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IN THE CHANCERY COURT FOR THE STATE OF TENNESSEE
TWENTIETH JUDICIAL DISTRICT, DAVIDSON COUNTY

CARLA GIFFORD,	)	
	)	
Petitioner,	)	
	)	**Case No. 23-0279-II**
v.	)	
	)	
IN RE: ESTATE OF MARIAN WISE,	)	
	)	
Respondent.	)	

Karen Johnson Davidson County
Batch # 1124919 ORDER
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FINAL ORDER

This matter was tried before the Court on March 28, 2024. No proof was submitted as the facts are undisputed and the issues for consideration are purely legal. On March 1, 2023, Carla Gifford ("Petitioner" or "Ms. Gifford") filed a Petition to Domesticate and Enter Foreign Decree and Declaratory Judgment against the Estate of Marian Wise (the "Respondent" or "Estate"). On August 7, 2023, Petitioner filed her Second Amended Petition seeking relief under Tenn. Code Ann. § 26-6-104 and for declaratory judgment, attaching a certified copy of the December 10, 2019 Judgment of Dissolution entered by the Superior Court of the State of California for the County of Orange and the California appellate court opinion affirming the trial court's judgment.

The Court denied Respondent's motion to dismiss in an Order dated December 7, 2023 and thus this matter was heard in anticipation of entry of a final order.

Findings of Fact

Parties and Background

This case arises from a dispute regarding three pieces of real property located in Tennessee that were found to be community property in a California divorce proceeding. Ms. Gifford was previously married to non-party Daniel Greenberg ("Daniel"). Daniel's mother, Marian Wise ("Marian" or "Decedent"), owned one of the Tennessee properties with Daniel and clouded title

to the other two properties with a promissory note and deed of trust in her favor, as explained in detail below. On July 21, 2019, Marian passed away. She was survived by three adult children: Mathew, Mitchell, and Daniel Greenberg.

The divorce proceedings were initiated in California and resulted in a Judgment of Dissolution entered by the Superior Court of the State of California for the County of Orange on December 10, 2019 (the "California Judgment"), which was after Marian's death. The judgment dissolved the parties' marriage and divided the parties' property. In the California Judgment, the Court noted that the trial was completed in "episodic parts over ten days between September 2017 and September 2018," with the final trial date on September 28, 2018. The Court further noted that the "matter was deemed 'under submission' on October 23, 2018 upon the filing of the parties' closing pleadings."

Marian appeared and actively participated in each day of the trial. Although she had passed away after trial and before the California Judgment, the Court specifically found in the California Judgment that Marian was "an indispensable party and now necessary to the enforcement of any judgment on the property issues submitted to the Court." The Court found that due process had been achieved on the contested property issues and that it had personal jurisdiction over Marian to make orders.

The California Judgment and the Tennessee Properties

In the California Judgment, the Court made findings related to three pieces of real property in Tennessee and awarded Ms. Gifford an interest in each of the following:

- 2115 Acklen Avenue, Unit 10, Nashville, TN (the "Acklen Property");
- 721 Sweet Cherry Court, Nashville, TN (the "Sweet Cherry Property");
- 2641 Blakemore, Nashville, TN (the "Blakemore Property").

The California Court initially found that the Acklen Property and the Sweet Cherry Property were held in Daniel's name alone and the Blakemore Property was held in Marian's name alone. The California Court ordered the parties to convey title and possession of Ms. Gifford's interest in the above properties. The Court noted that while "a California court lacks jurisdiction to render a decree affecting title to land in another state, since the property owners are before the Court and subject to the personal jurisdiction of the Court, the Court has the power to order the parties to convey title and possession of the land anywhere."

As to the Acklen Property, the Court found that, after the parties' separation and after Daniel had been served with the Automatic Temporary Restraining Orders ("ATROS"), on April 30, 2014, Daniel gave Marian a deed of trust to secure a $700,000 promissory note and that Marian recorded the deed of trust in Davidson County on May 2, 2014 (the "Wise Deed of Trust"). However, the California Court found that this encumbered the parties' community property in violation of the ATROS and ultimately held that "the validity of any promissory notes between Daniel and Marian are Daniel's sole and separate obligation for which the community assets are not liable and cannot be legally encumbered." Further, that "Daniel's execution of the $700,000 deed of trust is found to be a fraudulent transfer of the parties' community property interest to deprive Carla of her legal rights." The California Court awarded Ms. Gifford a 50% interest in the Acklen Property. The California Court stated that "Daniel is ordered to cooperate with the Special Master and execute the necessary conveyances and agreements to sell the Acklen property."

As to the Sweet Cherry Property, the Court likewise found that, after the parties' separation and the issuance of the ATROS, on April 30, 2014, Daniel gave Marian the Wise Deed of Trust and recorded it against this property. Again, the Court found that Daniel violated the ATROS and intentionally encumbered the Sweet Cherry Property with a deed of trust in his mother's favor.

The California Court awarded Ms. Gifford 100% interest in the Sweet Cherry Property and ordered Daniel to "execute the necessary conveyances and agreements to either sell the Sweet Cherry property or transfer ownership to Carla's name alone," which "includes an order to cancel, withdraw and/or strike the Warranty Deed in Marian's name."

As to the Blakemore Property, the California Court found that the property had been put in Marian's and Daniel's names as joint tenants and that, on May 30, 2014, Daniel conveyed his interest to Marian in violation of the ATROS (the "Blakemore Quitclaim"). The Court found that the Blakemore Quitclaim "was a fraudulent conveyance and is voided." The Court awarded Ms. Gifford a 50% interest in the Blakemore Property and found that Marian was entitled to the remaining 50% to be held as tenants in common. The California Court ordered Marian "to cooperate with the Special Master and execute the necessary conveyances and agreements to sell the Blakemore property."

The Appeal

Daniel appealed the California Judgment asserting that the judgment rendered against his mother was void because she died after the matter was submitted. The appellate court found that Daniel's claims had no merit and affirmed the California Judgment. *In re Marriage of Greenberg & Gifford*, No. G058200, 2021 WL 4097756 (Cal. Ct. App. Sept. 9, 2021), *review denied* (Dec. 15, 2021). Specifically, the appellate court held:

> Daniel contends the trial court lacked jurisdiction over Marian and a judgment against a dead person is void. We are not persuaded.
>
> We see no reason why Marian's death would have precluded entry of judgment, which had already been submitted. (Code of Civ. Proc. § 669 ["If a party dies after trial and submission of the case to a judge sitting without a jury for decision or after a verdict upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon"].) We need not reach the merits of this claim, however, because Daniel offers no authority to support his standing to bring a jurisdictional appeal on behalf of Marian, who is not a party to this appeal. Marian, not Daniel,

> was the party allegedly aggrieved by the trial court's orders. (*In re J.T.* (2011) 195 Cal. App. 4th 707, 717.) An appellant " 'lacks standing to raise issues affecting another person's interest.' " (*Ibid.*) We find no error.

Id. at *6. Daniel appealed, but the Supreme Court of California denied review.

The Probate Estate

On November 14, 2019, Daniel, along with his brothers, Mitchell and Mathew Greenberg, filed a Petition to Admit Marian's Will to Probate in the Circuit Court for Davidson County, Tennessee, Docket No. 19P2049. That same day, an Order Admitting Will to Probate was entered and Letters Testamentary issued to Mitchell Greenberg (the "Executor"). The Executor published Notice to Creditors notifying that claims must be filed within a certain timeframe; otherwise, the creditor's claim would be barred.

On April 17, 2020, Ms. Gifford filed a claim against the Estate for her interest in the Blakemore Property, referencing the California Judgment. On July 29, 2020, Ms. Gifford voluntarily withdrew her claim, citing that the California Judgment was pending appeal.

On May 21, 2021, the probate court entered an Order for Sale of Real Property to Pay Debts and Approval of Purchase & Sale Agreement, which ordered the Blakemore Property to be brought into the Estate. According to the Certificate of Service, Ms. Gifford did not receive a copy of the Order. The Executor's Deed transferring the Blakemore Property to the Estate was recorded in Davidson County on November 12, 2021.

Conclusions of Law

The Court already found, in its December 7, 2023 Order, that the California Judgement is a valid foreign judgment eligible for enrollment pursuant to the Uniform Enforcement of Foreign Judgments Act ("UEFJA") as adopted in Tennessee at Tenn. Code Ann. § 26-6-101, *et seq.* Defendant had the opportunity to demonstrate that it is not entitled to full faith and credit. The

Court finds Defendant has failed to do so and thus GRANTS the Petition to enroll the California Judgment as a foreign judgment.

Petitioner also seeks a declaratory judgment, pursuant to the Tennessee Declaratory Judgment Act at Tenn. Code Ann. § 29-14-102 and the California Judgment, that Petitioner is the legal owner of 50% of the Blakemore Property because the Blakemore Quitclaim is void, and the Estate cannot enforce the Wise Deed of Trust because it is also void. Respondent asserts that the Court does not have jurisdiction to declare the Blakemore Quitclaim void because pursuant to Tenn. Code Ann. § 31-2-103, the Blakemore Property immediately vested in Marian's heirs or beneficiaries, which occurred prior to entry of the California Judgment. Further, that the Wise Deed of Trust is an asset of the Estate and resolution of its validity should be left to the Probate Court handling the probate of the Estate. For many of the same reasons the Court denied Respondent's Rule 12 Motion to Dismiss and recognized the validity of the California Judgment pending proof otherwise, the Court finds that it does have jurisdiction to grant the requested declaratory judgment and grants same in this Order.

Regarding the Blakemore Property, the Court finds that the California Judgment voided the Blakemore Quitclaim and, even though issued after Marian's death, pursuant to California Code of Civil Procedure § 669, as explained in the December 7, 2023 Order, and as found by the California Court of Appeals, "[i]f a party dies after trial and submission of the case to a judge sitting without a jury for decision or after a verdict upon any issue of fact, and before judgment, the court may nevertheless render judgment thereon." *In re Marriage of Greenberg & Gifford*, No. G058200, 2021 WL 4097756, at *6 (Cal. Ct. App. Sept. 9, 2021), *review denied* (Dec. 15, 2021). Therefore, because the Blakemore Quitclaim was void, or a legal nullity, it could not operate pursuant to Tenn. Code Ann. § 31-2-103, to transfer the Blakemore Property to Marian's heirs or

beneficiaries. The only interest that could transfer from Marian to her heirs or beneficiaries was a valid interest in the Blakemore Property, which the California Judgment defined as a 50% ownership interest. Thus, Petitioner remains a 50% owner of the Blakemore Property.

In the California Judgment, the Wise Deed of Trust was also found to be void as the result of a fraudulent conveyance, and that Petitioner retained an unencumbered 50% interest in the Acklen Property and unencumbered 100% interest in the Sweet Cherry Property. Again, recognizing the validity of the California Judgment and that it, in effect, pre-dated Marian's death, the Wise Deed of Trust is not an asset of the Estate as it has no legal validity. Thus, the Court declares it void pursuant to the California Judgment.

Conclusion

It is therefore, ORDERED, ADJUDGED, and DECREED that the California Judgment is ENROLLED as a foreign judgment pursuant to Tenn. Code Ann. § 26-6-101, *et seq.*

IT IS FURTHER ORDERED, ADJUDGED and DECREED that a Declaratory Judgment is ENTERED in favor of Petitioner pursuant to Tenn. Code Ann. § 29-14-102, and the Court FINDS that Petitioner is the legal owner of 50% of the Blakemore Property and the Blakemore Quitclaim is void, and the Wise Deed of Trust is also void.

Costs are taxed to Respondent.

s/Anne C. Martin

ANNE C. MARTIN
CHANCELLOR, PART II

I HEREBY CERTIFY THAT THIS IS A TRUE COPY OF ORIGINAL INSTRUMENT FILED IN MY OFFICE.
THIS 19th DAY OF April 2024
MARIA M. SALAS, CLERK & MASTER
BY _____ DEPUTY

cc: John T. Maher
Nicholas A. Bellamy
The Kennedy Law Firm, PLLC
127 South Third Street
Clarksville, TN 3704-3403
jmaher@klflaw.net
nbellamy@klflaw.net
melisa@klflaw.net

Adam Barber
Martin Heller Potempa & Sheppard, PLLC
2122 21st Avenue South
Nashville, Tennessee 37212
abarber@mhpslaw.com

RULE 58 CERTIFICATION

A copy of this Order has been served by U.S. Mail upon all parties or their counsel named above.

s/Megan Broadnax
Deputy Clerk & Master

April 18, 2024
Date