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MAY 20 2019

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Frank R. Addy, Jr., Circuit Court Judge

Circuit Court Case No. 2014-CP-10-07038

**FILED**  
2019 MAY 16 PM 3:18  
JULIE J. ARMSTRONG  
CLERK OF COURT

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

Respondent,

vs.

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/d November  
2, 2009, .....

Appellants,

vs.

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,

and

Friendship Management, LLC, .....

Appellant,

vs.

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

Respondent.

IN THE MATTER OF:  
Keith S. Wellin

**NOTICE OF APPEAL**

Pursuant to Rule 203 of the South Carolina Appellate Court Rules, Appellants Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King, Individually and as Co-Trustees and

Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, and Friendship Management, LLC (the “Appellants”) appeal the order of the circuit court dated May 9, 2019, and entered on May 15, 2019.<sup>1</sup> Counsel for Appellants received written notice of the entry of the order on May 16, 2019. Appellants also appeal the prior orders of the circuit court entered October 20, 2017, and August 24, 2018.<sup>2</sup> Copies of the subject orders are attached hereto.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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<sup>1</sup> The order is immediately appealable because the order affects a substantial right of Appellants. See S.C. Code Ann. § 14-3-330; *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) (holding order granting motion to bifurcate was immediately appealable because it affected a substantial right of appellant).

<sup>2</sup> Although orders lifting a stay or refusing to stay a proceeding are not ordinarily immediately appealable, they are appropriately appealed when there is another appealable issue before the court and when doing so will serve the interest of equity and judicial efficiency. See, e.g., *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014) (“[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the court and a ruling on appeal will avoid unnecessary litigation.”).

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

Robert H. Brunson  
SC Bar No. 11987  
E-Mail: robert.brunson@nelsonmullins.com  
Merritt G. Abney  
SC Bar No. 71893  
E-mail: merritt.abney@nelsonmullins.com  
Patrick C. Wooten  
SC Bar No. 77985  
E-Mail: patrick.wooten@nelsonmullins.com  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
Charleston, SC 29401-2239  
(843) 853-5200

Miles Coleman  
SC Bar No. 78264  
E-Mail: miles.coleman@nelsonmullins.com  
104 South Main Street / Suite 900  
Greenville, SC 29601

*Attorneys for Appellants*

Charleston, South Carolina  
May 16, 2019

2014 CP 10 7038

**PROOF OF SERVICE**

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, w/a/d November 2, 2009, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**NOTICE OF APPEAL**

Counsel Served:

John T. Lay, Jr., Esq.  
Gray T. Culbreath, Esq.  
John D. Hudson, Jr., Esq.  
Lindsay Anne Joyner, Esq.  
Gallivan, White & Boyd, PA  
PO Box 7368  
Columbia, SC 29202  
*Attorneys for Wendy C.H. Wellin,  
individually*

John Fisher Beach, Esq.  
Lyndey Bryant, Esq.  
Adams and Reese LLP  
PO Box 2285  
Columbia, SC 29202  
*Attorneys for Hamilton College*

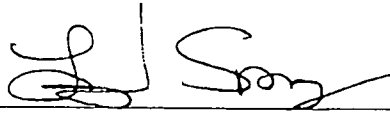
F. Patricia Scarborough, Esq.  
Edward G.R. Bennett, Esq.  
Evans, Carter, Kunes & Bennett, P.A.  
PO Box 369  
Charleston, South Carolina 29402  
*Attorneys for the Estate*

Robert H. Hood, Esq.  
James B. Hood, Esq.  
Molly H. Craig, Esq.  
Hood Law Firm, LLC  
172 Meeting Street  
Charleston, SC 29401  
*Attorneys for Wendy C.H. Wellin, as Special  
Administrator and for the Keith S. Wellin  
Florida Revocable Living Trust*

Marvin D. Infinger, Esq.  
Barnwell Whaley Patterson & Helms, LLC  
PO Drawer H  
Charleston, SC 29402  
*Attorney for Campbell Lane Hart and  
Heather Lane*

M. Dawes Cooke, Jr., Esq.  
Barnwell Whaley Patterson & Helms, LLC  
PO Drawer H  
Charleston, SC 29402  
843-577-7700  
*Attorneys for F. Patricia Scarborough, Esq.  
and Edward G.R. Bennett, Esq.*

FILED  
2019 MAY 16 PM 3:18  
JULIE J. ARMSTRONG  
CLERK OF COURT  
RY



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Lydia Spry  
Administrative Assistant

May 16, 2019

# ATTACHMENT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,  
*Petitioner,*

vs.

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,  
*Respondents and Counter- Petitioners*

vs.

Wendy C.H. Wellin, Invidiually 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 Hard, and Heather Lane  
*Counter-Respondents.*

IN THE MATTER OF:  
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

FILED  
2019 MAY 15 PM 2:24  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

THIS MATTER COMES BEFORE THE COURT on multiple motions: Wendy Wellin's Motion for a Protective Order, Edward Bennett and Patricia Scarborough's Motions to Quash Subpoenas and for Protective Orders, Dr. David Bachman's Motion to Quash a Subpoena Duces Tecum and motion for a Protective Order, the Wellin Children's Motion for a Status Conference, and Wendy Wellin's Motion to Bifurcate.

The pending action is a dispute over Keith S. Wellin's estate plans. Mr. Wellin died in 2014 and his most recent will and revocable trust were executed on June 27, 2014. Wendy Wellin filed a Petition for Formal Testacy after Keith Wellin's death. His three adult children ("the Wellin Children") answered the petition and counter-petitioned for formal testacy of an earlier Will. There are actions pending in federal court as well. In August of 2018, the Court ordered the stay in State Court be lifted. This jurist was given exclusive jurisdiction over this case. The parties filed the motions listed above and a hearing was scheduled on February 11, 2019 in Columbia, SC. After a complete hearing on all the motions listed above and after a full review of the facts and the law the Court finds as follows.

Wendy Wellin has already been subject to 14 hours of depositions as part of discovery in the pending action. She also participated in an additional 6 hours of deposition testimony for a malpractice case related to this lawsuit. The Court understands that is a considerable amount of time to be deposed. However, the Court finds it is not unreasonable to allow the Defendants to depose Mrs. Wellin again now that the stay has been lifted in state court and this case is positioned to be tried in the coming weeks. Therefore, the Court denies Mrs. Wellin's Motion for a Protective Order and orders that the Defendants may depose Mrs. Wellin for an additional 6 hours total.

Counsel for Edward Bennett, Esq. and F. Patricia Scarborough, Esq. also filed Motions to Quash Subpoenas and Motions for Protective Orders from further depositions. These two attorneys served as estate planning counsel to Keith Wellin in 2013 and 2014. They have already been deposed by the Defendants during discovery in the federal action. Attorney Bennett was deposed for 12 hours and Attorney Scarborough was deposed for 7 hours. As these attorneys are not parties to this litigation and they have both been deposed in depth, the Court finds it is unreasonable to allow the Defendants to depose them any further. Therefore the subpoenas regarding Mr. Bennett

and Ms. Scarborough will be quashed, and they are both entitled to a protective order from further depositions in this case.

Counsel for the Plaintiff filed a Motion for a Protective Order on behalf of Dr. David Bachman. Dr. Bachman was hired by Plaintiff's counsel in 2014 as a consultant. The Defendants filed a Subpoena Duces Tecum for Dr. Bachman's records from working with Keith Wellin before he died. Dr. Bachman asserts the records are subject to privilege and therefore he is entitled to a Protective Order from this Subpoena Duces Tecum. The Court finds that any such privilege which may exist is waived pursuant to South Carolina Rule of Civil Procedure 35(b). Therefore, the Motion for a Protective Order is denied, and Dr. Bachman is ordered to produce the documents requested.

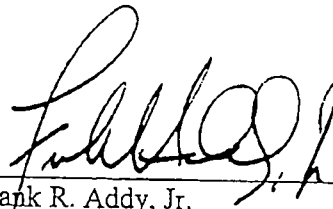
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial economy. Therefore, the Court orders that the pending state court action will be tried before the federal court action. Assuming that this action remains on the jury trial roster, the trial in state court will be limited to two weeks and take place in June of this year; the parties will have to streamline their presentations pursuant to a future order concerning the allocation of available time.

The final motion is Wendy Wellin's Motion to Bifurcate. Mrs. Wellin's Motion seeks bifurcation of only the validity issues associated with the Last Will and Testament and the amended and restated trust of Keith Wellin, both executed on June 27, 2014. These validity issues include whether Keith Wellin had testamentary capacity to execute the 2014 Will and the 2014 Revocable Trust and whether his execution of the Will or Revocable Trust was the result of undue influence,

fraud, duress, or mistake. This Court finds that bifurcation of the issues 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. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

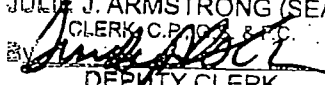
This Court will try the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014 in state court. Put another way, the trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin children will be entitled to present all evidence concerning the prior estate plan, the circumstances surrounding its formulation and execution, plan, and the jury will ultimately decide which estate plan and/or revocable trust controls.

**IT IS SO ORDERED.<sup>1</sup>**



Frank R. Addy, Jr.  
Circuit Court Judge  
Eighth Judicial Circuit

May 9, 2019  
Greenwood, South Carolina

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P.D.C. & C.  
BY   
DEPUTY CLERK

<sup>1</sup> The Court is aware that other motions have been filed since the hearing on this matter. The Court will address those other motions in due course.

# ATTACHMENT 2

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF CHARLESTON )  
 Wendy C. H. Wellin, ) C/A No. 2014-CP-10-07038  
 )  
 ) *Petitioner,* ) **ORDER GRANTING PETITIONER'S**  
 ) **MOTION TO LIFT THE STAY**  
 )  
 ) Versus )  
 )  
 ) Peter J. Wellin, Cynthia W. Plum, Marjorie W. )  
 ) King, )  
 )  
 ) *Respondents and Counter-Petitioners,* )  
 )  
 ) Versus )  
 )  
 ) Wendy C.H. Wellin, Hamilton College, Keith )  
 ) S. Wellin Florida Revocable Living Trust, )  
 ) Campbell Hart and Heather Lane, )  
 )  
 ) *Counter-Respondents.* )  
 )  
 ) IN THE MATTER OF: )  
 )  
 ) Keith S. Wellin )  
 )  
 \_\_\_\_\_ )

FILED  
 2017 OCT 20 PM 3:28  
 JULIE J. ANASTROPOU  
 CLERK OF COURT

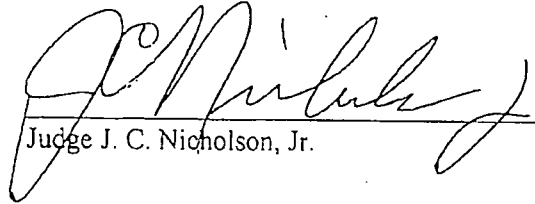
*gan*

This matter comes before the Court on a Motion to Lift the Stay filed by the Petitioner Wendy C. H. Wellin filed on June 30, 2017. In her motion, the Petitioner requests this Court to lift the stay previously entered by Order of this Court on July 2, 2015, which was filed on July 6, 2015, after a hearing on a Motion to Stay filed by the Respondents and Counter-Petitioners in this matter. As an initial matter, the Court notes that its earlier Order granting the Motion to Stay was to remain in effect until the pending Federal Action as defined in that Order including any appeals of that action is finally resolved or until further order of this Court. Having been over two (2) years since this matter was originally stayed by the Court, this Court concludes that the interest of justice is best served by lifting the stay to permit the probate of the Last Will and Testament of

Keith S. Wellin. Therefore, the Court GRANTS the Petitioner's Motion to Lift the Stay. The stay previously entered by this Court is hereby lifted.

AND IT IS SO ORDERED.

10/20, 2017  
Charleston, South Carolina

  
\_\_\_\_\_  
Judge J. C. Nicholson, Jr.

# ATTACHMENT 3

STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin  
PLAINTIFF(S)

Peter Wellin Cynthia  
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other

2018 AUG 24 PM 3:21  
 FILED  
 CLERK OF COURT

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

This order  ends  does not end the case.  
Additional Information for the Clerk:

*No further delays in this case. Chief Blum  
judge should set for trial (2 weeks max)  
as soon as practicable. 2m*

Motion/ Stay by Respondent & Counter Petitioners - Denied  
Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

*[Signature]*  
Circuit Court Judge

2159  
Judge Code

8-23-18  
Date



NELSON MULLINS

NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

Robert H. Brunson  
T 843.534.4226  
robert.brunson@nelsonmullins.com

151 Meeting Street | Sixth Floor  
Charleston, SC 29401-2239  
T 843.853.5200 F 843.722.8700  
nelsonmullins.com

May 16, 2019

Via Hand Delivery

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
PO Box 11629  
Columbia, SC 29211  
(803) 734-1890

RE: Wendy C. H. Wellin v. Peter Wellin, Cynthia W. Plum and Marjorie W. King v.  
Wendy C.H. Wellin, Hamilton College and Keith S. Wellin Florida Revocable  
Living Trust, Campbell Hart and Heather Lane and Friendship Management, LLC  
v. Wendy C.H. Wellin  
IN THE MATTER OF: Keith S. Wellin, Deceased  
Case No. 2014-CP-10-07038  
Our File No. 039113/01500

Dear Ms. Kitchings:

Enclosed please find the original and one copy of a Notice of Appeal in the above-referenced matter. We would ask that you file the original and return a clocked-in copy to us via the envelope provided for your convenience. Also enclosed is our Firm's check in the amount of \$250.00 as the required filing fee.

By copy of this letter to the Charleston County Clerk of Court and counsel of record, we are serving them with a copy of this notice.

Very truly yours,

Robert H. Brunson

RHB:ls  
Enclosures

cc: The Honorable Julie J. Armstrong ✓  
Robert H. Hood, Esq.

The Honorable Jenny Abbott Kitchings

May 16, 2019

Page 2

Molly H. Craig, Esq.

James B. Hood, Esq.

John T. Lay, Jr., Esq.

Gray T. Culbreath, Esq.

John D. Hudson, Jr., Esq.

Lindsay Anne Joyner, Esq.

Tiffany N. Provence, Esq.

Edward G.R. Bennett, Esq.

Marvin D. Infinger, Esq.

F. Patricia Scarborough, Esq.

John Beach, Esq.

Lyndey Bryant, Esq.