

# State of New Hampshire Supreme Court

## NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; (6) a probation revocation proceeding; (7) a landlord/tenant action or a possessory action filed under RSA chapter 540; (8) from an order denying a motion to intervene; or (9) a domestic relations matter filed under RSA chapters 457 to 461-A, except that an appeal from a final divorce decree or from a decree of legal separation shall be a mandatory appeal.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

*In re: Florence Mae Tarr Trust*  
No. 2010-EQ-0058

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

9<sup>th</sup> Circuit - Probate Division - Nashua (*Cristina M. O'Neill, J.*)

3A. NAME & ADDRESS OF APPEALING PARTY

Ryk Bullock  
11 Meetinghouse Rd.  
Bedford, NH 03110

3B. NAME, FIRM, ADDRESS & TELEPHONE

NUMBER OF APPELLANT'S COUNSEL  
Joshua L. Gordon  
New Hampshire Bar No. 9046  
Law Office of Joshua Gordon  
26 S. Main St., #175  
Concord, N.H. 03301  
(603) 226-4225  
[www.AppealsLawyer.net](http://www.AppealsLawyer.net)

4A. NAME & ADDRESS OF OPPOSING PARTY

n/a

4B. NAME, FIRM, ADDRESS, & TELEPHONE

NUMBER OF OPPOSING COUNSEL

n/a

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

1. Director of Charitable Trusts *by* Anthony Blenkinsop, Esq. & Anne Edwards, Esq.  
Office of the Attorney General  
33 Capitol St.  
Concord, NH 03301  
(603) 271-3650
2. Albert Johnson, *pro se* *and* Albert Johnson, *pro se* *and* Albert Johnson, *pro se*  
Page Hill Road 19 Mill St. 14331 East 29<sup>th</sup> Ln.  
Goffstown, NH 03045 Goffstown, NH 03045 Yuma, AZ 85367
3. Scott Pollock, *pro se*  
51 Harvey Rd, Unit B  
Londonderry, NH 03053
4. John Tarr *by* Laurie S. Perreault, Esq.  
P.O. Box 1109  
Holls, NH 03049  
(603) 465-6355
5. Veronica Tinker  
204 Chalk Pond Rd.  
Newbury, NH 03255
6. Marcia Marston *by* Rolf Godwin, Esq. & Peter B. Rotch, Esq.  
RR 20 McLane Graf Raulerson & Middleton PA  
555 Wallace Rd. 900 Elm St., P.O. Box 326  
Bedford, NH 03110 Manchester, NH 03105  
(603) 625-6464
7. Trust of Florence Mae Tarr *by* Richard Thorner, Esq.  
Wadleigh Starr & Peters  
95 Market St.  
Manchester, NH 03101  
(603) 669-4140
8. Special Trustee Todd C. Fahey, Esq.,  
Orr & Reno  
One Eagle Square, P.O. Box 3550  
Concord, NH 03302-3550  
(603) 224-2381
9. Town of Bedford *by* Barton L. Meyer, Esq.  
Upton & Hatfield  
P.O. Box 1090  
Concord, NH 03302-1090  
(603) 224-7791
10. Ayrshire Partners, Inc. *by* Gordon J. MacDonald, Esq. *and on appeal by* Andrew Schulman, Esq.  
288 South River Rd. Nixon Peabody Getman, Schulthess & Steere, PA  
Bedford, NH 03310 900 Elm Street, P.O. Box 2031 1838 Elm St.  
Manchester, NH 03101 Manchester, NH 03104  
(603) 628-4000 (603) 634-4300
11. Bedford Land Trust *by* John Monson, Esq. & Jamie Gillis, Esq.  
% Cornerstone Management Wiggin & Nourie, PA  
53 Regional Dr., Suite 1 670 N. Commercial St., Suite 305  
Concord, NH 03301 PO Box 808  
Manchester, NH 03105  
(603) 669-2211
12. Bedford Taxpayers Ass'n *by* Roy H. Stewart, *pro se*  
P.O. Box 10473 19 Hickory Ln.  
Bedford, NH 03110 Bedford, NH 03110

6. DATE OF CLERK'S NOTICE OF DECISION OR SENTENCING  
Clerk's Notice of Final Order,  
October 27, 2011

DATE OF CLERK'S NOTICE OF DECISION ON POST-TRIAL MOTION  
same

7. CRIMINAL CASES: DEFENDANT'S SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

n/a

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

None known.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

Ayrshire Partners, Inc.  
Corporate status unknown

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes

IF YES, COMPLETE TRANSCRIPT ORDER FORM

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

1. Did the probate court in ruling appellant Ryk Bullock did not present adequate evidence to support his claim of material misrepresentation in signing the settlement agreement despite an undisputed affidavit, email, letter, and pleading showing he was misled?
2. Did the probate court err in approving a settlement agreement which dissolved the Trust, when it was created during a mediation session which lacked proper notice and the required number of trustees for dissolution, in violation of RSA 292:9, 292:10-a, 293-A:14.02, 293-A:8, and the Trust's own bylaws?
3. Did the probate court err in approving a settlement agreement signed by individual trustees whom the Attorney General was simultaneously seeking to remove for mismanagement of the Trust?
4. Did the probate court err when it assumed jurisdiction over the Trust's federal constitutional takings claims against the Town of Bedford?
5. Did the probate court err in accepting a settlement agreement where the trust itself was not a party to the agreement, but rather the trustees signed in their individual capacities because the meeting was not a duly constituted trustees meeting under RSA 293-A:14.02?
6. Did the probate court err in dismissing Trustee Ryk Bullock's challenge to the proposed settlement agreement, where the court characterized the action before the court as a petition to remove trustees, where the scope of the proposed agreement would not only remove the trustees, but result in a de facto dissolution of the Trust by handing the entire trust corpus to another entity, end the Trust's federal lawsuit against the Town of Bedford, and contravene the Testator's intent by allowing public pathways in a private wildlife sanctuary?
7. Did the probate court err when it approved a settlement that would dissolve the Tarr Trust with no showing by any party that the charitable purpose had become "impossible, impracticable, illegal, obsolete, ineffective or prejudicial to the public interest to achieve" pursuant to RSA 564-B:4-413?
8. Did the probate court err by allowing a trustee to be represented by a surrogate when the duties of an officer or trustee are not delegable but personal in nature?
9. Did the probate court err in allowing a surrogate to sign the settlement agreement, that is Rolf Goodwin attending and signing on behalf of Trustee Martha Marston, where the law does not allow trustees to delegate this duty to another, and where Trustee Ryk Bullock did not fully attend the meeting pursuant to RSA 293-A:8 and the Trust's own bylaws?
10. Did the probate court err in construing a meeting of some trustees as a meeting of the board of trustees when less than a majority of trustees were in attendance and the actions taken, a dissolution of the trust, required a two-thirds majority of trustees in violation of RSA 292:10-a, 293-A, and the Trusts's own bylaws?
11. Did the probate court err in approving a settlement which contravenes the settlor's intent to limit use of the Trust's property to a wildlife sanctuary?
12. Did the probate court err in allowing the *cy pres* petition to go forward under a different docket number when doing so bifurcated issues that are inextricably intertwined, and if the *cy pres* fails the underlying different-docket settlement agreement has to be unwound?
13. Did the probate court err in ruling on the validity of Ryk Bullock's signature on the settlement agreement when the ruling followed a structuring conference which was not noticed to the parties as a hearing on the matter?
14. Did the probate court err in exercising jurisdiction over the settlement agreement which did not meet the statutory standards for dissolution?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

\_\_\_\_\_  
Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

November 28, 2011

\_\_\_\_\_  
Joshua L. Gordon, Esq.

**ATTACHMENTS**

(1) NOTICE OF DECISION (Oct. 27, 2011) ..... 7

(2) ORDER (Oct. 27, 2011) ..... 8

## TRANSCRIPT ORDER FORM

**INSTRUCTIONS:**

1. If a transcript is necessary for your appeal, you must complete this form.
2. List each portion of the proceedings that must be transcribed for appeal, e.g., entire trial (see Superior Court Administrative Rule 3-1), motion to suppress hearing, jury charge, etc., and provide information requested.
3. Determine the amount of deposit required for each portion of the proceedings and the total deposit required for all portions listed. Do not send the deposit to the Supreme Court. You will receive an order from the Supreme Court notifying you of the deadline for paying the deposit amount to the trial court. Failure to pay the deposit by the deadline may result in the dismissal of your appeal.

<b>LIST EACH PORTION OF CASE PROCEEDINGS TO BE TRANSCRIBED</b>						
Date of Proceeding	Type of Proceeding	Length of Proceeding	Name of Judge(s)	Steno/Recorded	Previously Prepared?*	Deposit
10/12/11	Structuring Conf. & Hearing on Motions to Intervene and Reconsider	1 hr.	<i>Christina O'Neil, J.</i>		no	\$175
<b>DO NOT SEND DEPOSIT AT THIS TIME</b>						<b>TOTAL DEPOSIT: \$175</b>

SCHEDULE OF DEPOSITS

Length of Proceeding

Deposit Amount

Hearing or trial of one hour or less  
 Hearing or trial up to ½ day  
 Hearing or trial of more than ½ day  
 Previously prepared portions

\$ 175  
 \$ 450  
 \$ 900/day  
 Number of pages x \$.50 per page per copy if  
 additional copies are needed

NOTE: The deposit is an estimate of the transcript cost. After the transcript has been completed, you may be required to pay an additional amount if the final cost of the transcript exceeds the deposit. Any amount paid as a deposit in excess of the final cost will be refunded. The transcript will not be released to the parties until the final cost of the transcript is paid in full.

\* For portions of the transcript that have been previously prepared, indicate number of copies that were prepared.

**THE STATE OF NEW HAMPSHIRE  
JUDICIAL BRANCH  
NH CIRCUIT COURT**

9th Circuit - Probate Division - Nashua  
30 Spring Street, Suite 103  
Nashua NH 03060

Telephone: (603) 882-1231  
TTY/TDD Relay: (800) 735-2964  
<http://www.courts.state.nh.us>

October 27, 2011

**GORDON J. MACDONALD, ESQ  
NIXON PEABODY LLP  
900 ELM STREET  
MANCHESTER NH 03101-2031**

Case Name: **Case of Florence Mae Tarr Trust**  
Case Number: **316-2010-EQ-00058**

Enclosed is a copy of the Honorable Court's Order dated October 27, 2011.

Sherry L. Bisson  
Clerk of Court

C: Veronica Tinker; Ryk Bullock; Marcia Marston; Albert Johnson; John Tarr; Scott Pollock; Todd C. Fahey, ESQ; Richard Thorner, ESQ; Laurie Sue Perreault, ESQ; Town of Bedford; Barton L. Mayer, ESQ; Patricia B. Quigley, ESQ; Liberty Mutual Surety; Anne M. Edwards, ESQ; NH Charitable Trusts; Rolf E. Goodwin, ESQ; Anthony I. Blenkinsop, ESQ; Ruth Ansell, ESQ; Anthony J. Galdieri, ESQ; Jaime I Gillis, ESQ; John R. Monson, ESQ; Roy H Stewart; Jayne Spaulding

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Appx 7  
OCT 28 2011

# The State of New Hampshire

## 9<sup>th</sup> CIRCUIT PROBATE DIVISION – NASHUA

In re: Florence Mae Tarr Trust  
Case number: 316-2010-EQ-00058

### ORDER

A hearing was held on October 12, 2011. Present were Anne M. Edwards, Esq., Anthony I. Blenkinsop, Esq., Richard Thorner, Esq., John R. Monson, Esq., Rolf E. Goodwin, Esq., Michael McGrath, Esq., Anthony J. Galdieri, Esq., Roy Stewart, Ryk Bullock, Albert Johnson, Veronica Tinker, and Jayne Spaulding. The issues before the court were: Motion to Intervene and Motion to Reconsider filed by Ayrshires Partners, Inc., Motion to Intervene filed by Bedford Taxpayers Association, and Motion and Memorandum in Support of Motions to Reconsider filed by Ryk Bullock, trustee. The parties were given 14 days from the date of the hearing to file memoranda of law on the motions and any responsive pleadings. The Charitable Trust Unit of the Attorney General's Office agreed that it would file a Petition for Cy Pres concerning this trust by October 21, 2011. The parties agreed that the court could rule on the motions and responses without a further hearing. AFTER THE HEARING AND A REVIEW OF THE PLEADINGS, THE COURT MAKES THE FOLLOWING ORDER:

1. The Motion to Intervene (index #81) and Motion to Reconsider (index #62) filed by Ayrshire Partners, Inc. are DENIED. The matter currently before the court is a petition to remove trustees and appoint a special trustee. It was brought by the Charitable Trust Unit of the Attorney General's Office because of concern about the

administration of the Florence Mae Tarr Trust. Aryshire Partners, Inc. does not have a direct and apparent interest in this matter. *Id.* at 277. See also *Id.* at 277, 138 N.H. 271 (1994) (Any person who seeks to intervene must have an interest in the subject matter of the litigation and that interest must be direct and apparent, such as would suffer, if not indeed be sacrificed, were the court to deny the privilege. *Id.* at 277.) In pleadings and at the hearing, Aryshire Partners, Inc. stated that as an abutter to the property, its interest in the Florence Mae Tarr Trust is the proposed change in use of the property and the impact that a proposed change would have on its own property value and use. The change in ownership and use of the real estate in the Florence Mae Tarr Trust will be considered in the petition for cy pres; it is not at issue in this case. Aryshire Partners, Inc. was not a party to the Settlement Agreement and is not an appropriate intervenor in this matter, therefore its motion to reconsider the settlement agreement is denied.

2. The Motion to Intervene (index #68) filed by Bedford Taxpayers Association is DENIED. Bedford Taxpayers Association argues that it should be allowed to intervene because it "...believes that Bedford has committed a wrongful act in taxing and subsequently seizing the real property of the Florence Mae Tarr Trust..." It further alleged that the litigation regarding the trust causes harm to the taxpayers of Bedford. The matter currently before the court is a petition to remove trustees. Bedford Taxpayers Association does not have a direct and apparent interest in this matter.

3. The Motion and Memorandum in Support of Motions to Reconsider (index #81) filed by Ryk Bullock is DENIED. As stated at the hearing, Ryk Bullock was a participant in the mediation session on August 5, 2011 that ended with the Settlement

Agreement that was submitted to court for approval. Ryk Bullock had another person sign the agreement for him because he was not able to stay long enough to sign it himself. In his Motion and Memorandum in Support of Motions to Reconsider filed with the court on October 5, 2011, Ryk Bullock stated that he wished to revoke his assent to the agreement on the basis that it was his understanding that the parties would have another meeting to decide upon future restrictions on the use of the real property in the Florence Mae Tarr Trust. In order to revoke his agreement, Ryk Bullock must prove that there was a defect in the formation of the agreement, or that he has a legal right to be excused from performance of the agreement because of misrepresentation, mutual mistake or other reason. At the hearing, Ryk Bullock did not present any evidence that there was malfeasance in creating the Settlement Agreement or that there is any reason why the performance of the Settlement Agreement is flawed.

Date

10/27/11



Christina M. O'Neill, Judge