ATTACHMENT 2

THE STATE OF SOUTH CAROLINA
In The Court of Common Pleas
Ninth Judicial Circuit
County of Charleston

APPEAL FROM CHARLESTON COUNTY PROBATE COURT

Irvin G. Condon, Probate Court Judge

Probate Case No.: 2013-GC-10-1029

Circuit Court Case No.: 2014-CP-10-4336

Peter J. Wellin, Cynthia Wellin Plum and
Marjorie Wellin King — Appellants.

v.

Keith S. Wellin — Respondent.

ORDER DENYING APPELLANTS' MOTION TO ALTER OR AMEND

This matter comes before the Court pursuant to Rule 59(e), SCRCP, on Appellants' Motion to Alter or Amend this Court's Order of January 13, 2016 affirming the Probate Court's Orders. A hearing on this motion was held April 8, 2016. Having considered all of the issues raised, the arguments made and the memoranda submitted by the parties, this Court declines to modify its Order of January 13, 2016.

STANDARD OF REVIEW

In a probate appeal, the circuit court, court of appeals, or Supreme Court hears and determines the appeal according to the rules of law. S.C. Code Ann. § 62-1-308(i) (2014). According to the rules of law means that, in the absence of a statute or rule of court providing a different standard of review, the circuit court must apply the same standard of review the Supreme Court would apply on appeal. *Matter of Howard*, 315 S.C. 356, 360, 434 S.E.2d 254, 256-57 (1993); *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005). An issue regarding statutory interpretation is a question of law. *Wimberly v. Barr*, 359 S.C. 414, 597 S.E.2d 853 (Ct. App. 2004). Thus, "the circuit court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them." *In re Howard*, 315 S.C. at 361, 434 S.E.2d at 257; see also *In re Estate of Pallister*, 363 S.C. 437, 447, 611 S.E.2d 250, 256 (2005) ("If the proceeding in the probate court is in the nature of an action at law, the circuit court and the appellate court may not disturb the probate court's findings of fact unless a review of the record discloses there is no evidence to support them."). An appellate court may affirm the lower court's judgment for any reason appearing in the record on appeal. *I'On v. Town of Mt. Pleasant*, 338 S.C. 406, 420-21, 526 S.E.2d 716, 723 (2000).

DISCUSSION

1. The Probate Court had subject matter jurisdiction to enter the protective orders.

The Probate Code vests exclusive jurisdiction in the probate court to "determine how the estate of the protected person which is subject to the laws of this State must be managed, expended, or distributed to or for the use of the protected person or any of his dependents." S.C. Code Ann. § 62-5-402 (2014). This exclusive jurisdiction is continuous, beginning with "the service of the summons and petition in a proceeding seeking the appointment of a conservator or other protective order" and continuing "until termination of the proceeding." *Id.* This vests in the probate court the "responsibility to determine whether the conservatorship estate... is effectively 'managed, expended, or distributed to or for the use of the protected person or any of his dependents.'" *Plyler v. Burns*, 373 S.C. 637, 647, 647 S.E.2d 188, 194 (2007). The Reporter's Comment to Section 62-5-402 notes "This section vests in the probate court, upon filing of the petition, exclusive jurisdiction over determination of the need for a conservator and the management of the protected person's estate." S.C. Code Ann. § 62-5-402 (2014).

The Probate Code also grants the power to the probate court "while a petition for appointment of a conservator is pending and after preliminary hearing upon such notice by the court as is reasonable under the circumstances, ... to preserve and apply the property of the person to be protected as may be required for his benefit..." S.C. Code Ann. § 62-5-408(1) (2014). The Reporter's Comment to this section provides that "This section gives specific powers to the court to take action with respect to the estate and affairs of a person if necessary even if that person has not yet been judged incompetent."

Appellants argue that the proceeds of the liquidation of the Friendship Partnership are not an asset of Mr. Wellin's estate. However, Appellants identified the Promissory Note as an estate

asset in need of protection in their Petition and acknowledged multiple times in open court, both in the Probate Court and before this Court, that they have offered and continued to offer $50,228,000 in exchange for the cancellation of the Promissory Note. Further, Appellants acknowledged, "they agreed to pay the note that was in the hands ... of the [special] conservator." April 8, 2016 Transcript p. 17, ln. 3-6. Moreover, Appellants offered to pay the funds into Court, a practice in which the Probate Courts of this State do not participate. This offer belies their argument that the Court lacks jurisdiction to order the same funds held for a Special Conservator pursuant to the Court's directive. During the pendency of this action, the Probate Court has had jurisdiction over the Note, the interest in Friendship Partners L.P. for which the note was swapped, and/or the proceeds of the liquidation of Friendship Partners, L.P. which relate to the interest for which the note was swapped, as well as the other assets belonging to Mr. Wellin under the broad grants of authority in S.C. Code Ann. §§ 62-5-402 and -408(1).

2. The Probate Court had personal jurisdiction over the Wellin Children individually and as trustees.

It is axiomatic that a party seeking relief from a court submits to its jurisdiction upon the filing of a summons and complaint. Here, the Wellin Children commenced the conservatorship action and do not dispute the Probate Court's finding that Wellin Children submitted to personal jurisdiction of the Court individually by virtue of their application for appointment of a conservator. However, they dispute the holding that Wellin Children submitted to jurisdiction in their trustee capacity by making arguments on behalf of the Trust.

"Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance." *Ex Parte Cannon, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009)* (citing *Stearns*

Bank Nat'l Ass'n v. Glenwood Falls, LP, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (S.C. Ct. App. 2007)); *In re Conservatorship of Groves*, 109 S.W.3d 317, 350 (Tenn. Ct. App. 2003) (holding that where parties appear and participate in an action, they waive any right to challenge failure to sue them as trustees); In *re Guardianship of Brown*, 611 So. 2d 1342 (Fla. Dist. Ct. App. 1993) (holding that it is not necessary to serve an individual who petitioned for appointment as guardian in their capacity as trustee)." [ROA 0028; 7/3/14 Order #1.] The Probate Court further found that "these cases are in accord with this Court's application of *In re Estate of Ahem*, 359 Ill. App. 3d 805, 812, 835 N.E.2d 95, 101 (2005) ("However, we find that some of the arguments Robert made in objecting to the petition for guardianship and in contesting the award of fees to Dutton indicate that he did in fact appear on behalf of the Trust and thus subjected it to the trial court's personal jurisdiction.")." (*Id.*) This Court finds these cases persuasive and adopts their reasoning.

The Wellin Children initiated these proceedings as Petitioners and have voluntarily appeared as Trustees in other matters before this Court. They clearly had notice of all proceedings because their counsel, who represents them in all of their capacities, appeared and argued on their behalf. Because of their actions, the Appellants have waived any defects, to the extent any could exist, that might have occurred. See *Stickland v. Consol. Energy Prods. Co.*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (S.C. 1980) ("A general appearance constitutes a voluntary submission to the jurisdiction of the court and waives any defects and irregularities in the service of process."); *H.S. Chisholm, Inc. v. Klinger*, 229 S.C. 8, 16, 91 S.E.2d 538, 542 (S.C. 1956).

The Wellin Children seek to have this Court rely on *In re Ashton* for its holding that "[F]or relief to be ordered against a trust, its trustee must be properly before the trial court as a

result of service, acceptance, or waiver or process, or an appearance." *In re Ashton*, 266 S.W.3d 602, 604 (Tex. App. 2008). While no South Carolina court has directly addressed the issue presented here, it would be an error to rely on this case as it can be easily distinguished. *In re Ashton* was a divorce proceeding wherein the Plaintiff (Wife) sought relief against the Defendant's (Husband) Trust. This case is inapplicable in the Wellin matter for several reasons. First, the Wellin Children were the Petitioners in this matter, alleging that their father's assets were in need of protection and including the promissory note which they listed on their Petition for the Appointment of a Conservator for their father. By petitioning the probate court, they submitted to its personal jurisdiction. They were not the Defendants in a marital dispute, nor has substantive relief been ordered against a Trust holding their personal assets, as they have acknowledged these funds belong to their father. Secondly, the Probate Code affords the Probate Court great latitude in protecting the assets of an alleged incapacitated party; therefore, application of a family court case is not appropriate.

3. Appellants have only tendered the $50 million at issue in exchange for cancellation of the promissory note, an asset of Wellin's estate.

On November 20, 2013, after Bennett's appointment by consent of the parties, pursuant to the right reserved to him in Article IX(A) of the Wellin Family 2009 Irrevocable Trust (the "Irrevocable Trust"), Wellin substituted the above-mentioned Promissory Note, valued by Appellants on their Petition for Appointment of Conservator at "approximately $49,000,000," for an interest in Friendship Partners, L. P. of the same value, as allowed by the Irrevocable Trust. [ROA 0763; 1/14/14 Application.] Prior to the substitution, Special Conservator Bennett reviewed the transaction per the Probate Court's Order to ensure adequate value was received for the transfer of assets. (*Id.*) On the date of the substitution, the Promissory Note was valued at

approximately $50,211,447. Based on the longstanding valuation methodology for interest in Friendship Partners, LP, which both Appellants and Wellin have used every year since 2009, this was the equivalent of approximately a 58% interest in Friendship Partners. (*Id.*) Bennett felt the substitution was for adequate consideration under the Court Order and supported the transaction.

Shortly after the substitution, the Wellin Children decided to liquidate the assets of Friendship Partners and dissolve the entity with no notice to Wellin or his Special Conservator. Cynthia Plum, as Manager of Friendship Management, LLC, executed a resolution as General Partner of Friendship Partners, LP to dissolve and liquidate the entity. As a result of the liquidation, the 58% interest in Friendship Partners held by Wellin entitled him to a distribution of approximately $92,000,000.[1] (*Id.*)

The Wellin Children then attempted to tender payment of the $50,228,000, representing the amount owed under the original Promissory Note and funds representing additional interest through the date of tender, to their father by mailing a check to Bennett on December 6, 2013, with a letter which effectively conditioned the payment of the funds upon his release of the rights to the remaining $42 million. [ROA 0758; 12/6/13 Hagerty Letter to Bennett.] Bennett returned the check as he felt it was not in Wellin's best interest to accept payment under those terms thereby causing him a potential loss of $42 million. [ROA 0760; 12/6/13 Bennett Letter to Hagerty.] Since their father's refusal to drop his claim for the additional $42 million, the Wellin Children have refused to pay the Special Conservator the minimum amount due to their father of $50,228,000. [ROA 0576; Special Conservator Hr'g Tr. 63:22-24.]

[1] The difference in value between the $92,000,000 distribution and the Promissory Note was the result of the fact that Mr. Wellin, as a limited partner, had no control over the partnership and the interest in Friendship Partners, LP was discounted for that lack of control. The decision of the Appellants to liquidate the partnership removed the lack of control, resulting in the increased value.

4. The Probate Court had the authority to issue its orders pursuant to S.C. Code Ann. §§ 62-5-402, -408, and -416.

When construing a statute, the cardinal rule is to ascertain the intent of the legislature. *Georgia-Carolina Bail Bonds, Inc. v. County of Aiken*, 354 S.C. 18, 22, 579 S.E.2d 334, 336 (Ct. App. 2003). "A statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Id.* at 22-23, 579 S.E.2d at 336. "All rules of statutory construction are subservient to the one that legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in the light of the intended purpose of the statute." *Id.* at 23, 579 S.E.2d at 336.

"The legislature's intent should be ascertained primarily from the plain language of the statute." *Id.* If, however, the language of the statute gives rise to doubt or uncertainty as to legislative intent, the construing court looks to the statute's language as a whole in light of its manifest purpose. *Id.* at 25, 579 S.E.2d at 337-38. The construing court may additionally look to the legislative history when determining the legislative intent. *State v. Byrd*, 267 S.C. 87, 92, 226 S.E.2d 244, 247 (1976).

S.C. Code Ann. § 62-5-402 states that "after the service of summons and petition in a proceeding seeking the appointment of a conservator or other protective order and until termination of the proceeding, the probate court in which the summons and petition are filed has: (2) exclusive jurisdiction to determine how the estate of the protected person which is subject to the laws of this State must be managed, expended or distributed to or for the use of the protected person or any of his dependents." Under this provision, after service of the Children's Summons and Petition and until a final determination of capacity was made (which never occurred), the

08

Probate Court had jurisdiction to issue orders relating to Wellin's property. This jurisdiction would include the ability to preserve property, including the promissory note and, subsequent to the swap, the interest in Friendship Partners, LP, and after its liquidation, the proceeds of such liquidation which related to the interest received on the swap.

Similarly, S.C. Code Ann. § 62-5-408 grants the Probate Court the "power to preserve and apply the property of the person to be protected as may be required for his benefit or the benefit of his dependents." S.C. Code Ann. §62-5-416(b) states, "Upon application to the appointing court, a conservator may request instructions concerning his fiduciary responsibility. A denial of the application by the court is not adjudication and does not preclude a formal proceeding." S.C. Code Ann. §62-5-416(c) states, "After notice and hearing as the court may direct, the court may give appropriate instructions or make ***any*** appropriate order." (Emphasis added.)

Here, the Special Conservator filed an application under S.C. Code Ann. §62-5-416(b). In the application, he requested that the court exercise its powers under §62-5-416(c) and allow the interested parties to brief the issues and present their arguments at a hearing. The Probate Court chose to exercise this power and received briefing and arguments from Wellin, the Special Conservator, and the Wellin Children. As a result of a hearing on the matter, in which all parties had notice and participated, the Court issued an appropriate Order protecting the assets of Wellin under S.C. Code Ann. § 62-5-416(c). As discussed above, Section 62-5-408 grants broad latitude to the Probate Court in issuing orders regarding the property of a protected person and allows it to exercise any and all powers over the estate of that person which he could exercise if present and not under disability. The plain language of these sections provide ample authority for the Probate Court to enter its orders.

5. The Special Conservator had standing to seek instruction from the Probate Court regarding the subject $50 million.

Appellants argue in their motion to alter or amend that the Special Conservator lacked the authority to pursue claims on behalf of Mr. Wellin at the time his application to the court was made. Petitioners cite Section 62-5-409(c) as the authority that a special conservator has only the authority expressly conferred by the court in the order of appointment. However, Probate Code section 62-5-417 notes that a conservator is a fiduciary and must observe a fiduciary standard of care. S.C. Code Ann. § 62-5-417. S.C. Code Ann. § 62-5-416(b) expressly provides a mechanism for a conservator, special or general, to seek guidance from the Probate Court regarding their fiduciary duties in a particular matter. Subsection (c) of this statute also allows for the probate court to give instructions or make any appropriate order "after notice and hearing as the court may direct." S.C. Code Ann. § 62-5-416(c). As a fiduciary for Mr. Wellin, the Special Conservator had the right and obligation to seek guidance from the Court regarding the asset at issue. Appellants characterize the Probate Court's order to pay the $50,228,000 to a second Special Conservator as "a request for substantive relief." However, review of the record reflects that this order was made in response to Appellants' offer to pay the funds into court. February 6, 2014 Transcript, p. 58, ln. 12-24. Appellants were served with the application and participated actively in the hearing. After hearing from the parties, the Probate Court made an appropriate order to protect assets belonging to Wellin specifically as the Appellants had requested in their Petition.

6. Dismissal was not required pursuant to Rule 12(b)(8), SCRCP.

Appellants argue that the Special Conservator's application for instruction should have been dismissed pursuant to Rule 12(b)(8), SCRCP on the basis that the issue of ownership of the $50 million is the subject of the pending federal court litigation. Dismissal under Rule 12(b)(8) *may* be proper where there is (1) another action pending, (2) between the same parties, (3) for the same claim. *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 105-106, 674 S.E.2d 524, 531 (Ct. App. 2009) (emphasis added). The Probate Court did not err in declining to dismiss the application because, despite Appellants' allegations to the contrary, at the time the claim was filed, there was no other action pending related to the Wellin Children's refusal to surrender these funds to the Special Conservator.

During the hearing before the Court in February 2014, Appellants acknowledged that there was no such action before the Federal Court or any other court. "That action does not currently contain a claim relating to this substitution of assets . . ." [ROA 0566; Special Conservator Hr'g Tr. 25:2-4.] In addition, no one contested the fact that Bennett as Special Conservator was not a party to any of the current litigation in Federal Court when these Orders were issued. [ROA 0567; Special Conservator Hr'g Tr. 28:13-20.] The fact that Bennett later attempted to fulfill his duties by seeking the additional $42 million for Wellin is not before this Court now because it was not before the Probate Court when these decisions were rendered. For these reasons, the Probate Court correctly held that "dismissal pursuant to Rule 12(b)(8) is not appropriate" by reiterating its "exclusive jurisdiction to issue a protective order until these proceedings are terminated pursuant to S.C. Code Ann. § 62-5-402, 62-5-408(1) and 62-5-430." [ROA 0028; 7/3/14 Order #1.] The Probate Court was the only court responsible for instructing Bennett as to protecting the assets of Wellin. For this reason, the Probate Court's denial of the Motion to Dismiss pursuant to Rule 12(b)(8), SCRCP was not error.

7. There was no violation of Appellants' due process rights by issuance of the protective order.

The core of due process is the right to notice and a meaningful opportunity to be heard at a meaningful time and in a meaningful manner. *Cleveland Bd. Of Ed. v. Loudermill*, 470 U.S. 532, 542 (1985); *LaChance v. Erickson*, 522 U.S. 262, 266 (1998); *S.C. Dep't of Soc. Servs. v. Beeks*, 325 S.C. 243, 481 S.E.2d 703 (1997). Appellants argue their due process rights were violated by the court's issuance of the orders in the absence of a summons and complaint, discovery process and an eventual trial by jury. However, Appellants petitioned the Probate Court and requested an emergency protective hearing to restrain their father from transferring his wealth outside of their control. Appellants made themselves subject to the Probate Court's jurisdiction when they decided to challenge his mental capacity to make his own decisions. [ROA 0040; Conservatorship Petition.]

The Special Conservator, Bennett, made his concerns regarding the substitution transaction discussed above known to the parties by his January 14, 2014 letter, which the Court treated as an application under S.C. Code § 62-5-416(a) and directed that he serve it upon all interested parties. [ROA 0763; 1/14/14 Application.] After said service, the Appellants actively participated in the scheduling of a hearing on the application. Prior to the hearing, the Petitioners filed a Motion to Dismiss, wherein they raised the same issues they now assert they did not have knowledge of. [ROA 0181; 2/3/14 Motion to Dismiss.]

Appellants further claim that they lacked knowledge of the issues to be addressed or that an oral amendment had been made that increased the scope of the hearing. This assertion is factually unfounded. The only oral amendment at the hearing was a reduction in the scope of the

proceeding based on an agreement that a separate Summons and Petition may be required to address the additional $42 million in dispute. [ROA 0393; 3/3/14 Motion to Alter or Amend, Footnote 1.]

Lastly, Appellants continue to ignore that the Court made the decision to protect Wellin's funds by relying on the fact that the Appellants (as Trustees) offered to pay the $50,228,000 into the Court during the hearing and that counsel for the Trust Protector represented to the Court that he did not know where the $50,228,000 was located. [ROA 0001; 7/3/14 Order #1.] The Appellants affirmatively disavowed any rights to the $50,228,000 which they acknowledged was due to Mr. Wellin. February 6, 2014 Hearing Transcript p. 55 ln23- p. 58 ln. 4. Fundamental fairness is not violated when a party has proper notice, participates in the proceedings, and then makes an offer to the Court upon which that it relies. For this reason, the Probate Court did not violate Appellants' due process rights in issuance of the protective order.

8. The Probate Court did not improperly invoke its equitable powers in issuing the order at issue.

Appellants argue that the Probate Court incorrectly relied on its equitable powers as basis for the authority in issuing the order to pay the $50 million to the Special Conservator II. Appellants' position is that this order is, in essence, an injunctive order granting equitable relief "to do what is necessary to protect the person." April 8, 2016 hearing p. 45, ln. 3-12. While "[e]quity will always seek to provide a remedy where a right has been violated," in this case resort to equity is unnecessary. *State ex rel. Daniel v. Strong*, 185 S.C. 27, 192 S.E. 671, 681 (S.C. 1937). Courts also "have the inherent power to do all things reasonably necessary to insure that just results are reached to the fullest extent possible." *Ex Parte Dibble*, 279 S.C. 592, 310 S.E.2d 440, 442 (S.C. Ct. App. 1983). This provides additional support for the Court's order, but

as discussed at length above, the statutory basis for the Court's order is founded in S.C. Code Ann. §§ 62-5-402, -416 (2014).

9. The Probate Court's findings of fact are supported by the evidence.

On appeal, the Circuit Court may not disturb the Probate Court's findings of fact unless the record reveals there is no evidence to support them. Appellants allege that certain of the Probate Court's factual findings are unsupported by the record because no evidence was admitted by the probate court and no evidentiary hearing was permitted. However, Appellants submitted significant factual material, both in connection with their Motion to Dismiss, their Petition for Appointment of Conservator, and their concessions at the hearing through Counsel. These findings, and their basis in the record, are discussed in detail in this Court's Order of January 13, 2016.

10. The Notice of Dismissal did not divest the Probate Court's jurisdiction to protect the estate assets.

Appellants contend that their Notice of Voluntary Dismissal pursuant to Rule 41(a)(1)(A), SCRCP, is unconditional and the dismissal became effective upon filing. They argue that Rule 41(a)(1)(A), SCRCP, is applicable to conservatorship proceedings and that Rule 81, SCRCP, does not apply. The provisions of Rule 41(a)(l)(A) do not apply to a conservatorship determination, and a Notice of Voluntary Dismissal is not an effective means to terminate the proceedings as to all parties and divest the Court of jurisdiction to appoint a conservator. Rule 81 of South Carolina Rules of Civil Procedure states that the Rules only apply in the Probate Court "insofar as practicable to the extent they are not inconsistent with the statutes and rules governing" proceedings in the Probate Court. Rule 81, S.C.R.C.P.; see *In re Timmerman*, 331 S.C. 455, 460 (Ct. App. 1998) ("The South Carolina Rules of Civil Procedure are applicable in

the probate court to the extent they are not inconsistent with the Probate Code or probate court rules.").

A prerequisite to the use of Rule 41(a)(l)(A) to dismiss a case is the requirement within the proceeding that an adverse party file an answer or have the ability to move for summary judgment. See *ISC Holding AG v. Nobel Biocare Fin. AG*, 688 F.3d 98, 116 (2d Cir. 2012) (finding that a petitioner could not use a Notice of Voluntary Dismissal to dismiss a petition to compel arbitration where respondent could not have filed an answer and summary judgment was unavailable). Within a conservatorship proceeding, there is simply no requirement for a respondent to file an answer and no ability to file a motion for summary judgment. The exclusive procedure for the Probate Court to appoint a conservator for an allegedly incapacitated person is set forth in S.C. Code Ann. § 62-5-407, which states:

> Upon the filing of a summons and petition for appointment of a conservator or other protective order for reasons other than minority, and after service of the summons and the petition, the court shall set a date for hearing. Unless the person to be protected has counsel of his own choice, the court must appoint a lawyer to represent him who then has the powers and duties of a guardian ad litem. If the protected person already has representation by an attorney that attorney shall act as his guardian ad litem. If the alleged disability is mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, or chronic intoxication, the court shall direct that the person to be protected be examined by one or more physicians designated by the court, preferably physicians who are not connected with any institution which the person is a patient or is detained.

Nowhere within the above section does it state that an allegedly incapacitated person is required to file an answer to the petition. Forcing an allegedly incapacitated person to file an answer would be contrary to the primary purpose of a conservatorship proceeding, that is to protect the interests of such a person. Rather than requiring an answer, the statute directs the Court to set a hearing after service of the summons and petition. S.C. Code Ann. § 62-5-407(b). Further, under § 62-5-402, the Probate court obtains and retains exclusive jurisdiction upon the

filing of a petition that does not terminate except by final order of the court. The clear language of the statute indicates that a person seeking the court's protection over an alleged incapacitated individual cannot subsequently rescind that request for protection by unilateral action. For this reason, the Probate Court did not err in finding that the Notice of Voluntary Dismissal was ineffective.

11. Application of the mootness doctrine would result in duplicative litigation over the same issues in the same court.

"A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief." *Mathis v. South Carolina State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). An exception to the mootness doctrine exists when "a decision by the trial court may affect future events or have collateral consequences for the parties." *Curtis v. State*, 345 S.C. 557, 549 S.E.2d 591, 596 (2001). Appellants allege this appeal is moot because Mr. Wellin died on September 14, 2014, two days after Appellants filed their initial brief in this matter. Appellants were given the opportunity to amend their brief to address this issue, but declined to do so. An issue may not be raised for the first time in a reply brief. *McClurg v. Deaton*, 395 S.C. 85, 87 n.2, 716 S.E.2d 887, 888 n.2 (2011). Thus, the mootness issue is arguably not properly before this Court.

Regardless, this Court declines to apply the mootness doctrine based on the collateral consequences exception because Mr. Wellin's death does not make moot the underlying dispute over the asset at issue. The parties have acknowledged there was no dispute that the $50 million was owed to Mr. Wellin, and now, to his estate. Applying the mootness doctrine in this instance would require the Estate to expend more time and costs to bring the identical action in the same court. Such litigation would not be in the interests of judicial economy.

CONCLUSION

Wherefore, for the reasons stated above, this Court's Order of January 13, 2016, is AFFIRMED.

AND IT IS SO ORDERED.

The Honorable Roger L. Couch

May 12, 2016
Charleston, South Carolina

State of South Carolina
The Circuit Court of the Seventh Judicial Circuit

ROGER L. COUCH
JUDGE

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MEMORANDUM

TO: The Honorable Julie J. Armstrong, Charleston County Clerk of Court

FROM: Adam J. Mandell, Law Clerk to Roger L. Couch, Judge

RE: Order

DATE: May 12, 2016

Dear Ms. Armstrong;

I hope that this message finds you well. Please find enclosed herewith one (1) Order to be filed in the case as incaptioned therein.

Please file said Order and inform the parties of its filing according to the regular procedures of your office.

If you have any questions please feel free to contact our office.

Thank you,

Adam J. Mandell
Law Clerk to Roger L. Couch