

Cause No. DC-24-19378

IN RE: THE 1975 RICHARD ROGERS  
TRUST

RYAN ROGERS and TOLLESON  
PRIVATE BANK,  
Petitioners,

v.

RICHARD ROGERS, ET AL.,  
Respondents.

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RICHARD R. ROGERS, *individually and as  
primary beneficiary of the Mary Kay – Richard R.  
Rogers 1975 Trust*,  
Petitioner,

v.

RYAN T. ROGERS, *individually and as  
personal trustee of the Mary Kay – Richard R.  
Rogers 1975 Trust*, and  
TOLLESON PRIVATE BANK, *individually  
and as corporate trustees of the Mary Kay–Richard  
R. Rogers 1975 Trust*,  
Respondents.

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OLIVIA ABBOTT,  
Petitioner,

v.

RYAN T. ROGERS, ET AL.  
Respondents.

IN THE DISTRICT COURT

160th JUDICIAL DISTRICT OF

DALLAS COUNTY, TEXAS

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**RICK ROGERS'S RESPONSE IN OPPOSITION TO  
OLIVIA ABBOTT'S RULE 91a MOTION TO DISMISS**

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## I. INTRODUCTION

In February 2025—months after this litigation began—Richard Rogers (“**Richard**”), then 81 years old, and his wife, Nancy Rogers (“**Nancy**”), purported to adopt an adult woman, Olivia Abbott (“**Olivia**”). Olivia now claims to be a beneficiary of the Mary Kay – Richard Rogers 1975 Trust (the “**Trust**”). Petitioners Ryan Rogers (“**Ryan**”) and Tolleson Private Bank (“**Tolleson**”) (together, “**Petitioners**” or “**Trustees**”) rightfully challenge this claim and ask the Court to declare that Olivia is not a Trust beneficiary. *Third Amended Petition* (“**TAP**”), ¶ 62(h). Rick Rogers agrees.

Olivia moves to dismiss under Rule 91a, but dismissal would be improper because Petitioners’ request is well-grounded in law, with at least three avenues for relief. First, when read against the governing legal backdrop in 1975, the Trust does not extend class gifts to adult adoptees. Second, the pleadings support a reasonable inference that this was a sham adoption orchestrated to undermine the settlor’s intent, precluding beneficiary status. Third, in the alternative, the Trust is ambiguous, necessitating the examination of extrinsic evidence to divine whether the settlor intended to include adult adoptees. For any of these reasons, the Motion should be denied.

## II. BACKGROUND

In 1975, Mary Kay Ash created the Trust to provide her son, Richard, and his lineal descendants, including his children Rick Rogers, Terri Rogers, and Ryan Rogers, income and distributions for their health, education, maintenance, and support (“**HEMS**”). TAP ¶¶ 30, 31. Richard sought no distributions for decades. *Id.* at ¶¶ 5, 35. Beginning in 2021, however, Richard started requesting unusually large distributions, including a so-called “catch-up” request for approximately 20 percent of the Trust corpus for years in which he voluntarily did not ask for distributions. *Id.* at ¶¶ 9, 36, 38, 45, 46.

Petitioners filed this suit in November 2024, noting their belief that Richard’s distribution requests are made for the purpose of enriching his personal estate, which will be left to individuals

who are not beneficiaries of the Trust. *Id.* at ¶ 46. Petitioners also allege other serious concerns. *Id.* at ¶¶ 42–54. A handful of months later, Richard and Nancy purportedly adopted Olivia, an adult woman, who resides in New York and has her own biological parents and siblings. *Id.* at ¶ 55. The other parties in this litigation were not informed of Olivia’s purported adoption until much later. *Id.* Yet, Olivia now claims to be a beneficiary of the fifty-year-old Trust that Mary Kay Ash set up for her son and his lineal descendants. While the Trust provides that terms like “lineal descendant” and “descendant” “include adopted persons,” the Trust does not define “adopted persons” or burden that term with any qualifiers that might indicate an intent contrary to the law in effect when the Trust was executed, let alone contain any reference to adult adoptees adopted solely for the purpose of leveraging money from the Trust. *Trust Instrument* § 1(C).<sup>1</sup> It also explicitly prohibits an adopted person’s natural heirs from “inherit[ing] through such adopted person in ascending degree.” *Id.*

In their *Third Amended Petition*, Petitioners seek, *inter alia*, a declaratory judgment that Olivia is not a Trust beneficiary. *Id.* at ¶ 62(h). Olivia filed a Motion to Dismiss under Rule 91(a), arguing that Petitioners’ request has no basis in law. Rick Rogers now files this Response in Opposition.

### III. LEGAL STANDARD

Rule 91a of the Texas Rules of Civil Procedure permits dismissal only if a claim has no basis in law or fact. Tex. R. Civ. P. 91a. “A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” *Bethel v. Quilling, Selander, Lownds, Winslett & Moser, P.C.*, 595 S.W.3d 651, 654 (Tex. 2020). For purposes of motions under Rule 91a, Courts construe pleadings liberally in favor of the nonmovant and apply fair-notice standards. *Wooley v. Schaffer*, 447 S.W.3d 71, 76 (Tex. App.—Houston [14th Dist.] 2014); *Roark v. Allen*, 633 S.W.2d 804, 810 (Tex. 1982).

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<sup>1</sup> The “Trust Instrument,” as referenced here, includes the Original Trust Agreement. See *Second Amended Petition*, pp. 84–98.

#### IV. ARGUMENTS AND AUTHORITIES

Petitioners' request for declaratory relief is well-supported by law. *First*, the Trust excludes adult adoptees as a matter of law under instructive Texas Court of Appeals precedent. *Second*, the pleadings support a reasonable inference that Olivia's adoption was a sham inconsistent with the settlor's intent. *Third*, at a minimum and in the alternative, the Trust's language is ambiguous, requiring consideration of extrinsic evidence to ascertain the settlor's intent. Any one of these reasons compels denial of Olivia's Motion to Dismiss.

##### A. The Trust excludes adult adoptees from the beneficiary class as a matter of law.

###### **(1) Because the Trust's plain language does not demonstrate the settlor's intent to include adopted adults, the Court must look to the law in effect when the Trust was established as an aid to construction.**

"The construction of an unambiguous trust instrument is a question of law for the trial court." *Estate of Rodriguez*, No. 04-17-00005-CV, 2018 WL 340137, at \*3 (Tex. App.—San Antonio Jan. 10, 2018, no pet.) (citation omitted). "The overriding principle to be observed in construing a trust instrument is to ascertain the settlor's intent with the view of effectuating it." *Lee v. Rogers Agency*, 517 S.W.3d 137, 145 (Tex. App.—Texarkana 2016, pet. denied) (citing *Parrish v. Mills*, 106 S.W. 882 (Tex. 1908)). It is the settlor's intent at the time of the trust's creation that controls. *Coffee v. William Marsh Rice Univ.*, 408 S.W.2d 269, 273 (Tex. App.—Houston 1966, writ ref'd n.r.e.) (citing RESTATEMENT (FIRST) OF TRUSTS § 4). Texas courts have made clear that the statutes in effect at the time the trust is established serve as a "constructive aid" in understanding the settlor's intent—even where the term at issue is unambiguous. *Cutrer v. Cutrer*, 345 S.W.2d 513, 516–17 (1961) (applying the adoption statute in effect at the time the will was executed to determine the status of adopted children as "children"); *In re Ray Ellison Grandchildren Tr.*, 261 S.W.3d 111, 118, 126 (Tex. App.—San Antonio 2008, pet. denied) (relying on the statutes in effect at the time to determine that "descendants," as used in the trust, unambiguously excluded adopted adults).



Though the Trust here includes “adopted persons” within the scope of “descendants” and “lineal descendants,” this language only welcomes adoptees generally; it does not resolve the distinct question of whether an *adult* adoptee, like Olivia, fits within those terms and can be considered a beneficiary. See *Trust Instrument* § 1(C). To answer that question, the Court must look to how those terms were commonly understood and interpreted under Texas law at the time the Trust was established. *Curter*, 345 S.W.2d at 516; *In re Ray Ellison*, 261 S.W.3d at 118; *Carpenter v. Carpenter*, No. 02-10-00243-CV, 2011 WL 5118802, at \*3 (Tex. App.—Fort Worth Oct. 27, 2011, pet. denied)(“To determine whether [claimants] are entitled to a share of the trust assets, we must look to the trust instrument itself **and the law in effect at the time the trust became effective.**” (emphasis added)); *The Episcopal Church v. Salazar*, 547 S.W.3d 353, 419 (Tex. App.—Fort Worth 2018), *aff’d in part, rev’d in part on other grounds sub nom. Episcopal Diocese of Fort Worth v. Episcopal Church*, 602 S.W.3d 417 (Tex. 2020) (“The construction of a trust instrument is a question of law for the court. We look to the law that was in effect at the time that the trust became effective.” (internal citations omitted)).

Here, the Trust’s text, when read against the statutory backdrop in effect at the time of the Trust’s creation, does not include adult adoptees as beneficiaries, and Olivia has pointed to nothing to indicate that Mary Kay Ash “intended, contrary to the law in effect at the time the trust became effective,” to include adult adoptees “as lineal descendants and beneficiaries of [the] trust.” See *Zeller v. Allen*, No. 13-24-00200-CV, 2025 WL 3237084, at \*3–4 (Tex. App.—Corpus Christi–Edinburg Nov. 20, 2025, no pet. h.) (concluding that a biological child born out of wedlock did not “fall within the beneficiary class of ‘children and lineal descendants’” as used in the trust because “Texas law **as it existed at the time** did not recognize nonmarital children as descendants for inheritance purposes,” and the petitioner had failed to provide the court with any evidence that the grantor “intended, contrary to the law in effect at the time the trust became effective, to include non-martial, illegitimate children as lineal descendants and beneficiaries of their trust.” (emphasis added)).

**(2) Texas case law interpreting the statute in effect at the time confirms that adopted adults are unambiguously excluded.**

The Texas statute in effect up until 1995 did not permit an adopted adult to inherit *through* the adoptive line; they could only inherit *from* their adoptive parents. *Armstrong v. Hixon*, 206 S.W.3d 175, 180–81 (Tex. App.—Corpus Christi–Edinburgh 2006); *see* TEX. FAM. CODE § 162.507 (previously codified at § 16.55). In similar cases, Texas Courts of Appeals have applied the pre-1995 statute to hold that adult adoptees were unambiguously excluded as beneficiaries. *See Armstrong*, 206 S.W.3d at 181–82; *In re Ray Ellison Grandchildren Tr.*, 261 S.W.3d at 126.

For example, in *Armstrong v. Hixon*, the court concluded that an adult adopted by the decedent’s niece could not be deemed a beneficiary under the decedent’s residuary trust and affirmed the lower court’s denial of summary judgment. 206 S.W.3d at 178–79, 183, 185. There, a 1964 will provided for the testator’s estate to be held in trust for the surviving children of his brother or their descendants. *Id.* at 178. One of the brother’s children, Lucie, adopted an adult woman following the death of the testator. *Id.* at 178–79. The descendants and trustee brought suit. *Id.* at 179. The court examined whether the adopted adult could be considered a descendant and thus a beneficiary under the residuary trust established by the will. *Id.* at 179. The court there construed the unambiguous will “pursuant to the law in effect at the time of its execution,” and determined the adopted adult “could not be deemed a beneficiary under the Residuary Trust.” *Id.* at 181–83. The Court reasoned that the law in effect in 1964 did not permit an adopted adult to inherit “through” the adoptive parents and “[t]o find otherwise would be to ignore extensive intervening legislative history delineating a distinction between” the statutory language in effect in 1964 and the 1995 amendment. *Id.* at 183.

Similarly, in *In re Ray Ellison Grandchildren Trust*, the court affirmed summary judgment, determining that the settlor did not intend to include persons adopted as adults by his son in the beneficiary class of the 1982 trust. 261 S.W.3d at 113–14. There, the settlor created an irrevocable trust in 1982 for the “descendants” of his children; the trust did not define “descendants.” *Id.* at 114,

121. The settlor's son then adopted the adult children of his second wife, who claimed to be beneficiaries of the trust. *Id.* The court examined whether the term “descendants” in the trust included these adult adoptees. *Id.* at 113. The court concluded that the term “descendants” was unambiguous and did not include persons adopted as adults, relying on the statute in effect in 1982 as a constructive aid. *Id.* at 120–26. The court noted that, under the statute, adopted adults could not inherit “through” their adoptive parents—that is, they were not considered “children” of their adoptive parents with respect to third parties. *Id.*

Here, like in *Armstrong* and *In re Ray Ellison*, the pre-1995 Trust provides no indication that it intended to sweep in adult adoptees. There is no definition of “descendants” that would go beyond the law in effect at the time. The Trust simply says “descendants”—whatever it means—includes “adoptive persons”—at best, it welcomes adoptees generally, but it does nothing to define the term or express a clear intention to include adults.<sup>2</sup> The settlor is presumed to have known the law in effect at the time, and the Trust's plain language does not express a clear intention to override that understanding.

Indeed, this is precisely why Olivia's primary case, *Lehman v. Corpus Christi National Bank*, 668 S.W.2d 687 (Tex. 1984), is inapposite here and why the Court should refuse to follow it. In *Lehman*, the will at issue defined “descendants” as including “the children of the person designated, and the issue of such children, and such children and issues shall ***always include*** those who are adopted.” *Id.* at 688 (emphasis added). This language evinced an unmistakable intention that an adopted person shall be included no matter the timing or conditions of their adoption. *Id.* at 688; see *Armstrong*, 206

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<sup>2</sup> For example, “[w]hen the word ‘children’ is used in a will, absent a clear and unequivocal intent to encompass more remote descendants, the word is restricted to those descendants of the first degree.” *In re Estate of Reistino*, 333 S.W.3d 767, 770 (Tex. App.—Waco 2010, no pet.) (citations omitted). On the other hand, “the term ‘issue’ when used in a will, is to be interpreted in its ordinary sense embracing all descendants, especially where there is nothing in the language of the instrument to show that a narrower interpretation was intended.” *Atkinson v. Kettler*, 372 S.W.2d 704, 711–12 (Tex. App.—Dallas 1963), *aff'd sub nom. Kettler v. Atkinson*, 383 S.W.2d 557 (Tex. 1964).

S.W.3d at 181–82 (“*Lehman* found there was no need to look to outside law because the will itself clearly and expressly provided that descendants would ‘always include those who are adopted.’ The court based its conclusion on that expressed intent.”). Because *Lehman* involved such uniquely clear inclusionary language, looking to the statutory language would have either been futile (having no effect on the clearly expressed intent) or it would have inappropriately defeated that intent if relied upon. *See In re Ray Ellison*, 261 S.W.3d at 121 (citing *Vaughn v. Vaughn*, 337 S.W.2d 793, 796 (1960)). Here, however, consideration of the statutory context would neither defeat the settlor’s intent nor be futile, but it would instead provide a necessary and helpful constructive tool.

Thus, the Court could conclude as a matter of law Olivia Abbott, as an adult adoptee, is not a beneficiary under the Trust, and so it should deny the Motion to Dismiss.

**B. Even if adult adoptees are not categorically excluded from the Trust, Olivia’s adoption contradicts settlor intent and does not confer beneficiary status.**

Even if the Court finds that the Trust does not exclude all adult adoptees, the Court should still find the Trust excludes Olivia as an adoptee due to the circumstances of her adoption. When a court construes a trust instrument, the prevailing principle is to ascertain the settlor’s intent with a view towards effectuating it. *Lee*, 517 S.W.3d at 145 (citing *Parrish*, 106 S.W. 882). Here, giving effect to the settlor’s intent requires excluding Olivia from the beneficiary class even if adult adoptees generally may be included.

From the allegations in this case, one can reasonably infer that the adoption of Olivia was orchestrated to access Trust assets. The adoption occurred in the midst of contentious litigation, soon after the Trustees challenged Richard’s request for a large catch-up distribution and sought an Independent Medical Examination of Richard’s health. Petitioners have raised their concern that Richard’s large requests are being used to enrich his estate and support non-beneficiaries, rather than for HEMS purposes as the Trust directs. From the allegations, it is plausible that this sham adoption

is being used as a mechanism to leverage the Trustees and Beneficiaries in this lawsuit. Such an adoption, however, would contravene the settlor's intent in creating a family Trust to provide for HEMS support of Mary Kay Ash's family. The Court should see this for what it is—"an act of subterfuge which in effect thwarts the intent of [Mary Kay Ash]" and "cheats the rightful [beneficiaries]" out of security provided by the Trust. *Minary v. Citizens Fid. Bank & Tr. Co.*, 419 S.W.2d 340, 343 (Ky. 1967).

Indeed, many courts throughout the country have declined to recognize an adult adoptee's ability to take under a trust or will where, as here, the adoption appears calculated to alter a class gift in a way that frustrates the grantor's intent, regardless of the legality of the adoption. *See, e.g., Minary*, 419 S.W.2d 340; *Otto v. Gore*, 45 A.3d 120 (Del. 2012); *Davis v. Nielson*, 871 S.W.2d 35 (Mo. Ct. App. 1994); *see also Eder v. Appeal from Prob.*, No. CV146045533S, 2016 WL 1265763 (Conn. Super. Ct. Mar. 2, 2016), *aff'd sub nom. Eder's Appeal From Prob.*, 171 A.3d 506 (Conn. App. Ct. 2017). These cases distinguish adoptions reflecting longstanding familial bonds from those undertaken to thwart a grantor's intent as determined by construction of the instrument, looking to the "surrounding circumstances" of the adoption. *Eder*, 2016 WL 1265763, at \*16 (quoting *Davis*, 871 S.W.2d 35); *see also Otto*, 45 A.3d 120 at 137 ("Even if the adoption is technically proper under Wyoming law . . . that does not require us to recognize [the adoptee] as a grandchild beneficiary of [the] Trust."). Accordingly, these courts ask "whether [the settlor's] intention could be interpreted under the [trust] to include within the gift class the *particular adults adopted*." *Eder*, 2016 WL 1265763, at \*16 (quoting *Davis*, 871 S.W.2d 35) (emphasis added).

This approach is consistent with Texas case law, which emphasizes a settlor's intent,<sup>3</sup> and it is instructive here. Mary Kay Ash established the Trust to benefit Richard and his family line for HEMS

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<sup>3</sup> These out-of-state cases can be read in harmony with Olivia's primary case, *Lehman*, where the adopted adult was the stepchild of the adoptive parent and, thus, had a familial bond. 668 S.W.2d at 688.

purposes. She even qualified that an adopted person's natural heirs "shall not inherit through such adopted person in ascending degree" (i.e., an adopted person's biological parents), signaling that she sought to limit people from using adoption as a mechanism to benefit adults outside the familial line. *Trust Instrument*, § 1(C). Accepting the pleaded facts, the timing, circumstances, and secrecy surrounding Olivia's adoptions reasonably support an inference that this adoption is a subterfuge that is inconsistent with the settlor's intent to benefit Richard and his family line for HEMS purposes. That suffices to defeat a Rule 91a dismissal and permits a merits determination whether Olivia falls within the intended class.

**C. Alternatively, the phrase "adopted persons" is ambiguous, creating a fact question whether Olivia is a beneficiary.**

To the extent the Court finds that "adopted persons" may reasonably include adopted adults like Olivia, then the Court must find the phrase to be ambiguous because it is at least as reasonable—and Rick asserts, far more reasonable—to read it to exclude adopted adults, as argued above. If the Trust is deemed to be ambiguous, then extrinsic evidence would be admissible to determine the settlor's intent, and the determination cannot be made on a Rule 91a motion. Thus, should the Court conclude the language is ambiguous, the Motion must be denied and the issue resolved by a fact finder, considering extrinsic evidence as to the settlor's intent.

**V. CONCLUSION AND PRAYER**

Because Petitioners' request for a declaration that Olivia is not a beneficiary is well-supported by law, Olivia's Motion is unfounded and must be denied. Accordingly, the Court should deny the Motion and award reasonable attorneys' fees and costs.

Dated: December 2, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of December 2025, a true and correct copy of the foregoing was delivered to all counsel of record by e-mail through an electronic filing manager or to the party's electronic service provider.

/s/ Edward Jason Dennis

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