

**THE COUNCIL OF THE CITY
OF NEW ORLEANS**

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NO. 2025-CA-0464

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VERSUS

COURT OF APPEAL

*

**EDWARD WISNER
DONATION, THE
HONORABLE MAYOR**

FOURTH CIRCUIT

*

STATE OF LOUISIANA

**LATOYA CANTRELL, IN HER
OFFICIAL CAPACITY AND AS
TRUSTEE, MICHAEL
PENEGUY, SENATOR EDWIN
MURRAY, MAJOR CHRIS
THORNHILL, AND PATRICK
NORTON**

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**APPEAL FROM
CIVIL DISTRICT COURT, ORLEANS PARISH
NO. 2022-06765, DIVISION "L"
Honorable Kern A. Reese, Judge**

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Judge Daniel L. Dysart

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(Court composed of Judge Daniel L. Dysart, Judge Sandra Cabrina Jenkins, Judge Paula A. Brown)

**JENKINS, J., CONCURS IN PART AND DISSENTS IN PART WITH
REASONS
BROWN, J., CONCURS IN THE RESULT**

Judy Y. Barrasso

Shaun P. McFall

Jane F. Dugal

BARRASO USDIN KUPPERMAN FREEMAN & SARVER, L.L.C

909 Poydras Street, Suite 2350

New Orleans, LA 70112

COUNSEL FOR PLAINTIFF/APPELLEE

Terrence K. Knister
Daniel Lund
John Y. Pearce
R. Ethan Zubic
Marianna K. Downer
Paul A. Babineaux
GORDON ARATA MONTGOMERY BARNETT
MCCOLLAM DUPLANTIS & EAGAN, LLC
201 St. Charles Avenue, 40th Floor
New Orleans, LA 70170

COUNSEL FOR INTERVENOR/APPELLANTS, Wisner Family Interests,
LLC, Mark E. Peneguy, Cook Family Properties, LLC, Wendell H. Cook,
Jr., EWP Family Properties, LLC, Edward W. Peneguy, Jr., and Wisner
Family Defendants

Robert L. Redfearn, Jr.
M. Claire Durio
SIMON PERAGINE SMITH & REDFEARN, L.L.P.
1100 Poydras Street, 30th Floor
New Orleans, LA 70163

COUNSEL FOR DEFENDANT/APPELLANTS, Edward Wisner Trust
Management Board

Robert J. Snyder, Jr.
ATTORNEY AT LAW
837 N. Pine Street
Gramercy, LA 70052

COUNSEL FOR DEFENDANT/APPELLANTS, James N. Peneguy and
Michael John Peneguy individually and/or as co-administrator of the Estate
of Michael J. Peneguy

Donald E. McKay, Jr.
Leila A. D'Aquin
Megan A. Haynes
LEAKE & ANDERSSON, LLP
1100 Poydras Street, Suite 1700
New Orleans, LA 70163

COUNSEL FOR DEFENDANT/APPELLANTS, Alexandra Keith Porteous
and Milner Porteous Wall Heirs

AFFIRMED

MAY 18, 2026

DLD This appeal is from a May 23, 2025 judgment granting partial summary judgment in favor of the plaintiff, the Council of the City of New Orleans (“City Council”) on the issues of nullity of the 2020 Ratification, Extension, Modification, and Amendment of the August 2, 1914 Donation as well as the issue of ownership of lands formerly held in the Wisner Trust. The trial court also denied motions for partial summary judgment filed by the defendants, the Wisner Board and The Salvation Army, William Porteous, and Wisner LLC. Finally, the trial court also denied the motion to adopt summary judgment filed by defendant, Michael Peneguy. For the reasons that follow, we affirm the trial court’s granting of the motions for partial summary judgment in favor of the plaintiff and the denial of the motions for partial summary judgment on behalf of the defendants.

BACKGROUND

In August of 1914, Edward Wisner, donated in trust approximately 50,000 acres of land located in Jefferson Parish, St. John the Baptist Parish and Lafourche Parish to the City of New Orleans. The trust instrument was limited to a 100-year

term, naming the Mayor of the City of New Orleans, or his successors in office as trustee, and Charity Hospital, Tulane University, and the Salvation Army as beneficiaries.

Subsequent to Mr. Wisner's death in 1928, his widow, Mary Wisner, and their two daughters, Elizabeth Wisner and Harriet Wisner Peneguy (the "Wisner Ladies"), filed suit to annul the trust instrument. In 1929, Thomas Semmes Walmsley (the acting mayor of the City of New Orleans), Charity Hospital, Tulane University, and the Salvation Army entered into an Act of Compromise and Settlement, which added the Wisner Ladies as beneficiaries (the "1929 Compromise"). The 1929 Compromise established the Edward Wisner Donation Advisory Committee ("Advisory Committee"). The purpose of the Advisory Committee was to represent the beneficiaries and oversee all matters related to the trust.

The trust expired in August of 2014. *In re Edward Wisner Donation*, 2014-0027 (La. App. 4 Cir. 9/18/14), 150 So.3d 391, *writ denied*, 2014-2135 (La. 2/13/15), 159 So.3d 463. Thereafter, in 2020, Mayor Cantrell and the beneficiaries entered into a Ratification, Extension, Modification and Amendment Agreement ("2020 Ratification Agreement").

The City Council filed a petition for declaratory and injunctive relief. The petition alleged that the 2020 Ratification Agreement was an illegal disposition of public property, an impermissible modification of the trust, and an absolute nullity. The City Council sought to enjoin further distribution of trust proceeds to previous

beneficiaries and enjoin the City of New Orleans from entering into new contracts without City Council approval to distribute trust proceeds during the pendency of the litigation. The Board, in turn, filed a dilatory exception of lack of procedural capacity or, alternatively, peremptory exception of no right of action.

The City Council subsequently moved for a temporary restraining order and for a preliminary injunction. The trial court denied the Board's exceptions and granted the City Council's request for a preliminary injunction. The Board Defendants and the Wisner Family Interests appealed. This Court reversed the trial court's decision, holding that the City Council was not a juridical person and lacked procedural capacity. *Council of City of New Orleans v. Edward Wisner Donation*, 2022-0790, 2022-0791 (La. App. 4 Cir. 6/9/23), 371 So.3d 74, *rev'd*, 2023-01106 (La. 3/22/24), 382 So.3d 27, 29, *reh'g denied*, 2023-01106 (La. 5/10/24). Thereafter, the City Council filed a writ of certiorari with the Louisiana Supreme Court, which reversed this Court's decision, holding that New Orleans's Home Rule Charter and custom established that the City Council has the procedural capacity to institute lawsuits in some instances. *Council of City of New Orleans v. Donation*, 2023-01106 (La. 3/22/24), 382 So.3d 27, 35, *reh'g denied*, 2023-01106 (La. 5/10/24), 384 So. 3d 890. On remand from the Supreme Court, this Court found that the trial court did not abuse its discretion in granting the City Council's preliminary injunction. *Council of City of New Orleans v. Edward Wisner Donation*, 2022-0790 (La. App. 4 Cir. 10/24/24), 409 So.3d 22, 35, *writ*

denied, 2024-01428 (La. 2/19/25), 400 So.3d 926, *and writ denied*, 2024-01431 (La. 2/19/25), 400 So.3d 931.

Defendants filed respective motions for summary judgment on the issue of ownership. The City Council filed a cross-motion for partial summary judgment on ownership and on nullity of the 2020 Ratification Agreement. A hearing was held on May 20, 2025. The trial court denied Defendants' motions for summary judgment and granted the City Council's motion for partial summary judgment on the issues of nullity of the 2020 Ratification Agreement and ownership.

Defendants timely appealed the judgment.

DISCUSSION

On appeal, there are three primary issues before this Court: (1) whether the granting of the City Council's motion for partial summary judgment concerning the nullity of the 2020 Ratification Agreement was proper; (2) whether the granting of the City Council's motion for partial summary judgment on the issue of ownership of land formerly held by the Wisner Trust was correct; and (3) whether the trial court's denial of the defendants' motions for partial summary judgment on the issue of ownership of lands formerly held by the Wisner Trust was correct.

Standard of Review

“Appellate courts review summary judgments under the *de novo* standard of review, using the same standard applied by the trial court in deciding the motion for summary judgment; as a result, we are not required to analyze the facts and evidence with deference to the judgment of the trial court or its reasons for

judgment.” *Amedee v. Aimbridge Hosp. LLC*, 2020-0590, p. 3 (La. App. 4 Cir. 12/16/22), 354 So.3d 250, 252 (quoting *Smith v. State*, 2018-0197, p. 3 (La. App. 4 Cir. 1/9/19), 262 So.3d 977, 980). Louisiana Code of Civil Procedure Article 966(A)(2) states: “The summary judgment procedure is designed to secure the just, speedy, and inexpensive determination of every action, except those disallowed by Article 969. The procedure is favored and shall be construed to accomplish these ends.” La. C.C.P. art. 966(A)(3) further provides: “After an opportunity for adequate discovery, a motion for summary judgment shall be granted if the motion, memorandum, and supporting documents show that there is no genuine issue as to material fact and that the mover is entitled to judgment as a matter of law.”

The mover bears the burden to prove that the mover is entitled to judgment as a matter of law, in accordance with La. C.C.P. art. 966(D)(1), as follows:

[I]f the mover will not bear the burden of proof at trial on the issue that is before the court on the motion for summary judgment, the mover’s burden on the motion does not require him to negate all essential elements of the adverse party’s claim, action, or defense, but rather to point out to the court the absence of factual support for one or more elements essential to the adverse party’s claim, action, or defense.

Moreover, “where cross-motions for summary judgment raise the same issues, courts generally can review the denial of a summary judgment in addressing the appeal of the granting of the cross-motion for summary judgment.” *May v. Cooper/T. Smith Stevedoring Co., Inc.*, 2024-0272, p. 4 (La. App. 4 Cir. 6/11/25), 421 So.3d 211, 214, *writ denied*, 2025-00884 (La. 10/14/25), 418 So.3d 903, and *writ denied*, 2025-00886 (La. 10/14/25), 418 So.3d 904.

Nullity of the 2020 Ratification Agreement

Defendants contend that the 2020 Ratification Agreement constitutes a new trust and is a binding and enforceable contract for joint administration of the former trust corpus. Defendants argue that the trial court's reliance on *Albritton v. Albritton*, 600 So.2d 1328 (1992), is misplaced because in *Albritton* the Supreme Court held that a new trust that was established prior to the original trust's termination date was an absolute nullity. Defendants assert that former beneficiaries and the trustee established a new trust with former trust assets nearly six years after the original trust terminated.

In *Albritton*, the trust was an irrevocable testamentary spendthrift trust that was set to terminate in two stages: 1) one-half of the trust would terminate on the plaintiff's twenty-first birthday (January 23, 1973) and, 2) the other half would terminate on the plaintiff's twenty-sixth birthday (January 23, 1978). *Albritton*, 600 So.2d at 1330. Approximately four months prior to the termination of the first part of the trust, the plaintiff signed as settlor and beneficiary a document entitled "Extension of Trust." *Id.*

The *Albritton* court noted "[a] contract is absolutely null when it violates a rule of public order, as when the object of a contract is illicit or immoral. A contract that is absolutely null may not be confirmed." *Id.* at 1331 (quoting La. C.C. art. 2030). In consideration of the facts and the trust instrument, the *Albritton* court noted "the settlor's intent was that the trust should terminate as to plaintiff upon his twenty-first and twenty-sixth birthdays. The extension of trust purports to extend the trust for plaintiff's lifetime. Clearly, this extension is contrary to the settlor's intent and acts to modify the trust." *Id.* at 1332. The *Albritton* court

further elaborated that “we do not mean to foreclose a former beneficiary from setting up a new trust with a former trust’s assets *after* the former trust has terminated by its own provisions. At this point, the intent of the settlor of the former trust becomes irrelevant and does not bar the former beneficiary from setting up a new trust.” *Id.* at n. 6 (emphasis in original).

Here, it is undisputed that the trust expired on August 4, 2014. While Defendants contend that the 2020 Ratification Agreement created a new trust nearly six years after the original trust terminated, we find that this argument is unpersuasive. The record provides that the 2020 Ratification Agreement is back-dated to August 3, 2014, one day before the trust was set to terminate. Moreover, the 2020 Ratification Agreement provides “the Trust will remain in trust to be owned, managed, and administered consistent with the intent and purpose of this Ratification, Extension and Amendment of the August 4, 1914 Edward Wisner Donation (the ‘Agreement’) consistent with the intent and purpose as expressed in the terms of the Trust, with such modifications as are provided in this Agreement to further those purposes.” There are numerous references in the 2020 Ratification Agreement as to the extension and amendment of the original trust. As in *Albritton*, back-dating the 2020 Ratification Agreement to form a new trust prior to the termination of the original trust, or to extend the trust was in violation of the settlor’s intent. Accordingly, we find that the trial court was correct in granting the motion for partial summary judgment in favor of the City Council and finding the 2020 Ratification Agreement is absolutely null and void.

Ownership of the Former Trust Property

The City is the sole owner of the former Trust’s land. The 1914 act of donation establishes that Edward Wisner donated the lands at issue exclusively to

the City. As the trial court recognized, the “plain language of the 1914 act “leaves no room for ambiguity as to the ownership issue.” There is a “strong public policy in effectuating and protecting the settlor’s intent as set forth in the trust document.” *Albritton v. Albritton*, 600 So.2d 1328, 1331 (La. 1992). Mr. Wisner donated “irrevocably and forever” 50,000 acres exclusively to the City of New Orleans. He conditioned the donation on lands being held in trust for 100 years and the City, in its discretion, using the revenues generated from the lands for charitable purposes; however, the only rights the non-City entities had was the possibility of receiving income during the Trust’s lifetime, at the City’s discretion.

In 1914, a valid donation required “an act by which the donor divests himself at present and irrevocably of the thing given in favor of the donee who accepts it.” La. C.C. art. 1465 (1870). The act itself was required to be “passed before a notary public and two witnesses.” La. C.C. art. 1536 (1870). Acceptance by the donee was required to “be made during the lifetime of the donor by a posterior and authentic act.” La. C.C. art. 1540 (1870). Edward Wisner’s 1914 act of donation complies with these requirements regarding the City. In fact, the City is the only entity that made such an acceptance during Mr. Wisner’s lifetime.

The 1929 Compromise did not alter property ownership. Nowhere in that document is ownership conveyed, nor could it have been. The plain language confirmed and the district court recognized that the 1929 Compromise was simply an agreement to allocate revenue derived from the Trust property during the lifetime of the Trust. Accordingly, the district court’s granting of the City Council’s motion for partial summary judgment regarding the issue of ownership of the former Wisner Trust lands was proper. Likewise, the district court’s denial of the defendants’ motions for partial summary judgment was also correct.

CONCLUSION

For the above and foregoing reasons, we affirm the trial court's granting of the motions for partial summary judgment filed by the plaintiff and the denial of the motions for partial summary judgment filed by the defendants.

AFFIRMED