SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN DIEGO
CENTRAL COURTHOUSE

TENTATIVE RULINGS - April 16, 2025

HEARING DATE: HEARING TIME: DEPT.:

JUDICIAL OFFICER:

CASE NO.:37-2023-00039951-CU-PO-CTL

CASE TITLE: Florey vs County of San Diego [IMAGED]

CASE TYPE: (U)Other PI/PD/WD: PI/PD Other

HEARING TYPE:

TENTATIVE RULING: DEFENDANTS' JOINT DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT ("FAC") BASED ON LACK OF STANDING is SUSTAINED without leave to amend.

Defendants jointly demur to the FAC of Plaintiff Torriana Florey, in her individual capacity and as successor in interest for Arabella McCormack ("Plaintiff"), based on the assertion that Plaintiff lacks standing. This case involves the tragic death of Arabella McCormack, which was allegedly caused by her adoptive parents. It is undisputed that Arabella McCormack's adoptive mother is ineligible for Arabella McCormack's inheritance, which would presumably include the claims within this action. Plaintiff asserts she is entitled to assert the causes of action, including for the wrongful death of Arabella McCormack, based on having the right to Arabella McCormack's inheritance, since Arabella McCormack died intestate. (Code Civ. Proc., §§ 377.10, 377.11, 377.30, 377.60; Prob. Code, § 6402; *Scott v. Thompson* (2010) 184 Cal.App.4th 1506, 1510.) Plaintiff alleges she is "Decedent's successor in interest" and that "Torriana Florey is and was Arabella's biological mother whose parental rights with respect to Arabella have not been terminated." (FAC, ¶ 5.) Plaintiff does not dispute that if her parental rights were terminated as to the right of inheritance from Arabella McCormack, then Plaintiff does not have standing.

When considering a demurrer, "[t]he pleading must be read as if it contained all matters of which the court could properly take judicial notice even in the face of allegations in the pleading to the contrary." (*Weiner v. Mitchell, Silberberg & Knupp* (1980) 114 Cal.App.3d 39, 47.) "As a general rule in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be." (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The Court must "accept as true all facts that may be implied or reasonably inferred from facts expressly alleged, unless they are contradicted by judicially noticed facts." (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1468.) "The courts, however, will not close their eyes to situations where a complaint contains allegations of fact inconsistent with attached documents, or allegations contrary to facts which are judicially noticed." (*Del E. Webb, supra,* 123 Cal.App.3d at 604.)

In seeking judicial notice, Defendants and Plaintiff rely upon Evidence Code section 452.

> Judicial notice may be taken of the following matters to the extent that they are not embraced within Section 451:

> (a) The decisional, constitutional, and statutory law of any state of the United States and the resolutions and private acts of the Congress of the United States and of the Legislature of this state.
>
> (b) Regulations and legislative enactments issued by or under the authority of the United States or any public entity in the United States.
>
> (c) Official acts of the legislative, executive, and judicial departments of the United States and of any state of the United States.
>
> (d) Records of (1) any court of this state or (2) any court of record of the United States or of any state of the United States.
>
> …
>
> (h) Facts and propositions that are not reasonably subject to dispute and are capable of immediate and accurate determination by resort to sources of reasonably indisputable accuracy.

(Evid. Code, § 452.)

"A demurrer is simply not the appropriate procedure for determining the truth of disputed facts." (*Joslin v. H.A.S. Ins. Brokerage* (1986) 184 Cal.App.3d 369, 374 [Citation omitted].) The court in *Joslin* adopted an approach as to taking judicial notice that "provides maximum flexibility while still insisting disputed factual issues cannot be resolved on demurrer" – the approach being that "judicial notice of matters upon demurrer will be dispositive only in those instances where there is not or cannot be a factual dispute concerning that which is sought to be judicially noticed." (*Id*. at 375 [Citation omitted].)

While this Court may take judicial notice of the existence of certain documents, such as websites and declarations filed in a court case that are not reasonably subject to dispute, the same is not true of their factual content. (*Jolley v. Chase Home Finance, LLC* (2013) 213 Cal.App.4th 872, 889.) "While courts take judicial notice of public records, they do not take notice of the truth of matters stated therein." (*Herrera v. Deutsche Bank National Trust Co.* (2011) 196 Cal.App.4th 1366, 1375.) "Where…judicial notice is requested of a *legally operative* document—like a contract—the court may take notice not only of the fact of the document and its recording or publication, but also facts that clearly derive from its *legal effect*. [Citation] Moreover, whether the fact derives from the legal effect of a document or from a statement within the document, the fact may be judicially noticed where...the fact is not reasonably subject to dispute." (*Scott v. JPMorgan Chase Bank, N.A.* (2013) 214 Cal.App.4th 743, 754.)

Judicial notice is granted as to Defendants' Exhibit A as Defendants do not seek judicial notice of the facts asserted therein, but for the purposes of demonstrating the existence of competing inheritance claims. Defendants' Exhibit B is a declaration of Steven Ratner filed in *A.M., et al. v. San Diego Rock Church, et al.*, which was included to "authenticate the official copy of the County of San Diego death certificate of Arabella McCormack." The declaration itself contains a legal effect – it authenticates the death certificate of Arabella McCormack that was included in a court record, of which this Court can take judicial notice. The Court finds Defendants may reply upon the legal effect of the declaration's

existence – the attached death certificate can be treated as authentic. Finally, as to Exhibits D-H, the Court grants judicial notice as they are records of a court.

Defendants also request judicial notice of Exhibits I, J, and K in the reply. Exhibit I is a copy of Certificate of Live Birth of Arabella McCormack officially registered and placed on file in the office of the San Diego County Recorder/Clerk dated December 21, 2023. While a party seeking judicial notice "should furnish the appellate court with a copy of such document or record certified by its custodian," Plaintiff does not demonstrate the Court cannot take judicial notice of an official record, which Plaintiff does not reasonably dispute is the officially registered Certificate of Live Birth of Arabella McCormack. (*Wolf v. CDS Devco* (2010) 185 Cal.App.4th 903, 915.) Judicial notice is granted.

Exhibit J is excerpts from the Judicial Branch Report to the Legislature: Tribal Customary Adoption. Plaintiff does not dispute that judicial notice of Exhibit J is proper, but Plaintiff asserts the "new evidence" should not be considered. While the "general rule of motion practice…is that new evidence is not permitted with reply papers" and "should only be allowed in the exceptional case," this is a demurrer where "[t]he pleading must be read as if it contained all matters of which the court could properly take judicial notice even in the face of allegations in the pleading to the contrary." (*Carbajal v. CWPSC, Inc.* (2016) 245 Cal.App.4th 227, 241 [Citation omitted]; *Weiner v. Mitchell, Silberberg & Knupp* (1980) 114 Cal.App.3d 39, 47.) The cases cited by Plaintiff do not involve a demurrer. Judicial notice is granted.

Exhibit K is excerpts from the California Department of Social Services All County Letter No. 10-47. As with Exhibit J, Plaintiff does not dispute that judicial notice of Exhibit J is proper, but Plaintiff asserts the new evidence should not be considered. The cases cited by Plaintiff do not involve a demurrer. While the "All-County Letter 10-47" has been treated "as interpretive," this does not prevent the Court from taking judicial notice of the existence of the letter. (*In re A.S.* (2018) 28 Cal.App.5th 131, 147.) Judicial notice is granted. Plaintiff does not oppose the remaining Exhibits sought to be judicially noticed. Such requests for judicial notice are granted. Plaintiff's unopposed requests for judicial notice are granted under Evidence Code section 452.

Tribal Customary Adoptions (TCA) were codified in Welfare and Institutions Code section 366.24, which was enacted under Assembly Bill 1325. (Welf. & Inst. Code, § 366.24.) "Termination of parental rights is ***<u>not required</u>*** to effect the tribal customary adoption." (Welf. & Inst. Code, § 366.24(a) [Emphasis added].)

> According to legislative analysis in the Assembly, the procedures enacted under Assembly Bill 1325 "allow Indian children in the child welfare system to be provided with the permanence offered by adoption without first terminating the birth parents' rights through the use of tribal customary adoption." (Assem. Conc. Sen. Amends. to Assembly Bill 1325 (2009–2010 Reg. Sess.) as amended Sept. 2, 2009.) This analysis explains, "According to the author [of AB 1325], the termination of parental rights which is currently a prerequisite to adoption of a child is 'totally contrary to many tribes' cultural beliefs and it is, in fact, associated with some of the most oppressive policies historically used against tribes and Indian people ...' By contrast, historically and traditionally, most tribes have practiced adoption by custom and ceremony. In addition, the termination of parental rights can disrupt the **<u>child's</u>** ability to be a full member of the tribe or participate fully in tribal life. The author states that the use of guardianship as a means of avoiding these complications is not a sufficient solution because it does not offer the

> same permanency as adoption and does not allow guardians to receive adoption assistance benefits." (*Ibid.*)

(*In re H.R.* (2012) 208 Cal.App.4th 751, 760–761 [Emphasis added].) "[T]ribal customary adoption is designed to provide the **minor** with the same stability and permanence of traditional adoption without terminating parental rights. Thus, an **Indian child's** interest in stability and permanence no longer provides a counterbalance to the child's interest in maintaining his or her tribal connection." (*Id*. at 763 [Emphasis added].)

Plaintiff asserts the key feature of the statutory framework is that the Tribal Customary Adoption does not result in a termination of parental rights, citing *In re Sadie S.* (2015) 241 Cal.App.4th 1289, which states "TCA 'is an alternative to a standard adoption and protects both the Tribe's and the child's interests in maintaining tribal membership by formalizing an adoption by an individual selected by the Tribe without terminating parental rights.'" (*In re Sadie S.* (2015) 241 Cal.App.4th 1289, 1295 [Citation omitted].)

> The general statutory preference is termination of parental rights and placement for adoption (§ 366.26, subd. (b)(1)), but "[i]n 2010, legislation was enacted establishing 'tribal customary adoption' as an alternative permanent plan for a dependent Indian child who cannot be reunited with his or her parents. Tribal customary adoption is intended to provide an Indian child with the same stability and permanency as traditional adoption under state law without the termination of parental rights, which is contrary to the cultural beliefs of many Native American tribes." (*H.R., supra,* 208 Cal.App.4th at p. 755, 145 Cal.Rptr.3d 782; § 366.24, subd. (a) [adoption through custom, traditions, or law of an Indian child's tribe does not require termination of parental rights].)

(*In re A.S.* (2018) 28 Cal.App.5th 131, 143.)

Plaintiff makes great effort to distinguish traditional adoptions from adoptions under the TCA to assert that parental rights survive under the TCA. While there is no direct authority on point, the Court is unconvinced the TCA was intended to alter traditional adoptions as far as the ultimate effect of changing inheritance rights of the parents. The TCA is clearly focused on "the child's best interest." (Welf. & Inst. Code, § 366.24(c)(7); *In re Sadie S.*, *supra*, 241 Cal.App.4th at 1296.) Plaintiff fails to point to any provision of the TCA that indicates the intent was to protect a biological parent's inheritance rights. Importantly, the TCA provides "[t]here shall be a conclusive presumption that **any parental rights** or obligations not specified in the tribal customary adoption order shall vest in the tribal customary adoptive parents." (Welf. & Inst. Code, § 366.24(c)(10) [Emphasis added].) "A tribal customary adoption order evidencing that the Indian child has been the subject of a tribal customary adoption shall be afforded full faith and credit and shall have the same force and effect as an order of adoption authorized by this section." (Welf. & Inst. Code, § 366.26(i)(2).) The Court interprets the above provisions to mean that if a TCA order does not specify that a biological parent retains inheritance rights, then there is a conclusive presumption that the tribal customary adoptive parents are vested with inheritance rights.

Here, the certified Tribal Customary Adoption Order ("TCAO") does not provide Plaintiff with any inheritance rights. (Defendants' Exhibit F.) Therefore, there is a conclusive presumption that Plaintiff's inheritance, if any existed, from Arabella McCormack vested in the tribal customary adoptive parents as a result of the TCAO. (Welf. & Inst. Code, §

366.24(c)(10).) Plaintiff cannot dispute that the TCAO is valid and enforceable as Plaintiff never petitioned to modify or set aside the TCAO, and the time to do so has passed. (*Slone v. Inyo County Juvenile Court* (1991) 230 Cal.App.3d 263, 268; *In re J.Y.* (2018) 30 Cal.App.5th 712, 722; Fam. Code, §§ 7642 and 9102; Defendants' Exhibit H; FAC, ¶ 138.)

In sum, Defendants have demonstrated that, based on judicially noticeable information, Plaintiff lacks standing. The demurrer is sustained without leave to amend.

The Court notes that some defendants filed a "motion to file Exhibits E, F, G and H to the Notice of Lodgment of Exhibits in Support of Defendants' Joint Demurrer to Plaintiff's First Amended Complaint under seal." (ROA # 163.) It appears that said defendants did not reserve a hearing date for their motion. Defendants' motion is not before the Court. (See Local Rule 2.1.19 [failure to reserve a date for hearing will result in motion not being heard].)