

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the 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

RECEIVED
JUN 11 2019
SC Court of Appeals

Wendy C.H. Wellin,

Respondent,

v.

Peter Wellin, Cynthia W. Plum and Marjorie W. King,
Individually and as Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust, u/a/b 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.

In the Matter of: Keith S. Wellin

RESPONDENTS' REPLY
IN SUPPORT OF MOTION TO DISMISS

Although Appellants cited only one case in their Notice of Appeal as justification for their premature appeal of an interlocutory order,¹ Appellants have now filed **92 pages** of

¹ As previously noted, the Notice of Appeal singled out *only the bifurcation decision* for this interlocutory appeal with its citation of *Morrow v. Fundamental Long-Term Care Holdings*,

argument and exhibits – inviting this Court to inject the plain language of Judge Addy’s Bifurcation Order with a nefarious, ulterior motive to deprive Appellants of their constitutional right to trial by jury. These wild and unsupported accusations reveal just how far Appellants have overreached to obtain premature appellate review:

- The Wellin Children accuse Judge Addy of trying to “prevent the Wellin Children from ever bringing their claims before a jury, i.e., [by] . . . effectively strik[ing] out a portion of their pleading, namely their counterclaims.” (Return, p. 17). But not one single word in the Bifurcation Order pretermits, or has the effect of premitting, the second phase of trial from proceeding in state court after the Validity Issues have been resolved – which is when the parties’ counterclaims² would be tried. Indeed, that is exactly what *bifurcation* of the issues means, and it is not an immediately appealable decision.
- The Wellin Children baldly assert that the “Order *must* intend for [sic] severed trial to be dispositive of some or all of the Wellin Children’s counterclaims against Wendy.” (Return, pp. 12-13). The Bifurcation Order contains no language stating or suggesting the first phase of the state court trial will be dispositive of the second phase of the state court trial. What the Bifurcation Order *actually* states is that “resolution of these [Validity] issues will likely result in resolution of much of the *federal litigation*.” (Bifurcation Order, p. 4)(emphasis added). The Wellin Children are correct that they have asserted - in one federal case - duplicates of their counterclaims against Mrs. Wellin in this case, but that is only one piece of the larger federal litigation which is comprised of three cases pending before Judge Norton. Many of the Validity Issues that Judge Addy has decided to try first are also at issue in the comprehensive federal litigation yet, as the Bifurcation Order observes, “these issues can only be decided

LLC, 412 S.C. 534, 537-40, 773 S.E.2d 144, 145-47 (2015) and accompanying parenthetical “holding order granting motion to bifurcate was immediately appealable because it affected a substantial right of appellant.” (Notice of Appeal, p. 2 n.1 (also citing generally to S.C. Code Ann. § 14-3-330)).

² Appellants have asserted what they term to be “counterclaims” against Respondent Mrs. Wellin, individually, and Mrs. Wellin has asserted her own counterclaims against Appellants as well. Appellants failed to timely answer Mrs. Wellin’s counterclaims, and a Request for Entry of Default is pending.

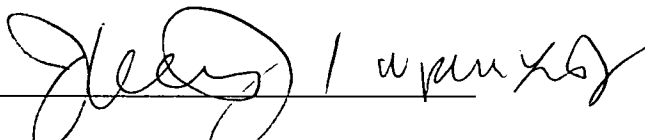
in state court” within its exclusive probate jurisdiction.³ It is not at all unusual for Judge Addy to surmise that much of the federal litigation will be resolved once the Validity Issues are tried in this case. Of course, how much of the federal litigation is resolved will be ultimately a decision for Judge Norton, not the state court, and there is no immediately appealable issue for this Court to consider.

- Finally, the Bifurcation Order did not, as the Wellin Children claim, “attempt[] to strong-arm them into ‘voluntarily’ relinquishing” the right to “a meaningful and substantive jury trial.” (Return, p. 18). The plain language of the Bifurcation Order specifically contemplates that the first phase of trial concerning the limited issues of capacity and undue influence will be “limited to two weeks” of jury trial, but the Bifurcation Order expresses no opinion about the length of the second phase of trial. Nor does the Bifurcation Order somehow restrict the evidence Appellants are entitled to present in the first phase of trial. To the contrary, the Bifurcation Order specifically contemplates that “the Wellin children will be entitled to present all evidence concerning the prior estate plan, the circumstances surrounding its formulation and execution” (Bifurcation Order, p. 4). Judge Addy’s decisions regarding the duration and timing of trial do not abridge Appellants’ constitutional right to trial by jury nor invoke the “mode of trial” exception to the general rule that only final orders are appealable. *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008). Likewise, Appellants’ protest that trial should not proceed in June (as the Bifurcation Order contemplates) is not immediately appealable. “Avoidance of trial is not a ‘substantial right’ entitling a party to immediate appeal of an interlocutory order.” *Shields v. Martin Marietta Corp.*, 303 S.C. 469, 470, 402 S.E.2d 482, 483 (1991); *see also Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94-95, 529 S.E.2d 11, 14 (2000).

³ It cannot be emphasized enough that some of the Validity Issues that Judge Addy slated to be tried first are *the fundamental probate determinations* that, according to the General Assembly, can only be determined within the exclusive jurisdiction of South Carolina state courts. Regardless of the overlap between this case and the broader federal litigation, only a state court can resolve these issues. Judge Addy’s Bifurcation Order simply ensures, apparently with Judge Norton’s blessing, that the state court tries first that portion of the litigation that only it can: The validity of testamentary documents. (Bifurcation Order, p. 3)(“As the Bifurcation Order notes, “bifurcation of the [Validity I]ssues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation.”).

For all of these reasons and those articulated in Respondents' initial filings regarding the issue of appealability, Respondents respectfully request that this Court reject Appellants' invitation to find appealability based upon innuendo and supposition, and instead find - based upon the plain language and effect of the Order appealed - that this matter must be dismissed as premature.

Respectfully submitted,

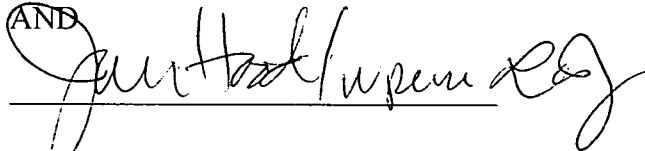


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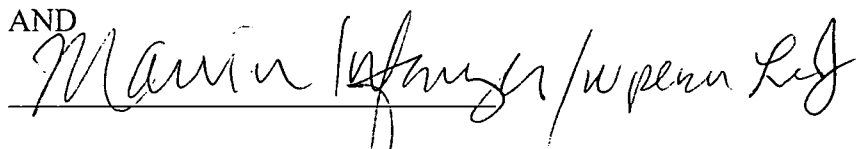
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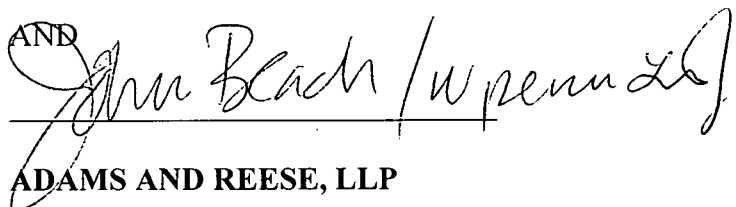
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PROOF OF SERVICE

I, the undersigned Paralegal of the law offices of Gallivan, White & Boyd, P.A., attorneys for Wendy C. H. Wellin, individually, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

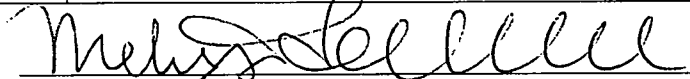
Pleadings:

RESPONDENTS' REPLY IN SUPPORT OF MOTION TO DISMISS

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Melissa Lee Urch
Paralegal

June 11, 2019

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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

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SC Court of Appeals

Re: Wendy C. H. Wellin v. Peter Wellin, Cynthia Plum and Marjorie W. King v.
Wendy C. H. Wellin, Hamilton College, Keith S. Wellin Florida Revocable
Living Trust, Campbell Hart and Heather Lane and Friendship Management, LLC
v. Wendy C.H. Wellin
C/A No.: 2014-CP-10-7038
Appellate Case No. 2019-000833

Dear Clerk Kitchings:

Enclosed herewith for filing, please find the original and six copies of Respondents' Reply in Support of Motion to Dismiss regarding the above-referenced matter. Please file the original and return a clocked copy to our courier.

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

Please do not hesitate to contact me if you have any questions or concerns.

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.


John T. Lay, Jr.

JTL,JR/mlu
Enclosures

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