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Supreme Court of Alabama.

James L. PARRIS, G.D. Varn III, James V. Searse, Jr., and Samuel S. Parris

v.

Phyllis H. BALLANTINE, Scott Preston Harrison, and Renee DuPont Harrison

1180908

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September 25, 2020

Synopsis

Background: Corporate trustee petitioned for final settlement of trust of daughter of initial trustor, which was a trust created by court order that approved a settlement of a dispute concerning trust created by initial trustor and that provided that daughter's trust, as well as the trusts of daughter's siblings, would be in the same form as the trust created by the initial trustor, pursuant to which the issue of initial trustor's primary descendants and such issue's lineal descendants would receive distributions of income and principal. On a motion for partial summary judgment filed by daughter's biological children, the Probate Court, Jefferson County, No. 196712, determined that daughter's adopted adult child was not a "lineal descendent" and was not therefore a beneficiary of daughter's trust. Adopted adult child appealed.

Holdings: The Supreme Court, Stewart, J., held that:

[1] adopted adult child had 42 days in which to file notice of appeal, and

[2] term "lineal descendants," as used in initial trust, which was executed before enactment of laws providing for adult adoption, did not include adopted adult child.

Motion to dismiss denied; affirmed.

Bolin and Shaw, JJ., concurred in the result.

Sellers, J., dissented and filed opinion, which Wise, J., joined.

Procedural Posture(s): On Appeal; Motion for Summary Judgment.

West Headnotes (8)

[1] Appeal and Error

30 Appeal and Error

The Supreme Court would only consider appellees' originally filed brief, despite appellees' submission, after the deadline and after appellant had submitted a reply brief, of a corrected brief along with a declaration of technology difficulties; there were multiple changes in the corrected brief, including the addition of legal authorities not cited in

the original brief, and the Alabama Rules of Appellate Procedure did not contemplate accepting an appellee's brief after the appellant had submitted a reply brief. Ala. R. App. P. 1 et seq.

[2] **Trusts**

390 Trusts

Adopted adult child of initial trustor's daughter had 42 days in which to file notice of appeal of probate court's determination on partial summary judgment that he was not a "lineal descendent" and therefore not a beneficiary of daughter's trust; despite argument that the appeals period was 30 days pursuant to local act providing probate courts in counties with a population of 500,000 or more general and concurrent jurisdiction with circuit courts in equity and in matters relating to the administration of estates, that local act only applied to matters concerning administration of an estate, while the case at hand involved the interpretation of the terms of a trust and was brought pursuant to the Alabama Uniform Trust Code (AUTC). Ala. Code §§ 12-22-2, 19-3B-101 et seq.; Ala. R. App. P. 4(a)(1).

[3] **Appeal and Error**

30 Appeal and Error

Where the facts of a case are essentially undisputed, an appellate court reviewing a summary judgment must determine whether the trial court misapplied the law to the undisputed facts, applying a de novo standard of review.

[4] **Contracts**

95 Contracts

An instrument is "unambiguous" if only one reasonable meaning clearly emerges.

[5] **Trusts**

390 Trusts

When the language of a trust is clear and unambiguous, the rules of construction cannot be employed to rewrite that trust and put it at variance with the meaning of the language used by the testator.

[6] **Trusts**

390 Trusts

Words employed in a trust are to be taken in their primary or ordinary sense and use, unless a different meaning is indicated by the context and circumstances of the case.

[7] **Trusts**

390 Trusts

Term "lineal descendants," as used in initial trust, which provided that trustor's primary descendants and such issue's lineal descendants would receive distributions of income and principal and which further defined "lineal descendants" as "those hereafter born, either before or after trustor's death, as well as those now in existence," did not include adult child adopted by trustor's daughter following establishment of initial trust and following court judgment that set up daughter's trust pursuant to settlement of dispute concerning initial trust and that ordered that daughter's trust would be in same form as initial trust; law at the time the initial trust was executed did not allow adult adoption.

[8] **Appeal and Error**

30 Appeal and Error

The Supreme Court, when determining whether adopted adult child of initial trustor's daughter was a "lineal descendant" as initial trust defined that term, would not consider argument by daughter's biological children that the proper statutory formalities were not followed before the entry of the adoption decree, which entry took place in South Carolina; daughter's biological children did not raise such an argument in the probate court, and Alabama courts were not the proper forum through which to lodge a collateral attack based on the validity of the adoption under South Carolina law.

West Codenotes

Limitation Recognized

Ala. Code §§ 43-4-1, 43-4-2, 43-4-3, 43-4-4, 26-10A-1, 26-10A-2, 26-10A-3, 26-10A-4, 26-10A-5, 26-10A-6, 26-10A-7, 26-10A-8, 26-10A-9, 26-10A-10, 26-10A-11, 26-10A-12, 26-10A-13, 26-10A-14, 26-10A-15, 26-10A-16, 26-10A-17, 26-10A-18, 26-10A-19, 26-10A-20, 26-10A-21, 26-10A-22, 26-10A-23, 26-10A-24, 26-10A-25, 26-10A-26, 26-10A-27, 26-10A-28, 26-10A-29, 26-10A-30, 26-10A-31, 26-10A-32, 26-10A-33, 26-10A-34, 26-10A-35, 26-10A-36, 26-10A-37, 26-10A-38.

Appeal from Jefferson Probate Court (No. 196712)

Opinion

STEWART, Justice.

*1 This appeal involves the question whether, under the terms of a particular trust instrument, a person adopted as an adult is considered a lineal descendant of a beneficiary of the trust and, thus, a beneficiary. James L. Parris, G.D. Varn III, James V. Searse, Jr., and Samuel S. Parris appeal from a partial summary judgment in favor of Phyllis H. Ballantine, Scott Preston Harrison, and Renee DuPont Harrison. We affirm the judgment.

Facts and Procedural History

In 1971, C. Porter Schutt and Phyllis DuPont Schutt ("the trustors") created a trust ("the 1971 trust") for the benefit of their three children and their children's "lineal descendants." The 1971 trust provides, in pertinent part:

> "Upon the date of the execution of this Trust, trustee shall divide the Trust into three equal shares so that one share shall be set aside for the issue, per stirpes, of [Charles Porter Schutt, Jr., Sarah Schutt Harrison, and Caroline Schutt Brown], respectively. Each child of Trustor for whose issue a share is set aside shall be referred to as the 'primary descendant' of the Trust in which such share is held. Trustee shall hold each such share as a separate trust, and each such separate trust shall be subject to [specific delineated provisions] ...."

Pursuant to the terms of the 1971 trust, the trustee is to make distributions of income and principal "to or among the issue of the primary descendant[s] and such issue's lineal descendants." The 1971 trust defines "lineal descendants" as "those hereafter born, either before or after trustor's death, as well as those now in existence. A child en ventre sa mere shall be deemed to be living." [1]

In 2002, in response to a dispute between the trustees of the 1971 trust and the income beneficiaries, the Mobile Circuit Court entered a judgment incorporating a settlement agreement between the parties that divided the 1971 trust into three separate

trusts -- one trust for each of the trustors' three children (Charles Porter Schutt, Jr., Sarah Schutt Harrison, and Caroline Schutt Brown) and the children's descendants. One of the three trusts was for Sarah Schutt Harrison and her four children: Phyllis Harrison Ballantine, Renee DuPont Harrison, Scott Preston Harrison, and Aimee Harrison Parris ("the Harrison trust").

In 2010, a dispute arose between the beneficiaries of the Harrison trust. The Jefferson Probate Court ("the probate court") entered an order approving a settlement agreement between the parties ("the 2010 order") that created four separate trusts for each of Sarah Schutt Harrison's children and her children's lineal descendants ("the sibling trusts"): one for Phyllis and her lineal descendants; one for Renee and her lineal descendants; one for Scott and his lineal descendants; and one for Aimee and her lineal descendants ("Aimee's trust"). The 2010 order provided that the sibling trusts would "be the same in form and terms as" the 1971 trust. In addition, it provided that, if a sibling trust had no remaining issue or lineal-descendant beneficiaries, the assets and liabilities of that trust would be divided equally among the remaining sibling trusts.

*2 Aimee appointed James L. Parris (her husband), G.D. Varn III, and James V. Searse, Jr., as individual trustees of her trust ("the individual trustees"), and they in turn appointed BancorpSouth Bank to serve as the corporate trustee. In November 2016, after learning that she had a terminal illness, Aimee adopted Samuel S. Parris, her adult stepchild and her husband's biological son. The adoption decree was entered in the Family Court of Charleston County, South Carolina. In February 2017, Aimee died.

In March 2017, BancorpSouth filed in the probate court a petition for final settlement of Aimee's trust.[2] In response, Phyllis, Renee, and Scott ("the siblings") filed an answer and counterclaim against BancorpSouth and cross-claims against the individual trustees and Samuel. The siblings argued, among other things, that, because Samuel was adopted as an adult, he is not a "lineal descendant" of Aimee's and, thus, was not a beneficiary of Aimee's trust. Therefore, they argued, there being no remaining issue or lineal descendants of Aimee's, the assets from Aimee's trust should be divided among the three other sibling trusts.

In January 2018, the siblings filed a motion for a partial summary judgment. In their motion, the siblings argued that language in the 1971 trust included only biological descendants of the trustors' children as beneficiaries. The siblings asserted that the 1971 trust language was unambiguous but that, if the probate court did not find so, it could consider affidavit testimony from Thomas P. Sweeney, a codrafter of the 1971 trust.

Samuel filed a response in opposition to the siblings' partial-summary-judgment motion. In his response, Samuel argued that the language of the 2010 order confirmed that adopted children were meant to be included as beneficiaries under the 1971 trust because, by the time that order was entered, this Court had made clear that terms such as "issue" and "lineal descendant" included an adopted child. Samuel also argued that, before entering the 2010 order, the probate court had appointed a guardian ad litem to represent "all unborn, unconceived, and unascertainable income and remainder beneficiaries." Samuel argued that the use of the word "unascertainable" demonstrated that it was in the contemplation of the parties and the probate court that there were other potential beneficiaries who did not fall into the categories of unborn or unconceived and that "unascertainable" could only be a reference to children adopted in the future. Samuel attached to his response an affidavit of Aimee that had been filed in the adoption proceeding, an affidavit of James Parris that included letters from Thomas Sweeney discussing the terms of the 1971 trust, a transcript from the 2002 proceedings in the Mobile Circuit Court, and a mineral trust between C. Porter Schutt and First Alabama Bank created in 1993. BancorpSouth also filed a response in which it stated that it neither joined nor opposed the partial-summary-judgment motion.

Samuel filed a motion to strike the affidavit of Thomas Sweeney in which Samuel asserted that previous letters from Sweeney, the contents of which Sweeney had testified about in the Mobile Circuit Court proceedings, conflicted with his testimony in the affidavit. Samuel also objected because, he said, the affidavit was based on Sweeney's subjective belief, rather than personal knowledge. The siblings filed a reply to Samuel's response to their motion for a partial summary judgment and a motion to strike the affidavit of James Parris that Samuel had submitted. The probate court did not rule on the motions to strike.

*3 On July 1, 2019, the probate court entered a partial summary judgment. The probate court found, among other things, that the language of the 1971 trust was not ambiguous, that Samuel was not a "lineal descendant" as defined by the 1971 trust, and

that, therefore, Samuel was not a beneficiary of Aimee's trust. The probate court certified the order as final pursuant to Rule 54(b), Ala. R. Civ. P. On August 7, 2019, Samuel and the individual trustees filed a notice of appeal. (The individual trustees assert that taking a position on the issues in this appeal with regard to Samuel is inconsistent with their duties of loyalty and impartiality. Accordingly, the arguments on appeal are referred to as only Samuel's even though the individual trustees joined in the notice of appeal.)

Discussion

I. Procedural Issues

[1] On December 19, 2019, after Samuel filed his reply brief, the siblings filed a "corrected" brief along with a "declaration of technology difficulties and a motion to accept corrected brief as timely filed" in which they asserted that they fixed typographical errors, pagination errors, and citation errors present in their original brief. The Supreme Court Clerk's office, after determining that there were also changes to the language in the "corrected" brief, issued a show-cause order to the siblings to explain why this Court should accept the corrected brief, noting that there is no provision in the Alabama Rules of Appellate Procedure to accept an appellee's brief after the briefing period has closed. The siblings responded that there had been no substantive changes and that the revisions were to correct typographical oversights, and they submitted a version evidencing their corrections. After reviewing the two versions, we note that there are multiple changes in the "corrected" brief, including the addition of legal authorities not cited in the original brief. Based on the large number of changes, and because the Alabama Rules of Appellate Procedure do not contemplate accepting an appellee's brief after the appellant has submitted a reply brief, we have considered only the siblings' originally filed brief.

[2] We must next address a motion to dismiss filed in this Court by the siblings. In their motion, the siblings asserted that Act No. 1144, Ala. Acts 1971 ("Act No. 1144"), a local act that requires notices of appeal from certain probate-court judgments to be filed within 30 days of the entry of the judgment, controls and that, because Samuel and the individual trustees did not file their notice of appeal within 30 days, this Court lacks jurisdiction to consider their appeal. Samuel argues that Act No. 1144 governs only appeals from matters concerning the administration of estates and that, because this matter involves a dispute over an inter vivos trust, Act No. 1144 is inapplicable.

Act No. 1144 was enacted to provide probate courts in counties with a population of 500,000 or more general and concurrent jurisdiction with circuit courts in equity and in matters relating to the administration of estates. See Title to Act No. 1144. The relevant portion of Act No. 1144 provides:

> "Section 4. Appeals may be taken from the orders, judgments, and decrees of such a Probate Court, relating to the administration of such aforesaid estates, including decrees on partial settlements and rulings on demurrer, or otherwise relating to action taken pursuant to jurisdiction conferred by this act, to the Supreme Court within thirty days from the rendition thereof, or within thirty days from the decision of such a Probate Court on a motion for new trial, in the manner and form as is provided for appeals from the Probate Courts to the Supreme Court."

(Emphasis added.)

The underlying matter does not involve the administration of an estate. Instead, it involves the interpretation of the terms of a trust and was brought pursuant to the Alabama Uniform Trust Code, § 19-3B-101 et seq., Ala. Code 1975 ("the AUTC").[3] Act No. 1144 does not concern proceedings involving the administration of trusts. Therefore, the AUTC, rather than Act No. 1144, controls, and there is no specific provision in the AUTC regarding appeals.

*4 Section 12-22-2, Ala. Code 1975, provides: "From any final judgment of the circuit court or probate court, an appeal lies to the appropriate appellate court as a matter of right by either party, or their personal representatives, within the time and in

the manner prescribed by the Alabama Rules of Appellate Procedure." Rule 4(a)(1), Ala. R. App. P., provides that a notice of appeal must be filed within 42 days of the entry of the judgment from which the appellant appeals. Therefore, Samuel's notice of appeal, filed 37 days after the entry of the order appealed from, was timely and this Court has jurisdiction to consider the appeal. Accordingly, the siblings' motion to dismiss is denied.

II. Analysis

[3] On appellate review of a summary judgment, the reviewing court will apply the same standard applied by the trial court. Williams v. State Farm Mut. Auto. Ins. Co., 886 So. 2d 72, 74 (Ala. 2003). "Where, as here, the facts of a case are essentially undisputed, this Court must determine whether the trial court misapplied the law to the undisputed facts, applying a de novo standard of review." Continental Nat'l Indem. Co. v. Fields, 926 So. 2d 1033, 1035 (Ala. 2005). The issues raised on appeal in this case present a question of law; they do not concern a disputed issue of fact. Accordingly, we review the probate court's summary judgment de novo without any presumption of correctness. Ex parte Byrom, 47 So. 3d 791, 794 (Ala. 2010).

[4] [5] [6] The resolution of the issues in this appeal requires the construction and interpretation of the terms of the 1971 trust. In construing a legal document, this Court has explained that, "[w]hen a document is unambiguous, its construction and legal effect are questions of law for the court to decide." Baldwin v. Branch, 888 So. 2d 482, 484 (Ala. 2004) (citing Wheeler v. First Alabama Bank of Birmingham, 364 So. 2d 1190 (Ala. 1978)).[4]

> " 'An "instrument is unambiguous if only one reasonable meaning clearly emerges." ' Reeves Cedarhurst Dev. Corp. v. First Amfed Corp., 607 So. 2d 184, 186 (Ala. 1992)(quoting Vainrib v. Downey, 565 So. 2d 647, 648 (Ala. Civ. App. 1990)). 'When the language of a [trust] is clear and unambiguous, the rules of construction cannot be employed to rewrite that [trust] and put it at variance with the meaning of the language used by the testator.' Windham v. Henderson, 658 So. 2d 431, 434 (Ala. 1995). '[W]ords employed in a [trust] are to be taken in their primary or ordinary sense and use, unless a different meaning is indicated by the context and circumstances of the case ....' Wiley v. Murphree, 228 Ala. 64, 68, 151 So. 869, 872 (1933)."

Harrison v. Morrow, 977 So. 2d 457, 459–60 (Ala. 2007).

[7] [8] Both sides contend, and the probate court found, that the language of the 1971 trust is unambiguous. Samuel argues that the term "lineal descendants" as defined in the 1971 trust presumptively includes adopted children. In support, Samuel argues that the law in Alabama since 1931 has been clear that adopted children are included in terms such as "issue," "lineal descendants," "child," and other similar terms and that adopted children are treated the same as biological children unless an intent to exclude them is clearly indicated in the instrument. The siblings argue that the use of the phrase "hereafter born" in defining "lineal descendants" in the 1971 trust implies that "adopted" descendants are excluded and demonstrates the trustors' intent that the 1971 trust benefit their biological descendants only. The siblings also assert that the trustors defined "lineal descendants" in a manner different than the generic legal definition, while they defined "heirs" as all persons entitled to take by intestacy — the primary, generic legal meaning. Therefore, the siblings argue, the trustors intended "lineal descendants," with its "radically different language," i.e., "hereafter born," to be limited to biological descendants.[5] Relying, in part, on this Court's decision in Whitfield v. Matthews, 334 So. 2d 876 (Ala. 1976), the probate court concluded that "[u]sing 'born' to define 'lineal descendants' without including 'or adopted' is a clear indication of Trustors' intent to exclude persons adopted as beneficiaries."[6]

*5 In challenging the probate court's judgment, Samuel relies primarily on Gotlieb v. Klotzman, 369 So. 2d 798 (Ala. 1979), McCaleb v. Brown, 344 So. 2d 485, 488 (Ala. 1977), and a 1931 adoption statute. Samuel argues that the trustors had "constructive knowledge of the effect of the enactment of the 1931 Act pertaining to the inheritance rights of adoptees." Samuel's brief, at 23. In Gotlieb, this Court considered whether the term "descendant" in a testamentary trust included adopted children. This Court explained:

> "In 1931, a statute was passed which allowed adopted children to inherit property by and through their adoptive parents. Act No. 405, Acts of Alabama, 1931, p. 504. In McCaleb v. Brown, [344 So. 2d 485 (Ala. 1977),] this Court stated that adopted children are 'presumptively within the designation of the adopter's descendants unless the context or circumstances clearly establish a contrary intention.' 344 So. 2d at 489. In view of the fact that scriveners were put on notice after 1931 that adopted children would be treated the same as natural children, and in view of the public policy extant at the time the wills were drawn and in the present case, by looking only at the wording of the wills, we determine that the testators, by using the term 'descendants,' intended to include the two adopted children."

369 So. 2d at 800. This Court also rejected the argument that, "in 1964, the term 'descendants' did not include adopted children," and it held that "the public policy of this state [is] that adopted children are treated the same as natural children, unless a desire to exclude them is clearly indicated by the testator." 369 So. 2d at 801. Likewise, in McCaleb, this Court, in concluding that the language used in a deed included adopted children, considered that the law at the time the deeds were executed would have allowed an adopted child to be an heir. 344 So. 2d at 488. This Court also considered that holding otherwise would "frustrate the overall policy of the adoption statute to treat adopted children in all respects as natural children unless a contrary meaning is clearly expressed." Id. at 489.

Gotlieb and McCaleb, however, are distinguishable from the present case. For one, the instruments at issue in Gotlieb and McCaleb did not include the specific term "born" as did the 1971 trust.[7] Moreover, Gotlieb, McCaleb, and the 1931 statute specifically addressed adopted children. See Doby v. Carroll, 274 Ala. 273, 275, 147 So. 2d 803, 805 (1962)(explaining that the 1931 statute applied only to minor children and that there was no provision for an adoption of an adult in Alabama). Samuel was adopted as an adult. At the time the 1971 trust was executed, there was no provision in the law authorizing the adoption of adults. Although the Alabama Legislature enacted the Adult Adoption Act, codified at §§ 43–4–1 through –4, Ala. Code 1975, in 1973 authorizing the adoption of an adult for inheritance purposes, that act came into being two years after the 1971 trust was executed. Moreover, those Code sections were repealed effective January 1, 1991, and replaced by the Alabama Adoption Code, § 26-10A-1 et seq., Ala. Code 1975. See Act No. 554, Ala. Acts 1990. Accordingly, the probate court's judgment is due to be affirmed on the basis that the law at the time the 1971 trust was executed did not allow adult adoption, that Samuel's adoption as an adult in 2016 did not make him a "lineal descendant" as that term is defined in the 1971 trust, and that, therefore, Samuel was not a beneficiary of Aimee's trust.

*6 Because we are affirming the probate court's judgment on the above grounds, we need not address the parties' arguments concerning the probate court's reliance on Whitfield v. Matthews, 334 So. 2d 876 (Ala. 1976). In addition, we pretermit discussion of the siblings' argument regarding whether Alabama public policy favors the inclusion of adopted adults within the term "lineal descendants." Furthermore, the analysis in this opinion is limited to the unique facts of this case, which involves the adoption of an adult, and should not be read to have any application to adoptions involving children.

Conclusion

Based on the foregoing, we affirm the judgment of the probate court.

MOTION TO DISMISS DENIED; AFFIRMED.

Parker, C.J., and Bryan, Mendheim, and Mitchell, JJ., concur.

Bolin and Shaw, JJ., concur in the result.

Wise and Sellers, JJ., dissent.

SELLERS, Justice (dissenting).

I respectfully dissent. This case is controlled by well settled full-faith-and-credit principles rendering the majority's extended analysis unnecessary. Our Constitution provides that "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State." U.S. Const., Art. IV, § 1. Adoption decrees are among those judgments to which full faith and credit is due. See V.L. v. E.L., —— U.S. ——, 136 S.Ct. 1017, 194 L.Ed.2d 92 (2016) (holding that Georgia superior court had subject-matter jurisdiction to grant adoption, triggering Alabama's full-faith-and-credit obligation). And, despite the various public-policy arguments regarding adult adoptions in Alabama, the United States Supreme Court has made clear that, although "[a] court may be guided by the forum State's 'public policy' in determining the law applicable to a controversy," there is "no roving 'public policy exception' to the full faith and credit due judgments." Baker v. General Motors Corp., 522 U.S. 222, 233, 118 S.Ct. 657, 139 L.Ed.2d 580 (1998). In other words, regarding judgments, "the full faith and credit obligation is exacting." Id.

In this case, the Charleston County Family Court received into evidence the affidavit of Aimee Harrison Parris in which Aimee testified that her purposes in seeking to adopt her stepson, Samuel S. Parris, were to affirm the loving familial relationship between them and to ensure that Samuel inherit from her as her descendant, thus effectuating her estate plan. Based on that evidence, the South Carolina court entered an adoption decree, adjudicating a parent-child relationship between Aimee and Samuel. See § 43-8-230, Ala. Code 1975 (stating that "adopted persons ... are included in class gift terminology ... for determining relationships for purposes of intestate succession"). Therefore, unless the 1971 trust specifically evidences a clear intent to exclude adopted children -- and I submit that it does not -- Samuel is presumed to be a lineal descendant under the 1971 trust. The 1971 trust defines "lineal descendants" as "those hereafter born, either before or after trustor's death, as well as those now in existence." The phrase "hereafter born" references the time frame in which lineal descendants are born in relation to the trustors' deaths and makes that time frame as expansively inclusive as possible. [8] To this extent, Samuel was born in 1993 and became a lineal descendant in 2016, when Aimee adopted him.

*7 Because the South Carolina adoption decree appears on its face to have been rendered by a court of competent jurisdiction, the Alabama probate court was required to afford full faith and credit to that decree. Accordingly, I would reverse the judgment of the probate court and render a judgment holding that Samuel is a lineal descendant of Aimee and thus a beneficiary under the terms of the 1971 trust.

Wise, J., concurs.

All Citations

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Footnotes

1 Black's Law Dictionary defines "en ventre sa mere" as a fetus "in the mother's womb." Black's Law Dictionary 675 (11th ed. 2019).

2 The petition and its amendment are not in the record.

3 Under § 19-3B-203(b) of the AUTC, "[a] probate court granted statutory equitable jurisdiction has concurrent jurisdiction with the circuit court in any proceeding involving a testamentary or inter vivos trust." The Jefferson Probate Court has been granted statutory equitable jurisdiction and has concurrent jurisdiction with the Jefferson Circuit Court

"to hear any proceeding brought by a trustee or beneficiary concerning the administration of a trust." Regions Bank v. Reed, 60 So. 3d 868, 880 (Ala. 2010).

4 Section 19-3B-112 of the AUTC provides: "Except as otherwise provided in this chapter, the rules of construction ... that apply in this state to the interpretation of and disposition of property by will also apply as appropriate to the interpretation of the terms of a trust and the disposition of the trust property."

5 The siblings also devote much argument to challenging the adoption decree, alleging that the proper statutory formalities were not followed before the entry of the decree. To the extent the siblings challenge the validity of the adoption under South Carolina laws, however, Alabama courts are not the proper forum through which to lodge a collateral attack, and the siblings did not raise that argument in the probate court. It will not be considered for the first time on appeal. See Landers v. O'Neal Steel, Inc., 564 So. 2d 925, 926 (Ala. 1990)("This Court will not review an issue raised for the first time on appeal.").

6 The provision of the trust instrument at issue in Whitfield provided that the trust was " 'for the benefit of the children now or later born to my son, L.B. Whitfield, III.'" Whitfield, 334 So. 2d at 877. This Court concluded that the adopted daughter of the testator's son was excluded from being considered a beneficiary of the trust, stating: "Had the trustor intended to favor those his sons legally adopted as well as his blood descendants, it would seem he could easily have accomplished this by saying so." 334 So. 2d at 878.

7 Samuel also cites Tierce v. Gilliam, 652 So. 2d 254 (Ala. 1994), Sellers v. Blackwell, 378 So. 2d 1106 (Ala. 1979), Southside Baptist Church v. Drennen, 362 So. 2d 854 (Ala. 1978), and Zimmerman v. First National Bank of Birmingham, 348 So. 2d 1359 (Ala. 1977), in support of his argument that "issue" and "descendants" include adopted children. Tierce involved a child born after divorce who was presumed to be a beneficiary's legal child. Sellers, Southside Baptist Church, and Zimmerman all involved an adopted child, and the instruments in those cases did not include the specific use of the word "born" or a similar variation.

8 Relying, in part, on Whitfield v. Matthews, 334 So. 2d 876 (Ala. 1976), the probate court found that the phrase "hereafter born" in defining "lineal descendants" demonstrated the trustors' intent for the 1971 trust to benefit only their biological descendants. In Whitfield, this Court held that the phrase " 'for the benefit of the children now or later born to my son, L.B. Whitfield, III,'" did not include an adopted child of the son. Whitfield is clearly distinguishable. In Whitfield, the trustor concisely expressed his intent that the trust assets benefit only those children born to his son; this excluded adopted children. Here, the 1971 trust does not define "lineal descendants" as those "hereafter born" to any specific person or class of persons, nor does the trust include any express language excluding adopted children. Rather, the phrase "hereafter born" taken in its proper context merely references the time frame in which lineal descendants are born in relation to the trustors' deaths to make clear that all children, regardless of the time or circumstances of their birth, are included in the definition of "lineal descendants" and can thus benefit under the terms of the 1971 trust.

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