

IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE  
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY, PART III

In the Matter of )

FISK UNIVERSITY, )

Petitioner. )

) NO. 05-2994-III  
)  
)  
)

ORDER

— D.C. & H.

CLERK & MASTER  
DAVIDSON CO. CHANCERY CT.

2010 DEC 20 AM 10:16

FILED

In a November 3, 2010 Memorandum and Order, this Court provided that court costs would be taxed equally between the parties. On December 2, 2010, Fisk University filed a motion for the Court to reconsider and tax the court costs to the Attorney General. Also, in the December 2, 2010 motion Fisk requested that its discretionary litigation costs of \$5,199.65 be taxed to the Attorney General. The latter filed opposition to paying these costs


The dispute between the parties on payment of costs hinges on whether, under Rule 54.04 of the Tennessee Rules of Civil Procedure, Fisk is the “prevailing party,” as that is the benchmark for recovery of costs. *See Massachusetts Mutual Life Ins. Co. v. Jefferson*, 104 S.W.3d 13, 35 (Tenn. Ct. App. 2002).

The Court’s analysis on the issue of the prevailing party in this case begins with the conclusion that the case had two *cy pres* phases: (1) impracticability and (2) fashioning the *cy pres* remedy. The Court finds that Fisk prevailed on its position on the first phase. As to the second phase, however, the Court adopted many of the Attorney General’s objections to the Crystal Bridges Agreement and rejected the Agreement as written. That rejection

required the Court to extend the litigation in the trial court to solicit other remedy proposals from the parties and then craft the Court's own remedy. From these facts, the Court concludes that on the second *cy pres* phase, Fisk was the prevailing party only partially.

For these reasons, the Court maintains the discretionary decision it made on November 3, 2010, for apportionment of court costs between the litigants pursuant to Tennessee Code Annotated section 20-12-119. Based on these same facts, related above, the Court, as well, denies the other part of Fisk's motion and requires Fisk to bear its own discretionary costs.

It is so ORDERED.

  
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ELLEN HOBBS LYLE  
CHANCELLOR

cc: Stacey Garrett  
John Branham  
C. Michael Norton  
C. David Briley  
Janet Kleinfelter  
William Helou