

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC.

SUPERIOR COURT

[Filed: March 12, 2018]

IN RE THE TRUST OF HERBERT O.  
PHILLIPS, DATED MARCH 1, 1928

:

C.A. No. PM-2017-2519

**DECISION**

**SILVERSTEIN, J.** Before the Court is Respondents'—Trust beneficiaries Claire Willis, Emily Greenstein, Carlin Greenstein, Suzanne Willis, Jack Sheehy, and David Sheehy (collectively, Respondents)—Super. R. Civ. P. 12(b)(6) Motion to Dismiss Petitioner John Parker Willis' (Petitioner) petition for declaratory relief or, in the alternative, to either amend the trust or allow the other beneficiaries to disclaim their interest in Petitioner's share of the Trust. Petitioner seeks to permit his adopted son—whom he adopted as an adult—to succeed to his interest in his grandfather's trust. This Court has jurisdiction pursuant to G.L. 1956 § 9-30-1.

**I**

**Facts**

The Herbert O. Phillips 1928 Trust and Amendments (herein, the Trust) was established in 1928 by Herbert O. Phillips (Settlor). Rhode Island Hospital Trust served as the initial Trustee, and has since been replaced by its successor entity, Bank of America. Following the Settlor's death, the Trust directs the Trustee to equally divide the remaining net income from the Trust to the benefit of his wife, Mary M. Phillips (Mary), three daughters—Edna, Barbara, and Marion—and their issue.<sup>1</sup> The Trust further provides for its termination twenty-one (21) years following

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<sup>1</sup> Throughout its Decision, the Court will refer to several individuals using their first names. In doing so, the Court seeks to improve clarity and intends no disrespect.

the death of the Settlor's wife and daughters and two other named individuals, Wesley Price Ricker and Barbara Price Ricker (collectively, the Rickers). Currently, the Rickers are the only surviving named individuals, and both are in their nineties.

Petitioner's mother, Barbara, one of Settlor's daughters, became a beneficiary of the Trust following the Settlor's death. Petitioner and his three sisters succeeded to their mother's interest in the Trust upon her death. In 2001, at the direction of this Court, Barbara's interest in the Trust was divided into four separate shares—one for each of her children. *See Judgment*, M.P. No. 2001-2857 (June 14, 2001) (Silverstein, J.) (hereinafter 2001 Judgment). The 2001 Judgment further provides that “[i]f, at any point, a child of Barbara Willis is deceased and no issue of that child survives,” then the deceased child's share of the Trust will be divided evenly among the surviving siblings. *Id.*

At present, Petitioner is the only sibling without biological children. Thus, if Petitioner dies prior to termination of the Trust, per the 2001 Judgment, his interest will be divided equally among his surviving siblings. While Petitioner does not have any biological children, he does have an adopted son, Simon Etherington (Simon). Notably, Simon was adopted while an adult by Petitioner. He seeks to have Simon succeed to his interest in the Trust if Petitioner dies prior to its termination.

Petitioner filed the instant petition; Respondents in turn submitted a motion to dismiss the petition. Both parties submitted supplemental memoranda in support of their respective positions.

## II

### **Standard of Review**

“[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint[.]” *Audette v. Poulin*, 127 A.3d 908, 911 (R.I. 2015) (quoting *Ho-Rath v. R.I. Hosp.*, 115 A.3d 938, 942 (R.I. 2015)). In testing the complaint’s sufficiency, the Court’s “review is confined to the four corners of that pleading,” *id.* (citation omitted), and the Court “assumes the allegations contained in the complaint to be true and views the facts in the light most favorable to the plaintiff[.]” *R.I. Emp’t Sec. All., Local 401, S.E.I.U., AFL-CIO v. State Dep’t of Emp’t & Training*, 788 A.2d 465, 467 (R.I. 2002) (hereinafter *R.I. Emp’t*) (*per curiam*) (quoting *St. James Condo. Ass’n v. Lokey*, 676 A.2d 1343, 1346 (R.I. 1996)). Phrased another way, “[w]hen ruling on a Rule 12(b)(6) motion, the [Court] must look no further than the complaint, assume that all allegations in the complaint are true, and resolve any doubts in a plaintiff’s favor.” *Pellegrino v. R.I. Ethics Comm’n*, 788 A.2d 1119, 1123 (R.I. 2002) (quoting *R.I. Affiliate, ACLU v. Bernasconi*, 557 A.2d 1232, 1232 (R.I. 1989)); *see also Palazzo v. Alves*, 944 A.2d 144, 149 (R.I. 2008). Accordingly, a motion to dismiss “should not be granted ‘unless it appears to a certainty that the plaintiff[] will not be entitled to relief under any set of facts which might be proved in support of [its] claim.’” *R.I. Emp’t*, 788 A.2d at 467 (internal alteration omitted) (quoting *St. James Condo. Ass’n*, 676 A.2d at 1346).

## III

### **Discussion**

Petitioner seeks a declaration from this Court that under the Trust and the facts and circumstances as they existed at the time of the Trust’s creation, Petitioner’s adopted son, Simon, may succeed to his interest in the Trust to the same extent as would a biological child. In the

alternative, Petitioner seeks leave from the Court to amend the Trust to permit Simon to succeed to Petitioner's interest in the Trust or to allow the other beneficiaries of the Trust to disclaim their interests in Petitioner's share of the Trust.<sup>2</sup>

In support of his position, Petitioner contends that the current statutory language—excluding children who were adopted when they were over the age of eighteen in the definition of “issue”—was not in effect when the Trust was created.<sup>3</sup> *See G.L. 1956 § 15-7-16.* Rather, Petitioner asserts that the statute in effect at the time of the Trust's creation did not differentiate

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<sup>2</sup> The Court notes that Petitioner has obtained consent to modify the Trust from Pamela Willis, beneficiary of the Trust, and Lawrence Savarese, son of Pamela Willis.

<sup>3</sup> The current language provided in § 15-7-16 is as follows:

“(a) A child lawfully adopted shall be deemed, for the purpose of inheritance by the child and his or her descendants from the parents by adoption and the lineal and collateral kindred of the parents by adoption, and for the purpose of inheritance by the parents by adoption, and the lineal and collateral kindred of the parents by adoption, from the child and his or her descendants, and for all other legal consequences and incidents of the natural relation of parents and children, except as provided in § 15-7-17, the child of the parents by adoption the same as if he or she had been born to them in lawful wedlock. In the construction of any instrument, whether executed before or after May 8, 1956, a child so adopted and the descendants of the child shall be deemed within a limitation to the lawful heirs, issue, children, descendants, or the like, as the case may be, of the parent or parents by adoption, unless a contrary intention shall appear by the terms of the instrument or unless the particular estate so limited has vested in and as to the person or persons entitled to it on April 20, 1962; provided, that this sentence shall not apply in the construction of any instrument as to any child who is over the age of eighteen (18) years at the time of his or her adoption and who is adopted after the death of the maker of the instrument.”

“(b) When an adopted child is related by blood to the parent or parents by adoption, he or she and his or her descendants shall be entitled to inherit from and through the parent or parents only as an adopted child or descendants of an adopted child and not by virtue of the blood relationship.”

between adopted and biological children.<sup>4</sup> Similarly, Petitioner argues there should be no distinction between children adopted before or after the age of eighteen. Petitioner further contends that because of the statutory language in effect at the time of creation and because the Trust does not contain a distinction between adopted and biological children, there was no intent—on behalf of the statute or the Settlor—to exclude adopted children.

Regarding his request to amend the Trust, Petitioner cites to Section 65 of the Restatement (Third) of *Trusts*. Section 65 provides for the modification of a Trust “if all of the beneficiaries of an irrevocable trust consent.” *See* Restatement (Third) of *Trusts* § 65. While modification is permitted with unanimous consent, the modification cannot “be inconsistent with a material purpose of the trust.” *Id.*

Turning to Petitioner’s request to allow the other beneficiaries to disclaim their interest in Petitioner’s share of the Trust, he asserts that this option would not require a modification: merely the consent of the other beneficiaries. Petitioner claims that it is anticipated that some or all of the beneficiaries will consent to the proposed modification or disclaim their interest in Petitioner’s share.

Respondents argue that Petitioner’s claim of a vested remainder interest subject to divestment should not impact the Court’s ultimate determination regarding whether the requested relief is proper under the Uniform Declaratory Judgments Act (UDJA). They maintain that the

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<sup>4</sup> The statutory language in effect at the time of the Trust’s creation, G.L. 1909 ch. 244, § 6, is provided as follows:

“A child so adopted shall be deemed, for the purposes of inheritance by such child and all other legal consequences and incidents of the natural relation of parents and children, the child of the parents by adoption, the same as if he had been born to them in lawful wedlock, except that he shall not be capable of taking property expressly limited to heirs of the body or bodies of the parents by adoption, nor property from the lineal or collateral kindred of such parents by right of representation.”

Petitioner's request remains hypothetical and, therefore, a justiciable controversy does not exist. Respondents further contend that Petitioner has acknowledged that he does not possess unanimous consent to amend the Trust and should not be allowed to continue litigation in hopes of convincing the other beneficiaries to consent.

Petitioner asserts that his request for declaratory judgment is proper because under § 9-30-4, a fiduciary is permitted to seek guidance from the Court to ascertain any class or devisee of a Trust and to answer questions regarding the administration of a Trust.<sup>5</sup> Here, Petitioner argues that his request aims to determine the "class" of beneficiaries entitled to take as issue and determine whether the term "issue" contemplates adopted children. Moreover, Petitioner contends there is a justiciable controversy because Simon holds a vested remainder interest subject to divestment in Petitioner's share of the Trust and that the Trust does not contain language limiting beneficiaries to "heirs of [the Settlor's] body." Petitioner further maintains that the mere fact that the Respondents have filed a motion to dismiss is indicative of a justiciable controversy.

Therefore, Petitioner contends it is premature for the Court to dismiss his petition to amend the Trust for lack of unanimous consent from the beneficiaries. In particular, Petitioner asserts that the Court has not had the opportunity to determine whether the 2001 Judgment

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<sup>5</sup> Section 9-30-4 permits any individual interested in the administration of a trust to seek a declaration from the court:

- “(1) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;
- “(2) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or
- “(3) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.”

dividing the Trust into four separate shares would require unanimous consent of all beneficiaries or simply Petitioner's consent to amend his sub-trust.<sup>6</sup>

## A

### **Declaratory Judgment**

In the case at bar, Petitioner asks this Court to declare that Petitioner's adopted son, who was adopted after the age of eighteen, may inherit his share of the Trust. Through this request, he seeks to avoid the possible distribution of his share of the Trust to his siblings as directed by the 2001 Judgment. In order for this scenario to occur, however, a number of precipitating events must transpire. Specifically, the Trust provides for its own termination twenty-one years following the deaths of several named individuals. The Rickers are the only surviving individuals named in the Trust. For the scenario contemplated by Petitioner to occur, both of the Rickers must die, and the Petitioner must also perish before twenty-one years have passed following their deaths. Clearly, as Petitioner has duly recognized, these events have not yet occurred and are not guaranteed to occur.

Alternatively, Respondents move to dismiss Petitioner's request for declaratory relief because they contend his request is not properly before the Court as it does not present a justiciable controversy. Petitioner asserts that his request is proper pursuant to § 9-30-4. Moreover, Petitioner contends the mere fact that Respondents have filed a motion to dismiss is evidence of a justiciable controversy.

Under the UDJA, this Court possesses the "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." *Sullivan v. Chafee*, 703 A.2d 748,

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<sup>6</sup> This particular contention was not included in Petitioner's original petition to the Court. Rather, Petitioner first articulated this alternative theory in his objection to Respondents' motion to dismiss the petition.

751 (R.I. 1997). The stated purpose of the UDJA is “to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations.” Sec. 9-30-12; *see also Millett v. Hoisting Eng’rs’ Licensing Div. of Dep’t of Labor*, 119 R.I. 285, 291, 377 A.2d 229, 233 (1977) (“The purpose of declaratory judgment actions is to render disputes concerning the legal rights and duties of parties justiciable without proof of a wrong committed by one party against another, and thus facilitate the termination of controversies.”). The Court’s power to declare rights “is broadly construed.” *Bradford Assocs. v. R.I. Div. of Purchases*, 772 A.2d 485, 489 (R.I. 2001). To grant or deny declaratory relief is therefore left “to the sound discretion of the trial justice and will not be disturbed on appeal unless the record demonstrates a clear abuse of discretion or the trial justice committed an error of law.” *Town of Barrington v. Williams*, 972 A.2d 603, 608 (R.I. 2009) (quoting *Imperial Cas. and Indemnity Co. v. Bellini*, 888 A.2d 957, 961 (R.I. 2005)) (internal ellipses omitted).

“It is well settled that a necessary predicate to this Court’s exercise of jurisdiction is an actual, justiciable controversy.” *H.V. Collins Co. v. Williams*, 990 A.2d 845, 847 (R.I. 2010). Moreover, our Supreme Court has cautioned that “declaratory-judgment action[s] may not be used ‘for the determination of abstract question or the rendering of advisory opinions,’ nor [do such actions] ‘license litigants to fish in judicial ponds for legal advice.’” *Sullivan*, 703 A.2d at 751 (quoting *Lamb v. Perry*, 101 R.I. 538, 542, 225 A.2d 521, 523 (1967); *Goodyear Loan Co. v. Little*, 107 R.I. 629, 631, 269 A.2d 542, 543 (1970)).

This Court’s “decision to grant or to deny declaratory relief under the [UDJA] is purely discretionary.” *Sullivan*, 703 A.2d at 751. The present matter, however, is distinct from instances where the Court, in its “sound discretion,” elected to issue declaratory relief interpreting a trust instrument. Whereas the Courts’ prior decisions to issue declarations concerned events that had

or would eventually occur, here the Court has merely been presented with an event that might occur, and indeed may never occur. *See Sullivan*, 703 A.2d at 751; *Lamb v. Perry*, 101 R.I. at 542, 225 A.2d at 523; *Goodyear Loan Co. v. Little*, 107 R.I. at 631, 269 A.2d at 543. Petitioner's request is premature and therefore not ripe for declaratory relief at this time. Accordingly, Petitioner's request for declaratory judgment is denied.

Regarding Respondent's motion to dismiss, our Supreme Court has previously addressed the applicability of a Rule 12(b)(6) motion to dismiss with reference to matters arising under the UDJA. *See Redmond v. R.I. Hospital Trust Nat'l Bank*, 120 R.I. 182, 186, 386 A.2d 1090, 1092 (1978). In *Redmond*, the Court found that per § 9-30-6, “the [trial justice's] discretion was not one to entertain the [declaratory judgment] action but was only one to enter or to decline entry of judgment.” *Id.*; *see also Goelet v. Manice*, No. CIV.A. N.M. 99-107, 2002 WL 393859 (R.I. Super. Feb. 14, 2002) (holding that a motion to dismiss was not the proper procedure for the Court to decide whether to exercise jurisdiction under the UDJA; rather, summary judgment was more appropriate). While recognizing these prior decisions, the Court here finds Petitioner's request to be improperly before the Court. Accordingly, after considering “the allegations contained in the complaint to be true and view[ing] the facts in the light most favorable to [Petitioner],” *R.I. Emp't*, 788 A.2d at 467 (quoting *St. James Condo. Ass'n*, 676 A.2d at 1346), the Court grants Respondents' motion to dismiss without prejudice.

## B

### **Amendment of the Trust or Disclaimer by Other Beneficiaries**

Petitioner alternatively seeks leave to amend the Trust or permit the other beneficiaries to disclaim their interest in his share of the Trust. Petitioner relies on Section 65 of the Restatement (Third) of *Trusts* for authority. Section 65 provides for termination or modification of a trust “if

all of the beneficiaries of an irrevocable trust consent.” Restatement (Third) of *Trusts* § 65. Termination or modification of the trust cannot be compelled by consent of the beneficiaries, however, if it “would be inconsistent with a material purpose of the trust.” *Id.* In that event, the beneficiaries must seek either “the consent of the settlor or, after the settlor’s death, . . . authorization of the court if it determines that the reason(s) for termination or modification outweigh the material purpose.” *Id.*

In furtherance of his effort, Petitioner has obtained the assent of two beneficiaries to amend the Trust. Moreover, Petitioner argues that this modification is not in conflict with the material purpose of the Trust. Respondents, however, have not—and indeed imply that they will not—provide assent to the modification of the Trust. Absent unanimous consent, Section 65 does not contemplate modification of a trust. *See Restatement (Third) of Trusts* § 65 (“[I]f *all of the beneficiaries of an irrevocable trust consent*, they can compel the termination or modification of the trust”) (emphasis added). Accordingly, Petitioner’s motion to amend the Trust is denied at this time.

Similarly, Petitioner seeks authorization from the Court allowing the other beneficiaries to disclaim their interest in his share of the Trust. Despite his request, Petitioner has not secured a disclaimer of interest from all other beneficiaries. *See id.* The other beneficiaries therefore have not agreed to disclaim their interest in the Trust, and the Court will not compel them to do so.

Petitioner presents an additional “alternative theory” under the 2001 Judgement by which he may modify his share of the Trust without the consent of the other beneficiaries. He posits that the Court may determine that modification of his sub-trust merely requires the consent of that particular sub-trust, *i.e.*, the Petitioner. The Court, however, declines to rule on this

argument at this time. Petitioner may, however, elect to brief this issue in conjunction with a motion to amend his original complaint, if he so desires.

## **IV**

### **Conclusion**

For the reasons stated herein, the Court grants Respondents' Motion to Dismiss without prejudice. Furthermore, the Court denies Petitioner's request for declaratory judgment. The Court also denies Petitioner's alternative request to amend the Trust or permit the disclaimer of Petitioner's interest by the other beneficiaries. Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.



## RHODE ISLAND SUPERIOR COURT

### *Decision Addendum Sheet*

**TITLE OF CASE:** In Re The Trust of Herbert O. Phillips, Dated March 1, 1928

**CASE NO:** PM-2017-2519

**COURT:** Providence County Superior Court

**DATE DECISION FILED:** March 12, 2018

**JUSTICE/MAGISTRATE:** Silverstein, J.

#### **ATTORNEYS:**

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