GSNCA, the Board recognized that six (6) camp locations were too many to serve its members. The Board, as part of its long-term strategic plan, spent several years analyzing the use at the camps, operating expenses,

maintenance expenses, capital improvements, and whether or not the camps were meeting the Mission and Vision of GSNCA.

12. A Property Assessment Committee was formed in the summer of 2011. The Committee is made up of volunteers, staff, community members and Board members. On February 21, 2012, the Property Assessment Committee made a presentation to the Property Committee. A copy of this Report is attached hereto as Exhibit "3" to the Affidavit of Patricia Coghlan. The ultimate conclusion of the Property Assessment Committee was that: "Based on current membership in our council, we are not able to continue operating the number of facilities that we currently occupy at the standard of service our members are currently receiving, expect and deserve". This conclusion was based on information obtained from internal and external surveys, town-hall meetings, property surveys, and market research. On March 27, 2012, the Property Committee met, and concluded that "Based on current membership in our council, we are not able to continue operating the number of facilities that we currently occupy at the standard of service our members are currently receiving, expect and deserve". See Exhibit "4" to Coghlan Affidavit.

13. The Property Committee formulated a recommendation, which was presented to the Board of GSNCA on May 9, 2012. A copy of the Recommendation is contained within the Minutes of the Meeting, as attached to Patricia Coghlan's Affidavit as Exhibit "5". The Board approved the 3 phase Property Plan on May 9, 2012. See Exhibit "5".

14. Based on the records of GSNCA, the net book value of Camp Cottaquilla is \$1,318,290.00, KPC is \$1,851,698.00, Camp Coleman is \$253,538.00, Trico is \$270,707.00, Anderel is \$303,068.00, and Tombigbee is \$405,037.00. The total net book value of these properties is \$4,050,037.00.

15. The tax appraised values of these properties are as follows:

Anderel	\$6,428,400.00
Coleman	\$2,126,000.00
Cottaquilla	\$4,635,700.00
KPC	\$4,173,350.00
Tombigbee	(No tax assessment)
Trico	\$2,086,900.00

The total tax appraised value of these five (5) properties is \$19,450,350.00. See Exhibit "14".

16. Based on the Property Plan, the total tax appraised value of the camp property for sale (Anderel, Tombigbee, Coleman and Trico) is \$11,932,917.00, and the total tax appraised value of the camp property not for sale is \$9,822,030.00. (For the purpose of this calculation, the net book value of Tombigbee is being used since there is no appraised value). The camp property for sale totals 55% of the total camp property owned by GSNCA. The book value of the camp property for sale is \$3,048,543.00, and the camp property not for sale is \$3,169,998.00, or 49% of the total camp property.

17. These calculations do not include other assets of GSNCA. Other non-camp assets owned by GSNCA total at least \$6,744,025.00. See Exhibit "14" to Coghlan Affidavit. Using book value, the value of the camp property proposed to be sold is only 38% of GSNCA's total assets. Using the tax appraised value of GSNCA's property, the camp properties proposed to be sold is only 42% of GSNCA's total value.

18. The Property Plan calls for the sale of the Birmingham Office. However, the Plan calls for the Birmingham Office is to be relocated to a more convenient location and into a more functional building. The funds received from the sale of the current building will be used to acquire the new building. The current building is very limited as to space, and the location is not convenient for many of the members of GSNCA. By moving to a more convenient location, and

expanding the size of the building to allow more room for volunteer training, meetings, and other activities essential to the Mission and Vision of GSNCA, the relocation serves the business purpose of GSNCA.

19. At the present time, there are over 300 council developed program opportunities available for members. An example of various opportunities is set forth in the December 2012 – January 2013 Leader Connections, which is attached hereto as Exhibit “10”.

20. GSNCA has already provided a large number of the documents requested by Petitioner to Petitioner and/or those acting in concert with her. Petitioner has already received the Property Committee Presentation, Property Assessment Committee Members, Management Reports (9/09 – 8/12), Board Minutes (2009 – 8/12), Finance Committee Meeting Minutes, Audit Committee Meeting Minutes, Town Hall Presentation, Property Committee Minutes (9/10 – 8/12) and Property Assessment Overview. See Exhibit “11”. Additionally, much of the information requested by Petitioner is available online at the GSNCA website, including 990s, audits and annual reports.

21. Petitioner Edwards is the President of Friends of Camp Coleman (FOCC). The purpose of FOCC, according to their website, is to “sav[e] Camp Coleman [and] to establish an endowment fund to ensure that Girl Scouts will be able to call Camp Coleman their own for another 87 years.” Their mission is to “Preserve Camp Coleman and its outdoor opportunities in order to build girls of courage, confidence and character now and in the future.” Nothing on their website indicates that the FOCC are concerned with the mission and goals of GSNCA: FOCC only wants to save Camp Coleman, without regard to the adverse consequences faced by GSNCA should they keep it. See Exhibit “6” to Affidavit of Coghlan.

II. ARGUMENT

22. Alabama Code Section 10A-3-120 requires that the “sale, lease, exchange, mortgage, pledge or other disposition of all, or substantially all of the property of a non-profit corporation” be decided by a two-thirds (2/3) vote of the voting membership. Alabama case law is void when addressing a situation similar to what is facing this Court. However, Alabama Code Section 10A-2-12.02(a) contains a similar provision concerning for-profit corporations.

This statute provides, in part:

A shareholder is entitled to dissent from, and obtain payment of the fair market value of his or her shares in the event of, any of the following corporate actions . . . (3) consummation of a sale or exchange by all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder is entitled to vote on the sale or exchange, including a sale and dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all net proceeds of the sale will be distributed to shareholders within one year of the date of sale.

23. In Huntsville Industrial Associates, Inc. v. The Cummings, 295 So. 2d 251 (Ala. 1974), shareholders filed suit dissenting from a reorganization of a for-profit corporation to recover the fair value of the shares held by the plaintiffs in the company. The defendant was a corporation that owned real estate and operated primarily as a real estate investment company. The Board transferred all of its assets to a newly formed real estate investment trust, and liquidated and transferred all of its shares in the real estate investment trust to the shareholders of the corporation. The court found that the statute gave a dissenting shareholder the right to demand fair value “where the sale or exchange includes the transfer of all or substantially all of the corporation’s capital or fixed assets as opposed to the sale or exchange of all or substantially all of merchandise, inventory or stock in trade”. Id. at 255. Since the primary purpose of the corporation was the rental of real estate, its lands and assets were capital assets held by the

corporation for the production of income. In the case pending before this Court, GSNCA is a non-profit corporation, whose primary purpose is to provide appropriate programs for its members consistent with its Mission and Vision, in conjunction with the Girl Scout tradition. GSNCA has an excessive number of camps, and the Board acted well within its authority to sell the four (4) camps, and keep two (2) to accomplish its mission. The fact that only 3.4% of all GSNCA took advantage of the camps in 2011, and only 2.8% took advantage in 2012, demonstrates that GSNCA has duplicative properties and duplicative expenses and costs.

24. Article IV, Section 4 of the Bylaws provides that “The Board: A. Shall have full power and authority over the affairs of the Council between meetings of the Council, except as otherwise provided in these bylaws or by statute.” There is nothing in the bylaws prohibiting the sale of property upon approval by the Board. As evidenced by GSNCA’s arguments herein, there is no statute prohibiting the sale of the four (4) camps and the Birmingham building as approved by the Board.

25. GSNCA currently provides over 300 council developed programs for its members. When the various organizations merged into the GSNCA in 2007, GSNCA recognized that there were too many camps and some of them would be sold in the future pursuant to its strategic plan. Less than five percent (5%) of the members attend Council operated summer camps. In 2012, the camps operated at a total loss of \$868,779.00. Some of the camps require extensive repairs, maintenance, and capital improvements, including the following, but not limited to:

- (a) Camp Coleman
 - (i) Entrance bridge;
 - (ii) Swimming pool;

- (iii) Worn and tired cabin and facilities;
 - (iv) Dining hall; and
 - (v) Pasture restoration.
- (b) Camp Anderel
 - (i) Shoreline restoration;
 - (ii) Boat house;
 - (iii) Boats; and
 - (iv) Swimming pool.
- (c) Camp Trico
 - (i) Asphalt roads;
 - (ii) Archery range; and
 - (iii) Tawanka upgrade.
- (d) Camp KPC
 - (i) Re-stain and paint cabins;
 - (ii) Conference Center deck;
 - (iii) Cabin with bathroom; and
 - (iv) New shower house.
- (e) Camp Cottaquilla
 - (i) Drainage issues;
 - (ii) Landscaping around pool; and
 - (iii) Re-grade front road.

The Board of GSNCA has the obligation to act in the best interest of GSNCA, which includes providing appropriate programs, at appropriate locations, at the appropriate level of cost to accomplish its mission.

26. In Butcher v. Girl Scouts of Tribal Trails Council, Inc., 779 N.E. 2d 946 (Ind. 2002), the Council owned a 140 acre parcel that had been used as a Girl Scout camp in the past. The Council received offers from private investors to buy the camp, ranging from \$300,000.00 to \$500,000.00. In addition to the camp real estate in question, the Council had cash investments worth approximately \$800,000.00. The Council also owned two (2) other properties with a combined value of approximately \$320,000.00. The Council spent several thousand dollars per year maintaining the camp and paying utilities, maintenance and insurance.

27. The Indiana Non-Profit Statute is similar to Alabama's, in that a non-profit corporation may sell "all, or substantially all, of the corporation's property" if the transaction is authorized by a majority vote of the members. Several members sought an injunction to prevent the Council from selling the camp. The court ultimately decided that the camp did not represent "all, or substantially all" of the Council's property.

28. The court reviewed a number of cases which had developed the generally accepted principle that the disposition of corporate assets may be considered "substantial" if either its quantitative or qualitative impact, or both, would fundamentally change the nature of the corporation. Id. at 949. The court cited two (2) Florida cases, finding that the notice and consent requirements of the Florida Code intended to insure that directors "do not fundamentally change the nature of the shareholder's investments without the checks and balances of informed shareholder approval." (quoting South End Improvement Group, Inc. v. Mullican, 602 So. 2d 1327 (Fla. Dist. App. 1992) and Schwadel v. Uchital, 455 So. 2d 401 (Fla. Dist. App. 1984),

which described shareholder's consent rights as a means to "protect the shareholders from fundamental change, more specifically to protect the shareholders from destruction of the means to accomplish the purposes or object for which the corporation was incorporated and actually performed." Clearly, the sale of these four (4) camps will not fundamentally change the day-to-day operations of GSNCA, nor would it destroy the means to accomplish the purpose, mission and vision of GSNCA. In fact, the sale of the (4) camp properties would enhance the ability of GSNCA to better accomplish its mission and serve its purpose. From a quantitative standpoint, the land to be sold by GSNCA is not "all, or substantially all" of the land, or the assets owned by GSNCA. The sale of the four (4) properties, based on the tax assessed value, would equal only 42% of the total assets of GSNCA. Using the book value, the sale of these four (4) properties would equal only 38% of the total assets of GSNCA. Both these percentages are well below the "all, or substantially all" threshold.

29. From a qualitative standpoint, "it is relevant to ask whether a transaction is out of the ordinary and substantially affects the existence and purpose of the corporation." Butcher at 950. The sale of the under-utilized and money-draining properties does not have an adverse impact on the existence and the purpose of GSNCA. Rather, it has a positive impact in that GSNCA is better able to serve its members by providing a meaningful camping experience, without draining monetary and other resources from GSNCA.

30. The sale of the Birmingham Headquarters Building does not represent the sale of "all, or substantially all" of the assets, and will not negatively affect the existence or purpose of GSNCA. Rather, it will have a positive impact in that GSNCA plans to reinvest the sale proceeds into a larger and more efficient building, in a more convenient location, to better serve

its members. This permits GSNCA to continue to meet the purpose of its existence and serve its members.

31. Petitioner has already received the vast majority of the documents requested in the Petition (See Exhibit 11), or has access to them on the GSNCA website. Sufficient information is publicly available, or has already been provided to her to determine that GSNCA is not selling “all, or substantially all” of its assets, nor have the Directors breached their fiduciary duty owed to GSNCA.

III. CONCLUSION

32. Based on the foregoing, GSNCA requests that this Court enter an Order granting its Motion for Summary Judgment, or in the Alternative, its Motion to Dismiss, or in the Alternative, its Motion to Transfer.

Respectfully submitted, this the 7th day of December, 2012.

s/ Daniel J. Burnick
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CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of December, 2012, I electronically filed the foregoing with the Clerk of Court using the ECF system which sent notification of such filing to all properly registered parties and to the extent they are not properly registered with the Court's ECF system, they have been served by directing same to their office addresses via First-Class, United States mail, postage prepaid, as follows:

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/s/ Daniel J. Burnick
OF COUNSEL

EXHIBIT “1”