

IN THE SUPREME COURT OF THE STATE OF KANSAS

No. 126,125

In the Matter of the MARVIN S. ROBINSON CHARITABLE TRUST,  
dated May 22, 1985.

SYLLABUS BY THE COURT

1.

The Kansas Supreme Court has subject matter jurisdiction to review an uncontested district court order retroactively modifying a charitable trust to decide whether the district court's order should be binding on federal tax authorities under *Commissioner v. Estate of Bosch*, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886 (1967).

2.

Appellate courts need not defer to the district court when reviewing cases decided on documents and stipulated facts.

Appeal from Riley District Court; JOHN F. BOSCH, judge. Submitted without oral argument May 18, 2023. Opinion filed June 30, 2023. Affirmed.

*Thomas M. Ruane*, of Polsinelli PC, of Kansas City, Missouri, and *Stephen J. Bahr*, of the same firm, were on the brief for appellants Dirk Daveline, Matt Crocker, Wayne Sloan, Jim Gordon, Neal Helmick, and Lance White, Co-Trustees.

No other parties appear.

The opinion of the court was delivered by

WALL, J.: This case involving the modification of a charitable trust is the latest in a line of appeals we have decided under *Commissioner v. Estate of Bosch*, 387 U.S. 456, 87 S. Ct. 1776, 18 L. Ed. 2d 886 (1967). In *Bosch*, the United States Supreme Court held that the Internal Revenue Service (IRS) and federal courts are not bound by decisions of lower state courts on issues of state law, but they will defer to decisions of a state's highest court.

Here, the district court granted the uncontested petition of the trustees of the Marvin S. Robinson Charitable Trust to retroactively modify the trust's terms to maintain its status as a tax-exempt "supporting organization" under the federal tax code. But under *Bosch*, orders on such matters are binding on federal tax authorities only if they emanate from our court. See *In re Common-Law Marriage of Heidkamp and Ritter*, 317 Kan. 125, 127-328, 526 P.3d 669 (2023). We therefore agreed to review the district court's order. For the reasons set forth in this opinion, we affirm the judgment of the district court.

#### FACTS AND PROCEDURAL BACKGROUND

The facts are undisputed. Before his death, longtime Riley County resident Marvin Robinson founded a charitable trust in his name to support local public charities like the Jewish Congregation of Manhattan and the Kansas State University Foundation. The IRS issued a determination letter classifying the trust as a "supporting organization" rather than a private foundation, meaning that it was a tax-exempt entity organized and operated "exclusively for the benefit of, to perform the functions of, or to carry out the purposes of" one or more public charities. 26 U.S.C. § 509(a)(3)(A) (2018). That classification was important because Robinson intended to fund the trust using his substantial stock

ownership in his family's steel business, SPS Companies. And classification as a private foundation would have subjected the trust to rules limiting the amount of SPS stock the trust could hold. See 26 U.S.C. § 4943(c)(2) (2018).

But in 2006, Congress altered the rules governing supporting organizations. See Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 424. Most relevant here, it extended the private-foundation limits on stock holdings to certain types of supporting organizations that were not (in tax lingo) "functionally integrated Type III supporting organizations." Pension Protection Act § 1243 (amending 26 U.S.C. § 4943). Under the IRS regulations implementing those amendments, organizations had until January 2015 to comply with these new rules. See 77 Fed. Reg. 76382, 76392 (Dec. 28, 2012) (providing for transitional period until "first day of the organization's second taxable year beginning after December 28, 2012").

Then in 2021, the trustees realized that Robinson's trust might qualify as the type of supporting organization subject to the private-foundation limits on stock holdings. They decided to amend the trust agreement to explicitly satisfy the requirements of (again, in tax lingo) Type I supporting organizations, which are not typically subject to those limits. See 26 U.S.C. § 4943(f). For example, the amended trust required a majority of the six trustees to be appointed by public charities that the trust supports. See 26 C.F.R. § 1.509(a)-4(g)(1)(i) (2022).

In January 2023, the trustees filed an uncontested petition to retroactively modify the trust under the Kansas Uniform Trust Code. The trustees asked the district court to recognize the amendment as retroactive to December 31, 2014, just before the deadline to comply with the new supporting-organization requirements. After reviewing the petition and the uncontroverted evidence, the court adopted the trust's proposed factual findings and legal conclusions. The court determined that it could retroactively modify the trust

(1) to enable the trustees to administer the trust in accordance with Robinson's charitable intention, (2) to prevent the trust from being classified as a private foundation, and (3) to preserve the trust's assets for the intended beneficiaries.

The trustees appealed from that favorable ruling to the Court of Appeals, and we granted the trustees' motion to transfer the case to our court to render a binding opinion under *Bosch*. See K.S.A. 2022 Supp. 20-3017 (upon motion of a party, Kansas Supreme Court may transfer to itself a case from the Kansas Court of Appeals).

Ordinarily, appellate courts do not have jurisdiction to review cases that lack adverse parties. See *In re Estate of Keller*, 273 Kan. 981, 985-86, 46 P.3d 1135 (2002). But "[t]his court has jurisdiction to consider this uncontested appeal because of the *Bosch* requirement that the highest state court in Kansas must affirm a ruling in this kind of case in order to have legal effect on federal courts and agencies." *In re Marriage of Heidkamp and Ritter*, 317 Kan. at 128.

#### ANALYSIS

We do not defer to the district court when reviewing cases that, like this one, were decided on documents and stipulated facts. See *In re Harris Testamentary Trust*, 275 Kan. 946, 951, 69 P.3d 1109 (2003). The question before us is a legal one: whether Kansas law supports the district court's modification of the trust. See 275 Kan. at 951; *In re Cohen*, No. 101,187, 2009 WL 862463, at \* 4 (Kan. 2009) (unpublished opinion). We hold that it does.

The trustees cited—and the district court relied on—three statutes of the Kansas Uniform Trust Code: K.S.A. 58a-412, K.S.A. 58a-413, and K.S.A. 58a-416. Under the first statute, K.S.A. 58a-412(b), a court may "modify the administrative terms of a trust if continuation of the trust on its existing terms would be impracticable or wasteful or

impair the trust's administration." The second statute, K.S.A. 58a-413(a), codifies the common-law doctrine of *cy pres*. It provides that "[i]f a charitable trust is or becomes . . . impracticable of fulfillment" and the settlor "manifested a general intention to devote the property to charity," then a court "may order an administration of the trust" that is "as nearly as possible to fulfill the manifested general charitable intention of the settlor." Finally, under the third statute, K.S.A. 58a-416, "the court may modify the terms of a trust in a manner that is not contrary to the settlor's probable intention" in order "[t]o achieve the settlor's tax objectives." Importantly, this statute permits the court to "provide that the modification has retroactive effect."

We agree with the district court that this final statute, K.S.A. 58a-416, authorizes the retroactive modification of Robinson's trust. There is no question that Robinson did not wish the trust to be classified as a private foundation under the federal tax code because that classification would have prevented the trust from holding substantial stock in SPS Companies. The uncontroverted affidavits presented to the district court make that clear. As does a provision of the trust agreement allowing the trustees to "change or amend [the] trust agreement to meet any requirements of the Internal Revenue Code so as to retain the tax exempt status of this trust, and to obtain recognition of exempt status as an organization which is not a private foundation and to retain this status."

But the trust's failure to meet various Pension Protection Act requirements by the end of 2014 threatened to subject the trust to private-foundation limits on stock holdings, contrary to Robinson's clear tax objectives. The amendments to the trust agreement avoid that danger by bringing the trust explicitly in line with the requirements of a Type I supporting organization that is not subject to those limits. These facts satisfy the requirements to retroactively modify a charitable trust under K.S.A. 58a-416.

Because that statute authorizes the modification of the trust, we need not decide whether modification was also proper under the other two statutes that the trustees and district court cited. And in fact, there is good reason not to decide those issues here. Unlike K.S.A. 58a-416, neither K.S.A. 58a-412 nor K.S.A. 58a-413 expressly permit a court to modify a trust retroactively. The absence of that express language may suggest that, in contrast to K.S.A. 58a-416, K.S.A. 58a-412 and K.S.A. 58a-413 permit prospective modification only. Moreover, it is unclear that K.S.A. 58a-413 even applies to the facts here. That statute—which implements but does not expand the common-law doctrine of *cy pres*—"permits a court to implement a testator's intent and save a gift to charity by substituting beneficiaries when the named charitable beneficiary is unable to take the gift." *In re Estate of Crawshaw*, 249 Kan. 388, Syl. ¶¶ 1, 4, 819 P.2d 613 (1991). And here, the point of the trust modifications is to maintain the preferred tax and organizational status, not to select a new beneficiary. Because this is an uncontested appeal, none of those questions have been put to the adversarial process. And in the absence of briefing and argument, we decline to resolve those issues here.

We affirm the order of the district court making the trust modifications effective as of December 31, 2014, under K.S.A. 58a-416.

Judgment of the district court is affirmed.