

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

Case No. 502010CA011771 "DIV. AA"

LILI M. WILSON, et al., etc.,

Plaintiff(s),

vs.

JOHN B. GOODMAN, etc.,

Defendant(s).

ORDER GRANTING PLAINTIFFS' EMERGENCY MOTION FOR RELIEF

This matter came before the Court on the Plaintiffs' Emergency Motion for Relief ("Plaintiffs' Motion"). A hearing was conducted on the pending motion on January 9, 2012. The Court has reviewed the submissions of the parties, and has heard the argument of counsel. Upon consideration, the Court makes the following findings.

The Plaintiffs' Motion again requires the Court to address the trusts created for the benefit of Defendant John Goodman's children (hereinafter collectively the "children's trust"). The events which serve as the grounds for the relief sought by the Plaintiffs border on the surreal and take the Court into a legal twilight zone.

The Court has previously held that the assets owned by the children's trust may not be considered a part of the net worth, or the financial resources, of Mr. Goodman for purposes of assessing punitive damages. Consequently, further discovery relating to these assets has not been permitted. Despite the Plaintiffs' protestations, or the perceived unfairness of such a result in a tragic case like this, the Court is convinced that its holding in this regard is in accordance with established Florida law and to hold

otherwise would be reversible error.¹ Nevertheless, Mr. Goodman's recent actions require a reexamination of this issue.

On January 3, 2012, the Plaintiffs were notified that Mr. Goodman had completed an adult adoption of Ms. Heather Hutchins (also known as Heather Colby). The adoption was finalized on October 13, 2011 in Dade County. The adoption declares Ms. Hutchins to be Mr. Goodman's child, and legal heir, entitled to all of the rights and privileges of Mr. Goodman's natural born children. Mr. Goodman has also filed a petition in the probate court in Harris County Texas seeking, *inter alia*, a declaration that Ms. Hutchins is a beneficiary under the children's trust entitling her to a one-third beneficiary interest in the trust.²

While there is nothing unusual about an adult adoption, the critical fact here is that Ms. Hutchins is Mr. Goodman's 42 year old girlfriend. Ms. Hutchins has testified in a deposition that she started dating Mr. Goodman in 2009, and it appears to be undisputed that they are still in a relationship today.

In consideration of the adult adoption, Ms. Hutchins entered into an agreement with Mr. Goodman with respect to Ms. Hutchins' interest in the children's trust. The agreement is entitled Agreement Pertaining to Adoption and Trust Issues (hereinafter the "Adoption Agreement"). The Adoption Agreement is dated January 3, 2012.

¹ Committing such error does not advance the cause of justice in this case and only postpones final resolution of the case for years based on the likelihood that a second trial after appeal will be required.

² It is unclear which court has jurisdiction over the administration of the children's trust. There is litigation in Delaware relating to the administration of the trust in which the trustee of the trust contends that Delaware has jurisdiction over the trust. Mr. Goodman has filed suit in Texas and asserts that the Texas courts have jurisdiction over the administration of the trust.

The Adoption Agreement is a complex legal document establishing the rights and obligations of Ms. Hutchins and Mr. Goodman relating to the children's trust.

Highlights of the Adoption Agreement include: a) an obligation by Ms. Hutchins to support Mr. Goodman's efforts to modify the trust; b) Ms. Hutchins' agreement to exercise certain powers of appointment; c) receipt and use of mandatory and discretionary income for Ms. Hutchins' share of trust income; and d) rights relating to the receipt of any discretionary distributions of principal.

The Court is in some doubt as to whether Ms. Hutchins will, in fact, be recognized as a legitimate beneficiary under the children's trust. A probate court with jurisdiction over the trust (either Texas or Delaware) will be called upon to determine this issue and will ultimately decide whether the adoption, at least as it relates to the children's trust, is a sham. Nevertheless, Mr. Goodman asserts that the adoption makes Ms. Hutchins a beneficiary and, until a probate court holds otherwise, this Court will assume this is true.

Plaintiffs view the adoption of Ms. Hutchins as a "game-changer" and as grounds to now include the assets of the children's trust, at least in some fashion, in the punitive damages calculation. Plaintiffs seek additional discovery relating to the adoption, and relating to the value of the children's trust, and seek a declaration that the trust assets should be considered by the jury in determining the financial resources of Mr. Goodman.

Mr. Goodman takes the position that the adoption does not matter. The Defendant asserts that he does not benefit from the adoption. He is still not a beneficiary of the trust, has no right to receive income or principal from the trust and the trust assets

are not his. Indeed, the Adoption Agreement specifically states that it should not be construed to create any beneficial interest in Mr. Goodman or his estate.

On paper, Mr. Goodman is correct. The Adoption Agreement is carefully drafted and does not, itself, reveal a direct pecuniary interest accruing to Mr. Goodman.

However, the Court cannot ignore reality or the practical impact of what Mr. Goodman has now done. The Defendant has effectively diverted a significant portion of the assets of the children's trust to a person with whom he is intimately involved at a time when his personal assets are largely at risk in this case.

Significantly, the children's trust provides for the mandatory payment of 70% of the income of the trust to a child once that child reaches the age of 35. The income is calculated on the child's proportionate interest in the trust assets. While none of Mr. Goodman's natural children have obtained the age of 35, Ms. Hutchins is 42 and is, therefore, immediately entitled to her proportionate share of income generated by the trust (i.e. one-third).

The Adoption Agreement does place restrictions and limitations on Ms. Hutchins receipt and use of mandatory income payments. However, the distributions are still significant and, of more concern, Ms. Hutchins may seek to retain a greater portion of the mandatory distributions by submitting a request to G. Andrew Toups, III. Here again the Court cannot ignore reality. Mr. Toups is a close confidant of, and advisor to, Mr. Goodman.

Of equal concern is Ms. Hutchins' right under the Adoption Agreement to retain in full any discretionary distributions of principal or income made for her "health, support, education or maintenance." While such distributions must be approved by the

trustee, and the current trustee is not likely to approve such distributions, Mr. Goodman is actively in litigation in Texas to remove the current trustee of the children's trust. Ms. Hutchins appears to be contractually obligated to support this request.

The Court is cognizant of Mr. Goodman's assertion that he has no legal right to compel financial support from Ms. Hutchins any more than he can compel support from his natural children. However, under the unique facts presented, the jury should be given an opportunity to determine the extent to which Ms. Hutchins' interest in the children's trust is a financial resource of Mr. Goodman. While there is no clear legal precedent for this approach, the adult adoption scenario created by Mr. Goodman in this case is itself unprecedented and the Court cannot ignore the practical implications of directing trust assets to Ms. Hutchins.

To be clear, the entire children's trust is not at issue in this case and additional discovery, if any, with respect to the assets of the trust will be limited. The issue is the value of Ms. Hutchins' one-third interest in the children's trust. While the Court will consider any request for additional discovery narrowly tailored to address this issue, most of the information required to determine Ms. Hutchins interest should already be available to the Plaintiffs.³

Based on the foregoing, it is hereby,

ORDERED AND ADJUDGED that Plaintiffs' Motion for Emergency Relief is GRANTED. Plaintiffs may seek discovery relating to the adult adoption of Heather Hutchins. Within 10 days of the date of this Order, Plaintiff may file a specific request for additional financial discovery relating to the value of Heather Hutchins' interest in the

³ Tax returns, balance sheets and income statements for the children's trusts for the past 7 years have already been produced.

children's trust. Any such request shall be narrowly tailored to the issue identified by the Court and shall not be directed to the personal assets of Ms. Hutchins beyond her one-third interest in the trust. Heather Hutchins' interest in the children's trust may be considered in connection with assessing Defendant John Goodman's financial resources. The Court will determine at a later hearing the manner in which this evidence may be presented.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida this 26th day of January, 2012.



JUDGE GLENN D. KELLEY
CIRCUIT COURT JUDGE

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