

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

**SUPERIOR COURT
CIVIL ACTION
NO. 2077CV00259**

NELSON D. BLINN & another¹

vs.

LARRY DEWAYNE BAILEY MISCOVITCH & another²

**MEMORANDUM OF DECISION AND ORDER
ON THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT
AND ON THE PLAINTIFFS'
CROSS MOTION FOR SUMMARY JUDGMENT**

INTRODUCTION

The plaintiffs Nelson D. Blinn ("Blinn") and Carolyn A. Mix ("Mix") (collectively, the "Trustees") filed this action as trustees of the Thomas R. Mix Family Trust of 1996 (the "Mix Family Trust") and the Mix Family Irrevocable Life Insurance Trust (the

¹ Carolyn A. Mix, together Trustees of the Thomas R. Mix Family Trust of 1996

² Cody Bailey

“Mix Life Insurance Trust”) (collectively, the “Trusts”).³

Defendants Larry Dewayne Bailey Miscovitch (“Miscovitch”) and Cody Bailey (“Bailey”) move for entry of summary judgment on the Complaint for Declaratory Judgment. Miscovitch seeks a determination that he qualifies as a “grandchild” under Florida law, which the Trusts specify as the governing law. The Trustee opposed Miscovitch’s Motion for Summary Judgment and submitted a Cross-Motion for Summary Judgment, contending that the donor did not intend for Miscovitch to receive benefits and no notice of his adoption was provided to the beneficiaries. For the reasons that follow, the Defendants’ Motion for Summary Judgment (Paper No. 4) is **DENIED**, and the Trustee’s Cross-Motion for Summary Judgment (Paper No. 4.2) is **ALLOWED**.

BACKGROUND

Thomas R. Mix (the “Donor”) died on August 1, 2006. His survivors include: his wife, Carolyn (Carolyn is now deceased); his two daughters, Sally and Susan (Susan is now deceased); and

³ Carolyn A. Mix is now deceased. Throughout this Memorandum of Decision and Order the court refers to Blinn as the “Trustee.”

three grandchildren, Kelly, Lila and Scott. SOF, para. 9. The Donor created the Mix Family Trust by Declaration of Trust in 1996. SOF, para. 18. The Donor also created the Mix Life Insurance Trust by Declaration of Trust in 1996. SOF, para. 26. Blinn, as the surviving co-Trustee, administers both Trusts. SOF, para. 1. The Donor's three grandchildren are natural born children of Sally. SOF, para 4-6. Susan has no natural born children. SOF, para. 11. Susan and her husband adopted Miscovitch when he was forty-five years old, without notice to the beneficiaries or the Trustees of the Trusts. SOF, para 13-14. Bailey is Miscovitch's son. SOF, para. 8.

The Trusts state that, in interpreting the words "child," "children" and "issue" and similar words, a person who is legally adopted shall be deemed to be the child of his adoptive parents. SOF, para. 21. Further, the Trusts provide that, upon the death of Carolyn, the Trustee shall divide the remaining Trust property into three shares. SOF, para. 24. The first share comprises eighty percent of the trust property and is known as the

children's share. SOF, para. 24. According to language contained in the Trusts:

The second share shall be known as and designated the Grandchildren's share and shall comprise fifteen percent of the Trust property. The grandchildren's share shall be held in a continuing trust for the benefit of the Donor's grandchildren then living. The Trustee shall pay to or apply for the benefit of such grandchildren so much of the income or principal of such share, whether in equal or unequal amounts, as it deems proper for such grandchildren's health, education, support and maintenance. At such time as there is no grandchild of the Donor living and under the age of twenty-five years, the Trustee shall divide and allocate all of the remaining trust property of this share into as many equal shares as there are grandchildren of the Donor then living and said shares shall be paid over and distributed to each such grandchild, outright and free of trusts.

SOF, para. 24. The third share comprises five percent of the Trust property and is designated to Patricia White who is the daughter of Carolyn. SOF, para. 24. The parties disagree as to whether Miscovitch qualifies as the Donor's "grandchild" under the express terms of the Trusts. SOF, para. 32. The Trustee alleges that Susan and her husband adopted Miscovitch for the sole purpose of preventing her nieces and nephew from inheriting her shares of the Trusts. SOF, para. 38.

DISCUSSION

The parties make multiple arguments in support of the pending motions. Miscovitch argues that the Full Faith and Credit Clause does not authorize or require Florida Law to give Full Faith and Credit to the entirety of Tennessee adoption law. He argues that it only requires that Florida recognize the genuineness of the Tennessee adoption, and that recognition does not carry with it all of the other statutory laws of Tennessee that pertain to adopted persons. The Trustee contends that Florida should give Full Faith and Credit to the laws of Tennessee or, alternatively, that Florida Statute § 63.172 carves out an exception pertaining to an adoptee's right of inheritance. In addition, the Trustee asserts that the lack of notice to the beneficiaries should void the adoption under Florida law. In response, Miscovitch claims that this argument fails because Kelly, Lila, and Scott will not be divested of their interests in the trusts. The Trustee argues that Miscovitch's actions amount to fraud upon the court, the intent of the Donor must be considered and is a genuine issue of material fact, and, lastly, that the Court should modify the language of the

Trusts. Below, the court addresses these arguments in more detail.

I. The Full Faith and Credit Clause

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.” U.S. Const. art. IV, § 1. “As to judgments, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land.” Baker by Thomas v. General Motors Corp., 522 U.S. 222, 223 (1998). The Full Faith and Credit Clause does not, however, compel “a state to substitute the statutes of other states for its own statutes dealing with a subject matter concerning which it is competent to legislate.” Id. at 232.

Susan and her husband’s petition for the adult adoption of Miscovitch was granted by the Circuit Court for Cocke County,

Tennessee. Ex. 3. The Trustee argues that Florida should give full faith and credit to the Tennessee adoption statute (the “Tennessee Statute”), which reads in part:

In the construction of any instrument, whether will, deed, or otherwise, whether executed before or after August 24, 1995, and whether the testator or other party creating an interest by such instrument died before or after August 24, 1995, or before or after an adoption, a child so adopted and the descendants of such child are deemed included within the class created by any limitation contained in such instrument restricting a devise, bequest or conveyance to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the adoptive parent, or of an ancestor or descendant of one (1) of them, and such adopted child shall be treated as a member of such class unless a contrary intention clearly shall appear by the terms of such instrument or unless the particular estate so limited shall have vested in interest and in possession in and as to the person or persons entitled thereto on August 24, 1995; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over twenty-one (21) years of age at the time of such child’s adoption.

Tenn. Code Ann. § 36-1-121. The Trustee argues that, based on the above provision, the laws of Tennessee do not allow adults over the age of twenty-one to inherit, unless permission for such is specifically stated in the written instructions of the instrument

at issue. Here, the Trusts do not specifically state that adults over the age of twenty-one may or may not benefit.

Miscovitch rebuts this argument contending that the full faith and credit principle only requires that Florida recognize the genuineness of the Tennessee Decree of Adoption, and that recognition does not carry with it all of the other statutory laws of Tennessee that pertain to adopted children. A similar issue was explored in Kupec v. Cooper, 593 So. 2d 1176, 1178 (Fla. 5th Dist. App. 1992). In that case, the Court held that: "By statute, a judgment of court establishing the relationship of a parent and child by adoption, which is issued pursuant to due process of law, by a court of any jurisdiction within or without the United States will be recognized by Florida." Id., citing Fla. Stat. Ann. § 63.192 (1991). The Court further stated that, "[i]f the evidence shows that the adoption proceedings were in compliance with another state's law and that law is similar to the law of Florida, then Florida will give it full faith and credit." Id. More recently, in Dennis v. Kline, the Court stated, "unlike other states, once a valid adoption has occurred, Florida makes no distinction as to

the extent to which an adult adoptee may become a beneficiary in probate proceedings, nor does Florida set a line of demarcation as to whether the 'policy' favoring adult adoption extends only to rights specifically identified by statute." 120 So. 3d 11, 18 (Fla. 4th Dist. App. 2013). "[F]inal adoption orders by a state court of competent jurisdiction are judgments that must be given full faith and credit under the Constitution by every other state in the nation[.]" Finstuen v. Crutcher, 496 F.3d 1139, 1141 (10th Cir.2007). Given these principles it is clear that Miscovitch's Tennessee adoption should be given full faith and credit in Florida.

Miscovitch contends that the Trusts should be analyzed under Florida statutory law, which states, "any person, a minor or an adult, may be adopted." Fla. Stat. Ann. § 63.042. And that:

A judgment terminating the relationship of parent and child or establishing the relationship by adoption, or a decree granting legal guardianship for purposes of adoption, issued pursuant to due process of law by a court or authorized body of any other jurisdiction within or without the United States shall be recognized in this state, and the rights and obligations of the parties shall be determined as though the judgment or decree were issued by a court of this state.

Fla. Stat. Ann. § 63.192. Under this view, only the validity of the adult adoption from Tennessee would be given full faith and credit by Florida. The adoption would be analyzed under Florida statutes to establish whether or not Miscovitch is able to qualify as a beneficiary under the Trusts. This would eliminate the need to analyze how the exception for children who are over twenty-one years of age at the time of their adoption, which is set forth in Tenn. Code Ann. § 36-1-121, pertains to Miscovitch.

In response, the Trustee refers to Florida statute:

(1) A judgment of adoption, whether entered by a court of this state, another state, or of any other place, has the following effect . . . (c) Except for rights of inheritance, it creates the relationship between the adopted person and the petitioner and all relatives of the petitioner that would have existed if the adopted person were a blood descendant of the petitioner born within wedlock. This relationship shall be created for all purposes, including applicability of statutes, documents, and instruments, whether executed before or after entry of the adoption judgment, that do not expressly exclude an adopted person from their operation or effect.

Fla. Stat. Ann. § 63.172. Based on this provision, the Trustee argues that Florida realizes the importance of inheritance and included language specifically excluding inheritance rights from the adopted person. This argument is persuasive because, even

though the Court accepts Miscovitch's argument that his adult adoption was valid and should be given full faith and credit by Florida, Florida statute explicitly rejects this recognition insofar as it pertains to inheritance. Thus, even though the adoption in Tennessee is given full faith and credit in Florida, Fla. Stat. Ann. § 63.172, prohibits an adoptee from automatically gaining inheritance. Put another way, while Florida honors the Tennessee adoption pursuant to the Full Faith and Credit Clause, Miscovitch's inheritance rights are not honored, under Fla. Stat. Ann. § 63.172. For the foregoing reasons, Miscovitch's request for entry of summary judgment on counts I and II is **DENIED**. And, the Trustee's request for summary judgment is **ALLOWED**, as the court concludes Miscovitch is not entitled to distributions under the Trusts.

II. Lack of Notice

A. Direct, Financial, and Immediate Interest

Next, the Trustee argues that, under Florida law, the beneficiaries of the Trusts should have been notified of Miscovitch's adoption. According to the Trustee, Scott, Kelly, and

Lila's interest was not contingent upon Susan dying without issue; rather, they had a present, immediate and direct interest in Susan's portion of the Children's share, since it would be consolidated with the Grandchildren's share upon the death of Susan and Carolyn. The First Amendment to the Mix Family Trust provided that, upon the death of Susan, her portion of the Children's Share would be consolidated with the Grandchildren's Share. SOF, para. A24. The Trusts provide that the Trustee shall make disbursements in equal or unequal amounts, as the Trustees deems proper for each grandchild's health, education, support and maintenance. SOF, para. 24. Also, while it was unlikely that either of the Donor's children were going to naturally have any more children of their own, that is still a possibility—until their death. These facts demonstrate that Scott, Kelly, and Lila's interest in the Trusts were not present, immediate, and direct. This argument is further inconsistent with the Trustee's previous argument that Florida should give Full Faith and Credit to the Tennessee Adoption Statute. The Trustee is contending that Tennessee law should apply in regard to the exception

pertaining to adult adoptions and inheritance, but that Florida law should apply when determining whether the Trusts' beneficiaries should have been notified of the adoption. For the foregoing reasons, even if Florida law were to apply, the Trustee's argument would fail because the grandchildren did not have the required interest to be notified of an adoption.

B. Repugnant Departure from Florida Law and Values

The Trustee also points to the exception, under Florida law, to giving full faith and fair credit to an out of state adoption where the out of state adoption laws are a repugnant departure from Florida law and values. According to the Trustee, Florida values the principle that those who will be immediately and directly financially harmed by an adoption be given notice of the adoption so that their interests can be protected. Tennessee does not require such notice. This argument was, however, defeated in Dennis. There, the Court held that:

Pennsylvania's absence of notice requirements for persons with a direct financial interest in an adoption does not render Pennsylvania's adoption practice "repugnant" to Florida. A state's different view of which

parties are proper or necessary in a lawsuit is not a basis for denying full faith and credit to that state's judgment.

Dennis, 120 So. 3d at 18. Dennis establishes that absent notice requirements do not render an out of state adoption repugnant to Florida. Id. For the foregoing reasons, the lack of notice does not mean that the adoption should be void.

III. Fraud on the Court, the intent of the Donor, and Modifying the Language of the Trusts

The Trustee contends that "there are situations which render an adult adoption void, such as a fraud upon the court." The Trustee next argues that the intent of the Donor must be considered and is a genuine issue of material fact. Lastly, the Trustee asserts that the Court should modify the language of the Trusts to conform with the Donor's intent. These arguments revolve around disputed facts that create a genuine issue of material fact. More significantly, the court need not address these arguments because, as discussed above, it has already concluded that, as a matter of law, under Fla. Stat. Ann. § 63.172, the Trustee is entitled to Summary Judgment.

Conclusion and Order

For the reasons explained above, it is hereby **ORDERED** that the defendants' Motion for Summary Judgment is **DENIED**; and the Trustee's Cross-Motion for Summary Judgment is **ALLOWED**. It is further **ORDERED** and **DECLARED**, under G. L. c. 231A, § 1, that Miscovitch does not qualify as the Donor's "grandchild," under either the terms of the Mix Family Trust and the Insurance Trust or applicable law. For this reason, he does not qualify as a beneficiary under the Trust.

DATED: June 9, 2021



John T. Lu
Justice of the Superior Court