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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
J.C. Nicholson, Jr., Circuit Court Judge

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

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

BENEFICIARY RESPONDENTS' RETURN
TO PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC*

As requested by the Court, and pursuant to Rules 219, 221 and 240 of the South Carolina Appellate Court Rules, Respondents Wendy C.H. Wellin, individually, ("Mrs. Wellin"); Hamilton College; Campbell Hart; and Heather Lane (herein collectively the "Beneficiary Respondents") submit this return to the Petition for Rehearing and Suggestion for Rehearing *En*

Banc ("Rehearing Petition") filed by Appellants Peter Wellin, Cynthia W. Plum, and Marjorie W. King (collectively the "Wellin Children"), which challenges this Court's June 13, 2019 order (the "Dismissal Order") denying the Wellin Children's "emergency" Petition for a Writ of Supersedeas (the "Supersedeas Petition") and dismissing this appeal as premature under S.C. Code Ann. § 14-3-330. Both the request for rehearing and suggestion for rehearing *en banc* should be denied, because the Dismissal Order correctly held that the Wellin Children must wait until after trial to appeal the decisions about which they complain, (Dismissal Order, p. 2, n.2), as none of their challenges qualify for immediate appeal.[1]

Introduction

Both substantive and procedural deficiencies plague the Wellin Children's ongoing efforts to pursue this premature appeal, which have reached a level of desperation with the filing of this Rehearing Petition. Substantively, not one of the three points raised in the Rehearing Petition was overlooked or misapprehended. This Court's dismissal of the appeal and denial of the Supersedeas Petition necessarily rejected these points by: (1) distinguishing *Morrow* from the situation at hand; (2) concluding the Bifurcation Order (which expressly provides for a jury trial) did not violate the Wellin Children's right to trial by jury; and (3) declining to impose an automatic stay of trial court proceedings when the interlocutory appeal was improvidently taken.

[1] As the Dismissal Order noted, the Wellin Children conceded that two of the three orders they sought to appeal were not immediately appealable standing alone. (Dismissal Order, p. 1, n.1). Moreover, the Wellin Children's Notice of Appeal singled out the trial court's decision to bifurcate the trial of this matter as justification for trying to immediately appeal the decisions at issue. The Notice cited as its only supporting case law *Morrow v. Fundamental Long-Term Care Holdings, LLC,* 412 S.C. 534, 537-40, 773 S.E.2d 144, 145-47 (2015), with the 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)).

As outlined below, these determinations are well-supported by the relevant law, and the Rehearing Petition fails to demonstrate otherwise.

Moreover, the Rehearing Petition should be denied for procedural reasons, because the issues it raises are either moot - because the trial court has ruled in the Wellin Children's favor during the pendency of this appeal, or premature - because the Wellin Children now have asked the trial court to reconsider them. The Dismissal Order properly found that none of the trial judge's interlocutory decisions triggered a right to immediate appellate review, and the Wellin Children's efforts to simultaneously litigate these decisions in the trial court and in this Court of Appeals must be brought to a close.

I. None Of The Points Raised In The Rehearing Petition Were Overlooked Or Misapprehended By The Court.

This Rehearing Petition is but another chapter in the Wellin Children's campaign to inject the Bifurcation Order with a nefarious, ulterior motive which is nowhere to be found in its plain language or in its practical application. This fact is perhaps best illustrated by the Wellin Children's reliance ***not*** on the language or impact of the Bifurcation Order itself, but rather on the voluminous exhibits attached to their appellate filings (including an unofficial hearing transcript attached to the Rehearing Petition[2]), from which the Wellin Children have plucked

[2] The Rehearing Petition attaches as "Exhibit A" portions of a unofficial transcript taken by an independent court reporter, despite the trial court's express order that the unofficial transcript should not be used in any appellate filings:

> THE COURT: We're going to go back on the record in Wellin versus Wellin. Just one quick housekeeping matter. I understand the parties have arranged to have an independent court reporter, which is perfectly fine. I have no problem with anything being taken down by an independent party. Just so that we all understand, though, obviously the court reporter that's a member of the judicial branch is the official court reporter. So you're welcome to use the transcript in any way you need to internally, but obviously this is my official reporter, so anything

arguments and phrases out of context to create the illusion they are being deprived of the right to a jury trial on their tort claims.

a. Narrowing Of The Issues Is Necessary And Inevitable Because Of The Nature Of The Wellin Children's Two-Fold Claims, Regardless Of Whether The Issues Are Bifurcated.

A brief explanation of the nature of this case, which originated as a probate proceeding following the death of Keith Wellin (the Wellin Children's father and Mrs. Wellin's husband), is fundamental to understanding the trial court's decision to bifurcate. The Wellin Children's claims in the state court case are two-fold: (1) they initially brought a will contest in 2014 which seeks to invalidate their father's most recent estate planning documents (which reduced their inheritance), on the grounds those documents were procured by Mrs. Wellin's undue influence and/or executed when their father lacked capacity; and (2) four years later in 2018, they added tort-based claims against Mrs. Wellin individually, alleging generally that by defamation and otherwise she interfered to prevent them from receiving their rightful inheritance. The former, encompassing the Validity Issues[3] to be tried in the first phase of trial, requires the adjudication of probate issues that can only be resolved by the state court because it has exclusive jurisdiction thereof. The latter, comprised primarily of ad-hominem claims against Mrs. Wellin individually

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> that needs to be transcribed or whatever on appeal, he would be the go-to guy for that. So I just want to make sure that that's understood.

(6/12/19 Hearing Tr. at 5, attached hereto as **Exhibit A**).

[3] As explained in Respondents' briefing on the motions to dismiss, the Estate of Keith S. Wellin (the "Estate") filed a Motion to Bifurcate or for Separate Trial seeking bifurcation of all validity issues associated with Mr. Wellin's June 27, 2014 Will and the amended and restated Keith S. Wellin Florida Revocable Living Trust executed June 27, 2014 ("2014 Revocable Trust"), to include (1) whether Mr. Wellin possessed sufficient mental capacity to execute both documents; and (2) whether Mr. Wellin's execution of the June 27, 2014 Will or the 2014 Revocable Trust was the result of undue influence, fraud, duress, or mistake (hereinafter collectively, the "Validity Issues").

to be tried in the second phase of trial, are claims the Wellin Children are simultaneously pursuing in state and federal court.

To say that a first trial phase of the Validity Issues will "narrow" the issues for the jury to consider in the second phase of trial is not a punishment inflicted on the Wellin Children if their claims are bifurcated. This narrowing is a necessary and inevitable result in this case – regardless of whether those claims are tried separately or together – due to the two-fold nature of the claims the Wellin Children have brought. This is because the jury ***must determine first*** which estate planning documents govern, fixing the amount the Wellin Children stand to inherit from their father's estate, before the Wellin Children can even attempt to define for the jury the amount of inheritance they allegedly lost as a result of the tortious actions of which they complain. The Estate moved to bifurcate not because it would pretermit the Wellin Children's tort-based claims against Mrs. Wellin individually from being heard by a jury, but because the Validity Issues undergird and define many – if not most – of the major allegations in this litigation. It appears that the Wellin Children disfavor bifurcation of the Validity Issues from their tort-based claims because it prevents them from confusing a jury with similar arguments that relate to completely different causes of action.[4]

[4] The Wellin Children's appellate filings emphasize that the evidence relevant to their tort-based claims against Mrs. Wellin may overlap in some instances with evidence relevant to the Validity Issues. What the Wellin Children have neglected to explain, however, is that their tort-based claims are legally distinct from the Validity Issues with respect to the applicable standards of proof, causation standards, and even the defendants from whom recovery is sought. For example, if the Wellin Children are unable to prevail in the Validity Issues trial, yet they prevail in the trial of their tort-based claims, they could not recover from the Estate. Likewise, if they prevail as to the Validity Issues but lose on their tort-based claims, they cannot recover from Mrs. Wellin, individually. In *Morrow*, the same claim was made against different parties, and the trial court found that failure to prevail against one party pretermits proceeding with the same claim against the other party. In this case, the Wellin Children have made completely different claims against different defendants and the trial court decided (1) to bifurcate the tort-based

Moreover, trying the Validity Issues first ensures that the state court fulfills the exclusive jurisdiction granted to it by the General Assembly to decide competing petitions for formal testacy – matters which could not ever be resolved in the comprehensive federal action even though the Wellin Children are pursuing the same tort claims in that forum too. It is important to bear all of this in mind when reading the arguments of counsel quoted in the Rehearing Petition, because there is no merit to the Wellin Children's suggestion that these statements are proof that the trial court is surreptitiously planning to never hold a second phase of trial on the tort claims. (Rehearing Petition, pp. 4-5). Aside from the fact that not one single word in the Bifurcation Order pretermits, or has the effect of pretermitting, the second phase of trial from proceeding after the Validity Issues have been resolved (after all, that is exactly what bifurcation of the issues means), the Wellin Children's conspiracy theory simply does not make sense given the nature of this case and the inevitable need for the jury first to decide which documents control. Whether the jury hears these matters separately, or lumped together in one trial with various standards of proof, is a procedural matter for the trial court to decide; it is not an immediately appealable abridgment of a litigant's right to a trial by jury.

b. *Morrow* Remains Inapposite As Nothing In The Bifurcation Order Deprives The Wellin Children Of A Jury Trial On Their Tort-Based Claims Against Mrs. Wellin Individually.

The first two points in the Rehearing Petition merely regurgitate all of the previously unsuccessful arguments advanced by the Wellin Children in their return to the motions to dismiss, although now the Wellin Children claim that the brevity of the Dismissal Order indicates this Court overlooked or misapprehended arguments that would have convinced it that

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claims from the Validity Issues; and (2) to try the latter first because the Validity Issues will resolve those matters over which the probate court has exclusive jurisdiction.

the Bifurcation Order is immediately appealable, *to wit:* the trial court effectively granted judgment on their claims as in *Morrow*, the trial court deprived them of a mode of trial, the trial court violated due process, and the trial court effectively struck their pleadings. (Rehearing Petition, pp. 2-10). No argument was overlooked or misapprehended in the Dismissal Order, because these "arguments" are not distinct points at all. They are just different ways of saying the same thing: The Wellin Children believe the Bifurcation Order pretermits a jury trial on their tort-based claims against Mrs. Wellin.[5] Regardless of the length of the Dismissal Order, it unequivocally and correctly rejected this argument and along with it, all of the points raised in the Rehearing Petition.

The Rehearing Petition invokes *Morrow* again to support the assertion that the Bifurcation Order "effectively grants judgment on or disposes of certain claims excluded from a truncated trial." (Rehearing Petition, pp. 3-4). As Respondents pointed out in their previous appellate submissions, 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 have asserted - in one federal case - duplicates of their tort-based counterclaims against Mrs. Wellin in this case, although that is only one piece of the larger federal litigation which is comprised of at least three cases pending before Judge Norton. Many of the Validity

[5] For example, there is significant overlap and repetition between the Rehearing Petition's first point – that the Bifurcation Order, like *Morrow*, effectively disposed of their tort claims and prevents them from being architects of their complaint – and the Rehearing Petition's second point – that the Bifurcation Order, like *Morrow*, effectively struck their tort claims from their pleadings and denied them a meaningful jury trial. (*Compare* Rehearing Petition, pp. 2-7, *with* pp. 8-10). Both points are addressed in this subsection.

Issues that will be tried first in the state court matter are also at issue in the comprehensive federal litigation yet, as the Bifurcation Order observes, "these issues can only be decided in state court" within its exclusive probate jurisdiction. The Wellin Children do not address this important distinction between the federal and state litigation, which made it not at all unusual for the trial court to surmise that much of the federal litigation will be resolved once the Validity Issues are tried in this case.[6]

The nature of the bifurcation in this case, which permits the jury to decide which estate planning documents are the operative documents before proceeding with any tort claims concerning those documents, could not be more different than the scenario present in *Morrow,* where losing the first phase of trial would have pretermitted the second phase altogether. To the contrary here, if the Wellin Children lose the Validity Issues trial, i.e., fail to convince a jury to invalidate their father's most recent estate planning documents, then it is conceivable they will receive a less-favorable inheritance and use that ***to bolster their tort claims*** in the second phase of trial (most notably, to increase the lost inheritance damages claimed from Mrs. Wellin). This is a significant difference from the outcome in *Morrow*.

Finally, the Bifurcation Order did not deny the Wellin Children "a meaningful and substantive jury trial," nor was it "an unvarnished effort to force a settlement or to pressure the parties to 'elect' a nonjury trial." (Rehearing Petition, p. 8). The plain language of the Bifurcation Order expressly orders a jury trial, which is the only factor relevant to the only question before the Court: Can the Wellin Children ***immediately*** appeal the Bifurcation Order? As the Dismissal Order noted, the Wellin Children are free to appeal these issues after trial,

[6] 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.

(Dismissal Order, p. 2 n.2), but South Carolina law has limited the scope of immediately appealable "mode of trial" orders to those that abridge the appellants' constitutional right to trial by jury. *Fulmer v. Cain*, 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008). "That analysis [of whether a constitutional right to a jury trial was abridged] proceeds by determining whether or not a party is erroneously denied a trial by jury in a law case, or is erroneously required to proceed before a jury in an equity case." *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 72-73, 533 S.E.2d 331, 333-34 (2000). Here, as in *Flagstar*, "no party is denied the right to a trial by jury" because the Bifurcation Order specifically orders a jury trial. *Id.*

> Moreover, after trial, . . . [the Wellin Children] will be free to advance on appeal that the trial judge abused his discretion in ordering bifurcation and that [they] ha[ve] thereby been effectively deprived of a fair and/or fully informed fact finder. An abuse of discretion, if any, by the trial court in its ruling can be corrected at that time. *See Breland v. Love Chevrolet*, 339 S.C. 89, 529 S.E.2d 11, 2000 S.C. LEXIS 54 (S.C. Sup. Ct. 2000) (immediate appeals under § 14-3-330(2) are permitted only where the alleged error cannot be corrected by a new trial). To hold otherwise would require this Court to, inter alia, predetermine the admissibility of evidence in advance of trial, to pass upon matters of pretrial discovery and to engage in "piecemeal litigation" . . . . In short, trial of all issues in the case in a single proceeding is not a mode of trial to which the parties are entitled as a matter of right. Any abuse of discretion on the part of the trial court in severing issues for trial may be appealed after the trial, and after full development of the evidence.

Id.

What the Wellin Children have asked this Court to do is to conclude that an order allotting a two-week jury trial for determining the validity of certain documents is tantamount to completely depriving the Wellin Children of their right to a jury trial. The Bifurcation Order places no limit on the length of the second phase of trial related to their tort claims. Nor does the Bifurcation Order restrict the evidence the Wellin Children 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). The trial judge is tasked with applying the tools given to him by the rules of civil procedure "to secure the just, speedy, and inexpensive determination of every action," Rule 1, SCRCP, and this is exactly what the Bifurcation Order accomplishes.

Expanding the reach of immediately appealable orders to include orders regarding the length of trial and other procedural matters soundly within the trial judge's discretion would grossly distort the scope of the "mode of trial" exception. First, it would require this Court to definitively conclude – even before the first piece of evidence has been admitted in the trial court and without any record on appeal outlining the evidence necessary for proof – that: (1) a two-week trial would ***never*** be sufficient for the Wellin Children to present their relevant evidence and have the Validity Issues heard by the jury; and (2) as a general rule, when a litigant may not have time to present all of the evidence he desires at trial, it is tantamount to depriving the litigant of a jury trial altogether. Aside from the unsuitable predeterminations required to reach the conclusion advocated by the Wellin Children, allowing litigants to immediately appeal decisions regarding the duration of trial would irrevocably tie the hands of judges who are tasked with deciding how to stretch valuable judicial resources across overloaded case dockets. When, as here, the trial court has ordered a trial by jury as demanded, subsequent administrative and procedural decisions regarding the duration and timing of trial do not abridge a litigant's constitutional right to trial by jury nor invoke the "mode of trial" exception to the general rule that only final orders are appealable. Otherwise, trial judges would be deprived of the discretion needed to administer their dockets effectively.

For all of these reasons, the Dismissal Order correctly concluded that the Bifurcation Order is not immediately appealable.

c. The South Carolina Supreme Court Has Expressly Stated That Improvident Interlocutory Appeals Do Not Trigger An Automatic Stay In The Trial Court.

The Rehearing Petition's third point – "even if a Panel of this Court or if the Court *en banc* concludes this [Bifurcation] Order is not immediately appealable, under the clear language of the Rules, the [Bifurcation] Order is nevertheless automatically stayed unless and until there is a remittitur," (Rehearing Petition, p. 11) – is puzzling given that the South Carolina Supreme Court has spoken directly to this issue and rejected that approach.[7] Where, as here, an order on appeal is found to be interlocutory, and thus not immediately appealable, the notice of appeal never transferred jurisdiction to the Court of Appeals nor stayed lower court proceedings, ***including trial***:

> Appellant first argues the lower court was without jurisdiction to try the case prior to this Court's issuance of the remittitur, since the filing of the notice of intent to appeal vested this Court with exclusive jurisdiction. Although this is the general rule, the instant case falls within a recognized exception.
>
> Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to this Court, nor does it stay further proceedings in the lower court. *State v. Dingle*, 279 S.C. 278, 306 S.E.2d 223 (1983); *Crout v. S.C. Nat. Bank*, 278 S.C. 120, 293 S.E.2d 422 (1982). Since this Court granted respondents' motion to dismiss on the grounds that the consolidation order was interlocutory, and not appealable, the Circuit Court never lost jurisdiction and properly proceeded to trial. Therefore, appellant's first argument fails.

S.C. Pub. Serv. Auth. v. Arnold, 287 S.C. 584, 585-86, 340 S.E.2d 535, 536 (1986). *See also State v. Dingle*, 279 S.C. 278, 282, 306 S.E.2d 223, 225 (1983) (holding because the order "[wa]s not appealable until final judgment [wa]s rendered, the trial court had continuing

[7] It is even more puzzling that the Wellin Children would make this argument in their Rehearing Petition without referencing the case law addressing this issue, much of which was cited in Respondents' Return to their Supersedeas Petition. (*See* Return to Supersedeas Petition, p. 4, n.5).

jurisdiction over the subject matter of the case"), *abrogated on other grounds by Horton v. California*, 496 U.S. 128, 110 S. Ct. 2301, 110 L. Ed. 2d 112 (1990); *Brown v. Greenwood Sch. Dist. 50 Bd. of Trs.*, 344 S.C. 522, 525, 544 S.E.2d 642, 643 (Ct. App. 2001) (same); *Dibble v. Schade*, 308 S.C. 88, 93, 417 S.E.2d 104, 107 (Ct. App. 1992)(same); *Fibkins v. Fibkins*, 303 S.C. 112, 117, 399 S.E.2d 158, 161 (Ct. App. 1990)(same). South Carolina law is well-settled that appellants may not use improvident interlocutory appeals to avoid trial proceedings, which is precisely what the Wellin Children seek to do.

II. The Rehearing Petition Also Should Be Denied For Procedural Reasons.

The Rehearing Petition also should be denied because the issues it raises are either moot (because the trial court has ruled in the Wellin Children's favor) or premature (because the Wellin Children have asked the trial court to reconsider them). Nothing about the Wellin Children's litigation strategy in this case is designed "to secure the just, speedy, and inexpensive determination of every action" as contemplated by Rule 1, SCRCP. During the pendency of this appeal, the Wellin Children have been litigating the same interlocutory issues on multiple fronts – even obtaining during the course of this appeal a trial court ruling in their favor that moots one of the principal issues they have raised on appeal. This appeal is the poster child for why interlocutory orders are rarely immediately appealable and why litigants cannot be allowed to simultaneously pursue the same relief on appeal and in the trial court.

a. The Wellin Children Have Already Obtained Relief From The June 17, 2019 Trial Setting.

The Wellin Children's June 7 "emergency" Supersedeas Petition sought an "urgent" order from this Court relieving them from the June 17 trial set by the Honorable Frank R. Addy, Jr. in the underlying matter. Just a few days after requesting that emergency relief from this Court, however, the Wellin Children asked the trial court for the same relief in a 153-page

"Motion for a Continuance of Trial"[8] – a step that Rule 241, SCACR, obligated the Wellin Children to take in the trial court ***before*** unnecessarily involving this Court.[9] On June 13, the trial court granted the Wellin Children's request for continuance, ***continuing the trial of this matter until at least early 2020***. (6/13/19 Email from Judge Addy and 7/2/19 Order, attached hereto as **Exhibit B**). That same day, this Court dismissed the Wellin Children's appeal.

The trial court now has granted the emergency relief the Wellin Children also sought from this Court in their now-moot Supersedeas Petition (relief that should have been requested from the trial court in the first place), which obviates any need to revisit the denial of the Supersedeas Petition. (Rehearing Petition, pp. 10-11). Moreover, dismissal of the appeal moots the need to address the Supersedeas Petition in the first instance.

b. The Wellin Children Recently Asked The Trial Court To Consider Expanding The Two-Week Limitation on Trial.

One of the main arguments the Rehearing Petition claims the Panel "overlooked" is the Bifurcation Order's alleged "imposition of an arbitrarily-chosen, unsupported, and grossly-insufficient [two-week] time limit on the trial," which the Wellin Children claim "was based not on any understanding or analysis of the number of witnesses and exhibits, but rather was merely an unvarnished effort to force a settlement or pressure the parties to 'elect' a nonjury trial." (Rehearing Petition, p. 8). Although this argument lacks substantive merit as an issue for

[8] The Supersedeas Petition was filed in the Court of Appeals on Friday afternoon, and the Motion for a Continuance of Trial was filed in the trial court on the following Monday.

[9] As Respondents noted in their Return to the Verified Petition for a Writ of Supersedeas, the Wellin Children should have petitioned the trial court for relief from the trial date before asking this Court to intervene. (*See* Return to Supersedeas Petition, pp. 2-4) (outlining how the Wellin Children reversed the procedure required by Rule 241(d), SCACR, and caused an unnecessary scramble by all parties to address their arguments on multiple fronts during a critical time of trial preparation).

immediate appeal for the reasons outlined above in Section I, it also fails procedurally as an immediately-appealable issue because it is an issue the Wellin Children are ***actively challenging*** in the trial court.

On July 10, 2019, after the Wellin Children filed their Rehearing Petition in this Court, they filed a Motion to Reconsider in the trial court specifically requesting a ruling on their argument "that the Court should not determine the length of trial without first considering the anticipated number of witnesses, their anticipated length of testimony, and other factors affecting the expected length of trial." (7/10/19 Motion for Reconsideration, attached hereto as **Exhibit C**). Quite significantly, the Wellin Children expressly requested that the trial court consider their arguments for why the trial should not be limited to two weeks because the trial court previously "***did not rule upon***" this argument. (**Ex. C**, p. 3 (emphasis added)). Even if the two-week trial length was an immediately appealable issue, which it is not as outlined above in Section I, the Wellin Children now have admitted it is not ripe for appellate consideration because the trial court has yet to rule upon this argument.

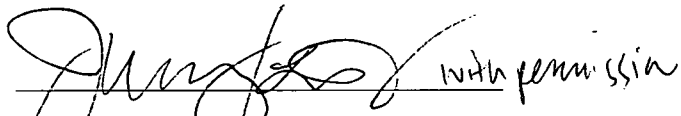
c. <u>The Welllin Children Still Are Seeking Clarification From The Trial Court Regarding The Scope Of The First Trial Phase On The Validity Issues</u>.

As the Dismissal Order correctly held, "the underlying bifurcation order in this case does not state or even suggest that the first phase of the bifurcated trial will be dispositive of any claim tried in the second phase of trial, and the order contains no language restricting the evidence Appellants are entitled to present in either phase." (Dismissal Order, p. 2). As outlined above, this case is nothing like *Morrow*, and the Bifurcation Order in no way pretermits a jury trial on the Wellin Children's tort claims after the first trial phase addressing the Validity Issues.

Moreover, it is clear from the Wellin Children's recent communications with the trial court that they are still in the process of seeking clarification regarding the scope of issues to be tried in each phase. (6/13/19 Email from R.Brunson to Judge Addy, attached hereto as **Exhibit D).**[10] The Wellin Children cannot have it both ways. They cannot seek, on one hand, a ruling from this Court that the scope of trial defined in the Bifurcation Order deprives them of a substantial right while at the same time seeking, on the other hand, clarification from the trial court regarding the scope of trial defined in the Bifurcation Order. This is yet another example of why interlocutory orders like the Bifurcation Order in this case cannot be immediately appealed.

For all of these reasons and those articulated in Respondents' initial filings regarding the issue of appealability, Beneficiary Respondents respectfully request that this Court reject Appellants' invitation to revisit the question of immediate appealability because the Dismissal Order appropriately dismissed this matter as premature and denied the Supersedeas Petition.

Respectfully submitted,



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[10] Beneficiary Respondents believe the trial court has pronounced its ruling on the scope of the first and second trial phases and oppose any effort by the Wellin Children to revisit that ruling.

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PROOF OF SERVICE

I, the undersigned Legal Assistant 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: **BENEFICIARY RESPONDENTS' RETURN TO PETITION FOR REHEARING AND SUGGESTION FOR REHEARING *EN BANC***

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Laura Sabo

July 26, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT

- - -

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/D November 2, 2009, Respondents, Counter-Petitioners, and Counterclaimants, 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, Counter-Respondents,	Civil Action No. 2014-CP-10-07038

(Caption continues on Page 2)

HEARING BEFORE:
HONORABLE FRANK R. ADDY, JR.

DATE TAKEN:	Wednesday, June 12, 2019
TIME BEGAN:	2:00 p.m.
TIME ENDED:	4:54 p.m.
LOCATION:	McCormick County Courthouse 133 South Mine Street McCormick, South Carolina
REPORTED BY:	Cynthia First, RPR, CRR, CBC EveryWord, Inc. P.O. Box 1459 Columbia, South Carolina 29202 803-212-0012

(Caption Continued)

and	)
	)
Friendship Management, LLC,	)
	)
Intervenor Plaintiff	)
	)
vs.	)
	)
Wendy C.H. Wellin,	)
	)
Defendant.	)
	)
IN THE MATTER OF:	)
	)
KEITH S. WELLIN	)

APPEARANCES:

HOOD LAW FIRM, LLC
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BY: ROBERT H. HOOD, SR., ESQUIRE
BY: VIRGINIA A. FLOYD, ESQUIRE
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Representing Plaintiff Wendy C.H. Wellin
as the Special Administrator of the Estate of
Keith S. Wellin, and as Trustee of the Keith S.
Wellin Florida Revocable Living Trust U/A/D
December 11, 2001

GALLIVAN WHITE & BOYD, P.A.
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BY: JOHN T. LAY, ESQUIRE
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in her Personal Capacity

APPEARANCES (Cont.)

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lyndey.bryant@arlaw.com
Representing Hamilton College and the Witness

- - -

P R O C E E D I N G S

- - -

THE COURT: We're going to go back on the record in Wellin versus Wellin. Just one quick housekeeping matter.

I understand the parties have arranged to have an independent court reporter, which is perfectly fine. I have no problem with anything being taken down by an independent party. Just so that we all understand, though, obviously the court reporter that's a member of the judicial branch is the official court reporter. So you're welcome to use the transcript in any way you need to internally, but obviously this is my official reporter, so anything that needs to be transcribed or whatever on appeal, he would be the go-to guy for that. So I just want to make sure that that's understood.

We have a couple of motions here today.

Do you have everybody's last name?

OFFICIAL COURT REPORTER: Yes, sir.

THE COURT: I had my secretary print off because I think earlier today there was a few

EXHIBIT B

From: Addy, Frank R. <faddyj@sccourts.org>
Sent: Thursday, June 13, 2019 2:58 PM
To: Robert Brunson; John Beach; James Hood
Cc: Addy, Frank R. Secretary (Freda Sartin); Bobby Hood; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; John Hagerty; John Hudson; John T. Lay; Karen Jessee; Lauren Lynch; Linda Brewer; Lindsay Joyner; Lydia Spry; Lyndey Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; DTAA - Molly Craig; Patricia Scarborough; Patrick Wooten; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood; Addy, Frank R. Law Clerk (Meagan White)
Subject: RE: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)

All,
At this point, I do not anticipate trying this case next week. First, there are logistical concerns in that the construction litigation which had been the date-certain has not yet settled, and if that does not settle, Judge Young will likely not be able to cover my assigned terms in Lexington or Newberry. This is a relatively recent development as settlement was anticipated. I was also recently told that the Court of Appeals may or may not issue a stay based upon what has been filed there.

Second, as it relates to the appeal from the May 15th order, I reviewed that appeal and the attachments in greater detail last night including the transcript from the February hearing we held. At that hearing, I clearly stated that we would only try the issue of capacity, not undue influence. Between the time of that hearing and the May order, I clearly changed my mind, finding that those issues are related and should be litigated together. However, I acknowledge that including the undue influence claim in the May 15th order clearly caught the Wellin children flat-footed. The appeal makes that abundantly clear.

I do not believe in trial by ambush, and the integrity of the court is the most valuable commodity my branch of government possesses. I had said in February that we would not litigate the undue influence claim, yet I ordered exactly that in May. This was not fair and may have caused the Wellin children to have doubts about the court's integrity.

So, for the above reasons regardless of whether the court of appeals stays the matter, I do not believe it can be or should be tried next week, and I have asked Judge Young to communicate that to the clerk of court who needed to know something prior to the docket meeting tomorrow morning.

I regret, first, that the May order differed from what was put on the record in February, and second, that the last pieces of the puzzle did not fall into place for us to try this case in the coming weeks, regardless of what the Court of Appeals does today or tomorrow as it relates to a stay.

At this point and after speaking with Judge Young, I would ask that we coordinate about finding 2 full weeks in January or February where we can try this case and get it calendared in Charleston as a date-certain. I will issue an order memorializing the other matters addressed yesterday. This will also afford everyone additional time to finalize discovery, continue briefing the issues in Federal court for July, and further narrow the issues/evidence we will address at trial next year. Because there appears to be agreement to try the issues outlined below as a group, we will proceed along those lines.

Pleasure to see everyone yesterday, and thank you for your understanding.

Frank R. Addy, Jr.
Resident Judge, 8th Judicial Circuit

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

THIS MATTER COMES BEFORE THE COURT on multiple motions: the Wellin Children's motion for continuance, the Wellin Children's motion for entry of default against Mrs. Wellin, Mrs. Wellin's motion for entry of default against the Wellin Children, and the Wellin Children and Mrs. Wellin's motions to set aside entries of default. A hearing was held with all parties present in McCormick, South Carolina on June 12, 2019. The Court finds as follows:

Counsel for both the Wellin Children and for Mrs. Wellin have filed motions for entry of default against each other and both have filed motions to set aside entry of default. The parties have been involved in years of litigation in both state and federal court. Pursuant to Rule 1 of the South Carolina Rules of Civil Procedure the Court finds it is not just or proper to enter a default against either side in this case because all sides have been continuously aware of the issues involved in these actions. Therefore, the Court denies both motions for entry of default and grants both motions to set aside the motions for entry of default.

The Wellin Children also filed a motion for continuance. The Court took the matter under advisement at the hearing and now grants the motion for continuance. There were some logistical problems the Court had with proceeding to trial during the timeframe initially ordered, and these concerns were previous communicated to counsel via email.

In light of this Order granting the Wellin Children's motion for continuance, the Court also orders the parties to coordinate with each other and find a mutually convenient two full, consecutive weeks in January, February, or March of 2020 when this case may be tried. The parties shall notify the Court which dates have been selected by close of business Monday, July 15th. Should the parties be unable to agree to a trial date, the Court will contact the Chief Administrative Judge and Court administration and select any available dates which the court calendar will allow.

IT IS SO ORDERED.

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

July 2, 2019
Greenwood, South Carolina

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Civil Action No. 2014-CP-10-07038

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/d November 2, 2009,

Respondents, Counter-Petitioners, and Counterclaimants,

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,

Counter-Respondents,

and

Friendship Management, LLC,

Intervenor Plaintiff,

vs.

Wendy C.H. Wellin,

Defendant.

IN THE MATTER OF:

Keith S. Wellin

THE WELLIN CHILDREN'S MOTION TO RECONSIDER

Pursuant to South Carolina Rule of Civil Procedure 59(e), Respondents, Counter-Petitioners, and Counterclaimants Peter Wellin, Cynthia W. Plum, and Marjorie W. King ("the Wellin Children"), by and through their undersigned counsel, hereby move this Court to reconsider its Order dated July 2, 2019, attached hereto as Exhibit A. In its Order, the Court ruled upon the Wellin Children's motion for continuance, the Wellin Children's motion for entry of default, Wendy Wellin's motion for entry of default, and the Wellin Children's motion to set aside Wendy Wellin's entry of default.

Although the Court stated in its Order that it was granting the Wellin Children's motion for continuance, the Court's Order also ordered the parties to select two weeks when they are available for trial during the first three months of 2020 and to provide those weeks to the Court by close of business on Monday, July 15, 2019, and the Court also held that it would select dates for the trial during the first three months of 2020 if the parties could not agree on two weeks during that time period.

In their motion for continuance, the Wellin Children asked the Court to continue the trial in this matter to at least the next term of Court for several reasons, including the wedding of Ceth Plum's son. However, the Wellin Children also asked the Court to continue the trial on the basis that the Wellin Children's appeal of this Court's Order entered on May 15, 2019, automatically stayed any trial in this action—and deprived this Court of jurisdiction to hold a trial in this action—unless and until the Court of Appeals or South Carolina Supreme Court remits this matter to this Court, which has not yet occurred. Otherwise, as the Wellin Children argued in their motion for a continuance, this Court risks holding a trial that is a nullity. The Wellin Children also argued that this matter should be continued until after the South Carolina Court of Appeals and, if necessary, the South Carolina Supreme Court, rules on the Wellin Children's Petition for a Writ of

Supersedeas. And the Wellin Children asked the Court to continue the trial for the additional reason that the Court should not determine the length of trial without first considering the anticipated number of witnesses, their anticipated length of testimony, and other factors affecting the expected length of trial.

Although the Court's Order dated July 2, 2019, did continue the trial of this matter beyond the term of Court in June 2019, the Court did not rule upon the Wellin Children's above-referenced arguments. To avoid any potential argument by the Wellin Children's adversaries that the Wellin Children failed to preserve an issue or argument, and out of an abundance of caution, the Wellin Children hereby move this Court to reconsider its Order dated July 2, 2019, with respect to the above-referenced arguments. The Court should reconsider its July 2, 2019 Order for the reasons that follow.

Although the Court of Appeals issued an Order on June 13, 2019, granting Respondents' motions to dismiss the appeal and denying the Wellin Children's Petition for a Writ of Supersedeas, the Wellin Children have petitioned the South Carolina Court of Appeals for rehearing of its Order, and the Court of Appeals has not yet remitted this matter to the trial court. *See* Court of Appeals Order, attached hereto as Exhibit B (stating that "the remittitur *will be sent* as provided in Rule 221 of the South Carolina Appellate Court Rules") (emphasis added); *see also* Rule 221, SCACR (stating the remittitur will not be sent until the time for filing of a petition for rehearing has elapsed and that, if such petition or a subsequent petition for certiorari are filed, the remittitur will not be sent until those petitions have been ruled on and, if granted, the further proceedings have been resolved). Because there has been no remittitur, this Court lacks jurisdiction to have a trial in this matter. Also, the Court's July 2, 2019 Order, in requiring the parties to provide two weeks when they are available to have a trial, effectively denies the Wellin Children's request

that the Court consider the evidence relevant to the length of trial prior to determining the length of trial. For the reasons set forth in the Wellin Children's motion for continuance and prior filings with this Court, this Court should not determine the length of trial without first considering the evidence relevant to the length of trial required for all the parties to have a full and fair opportunity to litigate their claims.

For the foregoing reasons, the Wellin Children respectfully request that the Court reconsider its July 2, 2019 Order and address the arguments set forth above.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for the Wellin Children

July 10, 2019
Charleston, South Carolina

2014-CP-10-7038

CERTIFICATE OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia W. Plum, Marjorie W. King and Friendship Management, LLC, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by emailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: **THE WELLIN CHILDREN'S MOTION TO RECONSIDER**

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Attorneys for F. Patricia Scarborough, Esq. and Edward G.R. Bennett, Esq.

Administrative Assistant

July 10, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA	**THE COURT OF COMMON PLEAS**
COUNTY OF CHARLESTON	**Civil Action No. 2014-CP-10-07038**
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*	**ORDER**
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	

THIS MATTER COMES BEFORE THE COURT on multiple motions: the Wellin Children's motion for continuance, the Wellin Children's motion for entry of default against Mrs. Wellin, Mrs. Wellin's motion for entry of default against the Wellin Children, and the Wellin Children and Mrs. Wellin's motions to set aside entries of default. A hearing was held with all parties present in McCormick, South Carolina on June 12, 2019. The Court finds as follows:

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In light of this Order granting the Wellin Children's motion for continuance, the Court also orders the parties to coordinate with each other and find a mutually convenient two full, consecutive weeks in January, February, or March of 2020 when this case may be tried. The parties shall notify the Court which dates have been selected by close of business Monday, July 15th. Should the parties be unable to agree to a trial date, the Court will contact the Chief Administrative Judge and Court administration and select any available dates which the court calendar will allow.

IT IS SO ORDERED.

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

July 2, 2019
Greenwood, South Carolina

EXHIBIT B

The South Carolina 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 Hard, and Heather Lane, Respondents.

In the Matter of: Keith S. Wellin.

Appellate Case No. 2019-000833

ORDER

Appellants' petition for a writ of supersedeas is denied. Respondents' motions to dismiss this appeal are granted because the underlying orders[1] are not immediately appealable pursuant to section 14-3-330 of the South Carolina Code (2017).

Appellants acknowledge bifurcation orders generally are not immediately appealable. *See Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding an order bifurcating the issue of exclusion under an insurance

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[1] Appellants appeal from the circuit courts' orders of May 15, 2019, August 23, 2018, and October 20, 2017. Appellants, however, concede the August 23, 2018 and October 20, 2017 orders, standing alone, are not immediately appealable.

contract from the issue of occurrence was not immediately appealable and, "after trial, [the appellant would] be free to advance on appeal that the trial judge abused his discretion in ordering bifurcation"); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding an order bifurcating issues in a contract case between liability and damages was not immediately appealable). Appellants, however, argue the underlying bifurcation order is immediately appealable based on our supreme court's decision in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015), wherein the court held an order bifurcating issues of direct liability and corporate liability was immediately appealable because the order impacted the substantial right of the plaintiffs to choose their defendant and effectively granted potential summary judgment on the issue of direct corporate liability. In *Morrow*, the circuit court ordered "discovery and a trial on the nursing home negligence claims could go forward, and only if the Morrows were successful, a new jury could hear the corporate negligence claims in a later proceeding." *Id.* at 536, 773 S.E.2d at 145. This case is distinguishable from *Morrow* as the underlying bifurcation order in this case does not state or even suggest that the first phase of the bifurcated trial will be dispositive of any claim tried in the second phase of the trial, and the order contains no language restricting the evidence Appellants are entitled to present in either phase. Accordingly, this appeal is dismissed,[2] and the remittitur will be sent as provided in Rule 221 of the South Carolina Appellate Court Rules.

H. Bruce Williams J.

J.

D. Martin J.

Columbia, South Carolina

FILED

June 13, 2019

[2] Nothing prevents Appellants from appealing after trial and advancing their argument that the circuit court abused its discretion in ordering bifurcation. *See Flagstar Corp.*, 341 S.C. at 72, 533 S.E.2d at 333.

cc:
The Honorable Frank R. Addy, Jr.
The Honorable Julie J. Armstrong
John Thomas Lay, Jr., Esquire
Gray Thomas Culbreath, Esquire
John Dwight Hudson, Jr., Esquire
Robert H. Hood, Esquire
James Bernard Hood, Esquire
Mary Agnes Hood Craig, Esquire
Lindsay Anne Joyner, Esquire
John Fisher Beach, Esquire
Lyndey Ritz Zwing Bryant, Esquire
Marvin D. Infinger, Esquire
Robert H. Brunson, Esquire
Merritt Gordon Abney, Esquire
Patrick Coleman Wooten, Esquire
Miles Edward Coleman, Esquire
Florence Patricia Scarborough, Esquire
Edward G.R. Bennett, Esquire

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Wendy C. H. Wellin Plaintiff, vs. Peter Wellin, Cynthia W. Plum and Marjorie W. King Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2014-CP-10-07038 **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**

Petitioner's Attorney:	Respondents' Attorney:
Robert H. Hood, Esq./James B. Hood, Esq. Molly H. Craig, Esq. Address: Hood Law Firm, LLC 172 Meeting St., Charleston, SC 29401 Phone: 843-577-4435; Fax: 843-722-1630 E-mail: @gwblawfirm.com	Robert H. Brunson, Esq./Patrick C. Wooten, Esq. Merritt G. Abney, Esq. Address: Nelson Mullins Riley & Scarborough LLP PO Box 1806, Charleston SC 29402 Phone: 843-534-4226; Fax: 843-722-8700 E-mail: robert.brunson@nelsonmullins.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☐ Written motion attached
☒ Form Motion/Order

I hereby move for ~~relief~~ or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☒ Defendant — July 10, 2019 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

ADDITIONAL ATTORNEYS:

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mdc@barnwell-whaley.com

EXHIBIT D

From:	Robert Brunson
To:	John Beach; James Hood; Addy, Frank R.
Cc:	Addy, Frank R. Secretary (Freda Sartin); Bobby Hood; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; John Hagerty; John Hudson; John T. Lay; Karen Jessee; Lauren Lynch; Linda Brewer; Lindsay Joyner; Lydia Spry; Lyndey Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; DTAA - Molly Craig; Patricia Scarborough; Patrick Wooten; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood; Caroline Crisler, Leonard; Addy, Frank R. Law Clerk (Meagan White); Al Eargle; Chiles, Gwendolyn D.; Buffey Hodges
Subject:	RE: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
Date:	Thursday, June 13, 2019 1:16:56 PM

Dear Judge Addy,

Thank you for your time yesterday. In response to Mr. Hood's below email, he is correct that the parties have sometimes fallen into the habit of using the shorthand of "capacity and undue influence" to refer to a group of related challenges that the Wellin Children have brought to the validity of Mr. Wellin's amended wills and trusts, all of which are based on the same or similar facts. The challenges to the validity of the 2013-14 versions of the will and trust that are related to capacity and undue influence are coercion, duress, fraud, and mistake. Like Mr. Hood and Mr. Beach, we had also understood that these related grounds for challenging the wills/trusts fell under the umbrella of "the issues of undue influence and testamentary capacity," which is the scope of trial identified in this Court's Order dated May 15, 2019. Likewise, yesterday when the Court confirmed at the status conference that the trial would be on the issues of "undue influence and incapacity" only, we understood that the related challenges of coercion, duress, fraud, and mistake would also be part of the trial. Of course, the Wellin Children's position is that all claims should be included in a single trial, but the Court has already heard and rejected the Wellin Children's argument on this point.

There are two additional issues regarding the scope of trial that the Wellin Children would like to address clearly in light of Mr. Hood's and Mr. Beach's below emails.

First, the Wellin Children's declaratory judgment counterclaim in this action alleges that the amended versions of Mr. Wellin's trust "were the product of . . . defamation, . . . breaches of fiduciary duty, breaches of contract, [and] intentional interference with testamentary intent." *See* Amended Counterclaims, ¶ 228. The counterclaim does not explicitly allege that the amended versions of Mr. Wellin's trust were invalid by virtue of defamation, breaches of fiduciary duty, breaches of contact, and intentional interference with inheritance. In any event, as the Court and the parties are aware, these are among the Wellin Children's counterclaims seeking damages against Wendy Wellin individually, and these are among the claims that the Wellin Children have argued should be included in the trial of this matter, but this Court has rejected that argument. We raise this because we want to be very clear that the Wellin Children are not being permitted to litigate these claims (or any of their other claims against Mrs. Wellin individually) in this first phase of trial, even though most if not all of the documents and testimony entered into evidence at trial will be relevant to these claims. We do not believe Mr. Hood's or Mr. Beach's emails are inconsistent with our position on this, but we wanted to raise it so that the record is clear, but we also do not want any party later to argue that these claims were actually litigated or that they could have been litigated in this trial.

Second, the Wellin Children's declaratory judgment counterclaim challenges the validity of the 2013-14 amendments to Mr. Wellin's trust on the ground that the amended versions of the trust were not delivered to Peter Wellin as successor trustee as required by the amendment

provision in the trust. *See* Amended Counterclaims, ¶ 229. On November 13, 2017, in the related federal action pending before Judge Norton (civil action number 2:14-cv-4067-DCN) the Wellin Children filed a motion for partial summary judgment as to this challenge to the purported amendments to Mr. Wellin's trust. *See* ECF No. 472. On December 14, 2017, the Estate, Mrs. Wellin, and Hamilton College filed response memoranda that totaled more than fifty pages (without exhibits). *See* ECF Nos. 491-93. On January 8, 2018, the Wellin Children filed a 17-page reply memorandum in support of their motion. *See* ECF No. 500. On February 28, 2018, Judge Norton held a lengthy hearing on this motion and took the motion under advisement. After the hearing, the Estate and Hamilton College each filed Sur-Replies opposing the motion. *See* ECF Nos. 518, 524. This motion remains pending before Judge Norton and a decision is expected at any time.

Although this legal issue has been extensively litigated in federal court and is awaiting a ruling by Judge Norton, I do not believe the parties have ever discussed this issue with this Court. In any event, this Court's Order dated May 15, 2019, does not mention this issue, which is plainly distinct from the Wellin Children's challenges to the trust amendments on the grounds of capacity and undue influence. Rather, the Court's Order provides—and the Court held yesterday—that the trial will be only on "the issues of undue influence and testamentary capacity." Thus, the Wellin Children understand that the Court has held that the parties are not permitted to litigate this separate issue during this trial, which is focused only on the Wellin Children's challenges on the grounds of undue influence and capacity and the related grounds identified above—namely, coercion, duress, fraud, and mistake. In sum, the Wellin Children understand the Court to have ordered that this trial will be only on the issues of whether the 2013-14 versions of Mr. Wellin's will and revocable trust are invalid by virtue of undue influence, incapacity, coercion, duress, fraud, and/or mistake and no other issues are being actually litigated, nor could they be litigated pursuant to the order.

Thank you for your consideration.

Robert H. Brunson
Nelson Mullins
843-534-4226

From: John Beach <John.Beach@arlaw.com>
Sent: Thursday, June 13, 2019 11:49 AM
To: James Hood <james.hood@hoodlaw.com>; Addy, Frank R. <faddyj@sccourts.org>
Cc: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Bobby Hood <bobby.hood@hoodlaw.com>; Brian Duffy <bduffy@duffyandyoung.com>; Bryson Geer <bryson.geer@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Edward Bennett <bennett@eckb.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay - GWB <jlay@gwblawfirm.com>; Karen Jessee <kjessee@barnwell-whaley.com>; Lauren Lynch <lauren.lynch@nelsonmullins.com>; Linda Brewer <linda.brewer@arlaw.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; Lydia Spry <Lydia.Spry@nelsonmullins.com>; Lyndey Bryant <lyndey.bryant@arlaw.com>; M Dawes Cooke <mdc@barnwell-whaley.com>; Marvin Infinger <minfinger@barnwell-whaley.com>; Melissa Urch <murch@gwblawfirm.com>; Merritt Abney <merritt.abney@nelsonmullins.com>; DTAA - Molly Craig <molly.craig@hoodlaw.com>; Patricia Scarborough <scarborough@eckb.com>; Patrick Wooten <Patrick.Wooten@nelsonmullins.com>;

Rutledge Young, Jr. <jry@duffyandyoung.com>; Stephanie Chickey <stephanie.chickey@hoodlaw.com>; Stephen Bell <sbell@duffyandyoung.com>; Tina Gault <tina.gault@hoodlaw.com>; Virginia Flood <Virginia.Floyd@hoodlaw.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>; Addy, Frank R. Law Clerk (Meagan White) <faddylc@sccourts.org>; Al Eargle <aeargle@lex-co.com>; Chiles, Gwendolyn D. <gchiles@mccormickcountysc.org>; Buffey Hodges <bhodges@mccormickcountysc.org>; Robert Brunson <robert.brunson@nelsonmullins.com>
Subject: RE: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)

Judge Addy,

Hamilton College has been proceeding under the same assumption as Mr. Hood and requests clarification that the bifurcated trial will adjudicate *all* of the Wellin Children's challenges to the validity of the various versions of the will and revocable trust Keith Wellin executed in 2013 and 2014.

Thank you,

-John

John Beach
Partner
1501 Main Street, 5th Floor | Columbia, SC 29201
main 803.254.4190 | **direct** 803.343.1269 | **mobile** 803.413.2300
efax 803.343.1224 | **fax** 803.779.4749

john.beach@arlaw.com

website bio vCard map

-----Original Message-----
From: Jamie Hood [mailto:james.hood@hoodlaw.com]
Sent: Wednesday, June 12, 2019 9:59 PM
To: Addy, Frank R.
Cc: Addy, Frank R. Secretary (Freda Sartin); Bobby Hood, Sr.; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; John Beach; John Hagerty; John Hudson; John Lay - GWB; Karen Jessee; Lauren Lynch; Linda Brewer; Lindsay Joyner; Lydia Spry; Lyndey R. Z. Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; Molly Craig; Patricia Scarborough; Patrick Wooten; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Floyd; Caroline Crisler. Leonard; Addy, Frank R. Law Clerk (Meagan White); Al Eargle; Chiles, Gwendolyn D.; Buffey Hodges; Robert Brunson
Subject: RE: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)

Dear Judge Addy,

Thank you very much for your time today.

I wanted to take you up on your offer to contact you with any questions. As you know, your

bifurcation order is directed toward the bifurcation of a trial to determine the validity of the estate planning documents (the Will and the Revocable Trust) executed by Keith Wellin in 2013 and 2014. While we fall into the habit of only referring to the challenges on testamentary capacity and undue influence, the Wellin Children have also raised challenges on other grounds, including fraud, mistake and duress. I wanted to take this opportunity to confirm that the scope of the bifurcated trial will adjudicate all of the Wellin Children's challenges to the testamentary documents themselves, including those other than capacity and undue influence. I am sure no one wants a series of trials on different challenges but since there was a specific question about the scope of the trial, I wanted to make sure we were all on the same page.

Would you be so kind as to let us know if this understanding is correct, incorrect, or in need of clarification?

Thank you,
Jamie

-----Original Message-----
From: Jamie Hood <james.hood@hoodlaw.com>
Sent: Monday, June 10, 2019 3:47 PM
To: Robert Brunson <robert.brunson@nelsonmullins.com>
Cc: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Bobby Hood, Sr. <bobby.hood@hoodlaw.com>; Brian Duffy <bduffy@duffyandyoung.com>; Bryson Geer <bryson.geer@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Edward Bennett <bennett@eckb.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; John Beach <john.beach@arlaw.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay - GWB <jlay@gwblawfirm.com>; Karen Jessee <kjessee@barnwell-whaley.com>; Lauren Lynch <lauren.lynch@nelsonmullins.com>; Linda Brewer <linda.brewer@arlaw.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; Lydia Spry <Lydia.Spry@nelsonmullins.com>; Lyndey Bryant <lyndey.bryant@arlaw.com>; M Dawes Cooke <mdc@barnwell-whaley.com>; Marvin Infinger <minfinger@barnwell-whaley.com>; Melissa Urch <murch@gwblawfirm.com>; Merritt Abney <merritt.abney@nelsonmullins.com>; Molly Craig <molly.craig@hoodlaw.com>; Patricia Scarborough <scarborough@eckb.com>; Patrick Wooten <Patrick.Wooten@nelsonmullins.com>; Rutledge Young, Jr. <jry@duffyandyoung.com>; Stephanie Chickey <stephanie.chickey@hoodlaw.com>; Stephen Bell <sbell@duffyandyoung.com>; Tina Gault <tina.gault@hoodlaw.com>; Virginia Floyd <virginia.floyd@hoodlaw.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>; Addy, Frank R. Law Clerk (Meagan White) <faddylc@sccourts.org>; Al Eargle <aeargle@lex-co.com>; Chiles, Gwendolyn D. <gchiles@mccormickcountysc.org>; Buffey Hodges <bhodges@mccormickcountysc.org>
Subject: Re: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)

Dear Judge Addy

I am writing to update the court and counsel regarding our trial conflict noted below. The parties in the Anderson case have reached a settlement. So our conflict has now resolved. Look forward to seeing everyone on Wednesday.

Regards, Jamie

Jamie Hood
(843) 577-1223 w
(843) 324-5582 c

> On Jun 10, 2019, at 3:06 PM, Robert Brunson <robert.brunson@nelsonmullins.com> wrote:
>
> Dear Judge Addy and all counsel:
>
> Attached please find a motion for continuance filed on behalf of the Wellin Children. Copies of the motion are also being served by regular mail. By filing this motion the Wellin Children do not waive objections to jurisdiction of this court, based upon the automatic stay. In addition, we respectfully request a court reporter for the status conference scheduled in McCormick on Wednesday. If a court reporter is not available, please inform us and we will bring one.
>
> Thanks,
>
> Robert H. Brunson
> Nelson Mullins
> 843-534-4226
>
> From: Robert Brunson
> Sent: Wednesday, June 5, 2019 9:27 PM
> To: James Hood <james.hood@hoodlaw.com>
> Cc: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Bobby Hood <bobby.hood@hoodlaw.com>; Brian Duffy <bduffy@duffyandyoung.com>; Bryson Geer <bryson.geer@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Edward Bennett <bennett@eckb.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; John Beach <john.beach@arlaw.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay - GWB <jlay@gwblawfirm.com>; Karen Jessee <kjessee@barnwell-whaley.com>; Lauren Lynch <lauren.lynch@nelsonmullins.com>; Linda Brewer <linda.brewer@arlaw.com>; Lindsay Joyner <ljoyner@gwblawfirm.com>; Lydia Spry <Lydia.Spry@nelsonmullins.com>; Lyndey Bryant <lyndey.bryant@arlaw.com>; M Dawes Cooke <mdc@barnwell-whaley.com>; Marvin Infinger <minfinger@barnwell-whaley.com>; Melissa Urch <murch@gwblawfirm.com>; Merritt Abney <merritt.abney@nelsonmullins.com>; DTAA - Molly Craig <molly.craig@hoodlaw.com>; Patricia Scarborough <scarborough@eckb.com>; Patrick Wooten <Patrick.Wooten@nelsonmullins.com>; Rutledge Young, Jr. <jry@duffyandyoung.com>; Stephanie Chickey <stephanie.chickey@hoodlaw.com>; Stephen Bell <sbell@duffyandyoung.com>; Tina Gault <tina.gault@hoodlaw.com>; Virginia Flood <Virginia.Floyd@hoodlaw.com>; Caroline Crisler. Leonard <ccleonard@charlestoncounty.org>; Addy, Frank R. Law Clerk (Meagan White) <faddylc@sccourts.org>; Al Eargle <aeargle@lex-co.com>; Chiles, Gwendolyn D. <gchiles@mccormickcountysc.org>; Buffey Hodges <bhodges@mccormickcountysc.org>
> Subject: Re: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
>
> Dear Judge Addy:
>
>

> The Wellin Children also have a significant conflict with respect to a trial during the final two weeks of June. Keith Plum—the son of our client Ceth Plum—is getting married on Friday, June 28<x-apple-data-detectors://0>, and his rehearsal dinner is on Thursday, June 27. <x-apple-data-detectors://1> Keith is Ceth's only son and is her first child to get married, and she is heavily involved in the planning and preparation for the events surrounding the wedding and the rehearsal dinner, which have been planned for these dates for nearly a year and which are in Colorado. All three of the Wellin Children and their families plan to attend both events. In light of this, the Wellin Children respectfully request that the Court continue the trial until after Keith Plum's wedding for a date that the parties and the Court can agree upon.
>
> We continue to believe that this Court lacks jurisdiction to have a trial in this action while the appeal is pending, but even setting those issues aside, a trial during the last two weeks of June would present a significant hardship for our clients in light of Keith Plum's wedding and rehearsal dinner. Thank you for your consideration.
>
>
> Robert Brunson
> Nelson Mullins
> 151 Meeting Street
> Suite 600
> Charleston, SC 29401
>
> 843-534-4226
> robert.brunson@nelsonmullins.com<mailto:robert.brunson@nelsonmullins.com>
> >
> On Jun 5, 2019, at 8:21 PM, Jamie Hood
<james.hood@hoodlaw.com<mailto:james.hood@hoodlaw.com>> wrote:
> ◀External Email▶ - From:
james.hood@hoodlaw.com<mailto:james.hood@hoodlaw.com>
>
> Dear Judge Addy
>
> I am in receipt of your email setting a status conference for next Wednesday June 12th and the trial to begin on Monday June 17th to conclude at the end of the week of the 24th. I wanted to alert the court to a scheduling conflict that Molly and I both have. We are set to start a two week product liability trial in Anderson starting on Monday June 10 and concluding Friday June 21st before Judge Maddox. That case was set by special designation by court administration. While the parties to that case in Anderson have discussed settlement, the difference is significant and we are prepared to commence on Monday. Of course, if that changes I will alert you and counsel. I have arranged to have others from my office in attendance at the status conference and really do not want to delay this trial but simply cannot be in two places at one time. If we started the Wellin trial on June 24th and continued through the net week, that would eliminate the trial conflict. I appreciate your consideration. Jamie
>
>
>
> From: Addy, Frank R. Secretary (Freda Sartin)
<faddysc@sccourts.org<mailto:faddysc@sccourts.org>>
> Sent: Tuesday, June 4, 2019 4:15 PM
> To: Bobby Hood, Sr. <bobby.hood@hoodlaw.com<mailto:bobby.hood@hoodlaw.com>>;

Brian Duffy <bduffy@duffyandyoung.com<mailto:bduffy@duffyandyoung.com>>; Bryson Geer <bryson.geer@nelsonmullins.com<mailto:bryson.geer@nelsonmullins.com>>; Deirdre McCool <deirdre.mccool@nelsonmullins.com<mailto:deirdre.mccool@nelsonmullins.com>>; Edward Bennett <bennett@eckb.com<mailto:bennett@eckb.com>>; Gray Culbreath <gculbreath@gwblawfirm.com<mailto:gculbreath@gwblawfirm.com>>; Jamie Hood <james.hood@hoodlaw.com<mailto:james.hood@hoodlaw.com>>; John Beach <john.beach@arlaw.com<mailto:john.beach@arlaw.com>>; John Hagerty <john.hagerty@nelsonmullins.com<mailto:john.hagerty@nelsonmullins.com>>; John Hudson <jhudson@gwblawfirm.com<mailto:jhudson@gwblawfirm.com>>; John Lay <jlay@gwblawfirm.com<mailto:jlay@gwblawfirm.com>>; Karen Jessee <kjessee@barnwell-whaley.com<mailto:kjessee@barnwell-whaley.com>>; Lauren Lynch <lauren.lynch@nelsonmullins.com<mailto:lauren.lynch@nelsonmullins.com>>; Linda Brewer <linda.brewer@arlaw.com<mailto:linda.brewer@arlaw.com>>; Lindsay Joyner <ljoyner@gwblawfirm.com<mailto:ljoyner@gwblawfirm.com>>; Lydia Spry <lydia.spry@nelsonmullins.com<mailto:lydia.spry@nelsonmullins.com>>; Lyndey Bryant <lyndey.bryant@arlaw.com<mailto:lyndey.bryant@arlaw.com>>; M Dawes Cooke <mdc@barnwell-whaley.com<mailto:mdc@barnwell-whaley.com>>; Marvin Infinger <minfinger@barnwell-whaley.com<mailto:minfinger@barnwell-whaley.com>>; Melissa Urch <murch@gwblawfirm.com<mailto:murch@gwblawfirm.com>>; Merritt Abney <merritt.abney@nelsonmullins.com<mailto:merritt.abney@nelsonmullins.com>>; Molly Craig <molly.craig@hoodlaw.com<mailto:molly.craig@hoodlaw.com>>; Patricia Scarborough <scarborough@eckb.com<mailto:scarborough@eckb.com>>; Patrick Wooten <Patrick.Wooten@nelsonmullins.com<mailto:Patrick.Wooten@nelsonmullins.com>>; Robert Brunson <robert.brunson@nelsonmullins.com<mailto:robert.brunson@nelsonmullins.com>>; Rutledge Young Jr <jry@duffyandyoung.com<mailto:jry@duffyandyoung.com>>; Stephanie Chickey <stephanie.chickey@hoodlaw.com<mailto:stephanie.chickey@hoodlaw.com>>; Stephen Bell <sbell@duffyandyoung.com<mailto:sbell@duffyandyoung.com>>; Tina Gault <tina.gault@hoodlaw.com<mailto:tina.gault@hoodlaw.com>>; Virginia Floyd <virginia.floyd@hoodlaw.com<mailto:virginia.floyd@hoodlaw.com>>
> Cc: Caroline Crisler. Leonard <ccleonard@charlestoncounty.org<mailto:ccleonard@charlestoncounty.org>>; Addy, Frank R. Law Clerk (Meagan White) <faddylc@sccourts.org<mailto:faddylc@sccourts.org>>; Al Eargle <aeargle@lex-co.com<mailto:aeargle@lex-co.com>>; Chiles, Gwendolyn D. <gchiles@mccormickcountysc.org<mailto:gchiles@mccormickcountysc.org>>; Buffey Hodges <bhodges@mccormickcountysc.org<mailto:bhodges@mccormickcountysc.org>>
> Subject: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
> Importance: High
>
> Good afternoon everyone,
>
> Judge Addy would like to have everyone make themselves available for a Status Conference meeting at the McCormick County Courthouse at 2 pm on Wednesday, June 12th in McCormick County.
> The court is aware that there has been a Notice of Intent to Appeal filed but does not see where there is a cause for an automatic stay of the case. Therefore, the court's intentions are to move forward with the trial during the weeks of June 17th and June 24th. The calendar on the Judicial website does not reflect a change at this time however, they are forthcoming. We look forward to seeing everyone next week.
>
> Have a wonderful day!

>
> Freda E. Sartin
> Administrative Assistant
> Honorable Frank R. Addy, Jr.
> Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
> 528 Monument Street, Suite 210
> Greenwood, South Carolina 29646
> Phone : (864) 943-8020
> Fax : (864) 942-8581
> Email : faddysc@sccourts.org<mailto:faddysc@sccourts.org>
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> <2019.06.10 (filed) WC's Motion for a Continuance (State Court) - 4838-0708-7513 v 1.pdf>

GWB
GALLIVAN WHITE BOYD
Complex experience for complex matters

JOHN T. LAY, JR.
A member of the South Carolina Bar
Direct Dial: 803.724.1800
jlay@GWBlawfirm.com

July 26, 2019

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

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 Beneficiary Respondents' Return to Petition for Rehearing and Suggestion for Rehearing *En Banc* 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/lhs
Enclosures

cc: *Via US Mail*:
Robert H. Brunson
Patrick C. Wooten

Merritt G. Abney
M. Dawes Cooke, Jr.
F. Patricia Scarborough
Edward G. R. Bennett
Marvin D. Infinger
Robert H. Hood
James B. Hood
Molly H. Craig
Virginia Rogers Floyd
John F. Beach
Lyndey Bryant