FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-4017

JEFFREY AMMEEN,

Appellant,

v.

WADE SJOGREN, individually
and as Co-Trustee of the Kirsten
Ammeen and Issue Year 2002
Trust,

Appellee.

On appeal from the Circuit Court for Duval County.
Jack Schemer, Judge.

January 11, 2021

ROBERTS, J.

Appellant Jeffrey Ammeen, as guardian and father of J.A. and A.A., sued appellee Wade Sjogren, trustee for the Kirsten Ammeen and Issue Year 2002 Trust (the Trust), for breach of trust. The Duval County Circuit Court ultimately entered final summary judgment in favor of the appellee, finding the trust beneficiary, J.A.'s and A.A.'s mother Kirsten Ammeen (Kirsten), had consented to the relinquishment of any interests in, and the termination of, the Trust in 2009. In doing so, Kirsten bound J.A. and A.A., who were permissible appointees, not beneficiaries, of the Trust. The court concluded J.A. and A.A. lacked standing to sue the appellee

for breach of trust. We affirm the final summary judgment for the following reasons.

Facts

The appellant and Kirsten were married in 2001 and divorced in 2008. They shared two daughters, J.A. and A.A. In 2002, Kirsten's mother, Jane Sjogren (the Settlor), established the Trust. Kirsten was the trust beneficiary and held a testamentary power of appointment over the Trust, exercisable at her death and only in her will. The Trust contained the following relevant provisions:

> (2)(b) Upon the death of Settlor's daughter, Kirsten Ammeen, the then remaining balance of the Trust estate shall be distributed to, or held in trust for the benefit of, such person or persons among the issue of Settlor's daughter, Kirsten Ammeen, and upon such estates and conditions as Settlor's daughter, Kirsten Ammeen, shall appoint by Will, making specific reference to this power. Any unappointed property shall be held for the benefit of the spouse of Settlor's daughter, Kirsten Ammeen, if he is then living and if he was married to and living with Settlor's said daughter at the time of her death[.]
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> . . . .
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> (2)(c) Upon the death of Settlor's daughter's spouse, or if Settlor's daughter, Kirsten Ammeen, did not have a spouse (or such spouse was not married to and living with Settlor's said daughter) at the time of her death, the then remaining balance of the Trust estate, or such unappointed property, as the case may be, shall be distributed to, the then living issue of Settlor's daughter, Kirsten Ammeen, per stirpes[.]
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> . . . .
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> (4)(a) Whenever Trustees, in their discretion, determine that a trust, or any part thereof, should be terminated for any reason, Trustees, without any liability to any person whose interest may be affected, shall

> terminate such trust, or part thereof, and shall distribute the terminated portion of the trust to the individual or individuals at that time eligible to receive the income therefrom.

In 2007, disputes arose within the Settlor's family over various family assets, which led to Kirsten and her two sisters (the sisters) suing the appellee and another brother (the brothers), as well as the Settlor.

On June 23, 2009, the parties entered into a mediated Settlement Agreement, which they read in open court in New Jersey. The Settlement gave the brothers all interest in a company called Whibco, Inc., while the sisters each took interest in a company called Land Associates, LLC. To accomplish the transfer of assets, the sisters agreed to transfer their interests (along with their spouses' and children's interests) in their individual 2002 trusts[1] to the brothers and the Settlor. The Settlement authorized the appellee to take various discretionary actions to enforce it.

Thereafter, disputes arose over the Settlement, and the parties proceeded to binding arbitration. In 2014, a New Jersey court found the Settlement was valid, binding, and enforceable. The court noted that because Florida law was implicated, a Florida court needed to declare that no provision of the Settlement was illegal or unenforceable.

In March 2015, Kirsten died without a will. The appellant opened an intestate estate for her and was appointed guardian of the estates of J.A. and A.A.

In August 2015, the Duval County Circuit Court found Kirsten's estate was bound by the terms of the Settlement. The court found the sisters consented to the appellee exercising his power to terminate each of their 2002 trusts in order to effectuate the Settlement and such exercise of this power was not a breach of his fiduciary duty to the sisters. In 2016, after receiving

[1] Each sister had an Issue Year 2002 Trust in her name.

confirmation under Florida law, the New Jersey court entered a final order effectuating the Settlement.

Earlier in 2016, the appellant had initiated the breach of trust lawsuit against the appellee in Duval County. The Duval County Circuit Court entered summary judgment in favor of the appellee. The court found that Kirsten had consented to the relinquishment of any interests in, and the termination of, the Trust before her death and that her interests were deemed to have passed on June 23, 2009, when the Settlement was entered in open court. The court found J.A. and A.A. were only permissible appointees before 2009 and were not beneficiaries; therefore, they were bound under section 736.0302(1), Florida Statutes (2019), to Kirsten's relinquishment of rights. The court granted final summary judgment in favor of the appellee because J.A. and A.A. lacked standing to sue for breach of trust. This appeal followed.

Analysis

We review the final summary judgment *de novo*. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

Most of the appellant's arguments on appeal rely on two assumptions in order to be successful. First, the appellant assumes that the Settlement was not valid, binding, or enforceable until, at earliest, the 2015 Florida court order finding the Settlement valid or, later, the 2016 New Jersey court order effectuating the Settlement. This assumption has already been rejected numerous times. Not only in the order on appeal, but also by several previous orders finding the Settlement was binding on the parties in 2009.[2] The Settlement was binding and enforceable when it was entered into open court in New Jersey on June 23, 2009. *See Pascarella v. Bruck*, 462 A.2d 186, 189 (N.J. Super. Ct.

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[2] Notably, the appellant's own motion for summary judgment in the case stated that "[a] Settlement Agreement was entered in 2009 . . . under which . . . the Sisters relinquished their interests in various trusts."

App. Div. 1983). By the time of Kirsten's death in 2015, six years had passed since she relinquished any right she had in the Trust.

Second, the appellant assumes that J.A. and A.A. were beneficiaries of the Trust. This is incorrect. Kirsten was the beneficiary of the Trust. Subsection (4) of the Trust makes clear that during Kirsten's lifetime, the Trust could have been terminated at the trustee's discretion and all assets distributed to Kirsten alone. Were that to have happened, J.A. and A.A. were not guaranteed to receive anything from the Trust. Further, subsection (2) of the Trust makes clear that J.A. and A.A. could not have any interest in the Trust until Kirsten's death and after she appointed them as beneficiaries in her will. Section 736.0103(4), Florida Statutes (2019), defines "beneficiary" to include "a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee." Section 736.0103(4) also provides,

> An interest as a permissible appointee of a power of appointment, held by a person in a capacity other than that of trustee, is not a beneficial interest for purposes of this subsection. Upon an irrevocable exercise of a power of appointment, the interest of a person in whose favor the appointment is made shall be considered a present or future beneficial interest in a trust in the same manner as if the interest had been included in the trust instrument.

J.A. and A.A. were only permissible appointees, not beneficiaries, while Kirsten was alive.

As the holder of a limited power of appointment, Kirsten could appoint among a specified class or class of individuals. *See Phipps v. Palm Beach Tr. Co.*, 196 So. 299, 301 (Fla. 1940). The class of persons included her issue, J.A. and A.A., who were permissible appointees. The class could have expanded had Kirsten had more children by birth or adoption. *See Dennis v. Kline*, 120 So. 3d 11, 18–19 (Fla. 4th DCA 2013). The class could have been restricted had Kirsten disavowed either J.A. or A.A. Thus, the class of potential appointees remained open and subject to defeasance

until Kirsten's death in 2015. *See Anderson v. Dimick*, 77 So. 2d 867, 869 (Fla. 1955). Subsection (2)(b) of the Trust directed that upon Kirsten's death, the Trust was to be distributed to "such person or persons among the issue" of Kirsten. J.A. and A.A. were nonexclusive members of an open class of potential appointees. They were not beneficiaries of the Trust.

With her power of appointment, Kirsten had the ability to represent and bind permissible appointees J.A. and A.A. *See* §736.0302(1), Fla. Stat. (2019) ("The holder of a power of appointment may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power."). *Cf. Peck v. Peck*, 133 So. 3d 587, 588 (Fla. 2d DCA 2014) (recognizing under section 736.0302(1), Florida Statutes (2012), the power of appointment gave the trust beneficiary the power to represent and bind even contingent beneficiaries). Kirsten's decision to relinquish any interest in the Trust and to consent to its termination meant that any potential interests J.A. and A.A. had in the Trust as permissible appointees were also relinquished in 2009.

The appellant argues Kirsten could not have bound J.A. and A.A. because the bad faith exception under section 736.0302(3), Florida Statutes (2019), applies. We reject this argument as conclusory. There was no finding of bad faith or fraud below, and we find no record evidence of such. Based on the foregoing, the trial court appropriately determined that J.A. and A.A. were not beneficiaries and that Kirsten relinquished any potential interest they could have had in the Trust when she entered into the Settlement in 2009. As such, they lacked standing to sue the appellee for breach of trust. Summary judgment was appropriately entered in favor of the appellee.

AFFIRMED.

RAY, C.J., and WINOKUR, J., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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