

QUESTION 8 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK III

After a long and successful career in the investment banking industry, May Moffman decided to make a gift to the order of nuns at the St. Mary's Orphanage where May had been raised as a child. After contacting her attorney, May signed documents creating a trust for the benefit of the Order in April 2010. The language of the trust appointed Big Bank as trustee, and required it to pay \$50,000 per year to provide for the "Health and comfort of the Sisters of the Order of the Immaculate Heart at the St. Mary's Orphanage." The trust also provided that, in the event that the intended purpose of the trust could no longer be carried out, the remainder of the trust would revert back to May, or to her great-granddaughter Amanda Avers, if May was not then living. Two million dollars was transferred to the trustee that same day.

In June 2010, May unexpectedly died in a car accident, and the vast majority of her multi-million dollar fortune was distributed to family and friends according to the terms of her will.

In early 2011, the St. Mary's Orphanage closed and was replaced by the St. Mary's Residential Treatment Center for Mentally Ill Children. The nuns continued to play a role in the residential treatment center, but that role was substantially decreased. Additionally, membership in the Sisters of the Order of the Immaculate Heart was at an all-time low. The last of the sisters, Sister Joan, died in January 2012, at age 89. Upon her death, the Order was formally dissolved.

In January 2013, when St. Mary's failed to receive the usual \$50,000 disbursement, it contacted Big Bank. The trustee informed St. Mary's that the remainder of the trust, now worth over four million dollars, would be given to Amanda, now age four, in accordance with the terms of the trust.

St. Mary's filed suit against Big Bank, seeking to enforce the trust. St. Mary's claimed that, as it is still in existence, it is entitled to the continuation of the trust. Amanda intervened as a party defendant.

Applying principles of Michigan law, discuss: (1) whether a valid trust was created by May Hoffman; (2) whether St. Mary's is entitled to continue receiving its annual stipend; and, (3) if not, what options the judge may employ to best carry out the wishes of May Moffman. Explain your answers.

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