

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE
AT NASHVILLE

In the Matter of
FISK UNIVERSITY,
Petitioner.

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No. 05-2994-III

D.C. & M.

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**PROPOSAL OF INTERVENOR ATTORNEY GENERAL AND REPORTER FOR THE
STATE OF TENNESSEE FOR THE DISPLAY AND MAINTENANCE OF THE
ALFRED STIEGLITZ COLLECTION**

In its August 20 Memorandum and Order, this Court set a twenty-day period within which the Attorney General could file a proposal with the Court for the display and maintenance of the Alfred Stieglitz Collection. In accordance with this solicitation, the Attorney General hereby submits the following proposal.

This Court found that it is financially impracticable for Fisk University to comply with Ms. O’Keeffe’s plan that Fisk maintain and display the Collection. Therefore, the Attorney General’s proposal seeks to provide relief to Fisk from the ongoing costs of maintenance and display of the Collection until such time as the university’s financial condition improves.

In presenting this proposal, the Attorney General is mindful of the importance placed by the Court on honoring the intent of Georgia O’Keeffe, the donor of this charitable gift. As the Court held, any *cy pres* proposal is required by law to “most closely approximate” Ms. O’Keeffe’s charitable purpose, which is to “enable the public – in Nashville and the South – to

have the opportunity to study the Collection in order to promote the general study of art.”

Ms. O’Keeffe gave the Stieglitz Collection to Fisk, hoping that the university could fulfill her vision of using this great assemblage of art to promote the study of art in Nashville and the South. Accordingly, the Attorney General’s proposal, which contemplates that the Collection would be displayed at a temporary alternative site in Nashville, provides that the Collection would return to the Fisk campus when the university is once again financially able to display and maintain the art. Even at the temporary alternative site, the Collection would maintain a close relationship with Fisk. It would continue to be known and identified as the “Alfred Stieglitz Collection at Fisk University.” Fisk students and faculty would be provided additional access to the Collection for research, scholarship and teaching. Visitors would be provided detailed information about Fisk and its unique connection to this artistic treasure.

As described in more detail below, the Attorney General’s proposal for the display and maintenance of the Stieglitz Collection in Nashville represents a public/private partnership among the State of Tennessee, the Frist Center for the Visual Arts and the Metropolitan Government of Nashville and Davidson County. Under the proposal, the State of Tennessee, through the Tennessee Arts Commission and on behalf of the citizens of Tennessee who are the beneficiaries of this charitable gift, would take temporary custody of the Collection until such time as Fisk has the financial ability to resume its role. At the request of the State, the Frist Center for the Visual Arts would display and maintain the Collection in gallery space devoted solely to the Collection and accessible to the public at no charge. As owner of the building in which the Frist Center is located, Metro Nashville would assist financially with the renovations needed to prepare the gallery space. To address the concerns expressed by this Court about the conditions under which the Collection is maintained and displayed, an advisory committee of

nationally recognized experts would propose best practices for the maintenance and display of the Collection, on the basis of which the Attorney General would ask this Court to modify those conditions.

Elements of the Proposal

1. The Tennessee General Assembly has recognized that the people of the State of Tennessee are the true beneficiaries of any charitable gift. Tenn. Code Ann. § 35-13-110(b). Thus, on behalf of its citizens, the State of Tennessee, by and through the Tennessee Arts Commission, would assume temporary custodianship of the Stieglitz Collection. As explained below and in the affidavit of the Commission's executive director, the Tennessee Arts Commission is an appropriate state agency possessing the power and expertise to administer this temporary custodianship. *See* Affidavit of Rich Boyd, Executive Director of the Tennessee Arts Commission attached hereto as Exhibit A and incorporated herein by this reference.

The Commission, which was established by the General Assembly in 1967, has the statutory duty to, among other things: 1) stimulate and encourage throughout the state the study and presentation of the performing, visual and literary arts and public interest and participation therein; 2) encourage participation in, appreciation of, and education in the arts to meet the legitimate needs and aspirations of persons in all parts of the state; and 3) take such steps as may be necessary and appropriate to encourage public interest in the cultural heritage of Tennessee, to expand the state's cultural resources and to promote the use of art in the state government's activities and facilities. Tenn. Code Ann. § 4-20-104.

To aid in the performance of these duties, the Commission has authority to: 1) enter into contracts with individuals, organizations and institutions for services furthering the objectives of the commission's programs; 2) enter into contracts with local and regional associations for

cooperative endeavors furthering the objectives of the commission's programs; 3) accept gifts from individuals, foundations, corporations and other organizations or institutions for the purpose of furthering the objectives of the commission's programs; and 4) make and sign any agreements and do and perform any acts that may be necessary to carry out the purposes of this part. Tenn. Code Ann. § 4-20-105.

Furthermore, the Commission currently administers grants in support of the arts at Fisk. Nothing in this Proposal would interfere with the continued availability of those grants to the university.

Through the Commission, the State will enter into a Memorandum of Understanding with the Frist Center for the Visual Arts (FCVA) and the Metropolitan Development and Housing Agency of the Metropolitan Government of Nashville and Davidson County (MDHA), which can only be modified by joint agreement of the parties and approval of the court. This Memorandum of Understanding would contain, at a minimum, the following terms and conditions:

- The FCVA will display the Stieglitz Collection at its facility located in downtown Nashville in accordance with Ms. O'Keeffe's conditions or any modifications adopted by the court. The FCVA has sufficient space, knowledge, expertise, financial resources and ability to display the Collection in accordance with Ms. O'Keeffe's conditions or any modifications adopted by the Court. The FCVA also has strong programs already in place that can use the Stieglitz Collection to promote the study of art in Nashville and Middle Tennessee. *See* Affidavit of William R. Frist, Chairman of the Board of Directors of the Frist Center for the Visual

Arts attached hereto as Exhibit B and incorporated herein by this reference.

- MDHA, as the legal owner of the building in which the FCVA is located, will agree to the display of the Stieglitz Collection in that building. MDHA further agrees to bear the costs of any renovations necessary to prepare appropriate display space for the Collection.
- Access to the Stieglitz Collection will be free of charge to the public.
- Fisk students and faculty will have additional access to the Collection on a reasonable basis for research, scholarship and teaching.
- The Collection will be prominently identified as the “Alfred Stieglitz Collection at Fisk University.”
- The FCVA will display appropriate signage that will communicate the history of Fisk University and of the Collection at Fisk.

The specific terms of this Memorandum of Understanding are set forth in a Term Sheet, which will form the basis for drafting the Memorandum of Understanding over the next thirty days. A copy of the Term Sheet is attached hereto as Exhibit C and incorporated herein by this reference. All parties have agreed to all the terms set forth in this Term Sheet. *See* Affidavit of Richard Boyd attached as Exhibit A; Affidavit of William R. Frist attached as Exhibit B; and Affidavit of Phil Ryan, Executive Director of MDHA, attached hereto as Exhibit D and incorporated herein by this reference.

2. In order to address any issues with respect to the outdated nature of certain of Ms. O’Keeffe’s conditions with respect to the display and maintenance of the Collection, as well as the current and ongoing condition of the Collection, the State will establish a committee of

experts (the "Advisory Committee") comprised of Gail Andrews, Director of the Birmingham Art Museum; William U. Eiland, Director of the Georgia Art Museum; Richard J. Powell, the John Spencer Bassett Professor of Art and Art History and Professor of African/African American Studies at Duke University; and Jock Reynolds, the Henry J. Heinz II Director of the Yale University Art Gallery. By mutual agreement of the State and the FCVA, and with notice to the court, additional experts may be added to the Advisory Committee as necessary.

The Advisory Committee, in conjunction with the FCVA and the State, will do the following:

- Identify those conditions of Ms. O’Keeffe with respect to the display and maintenance of the Collection that are inconsistent with or contrary to current best practices for the care and display of artwork and develop and recommend any appropriate and necessary modifications to Ms. O’Keeffe’s conditions so as to reflect those best practices. Once any such modifications have been developed and recommended, the Attorney General will seek court approval of such modifications to Ms. O’Keeffe’s conditions.
- Identify any remedial preservation or conservation work that is needed for each individual piece of artwork in the Collection. Based upon these recommendations, the State, as custodian of the Collection, through a grant from the Tennessee Arts Commission, will engage and pay the necessary and appropriate persons to perform the preservation/conservation work. The Frist Center will supervise the performance of that remedial work.

As part of this work, the Advisory Committee would hope to confer with the Collection's curatorial staff at Fisk.

Ms. Andrews and Dr. Eiland served as expert witnesses for the Attorney General in this litigation, and Dr. Eiland testified at the August hearing. Both are familiar with the issues in this litigation. They have both held leadership positions in the Association of Art Museum Directors and are familiar with best practices in the museum profession.

Mr. Reynolds and Dr. Powell were the organizers of *To Conserve a Legacy: American Art from Historically Black Colleges and Universities*, a project involving six historically black colleges and universities, including Fisk. This project was a multi-year effort to promote conservation of and education about the significant art owned by each of these institutions, and the project culminated with a major exhibition and catalogue in 1999-2000. Through this project, Mr. Reynolds and Dr. Powell developed a detailed knowledge of the Stieglitz Collection that will be of great assistance in developing best practices for its care.

The State submits that, in light of their collective education and experience, the Advisory Committee comprised of Gail Andrews, William U. Eiland, Richard J. Powell, and Jock Reynolds have the requisite expertise to advise and assist the State and the FCVA in the development and recommendation of appropriate modifications to Ms. O'Keeffe's conditions and in any preservation/conservation work that is needed for the Collection. Copies of the biography/curriculum vitae of each member of the Advisory Committee and letters from each member of the Advisory Committee agreeing to serve on the Committee are attached hereto as Collective Exhibits E and F respectively and incorporated herein by this reference.

3. The State's custodianship of the Alfred Stieglitz Collection would be temporary in that at any time, Fisk University would have the right to petition the court to regain

custodianship of the Collection. After an evidentiary hearing and a finding by the court that it is no longer impracticable for Fisk to comply with displaying and maintaining the Stieglitz Collection in accordance with Ms. O’Keeffe’s disposition because of its financial condition, the State would surrender its custodianship to Fisk University.

Conclusion

This Court is already well familiar with New York law governing *cy pres* relief, and so the Attorney General will not repeat the legal arguments made in its pretrial brief. Having found that the three threshold elements for *cy pres* relief have been satisfied, this Court must now fashion relief that most closely approximates Ms. O’Keeffe’s charitable intent. As this Court recognized, the benchmark for that relief is Ms. O’Keeffe’s charitable purpose described by the Tennessee Court of Appeals, which is to “enable the public – in Nashville and the South – to have the opportunity to study the Collection in order to promote the general study of art.” *In the Matter of Fisk University*, No. 05-2994-III, slip op. at 3 (Davidson County Chancery Court, Aug. 20, 2010) (quoting *Georgia O’Keeffe Foundation (Museum) v. Fisk University*, 312 S.W.3d 1, 18 (Tenn. Ct. App. 2009)).

The Court found that displaying the Collection in Bentonville, Arkansas, fifty percent of the time would dilute Ms. O’Keeffe’s purpose of access to the Collection by Nashvillians and Southerners. Similarly, the Court concluded that selling a half interest in the Collection to the Crystal Bridges Museum would have the same effect.

The proposal submitted by the Attorney General has none of these defects. It would display the Collection in Nashville one hundred percent of the time, free of charge, in a convenient downtown location that already draws almost 200,000 visitors annually and that offers a strong program of art education. It would not involve the sale of a substantial interest in

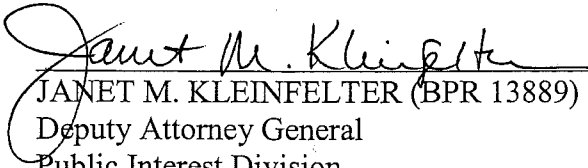
the Collection to a distant entity; rather it would involve a temporary transfer of custodianship to the State of Tennessee that would be surrendered as soon as Fisk can reestablish its financial stability to the satisfaction of this Court.

In sum, the Attorney General's proposal provides for the temporary display of the Alfred Stieglitz Collection in a proper facility located here in Nashville – the Frist Center for the Visual Arts – that is willing and able to bear the costs of displaying the Collection, to make the Collection available and free of charge to everyone, to provide additional access to Fisk students and faculty, to recognize Fisk's historic relationship with the Collection, and to display the Collection in accordance with Ms. O'Keeffe's conditions or any modifications adopted by the court. The Attorney General's proposal also contains an effective mechanism, as requested by the Court, to update Ms. O'Keeffe's conditions in light of advancement over the last fifty years in the care of artwork.

The Attorney General submits that this proposal most closely approximates and is in furtherance of the charitable intent and purpose for which the gift of the Collection was made, and as such it satisfies all requirements of the *cy pres* doctrine. Accordingly, the Attorney General respectfully requests that this Court approve his Proposal for the Display and Maintenance of the Alfred Stieglitz Collection.

Respectfully submitted,

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Attorney General and Reporter


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CERTIFICATE OF SERVICE

I hereby certify that a copy of this Proposal has been sent by electronic transmission and by first class U.S. Mail, postage prepaid, to

John P. Branham
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this 10th day of September, 2010.


JANET M. KLEINFELTER
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