

November 19, 2015 Session

ALEXIS BREANNA GLADDEN v. CUMBERLAND TRUST AND INVESTMENT COMPANY, ET AL.

Appeal from the Circuit Court for Hamblen County

No. 12-CV-119 Thomas J. Wright, Judge

No. E2015-00941-COA-R9-CV-FILED-MARCH 24, 2016

We granted an interlocutory appeal pursuant to Tenn. R. App. P. 9 in this case to consider whether the signature of the trustee of the Alexis Breanna Gladden Irrevocable Trust ("the Trust") on an investment/brokerage account agreement agreeing to arbitration binds the minor beneficiary of the Trust to conduct arbitration of unknown future disputes or claims. We find and hold that while the plain language of the trust agreement does allow the trustee to agree to arbitrate claims and disputes that have arisen, it does not allow the trustee to agree to arbitration of unknown future disputes or claims. Therefore, the signature of the trustee of the Trust on an investment/brokerage account agreement agreeing to arbitration does not bind the minor beneficiary to conduct arbitration of unknown future disputes or claims.

Tenn. R. App. P. 9 Interlocutory Appeal by Permission; Judgment of the
Circuit Court Reversed; Case Remanded

D. MICHAEL SWINEY, CHIEF JUDGE, delivered the opinion of the court, in which CHARLES D. SUSANO, JR., and JOHN W. MCCLARTY, JJ., joined.

F. Braxton Terry, Morristown, Tennessee and W. Lewis Jenkins, Jr., Dyersburg, Tennessee, for the appellant, Alexis Breanna Gladden b/n/f Wade Harvey, Jr.

Mark D. Griffin and Will E. Routt, Memphis, Tennessee, for the appellees, Wunderlich Securities, Inc. and Albert M. Alexander, Jr.

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OPINION

Background

Alexis Breanna Gladden ("the Minor") is a minor who was catastrophically injured at a young age and suffered severe disabilities. The Trust was created for the benefit of the Minor in Hamblen County, Tennessee, and was approved by and subject to the order of the Circuit Court for Hamblen County ("the Trial Court"). As pertinent to this appeal, the trust agreement establishing the Trust by order of the Trial Court ("Trust Agreement") provides:

Section 11.01 Introduction to Trustee's Powers

The Trustee may exercise, without prior approval from any court, all powers conferred by this trust agreement and any other powers conferred by law, including, without limitation, those powers set forth under the common law or any fiduciary powers act or other laws of the State of Tennessee, except as otherwise specifically provided in this agreement. Each power conferred upon the Trustee by state or federal statutes shall be subject to any express limitations or contrary directions contained in this agreement.

Section 11.05 The Trustee's Administrative Powers

In addition to the other powers granted the Trustee in other provisions of this agreement, the Trustee shall have the following administrative powers:

(e) Settlement Powers

The Trustee may settle, by compromise, arbitration or otherwise any and all claims and demands in favor of or against, or in any way relating to, any trust created under this agreement upon such terms as the Trustee may determine. The Trustee may release or abandon any claims in favor of this trust.

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Wade Harvey, Sr. ("Plaintiff") was appointed as the guardian of the Minor in June of 2011. In May of 2012, Plaintiff filed suit on behalf of the Minor against several defendants¹ alleging, among other things, failure to properly manage the Trust funds, breach of fiduciary duty, and misappropriation of the Trust funds.