



June 3, 2019

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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JUN 03 2019

SC Court of Appeals

RE: *Wendy C.H. Wellin v. Peter Wellin, et al.*
Appellate Case No. 2019-000833

Attorneys at Law

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Dear Ms. Kitchings:

On behalf of Hamilton College, we submit this letter in response to your correspondence dated May 23, 2019 requesting memoranda from the parties addressing the issue of appealability of the above-referenced case. Hamilton College believes the pending appeal should be dismissed as premature because it seeks to appeal an interlocutory order (the "Order on Appeal") which addresses only procedural issues (discovery and bifurcation) which are not immediately appealable pursuant to S.C. Code Ann. § 14-3-330 or otherwise.

Appellants assert the Order on Appeal falls within one of the narrow statutory exceptions to the final judgment rule set forth in S.C. Code Ann. § 14-3-330 and addressed in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E. 2d 144 (2015). Appellants contend the Order on Appeal is an "order granting motion to bifurcate" that "affects a substantial right." See, May 16, 2019 Notice of Appeal ("Notice of Appeal"), footnote 1.

Orders granting bifurcation ordinarily do not affect a substantial right and are, therefore, not immediately appealable. See *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (order bifurcating issue of exclusion under insurance contract from issue of occurrence not immediately appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (order bifurcating liability and damages issues in contract case not immediately appealable). *Durham v. Vinson*, 360 S.C. 639, 602 S.E.2d 760 (2004) (encouraging bifurcation of issues of actual and punitive damages in complex medical malpractice cases). The Order on Appeal is not immediately appealable because it falls squarely within the bounds of these uniform holdings.

Appellants cite *Morrow* for the notion that the portion of the Order on Appeal bifurcating the trial of this case "affects a substantial right of Appellants." See, Notice of Appeal, footnote 1. The order in *Morrow* was fundamentally different from the Order on Appeal. In *Morrow*, the plaintiffs asserted a direct claim against a group of defendants (the "Fundamental Entities"), alleging they left a hospital "underfunded, understaffed, or undertrained so as to provide substandard care." *Morrow* at 538, 773 S.E.2d at 146. However, the bifurcation order "effectively grant[ed] the Fundamental Entities potential summary judgment on the issues of direct corporate liability" by "treat[ing] [the plaintiff's] claims as based solely on vicarious liability . . ." *Id.* at 539, 773 S.E.2d at 146. The Court expressly found "[t]he trial court's order is quite distinct from other orders of bifurcation which have come before this court [and which the court has ruled not immediately appealable]." *Id.* at 540, 773 S.E.2d at 147 (citing *Flagstar*, *Senter*, and *Durham*, *supra*).

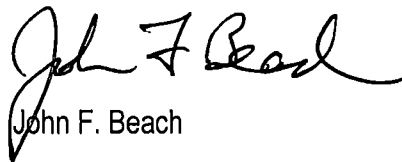
Unlike the order at issue in *Morrow*, the lower court's decision here to try, first, "the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014" and, second, the remaining claims and counterclaims between the individual parties, see Order on Appeal, p. 4, does not affect the viability of Appellants' remaining claims. The Order on Appeal does not "effectively grant[] potential summary judgment on [any theory of liability remaining in the second phase of this lawsuit]." Because the Order on Appeal does not affect a substantial right of the Appellants, it is not immediately appealable.

Hamilton College has joined in the Beneficiary Respondents' Motion to Dismiss, filed on May 24, 2019, and incorporates by reference the arguments made in that motion, as well as any memoranda submitted by Wendy C.H. Wellin, individually and in her representative capacities as Special Administrator and Trustee. Hamilton College respectfully requests the Court dismiss the prematurely-filed appeal and remand the case to the trial court for further proceedings.

By copy of this letter and attached Proof of Service, we are hereby serving all counsel of record with a copy of same.

Should you need anything else from us, please do not hesitate to let us know.

Sincerely,



John F. Beach

JFB/LRZB/vc

cc: Karen Leach

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge
J.C. Nicholson, Jr., Circuit Court Judge

Case No. 2014-CP-10-07038
Appellate Case No. 2019-000833

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SC Court of Appeals

Wendy C. H. Wellin,.....Respondent,

v.

Peter Wellin, Cynthia W. Plum and Marjorie W. King,
Individually and as Co-Trustee and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, Appellants,

v.

Wendy C. H. Wellin, Individually and as Trustee of the Keith S. Wellin
Florida Revocable Living Trust u/a/d December 11, 2001, Hamilton College,
Keith S. Wellin Florida Revocable Living Trust, Campbell Hart,
and Heather Lane, Respondents.

PROOF OF SERVICE

I, the undersigned paralegal of the law firm of Adams and Reese LLP, attorneys for Hamilton College, do hereby certify that on June 3, 2019, I have served all counsel in this action with a copy of the documents below specified via electronic mail and United States Mail to the following addresses:

List of Documents Served:

- 1. Correspondence from John F. Beach to The Honorable Jenny Abbott Kitchings dated June 3, 2019; and**
- 2. this Certificate of Service.**

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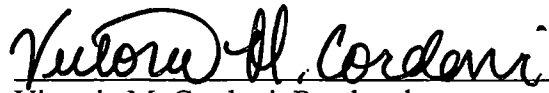
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June 3, 2019.