THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, Circuit Court Judge

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Case No. 2014-CP-10-07038
Court of Appeals 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/Petitioners,

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.

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## VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS[1]

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This Petition for a Writ of Supersedeas asks this Court to enforce the automatic appellate stay imposed by the Rules while the Court considers a Petition for Writ of Certiorari relating to a trial court order purporting to sever certain issues for a truncated trial. This Writ is justified not only because the Rules provide for an automatic stay, but also, and separately, because preservation of the status quo is required for the Court to protect its jurisdiction, to preserve judicial economy, and to avoid rendering the matters on appeal moot.

This Petition presents a fundamental question: does an appeal of an interlocutory order (1) trigger an automatic stay of the matters decided in the order on appeal as stated in Rules 205

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[1] In the alternative, Petitioners request the Court deem this filing to request a writ of prohibition or mandamus if, in the Court's discretion, the issuance of such other writ is preferable.

and 241(a), SCACR, or (2) does it trigger a stay ***only*** *where the trial court finds the interlocutory order is immediately appealable*? Put another way, (1) must a trial court faced with an appeal of an interlocutory order respect the automatic stay irrespective of his opinion whether the order is immediately appealable, or (2) can he disregard the automatic stay if he believes the matter is not immediately appealable? Appellants contend that the answer to these questions is (1), while Respondents contend the answer is (2). If Respondents are correct, then there is no "automatic" stay under Rules 205 and 241(a); instead, *the trial court is free to ignore these rules and proceed as if no appeal was taken.*

In the alternative, this Petition also presents a second question: even if the law governing stays is somehow as Respondents contend, do prudential concerns under the facts of this case nevertheless warrant imposing a stay of the trial of this matter until after this Court rules on the pending Petition for a Writ of Certiorari?

On May 15, 2019, the circuit court entered an order that, among other things, set a truncated two-week trial in which Appellants may not pursue their pending claims and the jury may not consider them, but which the circuit court nevertheless intends to be dispositive of some or all of Appellants' claims. The circuit court's order deprives Appellants of substantial rights, prevents them from being the architects of their complaint, and strips them of their constitutional right to a jury trial on their claims. Appellants immediately appealed the ruling. Despite the fact that the order was (and still is) being challenged on appeal, the circuit court nevertheless informed the parties that it intends to proceed with a trial in this matter regardless of the pending appeal that affects the very format and mode of the trial itself.

Proceeding with trial while an order governing the trial is being challenged on appeal is not permissible under the plain language of the South Carolina Appellate Court Rules, which provide for an automatic stay of matters on appeal and likewise provide that the circuit court lacks jurisdiction over matters affected by an appeal. Further, even assuming the trial is not halted by the automatic appellate stay, this Court nevertheless should exercise its discretion and

stay the trial below in the interests of the sound and efficient administration of justice. Allowing the circuit court to proceed with trial while this matter is on appeal would encroach on this Court's jurisdiction, moot the issues being appealed, deprive Appellants of substantial trial and appellate rights, and waste the parties' and the circuit court's time and resources on a trial likely bound for eventual vacatur. Accordingly, pursuant to Rule 241, SCACR and S.C. Code Ann. § 14-8-290, Appellants respectfully request this Court issue a Writ of Supersedeas or, in the alternative, a Writ of Prohibition or Mandamus, preventing the circuit court from holding a trial until this appeal is resolved and the case is remitted to the circuit court.

## RELEVANT BACKGROUND[2]

This appeal arises from a dispute over a multi-hundred million dollar estate left by the decedent Keith S. Wellin ("Keith"). Petitioners and Appellants in the pending appeal are Keith's three adult children—Peter J. Wellin, Cynthia Plum, and Marjorie King (collectively "the Wellin Children"). Respondent Wendy C.H. Wellin ("Wendy") was Keith's fourth wife and is the Special Administrator of the Estate seeking to probate Keith's final will dated June 27, 2014.

In this action, the Wellin Children challenged probate of the June 27, 2014 will and counter-petitioned to probate a prior will executed in August 2011. The Wellin Children have also asserted counterclaims in this proceeding against Wendy individually[3] and have sought a declaratory judgment that Keith's Tenth Amended Trust, dated August 2011, should be deemed his final and controlling trust, rather than later-amended versions of this Trust.

On May 15, 2019, the circuit court entered an order that, among other things, granted a motion by the Estate (*i.e.*, Wendy) to "bifurcate" the trial to "decide the issues of undue influence and testamentary capacity for the relevant period of time." *See* Order at 1 (attached hereto as

[2] For the sake of brevity, the recitation that follows provides only the information pertinent to the issuance of the Writ requested herein. A more complete recitation of the facts and procedural history of this proceeding is set forth in the Petition for Certiorari filed concurrently.

[3] The counterclaims include defamation, intentional interference with inheritance, intentional interference with prospective economic relations, breach of fiduciary duty, breaches of the prenuptial agreement, breach of contract accompanied by a fraudulent act, barratry, and negligence per se.

**Exhibit A**). The order, however, is not a bifurcation order in any normal sense. Rather, the order expressly prohibits the Wellin Children from pursuing their counterclaims during the trial and, instead, holds that the jury's findings on the issues of capacity and undue influence—which involve elements and burdens different from those applicable to the Wellin Children's counterclaims against Wendy—will "likely" be dispositive of certain unspecified portions of "the federal litigation." Litigation pending in federal court is largely overlapping with the state court litigation and includes all of the Wellin Children's claims against Wendy. *Id.* at 3–4.

The Wellin Children filed a Notice of Appeal the following day challenging this order, including the limitations and restrictions it imposed on the trial. *See* Notice of Appeal (attached hereto as **Exhibit B**).[4] Although bifurcation orders are not typically appealable, this order is analogous to the order in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015), in which this Court held a "bifurcation" order was immediately appealable because it effectively granted "potential summary judgment" on certain issues not included in the truncated trial and deprived plaintiffs of the substantive right to be the architects of their case.[5]

The day after the Wellin Children filed their Notice of Appeal, the circuit court judge, the Honorable Frank R. Addy, Jr., wrote to the Honorable James E. Lockemy, Chief Judge of the South Carolina Court of Appeals, stating, among other things, that "I do believe this appeal may be little more [than] an effort to delay this matter further," and also stating: "I just wanted the Court to be aware of my concerns and the procedural posture of this case in the hopes that we would be able to move forward and resolve this matter in June." *See* Letter (May 17, 2019)

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[4] In the Notice of Appeal, the Wellin Children also appealed from two other orders that, standing alone, would not be immediately appealable. The primary issue on appeal, however, is the permissibility of the truncated, limited, "bifurcated" trial prescribed in the circuit court's order.

[5] A more extensive explanation of the parallels between *Morrow* and the instant proceeding may be found in the Wellin Children's Petition for Certiorari filed concurrently.

(attached as **Exhibit C**). Judge Addy did not copy the Wellin Children or any of the parties on the letter.[6 & 7]

Notwithstanding the pending appeal and the appellate stay that should be imposed by Rules 205 and 241(a), SCACR (and that should also be imposed as a matter of prudence), Judge Addy's judicial assistant subsequently emailed the parties' counsel late on the afternoon of June 4, 2019, stating that "the court's intentions are to move forward with the trial during the weeks of June 17th and June 24th." *See* Email from Judge Addy on June 4, 2019 (attached hereto as **Exhibit D**).[8] The email further stated, "The court is aware that there has been a Notice of Intent to

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[6] The Wellin Children never received a copy of this letter. While the appeal was pending before the Court of Appeals, however, the Wellin Children discovered a copy of the letter after it was uploaded to the Court's online docket. That online docket entry has since been changed, and Judge Addy's letter has been removed from the PDF that can be downloaded for that entry.

[7] Contrary to Judge Addy's assertion in his letter to Judge Lockemy, the Wellin Children did not file an appeal to delay trial. Rather, they only seek a full and fair trial and to protect their appellate rights. The trial ordered by the circuit court purports to decide the claims of the Wellin Children without giving them the opportunity to present them to the jury. Further, because the Court's May 15, 2019, Order affects a substantial right, the Wellin Children *must* appeal the Order *now* to avoid waiving their appellate rights. *See Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (stating a party that fails to appeal an order affecting a substantial right waives the right to appeal that issue later). Indeed, if the Wellin Children were appealing for purposes of delay, they would not have filed their Notice of Appeal the day after the circuit court's Order was entered; rather, they would have waited 30 days to do so.

[8] Judge Addy's May 17 letter to Judge Lockemy states: "It had been my intention to try this case the final two weeks in June, and the parties have been aware of this since January." *See* **Exhibit C** (emphasis in original). The undersigned and the Wellin Children's other counsel are not aware of Judge Addy informing the parties in January of his intention to try this case in June—much less in particular weeks in June. In its Order dated May 15, 2019, the circuit court stated that the trial would be limited to two weeks and stated that the trial would "take place in June of this year." This was the first time counsel for the Wellin Children are aware of receiving notice of a trial to take place in June. If the circuit court sent a notice, counsel for the Wellin Children did not receive it and do not recall discussion of a June trial at the January off-the-record status conference or at the February hearing. Further, although Judge Addy in his May 17, 2019 letter informed Judge Lockemy of his intention since January to hold the trial during the last two weeks of June, the first notice received by the Wellin Children was the June 4, 2019 email from the circuit court indicating the trial would proceed notwithstanding the appeal. Upon information and belief, counsel for the other parties also were unaware of June trial until the May 15, 2019 order or of a trial starting on June 17, 2019, until receiving the June 4, 2019 email from the circuit court. In fact, counsel for the Estate informed the court by email on June 5, 2019, that it was already scheduled to try another case during the weeks of June 10 and June 17, and was therefore not available to begin trial on June 17. *See* E-Mail from Estate's Counsel (attached as **Exhibit E**).

Appeal filed but does not see where there is a cause for an automatic stay of the case." *Id.* The email did not provide a reason why the circuit court found no cause for the automatic stay to apply.

In response, the Wellin Children filed a Petition for a Writ of Supersedeas with the Court of Appeals pursuant to Rule 241(d)(2), SCACR, seeking to stay the trial below unless and until the matter was remitted to the trial court.[9] Out of an abundance of caution, and even though the Wellin Children believed the trial court lacked authority to proceed with the trial, they nevertheless also filed a motion with the trial court as contemplated by Rule 241(d)(1), SCACR, seeking to stay or, at minimum, reschedule, the trial that was set to commence in a matter of days, arguing in part that the Wellin Children could not attend in its entirety because the abruptly-scheduled trial conflicted with a long-planned family wedding and other obligations. *See* Wellin Children's Mot. for Continuance at 5–6 (June 10, 2019) (attached hereto, sans exhibits, as **Exhibit F**).

On the afternoon of Thursday, June 13, 2019, Judge Addy emailed the parties' counsel to inform them the trial would not be commencing the following week, citing logistical difficulties relating to courtroom availability and acknowledging his inconsistent past statements regarding whether the issue of undue influence would be tried in the truncated trial. *See* Email from Judge Addy to counsel (June 13, 2019) (attached hereto as **Exhibit G**). A few moments later, the Court of Appeals emailed the parties' counsel to inform them the Court was dismissing the appeal and denying the Petition for a Writ of Supersedeas. The Wellin Children filed a Petition for Rehearing and Suggestion for Rehearing *En Banc*, which the Court of Appeals declined to grant. The Wellin Children subsequently sought certiorari from this Court simultaneously with the filing of this Petition.

The circuit court's postponement of the trial relieved the exigency of the situation, but only temporarily. In his email to counsel on June 13, 2019, Judge Addy stated that, even though the matter had not (and still has not) been remitted to the circuit court, and despite the Wellin

[9] The Wellin Children filed the writ with the Court of Appeals in the first instance because (i) at the time of filing, the trial was set to begin in a matter of days, (ii) the trial court had indicated by email that it did not intend to recognize the appellate stay, and (iii) the predisposition of the trial court on this issue was plainly reflected in the unusual letter to Judge Lockemy. Under those extraordinary circumstances, it was impracticable to request relief first from the circuit court.

Children's motion asking the circuit court to stay any trial until after final resolution of their appeal, he intended to proceed with the truncated trial in early 2020 regardless of whether the appeal was still pending. *See* **Exhibit G;** *see also* Order at 2 (July 2, 2019) (attached hereto as **Exhibit H**) (memorializing Judge Addy's prior email and stating he intends to conduct the trial in the first quarter of 2020). Accordingly, pursuant to Rule 241(d)(2), SCACR, the Wellin Children now respectfully file this petition requesting this Court stay the trial below until the appeal is decided with finality and the matter is remitted to the circuit court.

## ARGUMENTS

As explained more fully below, this Court should issue a writ of supersedeas to enforce the automatic appellate stay imposed by the Rules, to protect its jurisdiction, to maintain the status quo pending resolution of the appeal, to preserve judicial economy, to avoid rendering the matters on appeal moot.[10] Because the circuit court has indicated it intends to conduct the truncated and limited trial in early 2020, the Wellin Children respectfully request expedited consideration and issuance of a writ staying the trial and any other proceedings in the circuit court affected by the appeal at least until resolution of the pending Petition for Certiorari and, if certiorari is granted, until after resolution of the merits of the appeal.

### I. A writ is needed to enforce the automatic appellate stay found in the appellate court rules.

The Rules are clear: the filing of a Notice of Appeal divests the trial court of jurisdiction over all matters decided in the order being appealed, except for "matters not affected by the appeal." *See* Rules 205 & 241(a), SCACR.[11] In the instant proceeding, the order on appeal unquestionably decides matters relating to the conduct and mode of the trial (including the

[10] These bases are separate and independent from one another. If, for example, this Court is disinclined to determine whether the automatic appellate stay applies or to draw a bright line regarding the application of the automatic stay, this Court may—and should—nevertheless issue a stay on the narrower, prudential bases that, under the specific facts of this case, a stay is warranted in the interests of judicial economy, efficiency, fairness, and to avoid mootness.

[11] The automatic appellate stay is subject to 11 enumerated exceptions, *see* Rule 241(b), SCACR, none of which is implicated here.

refusal to have a trial on certain claims). Indeed, as the opposing parties' appellate motions and supporting memoranda to date expressly recognize, those limitations are the very issue being appealed. Accordingly, the appeal automatically stayed the trial of this case until the appeal is resolved. *See* Rule 241(a), SCACR ("[T]he service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order . . . ."); *Grosshuesch v. Cramer*, 377 S.C. 12, 31 n.7, 659 S.E.2d 112, 122 n.7 (2008) ("We take this opportunity to reiterate that while an appeal is pending, a lower court cannot act on matters affecting the issue on appeal."); *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 23, 594 S.E.2d 478, 485 (2004) ("The automatic stay continues in effect for the duration of the appeal . . . .").

When (as here) a trial court intends to proceed with a matter despite the automatic appellate stay, a writ of supersedeas is warranted to enforce the automatic stay. *See State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000) (noting both the Court of Appeals and the Supreme Court had issued writs to stay the enforcement of the trial court's order; holding that order was automatically stayed by the appeal; and holding that "when there is a dispute as to whether an automatic stay exists," the authority to resolve that dispute is vested in the appellate courts).

The fact that the appealability of Judge Addy's order is disputed is of no moment. The Wellin Children anticipate that Wendy will oppose this Petition, relying (as she did in opposing the similar Petition filed with the Court of Appeals) on this Court's statement in a 1986 opinion that the appeal of an interlocutory ruling does not deprive the lower court of jurisdiction. *See S.C. Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 586, 340 S.E.2d 535, 536 (1986) (citing *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)).[12] The procedural posture and holding of *Arnold*, however, are distinct from the

[12] The Wellin Children note that *Arnold* and the cases it relied on predate the adoption of the SCACR, and thus these rulings were animated by pre-SCACR rules that were subsequently repealed and replaced. *See* Rule 102(a), SCACR ("These Rules take effect on September 1, 1990."); Rule 102(b), SCACR ("The Supreme Court Rules and the Miscellaneous Rules shall be repealed when these Rules become effective."); *see also Dingle*, 279 S.C. at 282, 306 S.E.2d at 225 (citing and relying on old Supreme Court Rule 41); *Crout*, 278 S.C. at 124, 293 S.E.2d at 424 (same). The Wellin Children are unaware of any post-SCACR cases in which this Court has reiterated or relied on the pre-SCACR principle set out in *Arnold*, *Dingle*, and *Crout*. (The Court of Appeals has, in a few instances, repeated the rule, citing solely to *Arnold*.)

instant appeal. Specifically, in *Arnold*, this Court had already dismissed the appeal prior to the time the trial was held, though the remittitur had not yet issued. *See Arnold*, 287 S.C. at 585, 340 S.E.2d 536. Accordingly, when the *Arnold* Court subsequently considered whether that trial had been proper, its reasoning was premised on a "no harm, no foul" analysis, holding that because *this Court* (and not merely an intermediate appellate court) had *already* held the order on appeal was not immediately appealable and had *already* dismissed the appeal at the time trial was held, the trial was not a nullity. *See id.* ("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."). Here, in contrast, there has not yet been such a final determination and ruling by this Court, and thus the "no harm, no foul" analysis that animated *Arnold*'s holding is absent here. Critically, neither this Court nor the Court of Appeals has ever *prospectively* held—as Respondents ask this Court to hold now—that no automatic stay was triggered by an interlocutory appeal because the trial court judge determined, in his or her own discretion, that the order was not immediately appealable. Such a holding would eliminate the automatic stay clearly imposed by the Appellate Court Rules and, in its place, create a rule (which does not appear anywhere in the Appellate Court Rules) making stays contingent on whether the trial court judge believes the interlocutory order to be immediately appealable. This is not the law. It is the role of the appellate courts—not the role of the trial court—to determine whether interlocutory orders are immediately appealable. Unless and until an appeal is remitted to the trial court, Rules 205 and 241(a) impose an automatic stay over of all matters decided in the order being appealed except for "matters not affected by the appeal."

Furthermore, the exception set out in *Arnold*—namely, that the automatic appellate stay is not triggered by a party's appeal from an order that is not immediately appealable—is not implicated here because the Wellin Children *have* appealed from an immediately appealable order. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) (holding an order purporting to bifurcate issues for trial was immediately appealable under circumstances parallel to those presented here); *see also* the Wellin Children's Petition for

Certiorari (explaining the immediate appealability of the order being appealed and discussing in detail the parallels between *Morrow* and the instant appeal). Indeed, the Wellin Children not only *may* immediately appeal the "bifurcation" order; they *must* immediately appeal it to avoid waiving their right to appeal later. *See Lester v. Dawson*, 327 S.C. 263, 266, 491 S.E.2d 240, 241 (1997) (stating a party that fails to appeal an order affecting a substantial right waives the right to appeal that issue later). The Rules establishing the automatic appellate stay make no exception for situations where an opposing party, or even the trial court, thinks the order is not immediately appealable. Nor should such an exception exist, as it would place parties like the Wellin Children in a "Catch 22" scenario—forced both to appeal (lest they lose their ability to do so later) and simultaneously forced to proceed with a potentially wasteful trial.

**II. A writ is needed to avoid rendering the matters on appeal moot.**

A Writ of Supersedeas is also warranted here because any form of trial at this point would render moot this Court's consideration of the order setting the length, scope, and mode of trial. Accordingly, the trial should be stayed pending a resolution of this appeal. *See* Rule 241(c)(2), SCACR ("In determining whether an order should issue pursuant to this Rule, the lower court, administrative tribunal, appellate court, or judge or justice of the appellate court should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot."); *see also Brown v. Harper*, 409 S.C. 470, 474, 761 S.E.2d 779, 781 (Ct. App. 2014), *aff'd sub nom.* 410 S.C. 446, 766 S.E.2d 375 (2014) ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy."); *Berry v. Ianuario*, 281 S.C. 21, 21, 314 S.E.2d 308, 308 (1983) (granting an appellant's petition for supersedeas "in order to prevent the appeal from becoming moot"); *Andrews v. Sumter Commercial & Real Estate Co.*, 87 S.C. 301, 304, 69 S.E. 604, 606 (1910) (holding the appellate courts should exercise their power to "supersede an order of a circuit judge . . . when it is made to appear to be necessary to prevent irreparable injury or a miscarriage of justice").

The Wellin Children appealed the order setting the truncated trial of severed issues. If the circuit court proceeds with that trial while the appeal is pending, the appeal will be rendered moot and the Wellin Children will have been deprived of the substantial rights they seek to protect on appeal and will have wasted substantial time and resources trying a case before a court that lacks jurisdiction. Such deprivation is no harmless error and cannot be undone. This Court has recognized that "it is difficult, if not impossible, to unring a bell." *State Record Co. v. State*, 332 S.C. 346, 356 n.19, 504 S.E.2d 592, 597 n.19 (1998). Accordingly, a writ is required here.

**III. A writ is warranted for prudential reasons of efficiency, judicial economy, and fairness.**

In the alternative, even if the automatic appellate stay does not apply, a discretionary or prudential stay is warranted by considerations of fairness, efficiency, and the sound and orderly administration of justice. *See* Rule 241(d)(2), SCACR (authorizing the discretionary stay of proceedings in lower court when such proceedings are not automatically stayed); *Matter of Decker*, 322 S.C. 212, 214, 471 S.E.2d 459 (1995) (stating that even if the automatic appellate stay does not apply, the Court "must determine if we should exercise our discretion to issue a writ of supersedeas," and issuing such a writ in the interests of fairness and to preserve the status quo pending the Court's resolution of a novel question); *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (stating a supersedeas should be used to "'stay proceedings in the [circuit] court, to preserve the status quo pending the determination of the appeal ..., and to preserve to appellant the fruits of a meritorious appeal where they might otherwise be lost to him.'") (quoting 4A C.J.S. Appeal & Error § 662 at 494–95 (1957)).

The rule espoused by the circuit court and the Court of Appeals in the instant litigation invites trial judges to roll the dice, speculating the appeal will eventually be dismissed with finality, but taking the risk that—if the order being appealed is, in fact, held to be immediately appealable—the trial that was held during the pendency of the appeal will have been an enormous waste of the parties' and the circuit court's time and resources. This sort of gamble is not (and should not be) the law.

An instructive example can again be found in this Court's holding in *Morrow*, a case that is procedurally nearly identical to the instant lawsuit and appeal. In *Morrow* (as here), the circuit court ordered a purported "bifurcation" of the issues and scheduled a trial in which only certain claims would be tried but which the court intended to be potentially dispositive of other, untried claims. *See Morrow*, 412 S.C. at 536, 773 S.E.2d at 145. The defendants appealed from that ruling. A single Judge of the Court of Appeals initially dismissed the appeal as interlocutory, and a panel of the Court of Appeals subsequently affirmed. If the trial court in *Morrow* had at that point proceeded to try the case without waiting for the defendants to file a petition for rehearing, then file a petition for certiorari, then brief the merits, then argue the case to the Supreme Court, and obtain an opinion from the Supreme Court (which ultimately reversed the so-called bifurcation order), the trial would have been a nullity. So too here. In the interests of efficiency, economy, and fairness, this Court should issue a Writ of Supersedeas halting any trial while the Wellin Children's Petition for Certiorari and subsequent appeal is pending, and making clear that no trial shall proceed in this matter unless and until a remittitur is issued. The circuit court's plan to proceed with trial under the very circumstances and limitations being challenged on appeal should be stayed.

## CONCLUSION

For the reasons set forth above, the Wellin Children respectfully request this Court grant a writ of supersedeas or, in the alternative, a writ of prohibition or mandamus, preventing the circuit court from holding a trial until this appeal is resolved and the case is remitted to the circuit court.

[*SIGNATURE PAGE ATTACHED*]

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October 17, 2019

THE STATE OF SOUTH CAROLINA
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APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
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In the Matter of: Keith S. Wellin.

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## PROOF OF SERVICE

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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, u/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: **Petition for a Writ of Certiorari**
**Appendix to the Petition for a Writ of Certiorari**
**Verified Petition for a Writ of Supersedeas**

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