

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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OCT 17 2019

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

S.C. SUPREME COURT

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.

APPENDIX—VOLUME I

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Frank R. Addy, Jr., Circuit Court Judge

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

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

vs.

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

vs.

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

and

Friendship Management, LLC, ... Appellant,

vs.

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

IN THE MATTER OF:
Keith S. Wellin

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SC Court of Appeals

NOTICE OF APPEAL

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

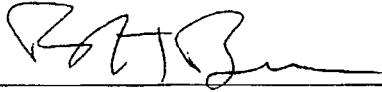
Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, and Friendship Management, LLC (the “Appellants”) appeal the order of the circuit court dated May 9, 2019, and entered on May 15, 2019.¹ Counsel for Appellants received written notice of the entry of the order on May 16, 2019. Appellants also appeal the prior orders of the circuit court entered October 20, 2017, and August 24, 2018.² Copies of the subject orders are attached hereto.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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

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

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Charleston, South Carolina
May 16, 2019

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, 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:

NOTICE OF APPEAL

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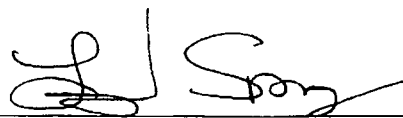
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SC Court of Appeals

A handwritten signature in black ink, appearing to read 'Lydia Spry', written over a horizontal line.

Lydia Spry
Administrative Assistant

May 16, 2019

ATTACHMENT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

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SC Court of Appeals

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

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

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

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

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

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

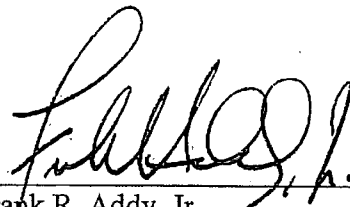
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

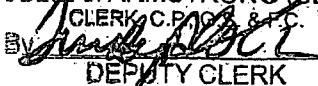
This Court will try the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014 in state court. Put another way, the trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

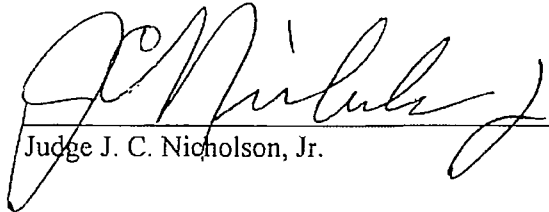
¹ The Court is aware that other motions have been filed since the hearing on this matter. The Court will address those other motions in due course.

ATTACHMENT 2

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

AND IT IS SO ORDERED.

10/20, 2017
Charleston, South Carolina


Judge J. C. Nicholson, Jr.

ATTACHMENT 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin
PLAINTIFF(S)

Peter Wellin Cynthia
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk:

No further delays in this case. Chief Admin Judge should set for trial (2 weeks max) as soon as practicable. am

Motion/ Stay by Respondent & Counter Petitioners - Denied

Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

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

[Signature]
Circuit Court Judge

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Judge Code

8-23-18
Date

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SC Court of Appeals



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MAY 28 2019

NELSON, MULLINS

The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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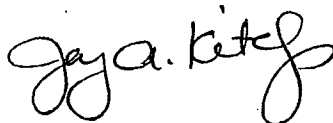
Re: Wendy Wellin v. Peter Wellin
Appellate Case No. 2019-000833

Dear Counsel:

This Court has received your notice of appeal. A preliminary review of the order(s) challenged on appeal indicates it might not be appealable.

Accordingly, it is requested the parties serve and file memoranda addressing the issue of appealability within ten (10) days of the date of this letter. The time limits for perfecting the appeal are held in abeyance pending the Court's consideration of the memorandum.

Very truly yours,

A handwritten signature in cursive script, appearing to read "J. A. Kite".

CLERK

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

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Wendy C.H. Wellin,

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Appellants,

v.

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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' MOTION TO DISMISS

Respondents Wendy C.H. Wellin, individually, ("Mrs. Wellin"); Hamilton College;
Campbell Hart; and Heather Lane (herein collectively the "Beneficiary Respondents")
respectfully move the South Carolina Court of Appeals to dismiss this appeal because it is
premature under S.C. Code Ann. § 14-3-330. The Appellants have appealed an interlocutory

order issued by the Honorable Frank R. Addy, Jr. that addressed only procedural issues – specifically discovery and bifurcation – in order to position this case for an imminent, phased trial on the merits. The case is not over, and Appellants cannot further delay a trial of this matter by pursuing an improper, premature appeal of interlocutory decisions. The provisions of § 14-3-330 ensure judicial economy and dictate that the parties try this case and proceed to resolution on the merits prior to any appeal. The grounds for this motion are more fully set forth herein.

PROCEDURAL HISTORY

The above-captioned action began as a petition for formal probate following the September 2014 passing of Keith S. Wellin, wherein Mrs. Wellin requested that the Probate Court of Charleston County probate Mr. Wellin's June 27, 2014 Last Will & Testament ("June 27, 2014 Will") and informally appoint her as personal representative of her late husband's estate. As required by South Carolina law, all potential heirs of Mr. Wellin's estate were named as Respondents to the petition, including Appellants Peter Wellin, Cynthia W. Plum, and Marjorie W. King (collectively, the "Wellin Children"). Shortly after the petition was filed, Mrs. Wellin was named the Special Administrator of the Estate of Keith S. Wellin.¹

On October 20, 2014, the Wellin Children contested Mrs. Wellin's request to probate the June 27, 2014 Will by filing an Answer, Counterclaims, and Counter-Petition in their individual capacities (the "Will Contest") and requesting removal of the matter² from Probate Court to Circuit Court. The Wellin Children's Will Contest named Mrs. Wellin, individually; Hamilton College; the Keith S. Wellin Florida Revocable Living Trust; Campbell Hart; and Heather Lane as "Counter-Respondents." The Wellin Children claimed that the June 27, 2014 Will should be

¹ At this time, no personal representative has been appointed to represent Mr. Wellin's Estate, so Mrs. Wellin has continued to serve as the Special Administrator.

² The removal was granted on October 23, 2014.

declared invalid on the basis of incapacity, undue influence, duress, fraud, and mistake, and instead sought to probate Keith Wellin's August 2011 estate plan.

Shortly after the Wellin Children filed their Will Contest in this matter, they also launched an attack against Mrs. Wellin personally by filing *in personam* claims against her in the District of South Carolina (the "Federal Action"). Then in January 2015, the Wellin Children moved to stay the Will Contest because they claimed that "resolution of the broader, Federal Action will resolve the issues in this Will Contest Action." Although the motion to stay was contested, the Circuit Court granted the motion in July 2015, and this matter was stayed for several years.

On October 20, 2017, the Circuit Court lifted the stay of this matter, (Notice of Appeal, Ex. 2), after which the Wellin Children sought to amend their Will Contest to include the same *in personam* claims against Mrs. Wellin that were already pending in the separate Federal Action. Even though the Wellin Children had previously assured the federal court that the *in personam* claims did not affect the Will Contest (and therefore did not implicate the probate exception to federal jurisdiction) and over objections from the other parties, the Wellin Children convinced the Circuit Court that their previously-pending *in personam* claims also needed to be included as part of the Will Contest as "mandatory counterclaims." On February 6, 2018, the Wellin Children filed their amended Answer, Counterclaims, and Counter-petition, adding their *in personam* claims, along with their representative capacities as "new parties," to this probate litigation.

In May 2018, the Wellin Children filed *another* Motion to Stay all proceedings in this now-expanded matter – the probate portion of which had been pending by that time for almost four (4) years. The Wellin Children again argued to the Circuit Court that this matter should be

stayed to permit resolution of the Federal Action first. That motion to stay was denied by interlocutory order signed by Judge Addy on August 24, 2018, and the order noted “No further delays in this case. Chief Admin Judge should set for trial (2 weeks max) as soon as practicable.” (Notice of Appeal, Ex. 3).

In August 2018, 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”). The Estate moved to bifurcate because the Validity Issues undergird many – if not most – of the major allegations in this litigation, such that bifurcating the Validity Issues to be tried first would promote efficiency, economy and fairness. Moreover, trial of 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 Federal Action.

ISSUES DECIDED BY THE ORDER ON APPEAL

The primary order Appellants seek to appeal is Judge Addy’s interlocutory decision to bifurcate the trial of this matter, which established that the first phase of trial will be comprised of the Validity Issues for all changes to Keith Wellin’s estate plan from 2013-2014. (Notice of Appeal, Ex. 1, at 3-4)(the “Bifurcation Order”). Although the Bifurcation Order ruled on six (6) motions in total – four (4) motions seeking protection from certain depositions, a motion by Appellants for a status conference, and the Estate’s Motion to Bifurcate – the Notice of Appeal

singles out *only the bifurcation decision* for this interlocutory appeal with its citation of *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537-40, 773 S.E.2d 144, 145-47 (2015) and accompanying parenthetical “holding order granting motion to bifurcate was immediately appealable because it affected a substantial right of appellant.” (Notice of Appeal, p. 2 n.1 (also citing generally to S.C. Code Ann. § 14-3-330)). It is for good reason that Appellants have not tried to appeal the other discovery and status conference decisions by Judge Addy contained in the Bifurcation Order, because the law is well-settled those decisions are not immediately appealable. *See, e.g., Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008)(holding that “discovery orders, in general, are interlocutory and are not immediately appealable”); *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005)(finding an order quashing a subpoena duces tecum issued to a non-party is not immediately appealable because it neither involves the merits nor affects a substantial right); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992)(holding an order requiring a party to submit to deposition is not immediately appealable); *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008)(holding that the “mode of trial” exception to the general rule that only final orders are immediately appealable is confined to orders which abridge a party’s constitutional right to trial by jury). As outlined below, this appeal must be dismissed because Judge Addy’s bifurcation decision to try the Validity Issues first is not immediately appealable either.³

³ Although Appellants’ Notice of Appeal also attaches prior circuit court orders (entered October 20, 2017 and August 24, 2018) which rejected Appellants’ repeated effort to stay the probate proceedings indefinitely while the Federal Action proceeds, Appellants admit those orders “are not ordinarily immediately appealable” unless “there is another appealable issue before the court.” (Notice of Appeal, p. 2, Exs. 2-3). Because there is no other immediately appealable issue at this time, as outlined *infra*, these orders are not properly on appeal either.

ARGUMENT

The Bifurcation Order is a non-final, interlocutory order, and the law is well-settled that bifurcation is not an immediately appealable issue. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable). Nevertheless, Appellants attempt to appeal the Bifurcation Order, citing § 14-3-330 and *Morrow* for their assertion that “the order affects a substantial right of Appellants.” (Notice of Appeal, p. 2, n.1). Appellants have not endeavored to explain what “substantial right” they believe was impacted by the Bifurcation Order, and as outlined in more detail below, their citation to *Morrow* is inapposite because the “substantial right” *Morrow* sought to protect is not at stake here. Dismissal of Appellants’ premature appeal of the Bifurcation Order is necessary because there is no statutory basis for their immediate appeal in this case – under *Morrow* or any other case law interpreting the General Assembly’s § 14-3-330 definition of appealable interlocutory orders.

“Generally only final judgments are appealable.” *Tillman v. Tillman*, 420 S.C. 246, 248-49, 801 S.E.2d 757, 759 (Ct. App. 2017); *see also Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) (“‘Final judgment’ is a term of art referring to the disposition of all the issues in the case.”). An order like the Bifurcation Order in this case which “reserve[es] an issue, or leav[es] open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory.” *Tillman*, 420 S.C. at 248-49, 801 S.E.2d at 759 (citing *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005)). The *only* interlocutory orders that may be appealed are those defined in the narrow exceptions of S.C. Code Ann. § 14-3-330:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330 (1976 & Supp. 2014); *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable.”); *see also Tillman*, 420 S.C. at 250-51, 801 S.E.2d at 760 (finding that “[t]o avoid circuitous litigation and needless appeals, we construe section 14-3-330 narrowly”). Narrow construction of § 14-3-330 furthers judicial economy by avoiding “piecemeal appeals.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

The South Carolina Supreme Court has repeatedly held that bifurcation orders are not immediately appealable under § 14-3-330, *Flagstar* and *Senter*, *supra*, yet Appellants claim Judge Addy’s Bifurcation Order is immediately appealable because it “affects a substantial right of Appellants.” (Notice of Appeal, p. 2, n.1)(citing generally to § 14-3-330). The Appellants’ Notice of Appeal fails to differentiate Judge Addy’s Bifurcation Order from those previously rejected for immediate appeal, and the Notice of Appeal fails to identify which of the § 14-3-330 “substantial right” subsections Appellants have invoked to support their appeal in this case. A

plain reading of the statute reveals Subsection (2)(a) to be the only “substantial right” provision of the statute even potentially applicable to the Bifurcation Order,⁴ and Subsection (2)(a) was the only provision relied on by the Court in *Morrow*, to which Appellants have cited. (Notice of Appeal, p. 2, n.1 (citing *Morrow*, 412 S.C. at 539; 773 S.E.2d at 146)).

For an order to qualify as having impacted a substantial right under § 14-3-330(2)(a), it must be “[a]n order involving the merits . . . [that] finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled.” *Duncan v. Gov’t Emps. Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) (quoting *Knowles v. Standard Sav. & Loan Ass’n*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979)). Section 14-3-330(2)(a) does not permit the immediate appeal of just any pretrial order affecting a substantial right. Rather, the statutory language makes clear that an order affecting a substantial right is immediately appealable only “when such order would discontinue an action, prevent an appeal, ... or strike out an action or defense.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 (1993).

None of these circumstances apply to the Bifurcation Order in this case, which simply orders the presentation of issues to the fact-finder for decision, extracting salient determinations - over which the state court has exclusive jurisdiction - to be decided first. No claims or defenses have been struck or pretermitted; the Bifurcation Order merely establishes the framework in which those claims and defenses will be presented. Importantly, the Validity Issues that Judge Addy slated to be tried first are the fundamental probate determinations that, according to the

⁴ The Bifurcation Order did not “grant[] or refuse[] a new trial” or “strike[] out an answer or any part thereof or any pleading in any action,” to invoke Subsection 2(b) or 2(c), respectively. Nor is the Bifurcation Order “[a] final order” that qualifies as immediately appealable pursuant to Subsection (3). Subsection 2(a) is the only potentially applicable statutory grant of immediate appealability here.

General Assembly, can only be determined within the exclusive jurisdiction of South Carolina state courts. The fact cannot be ignored that Appellants have chosen to pursue portions of this underlying litigation in *two different cases* proceeding simultaneously in state and federal court. Judge Addy's Bifurcation Order simply streamlines trial of the state court matter by ensuring the state court tries first that portion of the litigation that only it can: The validity of testamentary documents. As the Bifurcation Order notes, "bifurcation of the [Validity I]ssues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation." (Bifurcation Order, p. 3). The Bifurcation Order does not impact a "substantial right" of Appellants as required by § 14-3-330(2)(a).

Nor can Appellants seek solace in the Supreme Court's *Morrow* opinion, which only found that the bifurcation order entered in that case was immediately appealable because it impacted the "[t]he [substantial] right of the plaintiff to choose her defendant." *Morrow*, 412 S.C. at 539; 773 S.E.2d at 146 (parenthetically quoting *Neeltéc Enters., Inc., v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012)). This case is not *Morrow*, where the trial court's order was plagued by a "material misunderstanding" of the Morrows' claims and improperly "conflate[d] the theories of vicarious liability and direct liability by determining the Morrows can move forward on their claims against the corporate defendants only if they first recover against Magnolia Place." 412 S.C. at 538; 773 S.E.2d at 146. There was no material misunderstanding of Appellants' claims by Judge Addy in this case, nor does the Bifurcation Order make the second phase of trial contingent on the first phase as did the trial court in *Morrow*. The Bifurcation Order merely establishes the order of issues to be tried; it does not treat certain claims as "dependent" upon other claims, "effectively grant[ing] . . . potential

summary judgment” on certain issues like in *Morrow*. 412 S.C. at 539; 773 S.E.2d at 146. Judge Addy’s order contemplates that all of the issues will be tried at some point, but that some will be tried before others.

Perhaps most significant to the question of appealability in this case is what the Court explicitly *refused* to do in *Morrow*: It “decline[d] the . . . invitation to base our decision on the manner in which the motion was characterized—one of bifurcation” and set apart the bifurcation order in *Morrow* as “quite distinct from other orders of bifurcation which have come before this Court.” 412 S.C. at 539-40; 773 S.E.2d at 147 (comparing *Morrow* to *Flagstar* and *Senter*, *supra*). The narrow tailoring of the *Morrow* opinion prevents it from serving as a blanket authorization to immediately appeal any bifurcation order, yet that is *exactly* the result that Appellants’ Notice of Appeal urges in this case with its cursory citation to *Morrow* as authority to appeal an “order granting motion to bifurcate.” (Notice of Appeal, p. 2, n.1). *Morrow* offers no reason to abrogate the Court’s rejection of bifurcation as an immediately appealable issue in *Flagstar* and *Senter* and it does not elevate Judge Addy’s Bifurcation Order for an immediate appeal.

Allowing Appellants to appeal the Bifurcation Order would impermissibly expand the reach of § 14-3-330(2)(a) to encompass a category of procedural orders that fall squarely within the trial court’s discretion for trial management. See Rule 42(b), SCRCP (“The court, in furtherance of convenience . . . may order a separate trial of any . . . separate issue”); *Durham v. Vinson*, 360 S.C. 639, 644-45 n.2, 602 S.E.2d 760, 762 n.2 (2004) (finding the circuit court has discretion to bifurcate a trial). If bifurcation decisions are immediately appealable, no judge will ever consider bifurcating issues for trial even if it would serve the ends of justice; ordering bifurcation would virtually guarantee that a piecemeal appeal thwarts any forward

progress of a case toward resolution. It is for this very reason that immediately appealable interlocutory orders are the exception and not the rule under § 14-3-330. This case has already been delayed several years due to Appellants' efforts to stay the probate proceedings. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. at 94, 529 S.E.2d at 13-14 ("[W]e believe avoiding piecemeal litigation is the best policy to follow. The current case reveals why such appeals are disfavored. ... Already the progress of this case has been delayed several years."). No further delay is warranted, and this Court's observation in *Tillman* is equally applicable here:

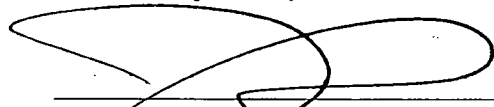
Appellant's rights have yet to be finally determined by the circuit court. Appellant has not reached the end of the road, however long and winding he may have made it. The order is not immediately appealable.

Tillman, 420 S.C. at 251, 801 S.E.2d at 760.

CONCLUSION

For all of these reasons, the Beneficiary Respondents respectfully request that the Court dismiss the prematurely-filed appeal and allows this case to proceed toward trial in the Circuit Court.

Respectfully submitted,



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PROOF OF SERVICE

RECEIVED
MAY 24 2019
SC Court of Appeals

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

Pleadings:

BENEFICIARY RESPONDENTS' MOTION TO DISMISS

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Paralegal

May 24, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAY 29 2019

SC 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

MOTION TO DISMISS

Respondent Wendy C.H. Wellin, in her representative capacities as Special Administrator and Trustee (collectively, the "Estate"), respectfully moves the South Carolina Court of Appeals to dismiss this appeal as premature because the interlocutory orders of which Appellants seek review are not immediately appealable under S.C. Code Ann. § 14-3-330. The Appellants have appealed an interlocutory order issued by the Honorable Frank R. Addy, Jr. ruling upon several

procedural motions which addressed discovery and scheduling issues aimed at moving forward with a phased trial on the merits to determine the validity of Keith S. Wellin's estate plan, including his will and related revocable trust. They also seek review of two prior interlocutory orders in which the Honorable J.C. Nicholson, Jr. lifted a stay of the probate litigation and Judge Addy declined to reinstate the stay. These orders do not include any final ruling on any issue on the merits of this probate action. Appellants should not be allowed to further delay this matter by pursuing a piecemeal appeal of discretionary procedural rulings. The grounds for this motion are more fully set forth herein.

PROCEDURAL HISTORY

The decedent in this probate matter, Keith S. Wellin, died on September 14, 2014, at the age of 88, as a resident of Charleston County. His surviving spouse is Respondent Wendy C. H. Wellin, to whom he was married in 2002. Mr. Wellin had three adult children from a prior marriage, Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, the Appellants in this matter.

Mr. Wellin was a businessman who amassed significant wealth as an entrepreneur and Wall Street investor. As might be expected of any wise businessman, Mr. Wellin retained and consulted with tax and estate planning attorneys regarding his plans for distributing his assets. In addition to executing a last will and testament, over his lifetime Mr. Wellin also executed other documents creating trusts and a family partnership to manage his assets during his life and upon his death.

After Mr. Wellin's death, Mrs. Wellin filed a Petition for Formal Probate and an Application for Informal Appointment of Personal Representative in the Charleston County Probate Court presenting for probate her husband's Last Will and Testament, executed June 27, 2014. By separate Application, Mrs. Wellin was appointed as Special Administrator of her

husband's estate on September 17, 2014. The Appellants opposed the probate of the June 27, 2014 Last Will and Testament and petitioned the Court to probate an older will executed by their father on August 11, 2011.¹ The Appellants challenge the validity of the June 27, 2014 Last Will and Testament on the grounds that (1) Mr. Wellin lacked capacity to execute the June 27, 2014 Will; (2) the Will was the product of undue influence exerted by Mrs. Wellin; and (3) the Will is the product of duress, fraud, or misrepresentation. Thereafter, Mr. Wellin's children filed a motion for removal, and the Petition for the Formal Probate of the will was removed to Circuit Court in October 2014.

In addition to this probate action, there are other pending actions in federal court regarding related matters. These federal actions include a 2013 action initiated by Mr. Wellin, before his death, asserting claims against his children for mismanagement and breach of fiduciary duties in connection with certain trusts he had established; a 2013 action initiated by a Trust Protector; and a 2014 action initiated by the Wellin Children asserting a multitude of tort claims against Mrs. Wellin individually and challenging the validity of Mr. Wellin's amendments to his Revocable Trust.

In January 2015, the Wellin Children moved to stay this state court probate action based on their claim that resolution of the federal action would resolve the issues in the will contest. By order of July 2, 2015, the Circuit Court granted the motion to stay. However, after several years of protracted discovery practice and no major progress toward resolution in the federal action the Estate filed a Motion to Lift the Stay in 2017. By order of October 20, 2017, Judge

¹ Mr. Wellin executed three other sets of estate planning documents in 2013-2014. Thus, under the Probate Code, S.C. Code § 62-3-407, the Appellants will have to prove the invalidity of each of those documents sequentially in order to succeed in their battle to proceed with probate under the August 11, 2011 will.

Nicholson granted the motion and lifted the stay, stating: "Having been over two (2) years since this matter was originally stayed by the Court, this Court concludes that the interest of justice is best served by lifting the stay to permit the probate of the Last Will and Testament of Keith S. Wellin." The Appellants filed another motion to stay this state probate action on May 1, 2018, which was denied by Judge Addy on August 24, 2018. In his Form 4 Order, Judge Addy ordered that there be no further delays of this case.

After the stay was lifted, the Appellants amended their pleadings to add their challenges to Keith Wellin's Revocable Trust amendments, as well as their federal court tort claims.² Various motions were filed. On December 4, 2018, the Supreme Court appointed Judge Addy with exclusive jurisdiction to hear and dispose of this case. On May 15, 2019, Judge Addy issued an order ruling on five pending motions, to wit:

- On February 23, 2018, Appellants made a motion for a status conference to plan logistics for an anticipated 8-10 weeks of trial. Judge Addy essentially denied the motion; instead, he explained that he had consulted with Judge Norton (who presides over the related litigation in federal court), who agreed the actions pending in state court should be tried prior to the federal action in order to promote judicial economy. Per Judge Addy's order, the case is to be tried in June 2019, and it will be limited to two weeks.
- On August 17, 2018, the Estate made a motion to bifurcate a trial on the issues of the validity of the June 27, 2014 Will, and the restated Revocable Trust executed that same day. Judge Addy granted the motion, ruling that he will try validity issues including

² The Appellants assert tort claims against Mrs. Wellin, individually, for defamation, interference with inheritance, interference with prospective economic advantage, breach of fiduciary duty, breach of prenuptial agreement, breach of contract accompanied by a fraudulent act, barratry, and negligence.

whether Mr. Wellin had testamentary capacity to execute the June 27, 2014 Will and related Revocable Trust and whether his execution of the Will or Revocable Trust was the result of undue influence, fraud, duress, or mistake. However, Judge Addy refused to limit the bifurcation of these issues as to only the June 27, 2014 documents; instead, the circuit court will try the issues of duress/undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014, stating:

[T]he trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin children will be entitled to present all evidence concerning the prior estate plan, the circumstances surrounding its formulation and execution, plan, and the jury will ultimately decide which estate plan and/or revocable trust controls.

- On October 16, 2018, Mrs. Wellin, individually, made a motion for a protective order and to quash any further deposition of her in state court, in light of the extensive deposition already given by her in the related federal court litigation. Judge Addy declined to completely prevent any further depositions of Mrs. Wellin; however, he did limit any further deposition to only six additional hours.
- On October 31, 2018, non-party attorneys, Patricia Scarborough and Edward Bennett, made a motion to quash subpoenas and for protective orders from any further depositions in state court, in light of the extensive depositions already given by them in the related federal court litigation. Judge Addy granted their motion.
- On January 9, 2019, the Estate made a motion for a protective order to object to a subpoena issued for materials from a consulting expert retained in separate, though related federal litigation. Judge Addy denied that motion and ordered production.

Appellants have appealed from Judge Addy's Order of May 15, 2019, and also from the prior orders of October 20, 2017, and August 24, 2018.

ARGUMENT – LACK OF APPELLATE JURISDICTION

Appellate jurisdiction is granted to review final judgments and such interlocutory orders as specifically provided by statute, S.C. Code § 14-3-330:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

Respondent seeks dismissal on the ground that there is no final judgment and none of the interlocutory rulings in the orders of May 15, 2019, October 20, 2017, and August 24, 2018 fall within the jurisdiction of Section 14-3-330.

I. There is no appellate jurisdiction for immediate review of discretionary rulings pertaining to motions to stay litigation.

Neither Judge Nicholson's order of October 20, 2017, lifting the stay, nor Judge Addy's order of August 24, 2018 Order, denying the motion to reinstate the stay are immediately appealable under any provision of Section 14-3-330. *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (order granting a stay not immediately appealable); *Carolina Water*

Serv., Inc. v. Lexington Cty. Joint Mun. Water & Sewer Comm'n, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (order lifting a stay not immediately appealable).

Appellants openly acknowledge that Judge Nicholson and Judge Addy's stay orders are not immediately appealable. However, by a footnote in their Notice of Appeal, they preemptively claim that these orders are appealable because there is another appealable issue before the court. As discussed below, none of the interlocutory rulings encompassed in Judge Addy's order of May 15, 2019 are immediately appealable under Section 14-3-330.

II. No jurisdiction for immediate review of discovery orders.

It is well settled that discovery orders are interlocutory and not immediately appealable. *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Therefore, there is no jurisdiction to review Judge Addy's rulings on the motions for protection filed by Mrs. Wellin, individually, the Estate or non-party Attorneys Bennett and Scarborough.

III. No jurisdiction for immediate review of bifurcation orders.

The law is equally well-settled that discretionary rulings on bifurcation motions are not immediately appealable. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable).

Based on a footnote in their Notice of Appeal, Appellants would appear to take the preemptive position that Judge Addy's bifurcation decision is immediately appealable under S.C. Code Ann. § 14-3-330(2) and *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412

S.C. 534, 537–40, 773 S.E.2d 144, 145–47 (2015), because the order supposedly affects their substantial rights. In the footnote, Appellants have not articulated what “substantial right” has been affected by the bifurcation ruling; however, as outlined in more detail below, Respondent submits that citation to *Morrow* is inapposite because Judge Addy’s order does not affect any “substantial right” comparable to *Morrow*.

The opinion in *Morrow* arose from a nursing home negligence action which included claims of corporate negligence as well as vicarious liability against numerous corporate entities. The corporate entities moved to bifurcate trial on the nursing home negligence claims separate from the corporate negligence claims, and to stay discovery related to the corporate negligence claims. In granting the motion, the trial court ruled that the claims for corporate negligence could not proceed without first proving negligence against the nursing home. While acknowledging the precedent on appealability of bifurcation orders, the Court held that the trial court’s ruling was not in the nature of the usual procedural bifurcation ruling, but instead, affected a substantial right of the petitioners, under § 14-3-330(2)(a), because the trial court’s ruling had effectively granted summary judgment against the plaintiff on the merits of issues of direct corporate liability.

Respondent maintains that Judge Addy’s ruling on bifurcation does not make any comparable ruling on the merits that affects any substantial rights in this probate action. The bifurcation order simply directs that the issues of validity of the will(s) – over which the state court has exclusive jurisdiction – and revocable trust(s) be presented to the fact-finder for decision first.

Separate from any of the pending federal litigation and whatever may be the overlapping, interrelated facts and legal issues, *this action* was removed to circuit court by the Appellants on petition for formal probate to determine the validity of Mr. Wellin’s will. *This action* was

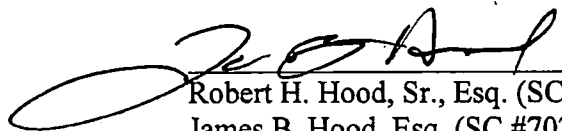
amended by the Appellants to add validity issues surrounding their father's amendments to his revocable trust. While the Appellants have raised other issues and assert assorted and varied counterclaims in this probate action, the court needs to resolve the core issue of validity of the will(s) over which the state court has exclusive jurisdiction, and the related revocable trust amendments. This case has already been delayed several years due to the first stay granted to defer to the pending federal litigation, but that federal litigation has been dragged out with no resolution yet of any merits. Under the circumstances, Judge Nicholson wisely lifted that stay to move this probate action forward, and Judge Addy wisely continues in the same vein.

CONCLUSION

Mr. Wellin died in 2014, yet five years later there still has been no determination of the validity of his last will and testament and the estate plan he intended to handle management and distribution of his assets. No further delay is warranted with a piece-meal appeal of these interlocutory orders.

WHEREFORE, based on the foregoing, the Respondent moves for dismissal of the appeal of these interlocutory rulings.

Respectfully submitted,


Robert H. Hood, Sr., Esq. (SC# 2599)
James B. Hood, Esq. (SC #70212)

HOOD LAW FIRM, LLC
Post Office Box 1508
Charleston, SC 29402
(843) 577-4435
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Attorneys for Wendy C. H. Wellin, as Special
Administrator of the Estate of Keith S. Wellin and
as Trustee of the Keith S. Wellin Florida Revocable
Living Trust, w/a/d Dec. 11, 2001

May 24, 2019

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

RECEIVED

MAY 29 2019

SC Court of Appeals

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

Certificate of Service

The undersigned certifies that on this 24th day of May, 2019, a copy of the Motion to Dismiss on behalf of Respondent Wendy C.H. Wellin, in her representative capacities as Special Administrator and Trustee (collectively, the "Estate"), was served by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following counsel at the addresses listed below:

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Merritt G. Abney, Esquire
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Charleston, SC 29401-2239

John T. Lay, Jr., Esquire
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Gallivan, White & Boyd, PA
P.O. Box 7368
Columbia, SC 29202

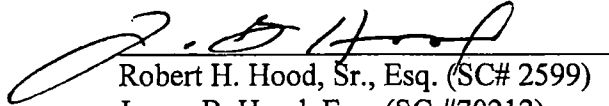
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Attorneys for Wendy C. H. Wellin, as Special
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as Trustee of the Keith S. Wellin Florida Revocable
Living Trust, u/a/d Dec. 11, 2001

May 24, 2019

May 24, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Wendy C.H. Wellin 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 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
In the Matter of: Keith S. Wellin
Case No. 2014-CP-10-07038, Charleston CP
Appellate Case No. 2019-000833
HLF File No. 528.000

Dear Ms. Kitchings:

Enclosed please find the original plus seven (7) copies of the Estate's Motion to Dismiss in the above matter, along with the Certificate of Service and the filing fee. I am serving all counsel of record with copies of each. Please return a clocked-in copy of each in the envelope provided.

Kind regards,

Yours truly,



James B. Hood

RECEIVED

MAY 29 2019

SC Court of Appeals

JBH/spc

Enclosure(s)

cc: Robert H. Brunson, Esquire/Merritt G. Abney, Esquire/Patrick C. Wooten, Esquire
Miles Coleman, Esquire
John T. Lay, Jr., Esquire/Gray T. Culbreath, Esquire
John D. Hudson, Jr., Esquire/Lindsay Anne Joyner, Esquire
John Fisher Beach, Esquire/Lyndey Bryant, Esquire
Marvin D. Infinger, Esquire
M. Dawes Cooke, Jr., Esquire
F. Patricia Scarborough, Esquire/Edward G.R. Bennett, Esquire

HOOD
LAW FIRM
LLC

172 MEETING STRI
CHARLESTON, SC
29401



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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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MAY 29 2019

SC Court of Appeals

May 29, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RECEIVED
MAY 31 2019
SC Court of Appeals

Re: Wendy C.H. Wellin 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 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
In the Matter of: Keith S. Wellin
Case No. 2014-CP-10-07038, Charleston CP
Appellate Case No. 2019-000833
HLF File No. 528.000

Dear Ms. Kitchings:

We are in receipt of your May 23, 2019 letter regarding the above-referenced case currently pending in the Court of Appeals. It seems that your correspondence to the parties and our Motion to Dismiss the Appeal have passed in the mail. It is our intention to allow our motion, currently filed with the Court to serve as the requested response to your May 23, 2019 correspondence but if you would like us to specifically respond in another format, please do not hesitate to let us know.

Kind regards,

Yours truly,



James B. Hood

JBH/spc

cc: Robert H. Brunson, Esquire/Merritt G. Abney, Esquire/Patrick C. Wooten, Esquire
Miles Coleman, Esquire
John T. Lay, Jr., Esquire/Gray T. Culbreath, Esquire
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APPENDIX_0046

www.hoodlaw.com

HOOD
LAW FIRM
LLC

172 Meeting Street
Charleston, South Carolina 29401

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MAY 31 2019

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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FIRST-CLASS MAIL

05/29/2019

US POSTAGE \$000.50⁰

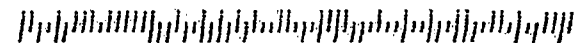


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APPENDIX_0047

278.000

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June 3, 2019

VIA HAND DELIVERY

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

RECEIVED

JUN 03 2019

SC Court of Appeals

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

Attorneys at Law

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Louisiana
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Tennessee
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John F. Beach

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john.beach@arlaw.com

Dear Ms. Kitchings:

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

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

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

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

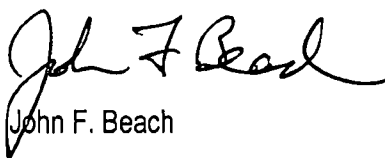
Unlike the order at issue in *Morrow*, the lower court's decision here to try, first, "the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014" and, second, the remaining claims and counterclaims between the individual parties, see Order on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

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

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

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

Sincerely,



John F. Beach

JFB/LRZB/vc

cc: Karen Leach

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

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

RECEIVED

JUN 03 2019

SC Court of Appeals

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

v.

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

v.

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

PROOF OF SERVICE

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

List of Documents Served:

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

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Attorney for Appellants

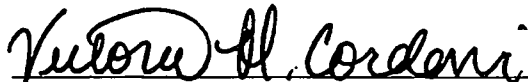
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Molly H. Craig, Esq.
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*Attorney for Wendy C.H. Wellin, as Special
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Attorney for Heather Lane and Campbell Hart


Victoria M. Cordoni, Paralegal
Adams and Reese LLP

June 3, 2019.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas

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

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

RECEIVED
JUN 03 2019
SC Court of Appeals

Wendy C.H. Wellin,

Respondent,

v.

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

Appellants,

v.

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

Respondents.

In the Matter of: Keith S. Wellin

RESPONDENT WENDY C.H. WELLIN'S
MEMORANDUM ADDRESSING
THE ISSUE OF APPEALABILITY

Respondent Wendy C.H. Wellin, individually, ("Mrs. Wellin") respectfully submits this memorandum addressing the issue of appealability as requested by this Court's May 23, 2019 correspondence to the parties following its preliminary assessment that the orders challenged on appeal may not be appealable (the "Appealability Request"). Prior to Mrs. Wellin's May 28,

2019 receipt of this Court's Appealability Request, Mrs. Wellin filed a Motion to Dismiss this appeal in her individual capacity, along with the other Respondent Beneficiaries, and she also filed a Motion to Dismiss this appeal in her role as Special Administrator of the Estate of Keith Wellin (collectively the "Motions to Dismiss"). The Motions to Dismiss, which crossed in the mail with this Court's Appealability Request, outline why the orders challenged on appeal are not appealable at this time, and Mrs. Wellin incorporates the arguments made in the Motions to Dismiss herein by reference. To ensure compliance with the Court's Appealability Request, Mrs. Wellin also separately submits this memorandum addressing the issue of appealability.

The Court's preliminary assessment is correct: The orders challenged on appeal are not appealable at this time. The primary order appealed by Appellants is an interlocutory order issued by the Honorable Frank R. Addy, Jr. that addressed only procedural issues – specifically discovery and bifurcation – in order to position this case for an imminent, phased trial on the merits.¹ The case is not over, and Appellants cannot further delay a trial of this matter by pursuing an improper, premature appeal of interlocutory decisions. The provisions of § 14-3-330 ensure judicial economy and dictate that the parties try this case and proceed to resolution on the merits prior to any appeal.

PROCEDURAL HISTORY

The above-captioned action began as a petition for formal probate following the September 2014 passing of Keith S. Wellin, wherein Mrs. Wellin requested that the Probate Court of Charleston County probate Mr. Wellin's June 27, 2014 Last Will & Testament ("June

¹ Although Appellants' Notice of Appeal also attaches prior circuit court orders (entered October 20, 2017 and August 24, 2018) which rejected Appellants' repeated effort to stay the probate proceedings indefinitely while the Federal Action proceeds, Appellants admit those orders "are not ordinarily immediately appealable" unless "there is another appealable issue before the court." (Notice of Appeal, p. 2, Exs. 2-3). Because there is no other immediately appealable issue at this time, as outlined *infra*, these orders are not properly on appeal either.

27, 2014 Will”) and informally appoint her as personal representative of her late husband’s estate. As required by South Carolina law, all potential heirs of Mr. Wellin’s estate were named as Respondents to the petition, including Appellants Peter Wellin, Cynthia W. Plum, and Marjorie W. King (collectively, the “Wellin Children”). Shortly after the petition was filed, Mrs. Wellin was named the Special Administrator of the Estate of Keith S. Wellin.²

On October 20, 2014, the Wellin Children contested Mrs. Wellin’s request to probate the June 27, 2014 Will by filing an Answer, Counterclaims, and Counter-Petition in their individual capacities (the “Will Contest”) and requesting removal of the matter³ from Probate Court to Circuit Court. The Wellin Children’s Will Contest named Mrs. Wellin, individually; Hamilton College; the Keith S. Wellin Florida Revocable Living Trust; Campbell Hart; and Heather Lane as “Counter-Respondents.” The Wellin Children claimed that the June 27, 2014 Will should be declared invalid on the basis of incapacity, undue influence, duress, fraud, and mistake, and instead sought to probate Keith Wellin’s August 2011 estate plan.

Shortly after the Wellin Children filed their Will Contest in this matter, they also launched an attack against Mrs. Wellin personally by filing *in personam* claims against her in the District of South Carolina (the “Federal Action”). Then in January 2015, the Wellin Children moved to stay the Will Contest because they claimed that “resolution of the broader, Federal Action will resolve the issues in this Will Contest Action.” Although the motion to stay was contested, the Circuit Court granted the motion in July 2015, and this matter was stayed for several years.

² At this time, no personal representative has been appointed to represent Mr. Wellin’s Estate, so Mrs. Wellin has continued to serve as the Special Administrator.

³ The removal was granted on October 23, 2014.

On October 20, 2017, the Circuit Court lifted the stay of this matter, (Notice of Appeal, Ex. 2), after which the Wellin Children sought to amend their Will Contest to include the same in personam claims against Mrs. Wellin that were already pending in the separate Federal Action. Even though the Wellin Children had previously assured the federal court that the in personam claims did not affect the Will Contest (and therefore did not implicate the probate exception to federal jurisdiction) and over objections from the other parties, the Wellin Children convinced the Circuit Court that their previously-pending in personam claims also needed to be included as part of the Will Contest as “mandatory counterclaims.” On February 6, 2018, the Wellin Children filed their amended Answer, Counterclaims, and Counter-petition, adding their in personam claims, along with their representative capacities as “new parties,” to this probate litigation.

In May 2018, the Wellin Children filed *another* Motion to Stay all proceedings in this now-expanded matter – the probate portion of which had been pending by that time for almost four (4) years. The Wellin Children again argued to the Circuit Court that this matter should be stayed to permit resolution of the Federal Action first. That motion to stay was denied by interlocutory order signed by Judge Addy on August 24, 2018, and the order noted “No further delays in this case. Chief Admin Judge should set for trial (2 weeks max) as soon as practicable.” (Notice of Appeal, Ex. 3).

In August 2018, 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”). The Estate moved to bifurcate because the Validity Issues undergird many – if not most – of the major allegations in this litigation, such that bifurcating the Validity Issues to be tried first would promote efficiency, economy and fairness. Moreover, trial of 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 Federal Action.

ISSUES DECIDED BY THE PRIMARY ORDER ON APPEAL

The primary order Appellants seek to appeal is Judge Addy’s interlocutory decision to bifurcate the trial of this matter, which established that the first phase of trial will be comprised of the Validity Issues for all changes to Keith Wellin’s estate plan from 2013-2014. (Notice of Appeal, Ex. 1, at 3-4)(the “Bifurcation Order”). Although the Bifurcation Order ruled on six (6) motions in total – four (4) motions seeking protection from certain depositions, a motion by Appellants for a status conference, and the Estate’s Motion to Bifurcate – the Notice of Appeal singles out *only the bifurcation decision* for this interlocutory appeal with its citation of *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537-40, 773 S.E.2d 144, 145-47 (2015) and accompanying parenthetical “holding order granting motion to bifurcate was immediately appealable because it affected a substantial right of appellant.” (Notice of Appeal, p. 2 n.1 (also citing generally to S.C. Code Ann. § 14-3-330)). It is for good reason that Appellants have not tried to appeal the other discovery and status conference decisions by Judge Addy contained in the Bifurcation Order as the law is well-settled those decisions are not immediately appealable. See, e.g., *Grosshuesch v. Cramer*, 377 S.C. 12, 659 S.E.2d 112 (2008)(holding that “discovery orders, in general, are interlocutory and are not immediately

appealable”); *Ex parte Wilson*, 367 S.C. 7, 625 S.E.2d 205 (2005)(finding an order quashing a subpoena duces tecum issued to a non-party is not immediately appealable because it neither involves the merits nor affects a substantial right); *Waddell v. Kahdy*, 309 S.C. 1, 419 S.E.2d 783 (1992)(holding an order requiring a party to submit to deposition is not immediately appealable); *Fulmer v. Cain*, 380 S.C. 466, 670 S.E.2d 652 (2008)(holding that the “mode of trial” exception to the general rule that only final orders are immediately appealable is confined to orders which abridge a party’s constitutional right to trial by jury). As outlined below, this appeal is premature because Judge Addy’s bifurcation decision to try the Validity Issues first is not immediately appealable either.

THIS APPEAL IS PREMATURE

The Bifurcation Order is a non-final, interlocutory order, and the law is well-settled that bifurcation is not an immediately appealable issue. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable). Nevertheless, Appellants attempt to appeal the Bifurcation Order, citing § 14-3-330 and *Morrow* for their assertion that “the order affects a substantial right of Appellants.” (Notice of Appeal, p. 2, n.1). Appellants have not endeavored to explain what “substantial right” they believe was impacted by the Bifurcation Order, and as outlined in more detail below, their citation to *Morrow* is inapposite because the “substantial right” *Morrow* sought to protect is not at stake here. As outlined in the Motions to Dismiss, dismissal of Appellants’ premature appeal of the Bifurcation Order is necessary because there is no statutory basis for their immediate appeal in this case – under *Morrow* or any

other case law interpreting the General Assembly's § 14-3-330 definition of appealable interlocutory orders.

"Generally only final judgments are appealable." *Tillman v. Tillman*, 420 S.C. 246, 248-49, 801 S.E.2d 757, 759 (Ct. App. 2017); *see also Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004) ("Final judgment' is a term of art referring to the disposition of all the issues in the case."). An order like the Bifurcation Order in this case which "reserve[es] an issue, or leav[es] open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." *Tillman*, 420 S.C. at 248-49, 801 S.E.2d at 759 (citing *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005)). The *only* interlocutory orders that may be appealed are those defined in the narrow exceptions of S.C. Code Ann. § 14-3-330:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330 (1976 & Supp. 2014); *Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) ("An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable."); *see also Tillman*, 420 S.C. at 250-51, 801

S.E.2d at 760 (finding that “[t]o avoid circuitous litigation and needless appeals, we construe section 14-3-330 narrowly”). Narrow construction of § 14-3-330 furthers judicial economy by avoiding “piecemeal appeals.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709.

The South Carolina Supreme Court has repeatedly held that bifurcation orders are not immediately appealable under § 14-3-330, *Flagstar* and *Senter*, *supra*, yet Appellants claim Judge Addy’s Bifurcation Order is immediately appealable because it “affects a substantial right of Appellants.” (Notice of Appeal, p. 2, n.1)(citing generally to § 14-3-330). The Appellants’ Notice of Appeal fails to differentiate Judge Addy’s Bifurcation Order from those previously rejected for immediate appeal, and the Notice of Appeal fails to identify which of the § 14-3-330 “substantial right” subsections Appellants have invoked to support their appeal in this case. A plain reading of the statute reveals Subsection (2)(a) to be the only “substantial right” provision of the statute even potentially applicable to the Bifurcation Order,⁴ and Subsection (2)(a) was the only provision relied on by the Court in *Morrow*, to which Appellants have cited. (Notice of Appeal, p. 2, n.1 (citing *Morrow*, 412 S.C. at 539; 773 S.E.2d at 146)).

For an order to qualify as having impacted a substantial right under § 14-3-330(2)(a), it must be “[a]n order involving the merits . . . [that] finally determine[s] some substantial matter forming the whole or a part of some cause of action or defense in the case in which the order is entitled.” *Duncan v. Gov’t Emps. Ins. Co.*, 331 S.C. 484, 485, 449 S.E.2d 580, 580 (1994) (quoting *Knowles v. Standard Sav. & Loan Ass’n*, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979)). Section 14-3-330(2)(a) does not permit the immediate appeal of just any pretrial order affecting a

⁴ The Bifurcation Order did not “grant[] or refuse[] a new trial” or “strike[] out an answer or any part thereof or any pleading in any action,” to invoke Subsection 2(b) or 2(c), respectively. Nor is the Bifurcation Order “[a] final order” that qualifies as immediately appealable pursuant to Subsection (3). Subsection 2(a) is the only potentially applicable statutory grant of immediate appealability here.

substantial right. Rather, the statutory language makes clear that an order affecting a substantial right is immediately appealable only “when such order would discontinue an action, prevent an appeal, ... or strike out an action or defense.” *Mid-State Distribs. v. Century Imps.*, 310 S.C. 330, 334 n.4, 426 S.E.2d 777, 780 (1993).

None of these circumstances apply to the Bifurcation Order in this case, which simply orders the presentation of issues to the fact-finder for decision, extracting salient determinations - over which the state court has exclusive jurisdiction - to be decided first. No claims or defenses have been struck or pretermitted; the Bifurcation Order merely establishes the framework in which those claims and defenses will be presented. Importantly, the Validity Issues that Judge Addy slated to be tried first are the fundamental probate determinations that, according to the General Assembly, can only be determined within the exclusive jurisdiction of South Carolina state courts. The fact cannot be ignored that Appellants have chosen to pursue portions of this underlying litigation in *two different cases* proceeding simultaneously in state and federal court. Judge Addy’s Bifurcation Order simply streamlines trial of the state court matter by ensuring the state court tries first that portion of the litigation that only it can: The validity of testamentary documents. As the Bifurcation Order notes, “bifurcation of the [Validity I]ssues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation.” (Bifurcation Order, p. 3). The Bifurcation Order does not impact a “substantial right” of Appellants as required by § 14-3-330(2)(a).

Nor can Appellants seek solace in the Supreme Court’s *Morrow* opinion, which only found that the bifurcation order entered in that case was immediately appealable because it impacted the “[t]he [substantial] right of the plaintiff to choose her defendant.” *Morrow*, 412

S.C. at 539; 773 S.E.2d at 146 (parenthetically quoting *Neeltec Enters., Inc., v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012)). This case is not *Morrow*, where the trial court's order was plagued by a "material misunderstanding" of the Morrows' claims and improperly "conflate[d] the theories of vicarious liability and direct liability by determining the Morrows can move forward on their claims against the corporate defendants only if they first recover against Magnolia Place." 412 S.C. at 538; 773 S.E.2d at 146. There was no material misunderstanding of Appellants' claims by Judge Addy in this case, nor does the Bifurcation Order make the second phase of trial contingent on the first phase as did the trial court in *Morrow*. The Bifurcation Order merely establishes the order of issues to be tried; it does not treat certain claims as "dependent" upon other claims, "effectively grant[ing] . . . potential summary judgment" on certain issues like in *Morrow*. 412 S.C. at 539; 773 S.E.2d at 146. Judge Addy's order contemplates that all of the issues will be tried at some point; however, some will be tried before others.

Perhaps most significant to the question of appealability in this case is what the Court explicitly *refused* to do in *Morrow*: It "decline[d] the . . . invitation to base [its] decision on the manner in which the motion was characterized—one of bifurcation" and set apart the bifurcation order in *Morrow* as "quite distinct from other orders of bifurcation which have come before this Court." 412 S.C. at 539-40; 773 S.E.2d at 147 (comparing *Morrow* to *Flagstar* and *Senter*, *supra*). The narrow tailoring of the *Morrow* opinion prevents it from serving as a blanket authorization to immediately appeal any bifurcation order, yet that is *exactly* the result that Appellants' Notice of Appeal urges in this case with its cursory citation to *Morrow* as authority to appeal an "order granting motion to bifurcate." (Notice of Appeal, p. 2, n.1). *Morrow* offers no reason to abrogate the Court's rejection of bifurcation as an immediately appealable issue in

Flagstar and *Senter*, and it does not elevate Judge Addy's Bifurcation Order for an immediate appeal.

Allowing Appellants to appeal the Bifurcation Order would impermissibly expand the reach of § 14-3-330(2)(a) to encompass a category of procedural orders that fall squarely within the trial court's discretion for trial management. See Rule 42(b), SCRCP ("The court, in furtherance of convenience . . . may order a separate trial of any . . . separate issue . . ."); *Durham v. Vinson*, 360 S.C. 639, 644-45 n.2, 602 S.E.2d 760, 762 n.2 (2004) (finding the circuit court has discretion to bifurcate a trial). If bifurcation decisions are immediately appealable, no judge will ever consider bifurcating issues for trial even if it would serve the ends of justice; ordering bifurcation would virtually guarantee that a piecemeal appeal thwarts any forward progress of a case toward resolution. It is for this very reason that immediately appealable interlocutory orders are the exception and not the rule under § 14-3-330. This case has already been delayed several years due to Appellants' efforts to stay the probate proceedings. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. at 94, 529 S.E.2d at 13-14 ("[W]e believe avoiding piecemeal litigation is the best policy to follow. The current case reveals why such appeals are disfavored. . . . Already the progress of this case has been delayed several years."). No further delay is warranted, and this Court's observation in *Tillman* is equally applicable here:

Appellant's rights have yet to be finally determined by the circuit court. Appellant has not reached the end of the road, however long and winding he may have made it. The order is not immediately appealable.

Tillman, 420 S.C. at 251, 801 S.E.2d at 760.

CONCLUSION

For all of these reasons, as well as the reasons presented in both the Beneficiary Respondents' Motion to Dismiss and the Estate's Motion to Dismiss, Mrs. Wellin respectfully submits that the orders challenged on appeal are not appealable at this time.

Respectfully submitted,



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SC Court of Appeals

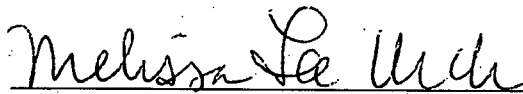
I, the undersigned Paralegal of the law offices of Gallivan, White & Boyd, P.A., attorneys for Wendy C. H. Wellin, individually, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage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

**RESPONDENT WENDY C.H. WELLIN'S MEMORANDUM
ADDRESSING THE ISSUE OF APPEALABILITY**

Counsel Served:

<u>Attorneys for Appellants</u> Robert H. Brunson, Esq. Patrick Wooten, Esq. Merritt G. Abney, Esq. Nelson Mullins Riley & Scarborough P.O. Box 1806 Charleston, SC 29402	<u>Attorneys for Wendy C.H. Wellin, as Special Administrator and Trustee for the Keith S. Wellin Florida Revocable Living Trust</u> Robert H. Hood, Esq. James B. Hood, Esq. Molly H. Craig, Esq. Virginia Rogers Floyd, Esq. Hood Law Firm, LLC 172 Meeting Street Charleston, SC 29402
<u>Attorneys for F. Patricia Scarborough, Esq. and Edward G.R. Bennett, Esq.</u> M. Dawes Cooke, Jr., Esq. Barnwell Whaley Patterson & Helms, LLC PO Drawer H Charleston, SC 29402	<u>Attorneys for Hamilton College</u> John Beach, Esq. Lyndey Bryant, Esq. Adams and Reese, LLP 1501 Main Street, 5 th Floor Columbia, SC 29201
<u>Attorneys for Heather Lane and Campbell Hart</u> Marvin D. Infinger, Esq. Barnwell Whaley Patterson & Helms, LLC PO Drawer H Charleston, SC 29402	<u>Attorneys for the Estate</u> F. Patricia Scarborough, Esq. Edward G.R. Bennett, Esq. Evans, Carter, Kunes & Bennett, P.A. PO Box 369 Charleston, South Carolina 29402

June 3, 2019



Melissa Lee Urch
Paralegal



Complex experience for complex matters

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A member of the South Carolina Bar
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June 3, 2019

VIA HAND DELIVERY

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

RECEIVED
JUN 03 2019
SC Court of Appeals

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

Dear Clerk Kitchings:

Enclosed herewith for filing, please find the original and six copies of Respondent Wendy C.H. Wellin's Memorandum Addressing the Issue of Appealability regarding the above-referenced matter. Please file the original and return a clocked copy to our courier.

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

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

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.

John T. Lay, Jr.

JTL,JR/mlu
Enclosures

cc: 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

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas

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

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

RECEIVED
JUN 05 2019
SC Court of Appeals

Wendy C.H. Wellin,

Respondent,

v.

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

Appellants,

v.

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

Respondents.

In the Matter of: Keith S. Wellin

**MEMORANDUM ADDRESSING
THE ISSUE OF APPEALABILITY**

Respondent Wendy C.H. Wellin, in her representative capacities as Special Administrator and Trustee (collectively, the "Estate"), respectfully submits this memorandum addressing the issue of appealability as requested by this Court's May 23, 2019 correspondence to the parties. On May 23, 2019, this Court wrote to all parties regarding its preliminary assessment that the

orders challenged on appeal may not be appealable. Prior to the Estate's receipt of the Court's correspondence, the Estate filed a Motion to Dismiss this appeal. Mrs. Wellin, individually, also filed a Motion to Dismiss the appeal prior to receiving the Court's correspondence. Both Motions to Dismiss, which appear to have crossed in the mail with this Court's letter requesting memoranda on the issue of appealability, outline why the orders challenged on appeal are not appealable at this time.

The Estate responded to this Court's request for memoranda initially on May 29, 2019, identifying its earlier Motion to Dismiss which addresses the issue of appealability and offering to submit the same in a different format if the Court so preferred. Having not received any further correspondence on this matter, the Estate separately submits this memorandum addressing the issue of appealability to ensure compliance with the Court's request.

The Court's preliminary assessment is correct: The orders challenged on appeal are not appealable at this time under S.C. Code Ann. § 14-3-330. The Appellants have appealed an interlocutory order issued by the Honorable Frank R. Addy, Jr. ruling upon several procedural motions which addressed discovery and scheduling issues aimed at moving forward with a phased trial on the merits to determine the validity of Keith S. Wellin's estate plan, including his will and related revocable trust. They also seek review of two prior interlocutory orders in which the Honorable J.C. Nicholson, Jr. lifted a stay of the probate litigation and Judge Addy declined to reinstate the stay. These orders do not include any final ruling on any issue on the merits of this probate action. Appellants should not be allowed to further delay this matter by pursuing a piecemeal appeal of discretionary procedural rulings. The grounds for this memorandum are more fully set forth herein.

PROCEDURAL HISTORY

The decedent in this probate matter, Keith S. Wellin, died on September 14, 2014, at the age of 88, as a resident of Charleston County. His surviving spouse is Respondent Wendy C. H. Wellin, to whom he was married in 2002. Mr. Wellin had three adult children from a prior marriage, Peter J. Wellin, Cynthia W. Plum and Marjorie W. King, the Appellants in this matter.

Mr. Wellin was a businessman who amassed significant wealth as an entrepreneur and Wall Street investor. As might be expected of any wise businessman, Mr. Wellin retained and consulted with tax and estate planning attorneys regarding his plans for distributing his assets. In addition to executing a last will and testament, over his lifetime Mr. Wellin also executed other documents creating trusts and a family partnership to manage his assets during his life and upon his death.

After Mr. Wellin's death, Mrs. Wellin filed a Petition for Formal Probate and an Application for Informal Appointment of Personal Representative in the Charleston County Probate Court presenting for probate her husband's Last Will and Testament, executed June 27, 2014. By separate Application, Mrs. Wellin was appointed as Special Administrator of her husband's estate on September 17, 2014. The Appellants opposed the probate of the June 27, 2014 Last Will and Testament and petitioned the Court to probate an older will executed by their father on August 11, 2011.¹ The Appellants challenge the validity of the June 27, 2014 Last Will and Testament on the grounds that (1) Mr. Wellin lacked capacity to execute the June 27, 2014 Will; (2) the Will was the product of undue influence exerted by Mrs. Wellin; and (3) the Will is

¹ Mr. Wellin executed three other sets of estate planning documents in 2013-2014. Thus, under the Probate Code, S.C. Code § 62-3-407, the Appellants will have to prove the invalidity of each of those documents sequentially in order to succeed in their battle to proceed with probate under the August 11, 2011 will.

the product of duress, fraud, or misrepresentation. Thereafter, Mr. Wellin's children filed a motion for removal, and the Petition for the Formal Probate of the will was removed to Circuit Court in October 2014.

In addition to this probate action, there are other pending actions in federal court regarding related matters. These federal actions include a 2013 action initiated by Mr. Wellin, before his death, asserting claims against his children for mismanagement and breach of fiduciary duties in connection with certain estate planning entities he had established; a 2013 action initiated by a Trust Protector against the Wellin Children; and a 2014 action initiated by the Wellin Children asserting a multitude of tort claims against Mrs. Wellin individually and challenging the validity of Mr. Wellin's amendments to his Revocable Trust.

In January 2015, the Wellin Children moved to stay this state court probate action based on their claim that resolution of the federal action would resolve the issues in the will contest. By order of July 2, 2015, the Circuit Court granted the motion to stay. However, after several years of protracted discovery practice and no major progress toward resolution in the federal action the Estate filed a Motion to Lift the Stay in 2017. By order of October 20, 2017, Judge Nicholson granted the motion and lifted the stay, stating: "Having been over two (2) years since this matter was originally stayed by the Court, this Court concludes that the interest of justice is best served by lifting the stay to permit the probate of the Last Will and Testament of Keith S. Wellin." The Appellants filed another motion to stay this state probate action on May 1, 2018, which was denied by Judge Addy on August 24, 2018. In his Form 4 Order, Judge Addy ordered that there be no further delays of this case.

After the stay was lifted, the Appellants amended their pleadings to add their challenges to Keith Wellin's Revocable Trust amendments, as well as their federal court tort claims.²

Various motions were filed. On December 4, 2018, the Supreme Court appointed Judge Addy with exclusive jurisdiction to hear and dispose of this case. On May 15, 2019, Judge Addy issued an order ruling on five pending motions, to wit:

- On February 23, 2018, Appellants made a motion for a status conference to plan logistics for an anticipated 8-10 weeks of trial. Judge Addy essentially denied the motion; instead, he explained that he had consulted with Judge Norton (who presides over the related litigation in federal court), who agreed the actions pending in state court should be tried prior to the federal action in order to promote judicial economy. Per Judge Addy's order, the case is to be tried in June 2019, and it will be limited to two weeks.
- On August 17, 2018, the Estate made a motion to bifurcate a trial on the issues of the validity of the June 27, 2014 Will, and the restated Revocable Trust executed that same day. Judge Addy granted the motion, ruling that he will try validity issues including whether Mr. Wellin had testamentary capacity to execute the June 27, 2014 Will and related Revocable Trust and whether his execution of the Will or Revocable Trust was the result of undue influence, fraud, duress, or mistake. However, Judge Addy refused to limit the bifurcation of these issues as to only the June 27, 2014 documents; instead, the circuit court will try the issues of duress/undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014, stating:

² The Appellants assert tort claims against Mrs. Wellin, individually, for defamation, interference with inheritance, interference with prospective economic advantage, breach of fiduciary duty, breach of prenuptial agreement, breach of contract accompanied by a fraudulent act, barratry, and negligence.

[T]he trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin children will be entitled to present all evidence concerning the prior estate plan, the circumstances surrounding its formulation and execution, plan, and the jury will ultimately decide which estate plan and/or revocable trust controls.

- On October 16, 2018, Mrs. Wellin, individually, made a motion for a protective order and to quash any further deposition of her in state court, in light of the extensive deposition already given by her in the related federal court litigation. Judge Addy declined to completely prevent any further depositions of Mrs. Wellin; however, he did limit any further deposition to only six additional hours.
- On October 31, 2018, non-party attorneys, Patricia Scarborough and Edward Bennett, made a motion to quash subpoenas and for protective orders from any further depositions in state court, in light of the extensive depositions already given by them in the related federal court litigation. Judge Addy granted their motion.
- On January 9, 2019, the Estate made a motion for a protective order to object to a subpoena issued for materials from a consulting expert retained in separate, though related federal litigation. Judge Addy denied that motion and ordered production.

Appellants have appealed from Judge Addy's Order of May 15, 2019, and also from the prior orders of October 20, 2017, and August 24, 2018.

ARGUMENT – LACK OF APPELLATE JURISDICTION

Appellate jurisdiction is granted to review final judgments and such interlocutory orders as specifically provided by statute, S.C. Code § 14-3-330:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought

there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

Respondent have moved for dismissal of the appeal on the ground that there is no final judgment and none of the interlocutory rulings in the orders of May 15, 2019, October 20, 2017, and August 24, 2018 fall within the jurisdiction of Section 14-3-330.

I. There is no appellate jurisdiction for immediate review of discretionary rulings pertaining to motions to stay litigation.

Neither Judge Nicholson's order of October 20, 2017, lifting the stay, nor Judge Addy's order of August 24, 2018 Order, denying the motion to reinstate the stay are immediately appealable under any provision of Section 14-3-330. *Edwards v. SunCom*, 369 S.C. 91, 93, 631 S.E.2d 529, 530 (2006) (order granting a stay not immediately appealable); *Carolina Water Serv., Inc. v. Lexington Cty. Joint Mun. Water & Sewer Comm'n*, 373 S.C. 96, 98, 644 S.E.2d 681, 682 (2007) (order lifting a stay not immediately appealable).

Appellants openly acknowledge that Judge Nicholson and Judge Addy's stay orders are not immediately appealable. However, by a footnote in their Notice of Appeal, they preemptively claim that these orders are appealable because there is another appealable issue

before the court. As discussed below, none of the interlocutory rulings encompassed in Judge Addy's order of May 15, 2019 are immediately appealable under Section 14-3-330.

II. No jurisdiction for immediate review of discovery orders.

It is well settled that discovery orders are interlocutory and not immediately appealable. *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994); *Ex parte Whetstone*, 289 S.C. 580, 347 S.E.2d 881 (1986). Therefore, there is no jurisdiction to review Judge Addy's rulings on the motions for protection filed by Mrs. Wellin, individually, the Estate or non-party Attorneys Bennett and Scarborough.

III. No jurisdiction for immediate review of bifurcation orders.

The law is equally well-settled that discretionary rulings on bifurcation motions are not immediately appealable. *Flagstar Corp. v. Royal Surplus Lines*, 341 S.C. 68, 533 S.E.2d 331 (2000) (holding order bifurcating issue of exclusion under insurance contract from issue of occurrence was not appealable); *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 533 S.E.2d 575 (2000) (holding order bifurcating issues in contract case between liability and damages was not immediately appealable).

Based on a footnote in their Notice of Appeal, Appellants would appear to take the preemptive position that Judge Addy's bifurcation decision is immediately appealable under S.C. Code Ann. § 14-3-330(2) and *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 537–40, 773 S.E.2d 144, 145–47 (2015), because the order supposedly affects their substantial rights. In the footnote, Appellants have not articulated what "substantial right" has been affected by the bifurcation ruling; however, as outlined in more detail below, Respondent submits that citation to *Morrow* is inapposite because Judge Addy's order does not affect any "substantial right" comparable to *Morrow*.

The opinion in *Morrow* arose from a nursing home negligence action which included claims of corporate negligence as well as vicarious liability against numerous corporate entities. The corporate entities moved to bifurcate trial on the nursing home negligence claims separate from the corporate negligence claims, and to stay discovery related to the corporate negligence claims. In granting the motion, the trial court ruled that the claims for corporate negligence could not proceed without first proving negligence against the nursing home. While acknowledging the precedent on appealability of bifurcation orders, the Court held that the trial court's ruling was not in the nature of the usual procedural bifurcation ruling, but instead, affected a substantial right of the petitioners, under § 14-3-330(2)(a), because the trial court's ruling had effectively granted summary judgment against the plaintiff on the merits of issues of direct corporate liability.

Respondent maintains that Judge Addy's ruling on bifurcation does not make any comparable ruling on the merits that affects any substantial rights in this probate action. The bifurcation order simply directs that the issues of validity of the will(s) – over which the state court has exclusive jurisdiction – and revocable trust(s) be presented to the fact-finder for decision first.

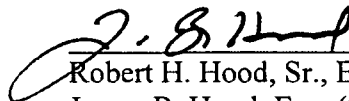
Separate from any of the pending federal litigation and whatever may be the overlapping, interrelated facts and legal issues, *this action* was removed to circuit court by the Appellants on petition for formal probate to determine the validity of Mr. Wellin's will. *This action* was amended by the Appellants to add validity issues surrounding their father's amendments to his revocable trust. While the Appellants have raised other issues and assert assorted and varied counterclaims in this probate action, the court needs to resolve the core issue of validity of the will(s) over which the state court has exclusive jurisdiction, and the related revocable trust amendments. This case has already been delayed several years due to the first stay granted to

defer to the pending federal litigation, but that federal litigation has been dragged out with no resolution yet of any merits. Under the circumstances, Judge Nicholson wisely lifted that stay to move this probate action forward, and Judge Addy wisely continues in the same vein.

CONCLUSION

Mr. Wellin died in 2014, yet five years later there still has been no determination of the validity of his last will and testament and the estate plan he intended to handle management and distribution of his assets. No further delay is warranted with a piece-meal appeal of these interlocutory orders. For all of these reasons, as well as the reasons presented in the Estate's Motion to Dismiss, and in Mrs. Wellin's Motion to Dismiss, the Estate respectfully submits that the orders challenged on appeal are not appealable at this time.

Respectfully submitted,



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as Trustee of the Keith S. Wellin Florida Revocable
Living Trust, u/a/d Dec. 11, 2001

June 3, 2019

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

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SC Court of Appeals

Wendy C.H. Wellin,

Respondent,

v.

Peter Wellin, Cynthia W. Plum and Marjorie W. King,
Individually and as Co-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

Certificate of Service

The undersigned certifies that on this 3rd day of June, 2019, a copy of the Memorandum Addressing the Issue of Appealability on behalf of Respondent Wendy C.H. Wellin, in her representative capacities as Special Administrator and Trustee (collectively, the "Estate"), was served by depositing said copy in the U.S. Mail, with sufficient first class postage, on the following counsel at the addresses listed below:

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Living Trust, u/a/d Dec. 11, 2001

June 3, 2019

June 3, 2019

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Re: Wendy C.H. Wellin 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 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
In the Matter of: Keith S. Wellin
Case No. 2014-CP-10-07038, Charleston CP
Appellate Case No. 2019-000833
HLF File No. 528.000

Dear Ms. Kitchings:

Enclosed please find the original plus seven (7) copies of the Estate's Memorandum Addressing the Issue of Appealability in the above matter, along with the Certificate of Service. I am serving all counsel of record with copies of each. Please return a clocked-in copy of each in the envelope provided.

Kind regards,

Yours truly,



James B. Hood

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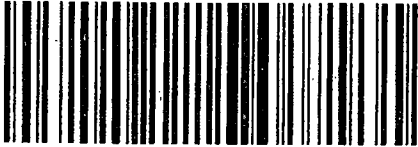
JBH/spc

Enclosure(s)

cc: Robert H. Brunson, Esquire/Merritt G. Abney, Esquire/Patrick C. Wooten, Esquire
Miles Coleman, Esquire
John T. Lay, Jr., Esquire/Gray T. Culbreath, Esquire
John D. Hudson, Jr., Esquire/Lindsay Anne Joyner, Esquire
John Fisher Beach, Esquire/Lyndey Bryant, Esquire
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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, 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 Marjory 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.

APPELLANTS' RETURN TO
RESPONDENTS' MOTIONS TO DISMISS¹

Pursuant to Rule 240, SCACR, and in response to the Clerk's letter dated May 23, 2019 requesting memoranda regarding the appealability of the orders challenged on appeal, Appellants file this Return to the various Respondents' Motions to Dismiss. Those motions should be denied because the matters challenged in this appeal are properly before this Court. Appellants' Notice of

¹ Appellants request the Court to permit this Return to serve also as Appellants' memorandum in response to the Clerk's letter of May 23, 2019 requesting memoranda addressing the appealability of the Orders Appellants have challenged on appeal.

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SC Court of Appeals

Appeal challenges three of the circuit court's orders: (1) an order that, among other things, set a truncated two-week trial in which Appellants may not assert their claims and the jury may not consider them, but which the circuit court nevertheless intends to be dispositive of certain of their claims; (2) an order granting one Respondent's motion to lift a stay in this case; and (3) an order denying Appellants' motion to reinstate a stay in this case. As explained more fully below, the first of these three orders is immediately appealable because it deprives Appellants of substantial rights, deprives them of a mode of trial to which they are entitled, denies them the right to be the architects and masters of their case, and limits the relief available to them. The latter two orders may also be considered on appeal to conserve the resources of the lower court and the litigants by avoiding later, unnecessary litigation.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND²

This appeal arises from a dispute over a multi-hundred million dollar estate left by the decedent Keith S. Wellin ("Keith"). Appellants are Keith's three adult children of his first wife: Peter J. Wellin, Cynthia Plum, and Marjorie King (collectively "the Wellin Children" or "Appellants"). Respondents include Wendy C.H. Wellin ("Wendy"), who was Keith's fourth wife and is the Special Administrator of the Estate, her two daughters, and Hamilton College.

Keith amassed substantial wealth during his lifetime and made extensive arrangements to convey the bulk of his estate to his children, with whom he had always had a close and loving relationship. In the summer of 2013, however, Keith, who was then in very poor health, became convinced that his children had "stolen" millions of dollars from him. Subsequently, Keith sued his children multiple times in various venues and largely disinherited them. With various lawsuits

² A more complete recitation of the facts is set forth in *Wellin et al. v. Wellin*, Ct. App. Op. No. 5608 (May 29, 2019), available at 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a dispute between the same parties.

still ongoing in federal court, Keith died on September 14, 2014. The next day, Wendy submitted his final will (dated June 27, 2014) for probate in the Probate Court for Charleston County. On October 20, 2014, the Wellin Children removed the probate action to the circuit court and counter-petitioned the circuit court to probate the 2011 version of Keith's will because the subsequent versions were executed at times when Keith lacked capacity and was subject to Wendy's undue influence. At the same time, the Wellin Children sued Wendy in federal court for various tort and breach of contract claims seeking damages arising from, among other things, Keith's decisions in the final year and a half of his life to sue and disinherit his children, to transfer nearly \$30 million dollars of assets *inter vivos* to Wendy, and to attempt to undo much of his prior transfers of wealth to his children.³

The Wellin Children's challenges to the validity of Keith's estate planning documents on the grounds of incapacity and undue influence are based on virtually the same evidence as the Wellin Children's tort and breach of contract claims against Wendy. In short, the Wellin Children are challenging the validity of Keith's estate planning documents on the grounds that Wendy convinced Keith—when his capacity was diminished—that his children stole from him, and the Wellin Children assert various tort and breach of contract claims against Wendy based on essentially this same theory, but with damages arising not from the will—which passed nothing—but from *inter vivos* transfers Keith made, revisions to his non-probate revocable trust, and other actions Keith took to harm the financial well-being of his children and grandchildren.

³ These claims 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. It is important to note that the claims against Wendy seek damages for actions that are unrelated to Keith's will which is being probated. The will passed no assets, and the estate has little or no assets.

In light of the pending federal court action between the Wellin Children and Wendy, the circuit court issued an order on July 6, 2015 granting the Wellin Children's motion to stay the state court action, ruling: "In the absence of a stay, the parties would be forced to litigate the overlapping issues in this action and in the Federal Action, which would create the risk of inconsistent judgments and waste the resources of this Court and the parties." *See* Order at 2–3 (attached as **Exhibit A**). While the state court action was stayed, the federal suit moved steadily toward trial. In the federal action, the parties have taken more than 120 depositions, disclosed more than two dozen expert witnesses, and had dozens of hearings and status conferences before Judge Norton and the Special Master to assist with the extensive motions practice. More than 2,000 ECF entries have been entered in the federal litigation.

On June 30, 2017, Wendy as Special Administrator ("the Estate") filed a motion to lift the stay in the state circuit court action. The circuit court subsequently granted the motion over the Wellin Children's objections. The Wellin Children, concerned about potential preclusive effect on their claims against Wendy should the state court proceed to trial first, subsequently sought and obtained an order allowing them to amend their pleading in the state circuit court action to assert counterclaims against Wendy that mirror the claims they are asserting against her in federal court. Since the stay was lifted, the Estate, Wendy, and Hamilton College have aggressively pursued a strategy to procure a partial trial in the state circuit court focused solely on the issues of whether Keith lacked capacity and was under undue influence when he executed his final will and trust on June 27, 2014—that is, the issues with the most difficult burden for the Wellin Children—with the express intention of using the outcome in the partial trial to preclude the Wellin Children from pursuing their tort and breach of contract claims against Wendy in the state and federal court actions—that is, the claims with the most favorable burden for the Wellin Children.

On May 2, 2018, the Wellin Children again moved to stay the state court action pending the outcome of the federal litigation, on the grounds that, among other things, Judge Norton had capably handled the federal litigation for five years and was intimately familiar with the issues in this litigation, whereas no state court judge had any familiarity with this litigation. On August 22, 2018, Judge Addy, who was serving as a visiting judge hearing motions in the Ninth Circuit Court of Common Pleas, heard and denied the Wellin Children's motion to stay based primarily on the age of the case. Although the length and mode of trial was not before him, Judge Addy stated at the hearing on the motion to stay that he would recommend to Judge Young, the Chief Administrative Judge, that the trial of this action be limited to two weeks. As Judge Addy acknowledged, however, his recommendation was not based on the anticipated number of witnesses, the anticipated length of their testimony, or any other facts bearing on the expected length of trial—indeed, Judge Addy did not have any of this information—but rather was based on his belief that limiting the trial to two weeks would drive the parties to settle. *See* Hearing Tr. at 31:9 to 32:6 (Aug. 22, 2018) (attached as **Exhibit B**). Judge Addy also stated that, while federal judges might be willing to try the case for eight weeks, no state court judge would be willing to try the case for this long. *Id.* at 12:14-19. The next day, Judge Addy signed a Form 4 Order denying the Wellin Children's motion to stay, and he handwrote in the margin of the Order: "No further delays in this case. Chief Admin judge should set for trial (2 weeks max) as soon as practicable." Order (attached as **Exhibit C**).

On December 4, 2018, the Chief Justice assigned Judge Addy to the state court Wellin case. On February 12, 2019, Judge Addy held a hearing on a number of pending motions, including (i) the Wellin Children's motion for a status conference and scheduling order, which requested

Judge Addy hold a hearing regarding the appropriate length of trial based on the facts of this case, and (ii) the Estate's "Motion to Bifurcate or for Separate Trial of Validity Issues."

In its memorandum in support of its motion to "bifurcate" trial, the Estate (*i.e.*, Wendy) asked the Court to hold a trial only on the claims that present the Wellin Children with the most onerous burden of proof—namely, the claims relating to whether Keith's will and revocable trust are invalid by virtue of incapacity or undue influence. *See* Memorandum in Support of Motion to Bifurcate (attached as **Exhibit D**). The truncated trial of severed claims the Estate requested would not include the Wellin Children's tort and breach of contract counterclaims against Wendy which, though based on the same evidence, have a lower standard of proof. The Estate argued that severing the claims in this way would "streamline" the remainder of the case and that the first trial (with the more onerous standard for the Wellin Children) "could be dispositive of the entire case." *Id.* at 7. Further, the Estate argued in its memorandum that the severed trial with the more onerous burden for the Wellin Children could be dispositive of "the Wellin Children's individual tort claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith and his estate planning." *Id.* at 8. Likewise, Wendy's counsel argued at the hearing on the motion that, if Wendy and the Estate are successful during the severed trial, "it eviscerates the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy. *See* Hearing Tr., at 27:25–28:1 (Feb. 11, 2019) (attached as **Exhibit E**). Finally, although South Carolina law provides that "[a] trial should be bifurcated only if the issues are *so distinct* that trial of each alone would not result in injustice," *Creighton v. Coligny Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998) (emphasis added), the Estate attempted to turn this law on its head, arguing that the Court should bifurcate because the issues to be bifurcated are *not distinct from*—but, instead, permeate—the remaining claims. *See id.* at 8:17–19 (arguing the Court should bifurcate because

“Keith Wellin’s capacity and issues surrounding the same permeate the claims between the parties in both this action in state court and also the federal court litigation”).

In opposing the Estate’s motion, the Wellin Children argued the Court should not sever the issues of capacity and undue influence because the Wellin Children’s tort and breach of contract claims against Wendy are based on the same evidence as the Wellin Children’s challenges to Keith’s estate planning documents on incapacity and undue influence grounds.⁴ See Memorandum in Opposition (attached as **Exhibit F**). Further, the Wellin Children argued that severing the trial in the way proposed by the Estate could only have two potential outcomes: (1) in the second trial, all the same evidence from the first trial is introduced again, resulting in a colossal waste of resources, or (2) in the second trial, Wendy will argue, as she did successfully in support of the motion, the Wellin Children are precluded from pursuing their claims against Wendy or from introducing the evidence relevant to those claims. Thus, the Wellin Children argued, the Estate’s proposed mode of trial is either (1) massively inefficient or (2) massively prejudicial to the Wellin Children’s right to pursue their claims against Wendy.

Judge Addy took the Estate’s motion under advisement. At the hearing, however, he made clear that he would not sever the issue of undue influence from the Wellin Children’s claims against Wendy because of the extent to which the issue of undue influence is overlapping with the Wellin Children’s claims against Wendy. See **Exhibit E** at 41:16–17 (stating “I wouldn’t be

⁴ The South Carolina District Court, applying Federal Rule of Civil Procedure 42 on bifurcation, which is substantially identical to South Carolina Rule of Civil Procedure 42, has held that separability of the issues “constitutes a threshold inquiry” on a motion to bifurcate, and “the issues must be truly separable before separate trials can be ordered without the risk of untoward consequences.” *Dodgeland of Columbia, Inc. v. Federated Mut. Ins. Co.*, No. CV 3:09-1190-JFA, 2009 WL 10710815, at *2 (D.S.C. July 15, 2009). Further, “bifurcation is ‘improper where the issues are so closely interwoven that plaintiff would have to present the same evidence twice in separate trials. In such circumstances, judicial economy is fostered by a single trial.’” *Id.* (quoting 8 Moore’s Federal Practice 3d § 42.20[7][c]).

bifurcating undue influence because that's the crux of your case."); *id.* at 41:25 – 42:2 (stating to the Wellin Children's counsel: "So if you're talking or worried about undue influence, hey, we're not going to have any evidence of undue influence [in the bifurcated trial]"). Indeed, Judge Addy recognized how devastating to the Wellin Children it would be if he severed undue influence from the Wellin Children's claims against Wendy, stating:

But if I were to do that – you know, if I were to bifurcate, I wouldn't lift [undue influence from the remainder of the case] because that means they'll do it in one step and it has an effect. *That's your entire case.*

Id. at 42:23 – 43:1 (emphasis added).⁵

Notwithstanding Judge Addy's assurance at the hearing that he would not bifurcate the issue of undue influence from the Wellin Children's claims against Wendy, Judge Addy issued an Order on May 15, 2019, doing just that. In its Order, the circuit court stated:

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

Order at 4 (attached as **Exhibit G**). Moreover, in the Order, the circuit court declined to hold a hearing to determine the length of trial that would be needed to permit the parties to adequately present their evidence and pursue their claims. Instead, the court imposed an arbitrary two-week cap on the length of trial and stated it would begin at an unspecified date in June 2019. Stated differently, the Order sets a trial in which the parties are to submit all the evidence (or at least

⁵ The circuit court also stated that, if the parties did not waive their right to a jury trial, "we're not going to bifurcate." **Exhibit E** at 25:25 – 26:1. He then said that this was only his "initial default setting" and that "perhaps . . . we would" bifurcate a jury trial. *Id.* at 26:3–4.

however much they can squeeze into a two-week trial) relating to Keith's estate plan and the changes to it, but the jury will be permitted to decide *only* the two issues that present the Wellin Children with the most onerous standard of proof—Keith's capacity and Wendy's undue influence—and not their tort and breach of contract claims against Wendy that are subject to a lower standard of proof.

Even worse, the circuit court stated this severed, truncated trial will likely dispose of at least some of the Wellin Children's claims, which would not be presented to the jury in the initial phase. *See id.* at 4 (stating this phasing of trial is intended to "promote convenience, efficiency, and economy" and that the "resolution of these issues will likely result in resolution of much of the federal litigation").⁶ Of course, severing the issues in this manner will promote efficiency and economy *only* if the first phase of trial has a preclusive effect on the remaining claims. That is, if the circuit court intended to permit the Wellin Children to fully pursue their claims against Wendy during the second phase of trial regardless of the outcome of the first phase of trial, then the circuit court could not possibly have found that the bifurcation will "promote convenience, efficiency, and economy."

Upon receiving the Court's May 15, 2019 Order, the Wellin Children immediately appealed lest their ability to appeal be lost forever.⁷

⁶ The claims the Wellin Children are pursuing against Wendy in the federal litigation are precisely the same claims the Wellin Children are pursuing against Wendy in the state litigation.

⁷ *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 it later); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (holding the failure to immediately appeal a ruling affecting the mode of trial and a substantial right meant the appeal was waived); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to jury trial which would otherwise be lost).

ARGUMENTS

I. The May 15, 2019 Order setting a truncated trial in which the Wellin Children may not pursue their claims but may nevertheless lose them is immediately appealable.

The appealability of an interlocutory order is governed primarily by S.C. Code Ann. § 14-3-330, which permits the immediate appeal of certain interlocutory orders, including those involving the merits, affecting a substantial right, or effectively striking out a portion of a pleading:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

* * *

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14-3-330.⁸ The Supreme Court has explained that subsection 14-3-330(2) permits the immediate appeal of orders affecting the “mode of trial,” including orders that deny or limit a party’s jury trial right, orders that prevent a party from trying a case using counsel of their choosing, and orders that limit a party’s ability to be the master and architect of its own case. *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (collecting cases); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015). As explained more fully in the arguments that follow, the circuit court’s Order dated May 15, 2019 is such an order and is immediately appealable on the basis of at least two of the rulings contained therein, either of which is sufficient to allow an immediate appeal of the order.

⁸ The Court of Appeals’ jurisdiction to consider appeals from interlocutory orders is the same. *See* S.C. Code Ann. § 14-3-330.

- A. The circuit court's "bifurcation" ruling, just like the one in *Morrow*, is immediately appealable because it would deprive the Wellin Children of a substantial right.

Garden-variety bifurcation orders typically are not immediately appealable. The circuit court's "bifurcation" in this suit, however, is no ordinary bifurcation order. Indeed, the Order in this case is not even a bifurcation order because it does not define a second phase, only a single truncated trial on severed claims. It is analogous to the order in *Morrow*, in which the Supreme 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 their substantive right to be the architects of their case. *See Morrow*, 412 S.C. at 539, 773 S.E.2d at 146,

In *Morrow*, the plaintiffs sued a nursing home and its parent companies for injuries sustained by Mr. Morrow. Plaintiffs alleged the parent companies were vicariously liable for the nursing home's alleged negligence *and* were directly liable for their own alleged wrongdoing in underfunding the nursing home. The trial court ordered a "bifurcated" trial with a first phase in which only "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." *Morrow*, 412 S.C. at 536, 773 S.E.2d at 145.

The Morrows appealed, and the Supreme Court ruled the trial court's order—though it was styled as one for bifurcation—was immediately appealable because it "affects a substantial right." *Id.* at 538, 773 S.E.2d at 146. Specifically, the Supreme Court focused on the trial court's express intent and erroneous belief that the first phase of trial could and should resolve other claims that were not asserted in that trial or considered by that jury and which were not derivative of the claims that actually were pursued and resolved by the jury:

By considering the Morrow's claims against the [parent companies] as dependent upon their claim against Magnolia Place, the trial court's order effectively grants the [parent companies] potential summary judgment on the issues of direct corporate liability.

Accordingly, we find the trial court's order fits neatly within the statutory provision allowing immediate appeals where a substantial right is implicated. S.C. Code Ann. § 14-3-330(2)(a). The effect of this order is to prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.

Id. at 539, 773 S.E.2d at 146 (footnotes and citation omitted). Stated differently, the immediately appealable error in *Morrow* was that the trial court intended for one trial before one jury on one set of claims against one party to be potentially dispositive of a different set of claims against different parties implicating potentially different standards and burdens of proof.

The Order here commits the same error. The Order expressly contemplates and intends that the outcome of a jury trial where no claims against Wendy are tried or decided by the jury will be dispositive of the Wellin Children's claims against Wendy. The truncated and severed jury trial will involve the issues of capacity and undue influence with one set of standards and may be dispositive of claims against Wendy that would therefore never be tried to a jury and that involve different elements and different (and less rigorous) standards. *See* Order at 3–4 (**Exhibit G**) (stating the circuit court's expectation and intent that the resolution of the two hand-picked issues in the "phase 1" trial "will likely result in resolution of much of the federal litigation"). Thus, the circuit court's order provides Wendy, who will have no claims tried against her, with "potential" summary judgment without ever facing a jury trial, just as the circuit court's order in *Morrow* provided the corporate parents, who would have had no claims tried against them in the first phase of trial, with "potential" summary judgment without ever facing a jury trial. Indeed, if the circuit court's Order promotes "convenience, efficiency, and economy," as it claims to do, *see* Order, **Exhibit G**, at 4, then the Order *must* intend for severed trial to be dispositive of some or all of the

Wellin Children's claims against Wendy. The only alternative would be for the severed trial not to be dispositive of any of the Wellin Children's claims against Wendy, in which case the Order would require the parties to have essentially the same trials with the same evidence two or more times but with different claims and different juries. This cannot possibly be what the circuit court intended, particularly where the circuit court specifically stated that the order would result in "convenience, efficiency, and economy," and specifically stated that the first phase of trial "will likely result in resolution of much of the federal litigation." *Id.* at 4.⁹

Notably, during the oral argument in *Morrow*, the South Carolina Supreme Court asked counsel for the parent corporations—*i.e.*, the parties who had obtained the "bifurcation" order and who were arguing that it was not immediately appealable—whether he would stipulate that, if the plaintiffs lost the first phase of trial, the plaintiffs nevertheless would have the right to pursue their claims against the corporate defendants. *See* Oral Argument Tr., at 19:25 – 20:6 (January 13, 2015) (attached as **Exhibit H**). Respondent's counsel would not so stipulate. *See id.* at 20:5. Here, Wendy not only refuses to stipulate that the Wellin Children will be permitted to pursue all their claims against her even if the Wellin Children lose the first phase of trial, Wendy argues that the Wellin Children losing the first phase of trial would "eviscerate[] the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy. *See Exhibit E*, at 27:25 – 28:1; *see also* Memorandum in Support of Motion to Bifurcate (attached as **Exhibit D**), at 7 (Wendy as Special Administrator arguing that the first trial "could be dispositive of the entire case").

This truncated trial of severed claims could wrongly result in disposition of many of the Wellin Children's claims and counterclaims arising from at least a dozen challenged transactions

⁹ The Wellin Children's claims against Wendy in federal court are the same as their claims against Wendy in state court.

which the Wellin Children claim were the result of Wendy's tortious misconduct, which overlaps largely with her undue influence of Keith in his estate planning. Several examples should suffice:

- The truncated and severed trial would include evidence relating to Keith's abrupt transfer of \$4.5 million to Wendy in April 2013 to buy a beach house. This incident and the evidence related to it is highly relevant to the issues of undue influence and testamentary capacity, *i.e.*, it demonstrates the way in which Wendy began to overtake Keith's will and eventually turned him against his children in the Spring and Summer of 2013. That incident and evidence are also highly relevant to the Wellin Children's counterclaim against Wendy for, *inter alia*, breach of the prenuptial agreement. It is possible the jury in the severed trial would conclude that the evidence of undue influence relating to Keith's estate planning transactions in 2013-2014 is insufficient to meet the exacting standards of undue influence and incapacity under South Carolina law. Wendy clearly intends to use such a determination of "fact"—no undue influence over Keith's estate planning—to preclude a trial on the breach of contract claim—a claim involving different elements, a different standard, and potentially different or additional evidence.¹⁰
- Likewise, in the truncated, severed trial, the Wellin Children would introduce documents and testimony relating to the critical events of November 20, 2013, when Keith undertook numerous, complicated steps to remove \$90 million worth of assets from an Irrevocable Trust he had previously established for his children and replaced them with assets worth only \$50 million. This "swap" transaction is a large potential component of the damages sought against Wendy individually by the Wellin Children. The Wellin Children maintain the swap was invalid and should be undone. If the swap is not unwound, however, the Wellin Children will instead seek to recover the tens of millions of dollars in losses from Wendy pursuant to claims for, among other things, breach of contract and intentional interference with inheritance. In the truncated trial, because the Wellin Children are not allowed to present their claims to the jury, the sole issues would be whether Keith was under undue influence and/or had capacity when he made his changes to his estate plan. If the jury were to find (again, under the demanding standard applicable to those issues) that Keith had capacity and was not unduly influenced, the circuit court's order contemplates and, indeed, encourages Wendy to use that finding offensively to preclude a trial on the intentional interference with inheritance and breach of contract claims relating in part to the swap—claims that,

¹⁰ Wendy and the other Respondents are ready to capitalize on the potential outcome of the circuit court's "bifurcation." In the Estate's memorandum in support of its motion to bifurcate, the Estate made no effort to disguise its intention to use any findings and rulings from the first phase of trial offensively to dispose of the Wellin Children's untried claims and counterclaims. *See* Estate's Mem. in Support of Mot. to Bifurcate at 12 (Feb. 12, 2019) (attached hereto as **Exhibit D**) (arguing the outcome of a trial limited to the issues of undue influence and capacity "has a strong potential to resolve and/or streamline the claims going forward"); *id.* at 7 (stating that bifurcation is appropriate because "resolution of certain issues could be dispositive of the entire case") (emphasis added).

again, involve different elements, different standards, and potentially different or additional evidence.

These are but two examples of the incidents, issues, and claims that—without actually being tried—could be effectively disposed of under the circuit court’s phasing of the trial. This is as bad or worse than the deprivation of a substantial right that was held to be immediately appealable in *Morrow*, namely a threatened disposition of untried claims based on the erroneous belief that the untried claims are dependent on or derivative of other claims to be tried.

Another parallel between *Morrow* and the instant suit is that the circuit court’s Order “prevent[s] [the Wellin Children] from being architects of their own complaint, and deprives them of bringing their case against the defendant of their choosing.” *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. Wendy, the person the Wellin Children are suing and from whom the Wellin Children are seeking to recover, will have no claims asserted against her during the truncated and severed trial. Further, the circuit court’s Order forces the Wellin Children into a Hobson’s choice of either (i) choosing to introduce evidence, arguments, and witnesses to support their position on the issues of undue influence and incapacity, knowing that if the jury rules against them they might be precluded from “relitigating” those facts in a subsequent trial of their tort claims against Wendy, or (ii) choosing instead to reserve those arguments, evidence, and facts for a possible future tort and breach of contract trial, and thus be hamstrung in their prosecution of the issues of incapacity and undue influence, which are based on the same evidence as the Wellin Children’s tort and breach of contract claims. The Hobson’s Choice effect of the Order is particularly important because these choices will be pervasive throughout the trial. Counsel for the Wellin Children will have to choose as to each piece of evidence whether to present it to maximize the chance of prevailing in the present or holding it back to mitigate the risk of a possible future finding that a fact was “actually litigated” and hence gives rise to collateral estoppel in a future trial.

Preservation of a record as to these choices that would enable the appellate courts in the future to provide a meaningful review would pose potentially unsurmountable challenges. It would be similar to disqualification of counsel, which the Supreme Court has found is immediately appealable because it is “one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken.” *Hagood v. Sommerville*, 362 S.C. 191, 197–98, 607 S.E.2d 707, 710 (2005).

Also, in *Morrow*, the South Carolina Supreme Court held that, “[t]o prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.” *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146–47. Likewise, in this case, preventing the Wellin Children from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on the issues of undue influence and capacity and its subsequent appeal. Piecemeal litigation would be guaranteed because, after this truncated trial, the losing party would be forced to appeal or waive their rights to do so. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868, 870 (2019) (upholding appeal “following a bifurcated hearing [in which] a claim or defense has been finally determined.”). Appellate rights would be affected as explained above because of the extent to which the Hobson’s Choice would permeate the truncated trial, but would be virtually impossible to preserve in the record.

In sum, the circuit court’s Order establishing the mode of trial wrongly threatens to deprive the Wellin Children of a jury trial on their claims in which all the applicable evidence is presented and the jury is instructed on the applicable standards for the Wellin Children’s claims against Wendy. This deprivation involves a substantial right and is immediately appealable, regardless of whether the ruling is characterized by the circuit court as a bifurcation order. *See Morrow, supra*.

Further, because the order *may* be immediately appealed, it *must* be immediately appealed. See *Hagood*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (holding an order disqualifying a party's attorney in a civil case affected a substantial right, is "closely related to the right to a particular mode of trial," and must be immediately appealed or else be lost forever). Here, just as in *Morrow*, the circuit court's ruling placed a limitation on the relief sought by and available to the Wellin Children, forcing them to present their evidence and arguments but without an opportunity to recover the damages sought in their counterclaims (and, rather, a chance of a verdict that would later be used by Wendy to foreclose them from ever litigating their claims). Interlocutory rulings such as this one regarding the mode of trial or limitations on relief may be, and must be, immediately appealed. See *Foggie v. CSX Transp., Inc.* 313 S.C. 98, 431 S.E.2d 587 (1993). For all of these reasons, this appeal is properly before this Court.

B. The circuit court's "bifurcation" ruling effectively strikes out a portion of the Wellin Children's pleading and is therefore immediately appealable.

As noted above, Code section 14-3-330 permits the immediate appeal of an interlocutory order that "strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2)(c). The circuit court's May 15, 2019 order does so. Although the order is characterized as a "bifurcation," the *effect* of it—as explained at length in the preceding argument section—is to potentially prevent the Wellin Children from ever bringing their claims before a jury, *e.g.*, it effectively strikes out a portion of their pleading, namely their counterclaims. This Court has previously explained that, when analyzing this subsection, the Court looks to the effect, not the label, of the order being appealed:

[A]n appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011). In the instant litigation, the effect of the circuit court's "bifurcation" order is potentially to prevent a fact finder from ever considering the Wellin Children's counterclaims and thus to prevent those claims from ever being litigated on the merits.

C. The circuit court's decision to impose an arbitrary time limit on the trial, unless the parties waive their constitutional right to a jury trial, is immediately appealable as a deprivation of a substantial right and/or of the right to a meaningful jury trial.

The circuit court's May 15, 2019 Order is immediately appealable for the additional reason that it deprives the Wellin Children of their substantial right to the mode of trial to which they are entitled by preventing them from conducting a meaningful and substantive jury trial and/or by attempting to strong-arm them into "voluntarily" relinquishing that right. For one, the circuit court did not seek, analyze, or articulate any meaningful basis upon which to determine the length needed for a trial of the party's claims. Indeed, the court denied the Wellin Children's request that the circuit court simply hold a hearing where the parties could present such information. *See* Order (attached as **Exhibit G**) (holding that the trial will be two weeks but providing no basis for this limitation, and stating that the order ruled upon the Wellin Children's motion for a status conference and scheduling order wherein the Wellin Children requested a hearing to address the appropriate length of trial). The circuit court does not know, and has declined to hold a hearing where the parties disclose to it, the number of witnesses the various parties anticipate calling and their expected length of testimony; what evidence will be presented; or any other facts bearing on the expected length of trial.

Indeed, the trial court has admitted its time limit on the trial is based not on any consideration of due process, fairness, or the volume of testimony and evidence to be presented at

trial but, rather, as a bald attempt to put the parties into such an untenable position that they will be forced to settle. When Judge Addy, prior to being appointed to handle this case, announced that he would recommend limiting the trial to two weeks, he stated:

I am firmly convinced and I have the strongest suspicion that when the trial court as I recommend to Judge Young when Judge Young directs, that this case will last no more than two weeks and everyone will have to expedite and stipulate and agree to exhibits and you will be confined to a mere two weeks to try this case I am very confident that this case will resolve and the federal litigation will also resolve. And I really don't mind saying that out loud. Because that is exactly what I forced to happen over in Beaufort County about two years ago when somebody all of a sudden on the week before trial told me that this was being a case that involved tens of millions of dollars was being tried in front of a jury. Where the entire time I had been led to believe it was just going to be a bench trial which means that I can go start at 8:30 and I can go until 9:00 or 930 and I can roll through it and I can get it done in five days. With a jury that would not have been possible. The case settled. Everybody went home. And the waste -- or the deletion of the estate assets ceased. So my recommendation to Judge Young who will have the ultimate call on this is that this will be limited to two weeks.

See Hearing Tr. at 31:9 to 32:6 (Aug. 22, 2018) (attached as **Exhibit B**); *see also id.* at 12:14-19 (stating that, while federal judges might be willing to try the case for eight weeks, no state court judge would be willing to try the case for this long). Thus, after the Wellin Children invested six years of their lives litigating this dispute and paying for more than 120 depositions and more than a dozen experts with the reasonable expectation that they eventually would be permitted to fully present their case to a jury, they were told that they would only receive a few days during a two week trial to present their case—not because that is how long it would take to try this case, but because the circuit court is seeking to force the parties to settle. In effect, even though the state constitution provides a right to a jury trial is inviolate, *see* S.C. Const. art. I, § 14, the circuit court held that litigants in South Carolina do not have a constitutional right to a jury trial if their trial will take more than two weeks.

The circuit court's May 15, 2019 Order regarding the length of trial is consistent with the circuit court's statements at the August 22, 2018, hearing, as it provides no basis for the two-week limit, gives no consideration to the parties' rights to present all the relevant evidence and testimony, and, by setting an extremely abbreviated trial and giving the parties extremely limited notice of the date when the trial will start, apparently attempts to force the parties to settle.

A full trial of the issues of capacity and undue influence would take significantly longer than two weeks. The parties have taken more than 120 depositions in the related federal litigation, most of which have related to issues of capacity or undue influence. The Estate has identified 132 witnesses in its interrogatory responses in this action. On the issues of capacity and undue influence, Wendy and the Estate have disclosed eight retained testifying experts and have identified dozens of treating physicians and fact witnesses. Likewise, the Wellin Children have identified six retained expert witnesses on these subjects along with numerous fact witnesses. Indeed, although the Estate's counsel has consistently pushed for a truncated trial, even he has admitted that litigating the issues of capacity and undue influence would require significantly more than two weeks. *See* Hearing Tr. at 4:13 – 5:7 (July 20, 2016) (attached as **Exhibit I**) (the Estate's counsel stating to Judge Norton that "the issue of capacity and competence" would require "three to four weeks of testimony," and stating: "we estimate that between the expert witnesses, the care providers, the doctors, the friends, the family members, you know, upwards of 50 witnesses specifically related to the issue of capacity, validity issues, undue influence, et cetera").

For the Wellin Children to fully present their case on the issues of capacity and undue influence, they must tell the jury the story of, among other things, the relationship between Keith and his children and grandchildren, Keith's relationship with Wendy, Keith's extensive estate planning and how it changed over the years, the events surrounding Keith's suddenly adopting the

belief in the summer of 2013 that his children had stolen from him and that he wanted to undo his prior estate planning, and the irrationality of Keith's behavior throughout the portion of this litigation where he was living. Notably, the circuit court recognized at the February 11, 2019, hearing on the Estate's motion to bifurcate that "the relationship that Mr. Wellin had with his kids and grandkids and great-grandkids throughout their lives is certainly relevant to the issue of what happened in 2013 and 2014 as it relates to assessment of estate plans." **Exhibit E** at 37:17–21; *see also id.* at 10:15 (stating that "[c]ontext is everything" and agreeing that the Wellin Children would need to address "[w]hat kind of relationship did [Keith] have after his first wife—after his first marriage ended? How did that evolve among the three kids, the grandkids, the one with the property in Maine? I understand how all that is intertwined into this.")). But Judge Addy's order limiting the trial to only two weeks effectively prevents the Wellin Children from presenting evidence on most of these issues.

Even if pretrial motions, jury selection, opening statements, directed verdict motions, and closing statements take only two days, and even if the Wellin Children received half of the remaining trial time (while Wendy, the Estate, and Hamilton shared the remaining half),¹¹ the Wellin Children would have only four days to present their case. Keith amended his trust more than a dozen times in his life and amended his trust five different times during 2013 and 2014. The Wellin Children will not attempt to describe the categories of evidence in this case, but the more than 120 depositions (most of which relate to capacity and undue influence) and the six years of litigation in federal court indicate that this is not the type of case where the Wellin Children can

¹¹ The Court's May 15, 2019 Order stated that "the parties will have to streamline their presentations pursuant to a future order concerning the allocation of available time." Order, **Exhibit G**, at 3. Because the circuit court has never issued this future order concerning the allocation of time, the Wellin Children do not know how many trial days they would receive during the two weeks.

present their case in four days. Thus, the practical effect of limiting the trial to two weeks is to exclude the vast majority of the Wellin Children's relevant evidence from trial, thereby denying the Wellin Children a full and fair opportunity to try their case and violating their due process rights.

In cases where a trial court has arbitrarily restricted the length of trial without considering the relevant evidence regarding the anticipated length of trial, courts have held that the trial court violated the constitutional due process rights of the parties. For example, in *Goodwin v. Goodwin*, 618 So. 2d 579, 583–84 (La. Ct. App. 1993), the court held:

[B]efore imposing time limitations in a case, the trial judge should be thoroughly familiar with the case through pretrial proceedings, including status and pretrial conferences, and discovery. The judge should be familiar with the claims of the parties, the proposed testimony and number of witnesses, and the documentary evidence to be presented. Each litigant should be required to estimate the length of his or her case, and if necessary, the amount of time needed for each witness. Armed with this information, the trial judge should be in a good position to set reasonable time limits for the presentation of the evidence, rather than arbitrary time limits.

Likewise, in *Ingram v. Ingram*, 125 P.3d 694, 698 (Ok. Civ. App. 2005), the court held that “parties in litigation are entitled to a meaningful and full opportunity to be heard, so rigid time limits are disfavored,” and where time limits are imposed, “[t]he court should thoroughly familiarize itself with the case through pretrial proceedings before imposing limitations, should require litigants to estimate length of their cases and, if necessary, amount of time for each witness.”

The circuit court's use of a two-week time limit goes further than merely restricting the jury trial right in hopes of forcing a settlement. In an off-the-record status conference on January 31, 2019, Judge Addy stated that the parties would be limited to a two-week trial if the case is tried to a jury (regardless of whether the trial was bifurcated), but that the trial could last as long as the parties reasonably needed if counsel waived their right to a jury trial and agreed to a bench trial

instead. The circuit court returned to this theme in its May 15, 2019 order, noting that “[a]ssuming that this action remains on the jury trial roster, the trial in state court will be limited to two weeks” See Order at 3 (emphasis added) (**Exhibit G**). Again, this presented the Wellin Children with a Hobson’s choice: agree to waive their right to a jury trial and thereby waive their appellate rights with respect to their right to a jury trial (because they would have consented to try the case non-jury), or have a jury trial that is limited to two weeks where the Wellin Children are unable to fully present the majority of their case. This sort of high stakes brinkmanship—significantly limiting a party’s jury trial in hopes of forcing a settlement, and offering the parties the right to fully try their case only if they waive their constitutional right to a jury trial—has the effect of depriving the Wellin Children of a mode of trial and therefore should be immediately appealable. See *Hagood*, 362 S.C. at 198, 607 S.E.2d at 710 (holding that even the disqualification of a party’s attorney in a civil case was “closely related to the right to a particular mode of trial” and thus was immediately appealable); *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389–90 (Ct. App. 2004) (“Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) of the South Carolina Code, and are immediately appealable.”).

D. Because at least some aspects of the May 15, 2019 order are immediately appealable, the entirety of the order is reviewable on appeal.

As explained in the foregoing argument sections, several of the portions of the circuit court’s May 15, 2019 order are immediately appealable. When at least one portion of an order is immediately appealable, the *entire* order may be considered upon appeal. See *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) (“This Court reviews interlocutory orders when they contain other appealable issues.”) (citing *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991)); *Rice Hope Plantation v. S.C.*

Pub. Serv. Auth., 216 S.C. 500, 511, 59 S.E.2d 132, 136 (1950), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (“We have here a single order from a part of which an appeal admittedly will lie, but it is manifest that the entire order should be considered upon this appeal; and the cases cited are sufficient to support this conclusion.”); *see also* Toal, *Appellate Practice in South Carolina* 88 (“Where there is a single order that is admittedly appealable in part, the entire order should be considered upon the appeal.”).

II. The October 20, 2017 and August 23, 2018 orders, while not themselves immediately appealable, may be joined in the appeal of another immediately appealable order.

The Wellin Children also appeal from the circuit court’s October 20, 2017 order granting Wendy’s motion to lift the stay and from the circuit court’s August 23, 2018 order denying the Wellin Children’s motion to stay further progress in this suit. These orders, if standing alone, would not be immediately appealable. *See Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm’n*, 373 S.C. 96, 644 S.E.2d 681 (2007) (holding order lifting a stay was not immediately appealable); *Edwards v. Suncom*, 369 S.C. 91, 631 S.E.2d 529 (2006). In the context of this appeal, however, these orders do not stand alone. “[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the court and a ruling on appeal will avoid unnecessary litigation.” *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014) (citation omitted). In the instant appeal, there is an immediately appealable issue, *see* Argument I, *supra*, and this Court’s simultaneous consideration of the prior orders will spare the lower court and the parties from expending needless resources litigating what could otherwise be resolved by this Court.

CONCLUSION

Because one of the orders being appealed is immediately appealable, and because the related orders—even if not themselves immediately appealable—may be joined in the appeal of

an appealable ruling, this Court has jurisdiction to consider and rule upon each of the orders appealed in the Wellin Children's Notice of Appeal.

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Charleston, South Carolina
June 7, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,

Civil Action No. 2014-CP-10-07038

Petitioner,

vs.

Peter J. Wellin, Cynthia W. Plum,
Marjorie W. King,

**ORDER GRANTING
MOTION TO STAY**

Respondents and
Counter-Petitioners,

vs.

Wendy C.H. Wellin, Hamilton College,
Keith S. Wellin Florida Revocable
Living Trust, Campbell Hart and
Heather Lane,

Counter-Respondents.

IN THE MATTER OF:

Keith S. Wellin

FILED
2015 JUL -6 PM 3:51
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on a motion to stay filed by Respondents and Counter-Petitioners Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King ("Respondents"). Through their motion, Respondents ask the Court to stay this action pending resolution of a related action currently pending between Respondents and Petitioner Wendy C.H. Wellin in the United States District Court for the District of South Carolina, Civil Action Number 2:14-cv-4067-DCN (the "Federal Action").

On May 5, 2015, Respondents filed a memorandum in support of their motion to stay. On May 7, 2015, Petitioner filed a memorandum in opposition to Respondents'

motion to stay. Also on May 7, the Court held a hearing on the motion to stay where the Court heard oral arguments from the parties. After considering the memoranda and oral arguments of the parties and the applicable law, the Court grants Respondents' motion to stay.

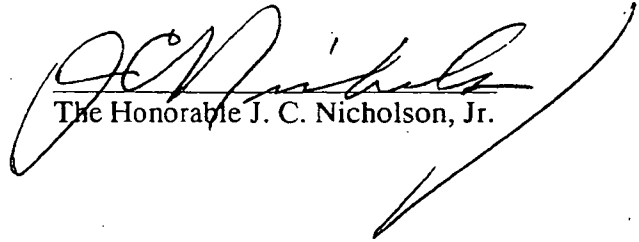
“The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial Judge.” *City of Spartanburg v. Belk's Dept. Store of Clinton*, 199 S.C. 458, 20 S.E.2d 157, 167 (1942); *see also Stone v. I.N.S.*, 514 U.S. 386, 411 (1995) (Breyer, J., dissenting) (noting that the United States Supreme Court has “long recognized that courts have inherent power to stay proceedings and ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants’”). “Courts generally employ a ‘stay’ of proceedings when there is another issue pending between the same parties in another action and the resolution of that issue will affect the action sought to be stayed.” *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 120, 328 S.E.2d 621, 623 (1985) (Littlejohn, J., dissenting). As recently held by the South Carolina Supreme Court, “[a]voiding concurrent litigation in both the courts of this state and the Federal District Court will foster wise judicial administration and conserve judicial resources.” *State ex rel. Wilson v. Condon*, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014).

Here, the Court finds that this action and the Federal Action involve overlapping issues and that resolution of the Federal Action is likely to reduce or eliminate the issues that must be litigated in this action. In the absence of a stay, the parties would be forced to litigate the overlapping issues in this action and in the Federal Action, which would create the risk of inconsistent judgments and waste the resources of this Court and the

parties. Staying this action pending resolution of the Federal Action, on the other hand, will serve to conserve the resources of this Court and the parties and will eliminate the risk of inconsistent judgments. Moreover, the Court agrees with Respondents that staying this action pending resolution of the Federal Action is unlikely to cause prejudice to any of the parties, and the Court finds that any prejudice that might be caused to any party by the stay is outweighed by the benefits of the stay.

For the foregoing reasons, the Court hereby grants Respondents' motion to stay. This action is hereby stayed and shall remain stayed until the Federal Action, including any appeals in that action, is finally resolved, or until further order of this Court.

AND IT IS SO ORDERED.



The Honorable J. C. Nicholson, Jr.

Charleston, South Carolina
7/2, 2015

EXHIBIT B

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Wendy C. H. Wellin,	)	CASE 2014-CP-10-07038
PLAINTIFF,	)	
vs.	)	TRANSCRIPT OF RECORD
Peter J. Wellin, Cynthia W. Plum,	)	
Marjorie King,	)	
RESPONDENTS AND COUNTER-PETITIONERS,	)	
vs,	)	
Wendy C.H. Wellin, Hamilton College,	)	
Keith S. Wellin Florida Revocable	)	
Living Trust, Campbell Hart and	)	
Heather Lane,	)	
COUNTER-RESPONDENTS.	)	
IN THE MATTER OF:	)	
The Estate of Keith S. Wellin.	)	

August 22, 2018

Charleston, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr.

A P P E A R A N C E S:

James Bernard Hood, Esquire
For the Estate

John Fisher Beach, Esquire
For the Plaintiff, Hamilton College

John T. Lay, Jr., Esquire
For the Plaintiff, Ms. Wendy C. H. Wellin

Robert H. Brunson and Patrick Wooten, Esquire
For the Defense

Certified Transcript Provided For: Nelson Mullins

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter

636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464

PNorton@sccourts.org

1 Nicholson accepted without giving us an opportunity to
2 respond at that hearing.

3 Subsequently, to his credit, Mr. Hood sent an e-mail to
4 Judge Nicholson sometime later correcting that. And it is
5 now undisputed that there are no beneficiaries of this will
6 who are waiting to receive anything while the will is not
7 being probated.

8 THE COURT: Forgive me for interrupting. The court has
9 the same concern. You brought up Judge Jefferson's. This
10 court has the same concern as Judge Jefferson does.

11 And I know in your memorandum you indicated that this
12 case would perhaps take eight to ten weeks to try. I
13 seriously doubt that. I don't know of any will contest that
14 is going to take six to eight weeks. And I don't know of
15 any judge who is going to have the patience on the trial
16 level. You can get federal judges to do it. But no trial-
17 level judge is going to spend eight weeks trying this case
18 when the Roof case was successfully tried in, what was it,
19 two weeks.

20 So, yeah, that -- first of all, that is not going to
21 happen. Second of all, this is an old case. I am very
22 hesitant to issue any stay -- and I appreciate the
23 procedural background and everything. But I am very very
24 hesitant to authorize any stay in any case that begins with
25 2014 for any reason.

1 time, whether it is a college or a 77-year-old person or
2 some kids or somebody else, somebody is entitled to get what
3 Mr. Wellin produced during the course of his life.

4 And whether that happens in state court or federal
5 court, and whether it happens first in state court or second
6 in state court, or first in federal court and second in
7 federal court, I really don't care. But depletion of assets
8 has to stop.

9 Which brings me to my third and final point. I am
10 firmly convinced and I have the strongest suspicion that
11 when the trial court as I recommend to Judge Young when
12 Judge Young directs, that this case will last no more than
13 two weeks and everyone will have to expedite and stipulate
14 and agree to exhibits and you will be confined to a mere two
15 weeks to try this case I am very confident that this case
16 will resolve and the federal litigation will also resolve.

17 And I really don't mind saying that out loud. Because
18 that is exactly what I forced to happen over in Beaufort
19 County about two years ago when somebody all of a sudden on
20 the week before trial told me that this was being a case
21 that involved tens of millions of dollars was being tried in
22 front of a jury. Where the entire time I had been led to
23 believe it was just going to be a bench trial which means
24 that I can go start at 8:30 and I can go until 9:00 or 930
25 and I can roll through it and I can get it done in five

1 days. With a jury that would not have been possible. The
2 case settled. Everybody went home. And the waste -- or the
3 deletion of the estate assets ceased.

4 So my recommendation to Judge Young who will have the
5 ultimate call on this is that this will be limited to two
6 weeks. If you want a jury trial that is perfectly fine. If
7 you get one, everybody will need to be prepared to come in
8 here.

9 And if he wants to invite me back down to Charleston to
10 try it, I love Charleston. The food is great, and I don't
11 mind coming. But we will do it in two weeks if it actually
12 is going to be tried.

13 So that will be my ruling. There will be no stay. And
14 we are going to move forward. Whichever case we reach first
15 is the case we reach first. And it is a pleasure to see you
16 people. The court will now take a break. Thank y'all very
17 much.

18 (WHEREUPON, the hearing concluded 10:52 a.m.)

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin

PLAINTIFF(S)

Peter Wellin Cynthia

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

No further delays in this case. Chief Clerk, judge should set for trial (2 weeks max) as soon as practicable. 2m
Motion/ Stay by Respondent & Counter Petitioners - Denied
Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

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

[Signature]
Circuit Court Judge

2159
Judge Code

8-23-18
Date

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,

Petitioner,

Versus

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 and Counter-Petitioners,

Versus

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.

IN THE MATTER OF:

Keith S. Wellin

) IN THE COURT OF COMMON PLEAS

)

)

) C/A No. 2014-CP-10-07038

)

) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO BIFURCATE OR FOR**
) **SEPARATE TRIAL OF VALIDITY ISSUES**

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FILED
2019 FEB 12 AM 9:30
JULIE J. ARMSTRONG
CLERK OF COURT

Wendy C. H. Wellin, as Petitioner and in her capacities as 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 (hereinafter "Petitioner"), by and through her undersigned counsel, submits this Memorandum in Support of her Motion to Bifurcate or for Separate Trial filed August 17, 2018. Specifically, Petitioner seeks bifurcation of all validity issues associated with the Last Will and Testament of Keith S. Wellin executed June 27, 2014 (the "2014 Will") and the amended and restated Keith S. Wellin Florida Revocable Living Trust executed June 27, 2014 (the "2014

Revocable Trust”), including (a) whether Keith S. Wellin (“Keith”) possessed sufficient mental capacity to execute the 2014 Will and the 2014 Revocable Trust and (b) whether Keith’s execution of the 2014 Will or the 2014 Revocable Trust was the result of undue influence, fraud, duress or mistake (hereinafter collectively, the “Validity Issues”).

The validity of the June 27, 2014 Will and Revocable Trust undergirds many – if not most – of the major allegations in this litigation, and early resolution of these fundamental Validity Issues has a strong potential to resolve and/or streamline the claims going forward. Therefore, for the reasons outlined below, this Court should bifurcate the Validity Issues to promote efficiency, economy, and fairness for all involved.

Factual Background

Keith Wellin passed away on September 14, 2014, leaving as a final written expression of his wishes his 2014 Will and 2014 Revocable Trust. These documents were executed on June 27, 2014 in the presence of several witnesses, including F. Patricia Scarborough, Esq. and M. Jean Lee, Esq. (two estate planning attorneys who signed the documents as witnesses), estate planning attorney Edward G. R. Bennett, Esq., speech therapist Amy Hider, and nationally-recognized capacity expert Daniel C. Marson, JD, PhD.

The validity of Keith’s 2014 Will has been an issue pending before this Court in this action since the fall of 2014 – Keith’s widow Wendy C. H. Wellin filed a Petition for Formal Testacy shortly after his passing. Keith’s three adult children, Peter Wellin, Cynthia Plum and Marjorie King (collectively, the “Wellin Children”), answered the Petition and counter-petitioned for formal testacy of an earlier Will in October, 2014. Last year, the Wellin Children amended their pleadings in this matter to add a request for declaratory judgment as to the validity of Keith’s 2014 Revocable Trust and a variety of other claims against Mrs. Wellin. By adding the issue of the validity of

Keith's 2014 Revocable Trust into this action, for the first time the Validity Issues surrounding the 2014 Will and the 2014 Revocable Trust are unified in one single proceeding.

Petitioner maintains that the 2014 Will and the 2014 Revocable Trust are valid, effective and represent Keith's final and dispositive estate plan. The Wellin Children allege that these documents are invalid due to any of the following: (i) Keith lacked capacity at the time they were executed; (ii) Keith was subject to undue influence at the time they were executed; (iii) Keith was under duress at the time they were executed; (iv) the documents were executed as a result of fraud; or (v) the documents were executed as a result of mistake. The Wellin Children also allege that the 2014 Revocable Trust is invalid because Peter Wellin did not receive a copy of the document while his father, the Decedent, was living.

Also pending before the Court in this action are various other claims raised by the Wellin Children in their amended pleading last year. These claims fall into three general categories: (1) a Counter-Petition for formal testacy of Keith Wellin's earlier Will executed on August 30, 2011¹; (2) individual tort and contract claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith Wellin and his estate planning; and (3) individual tort and equitable claims against Mrs. Wellin relating to matters other than her alleged involvement with or influence over the Decedent's estate planning.

Most recently, Friendship Management, LLC (the "LLC") intervened in this matter to raise two claims against Mrs. Wellin duplicative of those raised by the Wellin Children. While it does not appear to Petitioner that these claims touch upon the Validity Issues identified above, to the extent that the LLC's claims involve a Validity Issue Petitioner requests that they also be bifurcated.

¹ This Counter-Petition ignores other Wills executed by Keith on July 11, 2013, July 1, 2013, and a Codicil executed by Keith on June 20, 2013.

Argument

I. Bifurcation of the Validity Issues is appropriate and warranted in this matter.

Rule 42(b) of the South Carolina Rules of Civil Procedure permits a court to bifurcate issues or claims where such an action will promote convenience, efficiency and economy. Rule 42(b) of the South Carolina Rules of Civil Procedure provides:

“The court, in furtherance of convenience or to avoid prejudice, or when separate trials would be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.”

Rule 42(b), SCRPC. Considerable discretion is allotted when a court determines to bifurcate a trial, and the exercise of that discretion will be set aside only if clearly abused. *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000).

The South Carolina Supreme Court has encouraged trial courts to bifurcate trials, such as complex medical malpractice trials, where bifurcation helps to clarify and simplify the issues. *E.g.*, *Durham v. Vinson*, 360 S.C. 639, 644 n.2, 602 S.E.2d 760, 762 n.2 (2004). Bifurcation of a trial is appropriate where the issues are distinct, such that trial of issues separately would not result in injustice. *Wright v. Heiester Const. Co., Inc.*, 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010).

Rule 42 does not require that legal and equitable claims be tried separately. Rather, “when convenience so directs”, such claims may be tried together. *Johnson v. S.C. Nat’l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Moreover, there is no per se rule that the same jury must decide both issues after a trial is bifurcated. *Fortune v. Gibson*, 304 S.C. 279, 281, 403 S.E.2d 674, 675 (Ct. App. 1991).

A. Bifurcation of the Validity Issues is both permitted and encouraged by Rule 42, SCRPC.

Considerations of expediency and economy are appropriate bases upon which to order bifurcation of issues at trial. For example, bifurcation is appropriate where most witnesses on the issue of liability would not be called during a subsequent damages phase of a trial. *See, e.g., Winthrop Univ. Trs. v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142, 166, 791 S.E.2d 152, 165 (Ct. App. 2016); *Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 109, 512 S.E.2d 510, 517 (Ct. App. 1998). In *Creighton*, the trial court concluded that the potential expense of the plaintiff's damages testimony could be avoided entirely if a jury entered a verdict on liability in favor of the defendant. *Creighton*, 334 S.C. at 109, 512 S.E.2d at 517. The trial judge in *Winthrop* applied the same rationale when bifurcating liability and damage issues for trial, reasoning that it would save time and resources by trying the liability phase separately from the damages phase. 418 S.C. at 166, 791 S.E.2d at 165. The Court of Appeals, affirming the bifurcation of the trial, noted that convenience and judicial economy are legitimate reasons for bifurcation. *Id.*

Courts in other jurisdictions have exercised their discretionary power to bifurcate trials in which there are competing will contests. For example, in *Barber v. Cangelosi*, the trial court bifurcated the validity issue surrounding a testator's 2004 will, leaving for later disposition the will contestant's competing applications for probate of the testator's prior 1989 and 1983 wills. No. 01-08-00781-CV, 2010 Tex. App. LEXIS 247, at *6 (Tex. Ct. App. Jan. 14, 2010). Approving of the bifurcated trial, the Texas Court of Appeals noted that the separation of the competing will contests was appropriate where "resolution of a discrete issue in the first part of the proceeding may obviate the need for extensive evidence and possible confusion concerning multiple [wills]." *Barber*, 2010 Tex. App. LEXIS 247, at *15. Thus, the bifurcation of the validity issues surrounding the most recent will "kept the competing [wills] in the same proceeding and, at the

same time, avoided presentation of potentially confusing or unnecessary issues.” *Id.* Similarly, in *Slusarekno v. Slusarenko* the trial court consolidated two actions involving testamentary documents executed by the same decedent and subsequently bifurcated the issues of capacity and undue influence for trial. 147 P.3d 920, 929 (Ore. Ct. App. 2006) (referencing bifurcated trial but reversing the trial court’s holding on the merits).

In this case, there are competing petitions for formal testacy associated with Keith’s 2014 Will and Revocable Trust and with a Will and Revocable Trust executed by Keith in August 2011. There are also a myriad of other claims raised by the Wellin Children which are fact-intensive and involve evidence spanning many years. However, the Validity Issues associated with the 2014 Will and the 2014 Revocable Trust involve only the evidence of Keith’s actions on a single day – June 27, 2014. The evidentiary showings required for the Validity Issues are focused and limited, while the evidentiary showings required for the Wellin Children’s other claims against Mrs. Wellin (some of which are not recognized claims in this State) are not.

Bifurcation as contemplated in Rule 42(b), SCRCP, is primed and poised to address these very circumstances. Here, the fundamental and penultimate issue in dispute between the parties is the validity and effect of the 2014 Will and the 2014 Revocable Trust – in short, the very Validity Issues for which Petitioner seeks bifurcation. A bifurcated trial on the Validity Issues will permit all entities – parties, jurors, and the Court – to focus on this fundamental question without unnecessary noise and confusion relating to the other claims now pending in this action.

Furthermore, a bifurcated trial for the Validity Issues involving *both* the 2014 Will and the 2014 Revocable Trust will also prevent potentially inconsistent adjudications of Keith’s capacity and alleged susceptibility to undue influence. These documents were executed on the same day and before the same witnesses. Bifurcating the Petition for Formal Testacy (involving the 2014

Will), the Wellin Children's challenges to the same, and the Wellin Children's claim for Declaratory Judgment (involving the 2014 Revocable Trust) will increase the expediency of the trial of this matter and would be far more economical than bifurcating only the Validity Issues involving either document on its own. Moreover, an adjudication of the Validity Issues involving both the 2014 Will and the 2014 Revocable Trust by way of a bifurcated trial in this action will have preclusive effect in certain related federal litigation currently pending between the same parties – litigation in which the Wellin Children raise a duplicative claim for declaratory judgment of the validity of Keith's 2014 Revocable Trust but are unable (due to the Probate Court's exclusive jurisdiction over the probate of wills) to raise a claim related to Keith's 2014 Will.

B. Many other claims pending in this matter are predicated upon, or will be streamlined by, bifurcation of the Validity Issues.

Bifurcation is particularly appropriate where – as here – resolution of certain issues could be dispositive of the entire case. *Cook v. United Servs. Auto. Ass'n*, 169 F.R.D. 359, 361 (D. Nev. 1996) (citing 9 Wright & Miller, *Federal Practice & Proc.*, Civil 2d § 2388). The federal courts also favor bifurcation in such circumstances: “Resolution of a key issue may determine the outcome of an entire proceeding. In such a case, and so long as the issue may reasonably be separated from the remainder of the case, bifurcation of that issue for trial is likely to be conducive to judicial economy and expedition.” 8 *Moore's Federal Practice – Civil* § 42.20. As the comments to Rule 42 note, Rule 42, SCRCF is substantially identical to the Federal Rules of Civil Procedure, and Rule 42(b), SCRCF as adopted was similar to existing state practice.

Other trial courts have exercised their discretion to bifurcate issues where the validity of testamentary documents (such as wills or trusts) is disputed along with other claims for breach of trust or breach of fiduciary duty under the same. *See, e.g., Callaway v. Calloway*, 932 N.E.2d 215, 219 (Ind. Ct. App. 2010); *Hilbert v. Benson*, 917 P.2d 1152, 1155 (Wyo. 1996).

The Validity Issues are potentially dispositive of several claims or defenses involved in this case, including (i) the Petition for Formal Testacy; (ii) the Wellin Children's challenges to the same; and (iii) the Wellin Children's individual tort claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith and his estate planning. Additionally, the resolution of the remaining claims between the parties would be streamlined after a determination as to Keith's mental capacity and a resolution of the Validity Issues.

By way of example, the Wellin Children raise a claim for intentional interference with inheritance against Mrs. Wellin. If, however, a bifurcated trial determines that Keith's 2014 Will and 2014 Revocable Trust~~s~~ are valid, this claim will likely fail as a matter of law and no further trial proceeding would be needed to adjudicate the same.

If the Court elects to bifurcate the Validity Issues, the parties would be able to present all evidence relating to Keith's execution of the 2014 Will and the 2014 Revocable Trust in a single, efficient proceeding. This proceeding would substantially reduce judicial resources by providing an efficient and streamlined opportunity to resolve related issues that are fundamental not only to the present action but also in the "Related Federal Litigation".² The cost to the parties of litigating the same issues on multiple occasions would likewise be dramatically reduced.

Additionally, the single determination of the Validity Issues associated with the 2014 Will and the 2014 Revocable Trust, would be binding with respect to the Related Federal Litigation, but would not cause prejudice as all parties litigating the duplicative issue in federal court are participating in the present action. This would reduce the time required to subsequently litigate the other pending actions and would also preclude the parties from re-litigating the same issue

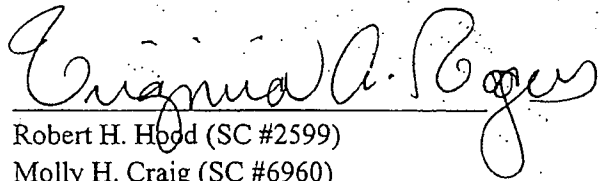
² *Wellin v. Wellin et al.*, C/A No. 2:13-cv-01831-DCN (D.S.C.); *McDevitt v. Wellin et al.*, 2:13-cv-03595-DCN (D.S.C.); and *Wellin et al v. Wellin*, 2:14-cv-04067-DCN (D.S.C.).

multiple times. Future litigation costs and resources will be dramatically reduced if the Court utilizes the procedures available to it under the authority of Rule 42.

Conclusion

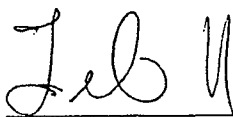
At its core, this case is about effectuating the wishes of Keith Wellin, the Decedent. In order to achieve this goal, the validity of the 2014 Will and the 2014 Revocable Trust – the final written expressions of Keith’s wishes – must be established. By bifurcating these common factual Validity Issues, the Court would effectively provide an opportunity to resolve substantial threshold issues in this matter. Therefore, Petitioner respectfully requests that the Court bifurcate the Validity Issues identified above, including: (a) whether Keith possessed sufficient mental capacity to execute the 2014 Will and the 2014 Revocable Trust and (b) whether Keith’s execution of the 2014 Will or the 2014 Revocable Trust was the result of undue influence, fraud, duress or mistake.

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James B. Hood (SC #70212)
✓ Virginia A. Rogers (SC #101849)

*Attorneys for Wendy C. H. Wellin
as Special Administrator of the Estate of Keith S. Wellin
and Trustee of the Keith S. Wellin Florida Revocable
Living Trust u/a/d December 11, 2001*

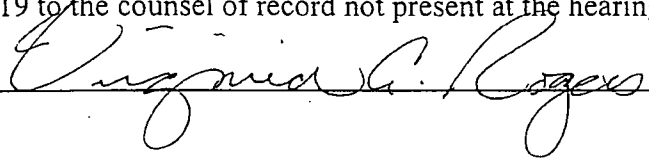


, 2019

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **MEMORANDUM IN SUPPORT OF MOTION TO BIFURCATE OR FOR SEPARATE TRIAL OF VALIDITY ISSUES** was served on each counsel of record present at the hearing via hand delivery on February 11, 2019 and via email on February 12, 2019 to the counsel of record not present at the hearing.



FILED
2019 FEB 12 AM 9:30
JILLIE J. APHSTRONG
CLERK OF COURT

EXHIBIT E

State of South Carolina	)	Court of Common Pleas
	)	Ninth Judicial Circuit
County of Charleston	)	Case No. 2014-CP-10-07038
	)	
Wendy C.H. Wellin,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Transcript of Record
	)	
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 and	)	
Counter-Petitioners,	)	
	)	
-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.	)	
	)	
IN THE MATTER OF:	)	
	)	
Keith S. Wellin	)	
	)	

February 11, 2019
 Columbia, South Carolina

B E F O R E:

The Honorable Frank Addy, Judge

1 those who actually signed as witnesses after Mr. Wellin
2 applied his signature and also those who were in the room and
3 participating in the final meeting during which he signed
4 these documents -- these witnesses can provide clear and
5 cogent testimony about circumstances surrounding Keith's
6 execution of the documents and also his capacity.

7 There are other issues pending between the parties
8 involving other claims for tortious conduct or breaches of
9 contract that occurred at different points in time or may
10 have occurred at different points in time. Bifurcation under
11 Rule 42 is appropriate here so that we can clarify,
12 crystallize, and zero in on the key issue in this case, the
13 validity of the 2014 estate plan.

14 Additionally, Your Honor -- and I will let Mr. Lay speak
15 to this in a little bit more detail. Bifurcation has the
16 greatest chance to resolve a dispositive issue in this case.

17 Keith Wellin's capacity and issues surrounding the same
18 permeate the claims between the parties in both this action
19 in state court and also the federal court litigation. A
20 dispositive determination of Keith's capacity, the validity
21 of these documents, which is what we're asking for here
22 today, has the potential to have great impact on the
23 resolution of the rest of the case, whether by adjudication
24 or through some sort of settlement.

25 We do believe it's appropriate. We believe it's

1 Wendy Wellin individually, and I maintain that position. She
2 would be okay with a non-jury trial, if we were able to get
3 some of these -- you know, what -- depending on what the
4 format of the trial is going to be, that would make a lot of
5 sense. I mean, obviously, it would be a very tensious [sic]
6 process.

7 THE COURT: Right. And --

8 MR. BEACH: Hamilton College is in the exact same
9 situation. We would be amenable to a non-jury trial, Your
10 Honor, assuming that we can come together on an appropriate
11 structure --

12 THE COURT: Right.

13 MR. BEACH: -- for all of it.

14 THE COURT: Okay. And that leads me -- maybe -- maybe
15 you would care to address this question, Ms. Rogers, but I'm
16 putting my old probate -- probate hat on, but unless there's
17 been some change in the law, my understanding is that to
18 create a will, you have -- you have to have a pretty low
19 legal standard in terms of just knowing the objects of your
20 affection.

21 For creation of a trust, my recollection is -- and
22 mercifully, I haven't had -- I haven't had to touch this much
23 in the last eight years, but it's basically a contract
24 capacity. Am I wrong?

25 MS. ROGERS: As far as the standards for execution, Your

1 dropping back and trying a 2013 and doing it like that. That
2 is inherently inefficient, but I'm somewhat more receptive to
3 the idea, especially if it is done as a bench trial, to try
4 the events, you know, the changes in the documents in 2013
5 and 2014 collectively because I think that that's kind of
6 when the children are alleging that most of this undue
7 influence really came in and pen got put to paper.

8 And the reason I say that is because perhaps resolution
9 of that issue would help drive or at least clarify the issues
10 for benefit of the federal court, if they were to reach
11 Wellin 3 prior to us being able to reconvene on your
12 counterclaims in state court.

13 Do you kind of get what I'm saying?

14 MR. WOOTEN: I guess what I don't understand, Your
15 Honor, is whether in that first trial -- if we had a trial on
16 all of the versions, 2013, 2014, are we -- it seems like
17 there are only two options.

18 Either we are allowed to put in our evidence on the
19 undue influence and capacity challenges, in which case we put
20 in our evidence on the tort claims, and then we're telling
21 the jury don't decide those claims. They've put the evidence
22 in, but you shall not decide that, even though we just all
23 spent weeks here trying this case. Or even if it's to Your
24 Honor, if we do it --

25 THE COURT: If we do it with the jury, we're not going

1 to bifurcate.

2 MR. WOOTEN: Okay. So --

3 THE COURT: That's my initial default setting, but at
4 the same time perhaps -- perhaps -- perhaps, we would. Do
5 you want to chime in on it?

6 MR. LAY: I do, if you don't mind.

7 THE COURT: Go ahead.

8 MR. LAY: And let me -- and let me deal with this from a
9 more practical standpoint.

10 Whether this is jury or non-jury, I think the statement
11 the evidence is all the same is untrue. And what we need to
12 sort of look at practically is how the case would actually
13 get tried if you look at it from their perspective.

14 If you try -- we have two different standards that
15 apply. One of the things that they are trying to prove is
16 defamation. They are trying to establish this defamation
17 claim, which is not a continuing tort. It's is there a
18 defamatory comment that's within the statute of limitations
19 that causes some change to the testamentary documents.
20 That's one of their causes of action that they say is by a
21 preponderance of the evidence.

22 And what that effectively does is turn estate planning
23 on its head. This is an undue influence and capacity case.
24 What they have to do under undue influence is this heightened
25 standard, and they've got to prove that up.

1 Now, imagine if we put all this together. We just mixed
2 it up into a stew. All right? Somebody gets -- a witness
3 gets up on the stand and they start testifying about a
4 particular statement. I get up and I object, and I'm going
5 to say, Your Honor, I am going to need to have a discussion
6 with you outside the presence of the jury because we are
7 going to need a limiting instruction here.

8 So the jury goes out and then there's a comment. Is it
9 defamatory? Is it even defamatory? If it's not -- if it is
10 defamatory, is it something that's excluded because of the
11 statute of limitations or is it something that should come
12 in? Or is it something that should go to an undue influence
13 standard?

14 And then how do you deal with the jury when they are
15 trying to decide the particular standard here when a
16 particular statement is being put up. It literally will be
17 every statement that anyone says there's going to be an
18 attempt, either by them or by us, on a limiting standard --
19 limiting instruction on how the evidence is going to come in.
20 It will make it impossible to try this case.

21 The beauty of the validity issue is this. You've got
22 not just the will, not just the rev trust, there was also
23 ratification of an inter vivos gift, the \$25 million. There
24 was also ratification of even bringing the suit.

25 So virtually every cause of action that they've got, if

1 it's determined to be valid, it eviscerates the lawsuit. It
2 does. It has a dramatic impact on their damages.

3 If we lose, it has a dramatic impact on their damages
4 too, to their benefit. Either one drives resolution in this
5 case.

6 There is no perfect solution. There's no way that we're
7 going to have one trial that takes care of everything, but if
8 we have a validity of the documents -- so it's going to be
9 undue influence and capacity of duress that impact the
10 validity of the documents in June of 2014. That is bringing
11 the lawsuit. That's the \$25 million inter vivos gift.
12 That's the rev trust and that's the will. If the answer to
13 that is no, then you look at what causes of action are left
14 in a subsequent trial.

15 You have really a lot of novel claims. If you look at
16 the claims that they have privately, you have intentional
17 interference with inheritance. Well, if the 2014 documents
18 are valid, they are going to have a very difficult time
19 proving up any sort of intentional interference with
20 inheritance. In fact, I think that probably ends that.

21 If we lose that case, then that's going to establish
22 damages from their perspective. They will have -- then, it
23 will be a rollback from 2014 to another will. That would be
24 impactful on what they say would be the interference with
25 their inheritance.

1 The only evidence that comes in is what happened on the
2 day where we controlled the entire environment for Mr.
3 Wellin. We brought in our lawyer, our expert --

4 THE COURT: And I'll stop you there. Even if I were to
5 bifurcate this, I think that I don't -- I'm certain that I
6 would not admit that -- that sliver of 15 minutes where he
7 comes into his lawyer's office and signs off --

8 MR. WOOTEN: Right.

9 THE COURT: -- on his will. Okay?

10 So because I understand you a hundred percent. Context
11 is everything. What kind of relationship did he have after
12 his first wife -- after his first marriage ended? How did
13 that evolve among the three kids, the grandkids, the one with
14 the property in Maine? I understand how all that is
15 intertwined into this.

16 And so from an evidentiary standpoint as far as your
17 case is concerned, yes, the relationship that Mr. Wellin had
18 with his kids and grandkids and great-grandkids throughout
19 their lives is certainly relevant to the issue of what
20 happened in 2013 and 2014 as it relates to assessment of
21 estate plans. So you don't need to worry about that.

22 MR. WOOTEN: Right.

23 THE COURT: That's -- you know, the course of dealing is
24 very important and there has to be some reason. Everything
25 happens for a reason and so he was either out of his mind and

1 to the claims challenging the versions of the trust.

2 THE COURT: Tortious interference with inheritance.

3 Okay? You alleged that counterclaim in the federal suit and
4 in the state cause of action. Okay?

5 So obviously, there's going to be some testimony that
6 relates to that. I don't know what that testimony is going
7 to be. You guys may have a better idea, but I can definitely
8 envision something that is relevant maybe to that cause of
9 action or to the defamation cause of action that should not
10 pertain to the question of whether he had testamentary
11 capacity in 2013 and 2014. I can envision some of that.

12 MR. WOOTEN: So I can envision that, but what we're
13 talking about is not bifurcating only testamentary capacity.
14 We're talking about bifurcating undue influence, and it is
15 almost impossible to conceive of --

16 THE COURT: Yeah. I wouldn't be bifurcating undue
17 influence because that's the crux of your case. So --

18 MR. WOOTEN: Oh.

19 THE COURT: Yeah. I mean I'm -- I'm talking about your
20 -- to the extent that you claim undue influence, that goes
21 hand in hand with the testamentary capacity issue. I don't
22 think they're going to disagree with that.

23 MR. WOOTEN: Okay.

24 MR. LAY: We didn't.

25 THE COURT: So -- yeah. So if you're talking or worried

1 about undue influence, hey, we're not going to have any
2 evidence of undue influence.

3 MR. WOOTEN: So this is a very important point. So the
4 -- the motion that they filed is only a couple of sentences.

5 THE COURT: Right.

6 MR. WOOTEN: And I think it does not delineate between
7 these two things. In federal court, the discussion was we
8 would bifurcate capacity and undue influence. Those were
9 together.

10 And so if their -- if their motion is to bifurcate only
11 capacity, I think it's probably not a good motion for a lot
12 of the same reasons, but that's a different motion than the
13 one I thought.

14 THE COURT: Yeah. It's more palatable than what you
15 were concerned with. I hear what you're saying. All right.

16 Since I haven't read Ms. Rogers' submission --

17 MR. WOOTEN: And just to --

18 THE COURT: Yes, sir.

19 MR. WOOTEN: Just to clarify, they are going to -- they
20 just handed this. It says that they are seeking to bifurcate
21 as to not only capacity but also as to undue influence. That
22 would be part of what they're chopping off.

23 THE COURT: But if I were to do that -- you know, if I
24 were to bifurcate, I wouldn't lift that because that means
25 they'll do it in one step and it has an effect. That's your

1 entire case.

2 MR. WOOTEN: Right. And so -- and I think the key point
3 as to the motion you are entertaining, which is just the
4 capacity issue, I think this is the viewpoint that I would
5 want to leave you with. And that is that Mr. Wellin's
6 cognitive state, his mental state, if he had diminished
7 capacity, that is highly relevant evidence for our tort
8 claims, our defamation claims and additional interference
9 with inheritance.

10 To the extent Mr. Wellin was told a lie while he was 100
11 percent, you know, a young 50-year-old man, that is much less
12 likely to affect him and have causation for our damages than
13 him being told a lie when he is -- his known capacity has
14 diminished a great deal and he's elderly and on medication,
15 even if he has testamentary capacity.

16 So the point of that is, Your Honor, the capacity
17 evidence -- we would be introducing that, the very same
18 evidence, in both the tort claims and in the -- the will
19 challenge claims.

20 And juries get and, you know, must follow jury
21 instructions all the time. If -- I think if this sort of
22 paradigm Mr. Lay is suggesting were correct, the law would
23 say when there are truly overlapping issues, you should
24 bifurcate so the jury doesn't get confused. That's the
25 opposite of what the cases say.

EXHIBIT F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,)
)
Petitioner,)

Civil Action No. 2014-CP-10-07038

vs.)

THE WELLIN CHILDREN'S
RESPONSE IN OPPOSITION TO THE
ESTATE'S MOTION TO BIFURCATE

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 and)
Counter-Petitioners,)

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.)

IN THE MATTER OF:)

Keith S. Wellin)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2018 SEP 25 PM 4:31

FILED

Respondents, Counter-Petitioners, and Counterclaimants Peter Wellin, Cynthia W. Plum, and Marjorie W. King (collectively the "Wellin Children"), by and through their undersigned counsel, hereby submit this memorandum in opposition to the motion to bifurcate filed by Wendy Wellin in her capacity as Special Administrator of the Estate and Trustee of the Revocable Trust (the "Estate").

I. Introduction

This action is a trust and estates dispute relating to the estate of Keith S. Wellin (“Keith”), who passed away in 2014 after amassing a large fortune during his lifetime. His three adult children—the Wellin Children—allege that his fourth wife and widow, Wendy Wellin (“Wendy”) unduly influenced Keith at a time when his mental capacity was diminished, and challenge Keith’s purported amendments to his estate planning documents and seek to recover damages from Wendy based on tort and contract claims. Critically, all of the claims pending in this action center on Keith’s capacity and Wendy’s alleged undue influence over Keith such that having a trial on only a subset of these claims would be incredibly inefficient and would make no sense, because all evidence relating to all claims would have to be introduced at the bifurcated trial, and also at the subsequent trial.

Specifically, the Estate’s motion to bifurcate should be denied because bifurcating in the manner suggested by the Estate would require the parties, this Court, and the witnesses to participate in two nearly identical trials, each of which would be lengthy and expensive, and each of which would require the parties to introduce the same evidence regarding the same issues—namely, the mental capacity of Keith and the influence exerted on Keith by Wendy. Such an approach would be incredibly inefficient and—to the extent the Estate seeks to use the outcome of the first trial as a basis to exclude relevant evidence in the second trial, which is apparently the Estate’s intent—incredibly prejudicial to the Wellin Children. In short, this motion is a transparent attempt by the Estate to have an initial trial where the jury decides only the claims with a burden of proof most favorable to the Estate, thereby allowing the Estate to attempt to use the outcome of the first trial offensively in the second trial. But this perceived strategic advantage for the Estate is not a legitimate reason to bifurcate, and bifurcating will force the parties, this Court, and the

witnesses to participate in two nearly identical trials, which would be an incredibly inefficient and expensive outcome.

“[T]he bifurcation of issues and the separate trial of them is not the usual course of events,” and all other things being equal, “a single trial will be more expedient and efficient.” *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31748, *8-10 (D.S.C. Oct. 29, 2004).¹ Here, not only would bifurcation in the manner suggested by the Estate fail to increase efficiency or reduce costs; it would dramatically *decrease* inefficiency and *increase* costs. The Estate’s motion should be denied.

II. Relevant Factual and Procedural Background

This case is related to several civil actions pending before Judge Norton in federal district court that the parties have litigated for more than five years. Well over one hundred million dollars are at stake in these actions, and more than 100 depositions have been taken. However, the reason that the Estate’s motion to bifurcate should be denied is straightforward and only requires a basic understanding of the claims at issue in this action. Thus, the Wellin Children will provide only a brief overview of the factual background relevant to the Estate’s motion.

Keith, who amassed a large fortune during his lifetime, passed away on September 14, 2014. During his lifetime and upon his death, Keith maintained most or all of his assets in a revocable trust that he created in 2001 named The Keith S. Wellin Florida Revocable Living Trust (the “Trust”). Also, all relevant versions of Keith’s will—including the 2011 version that the Wellin Children are seeking to probate in this action and the 2014 version that Wendy Wellin (“Wendy”) is seeking to probate in this action—are “pour over” wills that provide for the assets

¹ A copy of this case, which does not appear to be available on Westlaw, is attached hereto as Exhibit A.

remaining in Keith's estate, if any, to "pour over" to his Trust upon his death and be distributed pursuant to the Trust's terms. As a result, the version of Keith's will that is probated through this action will have little practical effect, but the version of Keith's Trust that is deemed effective will have significant practical effect. At all times prior to the summer of 2013, Keith's estate planning provided for the bulk and residuary of his estate to pass in equal shares to the Wellin Children, and for a smaller, fixed amount of cash to pass to Wendy.

Around the summer of 2013, however, things changed abruptly. Keith fired his long-standing estate planning lawyer and other advisors and hired new lawyers and advisors selected by Wendy, and he began transferring large amounts of his remaining wealth to Wendy, transferring approximately \$40 million to her in 2013 alone. Keith also became convinced that his children had "stolen" all or most of his money and that he was at risk for going bankrupt because of his children (not because of Wendy), and he removed his children from various fiduciary positions (such as Power of Attorney) and replaced them with Wendy. On July 3, 2013, Keith sued his children in federal court and sought to recover various assets transferred to them and entities created for their benefit, and he simultaneously purported to amend the Trust to disinherit or severely reduce the inheritance of the Wellin Children and increase the inheritance of Wendy. In April 2014—two months before Keith executed his final Trust and Will—an independent examiner appointed by the Probate Court examined Keith and issued a report opining that he was incapacitated.

Keith passed away on September 14, 2014. Shortly after Keith's death, the Wellin Children sued Wendy in federal court for intentional interference with inheritance, breach of the prenuptial agreement, defamation, and several other causes of action, alleging that Wendy, among other things, lied to Keith, convinced him that his children stole money from him, and caused Keith to sue, disinherit, and take or attempt to take other actions to the detriment of his children and other

lineal descendants and for the benefit of Wendy, and that she did so at times when Keith lacked capacity and was under Wendy's undue influence. The day after Keith's death, Wendy filed this action to probate Keith's final Will, and the Wellin Children subsequently asserted the same counterclaims against Wendy that they asserted in the federal court action against Wendy.²

The claims and counterclaims pending in the above-captioned action are comprised of the claims relating to which version of Keith's Will and Trust should be enforced, and whether and the extent to which Wendy owes the Wellin Children damages for influencing Keith while his capacity was diminished. Critically, all of these claims and counterclaims will require introduction of the evidence relating to Keith's capacity and Wendy's influence over Keith. This fact—which cannot reasonably be disputed—is fatal to the Estate's motion to bifurcate.

III. Relevant law

South Carolina Rule of Civil Procedure 42(b) provides:

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRCP 42(b). “A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice.” *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998). Most of the South Carolina cases discussing bifurcation involve requests to bifurcate liability from damages, because this is the most common type of bifurcation. In

² The above-captioned action was stayed, pending resolution of the federal action, for approximately two years, but the Estate successfully lifted the stay last year over the Wellin Children's objections.

discussing Federal Rule of Civil Procedure 42(b), which is substantially identical to SCRCP 42(b), the South Carolina District Court held:

The court is permitted considerable discretion in exercising its powers under the rule. Notwithstanding the broad discretion conferred by Rule 42(b), the bifurcation of issues and the separate trial of them is not the usual course of events. Nothing else appearing, a single trial will be more expedient and efficient. The party requesting separate trials bears the burden of convincing the court that such an exercise of its discretion will promote greater convenience to the parties, witnesses, jurors, and the court, be conducive to expedition and economy, and not result in undue prejudice to any party. Merely presenting some proof which supports bifurcation is not enough. The decision to bifurcate must be made on a case-by-case basis after consideration of all of the relevant factors and the individual circumstances.

In re Safety-Kleen Corp. Bondholders Litig., 2004 U.S. Dist. LEXIS 31748, *8-10.

As explained in *Safety-Kleen*, courts typically consider five factors in deciding a motion to bifurcate. *See id.* at *10-14. First, courts consider the separability of the issues. Courts “will likely decline to bifurcate if there will be a significant overlap of evidence at the two trials which would make separation inefficient and inexpedient.” *Id.* As a result, the most common type of bifurcation is of the issues of liability and damages. *Id.* Second, courts consider whether the claims to be tried are legal or equitable, and “[c]ourts tend to favor bifurcation where the claims to be tried are equitable rather than legal.” *Id.* Third, courts consider the posture of discovery and, specifically, whether bifurcation will allow the parties to defer costly discovery pending resolution of the issue to be tried first. *Id.* Fourth (and closely related to the first factor), courts consider whether there will be significant overlapping evidence in the separate trials. Finally, courts consider whether bifurcation will cause any prejudice to the parties. *Id.*

IV. Argument

In its motion, which is only three sentences, the Estate asks this Court “to issue an order bifurcating for trial the validity of Keith S. Wellin’s June 27, 2014 estate plan, including the Last Will and Testament and Amended and Restated Revocable Trust executed by Mr. Wellin on that

day, from the remaining claims and counterclaims currently pending in this matter.” In this action, the Wellin Children have challenged Keith’s purported amendments to his Will and Revocable Trust in 2013 and 2014 on the grounds of, among other things, Keith’s lack of capacity and Wendy’s undue influence. The Wellin Children allege that Wendy unduly influenced Keith by, among other things, convincing Keith in the summer of 2013 that his children “stole” his money—a belief Keith continued to hold for the remainder of his life, including on June 27, 2014. Thus, litigating the validity of the June 27, 2014 versions of Keith’s Will and Trust will require introduction of all evidence relevant to Keith’s capacity and Wendy’s influence over Keith, including all evidence from 2013 relating to Keith coming to believe the fiction that his children stole from him, and all evidence from 2013 and 2014 demonstrating Keith’s cognitive decline.

Under these circumstances, bifurcating the trial as the Estate suggests is not proper for at least two reasons. First, the bifurcated trial the Estate requests—one in which the parties litigate the validity of the June 27, 2014 versions of Keith’s Trust and Will—would require the parties to introduce all the evidence relevant to the remaining claims and counterclaims. If such a bifurcated trial were held, the Wellin Children would introduce all evidence supporting their tort and breach of contract claims against Wendy, because this is the same evidence that demonstrates Wendy’s undue influence over Keith and Keith’s diminished capacity rendering the June 27, 2014 Will and Trust invalid. For example, the evidence that Wendy defamed the Wellin Children to their father and intentionally interfered with their inheritance is also evidence supporting a finding that Wendy unduly influenced Keith. Thus, if the Estate’s motion were granted, the jury for the bifurcated trial would hear all the evidence relating to all the Wellin Children’s claims, but the jury would not be permitted to decide these claims. Rather, the jury would only be permitted to decide the claims relating to the validity of the Trust and the Will. This would be incredibly inefficient. If the jury

hears all the evidence relating to the Wellin Children's claims, the jury should be permitted to decide all those claims.

Second, if the Estate's motion were granted and the Court held an initial trial only on the validity of the June 27, 2014 Trust and Will, the parties may nevertheless be required to introduce all the same evidence from the first trial again in the second trial on the remaining claims. That is, even if a jury found in the first trial that, on June 27, 2014, Keith had testamentary capacity and Wendy's influence over Keith was not sufficiently great to meet the undue influence standard, this would not somehow preclude the Wellin Children from introducing all evidence of Keith's diminished capacity and Wendy's influence over Keith in the second trial. For example, regardless of the *degree* to which Keith's capacity was diminished or Wendy influenced Keith, such diminished capacity and influence is highly relevant to the Wellin Children's claims that Wendy defamed Keith and that such defamation was successful in causing Keith to disinherit and sue his children. Likewise, Keith's diminished capacity and Wendy's influence over Keith—regardless of the degree—is highly relevant to the Wellin Children's claim that Wendy intentionally interfered with their inheritance. Mental capacity and undue influence occur on a spectrum, and the Wellin Children are not required to prove Keith's diminished capacity or Wendy's undue influence to any particular standard for such evidence to be relevant to the Wellin Children's tort and breach of contract claims against Wendy. Thus, if the Court bifurcated the trial as the Estate suggests, the second trial may end up including the same evidence from the first trial.

The reason the Estate is seeking to bifurcate the trial in this manner is that the Wellin Children's challenges to the June 27, 2014 versions of Keith's Will and Trust are subject to a higher burden of proof than their tort and breach of contract claims against Wendy. Thus, the Estate

is seeking to try the claims with the most favorable standard of proof first, and then if the Estate is successful in this first trial, use the outcome from the first trial offensively in the second trial.

Regardless of whether bifurcation as suggested by the Estate is strategically advantageous to Wendy, however, it is not supported by any of the factors courts consider when deciding motions to bifurcate. To the contrary, all these factors weigh against bifurcation. First, courts consider the separability of the issues, and courts “will likely decline to bifurcate if there will be a significant overlap of evidence at the two trials which would make separation inefficient and inexpedient.” *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31748, *8-10. This is a textbook case where granting the motion to bifurcate would require significant overlap of evidence that would make the separate trials inefficient and inexpedient.

Second, courts consider whether the claims to be tried are legal or equitable, and “[c]ourts tend to favor bifurcation where the claims to be tried are equitable rather than legal.” *Id.* Here, most of the pending claims are legal, not equitable.

Third, courts consider the posture of discovery and, specifically, whether bifurcation will allow the parties to defer costly discovery pending resolution of the issue to be tried first. *Id.* Here, the Estate is not seeking to bifurcate discovery at all. Thus, bifurcation would not allow the parties to defer any discovery.

Fourth (and closely related to the first factor), courts consider whether there will be significant overlapping evidence in the separate trials. Again, this factor strongly weighs against bifurcation.

Finally, courts consider whether bifurcation will cause any prejudice to the parties. *Id.* This factor weighs most heavily against bifurcation in this case. As explained above, having a trial as to the validity of the Will and Trust—but where the numerous claims for which capacity

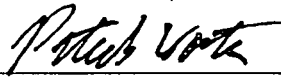
and undue influence evidence is relevant are not decided—would be incredibly inefficient and expensive. Further, all of the evidence from the initial trial on the validity of the Will and Trust may need to be introduced again when the remaining claims are tried. In the alternative, if the Court somehow decided to exclude evidence regarding capacity and undue influence from the subsequent trial on the Wellin Children's claims, as the Estate apparently envisions, the Wellin Children would be terribly prejudiced. This scenario is difficult to even fathom, as Keith's capacity and Wendy's influence over Keith are at the heart of the Wellin Children's claims against Wendy, and almost all the evidence in these cases relates to those issues to some extent.

Moreover, the Estate's motion does not explain how, as a practical matter, it envisions this proposal operating, making it difficult to assess the true level of prejudice that would result if the Court granted the motion. For example, how would the determinations made in the initial trial regarding the validity of the Will and Trust impact the subsequent litigation? Would a failure to meet the burden of proof to establish incapacity and undue influence mean the Wellin Children were barred from introducing certain evidence in the subsequent trial? What standard of proof would apply in the initial trial, and how could the determinations made in the initial trial be binding in subsequent litigation of claims with a different standard of proof? These questions and many others are not addressed in the Estate's motion, which is only three sentences. Thus, the true level of prejudice envisioned by the motion is impossible to assess.

V. Conclusion

Bifurcation should only be allowed where doing so would increase efficiency and reduce costs. Here, bifurcation as requested by the Estate would dramatically reduce inefficiency and increase costs. For the foregoing reasons, and any additional reasons provided before or during any hearing on this motion, the Estate's motion should be denied.

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September 25, 2018

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 and Marjorie W. King, 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: THE WELLIN CHILDREN'S MEMORANDUM IN OPPOSITION TO THE ESATE'S MOTION TO BIFURCATE

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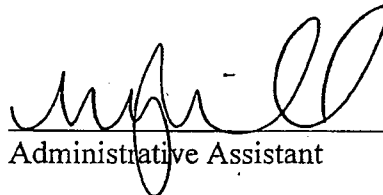
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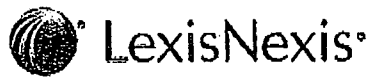
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Administrative Assistant

September 25, 2018

EXHIBIT A



User Name: XPN3BJB

Date and Time: Tuesday, September 25, 2018 2:26:00 PM EDT

Job Number: 74252750

Document (1)

1. *In re Safety-Kleen Corp. Bondholders Litig., 2004 U.S. Dist. LEXIS 31748*

Client/Matter: 039113/01500-cs06

Search Terms: 2004 U.S. Dist. LEXIS 31748

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Neutral

As of: September 25, 2018 6:26 PM Z

In re Safety-Kleen Corp. Bondholders Litig.

United States District Court for the District of South Carolina, Columbia Division

October 29, 2004, Decided; October 29, 2004, Filed

Case No. 3:00-1145-17

Reporter

2004 U.S. Dist. LEXIS 31748 *

IN RE SAFETY-KLEEN CORP. BONDHOLDERS LITIGATION

Subsequent History: Motion denied by, Motion granted by, Motion granted by, in part, Motion withdrawn by *In re Safety-Kleen*, 2005 U.S. Dist. LEXIS 46268 (D.S.C., Feb. 4, 2005)

Prior History: *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31099 (D.S.C., Oct. 29, 2004)

Core Terms

bifurcation, Securities, separate trial, issues, discovery, witnesses, damages, parties, require proof, plaintiffs', separable, scienter, weighs

Counsel: [*1] For Muzinich and Co Inc, Plaintiff: L Joel Chastain, LEAD ATTORNEY, Motley Rice, Barnwell, SC; Terry Edward Richardson, Jr, LEAD ATTORNEY, Richardson Patrick Westbrook and Brickman, Barnwell, SC; Ira M Press, Jeffrey H Squire, Kirby McInerney, New York, NY; Kevin K O'Brien, Grant and Eisenhofer, Wilmington, DE; Mark Levine, Stull Stull and Brody, New York, NY.

For American High Income Trust, State Street Research Income Trust, Plaintiffs: Diane T Zilka, Megan D McIntyre, Stuart M Grant, LEAD ATTORNEYS, James P McEvilly, III, R Michael Lindsey, Kevin K O'Brien, Grant and Eisenhofer, Wilmington, DE; Pope D Johnson, III, LEAD ATTORNEY, Johnson and Barnette, Columbia, SC; Andrew Kirk Susong, Brian C Wille, Bryan C Skarlatos, Kostelanetz and Fink, New York, NY.

For Oak Hill Securities Fund II LP, Plaintiff: Pope D Johnson, III, LEAD ATTORNEY, Johnson and Barnette, Columbia, SC; Stuart M Grant, LEAD ATTORNEY, Grant and Eisenhofer, Wilmington, DE.

For Susan Moore, Movant: Christopher B Mead, London and Mead, Washington, DC.

For Kenneth W Winger, Defendant: Alexa Christian Warner, LEAD ATTORNEY, Sidley Austin Brown and Wood,

Chicago, IL; Manton McCutchen Grier, LEAD ATTORNEY, Haynsworth Sinkler [*2] Boyd, Columbia, SC; Peter L Murphy, LEAD ATTORNEY, Disbarred; Tyson Knight Harper, Cotsirilos Tighe and Streicker, Chicago, IL.

For Michael Bragnolo, Defendant: Wilmot B Irvin, LEAD ATTORNEY, Rebecca G Fulmer, Wilmot B Irvin Law Office, Columbia, SC.

Paul R Humphreys, Defendant, Pro se, Calgary Alberta Canada.

For James R Bullock, Defendant: Alexa Christian Warner, Eric S Mattson, Preya B Sharma, LEAD ATTORNEYS, John N Gallo, Scott R Lassar, Sidley Austin Brown and Wood, Chicago, IL; John Hamilton Smith, LEAD ATTORNEY, Young Clement Rivers and Tisdale, Charleston, SC; Terence H Campbell, Cotsirilos Tighe and Streicker, Chicago, IL.

For Henry B Tippie, in his individual capacity and as personal representative of the estate of John W. Rollins, Sr., deceased, James L Wareham, Defendant: D Kay Tennyson, James J McGovern, Stephen G Morrison, William Parham Simpson, LEAD ATTORNEYS, Nelson Mullins Riley and Scarborough, Columbia, SC.

For Leslie W Haworth, Defendant: Alexa Christian Warner, LEAD ATTORNEY, Eric S Mattson, Sidley Austin Brown and Wood, Chicago, IL; John Hamilton Smith, LEAD ATTORNEY, Young Clement Rivers and Tisdale, Charleston, SC; Michael L Siegel, LEAD ATTORNEY, Carl E Poli, [*3] Stone McGuire and Benjamin, Northbrook, IL; Terence H Campbell, LEAD ATTORNEY, James R Streicker, Cotsirilos Tighe and Streicker, Chicago, IL.

For Robert W Luba, Defendant: D Kay Tennyson, James J McGovern, Stephen G Morrison, William Parham Simpson, LEAD ATTORNEYS, Nelson Mullins Riley and Scarborough, Columbia, SC; Christopher H McGrath, John B Missing, Brobeck Phleger and Harrison, Washington, DC.

For National Union Fire Insurance Company of Pittsburgh PA, Carrier: Elizabeth Schwartz Corn, LEAD ATTORNEY, Hood Law Firm, Charleston, SC.

For Laidlaw Inc, Defendant: Alexa Christian Warner, LEAD

ATTORNEY, Sidley Austin Brown and Wood, Chicago, IL; John Phillips Linton, LEAD ATTORNEY, Duffy and Young, Charleston, SC; Adrain Wager-Zito, Jones Day, Washington, DC; James E Anklam, Paul Hastings Janofsky and Walker, Washington, DC; John W Edwards, II, Jones Day, Cleveland, OH; Manton McCutchen Grier, Haynsworth Sinkler Boyd, Columbia, SC.

For Pricewaterhousecoopers LLP PWC-US, Defendant: Everett Augustus Kendall, II, William Roberts Calhoun, Jr, LEAD ATTORNEYS, Sweeny Wingate and Barrow, Columbia, SC; Alan R Struble, C Glen Morris, David W T Daniels, John R Crews, M Byron Wilder, Richard T.

[*4] Archibald, Gibson Dunn and Crutcher, Dallas, TX; Andrea E Neuman, Wesley G Howell, Gibson Dunn and Crutcher, New York, NY; Joseph P Busch, III, Gibson Dunn and Crutcher, Irvine, CA.

Judges: Joseph F. Anderson, Jr., United States District Judge.

Opinion by: Joseph F. Anderson, Jr.

Opinion

ORDER NO. 157 DENYING PLAINTIFFS' MOTION TO BIFURCATE TRIAL

This case comes before the court on motion by plaintiffs American High-Income Trust ("AHIT") and State Street Research Income Trust ("SSRIT") filed on July 23, 2004 on behalf of themselves and the class, for an order bifurcating the trial of this action so that the class's claims pursuant to Sections 11 and 15 of the Securities Act of 1933 ("Securities Act claims") are tried first, followed by separate trials of claims made pursuant to Sections 10(b), 18 and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act claims"). On August 9, 2004, defendant PricewaterhouseCoopers LLP ("PwC") filed a response to the motion in which it did not oppose bifurcation. By memorandum filed August 10, 2004, defendants James R. Bullock, Leslie W. Haworth, Henry B. Tippie, James L. Wareham and Robert W. Luba ("Defendant Directors"), opposed bifurcation. Plaintiffs filed a reply on August [*5] 12, 2004. On October 6, 2004, this court heard extensive oral argument on the motion.

The grounds for plaintiffs' motion to bifurcate primarily revolve around the risk of juror confusion. Plaintiffs argue that if the Securities Act claims and Exchange Act claims are tried together, there is a significant risk that jurors will apply the wrong legal standards to the different sets of claims. They assert that bifurcation is appropriate in light of the differences in the elements of each of the claims, including differences in

the measure of damages, burdens of proof regarding causation and state of mind, as well as the absence of reliance and scienter requirements under the Securities Act. Defendant Directors argue against bifurcation, claiming it would produce inefficiencies because evidence of the underlying facts and circumstances would be relevant to both trials, through identical witnesses and evidence. They further oppose bifurcation on the grounds that bifurcation would work an unfair hardship on them.

I. NATURE OF CLAIMS:

This is a securities fraud case in which plaintiffs have asserted claims under the 1933 Securities Act and the 1934 Exchange Act. A brief description of the differences [*6] among the claims follows for the purpose of highlighting the nature of the anticipated trial proceedings.

A. 1933 Securities Act Claims

1. Section 11 Claims:

The Section 11 claims are limited to false statements in the registration statements. They do not require proof of reliance, scienter or causation. Defendants bear the burden of proving the affirmative defense that they had no reasonable ground to believe and did not believe that the registration statements were untrue or misleading under essentially a negligence standard. Damages under Section 11 are calculated based on a statutory formula and are limited to post-registration purchases.

2. Section 15 Claims:

The Section 15 claims do not require proof of reliance or scienter. The affirmative defense requires defendants to prove they had no knowledge of or no reasonable ground to believe in the existence of the facts giving rise to Safety-Kleen's violation. Section 15 claims are derivative of Section 11 claims, and damages are calculated based on the same statutory formula.

B. 1934 Exchange Act Claims

1. Section 10(b) Claims:

The Section 10(b) claims are based on false statements in the

registration statements, offering memoranda and Form [*7] 10-K filings. They require proof of reliance and scienter. The burden is on plaintiffs to prove that the defendants acted intentionally or recklessly. Damages are calculated, not according to statutory formula, but by the fact-finder on an out-of-pocket measure. The Section 10(b) claims are based on all purchases of the bonds during the class period, not just post-registration.

2. Section 18 Claims:

The Section 18 claims are based on false statements in the Form 10-K filings. They require proof of reliance. The burden is on plaintiffs to prove that they actually read and relied on the false statements in the SEC filing. Section 18 does not require proof of scienter, but provides an affirmative defense to those defendants to prove that they acted in good faith and had no knowledge that the statement was false or misleading.

3. Section 20(a) Claims:

The Section 20(a) claims are based on control person liability against those who controlled Safety-Kleen. The Section 20(a) claims arise out of Safety-Kleen's violations of Section 10(b) and Section 18. Therefore, plaintiffs have the burden of proving all the elements of a Section 10(b) or Section 18 claim, plus establishing defendants' control [*8] of Safety-Kleen. Defendants bear the burden of proving that they acted in good faith and did not directly or indirectly induce the act(s) constituting the violation.

II. LEGAL ANALYSIS:

A. Standard of Review

Rule 42(b) of the Federal Rules of Civil Procedure governs motions to bifurcate an action into separate trials. This rule provides:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Fed. R. Civ. P. 42(b).

The court is permitted considerable discretion in exercising its powers under the rule. Shetterly v. Ravmark Indus., 117 F.3d 776, 782 (4th Cir. 1997); White v. Bloomberg, 501 F.2d 1379 (4th Cir. 1974). Notwithstanding the broad discretion conferred by Rule 42(b), the bifurcation of issues and the separate trial of them is not the usual [*9] course of events. See 9 Charles Alan Wright, et al., Federal Practice and Procedure § 2381, 2387-92, at 474 (1990). Nothing else appearing, a single trial will be more expedient and efficient. Industrias Metalicas Marva, Inc. v. Lausell, 172 F.R.D. 1, 2 (D.P.R.1997); Johns Hopkins University v. Cellpro, 160 F.R.D. 30, 35 (D.Del. 1995).

The party requesting separate trials bears the burden of convincing the court that such an exercise of its discretion will promote greater convenience to the parties, witnesses, jurors, and the court, be conducive to expedition and economy, and not result in undue prejudice to any party. Smith v. Alveska Pipeline Service, 538 F.Supp. 977 (D.Del.1982), aff'd, 758 F.2d 668 (Fed.Cir. 1984), cert. denied, 471 U.S. 1066, 105 S. Ct. 2142, 85 L. Ed. 2d 499 (1985). Novapharm, Ltd. v. Torpharm, Inc., 181 F.R.D. 308, 310 (E.D.N.C. 1998). Merely presenting some proof which supports bifurcation is not enough. Willemijn Houdstermaatschaap BV v. Apollo Computer Inc., 707 F.Supp. 1429, 1433-34 (D.Del. 1989).

The decision to bifurcate must be made on a case-by-case basis after consideration of all of the relevant factors and the individual circumstances. Id.; Lis v. Robert Packer Hospital, 579 F.2d 819, 824 (3rd Cir. 1978), [*10] cert. denied, 439 U.S. 955, 99 S. Ct. 354, 58 L. Ed. 2d 346 (1978).

B. Factors Relevant to Determining Whether to Bifurcate

In general, courts consider the following five factors relevant to a bifurcation decision.

1. Separability of the Issues

This factor constitutes a threshold inquiry because bifurcation raises the possibility that any delay between separate trials may result in the loss of one or more jurors which would require the selection of a new jury. In that instance, if the issues were not truly separable, the result would be that different juries would have considered the same issue, in violation of the Seventh Amendment. See Wright, supra at 512 (p. 110, 1999 Pocket Part), citing Matter of Rhone-Poulenc Rorer, Inc., 51 F.3d 1293, 1303 (7th Cir. 1995), cert. denied,

516 U.S. 867, 116 S. Ct. 184, 133 L. Ed. 2d 122 (1995); Castano v. American Tobacco Co., 84 F.3d 734 (5th Cir. 1996). Consequently, the issues must be truly separable before separate trials can be ordered without the risk of untoward consequences. Even if the issues are separable for purposes of the Seventh Amendment, a court will likely decline to bifurcate if there will be a significant overlap of evidence at the two [*11] trials which would make separation inefficient and inexpedient. Further, bifurcation is "improper where the issues are so closely interwoven that plaintiff would have to present the same evidence twice in separate trials. In such circumstances, judicial economy is fostered by a single trial." 8 Moore's Federal Practice 3d § 42.20[7][c].

The most common justification for separate trials is that the discovery and/or the trial of the issues of liability and damages are sufficiently complex so that the two issues should proceed separately. Determination of complexity, in turn, requires an examination of the amount and kind of evidence that will be used to support each issue. Willemijn at 1435; Home Elevators, Inc. v. Millar Elevator Serv. Co., 933 F.Supp. 1090, 1091 (N.D. Ga. 1996).

In the present case, both the Securities Act and Exchange Act claims will involve presentation of much of the same evidence on many of the same issues through the same witnesses. For example, the question of misstatement of Safety-Kleen's financial statements, market conditions, and the director's exercise of good faith and reasonable care are all issues involved in both sets of claims. Their resolution will likely [*12] involve testimony from many of the same witnesses. Plaintiffs themselves do not deny that there will be considerable overlap between the evidence and witnesses in the trial of the Securities Act and Exchange Act claims. Pl. Reply Br. at 2. Therefore, this factor weighs against bifurcation.

2. Jury-Tried Claims

Courts tend to favor bifurcation where the claims to be tried are equitable rather than legal. E.g., Dollar Sys., Inc. v. Avcar Leasing Sys., Inc., 890 F.2d 165, 170 (9th Cir. 1989). In this case, the claims are all legal claims to be tried to a jury. Therefore, this factor weighs against bifurcation.

3. Posture of Discovery

One of the "primary purposes of bifurcation is to defer costly discovery pending resolution of preliminary issues such as liability." 8 Moore's Federal Practice 3d § 2.23[3]. If bifurcation were ordered, there would be no substantial saving

of the parties' time insofar as discovery is concerned. Discovery has already been completed. This is not a case in which a request for bifurcation was made early in the proceedings based on the contention that time and expense would be saved if discovery relating to some of the claims was deferred. Therefore, this factor [*13] weighs against bifurcation.

4. Overlapping Evidence in Separate Trials

Although there may be some difference in the evidence to be presented in the two sets of claims, the parties anticipate there will be extensive overlap between the evidence and witnesses in the trial of the Securities Act claims and Exchange Act claims, as discussed above. Therefore, this factor weighs against bifurcation.

5. Prejudice to parties.

Bifurcating a case adds costs to the parties in the form of the additional expense associated with two trials and adds delay in final resolution. Willemijn at 1435, citing H.B. Fuller Co. v. National Starch & Chem. Corp., 595 F.Supp. 622, 625 (D.Del. 1984). Defendant Directors argue they will be prejudiced by bifurcation of the claims because they would incur additional costs and delay. Plaintiffs concede the trials would be collectively longer in the event of bifurcation than not. The court finds this factor also weighs against bifurcation.

The Court finds its ruling on decertification sufficient to foreclose further consideration of bifurcating the trial. Cases granting bifurcation have usually involved additional elements of complexity or involve separation of liability [*14] and damages phases. There are no similar additional complicating factors in this case. The court finds that any potential confusion can be eliminated with clear jury instructions and special verdict forms.

On the record here, this court concludes that the plaintiffs have not satisfied their burden of showing that separate trials in this case would further the convenience of the parties and would be conducive to expedition and economy.

III. CONCLUSION

The court denies plaintiffs' motion to bifurcate the trial. This case will proceed to trial as a class action as to the Securities Act claims. The class having been decertified as to plaintiffs' claims under Section 10, Section 20(a) and Section 18

2004 U.S. Dist. LEXIS 31748, *14

pursuant to the Exchange Act, only the two named plaintiffs' Exchange Act claims will be tried at the same time as the trial of the class's Securities Act claims (Section 11 and Section 15).

IT IS SO ORDERED.

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

United States District Judge

October 29, 2004

Columbia, South Carolina

End of Document

EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

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

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

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

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

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

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

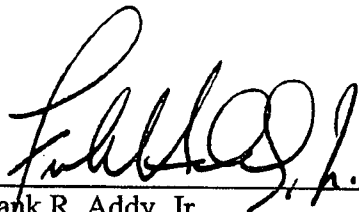
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

EXHIBIT H

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT
CASE NO. 2012-212871

LAWRENCE E. MORROW AND EVELYN M. MORROW,
Petitioners,

v.

FUNDAMENTAL LONG-TERM CARE HOLDINGS, LLC,
ET AL.,
Respondents.

TRANSCRIPT OF DVD PROCEEDINGS

1 separate theory of liability, and the trial
2 court recognized it, which is direct liability,
3 direct negligence.

4 MR. HINES: Your Honor, let me maybe answer
5 that by explaining what I think the trial court
6 actually did and how I think respectfully it's
7 not quite -- it's not quite that.

8 JUSTICE TOAL: Liability is not derivative,
9 but the Court apparently assumed that because it
10 said that Magnolia facility can avoid liability
11 and it might avoid liability because it is
12 somebody else's fault.

13 MR. HINES: To be clear now, Your Honor --

14 JUSTICE TOAL: And if they avoid liability,
15 even if they pin the fault directly on the other
16 corporations, they have, by avoiding liability
17 themselves, also precluded plaintiff from
18 pursuing its independent claims against the
19 other entities. That's the great big doubt
20 about this kind of bifurcation.

21 MR. HINES: To be clear, Your Honor, there
22 is no attempt at avoiding liability by the
23 facility by making such an argument. That is
24 not an issue that's raised in this case.

25 JUSTICE KITTREDGE: So you would stipulate

1 that even with the plaintiff losing in the,
2 quote, first trial, you would stipulate they
3 have an absolute right then to pursue the claims
4 against the corporate defendants?

5 MR. HINES: Your Honor, I would not.

6 JUSTICE KITTREDGE: Then you just answered
7 Chief Justice's question.

8 JUSTICE PLEICONES: Absolutely. And there
9 is nothing about this order that promotes
10 efficiency or that does anything but squander
11 judicial resources. But addressing the rule,
12 you must conclude or you must admit that
13 assuming Mr. Nichols and his side gets met with
14 a summary judgment order against these corporate
15 defendants because they lost the first trial,
16 that they can appeal that and that summary
17 judgment would likely be wrong. And if they
18 lose that first trial because they were deprived
19 of the opportunity to present certain amounts of
20 certain pieces of evidence, because if they
21 related purportedly only to the corporate
22 defendants, that they would have a clear appeal
23 on that and they probably win on that. So what
24 have you done?

25 Now, clearly the rule operates in your

EXHIBIT I

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

1	KEITH WELLIN, et al.	:	
2		:	
3	vs.	:	
4		:	
5	PETER J. WELLIN, et al.	:	2:13 CV 1831
6	LESTER S. SCHWARTZ	:	
7		:	
8	vs.	:	
9	PETER J. WELLIN, et al.	:	2:13 CV 3595
10		:	
11	vs.	:	
12	WENDY WELLIN	:	2:14 CV 4067
13	PETER J. WELLIN, et al.	:	
14		:	
15	vs.	:	
16	WENDY C.H. WELLIN	:	2:15 CV 1171
17		:	
18	WENDY C.H. WELLIN	:	
19		:	
20	vs.	:	
21	THOMAS M. FARACE, ESQ., et al.	:	2:16 CV 414

Motion hearing in the above-captioned matters held
Wednesday, July 20, 2016, commencing at 2:08 p.m., before
the Hon. David C. Norton, Courtroom II, United States
Courthouse, 83 Meeting St., Charleston, South Carolina,
29401.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

1 And then the last case that the Wellin children filed was
2 what we're referring to as a defamation case. Interlaced
3 through all three of these claims is a common issue that
4 surfaces across the spectrum of time, related to capacity,
5 competence, undue influence and duress. It's in our briefing
6 what we referred to as the validity issues.

7 And so we've identified in our briefing, 12 specific
8 points of time in about an 18- or 19-month window where
9 specific transactions were executed that are relevant to the
10 determination of claims in all three of those cases, some of
11 which are limited to one case and some are which related to
12 all three cases.

13 And as you sort of take a step back, and the issue of
14 capacity and competence has been raised by the Wellin
15 children, and it will be used likely as a defense or an
16 affirmative defense to many of the causes of action. And so
17 when I thought about how we would envision a trial where that
18 was a component, we estimate that between the expert
19 witnesses, the care providers, the doctors, the friends, the
20 family members, you know, upwards of 50 witnesses specifically
21 related to the issue of capacity, validity issues, undue
22 influence, et cetera. And when we started mapping out what
23 that would look like, it would look like three to four weeks
24 of testimony specifically related to issues of validity. And
25 if we separate -- if we proceeded as other cases are filed,

1 and we proceeded with our trial first, that means we'd have
2 three or four weeks of that testimony, coupled with all the
3 other issues. And then in the trust protector case you'd have
4 the same validity issues, coupled with the trust-specific
5 cases. And then in the defamation case you'd have the same
6 three or four weeks, coupled with then the defamation claims
7 that are associated therein.

8 So we looked at Rule 42. Forty-two gives you great
9 discretion. There's not a whole lot of guidance for us to go
10 look to in terms of common law interpreting Rule 42 in this
11 context. You know, I think that what we envisioned was a
12 combined 42(a) and 42(b) effort by the Court, if the Court is
13 so inclined, where you could bifurcate particular issues as
14 permitted, and consolidate those issues for a particular
15 trial.

16 The options really available to us, if you look at these
17 three cases, and I tried to identify what the potential
18 options are, and there may be others, but the first would be
19 to have simply three separate trials where there's no
20 consolidation, no bifurcation. And that's what I alluded to a
21 moment ago, where you'd have the same capacity validity
22 issues, coupled with the case specific ones.

23 And in our primary case, if you take the capacity and the
24 fiduciary issues, we would estimate that that would be a five-
25 or six-week trial.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, 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 Marjory 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.

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, 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):

RECEIVED
JUN 07 2019
SC Court of Appeals

Pleadings:

VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS

MOTION FOR EXPEDITED CONSIDERATION

APPELLANTS' RETURN TO RESPONDENTS' MOTIONS TO DISMISS

Counsel Served:

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June 7, 2019



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June 7, 2019

Via Hand Delivery

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

RECEIVED
JUN 07 2019
SC Court of Appeals

RE: Petition for a Writ of Supersedeas | Return to the Motions to Dismiss
Wendy C.H. Wellin v. Peter Wellin et al.
Appellate Case No. 2019-000833
Civil Action No. 2014-CP-10-7038
Our File No. 039113/01500

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of an emergency Petition for a Writ of Supersedeas in regard to the above-referenced matter. We ask that you file the original and return a clocked-in copy to us via our courier. We are filing the petition with a copy of the signed client verification required by Rule 241(d)(3), SCACR. The original, notarized verification has been placed in the mail for delivery to the Court. Also enclosed is a Firm check for the petition filing fee described in Rule 240, SCACR.

In light of the fact that this Petition and the above-referenced appeal are related to a proceeding decided by a panel of this Court one week ago—*Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019)—for which the remittitur has not yet been issued, and in light of the extraordinary and exigent circumstances giving rise to this Petition, we respectfully direct this Petition to the attention of the panel that decided that case, namely Judges Konduros, McDonald, and Hill (*i.e.*, “the appellate court where the appeal is pending,” *see* Rule 241(d)). Please assist us by delivering this Petition to them through the appropriate internal avenues at the Court with all possible haste. Our clients’ appeal is currently pending, but the trial court has informed us it intends to proceed with trial in 10 days. Thus this Petition is necessary to preserve our clients’ substantial rights at both the trial and appellate levels.

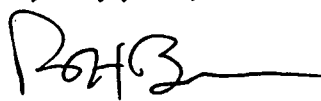
Also enclosed is an original and seven copies of a Motion for Expedited Consideration of the petition in light of the exigency of the matter. We ask that you file the original and return a clocked-in copy to us via our courier. Also enclosed is a Firm check for the motion filing fee.

The Honorable Jenny Abbott Kitchings
June 7, 2019
Page 2

Finally, you will also find enclosed an original and seven copies of Appellants' Return to the Motions to Dismiss the Appeal. We ask that you file the original and return a clocked-in copy to us via our courier. We also ask that you permit this Return also to serve as Appellants' memorandum addressing appealability as requested by your letter dated May 23, 2019.

By copy of this letter to counsel of record, we are serving them with copies of the Petition, the Motion, and the Return to the Motions to Dismiss the Appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "RHB", followed by a horizontal line extending to the right.

Robert H. Brunson

RHB:ls

Enclosures

cc: Robert H. Hood, Esq.
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Virginia R. Flood, Esq.
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John Beach, Esq.
Lyndey Bryant, Esq.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED
JUN 07 2019
SC Court of Appeals

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

VERIFIED PETITION FOR A
WRIT OF SUPERSEDEAS¹

This appeal arises from a complex estate dispute. The issue presented by this emergency Petition, however, is simple, and the writ it requests is urgent, necessary, and well justified. Although the circuit court's Order regarding the way this case is to be tried is currently pending on appeal before this Court, the circuit court nevertheless informed the parties on the evening of June 4, 2019, that it intends to proceed with a trial in this matter beginning on June 17, 2019.

¹ In the alternative, Petitioner requests 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.

Proceeding with trial while an Order governing the trial is 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. Allowing the circuit court to proceed with trial while this matter is on appeal would invade this Court's jurisdiction, undermine respect for the clear mandate of the appellate court rules, 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 because the lower court lacks jurisdiction. Thus, 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.²

INTRODUCTION

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 certain 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, filing their Notice of Appeal on May 16, 2019. Notwithstanding the pendency of that appeal and the automatic appellate stay imposed by Rules 205 and 241(a), SCACR, the circuit court judge, the Honorable Frank R. Addy, Jr., sent a letter to the Honorable James E. Lockemy, Chief Judge of the South Carolina Court of Appeals, dated May 17, 2019, stating, among other things, that "I do believe this appeal may be

² Because this Petition and the above-referenced appeal are related to a proceeding decided by a panel of this Court one week ago—*Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019)—for which the remittitur has not yet been issued, and in light of the extraordinary and exigent circumstances giving rise to this Petition, Appellants are directing this Petition to the attention of the panel that decided that case, namely Judges Konduros, McDonald, and Hill (*i.e.*, "the appellate court where the appeal is pending," *see* Rule 241(d)).

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 forward and resolve this matter in June.” *See* Letter (attached as **Exhibit A**). Judge Addy did not copy Appellants or any of the parties on the letter to Judge Lockemy, but Appellants recently discovered a copy of the letter after it was uploaded to this Court’s online docket. As far as Appellants are aware, this Court did not respond to Judge Addy’s letter, much less authorize Judge Addy to proceed with trial notwithstanding the automatic stay. This Court has not dismissed Appellants’ appeal, and in fact, the deadline for Appellants to file their memorandum regarding appealability issues is not until June 12, 2019. Nevertheless, on the evening of June 4, 2019, the circuit court informed the parties’ counsel via email that it intends to proceed with the trial on June 17, 2019 (meaning the trial is set to commence only 10 days from now) under the same limitations and conditions being challenged on appeal.

Contrary to Judge Addy’s assertion in his letter to Judge Lockemy, Appellants have not filed this appeal to delay trial. Rather, Appellants only seek a full and fair trial. The trial ordered by the circuit court denies them the opportunity to present their claims. 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).³

Accordingly, pursuant to Rule 241, SCACR and S.C. Code Ann. § 14-8-290, Petitioner files this Petition for a Writ of Supersedeas and respectfully requests this Court issue an expedited writ enforcing the automatic stay and staying the trial in this matter until resolution of the issues on appeal.⁴

³ Indeed, if Appellants 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 thirty days to file their Notice of Appeal.

⁴ Appellants filed this writ directly with the Court of Appeals because (i) the trial is now set for

RELEVANT BACKGROUND⁵

This appeal arises from a dispute over a multi-hundred million dollar estate left by the decedent Keith S. Wellin (“Keith”). Petitioner is Peter J. Wellin, Keith’s adult son of his first wife, who, along with his sisters Cynthia Plum and Marjorie King (collectively “the Wellin Children” or “Appellants”) are the Appellants in the pending appeal. 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 individually⁶ 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 and stating the first “phase” of trial would “decide the issues of undue influence and testamentary capacity for the relevant period of time.”

June 17, 2019, (ii) the circuit court has indicated by email to the parties that it does not intend to recognize the automatic stay, and (iii) the predisposition of the circuit court on this issue is plainly reflected in the unusual letter to Judge Lockemy. Under these extraordinary circumstances, it is impracticable to request relief in the first instance from the circuit court.

⁵ For the sake of brevity and in light of the emergency nature of this Petition, the recitation that follows omits the intricacies and complexities of the estate plan, the factual background, and the procedural history leading up to this appeal. Rather, this section provides only the background pertinent to the issuance of the Writ requested herein. A more complete recitation of the facts is set forth in *Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019), *available at* 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a related dispute between the same parties.

⁶ These include counterclaims for 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.

See Order at 1 (attached hereto as **Exhibit B**). 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 different elements and different burdens of proof than 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 C**). 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 the Supreme 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 their substantive right to be the architects of their case.

On May 17, 2019, the day after the Wellin Children filed their Notice of Appeal, Judge Addy sent the above-referenced letter to Judge Lockemy. See **Exhibit A**. As noted above, the Wellin Children are not aware of this Court responding to this letter, much less authorizing Judge Addy to proceed with trial while this matter is on appeal.⁷

⁷ Because Judge Addy did not copy any of the parties on this letter, and because the Wellin Children only discovered the letter while searching for a filing on this Court’s online docket, the Wellin Children are not aware if other parties received a copy of the letter before this filing.

On May 23, 2019, this Court sent a letter to the parties requesting memoranda addressing the issue of appealability. On May 24, 2019, Respondents filed motions to dismiss the appeal. On June 3, 2019, certain Respondents filed memoranda addressing the issue of appealability. On June 7, 2019, contemporaneously with the filing of this Petition, the Wellin Children filed their Return to the Motions to Dismiss (which also serves as the Wellin Children’s memorandum on the issue of appealability). Notably, every party to this appeal recognizes in their briefs that the primary issue on appeal is the permissibility of the truncated, limited, “bifurcated” trial prescribed in the circuit court’s Order. Indeed, Respondent Wendy Wellin has taken the position that *all* matters in this action are stayed pending resolution of the appeal, including all discovery. *See* E-Mail from the Wellin Children’s counsel to Wendy’s counsel (attached hereto as **Exhibit D**).⁸

Notwithstanding the pending appeal, the ongoing briefing regarding appealability, and the absence of any response (as far as the Wellin Children are aware) to Judge Addy’s letter to Judge Lockemy, Judge Addy’s judicial assistant sent an email to the parties’ counsel late on the afternoon of June 4, 2019, stating (for the first time to the parties) 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 E**).⁹ The email further stated, “The court is aware that

⁸ The Wellin Children disagree that discovery is stayed by this appeal. *See* Rule 205, SCACR (providing that an appeal does not prevent the lower court “from proceeding with matters not affected by the appeal”). This issue, however, is not before the Court in this Petition.

⁹ 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 A** (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

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.” *Id.* The email did not provide a reason why the circuit court found no cause for the automatic stay to apply.

ARGUMENTS

This Court should issue a writ of supersedeas to protect its jurisdiction, to enforce the automatic appellate stay imposed by the Rules, to maintain the status quo pending resolution of the appeal, to preserve judicial economy, and to avoid rendering the matters on appeal moot. Because the circuit court has scheduled trial to begin on June 17, 2019, the Wellin Children respectfully request expedited consideration and issuance of a writ staying the trial or any other proceedings in the circuit court affected by the appeal until after resolution of the pending appeal.

The appellate court 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.¹⁰ There can be no question here that the Order on appeal decides matters relating to the conduct and mode of the trial (including the refusal to have a trial on certain claims). Indeed, as the opposing parties’ appellate briefing and motions to date expressly recognize, those limitations are the very issue being appealed. Accordingly, the appeal stayed the trial of this case until the appeal is resolved. *See* Rule 241(a), SCACR (“[T]he

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 automatic stay. 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 is therefore not available to begin trial on June 17. *See* E-Mail from the Estate’s Counsel (attached as **Exhibit F**).

¹⁰ The automatic appellate stay is subject to 11 enumerated exceptions, *see* Rule 241(b), SCACR, none of which is implicated here.

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”).

Where a circuit court intends to act in circumvention of the automatic appellate stay, the appellate court rules provide for granting a writ of supersedeas “to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR; *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.”). 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.”” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting 4A C.J.S. Appeal & Error § 662 at 494–95 (1957)).

Such a writ is required here. 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. The Supreme 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).

Further, any form of trial at this point would render moot the court's consideration of the Order setting the length and scope of trial. *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."). Thus, a trial in any form in this matter must be stayed pending a resolution of this appeal. *See Berry v. Iamuario*, 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 fact that the appealability of the Order is disputed is of no moment. As the Wellin Children explain in their Return to the Motions to Dismiss the Appeal, filed contemporaneously herewith, under *Morrow*, they not only *may* immediately appeal the "bifurcation" order, but *must* immediately appeal it to avoid waiving their right to appeal at a later juncture in the proceedings. *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). Further, the Rules establishing the automatic appellate stay make no exception for situations where one party or even the trial court thinks the order is not immediately appealable. Rather, the Rules are clear that the circuit court is divested of jurisdiction to proceed with matters decided in its Order unless and until the appellate courts issue a remittitur.¹¹

¹¹ The appellate rules establish a specific procedure whereby a party seeking to set aside the automatic appellate stay may do so. *See* Rule 241(d), SCACR. In the instant proceeding, no party has applied to lift the automatic stay or to permit the trial to proceed despite the pendency of the appeal.

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, Petitioner respectfully requests 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.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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Attorneys for Appellants/Petitioner

Charleston, South Carolina
June 7, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, 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 Marjory 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.

VERIFICATION

I, Peter Wellin, verify that, to the best of my knowledge and belief, the facts set forth in
the foregoing Petition for a Writ of Supersedeas are accurate.

Executed on June 7th, 2019.

SWORN to and subscribed before me

this 7th day of June, 2019

[Signature] (L.S.)

Notary Public for Maine

My Commission Expires: Dec 12 / 2024

[Signature]

Peter Wellin

Appellant/Petitioner

EXHIBIT A



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.
Judge

Greenwood County Courthouse
528 Monument Street, Suite 210
Greenwood, SC 29646
Phone: (864) 943-8020
Fax: (864) 942-8581
faddyj@sccourts.org

May 17, 2019

The Hon. James E. Lockemy
Chief Judge, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

MAY 20 2019

SC Court of Appeals

Re: Appeal in Wellin v. Wellin

Dear Judge Lockemy,

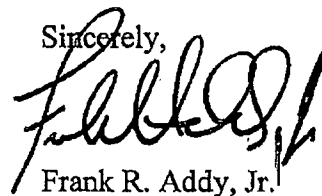
I became aware of the enclosed notice of intent to appeal in the above case today. Last year, I was assigned to handle all matters concerning it. To the extent the concerns expressed in this letter are not germane or appropriately communicated to you, please disregard this letter because I have no opinion concerning the merits of any appeal which may be taken.

Please understand that this is one of the oldest cases on the docket in Charleston, and it has a companion federal case which has been pending for years as well. 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.

Although I cannot speak to the issues they intend to raise, I do believe this appeal may be little more an effort to delay this matter further. Please do understand that this is an estate of incredible worth, and per Judge Norton in Charleston, substantial attorney's fees are already involved.

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. Should you desire to speak with me, I can be reached on my cell at (864) 992-2144.

Sincerely,



Frank R. Addy, Jr.

Enclosure

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

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

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

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

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

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

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

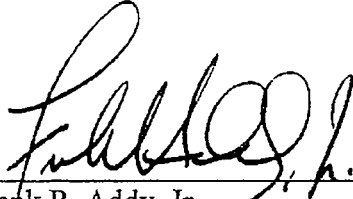
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

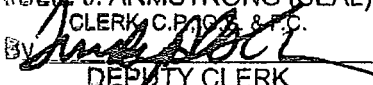
This Court will try the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014 in state court. Put another way, the trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Frank R. Addy, Jr., Circuit Court Judge

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

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

vs.

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

vs.

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

and

Friendship Management, LLC, ... Appellant,

vs.

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

IN THE MATTER OF:
Keith S. Wellin

RECEIVED

MAY 16 2019

SC Court of Appeals

NOTICE OF APPEAL

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

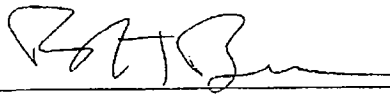
Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, and Friendship Management, LLC (the “Appellants”) appeal the order of the circuit court dated May 9, 2019, and entered on May 15, 2019.¹ Counsel for Appellants received written notice of the entry of the order on May 16, 2019. Appellants also appeal the prior orders of the circuit court entered October 20, 2017, and August 24, 2018.² Copies of the subject orders are attached hereto.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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

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

Attorneys for Appellants

Charleston, South Carolina
May 16, 2019

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, 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:

NOTICE OF APPEAL

Counsel Served:

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

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

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

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

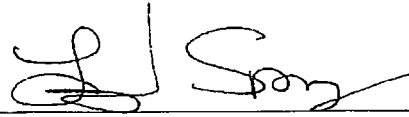
Marvin D. Infinger, Esq.
Barnwell Whaley Patterson & Helms, LLC
PO Drawer H
Charleston, SC 29402
*Attorney for Campbell Lane Hart and
Heather Lane*

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

RECEIVED

MAY 16 2019

SC Court of Appeals

A handwritten signature in black ink, appearing to read 'Lydia Spry', is positioned above a horizontal line.

Lydia Spry
Administrative Assistant

May 16, 2019

ATTACHMENT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

RECEIVED

MAY 16 2019

SC Court of Appeals

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

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

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

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

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

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

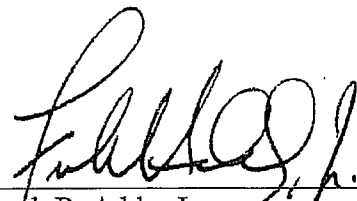
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

ATTACHMENT 2

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,

Petitioner,

Versus

Peter J. Wellin, Cynthia W. Plum, Marjorie W.
King,

Respondents and Counter-Petitioners,

Versus

Wendy C.H. Wellin, Hamilton College, Keith
S. Wellin Florida Revocable Living Trust,
Campbell Hart and Heather Lane,

Counter-Respondents.

IN THE MATTER OF:

Keith S. Wellin

) IN THE COURT OF COMMON PLEAS

) C/A No. 2014-CP-10-07038

) **ORDER GRANTING PETITIONER'S**
) **MOTION TO LIFT THE STAY**

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

RECEIVED

MAY 16 2019

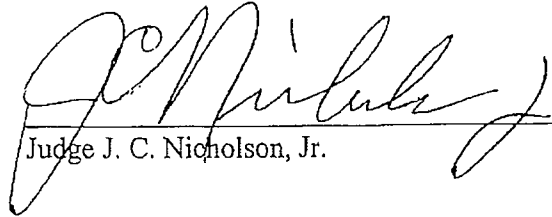
SC Court of Appeals

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

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

AND IT IS SO ORDERED.

10/20, 2017
Charleston, South Carolina


Judge J. C. Nicholson, Jr.

ATTACHMENT 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin
PLAINTIFF(S)

Peter Wellin Cynthia
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

No further delays in this case. Chief Admin judge should set for trial (2 weeks max) as soon as practicable. Am
Motion/ Stay by Respondent & Counter Petitioners - Denied
Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

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

Circuit Court Judge

RECEIVED

2159
Judge Code

MAY 16 2019

8-23-18
Date

From: Patrick Wooten
Sent: Wednesday, May 22, 2019 1:52 PM
To: John Lay - GWB
Subject: depositions

John T – I also want to confirm that you and I discussed on the phone the deposition notices you served for the Wellin Children to be deposed in the state court action in early June, and we agreed that those depositions will not go forward on the dates that they were noticed and that we do not need to file a motion relating to those depositions at this time. I understand that you are taking the position that all discovery is stayed in the state court action as a result of our notice of appeal, and we disagree with that position, but we can address that issue later. Let me know if any of this is incorrect. Thanks.



PATRICK C. WOOTEN PARTNER
patrick.wooten@nelsonmullins.com
LIBERTY CENTER | SUITE 600
151 MEETING STREET | CHARLESTON, SC 29401
T 843.534.4102 F 843.534.4267
NELSONMULLINS.COM VCARD VIEW BIO

EXHIBIT E

From: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>
Sent: Tuesday, June 4, 2019 4:15 PM
To: Bobby Hood; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; James Hood; John Beach; John Hagerty; John Hudson; John Lay - GWB; 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; Robert Brunson; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood
Cc: Caroline Crisler. Leonard; Addy, Frank R. Law Clerk (Meagan White); Al Eargle; Chiles, Gwendolyn D.; Buffey Hodges
Subject: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
Importance: High

◀External Email▶ - From: prvs=9058a7d14f=faddysc@sccourts.org

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

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

# EXHIBIT F



---

**From:** Jamie Hood <james.hood@hoodlaw.com>  
**Sent:** Wednesday, June 5, 2019 8:22 PM  
**To:** Addy, Frank R. Secretary (Freda Sartin); Bobby Hood; 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 Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; DTAA - Molly Craig; Patricia Scarborough; Patrick Wooten; Robert Brunson; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood  
**Cc:** 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 )

◀External Email▶ - From: james.hood@hoodlaw.com

Dear Judge Addy

I am in receipt of your email setting a status conference for next Wednesday June 12<sup>th</sup> and the trial to begin on Monday June 17<sup>th</sup> to conclude at the end of the week of the 24<sup>th</sup>. 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 21<sup>st</sup> 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 24<sup>th</sup> 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>  
**Sent:** Tuesday, June 4, 2019 4:15 PM  
**To:** 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>; Jamie Hood <james.hood@hoodlaw.com>; John Beach <john.beach@arlaw.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay <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>; Robert Brunson <robert.brunson@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>  
**Cc:** Caroline Crisler. Leonard <cleonard@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:** 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 12<sup>th</sup> 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 17<sup>th</sup> and June 24<sup>th</sup>. 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

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED
JUN 07 2019
SC Court of Appeals

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

MOTION FOR EXPEDITED CONSIDERATION

Pursuant to Rules 240 and 263(b), SCACR, Appellants/Petitioner respectfully move for expedited consideration of the Petition for a Writ of Supersedeas filed concurrently with this motion. As explained in the Petition, Appellants have appealed the circuit court's Order imposing certain limitations and restrictions on a trial in this proceeding. That appeal is still pending. Nevertheless, the circuit court has informed the parties that it intends to proceed with the trial—commencing in 10 days—notwithstanding the automatic stay. The trial in this matter has implications with respect to hundreds of millions of dollars, and numerous witnesses from out of

state will have to travel for the trial. Accordingly, Appellant Peter Wellin today filed a Petition for a Writ of Supersedeas to stay the trial until after resolution of the pending appeal. In light of the exigency of the circumstances, Appellants respectfully request this court consider and rule upon the Petition expeditiously.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____

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Attorneys for Appellants/Petitioner

Charleston, South Carolina
June 7, 2019

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the Court of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

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

RECEIVED
JUN 11 2019
SC Court of Appeals

Wendy C.H. Wellin,

Respondent,

v.

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

Appellants,

v.

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

Respondents.

In the Matter of: Keith S. Wellin

RESPONDENTS' RETURN
TO VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS

A writ of supersedeas is unnecessary, premature, and now moot because the Appellants should have – ***and indeed now have*** – petitioned the lower court for the relief they seek instead of asking this Court to intervene. The June 7, 2019 “emergency” Petition filed by Appellant

Peter Wellin¹ pursuant to Rule 241, SCACR, seeks an “urgent” order relieving Appellants from the current trial setting of June 17, 2019 and directing the Honorable Frank R. Addy, Jr. to delay trial indefinitely. The Petition must be denied for two reasons.²

First, the Petition is premature and procedurally deficient because Petitioner failed to meet a critical prerequisite to seeking this writ directly from the Court of Appeals: None of the Appellants *first* petitioned the trial judge and received an order “unjustifiably den[ying]” the relief sought, as required by Rules 241(d)(1) and 241(d)(4)(C), SCACR. Rule 241 is clear: The Petition must contain “a showing that an application for this relief was made to the lower court . . . , and was unjustifiably denied or that the relief granted failed to afford the relief which the petitioner requested” or, “[i]f no application was made to the lower court . . . , then the petition shall state the extraordinary circumstances which made it impracticable to make such an application.” Rule 241(d)(4)(C), SCACR.

Appellants not only failed to formally petition Judge Addy for relief from the trial setting before involving this Court, as required by Rule 241, but Appellants’ own actions belie the

¹ Although there are three Appellants, Peter Wellin, Cynthia W. Plum and Marjorie W. King, only Peter Wellin verified the Petition. Rule 241(d)(3) requires verification by the client, of which there are three in this case, and this is an additional procedural deficiency that plagues the Petition.

² It is not clear whether Petitioner has asked the full appellate court to consider his Petition, or whether he has sought review *only* by Judges Konduros, McDonald, and Hill, who served on the panel that issued an opinion on May 29, 2019 in a different case arising out of a separate conservatorship action which had been pending on appeal since 2016. *Wellin et al. v. Wellin*, Ct. App. Op. No. 5608 (May 29, 2019). Although Appellants Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King were also the appellants in that 2016 appeal, the Respondents involved in this case are not all involved in that case and the issues on appeal are utterly distinct. When the Petition was transmitted to the Clerk of Court for the Court of Appeals, Petitioner enclosed the number of copies required under Rule 241(d)(5) for “application to the full appellate court,” and consideration by the full appellate court under these circumstances is appropriate. Petitioner’s request to “direct” the Petition to specific judges who decided an unrelated appeal - simply because Appellants prevailed in the opinion issued by those judges - is not appropriate.

assertion that extraordinary circumstances made it “impracticable” for them to seek this relief from Judge Addy first. (Petition, pp. 3-4, n.4).

First, Appellants’ counsel *did informally* request a trial continuance from Judge Addy less than 48 hours before filing this “emergency” Petition; Appellants simply did not wait for Judge Addy to respond, nor did they make their request official by filing a proper motion for Judge Addy to consider before they filed this Petition. On June 5, 2019 at 9:27 pm, counsel for Appellants emailed Judge Addy requesting “that the Court continue the trial until after [grandchild] Keith Plum’s wedding,” due to wedding festivities apparently scheduled for June 27-28, 2019.³ Curiously, the Petition fails to attach (or even mention) this informal request for continuance by late-evening email to Judge Addy, which is attached hereto for the Court’s consideration as **Exhibit A**.⁴ Instead, the Petition casually suggests – in a footnote only – that it would have been “impracticable” to ask Judge Addy for relief from the June trial setting. (Petition, pp. 3-4, n.4). In actuality, Appellants did seek relief from the June trial setting but deprived Judge Addy of the opportunity to consider a proper, formal request or to otherwise respond to their informal request. Appellants’ own actions in the days leading up to the filing of

³ This is the first time that Appellants have advised the Court or opposing counsel of a potential wedding conflict with a June trial setting, although the parties were advised some time ago that Judge Addy intended to set this case for trial in June 2019.

⁴ The omission of any reference to this June 5 email from Appellants’ counsel to Judge Addy is even more puzzling given that the Petition both references and attaches an email sent one hour earlier by the Estate’s counsel in the same June 5 email exchange (even though Petitioner has not sought emergency relief based on the trial conflict identified by the Estate’s counsel). *Compare* Ex. F of the Petition *with* Ex. A hereto. Incidentally, that trial conflict resolved yesterday and is no longer an issue relating to the timing of trial.

this emergency Petition undermine any claim that it was “impracticable” for them to ask Judge Addy for a continuance from the June trial setting.⁵

Second, the Petition must be denied because Appellants *now have sought* the same relief from Judge Addy sought by this emergency Petition – a tacit admission that it was not only practicable, but appropriate, for Appellants to request this relief from Judge Addy in lieu of engaging this Court. On Sunday, June 9, 2019, two days after filing this emergency Petition, Appellants sent an email to counsel advising, in pertinent part:

⁵ Appellants had more than one opportunity to seek relief from the trial court after Judge Addy made known his intention to proceed with trial of this matter in June 2019. The Petition claims that the May 15, 2019 Order on appeal was “the first time counsel for the [Appellants] Wellin Children are aware of receiving notice of a trial to take place in June.” (Petition, p. 6, n.9). But Appellants filed no Rule 59(e), SCRCp, motion to reconsider the June trial setting, nor did they communicate to Judge Addy that they believed the June trial setting was unreasonable or unworkable because it conflicted with a family wedding.

On May 20, 2019, Appellants emailed Judge Addy’s staff “attaching a copy of the Notice of Appeal filed and served last week on behalf of our clients.” (5/20/19 Email from R.Brunson to Court and Counsel, attached hereto as **Exhibit B**). Although this communication with Judge Addy’s chambers occurred less than two weeks before the beginning of June when trial could occur, Appellants still chose not to address the issue with Judge Addy about whether he would proceed with trial in June.

Even after the Respondents filed motions to dismiss the appeal, and this Court *sua sponte* requested briefing on the issue of appealability, Appellants still did not reach out to Judge Addy to determine whether he intended to proceed with trial in June. Certainly at that point, Appellants should have realized that Judge Addy might view their interlocutory appeal as premature, such that it did not automatically stay the June trial setting, but Appellants remained silent on this issue and chose instead to pursue action only in the Court of Appeals.

There is no reason for Appellants to have presumed for the last 27-odd days that the automatic stay applied and would delay the June trial setting – especially given that motions to dismiss their appeal were filed only one week after their Notice of Appeal was filed. Where an order is interlocutory, and thus not appealable, the notice of intent to appeal does not transfer jurisdiction to the Court of Appeals, nor does it stay further proceedings in the lower court. *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)). Pending before this Court are two motions to dismiss on the grounds that the orders appealed are interlocutory and not immediately appealable. If those motions are granted, “the Circuit Court never lost jurisdiction and properly proceeded to trial.” *Id.*

As explained in our petition for a writ of supersedeas filed on Friday, we do not believe the circuit court has jurisdiction to have a trial in light of the appeal. Nevertheless, we plan to file a motion for a continuance of trial with the circuit court tomorrow that asks the circuit court to continue the trial until after Keith Plum's wedding on June 28. (If the trial were held during the weeks of June 17 and June 24, it seems likely that the jury verdict would come down during Keith's wedding ceremony, which our clients of course were planning to attend.)

...

Note that we also intend to argue in the motion that the trial should be continued for other reasons (including the automatic stay) Because of the time sensitive nature of this, we plan to file this motion at noon tomorrow.

(6/9/19 Email from P.Wooten to Counsel, attached hereto as **Exhibit C**). As promised, at 2:08 p.m. on Monday, June 10, 2019, Appellants filed a 153-page "Motion for a Continuance of Trial," attached hereto as **Exhibit D**, seeking from Judge Addy *the same relief sought in Petitioner's emergency Petition*. Appellants' motion for continuance not only seeks a new trial setting because of the wedding conflict previously disclosed on June 5, 2019, but the motion seeks an indefinite continuance because Appellants believe the automatic stay applies to their interlocutory appeal.⁶ These are the same arguments made in the emergency Petition pending before this Court. This issue is now properly before Judge Addy as Rule 241 intended, and the emergency Petition must be dismissed as moot.

By improperly reversing Rule 241's procedure for how and to whom a writ of supersedeas should be presented, Appellants have caused an unnecessary scramble by all parties to address their arguments on multiple fronts during a critical time of trial preparation.⁷

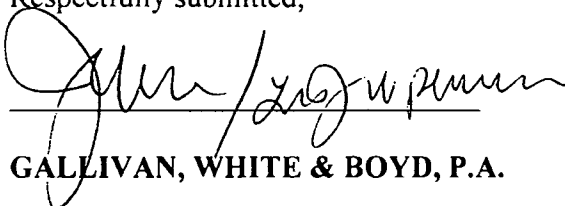
⁶ As previously noted, the existence of an automatic stay over the lower court proceedings is not, as Appellants have suggested, a certainty under these circumstances.

⁷ This is a complex estate dispute in which significant attorneys' fees already have been expended to litigate this matter contemporaneously in multiple courts. This isolated piece of the comprehensive litigation between the parties – which is the only portion of the litigation that can

Appellants were required to bring this matter to Judge Addy's attention in the first place, yet they continue to claim that Judge Addy must "wait until after the South Carolina Court of Appeals and, if necessary, the South Carolina Supreme Court, rules on this Petition before holding a trial." (Ex. C, Motion for Continuance, p. 6). These procedural deficiencies are fatal to the Petition, as it falls far short of establishing the "extraordinary circumstances" required to permit Appellants to escalate this request for a trial continuance directly to the Court of Appeals. For all of these reasons, the emergency Petition must be denied as premature, procedurally deficient, and now moot in light of Appellants' recently-filed Motion for Continuance.

Respondents respectfully request that this Court deny the Petition, dismiss the appeal as premature for the reasons outlined in the previously-filed Motions to Dismiss, and return this matter to Judge Addy for resolution.

Respectfully submitted,



GALLIVAN, WHITE & BOYD, P.A.

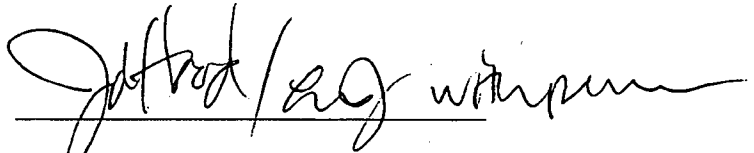
John T. Lay, Jr. (S.C. Bar No. 64526)
Gray T. Culbreath (S.C. Bar No. 11907)
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proceed with probating Mr. Wellin's Last Will and Testament because of the exclusive jurisdiction afforded to South Carolina courts to do so – has been pending since 2014 and is long-overdue for trial. Appellants could have, should have, and now have sought the relief outlined in their emergency Petition from the trial court, which is how this request should have been presented in the first instance.

ljoyner@GWBlawfirm.com

*Attorneys for Respondent
Wendy C.H. Wellin, Individually*

AND

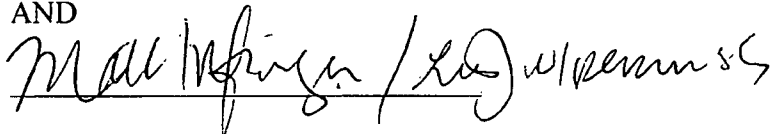


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(843) 722-1630

*Attorneys for Wendy C.H. Wellin, as Special
Administrator of the Estate of Keith S. Wellin and
as Trustee of the Keith S. Wellin Florida Revocable
Living Trust, w/a/d Dec. 11, 2001*

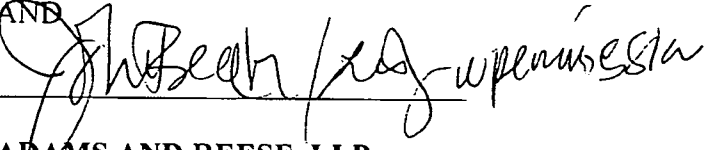
AND



**BARNWELL WHALEY PATTERSON &
HELMS, LLC**

Marvin D. Infinger, Esq.
PO Drawer H
Charleston, SC 29402

Attorneys for Heather Lane and Campbell Hart

AND 
ADAMS AND REESE, LLP

John Beach, Esq.
Lyndey Bryant, Esq.
1501 Main Street, 5th Floor
Columbia, SC 29201

Attorneys for Hamilton College

PROOF OF SERVICE

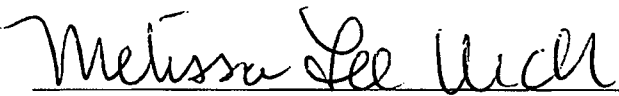
I, the undersigned Paralegal of the law offices of Gallivan, White & Boyd, P.A., attorneys for Wendy C. H. Wellin, individually, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage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

**RESPONDENTS' RETURN TO
VERIFIED PETITION FOR A WRIT OF SUPERSEDEAS**

Counsel Served:

<u>Attorneys for Appellants</u> Robert H. Brunson, Esq. Patrick Wooten, Esq. Merritt G. Abney, Esq. Nelson Mullins Riley & Scarborough P.O. Box 1806 Charleston, SC 29402	<u>Attorneys for Wendy C.H. Wellin, as Special Administrator and Trustee for the Keith S. Wellin Florida Revocable Living Trust</u> Robert H. Hood, Esq. James B. Hood, Esq. Molly H. Craig, Esq. Virginia Rogers Floyd, Esq. Hood Law Firm, LLC 172 Meeting Street Charleston, SC 29402
<u>Attorneys for F. Patricia Scarborough, Esq. and Edward G.R. Bennett, Esq.</u> M. Dawes Cooke, Jr., Esq. Barnwell Whaley Patterson & Helms, LLC PO Drawer H Charleston, SC 29402	<u>Attorneys for Hamilton College</u> John Beach, Esq. Lyndey Bryant, Esq. Adams and Reese, LLP 1501 Main Street, 5 th Floor Columbia, SC 29201
<u>Attorneys for Heather Lane and Campbell Hart</u> Marvin D. Infinger, Esq. Barnwell Whaley Patterson & Helms, LLC PO Drawer H Charleston, SC 29402	<u>Attorneys for the Estate</u> F. Patricia Scarborough, Esq. Edward G.R. Bennett, Esq. Evans, Carter, Kunes & Bennett, P.A. PO Box 369 Charleston, South Carolina 29402

June 11, 2019


Melissa Lee Urch
Paralegal

RECEIVED

JUN 11 2019

SC Court of Appeals

EXHIBIT A

From: Robert Brunson
To: James Hood
Cc: Addy, Frank R. Secretary (Freda Sartin); Bobby Hood; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; John Beach; John Hagerty; John Hudson; John T. Lay; Karen Jessee; Lauren Lynch; Linda Brewer; Lindsay Joyner; Lydia Spiv; 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 Earle; Chiles, Gwendolyn D.; Buffey Hodges
Subject: Re: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
Date: Wednesday, June 05, 2019 9:27:36 PM

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, and his rehearsal dinner is on Thursday, June 27. 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

On Jun 5, 2019, at 8:21 PM, Jamie Hood <james.hood@hoodlaw.com> wrote:

◀External Email▶ - From: 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 next week, that would eliminate the trial conflict. I appreciate your consideration. Jamie

From: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>

Sent: Tuesday, June 4, 2019 4:15 PM

To: 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>; Jamie Hood <james.hood@hoodlaw.com>; John Beach <john.beach@arlaw.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay <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>; Robert Brunson <robert.brunson@nelsonmullins.com>; Rutledge Young Jr <ryj@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>

Cc: Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>; Addy, Frank R. Law Clerk (Meagan White) <faddy@ccsccourts.org>; Al Eargle <aeargle@lex-co.com>; Chiles, Gwendolyn D. <gchiles@mccormickcountysc.org>; Buffey Hodges <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 : faddy@sccourts.org

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# EXHIBIT B

**From:** Robert Brunson  
**To:** Addy, Frank R. Law Clerk (Meagan White); Addy, Frank R. Secretary (Freda Sartin); Lindsay Joyner; John T. Lay; Stephanie Chickey  
**Cc:** Merritt Abney; Patrick Wooten; Bryson Geer; John Hagerty; Deirdre McCool; Gray Culbreath; John Hudson; John Beach; Lyndey Bryant; Edward Bennett; Patricia Scarborough; minfinger@barnwell-whaley.com; Melissa Urch; Linda Brewer; Lauren Lynch; Lydia Spry; James Hood; Virginia Flood; DTAA - Molly Craig; Bobby Hood; Tina Gault  
**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038 [GWB-IMANMAIN.FID103905]  
**Date:** Monday, May 20, 2019 3:36:31 PM  
**Attachments:** image001.jpg  
image002.jpg  
image003.jpg  
2019.05.16 Notice of Appeal for filing (Appeal of State Court Orders) - 4829-3192-6935 v 1.pdf

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We are attaching a copy of the Notice of Appeal filed and served last week on behalf of our clients. We assume Judge Addy has been notified of the appeal, but in an abundance of caution we thought we should send a courtesy copy.

Thanks,

Robert H. Brunson  
Nelson Mullins  
843-534-4226

**From:** Addy, Frank R. Law Clerk (Meagan White) <faddylic@sccourts.org>  
**Sent:** Thursday, May 9, 2019 7:18 PM  
**To:** Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>; Lindsay Joyner <ljoyner@gwblawfirm.com>; John Lay - GWB <jlay@gwblawfirm.com>; Stephanie Chickey <stephanie.chickey@hoodlaw.com>  
**Cc:** Robert Brunson <robert.brunson@nelsonmullins.com>; Merritt Abney <merritt.abney@nelsonmullins.com>; Patrick Wooten <Patrick.Wooten@nelsonmullins.com>; Bryson Geer <bryson.geer@nelsonmullins.com>; John Hagerty <john.hagerty@nelsonmullins.com>; Deirdre McCool <deirdre.mccool@nelsonmullins.com>; Gray Culbreath <gculbreath@gwblawfirm.com>; John Hudson <jhudson@gwblawfirm.com>; John Beach <john.beach@arlaw.com>; Lyndey Bryant <lyndey.bryant@arlaw.com>; Edward Bennett <bennett@eckb.com>; Patricia Scarborough <scarborough@eckb.com>; minfinger@barnwell-whaley.com; Melissa Urch <murch@gwblawfirm.com>; Linda Brewer <linda.brewer@arlaw.com>; Lauren Lynch <lauren.lynn@nelsonmullins.com>; Lydia Spry <Lydia.Spry@nelsonmullins.com>; James Hood <james.hood@hoodlaw.com>; Virginia Flood <Virginia.Floyd@hoodlaw.com>; DTAA - Molly Craig <molly.craig@hoodlaw.com>; Bobby Hood <bobby.hood@hoodlaw.com>; Tina Gault <tina.gault@hoodlaw.com>  
**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038 [GWB-IMANMAIN.FID103905]

◀External Email▶ - From: faddylic@sccourts.org

All,

Please find Judge Addy's order attached to this email.

Thank you.

Meagan White  
Law Clerk to the Honorable Frank R. Addy, Jr.

Greenwood County Courthouse  
528 Monument Street, Ste. 210  
Greenwood, South Carolina 29646  
(864)943-8022

**From:** Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>  
**Sent:** Friday, March 29, 2019 11:01 AM  
**To:** Lindsay Joyner <[ljoyner@gwblawfirm.com](mailto:ljoyner@gwblawfirm.com)>; Addy, Frank R. Law Clerk (Meagan White) <[faddylc@sccourts.org](mailto:faddylc@sccourts.org)>; John T. Lay <[jlay@gwblawfirm.com](mailto:jlay@gwblawfirm.com)>; Stephanie Chickey <[stephanie.chickey@hoodlaw.com](mailto:stephanie.chickey@hoodlaw.com)>  
**Cc:** [robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com); [merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com); [Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com); 'bryson.geer@nelsonmullins.com' <[bryson.geer@nelsonmullins.com](mailto:bryson.geer@nelsonmullins.com)>; [john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com); [deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com); Gray Culbreath <[gculbreath@gwblawfirm.com](mailto:gculbreath@gwblawfirm.com)>; John Hudson <[jhudson@gwblawfirm.com](mailto:jhudson@gwblawfirm.com)>; 'John.Beach@arlaw.com' <[John.Beach@arlaw.com](mailto:John.Beach@arlaw.com)>; [lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com); 'Bennett@eckb.com' <[Bennett@eckb.com](mailto:Bennett@eckb.com)>; [scarborough@eckb.com](mailto:scarborough@eckb.com); [minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com); Melissa Urch <[murch@gwblawfirm.com](mailto:murch@gwblawfirm.com)>; Linda Brewer <[linda.brewer@arlaw.com](mailto:linda.brewer@arlaw.com)>; Lauren Lynch <[lauren.lynch@nelsonmullins.com](mailto:lauren.lynch@nelsonmullins.com)>; 'lydia.spry@nelsonmullins.com' <[lydia.spry@nelsonmullins.com](mailto:lydia.spry@nelsonmullins.com)>; Jamie Hood <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)>; Virginia Rogers <[virginia.rogers@hoodlaw.com](mailto:virginia.rogers@hoodlaw.com)>; Molly Craig <[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)>; Bobby Hood, Sr. <[bobby.hood@hoodlaw.com](mailto:bobby.hood@hoodlaw.com)>; Tina Gault <[tina.gault@hoodlaw.com](mailto:tina.gault@hoodlaw.com)>  
**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038 [GWB-IMANMAIN.FID103905]

Lindsay,

Thank you so much for the update and if you would please keep Meagan in the email chains that way we are both staying on top of things in case one of us is out. We should be in touch in the future to schedule the pending motions.

Thank you again and have a great weekend.

*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)

**From:** Lindsay Joyner <ljoyner@gwblawfirm.com>

**Sent:** Friday, March 29, 2019 10:44 AM

**To:** Addy, Frank R. Law Clerk (Meagan White) <faddyfc@sccourts.org>; John T. Lay <jlay@gwblawfirm.com>; Addy, Frank R. Secretary (Freda Sartin) <faddyfc@sccourts.org>; Stephanie Chickey <stephanie.chickey@hoodlaw.com>

**Cc:** robert.brunson@nelsonmullins.com; merritt.abney@nelsonmullins.com; Patrick.Wooten@nelsonmullins.com; 'bryson.geer@nelsonmullins.com' <bryson.geer@nelsonmullins.com>; john.hagerty@nelsonmullins.com; deirdre.mccool@nelsonmullins.com; Gray Culbreath <gculbreath@gwblawfirm.com>; John Hudson <jhudson@gwblawfirm.com>; 'John.Beach@arlaw.com' <John.Beach@arlaw.com>; lyndey.bryant@arlaw.com; 'Bennett@eckb.com' <Bennett@eckb.com>; scarborough@eckb.com; minfinger@barnwell-whaley.com; Melissa Urch <murch@gwblawfirm.com>; Linda Brewer <linda.brewer@arlaw.com>; Lauren Lynch <lauren.lynn@nelsonmullins.com>; 'lydia.spry@nelsonmullins.com' <lydia.spry@nelsonmullins.com>; Jamie Hood <james.hood@hoodlaw.com>; Virginia Rogers <virginia.rogers@hoodlaw.com>; Molly Craig <molly.craig@hoodlaw.com>; Bobby Hood, Sr. <bobby.hood@hoodlaw.com>; Tina Gault <tina.gault@hoodlaw.com>

**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038 [GWB-IMANMAIN.FID103905]

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Ms. White,

Thank you for your email. Since the email from Mr. Lay on March 8, several motions have been filed in this matter.

- On Monday, March 11, 2019, Mrs. Wellin and the Estate filed a Motion for Discovery Conference and Plan. We emailed a courtesy copy to Ms. Sartin along with the rest of the parties, but if you would prefer that we forward a hardcopy, please let me know, and we will do so.
- On March 15, 2019, the Wellin Children responded to that motion and also filed a motion to bifurcate the issue of quantum of damages based on attorneys' fees.
- On March 26, 2019, Mrs. Wellin filed a motion to compel discovery responses from Friendship Management, LLC.

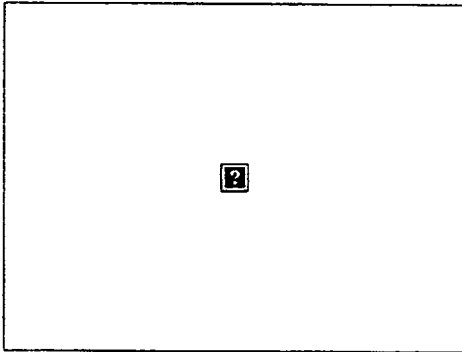
In addition to these newly filed motions and as reflected in the March 8 correspondence, the motions pending during the February 11 hearing, which included Mrs. Wellin's Motion for Protective Order, the Motion for Protective Order for Edward Bennett & Patricia Scarborough, the Estate's Motion for Protective Order as to Dr. Bachman, and the Estate's Motion to Bifurcate, remain pending as agreement could not be reached.

Finally, it is my understanding that the Clerk of Court in Charleston has forwarded Mrs. Wellin's Request for Entry of Default to Judge Addy. Following that request, the Wellin Children filed a Motion to Deny Entry of Default or in the alternative to Set Aside, so that motion is also pending.

Please let me know if you would like for us to send any of these motions to you directly or if there is anything else with which we can assist.

Thank you,  
Lindsay

Lindsay Anne Joyner



Partner  
[ljoyner@GWBlawfirm.com](mailto:ljoyner@GWBlawfirm.com)

**Gallivan, White & Boyd P.A.**

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**Mailing** Post Office Box 7368 | Columbia SC 29202

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**From:** Addy, Frank R. Law Clerk (Meagan White) [<mailto:faddylc@sccourts.org>]

**Sent:** Friday, March 29, 2019 9:53 AM

**To:** John T. Lay; Addy, Frank R. Secretary (Freda Sartin); Stephanie Chickey

**Cc:** [robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com); [merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com); [Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com); 'bryson.geer@nelsonmullins.com'; [john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com); [deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com); Gray Culbreath; John Hudson; Lindsay Joyner; 'John.Beach@arlaw.com'; [lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com); 'Bennett@eckb.com'; [scarborough@eckb.com](mailto:scarborough@eckb.com); [minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com); Melissa Urch; Linda Brewer; Lauren Lynch; 'lydia.spry@nelsonmullins.com'; Jamie Hood; Virginia Rogers; Molly Craig; Bobby Hood, Sr.; Tina Gault

**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038

Good morning,

It has been several weeks since we received the email below and we have not heard anything else about the status of this case. Could you all bring us up to speed where things stand as of today?

Thank you.

Meagan White

Law Clerk to the Honorable Frank R. Addy, Jr.  
Greenwood County Courthouse  
528 Monument Street, Ste. 210  
Greenwood, South Carolina 29646  
(864)943-8022

**From:** John T. Lay <[jlay@gwblawfirm.com](mailto:jlay@gwblawfirm.com)>

**Sent:** Friday, March 8, 2019 4:34 PM

**To:** Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Stephanie Chickey <[stephanie.chickey@hoodlaw.com](mailto:stephanie.chickey@hoodlaw.com)>; Addy, Frank R. Law Clerk (Meagan White) <[faddylc@sccourts.org](mailto:faddylc@sccourts.org)>

**Cc:** [robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com); [merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com); [Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com); 'bryson.geer@nelsonmullins.com' <[bryson.geer@nelsonmullins.com](mailto:bryson.geer@nelsonmullins.com)>; [john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com); [deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com); Gray Culbreath <[gculbreath@gwblawfirm.com](mailto:gculbreath@gwblawfirm.com)>; John Hudson <[jhudson@gwblawfirm.com](mailto:jhudson@gwblawfirm.com)>; Lindsay Joyner <[ljoyner@gwblawfirm.com](mailto:ljoyner@gwblawfirm.com)>; 'John.Beach@arlaw.com' <[John.Beach@arlaw.com](mailto:John.Beach@arlaw.com)>; [lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com); 'Bennett@eckb.com' <[Bennett@eckb.com](mailto:Bennett@eckb.com)>; [scarborough@eckb.com](mailto:scarborough@eckb.com); [minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com); Melissa Urch <[murch@gwblawfirm.com](mailto:murch@gwblawfirm.com)>;

Linda Brewer <[linda.brewer@arlaw.com](mailto:linda.brewer@arlaw.com)>; Lauren Lynch <[lauren.lynch@nelsonmullins.com](mailto:lauren.lynch@nelsonmullins.com)>;  
'lydia.spry@nelsonmullins.com' <[lydia.spry@nelsonmullins.com](mailto:lydia.spry@nelsonmullins.com)>; Jamie Hood  
<[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)>; Virginia Rogers <[virginia.rogers@hoodlaw.com](mailto:virginia.rogers@hoodlaw.com)>; Molly Craig  
<[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)>; Bobby Hood, Sr. <[bobby.hood@hoodlaw.com](mailto:bobby.hood@hoodlaw.com)>; Tina Gault  
<[tina.gault@hoodlaw.com](mailto:tina.gault@hoodlaw.com)>

**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038

Freda,

Thank you for the additional time to continue negotiations following the February 11 hearing on the motions for protective order of Edward G.R. Bennett, F. Patricia Scarborough, and Wendy C.H. Wellin. Unfortunately, at this time, no collective agreement has been reached.

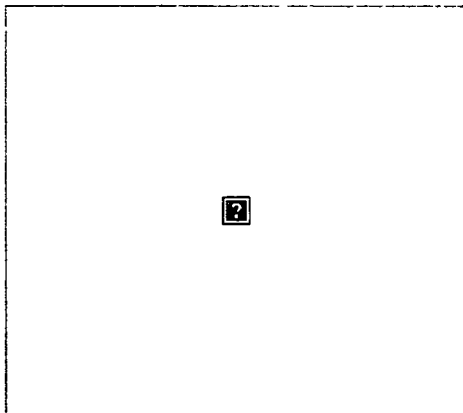
Also, Mrs. Wellin intends to file a motion for a status conference and request for a discovery plan to deal with all of these discovery issues globally rather than in the piecemeal fashion (including those currently before the court). We will file this motion Monday and will provide a copy of the motion to you and Judge Addy at that time.

We thank you and Judge Addy for your thoughtful attention to this matter.

I hope everyone has a great weekend.

With kind regards,

John T. Lay



**John T. Lay, Jr.**  
Partner  
[jlay@GWBlawfirm.com](mailto:jlay@GWBlawfirm.com)

**Gallivan, White & Boyd P.A.**  
Office 1201 Main Street | Suite 1200 | Columbia SC 29201  
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**From:** Addy, Frank R. Secretary (Freda Sartin) [<mailto:faddysc@sccourts.org>]  
**Sent:** Friday, February 22, 2019 11:25 AM  
**To:** Stephanie Chickey; Addy, Frank R. Law Clerk (Meagan White)  
**Cc:** [robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com); [merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com);  
[Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com); 'bryson.geer@nelsonmullins.com'; [john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com);  
[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com); John T. Lay; Gray Culbreath; John Hudson; Lindsay Joyner;  
'John.Beach@arlaw.com'; [lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com); 'Bennett@eckb.com'; [scarborough@eckb.com](mailto:scarborough@eckb.com);  
[minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com); Melissa Urch; Linda Brewer; Lauren Lynch; 'lydia.spry@nelsonmullins.com';  
Jamie Hood; Virginia Rogers; Molly Craig; Bobby Hood, Sr.; Tina Gault  
**Subject:** RE: Wellin, C/A No. 2014-CP-10-07038

Good morning,

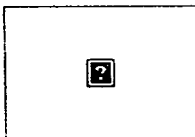
Judge Addy has asked that I respond to everyone and let you know that he will delay his ruling as requested.

Have a great weekend!

*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  
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**From:** Stephanie Chickey <[stephanie.chickey@hoodlaw.com](mailto:stephanie.chickey@hoodlaw.com)>  
**Sent:** Wednesday, February 20, 2019 3:35 PM  
**To:** Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Addy, Frank R. Law Clerk (Meagan White) <[faddytc@sccourts.org](mailto:faddytc@sccourts.org)>  
**Cc:** [robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com); [merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com); [Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com); 'bryson.geer@nelsonmullins.com' <[bryson.geer@nelsonmullins.com](mailto:bryson.geer@nelsonmullins.com)>; [john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com); [deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com); [ilay@gwblawfirm.com](mailto:ilay@gwblawfirm.com); 'gculbreath@gwblawfirm.com' <[gculbreath@gwblawfirm.com](mailto:gculbreath@gwblawfirm.com)>; [jhudson@GWBlawfirm.com](mailto:jhudson@GWBlawfirm.com); 'ljoyner@GWBlawfirm.com' <[ljoyner@GWBlawfirm.com](mailto:ljoyner@GWBlawfirm.com)>; 'John.Beach@arlaw.com' <[John.Beach@arlaw.com](mailto:John.Beach@arlaw.com)>; [lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com); 'Bennett@eckb.com' <[Bennett@eckb.com](mailto:Bennett@eckb.com)>; [scarborough@eckb.com](mailto:scarborough@eckb.com); [minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com); [murch@gwblawfirm.com](mailto:murch@gwblawfirm.com); 'linda.brewer@arlaw.com' <[linda.brewer@arlaw.com](mailto:linda.brewer@arlaw.com)>; [lauren.lynch@nelsonmullins.com](mailto:lauren.lynch@nelsonmullins.com); 'lydia.spry@nelsonmullins.com' <[lydia.spry@nelsonmullins.com](mailto:lydia.spry@nelsonmullins.com)>; Jamie Hood <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)>; Virginia Rogers <[virginia.rogers@hoodlaw.com](mailto:virginia.rogers@hoodlaw.com)>; Molly Craig <[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)>; Bobby Hood, Sr. <[bobby.hood@hoodlaw.com](mailto:bobby.hood@hoodlaw.com)>; Tina Gault <[tina.gault@hoodlaw.com](mailto:tina.gault@hoodlaw.com)>  
**Subject:** Wellin, C/A No. 2014-CP-10-07038

**Stephanie Chickey**  
Legal Secretary  
[Stephanie.Chickey@hoodlaw.com](mailto:Stephanie.Chickey@hoodlaw.com)





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EXHIBIT C

From: Patrick Wooten
To: John T. Lay; James Hood; John Beach; Marvin Infinger; Lindsay Joyner; Gray Culbreath; John Hudson; Virginia Flood; Lyndey Bryant; M. Dawes Cooke
Cc: Robert Brunson; Merritt Abney
Subject: motion for a continuance
Date: Sunday, June 09, 2019 12:11:03 PM

All:

As explained in our petition for a writ of supersedeas filed on Friday, we do not believe the circuit court has jurisdiction to have a trial in light of the appeal. Nevertheless, we plan to file a motion for a continuance of trial with the circuit court tomorrow that asks the circuit court to continue the trial until after Keith Plum's wedding on June 28. (If the trial were held during the weeks of June 17 and June 24, it seems likely that the jury verdict would come down during Keith's wedding ceremony, which our clients of course were planning to attend.) Please let us know if you consent to the court continuing the trial until after Keith Plum's wedding.

Note that we also intend to argue in the motion that the trial should be continued for other reasons (including the automatic stay), but if you consent to the trial being continued until after Keith Plum's wedding, we could state in the motion that you are only consenting to a continuance until the next term of court after Keith Plum's wedding and are not consenting to a continuance on any other grounds.

Because of the time sensitive nature of this, we plan to file this motion at noon tomorrow. If we do not hear back from you before then, we will state in the motion that we have attempted to confer but are still waiting to hear back and filed the motion before hearing back because of the time sensitive nature of the motion.

Thanks for your consideration.



PATRICK C. WOOTEN PARTNER
patrick.wooten@nelsonmullins.com
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151 MEETING STREET | CHARLESTON, SC 29401
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EXHIBIT D

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,)
)
Petitioner,)

Civil Action No. 2014-CP-10-07038

vs.)

THE WELLIN CHILDREN'S
MOTION FOR A CONTINUANCE
OF TRIAL

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)

FILED
2019 JUN 10 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT

I. The Wellin Children move the Court to continue the trial until after Keith Plum's wedding on June 28, 2019.

Pursuant to Rule 40(i) of the South Carolina Rules of Civil Procedure, Peter J. Wellin, Cynthia Wellin Plum, and Marjorie Wellin King (the "Wellin Children") move the Court to issue an Order continuing the trial in this matter until after Keith Plum's wedding, which is being held in Colorado on June 28, 2019. Keith Plum, Keith Wellin's only namesake, is the only son of Keith Wellin's oldest child Cynthia Plum and her husband Sam, and he is the first of their two children to be married. Keith's rehearsal dinner is on Thursday, June 27, 2019, and his wedding is on Friday, June 28, 2019. The rehearsal dinner and wedding have been planned for these dates for approximately ten months, and the Wellin Children and their families had all planned to attend. Each of the Wellin Children is a party and key witness to this litigation, and after six years of this highly emotional litigation, each of the Wellin Children had planned to testify in, and be present for the entirety of, any trial of this matter. Further, Keith Plum is a potential witness for the Wellin Children with respect to the relationships between Keith Wellin and his children and grandchildren, among other things.¹

If the Court holds the trial during the weeks of June 17 and June 24, 2019, as the Court recently informed the parties it intends to do, Cynthia Plum and her siblings will be forced to choose whether to participate in the trial or miss Keith Plum's rehearsal dinner and wedding. Further, having the trial of this emotionally charged six-year-old family dispute come to a close and a jury verdict on the very day that Keith Wellin's namesake is married would be a significant

¹ Keith Wellin's other seven grandchildren also support the Wellin Children in this litigation, and all eight grandchildren are represented by Duffy & Young for purposes of the federal and state court litigation. Keith Plum, however, has served as the spokesperson and face of Keith's eight grandchildren, and he is the only grandchild who intervened in (and remains a party to) the related federal litigation, in which he fully supports the position of the Wellin Children.

hardship on, and extremely upsetting for, Keith Plum, Cynthia Plum and her husband Sam, and the rest of the Wellin family, and would place a black cloud over the wedding for now and into the future. Indeed, if the Court proceeds with a trial ending on June 28, as it has stated its intention to do, it is reasonably likely that the jury will return a verdict as Cynthia Plum is watching her first child get married.

Under these circumstances, the Wellin Children respectfully submit that good and sufficient cause exists for a continuance until the next term of Court, and the Wellin Children respectfully request that the Court rule on this motion expeditiously. This motion is not being filed for purposes of delay, and granting this motion would not cause prejudice to any party. Pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure, the Wellin Children affirm that they have attempted to confer with opposing counsel regarding the relief requested in this motion prior to filing it, but opposing counsel has not responded to the request for consent.²

II. The Wellin Children's response to certain portions of the Court's letter dated May 17, 2019, to the Chief Judge of the South Carolina Court of Appeals

Last week, the Wellin Children accidentally discovered on the Court of Appeals online docket the letter dated May 17, 2019, that this Court sent to the Honorable James E. Lockemy, Chief Judge of the South Carolina Court of Appeals. *See* Letter to Judge Lockemy (attached hereto as **Exhibit A**). In the letter, the Court states that the parties to this action have been aware since January that the Court's intention was to try this case during the final two weeks of June. Neither the undersigned nor the other counsel for the Wellin Children are aware of the Court notifying the

² The Wellin Children's counsel requested consent from all opposing counsel yesterday around noon and requested that they respond by today at noon but has not yet heard back from any of the opposing counsel. Because of the time sensitive nature of this motion, the Wellin Children are filing this motion prior to receiving a response and will notify the Court in the event any of the other parties inform the Wellin Children's counsel of their consent.

parties in January—or at any time prior to the Court’s email dated June 4, 2019—of the weeks when the trial would be held. In the Court’s Order entered on May 15, 2019, the Court stated that the trial would be limited to two weeks and stated (for the first time as far as the Wellin Children’s counsel are aware) that the trial would “take place in June of this year,” but the Order did not identify the weeks in June when the trial would be held.³ Further, on March 11, 2019, Wendy Wellin and the Estate filed a joint Motion for Discovery Conference and Plan Pursuant to Rule 26(f), SCRCP, and asked the Court to, among other things, issue a schedule that included the following deadlines: expert disclosures on May 1, 2019; dispositive motions on June 1, 2019; motions in limine thirty days prior to trial; and a trial not before June 1, 2019. On March 15, 2019, the Wellin Children filed a response to this motion and argued, among other things, that Wendy’s request that the Court set a trial date was premature. This motion remains pending and has never been scheduled for a hearing.

The Court also states in its letter that the Wellin Children’s appeal “may be little more [than] an effort to delay this matter further.” But this simply is not the case. For the reasons explained in the Wellin Children’s Return to Respondents’ Motions to Dismiss the Appeal filed with the South Carolina Court of Appeals regarding appealability, attached hereto as **Exhibit B**, the Court’s Order entered on May 15, 2019, is immediately appealable for, *inter alia*, the same reasons the South Carolina Supreme Court found the trial court’s bifurcation order to be immediately appealable in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015). Further, where an order is immediately appealable as

³ Upon information and belief, counsel for the other parties also were unaware of a 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 court. In fact, counsel for the Estate informed the court by email on June 5, 2019, that he was already scheduled to try another case during the weeks of June 10 and June 17, and is therefore not available to begin trial on June 17.

affecting a substantial right, the order *must* be immediately appealed or else the right to appeal is waived forever. *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). In sum, the Wellin Children are seeking a full and fair trial where they are permitted to fully present their claims against Wendy to a jury, and they are seeking to preserve their appellate rights; they do not seek to delay these proceedings any more than is necessary to achieve this outcome.

III. Additional Grounds for Continuing the Trial

In addition to the wedding of Keith Plum, which is the primary basis for the Wellin Children's motion for a continuance, there are other compelling reasons to continue this trial until the next available term of Court or later.

First, the Notice of Appeal filed by the Wellin Children automatically stayed any trial in this action, and this Court lacks jurisdiction to have a trial where the Court's order regarding the trial has been appealed. *See* Rules 205 & 241(a), SCACR; *see also 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."). In *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015), the plaintiffs appealed the circuit court's order granting a motion to bifurcate. The defendants moved to dismiss the appeal on the ground that bifurcation orders are not immediately appealable, and the Court of Appeals agreed, dismissing the appeal as interlocutory. *See id.*, 412 S.C. at 535, 773 S.E.2d at 144. Nearly three years later, the South Carolina Supreme Court reversed the Court of Appeals and held that the order was immediately appealable. *See id.* Notably, the circuit court in *Morrow* did not proceed with the first phase of trial while its bifurcation order was on appeal—or even after the South Carolina Court of Appeals dismissed the appeal as interlocutory. Rather,

the circuit court honored the automatic stay and waited to move forward with the trial unless and until the matter was remitted to the circuit court by the Court of Appeals or the Supreme Court. Had the circuit court moved forward with trial—either based on its own belief that the order was not immediately appealable, or after the Court of Appeals issued its ruling that the order was not immediately appealable—then the trial would have been a nullity and would have resulted in a tremendous waste of resources for the parties and the court. The South Carolina Appellate Court Rules do not permit the circuit court to make its own determination as to whether its order that has been appealed is immediately appealable and then proceed with matters decided in its order if it believes that the order is not likely immediately appealable. Such a practice would invade the province of the Court of Appeals and make no sense.⁴

Second, the Wellin Children have filed a Petition for a Writ of Supersedeas with the South Carolina Court of Appeals seeking an Order preventing this Court from proceeding with trial unless and until this matter is remitted to the circuit court. *See* Petition for Writ of Supersedeas (attached hereto as **Exhibit C**). The Wellin Children respectfully submit that this Court should wait until after the South Carolina Court of Appeals and, if necessary, the South Carolina Supreme Court, rules on this Petition before holding a trial.⁵

⁴ The Wellin Children contend that the currently-pending appeal of this Court's order limiting and restricting the mode of trial, effect of trial, and other substantial rights relating to the contemplated trial on June 17, 2019, automatically divests this Court of jurisdiction to conduct the trial. In the alternative, and without waiving and expressly reserving that position, the Wellin Children are moving this Court for a continuance of trial. The Wellin Children reserve all objections and arguments regarding the trial and pre-trial proceedings in this action.

⁵ As explained in the Petition, the Wellin Children filed the Petition directly with the Court of Appeals because this Court had already indicated that it intended to proceed with trial despite the appeal and because of the very short time period before the date the Court indicated that it intends to start the trial.

Third, Professor Nathan Crystal, who is one of the Wellin Children's retained experts, is not available to testify at a trial held during the weeks of June 17 and June 24 because he will be travelling out of the country throughout that time period. *See* Affidavit of Robert Brunson (attached hereto as **Exhibit D**), at ¶ 4. Professor Crystal's anticipated testimony and opinions in this action, as detailed in his expert reports and depositions in the related federal litigation, relate to, among other things: the legal nature of the relationship between Keith Wellin and Wendy Wellin; the ways in which Keith placed his trust and confidence in Wendy; and the ways that Wendy, in 2013, took advantage of Keith and exploited her relationship of trust and confidence for her own financial benefit by, among other things, facilitating a transfer of \$25 million from Keith to herself mere days after Keith made his first purported revision to his revocable trust in 2013, and mere days before Keith sued his children alleging that they (not Wendy) were a threat to his financial solvency. *Id.* ¶ 6. Professor Crystal also has opinions with respect to the legal relationships between Keith Wellin and his three children, whether those relationships were fiduciary in nature, and whether the Wellin Children fulfilled any fiduciary duties to their father that may have existed. *Id.* The Wellin Children contend that Keith's belief that his children stole from him was a false belief that is evidence of a lack of capacity and undue influence. *Id.* Thus, Professor Crystal's anticipated testimony and opinions in this action are highly relevant and material to the issues of, among other things, whether Keith was susceptible to undue influence by Wendy based on their relationship of trust and confidence; whether Wendy engaged in tactics frequently associated with undue influence, such as exploiting her relationship of trust and confidence for her own benefit; and whether Keith's belief that his children stole from him is evidence of diminished capacity. *Id.* ¶ 7. In light of Professor Crystal's unavailability during the weeks of June 17 and June 24, and in light of the material nature of his testimony and the inability of the Wellin Children to go safely to trial

without his testimony, the Wellin Children respectfully submit that the Court should continue the trial of this matter until at least the next term of Court pursuant to South Carolina Rule of Civil Procedure 40(i)(2). *Id.* ¶ 8. This motion is not being filed for purposes of delay. *Id.* ¶ 9.

Fourth, the Wellin Children are in the midst of drafting responses to eighteen dispositive motions filed by the opposing parties in the related federal litigation. Many of these motions are more than twenty-five or thirty pages in length and raise numerous complex issues of fact and law. The Wellin Children's deadline to file their responses to these motions is July 1, 2019, which would be the Monday after this trial finishes. This deadline has already been extended twice. The Wellin Children's counsel cannot both fully prepare for and try this case while also fully preparing responses to all eighteen of these lengthy dispositive motions.

Fifth, despite the Wellin Children's request, the Court has never held a hearing on the appropriate length of trial. As argued in more detail in the Wellin Children's Return to Respondents' Motions to Dismiss the Wellin Children's Appeal—and as previously argued in the Wellin Children's Memorandum in Support of their Motion for a Status Conference and Scheduling Order—the Court should not set the trial length without considering the anticipated number of witnesses, their anticipated length of testimony, and other factors affecting the expected length of trial. *See* Wellin Children Return (attached hereto as **Exhibit B**), at 18-23. Setting the trial length without considering these factors violates the parties' constitutional due process rights by, among other things, depriving the Wellin Children of a mode of trial to which they are entitled, effectively denying them a jury trial, and granting potential judgment on claims never presented to the jury. *See id.* The Wellin Children incorporate by reference the arguments set forth in their Return regarding this issue, *see id.*, and set forth in their Memorandum in Support of their Motion for a Status Conference and Scheduling Order.

Sixth, the parties have not completed discovery in this action. In its May 15, 2019 Order, the Court denied Wendy's motion for protective order with respect to her deposition and ordered that the Wellin Children may depose Wendy for up to six hours. The Court also denied the Estate's motion for protective order with respect to the Wellin Children's subpoena to Dr. Bachman, who examined Keith during the relevant time period, and held that Dr. Bachman must respond to the Wellin Children's subpoena. The Estate, who upon information and belief is handling the response to Dr. Bachman's response to the Wellin Children's subpoena, has not responded to the subpoena to Dr. Bachman, and Wendy's counsel has taken the position that the Wellin Children's filing of a Notice of Appeal stays all discovery, including Wendy's deposition.

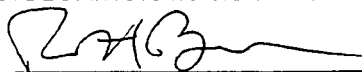
Seventh, because the Court informed the parties on June 4, 2019, that the truncated trial would begin in thirteen days, the parties have not had a chance to draft or file pretrial motions, such as motions *in limine* or *Daubert* motions, mark and exchange witness and exhibit lists, disclose and discover expert opinions to be offered at trial, or otherwise prepare for this truncated trial, which they learned the Court intended to have on May 15, 2019, and which they reasonably believed to be stayed between May 16, 2019, and June 4, 2019, when the Court informed the parties that it did not intend to honor the automatic stay.

Finally, the Court stated in its May 15, 2019 Order that it would issue "a future order concerning the allocation of available time," but the Court still has not issued this Order—or solicited input from the parties regarding allocation of time—a mere seven days before it intends to start trial. The Wellin Children respectfully submit that the Court should continue the trial so that the Court can inform the parties how long they will have to present their case with sufficient notice to prepare for trial, particularly where the trial is not of all the issues but rather is only of certain hand-picked issues that the Court identified for the first time on May 15, 2019.

IV. Conclusion

The Wellin Children only seek a full and fair trial. For all of the foregoing reasons, the Wellin Children respectfully request that the Court issue an Order continuing the trial of this matter until the next term of court or later.

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Attorneys for the Wellin Children

June 10, 2019
Charleston, South Carolina

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 FOR A CONTINUANCE OF TRIAL**

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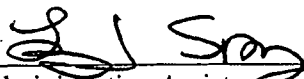
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Administrative Assistant

June 10, 2019

EXHIBIT A



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.
Judge

Greenwood County Courthouse
528 Monument Street, Suite 210
Greenwood, SC 29646
Phone: (864) 943-8020
Fax: (864) 942-8581
faddyj@sccourts.org

May 17, 2019

The Hon. James E. Lockemy
Chief Judge, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

MAY 20 2019

SC Court of Appeals

Re: Appeal in Wellin v. Wellin

Dear Judge Lockemy,

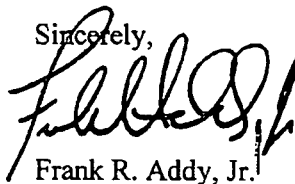
I became aware of the enclosed notice of intent to appeal in the above case today. Last year, I was assigned to handle all matters concerning it. To the extent the concerns expressed in this letter are not germane or appropriately communicated to you, please disregard this letter because I have no opinion concerning the merits of any appeal which may be taken.

Please understand that this is one of the oldest cases on the docket in Charleston, and it has a companion federal case which has been pending for years as well. 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.

Although I cannot speak to the issues they intend to raise, I do believe this appeal may be little more an effort to delay this matter further. Please do understand that this is an estate of incredible worth, and per Judge Norton in Charleston, substantial attorney's fees are already involved.

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. Should you desire to speak with me, I can be reached on my cell at (864) 992-2144.

Sincerely,



Frank R. Addy, Jr.

Enclosure

EXHIBIT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

RECEIVED

JUN 07 2019

SC Court of Appeals

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

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

APPELLANTS' RETURN TO
RESPONDENTS' MOTIONS TO DISMISS¹

Pursuant to Rule 240, SCACR, and in response to the Clerk's letter dated May 23, 2019 requesting memoranda regarding the appealability of the orders challenged on appeal, Appellants file this Return to the various Respondents' Motions to Dismiss. Those motions should be denied because the matters challenged in this appeal are properly before this Court. Appellants' Notice of

¹ Appellants request the Court to permit this Return to serve also as Appellants' memorandum in response to the Clerk's letter of May 23, 2019 requesting memoranda addressing the appealability of the Orders Appellants have challenged on appeal.

Appeal challenges three of the circuit court's orders: (1) an order that, among other things, set a truncated two-week trial in which Appellants may not assert their claims and the jury may not consider them, but which the circuit court nevertheless intends to be dispositive of certain of their claims; (2) an order granting one Respondent's motion to lift a stay in this case; and (3) an order denying Appellants' motion to reinstate a stay in this case. As explained more fully below, the first of these three orders is immediately appealable because it deprives Appellants of substantial rights, deprives them of a mode of trial to which they are entitled, denies them the right to be the architects and masters of their case, and limits the relief available to them. The latter two orders may also be considered on appeal to conserve the resources of the lower court and the litigants by avoiding later, unnecessary litigation.

RELEVANT FACTUAL AND PROCEDURAL BACKGROUND²

This appeal arises from a dispute over a multi-hundred million dollar estate left by the decedent Keith S. Wellin ("Keith"). Appellants are Keith's three adult children of his first wife: Peter J. Wellin, Cynthia Plum, and Marjorie King (collectively "the Wellin Children" or "Appellants"). Respondents include Wendy C.H. Wellin ("Wendy"), who was Keith's fourth wife and is the Special Administrator of the Estate, her two daughters, and Hamilton College.

Keith amassed substantial wealth during his lifetime and made extensive arrangements to convey the bulk of his estate to his children, with whom he had always had a close and loving relationship. In the summer of 2013, however, Keith, who was then in very poor health, became convinced that his children had "stolen" millions of dollars from him. Subsequently, Keith sued his children multiple times in various venues and largely disinherited them. With various lawsuits

² A more complete recitation of the facts is set forth in *Wellin et al. v. Wellin*, Ct. App. Op. No. 5608 (May 29, 2019), available at 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a dispute between the same parties.

still ongoing in federal court, Keith died on September 14, 2014. The next day, Wendy submitted his final will (dated June 27, 2014) for probate in the Probate Court for Charleston County. On October 20, 2014, the Wellin Children removed the probate action to the circuit court and counter-petitioned the circuit court to probate the 2011 version of Keith's will because the subsequent versions were executed at times when Keith lacked capacity and was subject to Wendy's undue influence. At the same time, the Wellin Children sued Wendy in federal court for various tort and breach of contract claims seeking damages arising from, among other things, Keith's decisions in the final year and a half of his life to sue and disinherit his children, to transfer nearly \$30 million dollars of assets *inter vivos* to Wendy, and to attempt to undo much of his prior transfers of wealth to his children.³

The Wellin Children's challenges to the validity of Keith's estate planning documents on the grounds of incapacity and undue influence are based on virtually the same evidence as the Wellin Children's tort and breach of contract claims against Wendy. In short, the Wellin Children are challenging the validity of Keith's estate planning documents on the grounds that Wendy convinced Keith—when his capacity was diminished—that his children stole from him, and the Wellin Children assert various tort and breach of contract claims against Wendy based on essentially this same theory, but with damages arising not from the will—which passed nothing—but from *inter vivos* transfers Keith made, revisions to his non-probate revocable trust, and other actions Keith took to harm the financial well-being of his children and grandchildren.

³ These claims 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. It is important to note that the claims against Wendy seek damages for actions that are unrelated to Keith's will which is being probated. The will passed no assets, and the estate has little or no assets.

In light of the pending federal court action between the Wellin Children and Wendy, the circuit court issued an order on July 6, 2015 granting the Wellin Children's motion to stay the state court action, ruling: "In the absence of a stay, the parties would be forced to litigate the overlapping issues in this action and in the Federal Action, which would create the risk of inconsistent judgments and waste the resources of this Court and the parties." *See* Order at 2–3 (attached as **Exhibit A**). While the state court action was stayed, the federal suit moved steadily toward trial. In the federal action, the parties have taken more than 120 depositions, disclosed more than two dozen expert witnesses, and had dozens of hearings and status conferences before Judge Norton and the Special Master to assist with the extensive motions practice. More than 2,000 ECF entries have been entered in the federal litigation.

On June 30, 2017, Wendy as Special Administrator ("the Estate") filed a motion to lift the stay in the state circuit court action. The circuit court subsequently granted the motion over the Wellin Children's objections. The Wellin Children, concerned about potential preclusive effect on their claims against Wendy should the state court proceed to trial first, subsequently sought and obtained an order allowing them to amend their pleading in the state circuit court action to assert counterclaims against Wendy that mirror the claims they are asserting against her in federal court. Since the stay was lifted, the Estate, Wendy, and Hamilton College have aggressively pursued a strategy to procure a partial trial in the state circuit court focused solely on the issues of whether Keith lacked capacity and was under undue influence when he executed his final will and trust on June 27, 2014—that is, the issues with the most difficult burden for the Wellin Children—with the express intention of using the outcome in the partial trial to preclude the Wellin Children from pursuing their tort and breach of contract claims against Wendy in the state and federal court actions—that is, the claims with the most favorable burden for the Wellin Children.

On May 2, 2018, the Wellin Children again moved to stay the state court action pending the outcome of the federal litigation, on the grounds that, among other things, Judge Norton had capably handled the federal litigation for five years and was intimately familiar with the issues in this litigation, whereas no state court judge had any familiarity with this litigation. On August 22, 2018, Judge Addy, who was serving as a visiting judge hearing motions in the Ninth Circuit Court of Common Pleas, heard and denied the Wellin Children's motion to stay based primarily on the age of the case. Although the length and mode of trial was not before him, Judge Addy stated at the hearing on the motion to stay that he would recommend to Judge Young, the Chief Administrative Judge, that the trial of this action be limited to two weeks. As Judge Addy acknowledged, however, his recommendation was not based on the anticipated number of witnesses, the anticipated length of their testimony, or any other facts bearing on the expected length of trial—indeed, Judge Addy did not have any of this information—but rather was based on his belief that limiting the trial to two weeks would drive the parties to settle. *See* Hearing Tr. at 31:9 to 32:6 (Aug. 22, 2018) (attached as **Exhibit B**). Judge Addy also stated that, while federal judges might be willing to try the case for eight weeks, no state court judge would be willing to try the case for this long. *Id.* at 12:14-19. The next day, Judge Addy signed a Form 4 Order denying the Wellin Children's motion to stay, and he handwrote in the margin of the Order: "No further delays in this case. Chief Admin judge should set for trial (2 weeks max) as soon as practicable." Order (attached as **Exhibit C**).

On December 4, 2018, the Chief Justice assigned Judge Addy to the state court Wellin case. On February 12, 2019, Judge Addy held a hearing on a number of pending motions, including (i) the Wellin Children's motion for a status conference and scheduling order, which requested

Judge Addy hold a hearing regarding the appropriate length of trial based on the facts of this case, and (ii) the Estate's "Motion to Bifurcate or for Separate Trial of Validity Issues."

In its memorandum in support of its motion to "bifurcate" trial, the Estate (*i.e.*, Wendy) asked the Court to hold a trial only on the claims that present the Wellin Children with the most onerous burden of proof—namely, the claims relating to whether Keith's will and revocable trust are invalid by virtue of incapacity or undue influence. *See* Memorandum in Support of Motion to Bifurcate (attached as **Exhibit D**). The truncated trial of severed claims the Estate requested would not include the Wellin Children's tort and breach of contract counterclaims against Wendy which, though based on the same evidence, have a lower standard of proof. The Estate argued that severing the claims in this way would "streamline" the remainder of the case and that the first trial (with the more onerous standard for the Wellin Children) "could be dispositive of the entire case." *Id.* at 7. Further, the Estate argued in its memorandum that the severed trial with the more onerous burden for the Wellin Children could be dispositive of "the Wellin Children's individual tort claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith and his estate planning." *Id.* at 8. Likewise, Wendy's counsel argued at the hearing on the motion that, if Wendy and the Estate are successful during the severed trial, "it eviscerates the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy. *See* Hearing Tr., at 27:25–28:1 (Feb. 11, 2019) (attached as **Exhibit E**). Finally, although South Carolina law provides that "[a] trial should be bifurcated only if the issues are *so distinct* that trial of each alone would not result in injustice," *Creighton v. Coligny Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998) (emphasis added), the Estate attempted to turn this law on its head, arguing that the Court should bifurcate because the issues to be bifurcated are *not distinct from*—but, instead, permeate—the remaining claims. *See id.* at 8:17–19 (arguing the Court should bifurcate because

“Keith Wellin’s capacity and issues surrounding the same permeate the claims between the parties in both this action in state court and also the federal court litigation”).

In opposing the Estate’s motion, the Wellin Children argued the Court should not sever the issues of capacity and undue influence because the Wellin Children’s tort and breach of contract claims against Wendy are based on the same evidence as the Wellin Children’s challenges to Keith’s estate planning documents on incapacity and undue influence grounds.⁴ See Memorandum in Opposition (attached as **Exhibit F**). Further, the Wellin Children argued that severing the trial in the way proposed by the Estate could only have two potential outcomes: (1) in the second trial, all the same evidence from the first trial is introduced again, resulting in a colossal waste of resources, or (2) in the second trial, Wendy will argue, as she did successfully in support of the motion, the Wellin Children are precluded from pursuing their claims against Wendy or from introducing the evidence relevant to those claims. Thus, the Wellin Children argued, the Estate’s proposed mode of trial is either (1) massively inefficient or (2) massively prejudicial to the Wellin Children’s right to pursue their claims against Wendy.

Judge Addy took the Estate’s motion under advisement. At the hearing, however, he made clear that he would not sever the issue of undue influence from the Wellin Children’s claims against Wendy because of the extent to which the issue of undue influence is overlapping with the Wellin Children’s claims against Wendy. See **Exhibit E** at 41:16–17 (stating “I wouldn’t be

⁴ The South Carolina District Court, applying Federal Rule of Civil Procedure 42 on bifurcation, which is substantially identical to South Carolina Rule of Civil Procedure 42, has held that separability of the issues “constitutes a threshold inquiry” on a motion to bifurcate, and “the issues must be truly separable before separate trials can be ordered without the risk of untoward consequences.” *Dodgeland of Columbia, Inc. v. Federated Mut. Ins. Co.*, No. CV 3:09-1190-JFA, 2009 WL 10710815, at *2 (D.S.C. July 15, 2009). Further, “bifurcation is ‘improper where the issues are so closely interwoven that plaintiff would have to present the same evidence twice in separate trials. In such circumstances, judicial economy is fostered by a single trial.’” *Id.* (quoting 8 Moore’s Federal Practice 3d § 42.20[7][c]).

bifurcating undue influence because that's the crux of your case."); *id.* at 41:25 – 42:2 (stating to the Wellin Children's counsel: "So if you're talking or worried about undue influence, hey, we're not going to have any evidence of undue influence [in the bifurcated trial]"). Indeed, Judge Addy recognized how devastating to the Wellin Children it would be if he severed undue influence from the Wellin Children's claims against Wendy, stating:

But if I were to do that – you know, if I were to bifurcate, I wouldn't lift [undue influence from the remainder of the case] because that means they'll do it in one step and it has an effect. *That's your entire case.*

Id. at 42:23 – 43:1 (emphasis added).⁵

Notwithstanding Judge Addy's assurance at the hearing that he would not bifurcate the issue of undue influence from the Wellin Children's claims against Wendy, Judge Addy issued an Order on May 15, 2019, doing just that. In its Order, the circuit court stated:

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

Order at 4 (attached as **Exhibit G**). Moreover, in the Order, the circuit court declined to hold a hearing to determine the length of trial that would be needed to permit the parties to adequately present their evidence and pursue their claims. Instead, the court imposed an arbitrary two-week cap on the length of trial and stated it would begin at an unspecified date in June 2019. Stated differently, the Order sets a trial in which the parties are to submit all the evidence (or at least

⁵ The circuit court also stated that, if the parties did not waive their right to a jury trial, "we're not going to bifurcate." **Exhibit E** at 25:25 – 26:1. He then said that this was only his "initial default setting" and that "perhaps . . . we would" bifurcate a jury trial. *Id.* at 26:3–4.

however much they can squeeze into a two-week trial) relating to Keith's estate plan and the changes to it, but the jury will be permitted to decide *only* the two issues that present the Wellin Children with the most onerous standard of proof—Keith's capacity and Wendy's undue influence—and not their tort and breach of contract claims against Wendy that are subject to a lower standard of proof.

Even worse, the circuit court stated this severed, truncated trial will likely dispose of at least some of the Wellin Children's claims, which would not be presented to the jury in the initial phase. *See id.* at 4 (stating this phasing of trial is intended to "promote convenience, efficiency, and economy" and that the "resolution of these issues will likely result in resolution of much of the federal litigation").⁶ Of course, severing the issues in this manner will promote efficiency and economy *only* if the first phase of trial has a preclusive effect on the remaining claims. That is, if the circuit court intended to permit the Wellin Children to fully pursue their claims against Wendy during the second phase of trial regardless of the outcome of the first phase of trial, then the circuit court could not possibly have found that the bifurcation will "promote convenience, efficiency, and economy."

Upon receiving the Court's May 15, 2019 Order, the Wellin Children immediately appealed lest their ability to appeal be lost forever.⁷

⁶ The claims the Wellin Children are pursuing against Wendy in the federal litigation are precisely the same claims the Wellin Children are pursuing against Wendy in the state litigation.

⁷ *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 it later); *Creed v. Stokes*, 285 S.C. 542, 331 S.E.2d 351 (1985) (holding the failure to immediately appeal a ruling affecting the mode of trial and a substantial right meant the appeal was waived); *Bateman v. Rouse*, 358 S.C. 667, 675, 596 S.E.2d 386, 390 (Ct. App. 2004) (purpose of immediate appeal on right to particular mode of trial is to preserve party's constitutional right to jury trial which would otherwise be lost).

ARGUMENTS

I. The May 15, 2019 Order setting a truncated trial in which the Wellin Children may not pursue their claims but may nevertheless lose them is immediately appealable.

The appealability of an interlocutory order is governed primarily by S.C. Code Ann. § 14-3-330, which permits the immediate appeal of certain interlocutory orders, including those involving the merits, affecting a substantial right, or effectively striking out a portion of a pleading:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

* * *

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.

S.C. Code Ann. § 14-3-330.⁸ The Supreme Court has explained that subsection 14-3-330(2) permits the immediate appeal of orders affecting the “mode of trial,” including orders that deny or limit a party’s jury trial right, orders that prevent a party from trying a case using counsel of their choosing, and orders that limit a party’s ability to be the master and architect of its own case. *See, e.g., Hagood v. Sommerville*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (collecting cases); *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146 (2015). As explained more fully in the arguments that follow, the circuit court’s Order dated May 15, 2019 is such an order and is immediately appealable on the basis of at least two of the rulings contained therein, either of which is sufficient to allow an immediate appeal of the order.

⁸ The Court of Appeals’ jurisdiction to consider appeals from interlocutory orders is the same. *See* S.C. Code Ann. § 14-3-330.

- A. The circuit court's "bifurcation" ruling, just like the one in *Morrow*, is immediately appealable because it would deprive the Wellin Children of a substantial right.

Garden-variety bifurcation orders typically are not immediately appealable. The circuit court's "bifurcation" in this suit, however, is no ordinary bifurcation order. Indeed, the Order in this case is not even a bifurcation order because it does not define a second phase, only a single truncated trial on severed claims. It is analogous to the order in *Morrow*, in which the Supreme 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 their substantive right to be the architects of their case. *See Morrow*, 412 S.C. at 539, 773 S.E.2d at 146,

In *Morrow*, the plaintiffs sued a nursing home and its parent companies for injuries sustained by Mr. Morrow. Plaintiffs alleged the parent companies were vicariously liable for the nursing home's alleged negligence *and* were directly liable for their own alleged wrongdoing in underfunding the nursing home. The trial court ordered a "bifurcated" trial with a first phase in which only "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." *Morrow*, 412 S.C. at 536, 773 S.E.2d at 145.

The Morrows appealed, and the Supreme Court ruled the trial court's order—though it was styled as one for bifurcation—was immediately appealable because it "affects a substantial right." *Id.* at 538, 773 S.E.2d at 146. Specifically, the Supreme Court focused on the trial court's express intent and erroneous belief that the first phase of trial could and should resolve other claims that were not asserted in that trial or considered by that jury and which were not derivative of the claims that actually were pursued and resolved by the jury:

By considering the Morrow's claims against the [parent companies] as dependent upon their claim against Magnolia Place, the trial court's order effectively grants the [parent companies] potential summary judgment on the issues of direct corporate liability.

Accordingly, we find the trial court's order fits neatly within the statutory provision allowing immediate appeals where a substantial right is implicated. S.C. Code Ann. § 14-3-330(2)(a). The effect of this order is to prevent the Morrows from being architects of their own complaint, and deprives them of bringing their case against the defendant of their own choosing.

Id. at 539, 773 S.E.2d at 146 (footnotes and citation omitted). Stated differently, the immediately appealable error in *Morrow* was that the trial court intended for one trial before one jury on one set of claims against one party to be potentially dispositive of a different set of claims against different parties implicating potentially different standards and burdens of proof.

The Order here commits the same error. The Order expressly contemplates and intends that the outcome of a jury trial where no claims against Wendy are tried or decided by the jury will be dispositive of the Wellin Children's claims against Wendy. The truncated and severed jury trial will involve the issues of capacity and undue influence with one set of standards and may be dispositive of claims against Wendy that would therefore never be tried to a jury and that involve different elements and different (and less rigorous) standards. *See* Order at 3-4 (**Exhibit G**) (stating the circuit court's expectation and intent that the resolution of the two hand-picked issues in the "phase 1" trial "will likely result in resolution of much of the federal litigation"). Thus, the circuit court's order provides Wendy, who will have no claims tried against her, with "potential" summary judgment without ever facing a jury trial, just as the circuit court's order in *Morrow* provided the corporate parents, who would have had no claims tried against them in the first phase of trial, with "potential" summary judgment without ever facing a jury trial. Indeed, if the circuit court's Order promotes "convenience, efficiency, and economy," as it claims to do, *see* Order, **Exhibit G**, at 4, then the Order *must* intend for severed trial to be dispositive of some or all of the

Wellin Children's claims against Wendy. The only alternative would be for the severed trial not to be dispositive of any of the Wellin Children's claims against Wendy, in which case the Order would require the parties to have essentially the same trials with the same evidence two or more times but with different claims and different juries. This cannot possibly be what the circuit court intended, particularly where the circuit court specifically stated that the order would result in "convenience, efficiency, and economy," and specifically stated that the first phase of trial "will likely result in resolution of much of the federal litigation." *Id.* at 4.⁹

Notably, during the oral argument in *Morrow*, the South Carolina Supreme Court asked counsel for the parent corporations—*i.e.*, the parties who had obtained the "bifurcation" order and who were arguing that it was not immediately appealable—whether he would stipulate that, if the plaintiffs lost the first phase of trial, the plaintiffs nevertheless would have the right to pursue their claims against the corporate defendants. *See* Oral Argument Tr., at 19:25 – 20:6 (January 13, 2015) (attached as **Exhibit H**). Respondent's counsel would not so stipulate. *See id.* at 20:5. Here, Wendy not only refuses to stipulate that the Wellin Children will be permitted to pursue all their claims against her even if the Wellin Children lose the first phase of trial, Wendy argues that the Wellin Children losing the first phase of trial would "eviscerate[] the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy. *See Exhibit E*, at 27:25 – 28:1; *see also* Memorandum in Support of Motion to Bifurcate (attached as **Exhibit D**), at 7 (Wendy as Special Administrator arguing that the first trial "could be dispositive of the entire case").

This truncated trial of severed claims could wrongly result in disposition of many of the Wellin Children's claims and counterclaims arising from at least a dozen challenged transactions

⁹ The Wellin Children's claims against Wendy in federal court are the same as their claims against Wendy in state court.

which the Wellin Children claim were the result of Wendy's tortious misconduct, which overlaps largely with her undue influence of Keith in his estate planning. Several examples should suffice:

- The truncated and severed trial would include evidence relating to Keith's abrupt transfer of \$4.5 million to Wendy in April 2013 to buy a beach house. This incident and the evidence related to it is highly relevant to the issues of undue influence and testamentary capacity, *i.e.*, it demonstrates the way in which Wendy began to overtake Keith's will and eventually turned him against his children in the Spring and Summer of 2013. That incident and evidence are also highly relevant to the Wellin Children's counterclaim against Wendy for, *inter alia*, breach of the prenuptial agreement. It is possible the jury in the severed trial would conclude that the evidence of undue influence relating to Keith's estate planning transactions in 2013-2014 is insufficient to meet the exacting standards of undue influence and incapacity under South Carolina law. Wendy clearly intends to use such a determination of "fact"—no undue influence over Keith's estate planning—to preclude a trial on the breach of contract claim—a claim involving different elements, a different standard, and potentially different or additional evidence.¹⁰
- Likewise, in the truncated, severed trial, the Wellin Children would introduce documents and testimony relating to the critical events of November 20, 2013, when Keith undertook numerous, complicated steps to remove \$90 million worth of assets from an Irrevocable Trust he had previously established for his children and replaced them with assets worth only \$50 million. This "swap" transaction is a large potential component of the damages sought against Wendy individually by the Wellin Children. The Wellin Children maintain the swap was invalid and should be undone. If the swap is not unwound, however, the Wellin Children will instead seek to recover the tens of millions of dollars in losses from Wendy pursuant to claims for, among other things, breach of contract and intentional interference with inheritance. In the truncated trial, because the Wellin Children are not allowed to present their claims to the jury, the sole issues would be whether Keith was under undue influence and/or had capacity when he made his changes to his estate plan. If the jury were to find (again, under the demanding standard applicable to those issues) that Keith had capacity and was not unduly influenced, the circuit court's order contemplates and, indeed, encourages Wendy to use that finding offensively to preclude a trial on the intentional interference with inheritance and breach of contract claims relating in part to the swap—claims that,

¹⁰ Wendy and the other Respondents are ready to capitalize on the potential outcome of the circuit court's "bifurcation." In the Estate's memorandum in support of its motion to bifurcate, the Estate made no effort to disguise its intention to use any findings and rulings from the first phase of trial offensively to dispose of the Wellin Children's untried claims and counterclaims. *See* Estate's Mem. in Support of Mot. to Bifurcate at 12 (Feb. 12, 2019) (attached hereto as **Exhibit D**) (arguing the outcome of a trial limited to the issues of undue influence and capacity "has a strong potential to resolve and/or streamline the claims going forward"); *id.* at 7 (stating that bifurcation is appropriate because "resolution of certain issues could be dispositive of the entire case") (emphasis added).

again, involve different elements, different standards, and potentially different or additional evidence.

These are but two examples of the incidents, issues, and claims that—without actually being tried—could be effectively disposed of under the circuit court’s phasing of the trial. This is as bad or worse than the deprivation of a substantial right that was held to be immediately appealable in *Morrow*, namely a threatened disposition of untried claims based on the erroneous belief that the untried claims are dependent on or derivative of other claims to be tried.

Another parallel between *Morrow* and the instant suit is that the circuit court’s Order “prevent[s] [the Wellin Children] from being architects of their own complaint, and deprives them of bringing their case against the defendant of their choosing.” *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. Wendy, the person the Wellin Children are suing and from whom the Wellin Children are seeking to recover, will have no claims asserted against her during the truncated and severed trial. Further, the circuit court’s Order forces the Wellin Children into a Hobson’s choice of either (i) choosing to introduce evidence, arguments, and witnesses to support their position on the issues of undue influence and incapacity, knowing that if the jury rules against them they might be precluded from “relitigating” those facts in a subsequent trial of their tort claims against Wendy, or (ii) choosing instead to reserve those arguments, evidence, and facts for a possible future tort and breach of contract trial, and thus be hamstrung in their prosecution of the issues of incapacity and undue influence, which are based on the same evidence as the Wellin Children’s tort and breach of contract claims. The Hobson’s Choice effect of the Order is particularly important because these choices will be pervasive throughout the trial. Counsel for the Wellin Children will have to choose as to each piece of evidence whether to present it to maximize the chance of prevailing in the present or holding it back to mitigate the risk of a possible future finding that a fact was “actually litigated” and hence gives rise to collateral estoppel in a future trial.

Preservation of a record as to these choices that would enable the appellate courts in the future to provide a meaningful review would pose potentially unsurmountable challenges. It would be similar to disqualification of counsel, which the Supreme Court has found is immediately appealable because it is “one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken.” *Hagood v. Sommerville*, 362 S.C. 191, 197–98, 607 S.E.2d 707, 710 (2005).

Also, in *Morrow*, the South Carolina Supreme Court held that, “[t]o prevent the Morrows from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.” *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146–47. Likewise, in this case, preventing the Wellin Children from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on the issues of undue influence and capacity and its subsequent appeal. Piecemeal litigation would be guaranteed because, after this truncated trial, the losing party would be forced to appeal or waive their rights to do so. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868, 870 (2019) (upholding appeal “following a bifurcated hearing [in which] a claim or defense has been finally determined.”). Appellate rights would be affected as explained above because of the extent to which the Hobson’s Choice would permeate the truncated trial, but would be virtually impossible to preserve in the record.

In sum, the circuit court’s Order establishing the mode of trial wrongly threatens to deprive the Wellin Children of a jury trial on their claims in which all the applicable evidence is presented and the jury is instructed on the applicable standards for the Wellin Children’s claims against Wendy. This deprivation involves a substantial right and is immediately appealable, regardless of whether the ruling is characterized by the circuit court as a bifurcation order. *See Morrow, supra*.

Further, because the order *may* be immediately appealed, it *must* be immediately appealed. See *Hagood*, 362 S.C. 191, 198, 607 S.E.2d 707, 710 (2005) (holding an order disqualifying a party's attorney in a civil case affected a substantial right, is "closely related to the right to a particular mode of trial," and must be immediately appealed or else be lost forever). Here, just as in *Morrow*, the circuit court's ruling placed a limitation on the relief sought by and available to the Wellin Children, forcing them to present their evidence and arguments but without an opportunity to recover the damages sought in their counterclaims (and, rather, a chance of a verdict that would later be used by Wendy to foreclose them from ever litigating their claims). Interlocutory rulings such as this one regarding the mode of trial or limitations on relief may be, and must be, immediately appealed. See *Foggie v. CSX Transp., Inc.* 313 S.C. 98, 431 S.E.2d 587 (1993). For all of these reasons, this appeal is properly before this Court.

B. The circuit court's "bifurcation" ruling effectively strikes out a portion of the Wellin Children's pleading and is therefore immediately appealable.

As noted above, Code section 14-3-330 permits the immediate appeal of an interlocutory order that "strikes out an answer or any part thereof or any pleading in any action." S.C. Code Ann. § 14-3-330(2)(c). The circuit court's May 15, 2019 order does so. Although the order is characterized as a "bifurcation," the *effect* of it—as explained at length in the preceding argument section—is to potentially prevent the Wellin Children from ever bringing their claims before a jury, *e.g.*, it effectively strikes out a portion of their pleading, namely their counterclaims. This Court has previously explained that, when analyzing this subsection, the Court looks to the effect, not the label, of the order being appealed:

[A]n appellate court should look to the effect of an interlocutory order to determine its appealability under section 14-3-330(2)(c). An order affects a substantial right by striking a pleading if the order removes a material issue from the case, thereby preventing the issue from being litigated on the merits, and preventing the party from seeking to correct any errors in the order during or after trial.

Thornton v. S.C. Elec. & Gas Corp., 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011). In the instant litigation, the effect of the circuit court's "bifurcation" order is potentially to prevent a fact finder from ever considering the Wellin Children's counterclaims and thus to prevent those claims from ever being litigated on the merits.

C. The circuit court's decision to impose an arbitrary time limit on the trial, unless the parties waive their constitutional right to a jury trial, is immediately appealable as a deprivation of a substantial right and/or of the right to a meaningful jury trial.

The circuit court's May 15, 2019 Order is immediately appealable for the additional reason that it deprives the Wellin Children of their substantial right to the mode of trial to which they are entitled by preventing them from conducting a meaningful and substantive jury trial and/or by attempting to strong-arm them into "voluntarily" relinquishing that right. For one, the circuit court did not seek, analyze, or articulate any meaningful basis upon which to determine the length needed for a trial of the party's claims. Indeed, the court denied the Wellin Children's request that the circuit court simply hold a hearing where the parties could present such information. *See* Order (attached as **Exhibit G**) (holding that the trial will be two weeks but providing no basis for this limitation, and stating that the order ruled upon the Wellin Children's motion for a status conference and scheduling order wherein the Wellin Children requested a hearing to address the appropriate length of trial). The circuit court does not know, and has declined to hold a hearing where the parties disclose to it, the number of witnesses the various parties anticipate calling and their expected length of testimony; what evidence will be presented; or any other facts bearing on the expected length of trial.

Indeed, the trial court has admitted its time limit on the trial is based not on any consideration of due process, fairness, or the volume of testimony and evidence to be presented at

trial but, rather, as a bald attempt to put the parties into such an untenable position that they will be forced to settle. When Judge Addy, prior to being appointed to handle this case, announced that he would recommend limiting the trial to two weeks, he stated:

I am firmly convinced and I have the strongest suspicion that when the trial court as I recommend to Judge Young when Judge Young directs, that this case will last no more than two weeks and everyone will have to expedite and stipulate and agree to exhibits and you will be confined to a mere two weeks to try this case I am very confident that this case will resolve and the federal litigation will also resolve. And I really don't mind saying that out loud. Because that is exactly what I forced to happen over in Beaufort County about two years ago when somebody all of a sudden on the week before trial told me that this was being a case that involved tens of millions of dollars was being tried in front of a jury. Where the entire time I had been led to believe it was just going to be a bench trial which means that I can go start at 8:30 and I can go until 9:00 or 930 and I can roll through it and I can get it done in five days. With a jury that would not have been possible. The case settled. Everybody went home. And the waste -- or the deletion of the estate assets ceased. So my recommendation to Judge Young who will have the ultimate call on this is that this will be limited to two weeks.

See Hearing Tr. at 31:9 to 32:6 (Aug. 22, 2018) (attached as **Exhibit B**); *see also id.* at 12:14-19 (stating that, while federal judges might be willing to try the case for eight weeks, no state court judge would be willing to try the case for this long). Thus, after the Wellin Children invested six years of their lives litigating this dispute and paying for more than 120 depositions and more than a dozen experts with the reasonable expectation that they eventually would be permitted to fully present their case to a jury, they were told that they would only receive a few days during a two week trial to present their case—not because that is how long it would take to try this case, but because the circuit court is seeking to force the parties to settle. In effect, even though the state constitution provides a right to a jury trial is inviolate, *see* S.C. Const. art. I, § 14, the circuit court held that litigants in South Carolina do not have a constitutional right to a jury trial if their trial will take more than two weeks.

The circuit court's May 15, 2019 Order regarding the length of trial is consistent with the circuit court's statements at the August 22, 2018, hearing, as it provides no basis for the two-week limit, gives no consideration to the parties' rights to present all the relevant evidence and testimony, and, by setting an extremely abbreviated trial and giving the parties extremely limited notice of the date when the trial will start, apparently attempts to force the parties to settle.

A full trial of the issues of capacity and undue influence would take significantly longer than two weeks. The parties have taken more than 120 depositions in the related federal litigation, most of which have related to issues of capacity or undue influence. The Estate has identified 132 witnesses in its interrogatory responses in this action. On the issues of capacity and undue influence, Wendy and the Estate have disclosed eight retained testifying experts and have identified dozens of treating physicians and fact witnesses. Likewise, the Wellin Children have identified six retained expert witnesses on these subjects along with numerous fact witnesses. Indeed, although the Estate's counsel has consistently pushed for a truncated trial, even he has admitted that litigating the issues of capacity and undue influence would require significantly more than two weeks. *See* Hearing Tr. at 4:13 – 5:7 (July 20, 2016) (attached as **Exhibit I**) (the Estate's counsel stating to Judge Norton that "the issue of capacity and competence" would require "three to four weeks of testimony," and stating: "we estimate that between the expert witnesses, the care providers, the doctors, the friends, the family members, you know, upwards of 50 witnesses specifically related to the issue of capacity, validity issues, undue influence, et cetera").

For the Wellin Children to fully present their case on the issues of capacity and undue influence, they must tell the jury the story of, among other things, the relationship between Keith and his children and grandchildren, Keith's relationship with Wendy, Keith's extensive estate planning and how it changed over the years, the events surrounding Keith's suddenly adopting the

belief in the summer of 2013 that his children had stolen from him and that he wanted to undo his prior estate planning, and the irrationality of Keith's behavior throughout the portion of this litigation where he was living. Notably, the circuit court recognized at the February 11, 2019, hearing on the Estate's motion to bifurcate that "the relationship that Mr. Wellin had with his kids and grandkids and great-grandkids throughout their lives is certainly relevant to the issue of what happened in 2013 and 2014 as it relates to assessment of estate plans." **Exhibit E** at 37:17–21; *see also id.* at 10:15 (stating that "[c]ontext is everything" and agreeing that the Wellin Children would need to address "[w]hat kind of relationship did [Keith] have after his first wife—after his first marriage ended? How did that evolve among the three kids, the grandkids, the one with the property in Maine? I understand how all that is intertwined into this."). But Judge Addy's order limiting the trial to only two weeks effectively prevents the Wellin Children from presenting evidence on most of these issues.

Even if pretrial motions, jury selection, opening statements, directed verdict motions, and closing statements take only two days, and even if the Wellin Children received half of the remaining trial time (while Wendy, the Estate, and Hamilton shared the remaining half),¹¹ the Wellin Children would have only four days to present their case. Keith amended his trust more than a dozen times in his life and amended his trust five different times during 2013 and 2014. The Wellin Children will not attempt to describe the categories of evidence in this case, but the more than 120 depositions (most of which relate to capacity and undue influence) and the six years of litigation in federal court indicate that this is not the type of case where the Wellin Children can

¹¹ The Court's May 15, 2019 Order stated that "the parties will have to streamline their presentations pursuant to a future order concerning the allocation of available time." Order, **Exhibit G**, at 3. Because the circuit court has never issued this future order concerning the allocation of time, the Wellin Children do not know how many trial days they would receive during the two weeks.

present their case in four days. Thus, the practical effect of limiting the trial to two weeks is to exclude the vast majority of the Wellin Children's relevant evidence from trial, thereby denying the Wellin Children a full and fair opportunity to try their case and violating their due process rights.

In cases where a trial court has arbitrarily restricted the length of trial without considering the relevant evidence regarding the anticipated length of trial, courts have held that the trial court violated the constitutional due process rights of the parties. For example, in *Goodwin v. Goodwin*, 618 So. 2d 579, 583–84 (La. Ct. App. 1993), the court held:

[B]efore imposing time limitations in a case, the trial judge should be thoroughly familiar with the case through pretrial proceedings, including status and pretrial conferences, and discovery. The judge should be familiar with the claims of the parties, the proposed testimony and number of witnesses, and the documentary evidence to be presented. Each litigant should be required to estimate the length of his or her case, and if necessary, the amount of time needed for each witness. Armed with this information, the trial judge should be in a good position to set reasonable time limits for the presentation of the evidence, rather than arbitrary time limits.

Likewise, in *Ingram v. Ingram*, 125 P.3d 694, 698 (Ok. Civ. App. 2005), the court held that “parties in litigation are entitled to a meaningful and full opportunity to be heard, so rigid time limits are disfavored,” and where time limits are imposed, “[t]he court should thoroughly familiarize itself with the case through pretrial proceedings before imposing limitations, should require litigants to estimate length of their cases and, if necessary, amount of time for each witness.”

The circuit court's use of a two-week time limit goes further than merely restricting the jury trial right in hopes of forcing a settlement. In an off-the-record status conference on January 31, 2019, Judge Addy stated that the parties would be limited to a two-week trial if the case is tried to a jury (regardless of whether the trial was bifurcated), but that the trial could last as long as the parties reasonably needed if counsel waived their right to a jury trial and agreed to a bench trial

instead. The circuit court returned to this theme in its May 15, 2019 order, noting that “[a]ssuming that this action remains on the jury trial roster, the trial in state court will be limited to two weeks” See Order at 3 (emphasis added) (Exhibit G). Again, this presented the Wellin Children with a Hobson’s choice: agree to waive their right to a jury trial and thereby waive their appellate rights with respect to their right to a jury trial (because they would have consented to try the case non-jury), or have a jury trial that is limited to two weeks where the Wellin Children are unable to fully present the majority of their case. This sort of high stakes brinkmanship—significantly limiting a party’s jury trial in hopes of forcing a settlement, and offering the parties the right to fully try their case only if they waive their constitutional right to a jury trial—has the effect of depriving the Wellin Children of a mode of trial and therefore should be immediately appealable. See *Hagood*, 362 S.C. at 198, 607 S.E.2d at 710 (holding that even the disqualification of a party’s attorney in a civil case was “closely related to the right to a particular mode of trial” and thus was immediately appealable); *Bateman v. Rouse*, 358 S.C. 667, 674, 596 S.E.2d 386, 389–90 (Ct. App. 2004) (“Orders of the trial judge denying a request for a jury trial involve the mode of trial, affect substantial rights under section 14-3-330(2) of the South Carolina Code, and are immediately appealable.”).

D. Because at least some aspects of the May 15, 2019 order are immediately appealable, the entirety of the order is reviewable on appeal.

As explained in the foregoing argument sections, several of the portions of the circuit court’s May 15, 2019 order are immediately appealable. When at least one portion of an order is immediately appealable, the *entire* order may be considered upon appeal. See *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002) (“This Court reviews interlocutory orders when they contain other appealable issues.”) (citing *Hite v. Thomas & Howard Co.*, 305 S.C. 358, 360, 409 S.E.2d 340, 341 (1991)); *Rice Hope Plantation v. S.C.*

Pub. Serv. Auth., 216 S.C. 500, 511, 59 S.E.2d 132, 136 (1950), *overruled on other grounds*, *McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985) (“We have here a single order from a part of which an appeal admittedly will lie, but it is manifest that the entire order should be considered upon this appeal; and the cases cited are sufficient to support this conclusion.”); *see also* Toal, *Appellate Practice in South Carolina* 88 (“Where there is a single order that is admittedly appealable in part, the entire order should be considered upon the appeal.”).

II. The October 20, 2017 and August 23, 2018 orders, while not themselves immediately appealable, may be joined in the appeal of another immediately appealable order.

The Wellin Children also appeal from the circuit court’s October 20, 2017 order granting Wendy’s motion to lift the stay and from the circuit court’s August 23, 2018 order denying the Wellin Children’s motion to stay further progress in this suit. These orders, if standing alone, would not be immediately appealable. *See Carolina Water Serv., Inc. v. Lexington Cnty. Joint Mun. Water & Sewer Comm’n*, 373 S.C. 96, 644 S.E.2d 681 (2007) (holding order lifting a stay was not immediately appealable); *Edwards v. Suncom*, 369 S.C. 91, 631 S.E.2d 529 (2006). In the context of this appeal, however, these orders do not stand alone. “[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the court and a ruling on appeal will avoid unnecessary litigation.” *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014) (citation omitted). In the instant appeal, there is an immediately appealable issue, *see* Argument I, *supra*, and this Court’s simultaneous consideration of the prior orders will spare the lower court and the parties from expending needless resources litigating what could otherwise be resolved by this Court.

CONCLUSION

Because one of the orders being appealed is immediately appealable, and because the related orders—even if not themselves immediately appealable—may be joined in the appeal of

an appealable ruling, this Court has jurisdiction to consider and rule upon each of the orders appealed in the Wellin Children's Notice of Appeal.

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Attorneys for Appellants/Petitioner

Charleston, South Carolina
June 7, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,

Civil Action No. 2014-CP-10-07038

Petitioner,

vs.

Peter J. Wellin, Cynthia W. Plum,
Marjorie W. King,

**ORDER GRANTING
MOTION TO STAY**

Respondents and
Counter-Petitioners,

vs.

Wendy C.H. Wellin, Hamilton College,
Keith S. Wellin Florida Revocable
Living Trust, Campbell Hart and
Heather Lane,

Counter-Respondents.

IN THE MATTER OF:

Keith S. Wellin

FILED
2015 JUL -6 PM 3:51
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before the Court on a motion to stay filed by Respondents and Counter-Petitioners Peter J. Wellin, Cynthia W. Plum, and Marjorie W. King ("Respondents"). Through their motion, Respondents ask the Court to stay this action pending resolution of a related action currently pending between Respondents and Petitioner Wendy C.H. Wellin in the United States District Court for the District of South Carolina, Civil Action Number 2:14-cv-4067-DCN (the "Federal Action").

On May 5, 2015, Respondents filed a memorandum in support of their motion to stay. On May 7, 2015, Petitioner filed a memorandum in opposition to Respondents'

motion to stay. Also on May 7, the Court held a hearing on the motion to stay where the Court heard oral arguments from the parties. After considering the memoranda and oral arguments of the parties and the applicable law, the Court grants Respondents' motion to stay.

“The granting of a motion for a stay of proceedings rests entirely within the discretion of the trial Judge.” *City of Spartanburg v. Belk's Dept. Store of Clinton*, 199 S.C. 458, 20 S.E.2d 157, 167 (1942); *see also Stone v. I.N.S.*, 514 U.S. 386, 411 (1995) (Breyer, J., dissenting) (noting that the United States Supreme Court has “long recognized that courts have inherent power to stay proceedings and ‘to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants’”). “Courts generally employ a ‘stay’ of proceedings when there is another issue pending between the same parties in another action and the resolution of that issue will affect the action sought to be stayed.” *Talley v. John-Mansville Sales Corp.*, 285 S.C. 117, 120, 328 S.E.2d 621, 623 (1985) (Littlejohn, J., dissenting). As recently held by the South Carolina Supreme Court, “[a]voiding concurrent litigation in both the courts of this state and the Federal District Court will foster wise judicial administration and conserve judicial resources.” *State ex rel. Wilson v. Condon*, 410 S.C. 331, 333, 764 S.E.2d 247, 248 (2014).

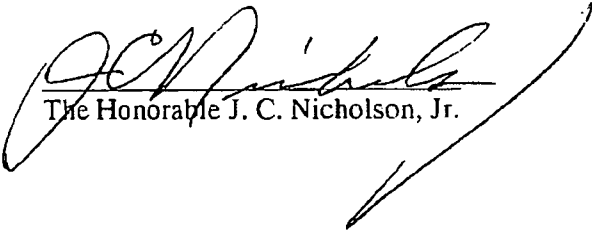
Here, the Court finds that this action and the Federal Action involve overlapping issues and that resolution of the Federal Action is likely to reduce or eliminate the issues that must be litigated in this action. In the absence of a stay, the parties would be forced to litigate the overlapping issues in this action and in the Federal Action, which would create the risk of inconsistent judgments and waste the resources of this Court and the

parties. Staying this action pending resolution of the Federal Action, on the other hand, will serve to conserve the resources of this Court and the parties and will eliminate the risk of inconsistent judgments. Moreover, the Court agrees with Respondents that staying this action pending resolution of the Federal Action is unlikely to cause prejudice to any of the parties, and the Court finds that any prejudice that might be caused to any party by the stay is outweighed by the benefits of the stay.

For the foregoing reasons, the Court hereby grants Respondents' motion to stay. This action is hereby stayed and shall remain stayed until the Federal Action, including any appeals in that action, is finally resolved, or until further order of this Court.

AND IT IS SO ORDERED.

Charleston, South Carolina
7/2, 2015



The Honorable J. C. Nicholson, Jr.

EXHIBIT B

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
Wendy C. H. Wellin,	)	CASE 2014-CP-10-07038
PLAINTIFF,	)	
vs.	)	TRANSCRIPT OF RECORD
Peter J. Wellin, Cynthia W. Plum,	)	
Marjorie King,	)	
RESPONDENTS AND COUNTER-PETITIONERS,	)	
vs,	)	
Wendy C.H. Wellin, Hamilton College,	)	
Keith S. Wellin Florida Revocable	)	
Living Trust, Campbell Hart and	)	
Heather Lane,	)	
COUNTER-RESPONDENTS.	)	
IN THE MATTER OF:	)	
The Estate of Keith S. Wellin.	)	
	)	

August 22, 2018

Charleston, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr.

A P P E A R A N C E S:

James Bernard Hood, Esquire
For the Estate

John Fisher Beach, Esquire
For the Plaintiff, Hamilton College

John T. Lay, Jr., Esquire
For the Plaintiff, Ms. Wendy C. H. Wellin

Robert H. Brunson and Patrick Wooten, Esquire
For the Defense

Certified Transcript Provided For: Nelson Mullins

Phyllis Norton, CVR-Master, Nationally Certified Verbatim Court Reporter

636 Long Point Road, Unit G, #74, Mt. Pleasant, South Carolina 29464

PNorton@sccourts.org

1 Nicholson accepted without giving us an opportunity to
2 respond at that hearing.

3 Subsequently, to his credit, Mr. Hood sent an e-mail to
4 Judge Nicholson sometime later correcting that. And it is
5 now undisputed that there are no beneficiaries of this will
6 who are waiting to receive anything while the will is not
7 being probated.

8 THE COURT: Forgive me for interrupting. The court has
9 the same concern. You brought up Judge Jefferson's. This
10 court has the same concern as Judge Jefferson does.

11 And I know in your memorandum you indicated that this
12 case would perhaps take eight to ten weeks to try. I
13 seriously doubt that. I don't know of any will contest that
14 is going to take six to eight weeks. And I don't know of
15 any judge who is going to have the patience on the trial
16 level. You can get federal judges to do it. But no trial-
17 level judge is going to spend eight weeks trying this case
18 when the Roof case was successfully tried in, what was it,
19 two weeks.

20 So, yeah, that -- first of all, that is not going to
21 happen. Second of all, this is an old case. I am very
22 hesitant to issue any stay -- and I appreciate the
23 procedural background and everything. But I am very very
24 hesitant to authorize any stay in any case that begins with
25 2014 for any reason.

1 time, whether it is a college or a 77-year-old person or
2 some kids or somebody else, somebody is entitled to get what
3 Mr. Wellin produced during the course of his life.

4 And whether that happens in state court or federal
5 court, and whether it happens first in state court or second
6 in state court, or first in federal court and second in
7 federal court, I really don't care. But depletion of assets
8 has to stop.

9 Which brings me to my third and final point. I am
10 firmly convinced and I have the strongest suspicion that
11 when the trial court as I recommend to Judge Young when
12 Judge Young directs, that this case will last no more than
13 two weeks and everyone will have to expedite and stipulate
14 and agree to exhibits and you will be confined to a mere two
15 weeks to try this case I am very confident that this case
16 will resolve and the federal litigation will also resolve.

17 And I really don't mind saying that out loud. Because
18 that is exactly what I forced to happen over in Beaufort
19 County about two years ago when somebody all of a sudden on
20 the week before trial told me that this was being a case
21 that involved tens of millions of dollars was being tried in
22 front of a jury. Where the entire time I had been led to
23 believe it was just going to be a bench trial which means
24 that I can go start at 8:30 and I can go until 9:00 or 930
25 and I can roll through it and I can get it done in five

1 days. With a jury that would not have been possible. The
2 case settled. Everybody went home. And the waste -- or the
3 deletion of the estate assets ceased.

4 So my recommendation to Judge Young who will have the
5 ultimate call on this is that this will be limited to two
6 weeks. If you want a jury trial that is perfectly fine. If
7 you get one, everybody will need to be prepared to come in
8 here.

9 And if he wants to invite me back down to Charleston to
10 try it, I love Charleston. The food is great, and I don't
11 mind coming. But we will do it in two weeks if it actually
12 is going to be tried.

13 So that will be my ruling. There will be no stay. And
14 we are going to move forward. Whichever case we reach first
15 is the case we reach first. And it is a pleasure to see you
16 people. The court will now take a break. Thank y'all very
17 much.

18 (WHEREUPON, the hearing concluded 10:52 a.m.)

EXHIBIT C

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin
PLAINTIFF(S)

Peter Wellin Cynthia
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

No further delays in this case. Chief Admin, judge should set for trial (2 weeks max) as soon as practicable. 2m
Motion/ Stay by Respondent & Counter Petitioners - Denied
Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

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

[Signature]
Circuit Court Judge

2159
Judge Code

8-23-18
Date

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,

Petitioner,

Versus

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 and Counter-Petitioners,

Versus

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.

IN THE MATTER OF:

Keith S. Wellin

) IN THE COURT OF COMMON PLEAS

) C/A No. 2014-CP-10-07038

) **MEMORANDUM IN SUPPORT OF**
) **MOTION TO BIFURCATE OR FOR**
) **SEPARATE TRIAL OF VALIDITY ISSUES**

FILED
CLERK OF COURT
2019 FEB 12 AM 9:38

Wendy C. H. Wellin, as Petitioner and in her capacities as 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 (hereinafter "Petitioner"), by and through her undersigned counsel, submits this Memorandum in Support of her Motion to Bifurcate or for Separate Trial filed August 17, 2018. Specifically, Petitioner seeks bifurcation of all validity issues associated with the Last Will and Testament of Keith S. Wellin executed June 27, 2014 (the "2014 Will") and the amended and restated Keith S. Wellin Florida Revocable Living Trust executed June 27, 2014 (the "2014

Revocable Trust”), including (a) whether Keith S. Wellin (“Keith”) possessed sufficient mental capacity to execute the 2014 Will and the 2014 Revocable Trust and (b) whether Keith’s execution of the 2014 Will or the 2014 Revocable Trust was the result of undue influence, fraud, duress or mistake (hereinafter collectively, the “Validity Issues”).

The validity of the June 27, 2014 Will and Revocable Trust undergirds many – if not most – of the major allegations in this litigation, and early resolution of these fundamental Validity Issues has a strong potential to resolve and/or streamline the claims going forward. Therefore, for the reasons outlined below, this Court should bifurcate the Validity Issues to promote efficiency, economy, and fairness for all involved.

Factual Background

Keith Wellin passed away on September 14, 2014, leaving as a final written expression of his wishes his 2014 Will and 2014 Revocable Trust. These documents were executed on June 27, 2014 in the presence of several witnesses, including F. Patricia Scarborough, Esq. and M. Jean Lee, Esq. (two estate planning attorneys who signed the documents as witnesses), estate planning attorney Edward G. R. Bennett, Esq., speech therapist Amy Hider, and nationally-recognized capacity expert Daniel C. Marson, JD, PhD.

The validity of Keith’s 2014 Will has been an issue pending before this Court in this action since the fall of 2014 – Keith’s widow Wendy C. H. Wellin filed a Petition for Formal Testacy shortly after his passing. Keith’s three adult children, Peter Wellin, Cynthia Plum and Marjorie King (collectively, the “Wellin Children”), answered the Petition and counter-petitioned for formal testacy of an earlier Will in October, 2014. Last year, the Wellin Children amended their pleadings in this matter to add a request for declaratory judgment as to the validity of Keith’s 2014 Revocable Trust and a variety of other claims against Mrs. Wellin. By adding the issue of the validity of

Keith's 2014 Revocable Trust into this action, for the first time the Validity Issues surrounding the 2014 Will and the 2014 Revocable Trust are unified in one single proceeding.

Petitioner maintains that the 2014 Will and the 2014 Revocable Trust are valid, effective and represent Keith's final and dispositive estate plan. The Wellin Children allege that these documents are invalid due to any of the following: (i) Keith lacked capacity at the time they were executed; (ii) Keith was subject to undue influence at the time they were executed; (iii) Keith was under duress at the time they were executed; (iv) the documents were executed as a result of fraud; or (v) the documents were executed as a result of mistake. The Wellin Children also allege that the 2014 Revocable Trust is invalid because Peter Wellin did not receive a copy of the document while his father, the Decedent, was living.

Also pending before the Court in this action are various other claims raised by the Wellin Children in their amended pleading last year. These claims fall into three general categories: (1) a Counter-Petition for formal testacy of Keith Wellin's earlier Will executed on August 30, 2011¹; (2) individual tort and contract claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith Wellin and his estate planning; and (3) individual tort and equitable claims against Mrs. Wellin relating to matters other than her alleged involvement with or influence over the Decedent's estate planning.

Most recently, Friendship Management, LLC (the "LLC") intervened in this matter to raise two claims against Mrs. Wellin duplicative of those raised by the Wellin Children. While it does not appear to Petitioner that these claims touch upon the Validity Issues identified above, to the extent that the LLC's claims involve a Validity Issue Petitioner requests that they also be bifurcated.

¹ This Counter-Petition ignores other Wills executed by Keith on July 11, 2013, July 1, 2013, and a Codicil executed by Keith on June 20, 2013.

Argument

I. Bifurcation of the Validity Issues is appropriate and warranted in this matter.

Rule 42(b) of the South Carolina Rules of Civil Procedure permits a court to bifurcate issues or claims where such an action will promote convenience, efficiency and economy. Rule 42(b) of the South Carolina Rules of Civil Procedure provides:

“The court, in furtherance of convenience or to avoid prejudice, or when separate trials would be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.”

Rule 42(b), SCRCP. Considerable discretion is allotted when a court determines to bifurcate a trial, and the exercise of that discretion will be set aside only if clearly abused. *Senter v. Piggly Wiggly Carolina Co.*, 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000).

The South Carolina Supreme Court has encouraged trial courts to bifurcate trials, such as complex medical malpractice trials, where bifurcation helps to clarify and simplify the issues. *E.g.*, *Durham v. Vinson*, 360 S.C. 639, 644 n.2, 602 S.E.2d 760, 762 n.2 (2004). Bifurcation of a trial is appropriate where the issues are distinct, such that trial of issues separately would not result in injustice. *Wright v. Heiester Const. Co., Inc.*, 389 S.C. 504, 516, 698 S.E.2d 822, 828 (Ct. App. 2010).

Rule 42 does not require that legal and equitable claims be tried separately. Rather, “when convenience so directs”, such claims may be tried together. *Johnson v. S.C. Nat’l Bank*, 292 S.C. 51, 55, 354 S.E.2d 895, 897 (1987). Moreover, there is no per se rule that the same jury must decide both issues after a trial is bifurcated. *Fortune v. Gibson*, 304 S.C. 279, 281, 403 S.E.2d 674, 675 (Ct. App. 1991).

A. **Bifurcation of the Validity Issues is both permitted and encouraged by Rule 42, SCRCP.**

Considerations of expediency and economy are appropriate bases upon which to order bifurcation of issues at trial. For example, bifurcation is appropriate where most witnesses on the issue of liability would not be called during a subsequent damages phase of a trial. *See, e.g., Winthrop Univ. Trs. v. Pickens Roofing & Sheet Metals, Inc.*, 418 S.C. 142, 166, 791 S.E.2d 152, 165 (Ct. App. 2016); *Creighton v. Coligny Plaza Ltd. Partnership*, 334 S.C. 96, 109, 512 S.E.2d 510, 517 (Ct. App. 1998). In *Creighton*, the trial court concluded that the potential expense of the plaintiff's damages testimony could be avoided entirely if a jury entered a verdict on liability in favor of the defendant. *Creighton*, 334 S.C. at 109, 512 S.E.2d at 517. The trial judge in *Winthrop* applied the same rationale when bifurcating liability and damage issues for trial, reasoning that it would save time and resources by trying the liability phase separately from the damages phase. 418 S.C. at 166, 791 S.E.2d at 165. The Court of Appeals, affirming the bifurcation of the trial, noted that convenience and judicial economy are legitimate reasons for bifurcation. *Id.*

Courts in other jurisdictions have exercised their discretionary power to bifurcate trials in which there are competing will contests. For example, in *Barber v. Cangelosi*, the trial court bifurcated the validity issue surrounding a testator's 2004 will, leaving for later disposition the will contestant's competing applications for probate of the testator's prior 1989 and 1983 wills. No. 01-08-00781-CV, 2010 Tex. App. LEXIS 247, at *6 (Tex. Ct. App. Jan. 14, 2010). Approving of the bifurcated trial, the Texas Court of Appeals noted that the separation of the competing will contests was appropriate where "resolution of a discrete issue in the first part of the proceeding may obviate the need for extensive evidence and possible confusion concerning multiple [wills]." *Barber*, 2010 Tex. App. LEXIS 247, at *15. Thus, the bifurcation of the validity issues surrounding the most recent will "kept the competing [wills] in the same proceeding and, at the

same time, avoided presentation of potentially confusing or unnecessary issues.” *Id.* Similarly, in *Slusarekno v. Slusarenko* the trial court consolidated two actions involving testamentary documents executed by the same decedent and subsequently bifurcated the issues of capacity and undue influence for trial. 147 P.3d 920, 929 (Ore. Ct. App. 2006) (referencing bifurcated trial but reversing the trial court’s holding on the merits).

In this case, there are competing petitions for formal testacy associated with Keith’s 2014 Will and Revocable Trust and with a Will and Revocable Trust executed by Keith in August 2011. There are also a myriad of other claims raised by the Wellin Children which are fact-intensive and involve evidence spanning many years. However, the Validity Issues associated with the 2014 Will and the 2014 Revocable Trust involve only the evidence of Keith’s actions on a single day – June 27, 2014. The evidentiary showings required for the Validity Issues are focused and limited, while the evidentiary showings required for the Wellin Children’s other claims against Mrs. Wellin (some of which are not recognized claims in this State) are not.

Bifurcation as contemplated in Rule 42(b), SCRCP, is primed and poised to address these very circumstances. Here, the fundamental and penultimate issue in dispute between the parties is the validity and effect of the 2014 Will and the 2014 Revocable Trust – in short, the very Validity Issues for which Petitioner seeks bifurcation. A bifurcated trial on the Validity Issues will permit all entities – parties, jurors, and the Court – to focus on this fundamental question without unnecessary noise and confusion relating to the other claims now pending in this action.

Furthermore, a bifurcated trial for the Validity Issues involving *both* the 2014 Will and the 2014 Revocable Trust will also prevent potentially inconsistent adjudications of Keith’s capacity and alleged susceptibility to undue influence. These documents were executed on the same day and before the same witnesses. Bifurcating the Petition for Formal Testacy (involving the 2014

Will), the Wellin Children's challenges to the same, and the Wellin Children's claim for Declaratory Judgment (involving the 2014 Revocable Trust) will increase the expediency of the trial of this matter and would be far more economical than bifurcating only the Validity Issues involving either document on its own. Moreover, an adjudication of the Validity Issues involving both the 2014 Will and the 2014 Revocable Trust by way of a bifurcated trial in this action will have preclusive effect in certain related federal litigation currently pending between the same parties – litigation in which the Wellin Children raise a duplicative claim for declaratory judgment of the validity of Keith's 2014 Revocable Trust but are unable (due to the Probate Court's exclusive jurisdiction over the probate of wills) to raise a claim related to Keith's 2014 Will.

B. Many other claims pending in this matter are predicated upon, or will be streamlined by, bifurcation of the Validity Issues.

Bifurcation is particularly appropriate where – as here – resolution of certain issues could be dispositive of the entire case. *Cook v. United Servs. Auto. Ass'n*, 169 F.R.D. 359, 361 (D. Nev. 1996) (citing 9 Wright & Miller, *Federal Practice & Proc.*, Civil 2d § 2388). The federal courts also favor bifurcation in such circumstances: "Resolution of a key issue may determine the outcome of an entire proceeding. In such a case, and so long as the issue may reasonably be separated from the remainder of the case, bifurcation of that issue for trial is likely to be conducive to judicial economy and expedition." 8 *Moore's Federal Practice – Civil* § 42.20. As the comments to Rule 42 note, Rule 42, SCRCP is substantially identical to the Federal Rules of Civil Procedure, and Rule 42(b), SCRCP as adopted was similar to existing state practice.

Other trial courts have exercised their discretion to bifurcate issues where the validity of testamentary documents (such as wills or trusts) is disputed along with other claims for breach of trust or breach of fiduciary duty under the same. *See, e.g., Callaway v. Calloway*, 932 N.E.2d 215, 219 (Ind. Ct. App. 2010); *Hilbert v. Benson*, 917 P.2d 1152, 1155 (Wyo. 1996).

The Validity Issues are potentially dispositive of several claims or defenses involved in this case, including (i) the Petition for Formal Testacy; (ii) the Wellin Children's challenges to the same; and (iii) the Wellin Children's individual tort claims against Mrs. Wellin relating to her alleged involvement with or influence over Keith and his estate planning. Additionally, the resolution of the remaining claims between the parties would be streamlined after a determination as to Keith's mental capacity and a resolution of the Validity Issues.

By way of example, the Wellin Children raise a claim for intentional interference with inheritance against Mrs. Wellin. If, however, a bifurcated trial determines that Keith's 2014 Will and 2014 Revocable Trust are valid, this claim will likely fail as a matter of law and no further trial proceeding would be needed to adjudicate the same.

If the Court elects to bifurcate the Validity Issues, the parties would be able to present all evidence relating to Keith's execution of the 2014 Will and the 2014 Revocable Trust in a single, efficient proceeding. This proceeding would substantially reduce judicial resources by providing an efficient and streamlined opportunity to resolve related issues that are fundamental not only to the present action but also in the "Related Federal Litigation".² The cost to the parties of litigating the same issues on multiple occasions would likewise be dramatically reduced.

Additionally, the single determination of the Validity Issues associated with the 2014 Will and the 2014 Revocable Trust, would be binding with respect to the Related Federal Litigation, but would not cause prejudice as all parties litigating the duplicative issue in federal court are participating in the present action. This would reduce the time required to subsequently litigate the other pending actions and would also preclude the parties from re-litigating the same issue

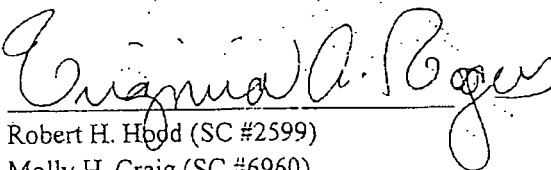
² *Wellin v. Wellin et al.*, C/A No. 2:13-cv-01831-DCN (D.S.C.); *McDevitt v. Wellin et al.*, 2:13-cv-03595-DCN (D.S.C.); and *Wellin et al v. Wellin*, 2:14-cv-04067-DCN (D.S.C.).

multiple times. Future litigation costs and resources will be dramatically reduced if the Court utilizes the procedures available to it under the authority of Rule 42.

Conclusion

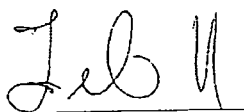
At its core, this case is about effectuating the wishes of Keith Wellin, the Decedent. In order to achieve this goal, the validity of the 2014 Will and the 2014 Revocable Trust – the final written expressions of Keith’s wishes – must be established. By bifurcating these common factual Validity Issues, the Court would effectively provide an opportunity to resolve substantial threshold issues in this matter. Therefore, Petitioner respectfully requests that the Court bifurcate the Validity Issues identified above, including: (a) whether Keith possessed sufficient mental capacity to execute the 2014 Will and the 2014 Revocable Trust and (b) whether Keith’s execution of the 2014 Will or the 2014 Revocable Trust was the result of undue influence, fraud, duress or mistake.

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*Attorneys for Wendy C. H. Wellin
as Special Administrator of the Estate of Keith S. Wellin
and Trustee of the Keith S. Wellin Florida Revocable
Living Trust w/a/d December 11, 2001*

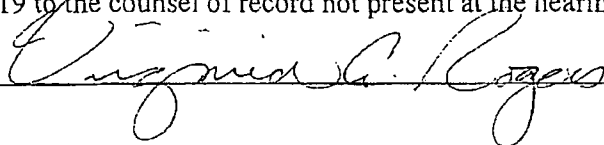


, 2019

Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the **MEMORANDUM IN SUPPORT OF MOTION TO BIFURCATE OR FOR SEPARATE TRIAL OF VALIDITY ISSUES** was served on each counsel of record present at the hearing via hand delivery on February 11, 2019 and via email on February 12, 2019 to the counsel of record not present at the hearing.



2019 FEB 12 AM 9:30
CLERK OF COURT

EXHIBIT E

State of South Carolina	)	Court of Common Pleas
	)	Ninth Judicial Circuit
County of Charleston	)	Case No. 2014-CP-10-07038
	)	
Wendy C.H. Wellin,	)	
	)	
Petitioner,	)	
	)	
-vs-	)	Transcript of Record
	)	
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 and	)	
Counter-Petitioners,	)	
	)	
-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.	)	
	)	
IN THE MATTER OF:	)	
	)	
Keith S. Wellin	)	
	)	

February 11, 2019
Columbia, South Carolina

B E F O R E:

The Honorable Frank Addy, Judge

1 those who actually signed as witnesses after Mr. Wellin
2 applied his signature and also those who were in the room and
3 participating in the final meeting during which he signed
4 these documents -- these witnesses can provide clear and
5 cogent testimony about circumstances surrounding Keith's
6 execution of the documents and also his capacity.

7 There are other issues pending between the parties
8 involving other claims for tortious conduct or breaches of
9 contract that occurred at different points in time or may
10 have occurred at different points in time. Bifurcation under
11 Rule 42 is appropriate here so that we can clarify,
12 crystallize, and zero in on the key issue in this case, the
13 validity of the 2014 estate plan.

14 Additionally, Your Honor -- and I will let Mr. Lay speak
15 to this in a little bit more detail. Bifurcation has the
16 greatest chance to resolve a dispositive issue in this case.

17 Keith Wellin's capacity and issues surrounding the same
18 permeate the claims between the parties in both this action
19 in state court and also the federal court litigation. A
20 dispositive determination of Keith's capacity, the validity
21 of these documents, which is what we're asking for here
22 today, has the potential to have great impact on the
23 resolution of the rest of the case, whether by adjudication
24 or through some sort of settlement.

25 We do believe it's appropriate. We believe it's

1 Wendy Wellin individually, and I maintain that position. She
2 would be okay with a non-jury trial, if we were able to get
3 some of these -- you know, what -- depending on what the
4 format of the trial is going to be, that would make a lot of
5 sense. I mean, obviously, it would be a very tensious [sic]
6 process.

7 THE COURT: Right. And --

8 MR. BEACH: Hamilton College is in the exact same
9 situation. We would be amenable to a non-jury trial, Your
10 Honor, assuming that we can come together on an appropriate
11 structure --

12 THE COURT: Right.

13 MR. BEACH: -- for all of it.

14 THE COURT: Okay. And that leads me -- maybe -- maybe
15 you would care to address this question, Ms. Rogers, but I'm
16 putting my old probate -- probate hat on, but unless there's
17 been some change in the law, my understanding is that to
18 create a will, you have -- you have to have a pretty low
19 legal standard in terms of just knowing the objects of your
20 affection.

21 For creation of a trust, my recollection is -- and
22 mercifully, I haven't had -- I haven't had to touch this much
23 in the last eight years, but it's basically a contract
24 capacity. Am I wrong?

25 MS. ROGERS: As far as the standards for execution, Your

1 dropping back and trying a 2013 and doing it like that. That
2 is inherently inefficient, but I'm somewhat more receptive to
3 the idea, especially if it is done as a bench trial, to try
4 the events, you know, the changes in the documents in 2013
5 and 2014 collectively because I think that that's kind of
6 when the children are alleging that most of this undue
7 influence really came in and pen got put to paper.

8 And the reason I say that is because perhaps resolution
9 of that issue would help drive or at least clarify the issues
10 for benefit of the federal court, if they were to reach
11 Wellin 3 prior to us being able to reconvene on your
12 counterclaims in state court.

13 Do you kind of get what I'm saying?

14 MR. WOOTEN: I guess what I don't understand, Your
15 Honor, is whether in that first trial -- if we had a trial on
16 all of the versions, 2013, 2014, are we -- it seems like
17 there are only two options.

18 Either we are allowed to put in our evidence on the
19 undue influence and capacity challenges, in which case we put
20 in our evidence on the tort claims, and then we're telling
21 the jury don't decide those claims. They've put the evidence
22 in, but you shall not decide that, even though we just all
23 spent weeks here trying this case. Or even if it's to Your
24 Honor, if we do it --

25 THE COURT: If we do it with the jury, we're not going

1 to bifurcate.

2 MR. WOOTEN: Okay. So --

3 THE COURT: That's my initial default setting, but at
4 the same time perhaps -- perhaps -- perhaps, we would. Do
5 you want to chime in on it?

6 MR. LAY: I do, if you don't mind.

7 THE COURT: Go ahead.

8 MR. LAY: And let me -- and let me deal with this from a
9 more practical standpoint.

10 Whether this is jury or non-jury, I think the statement
11 the evidence is all the same is untrue. And what we need to
12 sort of look at practically is how the case would actually
13 get tried if you look at it from their perspective.

14 If you try -- we have two different standards that
15 apply. One of the things that they are trying to prove is
16 defamation. They are trying to establish this defamation
17 claim, which is not a continuing tort. It's is there a
18 defamatory comment that's within the statute of limitations
19 that causes some change to the testamentary documents.
20 That's one of their causes of action that they say is by a
21 preponderance of the evidence.

22 And what that effectively does is turn estate planning
23 on its head. This is an undue influence and capacity case.
24 What they have to do under undue influence is this heightened
25 standard, and they've got to prove that up.

1 Now, imagine if we put all this together. We just mixed
2 it up into a stew. All right? Somebody gets -- a witness
3 gets up on the stand and they start testifying about a
4 particular statement. I get up and I object, and I'm going
5 to say, Your Honor, I am going to need to have a discussion
6 with you outside the presence of the jury because we are
7 going to need a limiting instruction here.

8 So the jury goes out and then there's a comment. Is it
9 defamatory? Is it even defamatory? If it's not -- if it is
10 defamatory, is it something that's excluded because of the
11 statute of limitations or is it something that should come
12 in? Or is it something that should go to an undue influence
13 standard?

14 And then how do you deal with the jury when they are
15 trying to decide the particular standard here when a
16 particular statement is being put up. It literally will be
17 every statement that anyone says there's going to be an
18 attempt, either by them or by us, on a limiting standard --
19 limiting instruction on how the evidence is going to come in.
20 It will make it impossible to try this case.

21 The beauty of the validity issue is this. You've got
22 not just the will, not just the rev trust, there was also
23 ratification of an inter vivos gift, the \$25 million. There
24 was also ratification of even bringing the suit.

25 So virtually every cause of action that they've got, if

1 it's determined to be valid, it eviscerates the lawsuit. It
2 does. It has a dramatic impact on their damages.

3 If we lose, it has a dramatic impact on their damages
4 too, to their benefit. Either one drives resolution in this
5 case.

6 There is no perfect solution. There's no way that we're
7 going to have one trial that takes care of everything, but if
8 we have a validity of the documents -- so it's going to be
9 undue influence and capacity of duress that impact the
10 validity of the documents in June of 2014. That is bringing
11 the lawsuit. That's the \$25 million inter vivos gift.
12 That's the rev trust and that's the will. If the answer to
13 that is no, then you look at what causes of action are left
14 in a subsequent trial.

15 You have really a lot of novel claims. If you look at
16 the claims that they have privately, you have intentional
17 interference with inheritance. Well, if the 2014 documents
18 are valid, they are going to have a very difficult time
19 proving up any sort of intentional interference with
20 inheritance. In fact, I think that probably ends that.

21 If we lose that case, then that's going to establish
22 damages from their perspective. They will have -- then, it
23 will be a rollback from 2014 to another will. That would be
24 impactful on what they say would be the interference with
25 their inheritance.

1 The only evidence that comes in is what happened on the
2 day where we controlled the entire environment for Mr.
3 Wellin. We brought in our lawyer, our expert --

4 THE COURT: And I'll stop you there. Even if I were to
5 bifurcate this, I think that I don't -- I'm certain that I
6 would not admit that -- that sliver of 15 minutes where he
7 comes into his lawyer's office and signs off --

8 MR. WOOTEN: Right.

9 THE COURT: -- on his will. Okay?

10 So because I understand you a hundred percent. Context
11 is everything. What kind of relationship did he have after
12 his first wife -- after his first marriage ended? How did
13 that evolve among the three kids, the grandkids, the one with
14 the property in Maine? I understand how all that is
15 intertwined into this.

16 And so from an evidentiary standpoint as far as your
17 case is concerned, yes, the relationship that Mr. Wellin had
18 with his kids and grandkids and great-grandkids throughout
19 their lives is certainly relevant to the issue of what
20 happened in 2013 and 2014 as it relates to assessment of
21 estate plans. So you don't need to worry about that.

22 MR. WOOTEN: Right.

23 THE COURT: That's -- you know, the course of dealing is
24 very important and there has to be some reason. Everything
25 happens for a reason and so he was either out of his mind and

1 to the claims challenging the versions of the trust.

2 THE COURT: Tortious interference with inheritance.

3 Okay? You alleged that counterclaim in the federal suit and
4 in the state cause of action. Okay?

5 So obviously, there's going to be some testimony that
6 relates to that. I don't know what that testimony is going
7 to be. You guys may have a better idea, but I can definitely
8 envision something that is relevant maybe to that cause of
9 action or to the defamation cause of action that should not
10 pertain to the question of whether he had testamentary
11 capacity in 2013 and 2014. I can envision some of that.

12 MR. WOOTEN: So I can envision that, but what we're
13 talking about is not bifurcating only testamentary capacity.
14 We're talking about bifurcating undue influence, and it is
15 almost impossible to conceive of --

16 THE COURT: Yeah. I wouldn't be bifurcating undue
17 influence because that's the crux of your case. So --

18 MR. WOOTEN: Oh.

19 THE COURT: Yeah. I mean I'm -- I'm talking about your
20 -- to the extent that you claim undue influence, that goes
21 hand in hand with the testamentary capacity issue. I don't
22 think they're going to disagree with that.

23 MR. WOOTEN: Okay.

24 MR. LAY: We didn't.

25 THE COURT: So -- yeah. So if you're talking or worried

1 about undue influence, hey, we're not going to have any
2 evidence of undue influence.

3 MR. WOOTEN: So this is a very important point. So the
4 -- the motion that they filed is only a couple of sentences.

5 THE COURT: Right.

6 MR. WOOTEN: And I think it does not delineate between
7 these two things. In federal court, the discussion was we
8 would bifurcate capacity and undue influence. Those were
9 together.

10 And so if their -- if their motion is to bifurcate only
11 capacity, I think it's probably not a good motion for a lot
12 of the same reasons, but that's a different motion than the
13 one I thought.

14 THE COURT: Yeah. It's more palatable than what you
15 were concerned with. I hear what you're saying. All right.

16 Since I haven't read Ms. Rogers' submission --

17 MR. WOOTEN: And just to --

18 THE COURT: Yes, sir.

19 MR. WOOTEN: Just to clarify, they are going to -- they
20 just handed this. It says that they are seeking to bifurcate
21 as to not only capacity but also as to undue influence. That
22 would be part of what they're chopping off.

23 THE COURT: But if I were to do that -- you know, if I
24 were to bifurcate, I wouldn't lift that because that means
25 they'll do it in one step and it has an effect. That's your

1 entire case.

2 MR. WOOTEN: Right. And so -- and I think the key point
3 as to the motion you are entertaining, which is just the
4 capacity issue, I think this is the viewpoint that I would
5 want to leave you with. And that is that Mr. Wellin's
6 cognitive state, his mental state, if he had diminished
7 capacity, that is highly relevant evidence for our tort
8 claims, our defamation claims and additional interference
9 with inheritance.

10 To the extent Mr. Wellin was told a lie while he was 100
11 percent, you know, a young 50-year-old man, that is much less
12 likely to affect him and have causation for our damages than
13 him being told a lie when he is -- his known capacity has
14 diminished a great deal and he's elderly and on medication,
15 even if he has testamentary capacity.

16 So the point of that is, Your Honor, the capacity
17 evidence -- we would be introducing that, the very same
18 evidence, in both the tort claims and in the -- the will
19 challenge claims.

20 And juries get and, you know, must follow jury
21 instructions all the time. If -- I think if this sort of
22 paradigm Mr. Lay is suggesting were correct, the law would
23 say when there are truly overlapping issues, you should
24 bifurcate so the jury doesn't get confused. That's the
25 opposite of what the cases say.

EXHIBIT F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin,)
)
Petitioner,)

Civil Action No. 2014-CP-10-07038

vs.)

THE WELLIN CHILDREN'S
RESPONSE IN OPPOSITION TO THE
ESTATE'S MOTION TO BIFURCATE

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 and)
Counter-Petitioners,)

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 Lanc,)

Counter-Respondents.)

IN THE MATTER OF:)

Keith S. Wellin)

2010 SEP 25 PM 4:31
JULIE L. ARMSTRONG
CLERK OF COURT
BY _____

Respondents, Counter-Petitioners, and Counterclaimants Peter Wellin, Cynthia W. Plum, and Marjorie W. King (collectively the "Wellin Children"), by and through their undersigned counsel, hereby submit this memorandum in opposition to the motion to bifurcate filed by Wendy Wellin in her capacity as Special Administrator of the Estate and Trustee of the Revocable Trust (the "Estate").

I. Introduction

This action is a trust and estates dispute relating to the estate of Keith S. Wellin (“Keith”), who passed away in 2014 after amassing a large fortune during his lifetime. His three adult children—the Wellin Children—allege that his fourth wife and widow, Wendy Wellin (“Wendy”) unduly influenced Keith at a time when his mental capacity was diminished, and challenge Keith’s purported amendments to his estate planning documents and seek to recover damages from Wendy based on tort and contract claims. Critically, all of the claims pending in this action center on Keith’s capacity and Wendy’s alleged undue influence over Keith such that having a trial on only a subset of these claims would be incredibly inefficient and would make no sense, because all evidence relating to all claims would have to be introduced at the bifurcated trial, and also at the subsequent trial.

Specifically, the Estate’s motion to bifurcate should be denied because bifurcating in the manner suggested by the Estate would require the parties, this Court, and the witnesses to participate in two nearly identical trials, each of which would be lengthy and expensive, and each of which would require the parties to introduce the same evidence regarding the same issues—namely, the mental capacity of Keith and the influence exerted on Keith by Wendy. Such an approach would be incredibly inefficient and—to the extent the Estate seeks to use the outcome of the first trial as a basis to exclude relevant evidence in the second trial, which is apparently the Estate’s intent—incredibly prejudicial to the Wellin Children. In short, this motion is a transparent attempt by the Estate to have an initial trial where the jury decides only the claims with a burden of proof most favorable to the Estate, thereby allowing the Estate to attempt to use the outcome of the first trial offensively in the second trial. But this perceived strategic advantage for the Estate is not a legitimate reason to bifurcate, and bifurcating will force the parties, this Court, and the

witnesses to participate in two nearly identical trials, which would be an incredibly inefficient and expensive outcome.

“[T]he bifurcation of issues and the separate trial of them is not the usual course of events,” and all other things being equal, “a single trial will be more expedient and efficient.” *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31748, *8-10 (D.S.C. Oct. 29, 2004).¹ Here, not only would bifurcation in the manner suggested by the Estate fail to increase efficiency or reduce costs; it would dramatically *decrease* inefficiency and *increase* costs. The Estate’s motion should be denied.

II. Relevant Factual and Procedural Background

This case is related to several civil actions pending before Judge Norton in federal district court that the parties have litigated for more than five years. Well over one hundred million dollars are at stake in these actions, and more than 100 depositions have been taken. However, the reason that the Estate’s motion to bifurcate should be denied is straightforward and only requires a basic understanding of the claims at issue in this action. Thus, the Wellin Children will provide only a brief overview of the factual background relevant to the Estate’s motion.

Keith, who amassed a large fortune during his lifetime, passed away on September 14, 2014. During his lifetime and upon his death, Keith maintained most or all of his assets in a revocable trust that he created in 2001 named The Keith S. Wellin Florida Revocable Living Trust (the “Trust”). Also, all relevant versions of Keith’s will—including the 2011 version that the Wellin Children are seeking to probate in this action and the 2014 version that Wendy Wellin (“Wendy”) is seeking to probate in this action—are “pour over” wills that provide for the assets

¹ A copy of this case, which does not appear to be available on Westlaw, is attached hereto as Exhibit A.

remaining in Keith's estate, if any, to "pour over" to his Trust upon his death and be distributed pursuant to the Trust's terms. As a result, the version of Keith's will that is probated through this action will have little practical effect, but the version of Keith's Trust that is deemed effective will have significant practical effect. At all times prior to the summer of 2013, Keith's estate planning provided for the bulk and residuary of his estate to pass in equal shares to the Wellin Children, and for a smaller, fixed amount of cash to pass to Wendy.

Around the summer of 2013, however, things changed abruptly. Keith fired his long-standing estate planning lawyer and other advisors and hired new lawyers and advisors selected by Wendy, and he began transferring large amounts of his remaining wealth to Wendy, transferring approximately \$40 million to her in 2013 alone. Keith also became convinced that his children had "stolen" all or most of his money and that he was at risk for going bankrupt because of his children (not because of Wendy), and he removed his children from various fiduciary positions (such as Power of Attorney) and replaced them with Wendy. On July 3, 2013, Keith sued his children in federal court and sought to recover various assets transferred to them and entities created for their benefit, and he simultaneously purported to amend the Trust to disinherit or severely reduce the inheritance of the Wellin Children and increase the inheritance of Wendy. In April 2014—two months before Keith executed his final Trust and Will—an independent examiner appointed by the Probate Court examined Keith and issued a report opining that he was incapacitated.

Keith passed away on September 14, 2014. Shortly after Keith's death, the Wellin Children sued Wendy in federal court for intentional interference with inheritance, breach of the prenuptial agreement, defamation, and several other causes of action, alleging that Wendy, among other things, lied to Keith, convinced him that his children stole money from him, and caused Keith to sue, disinherit, and take or attempt to take other actions to the detriment of his children and other

lineal descendants and for the benefit of Wendy, and that she did so at times when Keith lacked capacity and was under Wendy's undue influence. The day after Keith's death, Wendy filed this action to probate Keith's final Will, and the Wellin Children subsequently asserted the same counterclaims against Wendy that they asserted in the federal court action against Wendy.²

The claims and counterclaims pending in the above-captioned action are comprised of the claims relating to which version of Keith's Will and Trust should be enforced, and whether and the extent to which Wendy owes the Wellin Children damages for influencing Keith while his capacity was diminished. Critically, all of these claims and counterclaims will require introduction of the evidence relating to Keith's capacity and Wendy's influence over Keith. This fact—which cannot reasonably be disputed—is fatal to the Estate's motion to bifurcate.

III. Relevant law

South Carolina Rule of Civil Procedure 42(b) provides:

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitution or as given by a statute of the State.

SCRCP 42(b). "A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998). Most of the South Carolina cases discussing bifurcation involve requests to bifurcate liability from damages, because this is the most common type of bifurcation. In

² The above-captioned action was stayed, pending resolution of the federal action, for approximately two years, but the Estate successfully lifted the stay last year over the Wellin Children's objections.

discussing Federal Rule of Civil Procedure 42(b), which is substantially identical to SCRCF 42(b), the South Carolina District Court held:

The court is permitted considerable discretion in exercising its powers under the rule. Notwithstanding the broad discretion conferred by Rule 42(b), the bifurcation of issues and the separate trial of them is not the usual course of events. Nothing else appearing, a single trial will be more expedient and efficient. The party requesting separate trials bears the burden of convincing the court that such an exercise of its discretion will promote greater convenience to the parties, witnesses, jurors, and the court, be conducive to expedition and economy, and not result in undue prejudice to any party. Merely presenting some proof which supports bifurcation is not enough. The decision to bifurcate must be made on a case-by-case basis after consideration of all of the relevant factors and the individual circumstances.

In re Safety-Kleen Corp. Bondholders Litig., 2004 U.S. Dist. LEXIS 31748, *8-10.

As explained in *Safety-Kleen*, courts typically consider five factors in deciding a motion to bifurcate. *See id.* at *10-14. First, courts consider the separability of the issues. Courts “will likely decline to bifurcate if there will be a significant overlap of evidence at the two trials which would make separation inefficient and inexpedient.” *Id.* As a result, the most common type of bifurcation is of the issues of liability and damages. *Id.* Second, courts consider whether the claims to be tried are legal or equitable, and “[c]ourts tend to favor bifurcation where the claims to be tried are equitable rather than legal.” *Id.* Third, courts consider the posture of discovery and, specifically, whether bifurcation will allow the parties to defer costly discovery pending resolution of the issue to be tried first. *Id.* Fourth (and closely related to the first factor), courts consider whether there will be significant overlapping evidence in the separate trials. Finally, courts consider whether bifurcation will cause any prejudice to the parties. *Id.*

IV. Argument

In its motion, which is only three sentences, the Estate asks this Court “to issue an order bifurcating for trial the validity of Keith S. Wellin’s June 27, 2014 estate plan, including the Last Will and Testament and Amended and Restated Revocable Trust executed by Mr. Wellin on that

day, from the remaining claims and counterclaims currently pending in this matter.” In this action, the Wellin Children have challenged Keith’s purported amendments to his Will and Revocable Trust in 2013 and 2014 on the grounds of, among other things, Keith’s lack of capacity and Wendy’s undue influence. The Wellin Children allege that Wendy unduly influenced Keith by, among other things, convincing Keith in the summer of 2013 that his children “stole” his money—a belief Keith continued to hold for the remainder of his life, including on June 27, 2014. Thus, litigating the validity of the June 27, 2014 versions of Keith’s Will and Trust will require introduction of all evidence relevant to Keith’s capacity and Wendy’s influence over Keith, including all evidence from 2013 relating to Keith coming to believe the fiction that his children stole from him, and all evidence from 2013 and 2014 demonstrating Keith’s cognitive decline.

Under these circumstances, bifurcating the trial as the Estate suggests is not proper for at least two reasons. First, the bifurcated trial the Estate requests—one in which the parties litigate the validity of the June 27, 2014 versions of Keith’s Trust and Will—would require the parties to introduce all the evidence relevant to the remaining claims and counterclaims. If such a bifurcated trial were held, the Wellin Children would introduce all evidence supporting their tort and breach of contract claims against Wendy, because this is the same evidence that demonstrates Wendy’s undue influence over Keith and Keith’s diminished capacity rendering the June 27, 2014 Will and Trust invalid. For example, the evidence that Wendy defamed the Wellin Children to their father and intentionally interfered with their inheritance is also evidence supporting a finding that Wendy unduly influenced Keith. Thus, if the Estate’s motion were granted, the jury for the bifurcated trial would hear all the evidence relating to all the Wellin Children’s claims, but the jury would not be permitted to decide these claims. Rather, the jury would only be permitted to decide the claims relating to the validity of the Trust and the Will. This would be incredibly inefficient. If the jury

hears all the evidence relating to the Wellin Children's claims, the jury should be permitted to decide all those claims.

Second, if the Estate's motion were granted and the Court held an initial trial only on the validity of the June 27, 2014 Trust and Will, the parties may nevertheless be required to introduce all the same evidence from the first trial again in the second trial on the remaining claims. That is, even if a jury found in the first trial that, on June 27, 2014, Keith had testamentary capacity and Wendy's influence over Keith was not sufficiently great to meet the undue influence standard, this would not somehow preclude the Wellin Children from introducing all evidence of Keith's diminished capacity and Wendy's influence over Keith in the second trial. For example, regardless of the *degree* to which Keith's capacity was diminished or Wendy influenced Keith, such diminished capacity and influence is highly relevant to the Wellin Children's claims that Wendy defamed Keith and that such defamation was successful in causing Keith to disinherit and sue his children. Likewise, Keith's diminished capacity and Wendy's influence over Keith—regardless of the degree—is highly relevant to the Wellin Children's claim that Wendy intentionally interfered with their inheritance. Mental capacity and undue influence occur on a spectrum, and the Wellin Children are not required to prove Keith's diminished capacity or Wendy's undue influence to any particular standard for such evidence to be relevant to the Wellin Children's tort and breach of contract claims against Wendy. Thus, if the Court bifurcated the trial as the Estate suggests, the second trial may end up including the same evidence from the first trial.

The reason the Estate is seeking to bifurcate the trial in this manner is that the Wellin Children's challenges to the June 27, 2014 versions of Keith's Will and Trust are subject to a higher burden of proof than their tort and breach of contract claims against Wendy. Thus, the Estate

is seeking to try the claims with the most favorable standard of proof first, and then if the Estate is successful in this first trial, use the outcome from the first trial offensively in the second trial.

Regardless of whether bifurcation as suggested by the Estate is strategically advantageous to Wendy, however, it is not supported by any of the factors courts consider when deciding motions to bifurcate. To the contrary, all these factors weigh against bifurcation. First, courts consider the separability of the issues, and courts “will likely decline to bifurcate if there will be a significant overlap of evidence at the two trials which would make separation inefficient and inexpedient.” *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31748, *8-10. This is a textbook case where granting the motion to bifurcate would require significant overlap of evidence that would make the separate trials inefficient and inexpedient.

Second, courts consider whether the claims to be tried are legal or equitable, and “[c]ourts tend to favor bifurcation where the claims to be tried are equitable rather than legal.” *Id.* Here, most of the pending claims are legal, not equitable.

Third, courts consider the posture of discovery and, specifically, whether bifurcation will allow the parties to defer costly discovery pending resolution of the issue to be tried first. *Id.* Here, the Estate is not seeking to bifurcate discovery at all. Thus, bifurcation would not allow the parties to defer any discovery.

Fourth (and closely related to the first factor), courts consider whether there will be significant overlapping evidence in the separate trials. Again, this factor strongly weighs against bifurcation.

Finally, courts consider whether bifurcation will cause any prejudice to the parties. *Id.* This factor weighs most heavily against bifurcation in this case. As explained above, having a trial as to the validity of the Will and Trust—but where the numerous claims for which capacity

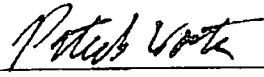
and undue influence evidence is relevant are not decided—would be incredibly inefficient and expensive. Further, all of the evidence from the initial trial on the validity of the Will and Trust may need to be introduced again when the remaining claims are tried. In the alternative, if the Court somehow decided to exclude evidence regarding capacity and undue influence from the subsequent trial on the Wellin Children's claims, as the Estate apparently envisions, the Wellin Children would be terribly prejudiced. This scenario is difficult to even fathom, as Keith's capacity and Wendy's influence over Keith are at the heart of the Wellin Children's claims against Wendy, and almost all the evidence in these cases relates to those issues to some extent.

Moreover, the Estate's motion does not explain how, as a practical matter, it envisions this proposal operating, making it difficult to assess the true level of prejudice that would result if the Court granted the motion. For example, how would the determinations made in the initial trial regarding the validity of the Will and Trust impact the subsequent litigation? Would a failure to meet the burden of proof to establish incapacity and undue influence mean the Wellin Children were barred from introducing certain evidence in the subsequent trial? What standard of proof would apply in the initial trial, and how could the determinations made in the initial trial be binding in subsequent litigation of claims with a different standard of proof? These questions and many others are not addressed in the Estate's motion, which is only three sentences. Thus, the true level of prejudice envisioned by the motion is impossible to assess.

V. Conclusion

Bifurcation should only be allowed where doing so would increase efficiency and reduce costs. Here, bifurcation as requested by the Estate would dramatically reduce inefficiency and increase costs. For the foregoing reasons, and any additional reasons provided before or during any hearing on this motion, the Estate's motion should be denied.

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Charleston, South Carolina
September 25, 2018

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 and Marjorie W. King, 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: THE WELLIN CHILDREN'S MEMORANDUM IN OPPOSITION TO THE ESATE'S MOTION TO BIFURCATE

Counsel/Party Served:

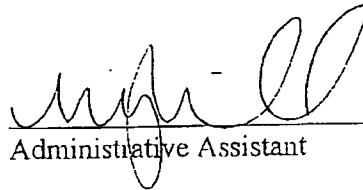
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September 25, 2018

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JULIE J. AMOS
CLERK OF COURT

EXHIBIT A



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Document (1)

1. *In re Safety-Kleen Corp. Bondholders Litig., 2004 U.S. Dist. LEXIS 31748*

Client/Matter: 039113/01500-cs06

Search Terms: 2004 U.S. Dist. LEXIS 31748

Search Type: Natural Language

Narrowed by:

Content Type
Cases

Narrowed by
-None-



Neutral
As of: September 25, 2018 6:26 PM Z

In re Safety-Kleen Corp. Bondholders Litig.

United States District Court for the District of South Carolina, Columbia Division

October 29, 2004, Decided; October 29, 2004, Filed

Case No. 3:00-1145-17

Reporter

2004 U.S. Dist. LEXIS 31748 *

IN RE SAFETY-KLEEN CORP. BONDHOLDERS LITIGATION

Subsequent History: Motion denied by, Motion granted by, Motion granted by, in part, Motion withdrawn by *In re Safety-Kleen*, 2005 U.S. Dist. LEXIS 46268 (D.S.C., Feb. 4, 2005)

Prior History: *In re Safety-Kleen Corp. Bondholders Litig.*, 2004 U.S. Dist. LEXIS 31099 (D.S.C., Oct. 29, 2004)

Core Terms

bifurcation, Securities, separate trial, issues, discovery, witnesses, damages, parties, require proof, plaintiffs', separable, scienter, weights

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Judges: Joseph F. Anderson, Jr., United States District Judge.

Opinion by: Joseph F. Anderson, Jr.

Opinion

ORDER NO. 157 DENYING PLAINTIFFS' MOTION TO BIFURCATE TRIAL

This case comes before the court on motion by plaintiffs American High-Income Trust ("AHIT") and State Street Research Income Trust ("SSRIT") filed on July 23, 2004 on behalf of themselves and the class, for an order bifurcating the trial of this action so that the class's claims pursuant to Sections 11 and 15 of the Securities Act of 1933 ("Securities Act claims") are tried first, followed by separate trials of claims made pursuant to Sections 10(b), 18 and 20(a) of the Securities Exchange Act of 1934 ("Exchange Act claims"). On August 9, 2004, defendant PricewaterhouseCoopers LLP ("PwC") filed a response to the motion in which it did not oppose bifurcation. By memorandum filed August 10, 2004, defendants James R. Bullock, Leslie W. Haworth, Henry B. Tippie, James L. Wareham and Robert W. Luba ("Defendant Directors"), opposed bifurcation. Plaintiffs filed a reply on August [*5] 12, 2004. On October 6, 2004, this court heard extensive oral argument on the motion.

The grounds for plaintiffs' motion to bifurcate primarily revolve around the risk of juror confusion. Plaintiffs argue that if the Securities Act claims and Exchange Act claims are tried together, there is a significant risk that jurors will apply the wrong legal standards to the different sets of claims. They assert that bifurcation is appropriate in light of the differences in the elements of each of the claims, including differences in

the measure of damages, burdens of proof regarding causation and state of mind, as well as the absence of reliance and scienter requirements under the Securities Act. Defendant Directors argue against bifurcation, claiming it would produce inefficiencies because evidence of the underlying facts and circumstances would be relevant to both trials, through identical witnesses and evidence. They further oppose bifurcation on the grounds that bifurcation would work an unfair hardship on them.

I. NATURE OF CLAIMS:

This is a securities fraud case in which plaintiffs have asserted claims under the 1933 Securities Act and the 1934 Exchange Act. A brief description of the differences [*6] among the claims follows for the purpose of highlighting the nature of the anticipated trial proceedings.

A. 1933 Securities Act Claims

1. Section 11 Claims:

The Section 11 claims are limited to false statements in the registration statements. They do not require proof of reliance, scienter or causation. Defendants bear the burden of proving the affirmative defense that they had no reasonable ground to believe and did not believe that the registration statements were untrue or misleading under essentially a negligence standard. Damages under Section 11 are calculated based on a statutory formula and are limited to post-registration purchases.

2. Section 15 Claims:

The Section 15 claims do not require proof of reliance or scienter. The affirmative defense requires defendants to prove they had no knowledge of or no reasonable ground to believe in the existence of the facts giving rise to Safety-Kleen's violation. Section 15 claims are derivative of Section 11 claims, and damages are calculated based on the same statutory formula.

B. 1934 Exchange Act Claims

1. Section 10(b) Claims:

The Section 10(b) claims are based on false statements in the

registration statements, offering memoranda and Form [*7] 10-K filings. They require proof of reliance and scienter. The burden is on plaintiffs to prove that the defendants acted intentionally or recklessly. Damages are calculated, not according to statutory formula, but by the fact-finder on an out-of-pocket measure. The Section 10(b) claims are based on all purchases of the bonds during the class period, not just post-registration.

2. Section 18 Claims:

The Section 18 claims are based on false statements in the Form 10-K filings. They require proof of reliance. The burden is on plaintiffs to prove that they actually read and relied on the false statements in the SEC filing. Section 18 does not require proof of scienter, but provides an affirmative defense to those defendants to prove that they acted in good faith and had no knowledge that the statement was false or misleading.

3. Section 20(a) Claims:

The Section 20(a) claims are based on control person liability against those who controlled Safety-Kleen. The Section 20(a) claims arise out of Safety-Kleen's violations of Section 10(b) and Section 18. Therefore, plaintiffs have the burden of proving all the elements of a Section 10(b) or Section 18 claim, plus establishing defendants' control [*8] of Safety-Kleen. Defendants bear the burden of proving that they acted in good faith and did not directly or indirectly induce the act(s) constituting the violation.

II. LEGAL ANALYSIS:

A. Standard of Review

Rule 42(b) of the Federal Rules of Civil Procedure governs motions to bifurcate an action into separate trials. This rule provides:

The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Fed. R. Civ. P. 42(b).

The court is permitted considerable discretion in exercising its powers under the rule. Shetterly v. Ravmark Indus., 117 F.3d 776, 782 (4th Cir. 1997); White v. Bloomberg, 501 F.2d 1379 (4th Cir. 1974). Notwithstanding the broad discretion conferred by Rule 42(b), the bifurcation of issues and the separate trial of them is not the usual [*9] course of events. See 9 Charles Alan Wright, et al., Federal Practice and Procedure § 2381, 2387-92, at 474 (1990). Nothing else appearing, a single trial will be more expedient and efficient. Industrias Metalicas Marva, Inc. v. Lausell, 172 F.R.D. 1, 2 (D.P.R. 1997); Johns Hopkins University v. Cellpro, 160 F.R.D. 30, 35 (D.Del. 1995).

The party requesting separate trials bears the burden of convincing the court that such an exercise of its discretion will promote greater convenience to the parties, witnesses, jurors, and the court, be conducive to expedition and economy, and not result in undue prejudice to any party. Smith v. Alyeska Pipeline Service, 538 F.Supp. 977 (D.Del. 1982), *aff'd*, 758 F.2d 668 (Fed. Cir. 1984), *cert. denied*, 471 U.S. 1066, 105 S. Ct. 2142, 85 L. Ed. 2d 499 (1985). Novapharm, Ltd. v. Torpharm, Inc., 181 F.R.D. 308, 310 (E.D.N.C. 1998). Merely presenting some proof which supports bifurcation is not enough. Willemijn Houdstermaatschappij BV v. Apollo Computer Inc., 707 F.Supp. 1429, 1433-34 (D.Del. 1989).

The decision to bifurcate must be made on a case-by-case basis after consideration of all of the relevant factors and the individual circumstances. *Id.*; Lis v. Robert Packer Hospital, 579 F.2d 819, 824 (3rd Cir. 1978), [*10] *cert. denied*, 439 U.S. 955, 99 S. Ct. 354, 58 L. Ed. 2d 346 (1978).

B. Factors Relevant to Determining Whether to Bifurcate

In general, courts consider the following five factors relevant to a bifurcation decision.

1. Separability of the Issues

This factor constitutes a threshold inquiry because bifurcation raises the possibility that any delay between separate trials may result in the loss of one or more jurors which would require the selection of a new jury. In that instance, if the issues were not truly separable, the result would be that different juries would have considered the same issue, in violation of the Seventh Amendment. See Wright, *supra* at 512 (p. 110, 1999 Pocket Part), citing Matter of Rhone-Poulenc Rorer, Inc., 51 F.3d 1293, 1303 (7th Cir. 1995), *cert. denied*,

516 U.S. 867, 116 S. Ct. 184, 133 L. Ed. 2d 122 (1995); Castano v. American Tobacco Co., 84 F.3d 734 (5th Cir. 1996). Consequently, the issues must be truly separable before separate trials can be ordered without the risk of untoward consequences. Even if the issues are separable for purposes of the Seventh Amendment, a court will likely decline to bifurcate if there will be a significant overlap of evidence at the two [*11] trials which would make separation inefficient and inexpedient. Further, bifurcation is "improper where the issues are so closely interwoven that plaintiff would have to present the same evidence twice in separate trials. In such circumstances, judicial economy is fostered by a single trial." 8 Moore's Federal Practice 3d § 42.20[7][c].

The most common justification for separate trials is that the discovery and/or the trial of the issues of liability and damages are sufficiently complex so that the two issues should proceed separately. Determination of complexity, in turn, requires an examination of the amount and kind of evidence that will be used to support each issue. Willemijn at 1435; Home Elevators, Inc. v. Millar Elevator Serv. Co., 933 F.Supp. 1090, 1091 (N.D. Ga. 1996).

In the present case, both the Securities Act and Exchange Act claims will involve presentation of much of the same evidence on many of the same issues through the same witnesses. For example, the question of misstatement of Safety-Kleen's financial statements, market conditions, and the director's exercise of good faith and reasonable care are all issues involved in both sets of claims. Their resolution will likely [*12] involve testimony from many of the same witnesses. Plaintiffs themselves do not deny that there will be considerable overlap between the evidence and witnesses in the trial of the Securities Act and Exchange Act claims. Pl. Reply Br. at 2. Therefore, this factor weighs against bifurcation.

2. Jury-Tried Claims

Courts tend to favor bifurcation where the claims to be tried are equitable rather than legal. E.g., Dollar Sys., Inc. v. Aycar Leasing Sys., Inc., 890 F.2d 165, 170 (9th Cir. 1989). In this case, the claims are all legal claims to be tried to a jury. Therefore, this factor weighs against bifurcation.

3. Posture of Discovery

One of the "primary purposes of bifurcation is to defer costly discovery pending resolution of preliminary issues such as liability." 8 Moore's Federal Practice 3d § 2.23[3]. If bifurcation were ordered, there would be no substantial saving

of the parties' time insofar as discovery is concerned. Discovery has already been completed. This is not a case in which a request for bifurcation was made early in the proceedings based on the contention that time and expense would be saved if discovery relating to some of the claims was deferred. Therefore, this factor [*13] weighs against bifurcation.

4. Overlapping Evidence in Separate Trials

Although there may be some difference in the evidence to be presented in the two sets of claims, the parties anticipate there will be extensive overlap between the evidence and witnesses in the trial of the Securities Act claims and Exchange Act claims, as discussed above. Therefore, this factor weighs against bifurcation.

5. Prejudice to parties.

Bifurcating a case adds costs to the parties in the form of the additional expense associated with two trials and adds delay in final resolution. Willemijn at 1435, citing H.B. Fuller Co. v. National Starch & Chem. Corp., 595 F.Supp. 622, 625 (D.Del. 1984). Defendant Directors argue they will be prejudiced by bifurcation of the claims because they would incur additional costs and delay. Plaintiffs concede the trials would be collectively longer in the event of bifurcation than not. The court finds this factor also weighs against bifurcation.

The Court finds its ruling on decertification sufficient to foreclose further consideration of bifurcating the trial. Cases granting bifurcation have usually involved additional elements of complexity or involve separation of liability [*14] and damages phases. There are no similar additional complicating factors in this case. The court finds that any potential confusion can be eliminated with clear jury instructions and special verdict forms.

On the record here, this court concludes that the plaintiffs have not satisfied their burden of showing that separate trials in this case would further the convenience of the parties and would be conducive to expedition and economy.

III. CONCLUSION

The court denies plaintiffs' motion to bifurcate the trial. This case will proceed to trial as a class action as to the Securities Act claims. The class having been decertified as to plaintiffs' claims under Section 10, Section 20(a) and Section 18

2004 U.S. Dist. LEXIS 31748, *14

pursuant to the Exchange Act, only the two named plaintiffs' Exchange Act claims will be tried at the same time as the trial of the class's Securities Act claims (Section 11 and Section 15).

IT IS SO ORDERED.

/s/ Joseph F. Anderson, Jr.

Joseph F. Anderson, Jr.

United States District Judge

October 29, 2004

Columbia, South Carolina

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EXHIBIT G

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

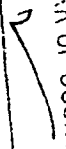
Wendy C.H. Wellin, Invidiually and as
Trustee of the Keith S. Wellin Florida
Revocable Living Trust u/a/d December
11, 2001, Hamilton College, Keith S.
Wellin Florida Revocable Living Trust,
Campbell Hard, and Heather Lane
Counter-Respondents.

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

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

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

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

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

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

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

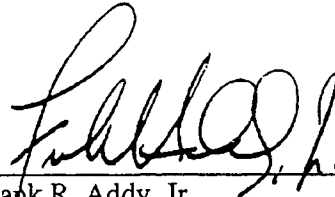
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

EXHIBIT H

1
2 THE STATE OF SOUTH CAROLINA
3 IN THE SUPREME COURT
4 CASE NO. 2012-212871
5

6 LAWRENCE E. MORROW AND EVELYN M. MORROW,
7 Petitioners,
8 v.
9 FUNDAMENTAL LONG-TERM CARE HOLDINGS, LLC,
10 ET AL.,
11 Respondents.
12
13

14 TRANSCRIPT OF DVD PROCEEDINGS
15
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18
19
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25

1 separate theory of liability, and the trial
2 court recognized it, which is direct liability,
3 direct negligence.

4 MR. HINES: Your Honor, let me maybe answer
5 that by explaining what I think the trial court
6 actually did and how I think respectfully it's
7 not quite -- it's not quite that.

8 JUSTICE TOAL: Liability is not derivative,
9 but the Court apparently assumed that because it
10 said that Magnolia facility can avoid liability
11 and it might avoid liability because it is
12 somebody else's fault.

13 MR. HINES: To be clear now, Your Honor --

14 JUSTICE TOAL: And if they avoid liability,
15 even if they pin the fault directly on the other
16 corporations, they have, by avoiding liability
17 themselves, also precluded plaintiff from
18 pursuing its independent claims against the
19 other entities. That's the great big doubt
20 about this kind of bifurcation.

21 MR. HINES: To be clear, Your Honor, there
22 is no attempt at avoiding liability by the
23 facility by making such an argument. That is
24 not an issue that's raised in this case.

25 JUSTICE KITTREDGE: So you would stipulate

1 that even with the plaintiff losing in the,
2 quote, first trial, you would stipulate they
3 have an absolute right then to pursue the claims
4 against the corporate defendants?

5 MR. HINES: Your Honor, I would not.

6 JUSTICE KITTREDGE: Then you just answered
7 Chief Justice's question.

8 JUSTICE PLEICONES: Absolutely. And there
9 is nothing about this order that promotes
10 efficiency or that does anything but squander
11 judicial resources. But addressing the rule,
12 you must conclude or you must admit that
13 assuming Mr. Nichols and his side gets met with
14 a summary judgment order against these corporate
15 defendants because they lost the first trial,
16 that they can appeal that and that summary
17 judgment would likely be wrong. And if they
18 lose that first trial because they were deprived
19 of the opportunity to present certain amounts of
20 certain pieces of evidence, because if they
21 related purportedly only to the corporate
22 defendants, that they would have a clear appeal
23 on that and they probably win on that. So what
24 have you done?

25 Now, clearly the rule operates in your

EXHIBIT I

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

1	KEITH WELLIN, et al.	:	
2		:	
3	vs.	:	
4		:	
5	PETER J. WELLIN, et al.	:	2:13 CV 1831
6	LESTER S. SCHWARTZ	:	
7		:	
8	vs.	:	
9		:	
10	PETER J. WELLIN, et al.	:	2:13 CV 3595
11		:	
12	PETER J. WELLIN, et al.	:	
13		:	
14	vs.	:	
15		:	
16	WENDY WELLIN	:	2:14 CV 4067
17		:	
18	PETER J. WELLIN, et al.	:	
19		:	
20	vs.	:	
21		:	
22	WENDY C.H. WELLIN	:	2:15 CV 1171
23		:	
24	WENDY C.H. WELLIN	:	
25		:	
	vs.	:	
		:	
	THOMAS M. FARACE, ESQ., et al.	:	2:16 CV 414

Motion hearing in the above-captioned matters held
Wednesday, July 20, 2016, commencing at 2:08 p.m., before
the Hon. David C. Norton, Courtroom II, United States
Courthouse, 83 Meeting St., Charleston, South Carolina,
29401.

REPORTED BY DEBRA LEE POTOCKI, RMR, RDR, CRR
Official Court Reporter for the U.S. District Court
P.O. Box 835
Charleston, SC 29402
843/723-2208

1 And then the last case that the Wellin children filed was
2 what we're referring to as a defamation case. Interlaced
3 through all three of these claims is a common issue that
4 surfaces across the spectrum of time, related to capacity,
5 competence, undue influence and duress. It's in our briefing
6 what we referred to as the validity issues.

7 And so we've identified in our briefing, 12 specific
8 points of time in about an 18- or 19-month window where
9 specific transactions were executed that are relevant to the
10 determination of claims in all three of those cases, some of
11 which are limited to one case and some are which related to
12 all three cases.

13 And as you sort of take a step back, and the issue of
14 capacity and competence has been raised by the Wellin
15 children, and it will be used likely as a defense or an
16 affirmative defense to many of the causes of action. And so
17 when I thought about how we would envision a trial where that
18 was a component, we estimate that between the expert
19 witnesses, the care providers, the doctors, the friends, the
20 family members, you know, upwards of 50 witnesses specifically
21 related to the issue of capacity, validity issues, undue
22 influence, et cetera. And when we started mapping out what
23 that would look like, it would look like three to four weeks
24 of testimony specifically related to issues of validity. And
25 if we separate -- if we proceeded as other cases are filed,

1 and we proceeded with our trial first, that means we'd have
2 three or four weeks of that testimony, coupled with all the
3 other issues. And then in the trust protector case you'd have
4 the same validity issues, coupled with the trust-specific
5 cases. And then in the defamation case you'd have the same
6 three or four weeks, coupled with then the defamation claims
7 that are associated therein.

8 So we looked at Rule 42. Forty-two gives you great
9 discretion. There's not a whole lot of guidance for us to go
10 look to in terms of common law interpreting Rule 42 in this
11 context. You know, I think that what we envisioned was a
12 combined 42(a) and 42(b) effort by the Court, if the Court is
13 so inclined, where you could bifurcate particular issues as
14 permitted, and consolidate those issues for a particular
15 trial.

16 The options really available to us, if you look at these
17 three cases, and I tried to identify what the potential
18 options are, and there may be others, but the first would be
19 to have simply three separate trials where there's no
20 consolidation, no bifurcation. And that's what I alluded to a
21 moment ago, where you'd have the same capacity validity
22 issues, coupled with the case specific ones.

23 And in our primary case, if you take the capacity and the
24 fiduciary issues, we would estimate that that would be a five-
25 or six-week trial.

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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

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

RECEIVED
JUN 07 2019
SC Court of Appeals

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

VERIFIED PETITION FOR A
WRIT OF SUPERSEDEAS¹

This appeal arises from a complex estate dispute. The issue presented by this emergency Petition, however, is simple, and the writ it requests is urgent, necessary, and well justified. Although the circuit court's Order regarding the way this case is to be tried is currently pending on appeal before this Court, the circuit court nevertheless informed the parties on the evening of June 4, 2019, that it intends to proceed with a trial in this matter beginning on June 17, 2019.

¹ In the alternative, Petitioner requests 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.

Proceeding with trial while an Order governing the trial is 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. Allowing the circuit court to proceed with trial while this matter is on appeal would invade this Court's jurisdiction, undermine respect for the clear mandate of the appellate court rules, 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 because the lower court lacks jurisdiction. Thus, 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.²

INTRODUCTION

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 certain 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, filing their Notice of Appeal on May 16, 2019. Notwithstanding the pendency of that appeal and the automatic appellate stay imposed by Rules 205 and 241(a), SCACR, the circuit court judge, the Honorable Frank R. Addy, Jr., sent a letter to the Honorable James E. Lockemy, Chief Judge of the South Carolina Court of Appeals, dated May 17, 2019, stating, among other things, that "I do believe this appeal may be

² Because this Petition and the above-referenced appeal are related to a proceeding decided by a panel of this Court one week ago—*Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019)—for which the remittitur has not yet been issued, and in light of the extraordinary and exigent circumstances giving rise to this Petition, Appellants are directing this Petition to the attention of the panel that decided that case, namely Judges Konduros, McDonald, and Hill (*i.e.*, "the appellate court where the appeal is pending," *see* Rule 241(d)).

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 forward and resolve this matter in June.” See Letter (attached as **Exhibit A**). Judge Addy did not copy Appellants or any of the parties on the letter to Judge Lockemy, but Appellants recently discovered a copy of the letter after it was uploaded to this Court’s online docket. As far as Appellants are aware, this Court did not respond to Judge Addy’s letter, much less authorize Judge Addy to proceed with trial notwithstanding the automatic stay. This Court has not dismissed Appellants’ appeal, and in fact, the deadline for Appellants to file their memorandum regarding appealability issues is not until June 12, 2019. Nevertheless, on the evening of June 4, 2019, the circuit court informed the parties’ counsel via email that it intends to proceed with the trial on June 17, 2019 (meaning the trial is set to commence only 10 days from now) under the same limitations and conditions being challenged on appeal.

Contrary to Judge Addy’s assertion in his letter to Judge Lockemy, Appellants have not filed this appeal to delay trial. Rather, Appellants only seek a full and fair trial. The trial ordered by the circuit court denies them the opportunity to present their claims. 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).³

Accordingly, pursuant to Rule 241, SCACR and S.C. Code Ann. § 14-8-290, Petitioner files this Petition for a Writ of Supersedeas and respectfully requests this Court issue an expedited writ enforcing the automatic stay and staying the trial in this matter until resolution of the issues on appeal.⁴

³ Indeed, if Appellants 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 thirty days to file their Notice of Appeal.

⁴ Appellants filed this writ directly with the Court of Appeals because (i) the trial is now set for

RELEVANT BACKGROUND⁵

This appeal arises from a dispute over a multi-hundred million dollar estate left by the decedent Keith S. Wellin (“Keith”). Petitioner is Peter J. Wellin, Keith’s adult son of his first wife, who, along with his sisters Cynthia Plum and Marjorie King (collectively “the Wellin Children” or “Appellants”) are the Appellants in the pending appeal. 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 individually⁶ 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 and stating the first “phase” of trial would “decide the issues of undue influence and testamentary capacity for the relevant period of time.”

June 17, 2019, (ii) the circuit court has indicated by email to the parties that it does not intend to recognize the automatic stay, and (iii) the predisposition of the circuit court on this issue is plainly reflected in the unusual letter to Judge Lockemy. Under these extraordinary circumstances, it is impracticable to request relief in the first instance from the circuit court.

⁵ For the sake of brevity and in light of the emergency nature of this Petition, the recitation that follows omits the intricacies and complexities of the estate plan, the factual background, and the procedural history leading up to this appeal. Rather, this section provides only the background pertinent to the issuance of the Writ requested herein. A more complete recitation of the facts is set forth in *Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019), available at 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a related dispute between the same parties.

⁶ These include counterclaims for 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.

See Order at 1 (attached hereto as **Exhibit B**). 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 different elements and different burdens of proof than 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 C**). 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 the Supreme 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 their substantive right to be the architects of their case.

On May 17, 2019, the day after the Wellin Children filed their Notice of Appeal, Judge Addy sent the above-referenced letter to Judge Lockemy. See **Exhibit A**. As noted above, the Wellin Children are not aware of this Court responding to this letter, much less authorizing Judge Addy to proceed with trial while this matter is on appeal.⁷

⁷ Because Judge Addy did not copy any of the parties on this letter, and because the Wellin Children only discovered the letter while searching for a filing on this Court's online docket, the Wellin Children are not aware if other parties received a copy of the letter before this filing.

On May 23, 2019, this Court sent a letter to the parties requesting memoranda addressing the issue of appealability. On May 24, 2019, Respondents filed motions to dismiss the appeal. On June 3, 2019, certain Respondents filed memoranda addressing the issue of appealability. On June 7, 2019, contemporaneously with the filing of this Petition, the Wellin Children filed their Return to the Motions to Dismiss (which also serves as the Wellin Children's memorandum on the issue of appealability). Notably, every party to this appeal recognizes in their briefs that the primary issue on appeal is the permissibility of the truncated, limited, "bifurcated" trial prescribed in the circuit court's Order. Indeed, Respondent Wendy Wellin has taken the position that *all* matters in this action are stayed pending resolution of the appeal, including all discovery. *See* E-Mail from the Wellin Children's counsel to Wendy's counsel (attached hereto as **Exhibit D**).⁸

Notwithstanding the pending appeal, the ongoing briefing regarding appealability, and the absence of any response (as far as the Wellin Children are aware) to Judge Addy's letter to Judge Lockemy, Judge Addy's judicial assistant sent an email to the parties' counsel late on the afternoon of June 4, 2019, stating (for the first time to the parties) 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 E**).⁹ The email further stated, "The court is aware that

⁸ The Wellin Children disagree that discovery is stayed by this appeal. *See* Rule 205, SCACR (providing that an appeal does not prevent the lower court "from proceeding with matters not affected by the appeal"). This issue, however, is not before the Court in this Petition.

⁹ 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 A** (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

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.” *Id.* The email did not provide a reason why the circuit court found no cause for the automatic stay to apply.

ARGUMENTS

This Court should issue a writ of supersedeas to protect its jurisdiction, to enforce the automatic appellate stay imposed by the Rules, to maintain the status quo pending resolution of the appeal, to preserve judicial economy, and to avoid rendering the matters on appeal moot. Because the circuit court has scheduled trial to begin on June 17, 2019, the Wellin Children respectfully request expedited consideration and issuance of a writ staying the trial or any other proceedings in the circuit court affected by the appeal until after resolution of the pending appeal.

The appellate court 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.¹⁰ There can be no question here that the Order on appeal decides matters relating to the conduct and mode of the trial (including the refusal to have a trial on certain claims). Indeed, as the opposing parties’ appellate briefing and motions to date expressly recognize, those limitations are the very issue being appealed. Accordingly, the appeal stayed the trial of this case until the appeal is resolved. *See* Rule 241(a), SCACR (“[T]he

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 automatic stay. 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 is therefore not available to begin trial on June 17. *See* E-Mail from the Estate’s Counsel (attached as **Exhibit F**).

¹⁰ The automatic appellate stay is subject to 11 enumerated exceptions, *see* Rule 241(b), SCACR, none of which is implicated here.

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”).

Where a circuit court intends to act in circumvention of the automatic appellate stay, the appellate court rules provide for granting a writ of supersedeas “to prevent a contested issue from becoming moot.” Rule 241(c)(2), SCACR; *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.”). 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.”” *Graham v. Graham*, 301 S.C. 128, 130, 390 S.E.2d 469, 470 (1990) (quoting 4A C.J.S. Appeal & Error § 662 at 494–95 (1957)).

Such a writ is required here. 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. The Supreme 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).

Further, any form of trial at this point would render moot the court's consideration of the Order setting the length and scope of trial. 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."). Thus, a trial in any form in this matter must be stayed pending a resolution of this appeal. See *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 fact that the appealability of the Order is disputed is of no moment. As the Wellin Children explain in their Return to the Motions to Dismiss the Appeal, filed contemporaneously herewith, under *Morrow*, they not only *may* immediately appeal the "bifurcation" order, but *must* immediately appeal it to avoid waiving their right to appeal at a later juncture in the proceedings. 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). Further, the Rules establishing the automatic appellate stay make no exception for situations where one party or even the trial court thinks the order is not immediately appealable. Rather, the Rules are clear that the circuit court is divested of jurisdiction to proceed with matters decided in its Order unless and until the appellate courts issue a remittitur.¹¹

¹¹ The appellate rules establish a specific procedure whereby a party seeking to set aside the automatic appellate stay may do so. See Rule 241(d), SCACR. In the instant proceeding, no party has applied to lift the automatic stay or to permit the trial to proceed despite the pendency of the appeal.

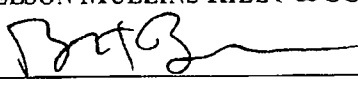
The circuit court's plan to proceed with trial under the very circumstances and limitations being challenged on appeal should be stayed.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests 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.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: _____


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SC Bar No. 11987
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Merritt G. Abney
SC Bar No. 71893
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Miles Coleman
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Greenville, SC 29601
(864) 373-2352

Attorneys for Appellants/Petitioner

Charleston, South Carolina
June 7, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
The Honorable Frank Addy, 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 Marjory W.
King, Individually and as Co-Trustees and
Beneficiaries of the Wellin Family 2009 Irrevocable
Trust, w/a/b November 2, 2009, ... Appellants,

v.

Wendy C.H. Wellin, Individually and as Trustee of
the Keith S. Wellin Florida Revocable Living Trust
w/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.

VERIFICATION

I, Peter Wellin, verify that, to the best of my knowledge and belief, the facts set forth in
the foregoing Petition for a Writ of Supersedeas are accurate.

Executed on June 7th, 2019.

SWORN to and subscribed before me

this 1st day of June, 2019

[Signature] (L.S.)

Notary Public for Maine

My Commission Expires: Dec 12/2024

[Signature]

Peter Wellin

Appellant/Petitioner

EXHIBIT A



State of South Carolina
The Circuit Court of the Eighth Judicial Circuit

Frank R. Addy, Jr.
Judge

May 17, 2019

Greenwood County Courthouse
528 Monument Street, Suite 210
Greenwood, SC 29646
Phone: (864) 943-8020
Fax: (864) 942-8581
faddyj@sccourts.org

The Hon. James E. Lockemy
Chief Judge, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

MAY 20 2019

SC Court of Appeals

Re: Appeal in Wellin v. Wellin

Dear Judge Lockemy,

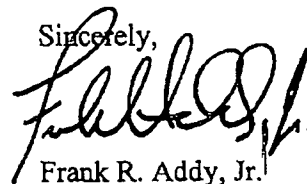
I became aware of the enclosed notice of intent to appeal in the above case today. Last year, I was assigned to handle all matters concerning it. To the extent the concerns expressed in this letter are not germane or appropriately communicated to you, please disregard this letter because I have no opinion concerning the merits of any appeal which may be taken.

Please understand that this is one of the oldest cases on the docket in Charleston, and it has a companion federal case which has been pending for years as well. 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.

Although I cannot speak to the issues they intend to raise, I do believe this appeal may be little more an effort to delay this matter further. Please do understand that this is an estate of incredible worth, and per Judge Norton in Charleston, substantial attorney's fees are already involved.

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. Should you desire to speak with me, I can be reached on my cell at (864) 992-2144.

Sincerely,



Frank R. Addy, Jr.

Enclosure

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

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

1 

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

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

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

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

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

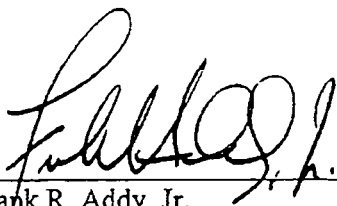
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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

fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS

Frank R. Addy, Jr., Circuit Court Judge

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

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

vs.

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

vs.

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

and

Friendship Management, LLC, ... Appellant,

vs.

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

IN THE MATTER OF:
Keith S. Wellin

RECEIVED

MAY 16 2019

SC Court of Appeals

NOTICE OF APPEAL

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

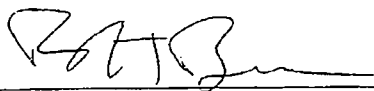
Beneficiaries of the Wellin Family 2009 Irrevocable Trust, u/a/d November 2, 2009, and Friendship Management, LLC (the “Appellants”) appeal the order of the circuit court dated May 9, 2019, and entered on May 15, 2019.¹ Counsel for Appellants received written notice of the entry of the order on May 16, 2019. Appellants also appeal the prior orders of the circuit court entered October 20, 2017, and August 24, 2018.² Copies of the subject orders are attached hereto.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

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

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

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: 

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Merritt G. Abney
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E-Mail: patrick.wooten@nelsonmullins.com
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(843) 853-5200

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

Attorneys for Appellants

Charleston, South Carolina
May 16, 2019

PROOF OF SERVICE

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, 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:

NOTICE OF APPEAL

Counsel Served:

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

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

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

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

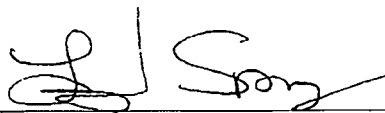
Marvin D. Infinger, Esq.
Barnwell Whaley Patterson & Helms, LLC
PO Drawer H
Charleston, SC 29402
*Attorney for Campbell Lane Hart and
Heather Lane*

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

RECEIVED

MAY 16 2019

SC Court of Appeals

A handwritten signature in black ink, appearing to read 'Lydia Spry', is positioned above a horizontal line.

Lydia Spry
Administrative Assistant

May 16, 2019

ATTACHMENT 1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wendy C. H. Wellin,
Petitioner,

vs.

Peter Wellin, Cynthia W. Plum and
Marjorie W. King, Individually and as
Co-Trustees and Beneficiaries of the
Wellin Family 2009 Irrevocable Trust,
u/a/b November 2, 2009,
Respondents and Counter- Petitioners

vs.

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

IN THE MATTER OF:
Keith S. Wellin

THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-10-07038

ORDER

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

RECEIVED

MAY 16 2019

SC Court of Appeals

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

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

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

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

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

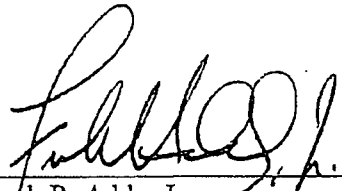
The Wellin Children filed a Motion for a Status Conference in this case. This jurist recently consulted with Judge Norton who has jurisdiction over the federal court action. Both courts agree that the actions pending in state court should be tried prior to the federal action in order to promote judicial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

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fraud, duress, or mistake. This Court finds that bifurcation of the issues will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation. However, the Court denies Ms. Wellin's motion to limit bifurcation only to Keith Wellin's most recent estate plan.

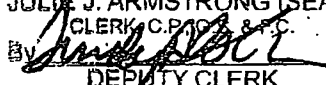
This Court will try the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014 in state court. Put another way, the trial will decide the issues of undue influence and testamentary capacity for the relevant period of time. Of course, the Wellin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

IT IS SO ORDERED.¹



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

May 9, 2019
Greenwood, South Carolina

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

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

ATTACHMENT 2

IN THE COURT OF COMMON PLEAS

)

) C/A No. 2014-CP-10-07038

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MAY 16 2019
SC Court of Appeals

JULIE J. MONTGOMERY
CLERK OF COURT

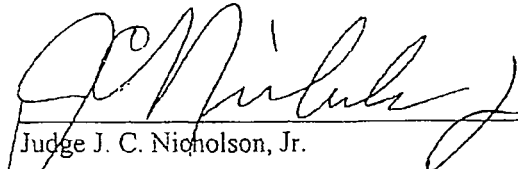
DEPT

ggm

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

AND IT IS SO ORDERED.

10/20, 2017
Charleston, South Carolina


Judge J. C. Nicholson, Jr.

ATTACHMENT 3

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014CP1007038

Wendy C H Wellin
PLAINTIFF(S)

Peter Wellin Cynthia
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

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

*No further delays in this case. Chief Clerk
judge should sit for trial (2 weeks max)
as soon as practicable. am*
Motion/ Stay by Respondent & Counter Petitioners - Denied
Amended Motion/ Stay by respondents, crt/srv - Denied

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be Enrolled (List amount(s) below)
		\$

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

Circuit Court Judge

RECEIVED

2159
Judge Code

8-23-18
Date

MAY 16 2019

SC Court of Appeals

From: Patrick Wooten
Sent: Wednesday, May 22, 2019 1:52 PM
To: John Lay - GWB
Subject: depositions

John T – I also want to confirm that you and I discussed on the phone the deposition notices you served for the Wellin Children to be deposed in the state court action in early June, and we agreed that those depositions will not go forward on the dates that they were noticed and that we do not need to file a motion relating to those depositions at this time. I understand that you are taking the position that all discovery is stayed in the state court action as a result of our notice of appeal, and we disagree with that position, but we can address that issue later. Let me know if any of this is incorrect. Thanks.



PATRICK C. WOOTEN PARTNER
patrick.wooten@nelsonmullins.com
LIBERTY CENTER | SUITE 600
151 MEETING STREET | CHARLESTON, SC 29401
T 843.534.4102 F 843.534.4267
NELSONMULLINS.COM VCARD VIEW BIO

EXHIBIT E

From: Addy, Frank R. Secretary (Freda Sartin) <faddysc@sccourts.org>
Sent: Tuesday, June 4, 2019 4:15 PM
To: Bobby Hood; Brian Duffy; Bryson Geer; Deirdre McCool; Edward Bennett; Gray Culbreath; James Hood; John Beach; John Hagerty; John Hudson; John Lay - GWB; 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; Robert Brunson; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood
Cc: Caroline Crisler. Leonard; Addy, Frank R. Law Clerk (Meagan White); Al Eargle; Chiles, Gwendolyn D.; Buffey Hodges
Subject: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al)
Importance: High

◄External Email► - From: prvs=9058a7d14f=faddysc@sccourts.org

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

--- CONFIDENTIALITY NOTICE --- This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

EXHIBIT F

From: Jamie Hood <james.hood@hoodlaw.com>
Sent: Wednesday, June 5, 2019 8:22 PM
To: Addy, Frank R. Secretary (Freda Sartin); Bobby Hood; 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 Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; DTAA - Molly Craig; Patricia Scarborough; Patrick Wooten; Robert Brunson; Rutledge Young, Jr.; Stephanie Chickey; Stephen Bell; Tina Gault; Virginia Flood
Cc: 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)

◀External Email▶ - From: 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>
Sent: Tuesday, June 4, 2019 4:15 PM
To: 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>; Jamie Hood <james.hood@hoodlaw.com>; John Beach <john.beach@arlaw.com>; John Hagerty <john.hagerty@nelsonmullins.com>; John Hudson <jhudson@gwblawfirm.com>; John Lay <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>; Robert Brunson <robert.brunson@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>
Cc: Caroline Crisler. Leonard <cceleonard@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: 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

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# EXHIBIT D

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Wendy C. H. Wellin, )  
 )  
Petitioner, )

Civil Action No. 2014-CP-10-07038

vs. )

**AFFIDAVIT OF ROBERT H.  
BRUNSON, ESQ., IN SUPPORT OF  
MOTION FOR CONTINUANCE**

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 )

PERSONALLY appeared before me Robert H. Brunson, Esq., who, being duly sworn, says:

1. My name is Robert H. Brunson, and I am of the age of majority and competent in all respects to testify regarding the matters set forth herein. I have personal knowledge of the facts stated herein and know them to be true.

2. I am an attorney licensed to practice law in South Carolina and am lead counsel for Peter J. Wellin, Cynthia Wellin Plum, Marjorie Wellin King, and Friendship Management, LLC (collectively, the "Wellin Children") in the above-captioned matter.

3. The circuit court has notified the parties that it intends to hold a trial in this matter regarding "the issues of undue influence and testamentary capacity for all changes to Keith Wellin's estate plan from 2013-2014," and that it intends for such trial to be held during the two weeks beginning June 17, 2019.

4. One of the Wellin Children's retained experts in this matter is Professor Nathan Crystal, who, in the related federal litigation, has issued affirmative and rebuttal expert reports and given two depositions setting forth his opinions and their bases. Professor Crystal has informed me that he is unavailable to testify at trial during the weeks of June 17 and June 24 because he will be out of the country for both of those weeks travelling to, among other places, Abu Dhabi and Singapore.

5. The testimony of Professor Crystal is material to the Wellin Children's position with respect to the issues to be tried during the weeks of June 17 and June 24.

6. Professor Crystal's anticipated testimony and opinions in this action, as detailed in his expert reports and depositions in the related federal litigation, relate to, among other things: the legal nature of the relationship between Keith Wellin and Wendy Wellin; the ways in which

Keith placed his trust and confidence in Wendy; and the ways that Wendy, in 2013, took advantage of Keith and exploited her relationship of trust and confidence for her own financial benefit by, among other things, facilitating a transfer of \$25 million from Keith to herself mere days after Keith made his first purported revision to his revocable trust in 2013, and mere days before Keith sued his children alleging that his children were a threat to his financial solvency. Professor Crystal also has opinions with respect to the legal relationships between Keith Wellin and his three children, whether those relationships were fiduciary in nature, and whether the Wellin Children fulfilled any fiduciary duties to their father that may have existed. The Wellin Children contend that Keith's belief that his children breached their duties to him was a false belief that demonstrated lack of capacity and undue influence.

7. Thus, Professor Crystal's anticipated testimony and opinions in this action are highly relevant and material to the issues of, among other things, whether Keith was susceptible to undue influence by Wendy based on their relationship of trust and confidence; whether Wendy engaged in tactics frequently associated with undue influence, such as exploiting her relationship of trust and confidence for her own benefit; and whether Keith's belief that his children stole from him is evidence of diminished capacity.

8. In light of Professor Crystal's unavailability during the weeks of June 17 and June 24, and in light of the material nature of his testimony and the inability of the Wellin Children to go safely to trial without his testimony, the Wellin Children are moving the Court for a continuance of trial pursuant to South Carolina Rule of Civil Procedure 40(i)(2).

9. The Wellin Children's motion for continuance is not being filed for purposes of delay.



ROBERT H. BRUNSON

SWORN to and subscribed before me  
this 10<sup>th</sup> day of June, 2019.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: 3/29/20

**GINA M PEDERSON**  
Notary Public, South Carolina  
My Commission Expires March 29, 2020

June 11, 2019

**VIA HAND DELIVERY**

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

**RECEIVED**  
JUN 11 2019  
SC Court of Appeals

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

Dear Clerk Kitchings:

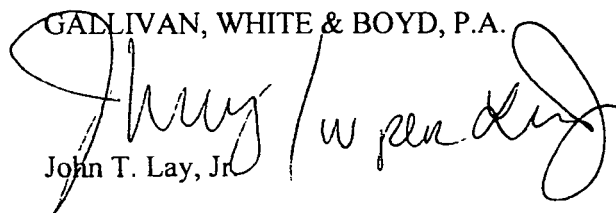
Enclosed herewith for filing, please find the original and six copies of Respondents' Return to Verified Petition for a Writ of Supersedeas regarding the above-referenced matter. Please file the original and return a clocked copy to our courier.

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

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

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.

  
John T. Lay, Jr.

JTL,JR/mlu  
Enclosures

cc: 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

**THE STATE OF SOUTH CAROLINA**  
**In the Court of Appeals**

---

Appeal from the Court of Common Pleas

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

---

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

---

**RECEIVED**  
**JUN 11 2019**  
**SC Court of Appeals**

Wendy C.H. Wellin,

Respondent,

v.

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

Appellants,

v.

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

Respondents.

In the Matter of: Keith S. Wellin

---

**RESPONDENTS' REPLY**  
**IN SUPPORT OF MOTION TO DISMISS**

---

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

---

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



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

- The Wellin Children accuse Judge Addy of trying to “prevent the Wellin Children from ever bringing their claims before a jury, i.e., [by] . . . effectively strik[ing] out a portion of their pleading, namely their counterclaims.” (Return, p. 17). But not one single word in the Bifurcation Order pretermits, or has the effect of pretermitting, the second phase of trial from proceeding in state court after the Validity Issues have been resolved – which is when the parties’ counterclaims<sup>2</sup> would be tried. Indeed, that is exactly what *bifurcation* of the issues means, and it is not an immediately appealable decision.
- The Wellin Children baldly assert that the “Order *must* intend for [sic] severed trial to be dispositive of some or all of the Wellin Children’s counterclaims against Wendy.” (Return, pp. 12-13). The Bifurcation Order contains no language stating or suggesting the first phase of the state court trial will be dispositive of the second phase of the state court trial. What the Bifurcation Order *actually* states is that “resolution of these [Validity] issues will likely result in resolution of much of the *federal litigation*.” (Bifurcation Order, p. 4)(emphasis added). The Wellin Children are correct that they have asserted - in one federal case - duplicates of their counterclaims against Mrs. Wellin in this case, but that is only one piece of the larger federal litigation which is comprised of three cases pending before Judge Norton. Many of the Validity Issues that Judge Addy has decided to try first are also at issue in the comprehensive federal litigation yet, as the Bifurcation Order observes, “these issues can only be decided

---

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

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

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

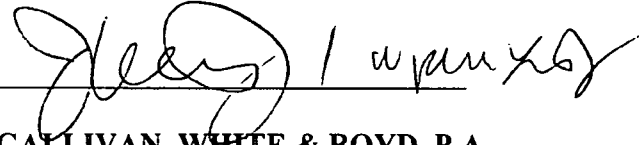
- Finally, the Bifurcation Order did not, as the Wellin Children claim, “attempt[] to strong-arm them into ‘voluntarily’ relinquishing” the right to “a meaningful and substantive jury trial.” (Return, p. 18). The plain language of the Bifurcation Order specifically contemplates that the first phase of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

---

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

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John T. Lay, Jr.", written over a horizontal line.

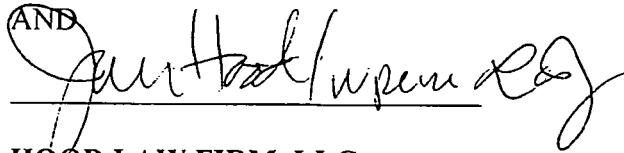
**GALLIVAN, WHITE & BOYD, P.A.**

John T. Lay, Jr. (S.C. Bar No. 64526)  
Gray T. Culbreath (S.C. Bar No. 11907)  
John D. Hudson, Jr. (S.C. Bar No. 68646)  
Lindsay A. Joyner (S.C. Bar No. 77437)  
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(803) 779-1833  
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jlay@gwblawfirm.com

gculbreath@gwblawfirm.com  
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ljoyner@GWBlawfirm.com

*Attorneys for Respondent*  
*Wendy C.H. Wellin, Individually*

AND



**HOOD LAW FIRM, LLC**

Robert H. Hood, Sr., Esq. (S.C. Bar No. 2599)

James B. Hood, Esq. (S.C. Bar No. 70212)

Molly H. Craig, Esq.

Virginia Rogers Floyd, Esq.

Post Office Box 1508

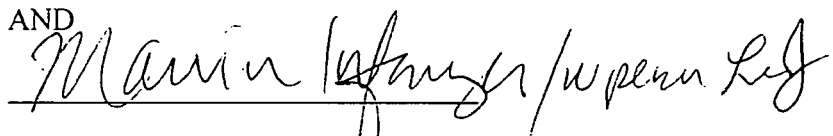
Charleston, SC 29402

(843) 577-4435

(843) 722-1630

*Attorneys for Wendy C.H. Wellin, as Special  
Administrator of the Estate of Keith S. Wellin and  
as Trustee of the Keith S. Wellin Florida Revocable  
Living Trust, w/a/d Dec. 11, 2001*

AND



**BARNWELL WHALEY PATTERSON &  
HELMS, LLC**

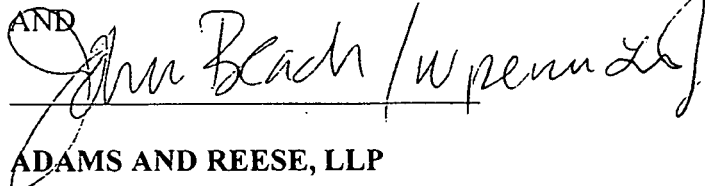
Marvin D. Infinger, Esq.

PO Drawer H

Charleston, SC 29402

*Attorneys for Heather Lane and Campbell Hart*

AND



**ADAMS AND REESE, LLP**

John Beach, Esq.

Lyndey Bryant, Esq.

1501 Main Street, 5<sup>th</sup> Floor

Columbia, SC 29201

*Attorneys for Hamilton College*

---

**PROOF OF SERVICE**

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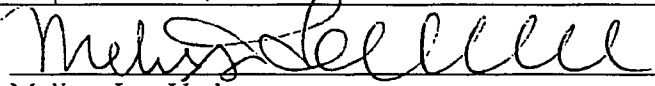
I, the undersigned Paralegal of the law offices of Gallivan, White & Boyd, P.A., attorneys for Wendy C. H. Wellin, individually, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) herein below specified by mailing a copy of the same by United States Mail, postage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

Pleadings:

**RESPONDENTS' REPLY IN SUPPORT OF MOTION TO DISMISS**

Counsel Served:

|                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                      |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b><u>Attorneys for Appellants</u></b><br>Robert H. Brunson, Esq.<br>Patrick Wooten, Esq.<br>Merritt G. Abney, Esq.<br>Nelson Mullins Riley & Scarborough<br>P.O. Box 1806<br>Charleston, SC 29402    | <b><u>Attorneys for Wendy C.H. Wellin, as Special Administrator and Trustee for the Keith S. Wellin Florida Revocable Living Trust</u></b><br>Robert H. Hood, Esq.<br>James B. Hood, Esq.<br>Molly H. Craig, Esq.<br>Virginia Rogers Floyd, Esq.<br>Hood Law Firm, LLC<br>172 Meeting Street<br>Charleston, SC 29402 |
| <b><u>Attorneys for F. Patricia Scarborough, Esq. and Edward G.R. Bennett, Esq.</u></b><br>M. Dawes Cooke, Jr., Esq.<br>Barnwell Whaley Patterson & Helms, LLC<br>PO Drawer H<br>Charleston, SC 29402 | <b><u>Attorneys for Hamilton College</u></b><br>John Beach, Esq.<br>Lyndey Bryant, Esq.<br>Adams and Reese, LLP<br>1501 Main Street, 5 <sup>th</sup> Floor<br>Columbia, SC 29201                                                                                                                                     |
| <b><u>Attorneys for Heather Lane and Campbell Hart</u></b><br>Marvin D. Infinger, Esq.<br>Barnwell Whaley Patterson & Helms, LLC<br>PO Drawer H<br>Charleston, SC 29402                               | <b><u>Attorneys for the Estate</u></b><br>F. Patricia Scarborough, Esq.<br>Edward G.R. Bennett, Esq.<br>Evans, Carter, Kunes & Bennett, P.A.<br>PO Box 369<br>Charleston, South Carolina 29402                                                                                                                       |

  
Melissa Lee Urch  
Paralegal

June 11, 2019

June 11, 2019

**VIA HAND DELIVERY**

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

**RECEIVED**  
JUN 11 2019  
SC Court of Appeals

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

Dear Clerk Kitchings:

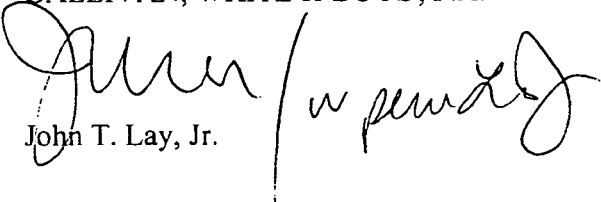
Enclosed herewith for filing, please find the original and six copies of Respondents' Reply in Support of Motion to Dismiss regarding the above-referenced matter. Please file the original and return a clocked copy to our courier.

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

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

Very truly yours,

GALLIVAN, WHITE & BOYD, P.A.

  
John T. Lay, Jr.

JTL,JR/mlu  
Enclosures

cc: 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

## Lauren Lynch

---

**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 Lay - GWB; 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 15<sup>th</sup> 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 15<sup>th</sup> 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, 8<sup>th</sup> Judicial Circuit



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Greenwood, South Carolina 29646  
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Fax: (864) 942-8581  
Email: [faddyj@sccourts.org](mailto:faddyj@sccourts.org)  
Secretary: Freda Sartin ([faddysc@sccourts.org](mailto:faddysc@sccourts.org))  
Law Clerk: Meagan E. White ([faddylc@sccourts.org](mailto:faddylc@sccourts.org))

---

**From:** Robert Brunson [<mailto:robert.brunson@nelsonmullins.com>]  
**Sent:** Thursday, June 13, 2019 1:17 PM  
**To:** John Beach <[john.beach@arlaw.com](mailto:john.beach@arlaw.com)>; James Hood <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)>; Addy, Frank R. <[faddyj@sccourts.org](mailto:faddyj@sccourts.org)>  
**Cc:** Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Bobby Hood <[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)>; John Hagerty <[john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com)>; John Hudson <[jhudson@gwblawfirm.com](mailto:jhudson@gwblawfirm.com)>; John Lay - GWB <[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)>; DTAA - 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)>; 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 Flood <[Virginia.Floyd@hoodlaw.com](mailto:Virginia.Floyd@hoodlaw.com)>; 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:** RE: 2014-CP-10-07038 (Wendy C H Wellin, et al v. Peter J Wellin, et al )

\*\*\* **EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

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 <cclleonard@charlestoncounty.org>; Addy, Frank R. Law Clerk (Meagan White) <faddyjc@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  
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efax 803.343.1224 | fax 803.779.4749

[john.beach@arlaw.com](mailto: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](mailto:james.hood@hoodlaw.com)>

Sent: Monday, June 10, 2019 3:47 PM

To: Robert Brunson <[robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com)>

Cc: Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; 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)>; 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 - GWB <[jl原因@gwblawfirm.com](mailto:jl原因@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)>; 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)>; Caroline Crisler. Leonard <[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)>; Addy, Frank R. Law Clerk (Meagan White) <[faddytc@sccourts.org](mailto:faddytc@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: 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](mailto: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](mailto:james.hood@hoodlaw.com)>

> Cc: Addy, Frank R. Secretary (Freda Sartin) <[faddyse@sccourts.org](mailto:faddyse@sccourts.org)>; Bobby Hood <[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)>; 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 - GWB <[jl原因@gwblawfirm.com](mailto:jl原因@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)>; DTAA - 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)>; 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 Flood <[Virginia.Floyd@hoodlaw.com](mailto:Virginia.Floyd@hoodlaw.com)>; Caroline Crisler. Leonard <[cceleonard@charlestoncounty.org](mailto:cceleonard@charlestoncounty.org)>; Addy, Frank R. Law Clerk (Meagan White) <[faddyse@sccourts.org](mailto:faddyse@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: 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)<mailto:robert.brunson@nelsonmullins.com>

>  
> On Jun 5, 2019, at 8:21 PM, Jamie Hood <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)<mailto:james.hood@hoodlaw.com>> wrote:

> ◀External Email▶ - From: [james.hood@hoodlaw.com](mailto: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) <[faddy@sccourts.org](mailto:faddy@sccourts.org)<mailto:faddy@sccourts.org>>  
> Sent: Tuesday, June 4, 2019 4:15 PM  
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 > 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  
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> <2019.06.10 (filed) WC's Motion for a Continuance (State Court) - 4838-0708-7513 v 1.pdf>



# 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

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## ORDER

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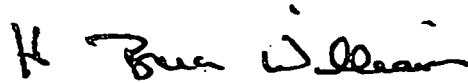
Appellants' petition for a writ of supersedeas is denied. Respondents' motions to dismiss this appeal are granted because the underlying orders<sup>1</sup> are not immediately appealable pursuant to section 14-3-330 of the South Carolina Code (2017).

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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<sup>1</sup> 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,<sup>2</sup> and the remittitur will be sent as provided in Rule 221 of the South Carolina Appellate Court Rules.



J.



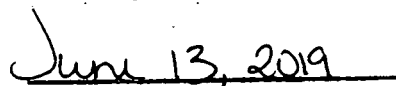
J.



J.

Columbia, South Carolina

**FILED**



<sup>2</sup> 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

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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

**RECEIVED**

JUN 28 2019

SC Court of Appeals

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

PETITION FOR REHEARING AND  
SUGGESTION FOR REHEARING *EN BANC*

Pursuant to Rules 219(b), 221(a), and 240, SCACR, Appellants Peter Wellin, Cynthia W. Plum, and Marjory W. King (collectively the "Wellin Children") request rehearing or rehearing *en banc* of the Panel's June 13, 2019 order dismissing this appeal and denying the Wellin Children's emergency Petition for a Writ of Supersedeas. The Wellin Children respectfully submit that the Panel overlooked or misapprehended the procedural history of this case, the nature of the circuit court's Order being challenged on appeal, and the parallels between the instant appeal and the Supreme Court's holding in *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C.

534, 538–39, 773 S.E.2d 144, 146 (2015). In addition, the Panel seemingly failed to consider several of the Wellin Children’s arguments as to why the circuit court’s Order was immediately appealable, and overlooked the Rules’ clear mandate and justifications for enforcing the automatic appellate stay until the Wellin Children have exhausted their appellate remedies. Accordingly, the Wellin Children respectfully request this Court withdraw the Panel’s order of dismissal, reinstate the appeal, and stay the trial below until a remittitur has been issued.

### **ARGUMENT<sup>1</sup>**

The Panel’s dismissal of this appeal overlooked or misapprehended the facts, issues, and relevant procedural posture of this case, and the way in which this case parallels the situation presented in *Morrow*. Further, the Panel’s denial of the Petition for a Writ of Supersedeas overlooked the plain language of the applicable Court Rules and the sound policy reasons supporting those rules. Each is explained in turn below.

#### **I. The Panel’s dismissal of the appeal overlooked or misapprehended relevant facts and controlling law.**

The Wellin Children asserted in their prior briefing, and reassert now, that this case is, from a procedural standpoint, precisely analogous to *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015). In *Morrow*, the circuit court issued an order purporting to bifurcate the trial of the plaintiffs’ claims, permitting only certain claims to proceed against certain defendants but indicating the outcome of those claims might be dispositive of other untried claims. *Id.* at 536, 773 S.E.2d at 145. The plaintiffs appealed the order and this Court

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<sup>1</sup> This Petition presumes the readers’ familiarity with the relevant factual and procedural background set out on pages 2–5 of the Wellin Children’s Return to the Motions to Dismiss filed on June 7, 2019, and discussed in *Wellin et al. v. Wellin*, Ct. App. Op. No 5608 (May 29, 2019), available at 2019 WL 2313587, which is a recently-decided appeal in a related matter arising from a related dispute between the same parties.

dismissed the appeal finding that the order was not immediately appealable. *Id.* The plaintiffs then petitioned the South Carolina Supreme Court for a writ of certiorari, which the Court granted. *Id.* The Supreme Court held the trial court's order—though styled as one for bifurcation—was immediately appealable because it “affect[ed] a substantial right” by effectively granting “potential” summary judgment on certain issues not included in the truncated trial and depriving plaintiffs of their substantive right to be the architects of their case. *Id.* at 538–39, 773 S.E.2d at 146. Specifically, the Supreme Court indicated that the immediately appealable error in *Morrow* was that the trial court intended for one trial before one jury on one set of claims against one party to be potentially dispositive of a different set of claims against different parties implicating potentially different standards and burdens of proof. *See id.* at 539, 773 S.E.2d at 146.

In the instant litigation, the circuit court's May 15, 2019 Order commits the same error as in *Morrow*. The Order granted a motion by the Estate (*i.e.*, the decedent's fourth wife, Wendy) to “bifurcate” the trial and stated the trial would “decide the issues of undue influence and testamentary capacity for the relevant period of time.” The Order, however, is not a bifurcation order in any normal sense. Rather, the circuit court's 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 different elements and different burdens of proof than the Wellin Children's counterclaims against Wendy—will “likely” be dispositive of certain unspecified portions of “the federal litigation.”<sup>2</sup> *See* Circuit Court Order (May 15, 2019) at 3–4. As the Supreme Court held in *Morrow*, any order—regardless of how it is named—that effectively grants judgment on or disposes of certain claims excluded from a

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<sup>2</sup> Litigation pending in federal court is largely overlapping with the state court litigation and includes all of the Wellin Children's claims against Wendy.

truncated trial is immediately appealable because it deprives the plaintiffs of their substantive right to be the architects of their own case. *See* 412 S.C. at 538–39, 773 S.E.2d at 146.

Furthermore, in *Morrow*, the South Carolina Supreme Court held that, “[t]o prevent the *Morrows* from appealing the order immediately would encourage piecemeal litigation and limit their appellate remedies after the first trial on nursing home negligence and its subsequent appeal.” *Morrow*, *Id.* at 539, 773 S.E.2d at 146–47. Likewise, in this case, preventing the Wellin Children from appealing the order immediately would encourage piecemeal litigation because, after this truncated trial, the losing party would be forced to appeal (without waiting to see whether, when, and how any future phases of trial might proceed) or else waive their rights to do so. *See Stone v. Thompson*, 426 S.C. 291, 826 S.E.2d 868, 870 (2019) (upholding appeal “following a bifurcated hearing [in which] a claim or defense has been finally determined.”). And if the appellate court(s) decided the supposedly “bifurcated” trial was improper, the parties would be required to relitigate those issues again—at substantial cost and time to the court and the parties—in a proper trial.

The Panel’s misapprehension of the facts and law in the instant appeal is apparent from its statement in the June 13, 2019 order dismissing the appeal that “[t]his 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.” (Order of Dismissal p. 2.) The fact that the circuit court’s order does not discuss a second phase of trial, however, actually *supports* the immediate appealability of that order. Neither the circuit court’s order nor any other pronouncement from the circuit court has discussed whether there will be a second phase of trial *because the circuit court and the opposing parties believe the truncated trial on the severed issues may be dispositive of the entire case* and any subsequent trial on the untried claims will be unnecessary. *See, e.g.,* Circuit Court Order (May 15, 2019) at 3–4

(anticipating the trial of the severed claims could be dispositive of other claims between the parties); Estate's Mem. in Supp. of the Mot. to Bifurcate at 7 (arguing that severing the trial of the claims in this way would "streamline" the remainder of the case and that the first trial "could be dispositive of the entire case");<sup>3</sup> *id.* at 8 (arguing the trial of the two claims with the more onerous burden for the Wellin Children could also be dispositive of "the Wellin Children's individual tort claims against Mrs. Wellin"); Hearing Tr., at 27:25 to 28:1 (Feb. 11, 2019) (attorney for Wendy arguing that, if Wendy and the Estate are successful during the severed trial, "it eviscerates the lawsuit" as to "virtually every cause of action that" the Wellin Children have against Wendy);<sup>4</sup> *id.* at 42:23 to 43:1 (Judge Addy recognizing that if the issue of undue influence were tried separately from the Wellin Children's tort claims, the resulting trial of the former would "do it in one step and it has an effect. That's your entire case").

Another parallel between *Morrow* and the instant suit is that the circuit court's order "prevent[s] [the Wellin Children] from being architects of their own complaint, and deprives them of bringing their case against the defendant of their choosing." *Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. Wendy, the person the Wellin Children are suing and from whom the Wellin Children are seeking to recover, will have no claims asserted against her during the first phase of trial. Further, the circuit court's Order forces the Wellin Children into a Hobson's choice of either (i) choosing to introduce evidence, arguments, and witnesses to support their position on the issues of undue influence and incapacity, knowing that if the jury rules against them they might be precluded from "relitigating" those facts in a subsequent trial of their tort claims against Wendy,

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<sup>3</sup> The Estate's memorandum was attached to the Wellin Children's Return to the Motions to Dismiss as Exhibit D.

<sup>4</sup> The transcript of the hearing on the Estate's Motion to Bifurcate was attached to the Wellin Children's Return to the Motions to Dismiss as Exhibit E.



or (ii) choosing instead to reserve those arguments, evidence, and facts for a possible future tort and breach of contract trial, and thus be hamstrung in their prosecution of the issues of incapacity and undue influence, which are based on the same evidence as the Wellin Children's tort and breach of contract claims. The Hobson's Choice effect of the Order is particularly important because these choices will be pervasive throughout the trial. Counsel for the Wellin Children will have to choose as to each piece of evidence whether to present it to maximize the chance of prevailing in the present or holding it back to mitigate the risk of a possible future finding that a fact was "actually litigated" and hence gives rise to collateral estoppel in a future trial. Preservation of a record as to these choices that would enable the appellate courts in the future to provide a meaningful review would pose potentially unsurmountable challenges. It would be similar to disqualification of counsel, which the Supreme Court has found is immediately appealable because it is "one of those rare orders which, in effect, could determine the action and prevent a judgment from which an appeal might be taken." *Hagood v. Sommerville*, 362 S.C. 191, 197-98, 607 S.E.2d 707, 710 (2005).

The Panel's order of dismissal misapprehended yet another aspect of *Morrow*. Specifically, the Panel believed the instant appeal "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 trial . . . ." (Order at 2.) This supposed distinction, however, is actually a point of *similarity* between this case and *Morrow*. The trial court's order in *Morrow* (like the circuit court's Order here) did not expressly and definitively state that summary judgment would be granted as to certain claims after the initial trial. Rather, the effect of the *Morrow* "bifurcation" order was merely the "*potential*" to dispose of untried claims.

*Morrow*, 412 S.C. at 538–39, 773 S.E.2d at 146 (emphasis added).<sup>5</sup> Here too, the circuit court’s order is premised on what it believes to be a likelihood that the truncated trial might be dispositive of untried claims. Indeed, the circuit court held that its “bifurcation” order “will promote convenience, efficiency, and economy in that these issues can only be decided in state court and resolution of these issues will likely result in resolution of much of the federal litigation.” Circuit Court Order (May 15, 2019) at 4. But the bifurcation will only promote efficiency and economy if the first phase of trial *is* dispositive of certain claims that are not tried. That is, the circuit court’s order either promotes efficiency and disposes of certain untried claims, or it is entirely inefficient because the same claims will be tried twice. The Panel’s Order failed to address this critical point.

In sum, the circuit court’s order is immediately appealable pursuant to the Supreme Court’s opinion in *Morrow*, and this Court should reinstate the appeal.

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<sup>5</sup> This point was a salient one to the Supreme Court. During the oral argument in *Morrow*, the Supreme Court asked counsel for the parent corporations—*i.e.*, the parties who had obtained the “bifurcation” order and who were arguing that it was not immediately appealable—whether he would stipulate that, if the plaintiffs lost the first phase of trial, the plaintiffs nevertheless would have the right to pursue their claims against the corporate defendants. *See Morrow* Oral Argument Tr., at 19:25 – 20:6 (January 13, 2015) (attached as Exhibit H to the Wellin Children’s Return to the Motions to Dismiss). Counsel would not so stipulate. *See id.* at 20:5. Of course, this question would not have made any sense if the Supreme Court interpreted the trial court’s order as one that actually granted summary judgment—as opposed to granting “potential” summary judgment—as to certain claims that would not be litigated in the first phase of trial. Here too, Wendy not only refuses to stipulate that the Wellin Children will be permitted to pursue all their claims against her even if the Wellin Children lose the first phase of trial; she also argues the Wellin Children losing the first phase of trial would “eviscerate[] the lawsuit” as to “virtually every cause of action that” the Wellin Children have against Wendy. *See* Hearing Tr., at 27:25 to 28:1 (attached as Exhibit E to the Wellin Children’s Return to the Motions to Dismiss); *see also* Memorandum in Support of Motion to Bifurcate (attached as Exhibit D to the Wellin Children’s Return to the Motions to Dismiss), at 7 (Wendy as Special Administrator arguing that the first trial “could be dispositive of the entire case”).

**II. The Panel overlooked the Wellin Children's arguments that the Order below violated due process, deprived them of a mode of trial, and effectively struck a portion of their pleadings.**

The Panel also overlooked or misapprehended the Wellin Children's argument that the circuit court's orders being challenged on appeal violate their due process rights and deny them a mode of trial by effectively denying them a meaningful and substantive jury trial. *See generally* Wellin Children's Return to the Motions to Dismiss at 18–23. The Panel's Order dismissing the appeal fails to mention this argument at all. The trial court's imposition of an arbitrarily-chosen, unsupported, and grossly-insufficient time limit on the trial 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 to pressure the parties to "elect" a nonjury trial. *See id.* Additional comments made by the circuit court less than 24 hours before the Panel dismissed the instant appeal further confirm the Wellin Children's arguments.<sup>6</sup> *See* Hearing Tr. at 10 (June 12, 2019) (attached hereto as **Exhibit A**) (Judge Addy: "I really think it would behoove everybody . . . to give serious consideration to doing this nonjury because that will prevent us from being limited to the two weeks that I am going to permit in this particular case."); *id.* at 12 (Judge Addy: "If you all want to do this as a bench trial, we can forget about next week and forget about the week after that, and I can find some other time to do that."); *id.* at 21 (Judge Addy: "Again, if it was nonjury, I would do it all. I would do it all and give you guys all the time in the world.").

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<sup>6</sup> The status conference before Judge Addy had not yet occurred when the Wellin Children filed their Return to the Motions to Dismiss the appeal, nor were the Wellin Children able to alert this Court of the contents of that conference before the Court issued its Order dismissing the appeal. The conference concluded at 4:54 p.m. on June 12, 2019, and the Panel issued its ruling dismissing the appeal at 3:16 p.m. on June 13, 2019. Accordingly, these comments were not before the panel. However, the arguments and evidence before the Panel at the time of its ruling were sufficient to reveal the immediate appealability of the Order challenged on appeal, and these more recent comments merely provide additional confirmation for what was already apparent.

The circuit court's Order establishing the mode of trial wrongly threatens to deprive the Wellin Children of a jury trial on their claims in which all the applicable evidence is presented and the jury is instructed on the applicable standards for the Wellin Children's claims against Wendy. *See* Wellin Children's Return to the Motions to Dismiss at 18–23 (and cases cited therein). This deprivation involves a substantial right and is immediately appealable, regardless of whether the ruling is characterized by the circuit court as a bifurcation order. *See Morrow*, 412 S.C. at 539, 773 S.E.2d at 146. Moreover, because the order *may* be immediately appealed, it *must* be immediately appealed. *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). Here, just as in *Morrow*, the circuit court's ruling placed a limitation on the relief sought by and available to the Wellin Children, forcing them to present their evidence and arguments but without an opportunity to recover the damages sought in their counterclaims (and, rather, a chance of a verdict that would later be used by Wendy to foreclose them from ever litigating their claims). Interlocutory rulings such as this one regarding the mode of trial or limitations on relief may be, and must be, immediately appealed. *See Foggie v. CSX Transp., Inc.* 313 S.C. 98, 431 S.E.2d 587 (1993).

The Panel further overlooked or misapprehended the Wellin Children's argument that the circuit court's challenged order effectively struck out part of their pleading and was thus immediately appealable. *See generally* Wellin Children's Return to the Motions to Dismiss at 17–18. The Panel's Order dismissing the appeal fails to mention or specifically rule on this argument. Because the effect of an order, not the label or title placed on it, is what determines appealability, and because the effect of the circuit court's order in the instant litigation was to “remove[] material issues[s] from the case, thereby preventing the issue[s] from being litigated on the merits,” the

order is immediately appealable. *See id.* at 17 (quoting *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 705 S.E.2d 475 (Ct. App. 2011)).

For the foregoing reasons, the circuit court's order is immediately appealable and this Court should reinstate the appeal.

**III. The Panel's denial of the Petition for a Writ of Supersedeas overlooked or misapprehended relevant Court Rules and the sound policies supporting them.**

Several weeks after the Wellin Children had filed their Notice of Appeal in the instant appeal, and while the briefing on the question of immediate appealability was still ongoing, the circuit court informed the parties that despite the pendency of the appeal, it intended to proceed with trial commencing in a matter of days. In response, the Wellin Children promptly filed an emergency Petition for Writ of Supersedeas on June 7, 2019, requesting that this Court order the circuit court to stay the trial of this matter pending resolution of this appeal. In the order of dismissal, the Panel denied the Petition, stating only that the underlying order was not immediately appealable. (Order of Dismissal p. 1.) Nearly simultaneously with this Court's issuance of its Order denying the Petition and dismissing the appeal, the circuit court informed the parties that the truncated trial set to begin on June 17, 2019, had been postponed to an indefinite date in the future. Both the Panel's denial of the Petition and the circuit court's apparent intent to proceed with trial in the future while the Wellin Children are still pursuing their appellate remedies are wrong for the following reasons.

As explained in the Wellin Children's Petition, the appellate court rules expressly state the filing of a Notice of Appeal divests the trial court of jurisdiction over all matters decided in and affected by the Order being appealed. *See* Rules 205 & 241(a), SCACR. The fact that the appealability of the lower court's order is disputed is immaterial to this analysis. The Rules establishing the automatic appellate stay make no exception for situations where one party or even

the trial court thinks the order is not immediately appealable. Indeed, even if a Panel of this Court or if the Court *en banc* concludes this Order is not immediately appealable, under the clear language of the Rules, the Order is nevertheless automatically stayed unless and until there is a remittitur.

This rule makes sense and is supported by considerations of fairness and efficiency. The contrary rule, espoused by the circuit court and the Panel in the instant litigation, invites trial judges to roll the dice, speculating that the appeal will eventually be dismissed with finality and that the trial held in the meantime will be valid, but taking the risk that—if the order being appealed is, in fact, held to be immediately appealable—the trial will have been a sizeable waste of the parties' and the court's resources. This sort of gamble is not (and should not) be the law. Again, reference to *Morrow* is instructive. In *Morrow*, a single Judge of this Court initially dismissed the appeal as interlocutory. A panel of this Court subsequently affirmed. If the trial court in *Morrow* had at that point proceeded to try the case without waiting for the *Morrows* to petition for rehearing, petition for certiorari, brief the merits, argue the case to the Supreme Court, and obtain an opinion from the Supreme Court, that trial would have been a nullity. So too here. The Panel should have granted the Petition for a Writ of Supersedeas or otherwise made clear that the lower court is divested of jurisdiction to proceed with trial unless and until a remittitur is issued.

#### CONCLUSION

For the reasons set forth above, Appellants respectfully request that this Court grant rehearing, deny Respondents' motion to dismiss, and reinstate the appeal.

[SIGNATURE PAGE ATTACHED]

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Charleston, South Carolina

June 28, 2019

# Exhibit A

to the Wellin Children's Petition for Rehearing and  
Suggestion for Rehearing *En Banc*

Appellate Case No. 2019-000833



STATE OF SOUTH CAROLINA  
COUNTY OF CHARLESTON

IN THE COURT OF  
COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

Wendy C.H. Wellin, )  
                                Petitioner, ) Civil Action No.  
                                vs. ) 2014-CP-10-07038  
                                ) )  
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, )  
                                ) )  
(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             | ) |

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grounds we have in our motion that I'd like to address, if I may.

THE COURT: Sure. If I may before you go there, not to interrupt, but just while this is on my mind. Earlier today -- I did ask Judge Young the last yesterday. He's e-mailed it to me today. You've asked for it to be continued to another term of court. And he made this abundantly clear to me yesterday that with all the construction litigation and everything that's going on down in Charleston, as far as date certains, I mean, they are booked until the end of the year and they even have date certains backing up date certains. And people who are requesting date certains, they're now being told, "Look, the calendar is not out for 2020. We'll put you in line, but you're not going to be in a position to jump in front of somebody else for something you're not assigned." As the calendar comes out, then they may put them in line once that calendar of 2020 does come out.

So in terms of continuing it to another term of court, a jury term of court, which is a nice segue to what I was going to suggest, but

in terms of continuing it to another jury term of court, the next -- that won't do anything. And if anything, it potentially may be more disruptive in the sense that I might simply get notification, "Okay. Well, this construction litigation has resolved so, Judge Addy, you can have the term for two or three days."

And then I've got to jump through all the hoops and you all would have to jump through all the hoops. And I know that the Hood Firm was involved in litigation in Anderson County in front of Judge Maddox, I think. It got resolved earlier this week, on Tuesday. So the stars are kind of aligning for Wellin to be tried and resolved next week.

Now, that said, you know, we've had this continuing discussion about jury as opposed to nonjury. I really think it would behoove everybody, and particularly the primary parties involved in this, the children and Ms. Wellin, to give serious consideration to doing this nonjury because that will prevent us from being limited to the two weeks that I am going to permit in this particular case.

I don't know the last time you all tried a

case in Charleston, but the logistics of it are really challenging in the sense that you have to take into account the fact that Charleston is such a spread out -- I know you don't have to take this into account -- I have to take it into account, the fact that Charleston is a very expansive county. The last time I tried a case there, one juror had a one-and-a-half-hour commute every day to get to the courthouse, so you're limited on when you can start. You have to be concerned about lunch breaks. You have to be concerned about obligations with child care, things like that, afterward.

And for a two-hour case involving this sum of money, you're going to be drawing your jury from all and various parts of Charleston County that maybe is not people with seven-figure incomes. I don't know how favorably they're going to view all the parties in this case. And I'm just speaking candidly. But if you are living in a 2,000-square-foot house with a mortgage payment, two car payments, and struggling to live hand to mouth, I don't really know that too many people are going to be jumping up, wanting to hear about this

litigation involving more money than they will ever see in 10 generations in their family.

Okay? So that is a risk that you run.

If you are looking to make this wedding -- if the Wellin children absolutely, you know, have to be present for trial, I can meet you halfway, but there's no way that we can do this in a jury format and have it done by Wednesday. I mean, that's simply not -- one side or the other is wanting eight weeks. I can't give you eight weeks. I can give you two weeks. I don't see any way we can reasonably have this done by Wednesday.

If they want to do this or the parties are willing to try this as a bench trial, we can go maybe next week. We can maybe do it later. I don't have to concern myself because they have sufficient courtroom space. If you all want to do this as a bench trial, we can forget about next week and forget about the week after that, and I can find some other time to do that.

But if all the parties want a jury trial, the stars have aligned. We're doing it next week. I'm sorry if that means they're going to have to be missing out on the verdict two weeks



from Friday, but that's just how it's going to have to play out. I don't know if that changes anything or if it's something you need to talk to your clients about. I assume you've already had that conversation. If you want a continuance, that's fine. We can do it nonjury and we'll move it on back.

MR. BRUNSON: Your Honor, we're not willing to waive the jury trial.

THE COURT: We're doing it next week then and the week after. So that's it.

MR. WOOTEN: Your Honor, the other grounds we have in our motion will be filed with the court. And if you don't want me to go --

THE COURT: Go right ahead.

MR. WOOTEN: And I will if you would like me to, but if you've already decided, then I don't --

THE COURT: No. Maybe there's something that I missed that would convince me that a continuance is warranted. Go right ahead.

MR. WOOTEN: Okay. Well, we think that it should be -- there should not be a trial next week because there is a stay in place under the rules, the court of appeals rules, because we

And in fact Mrs. Wellin's attorney, at the hearing on the motion to bifurcate, said if we, the children, lose the first phase of trial, it eviscerates our lawsuit. And the idea is that, Your Honor, either this first trial is going to streamline the case such that if we lose, we don't get to pursue all of our claims against Mrs. Wellin or we don't get to put all the evidence in that we want to, in which case we are prejudiced in a way that is not contemplated by the law on bifurcation. We're prejudiced horribly. We're not able to put in our claims, our best claims, ever because we have a trial only on the claims they want to try and not on ours.

Or the only other option, Your Honor, is that after this first phase of trial, we can fully litigate our tort claims against Mrs. Wellin, in which case there was no efficiency whatsoever. We have the same trial again after this trial.

And so there really are only two options. Either it's horribly prejudicial in denying our clients the right to try the claims they would like to try or it's horribly inefficient

because we're going to have the same trial twice.

So, Your Honor, I'm arguing the merits of the -- the merits of the bifurcation briefly, again, Your Honor, but of course the issue is you don't need to decide whether our arguments are good or not to decide whether the automatic stay applies. The automatic stay is -- it applies irrespective of how good or bad our arguments are on the merits of the appeal. The automatic stay applies upon filing notice of the appeal.

But we also, Your Honor, very strongly object to a trial being limited to two weeks. I heard what you just said, Your Honor --

THE COURT: I cannot -- two weeks for the guy who lives in a 2,000-square-foot house where he's going without pay over a multigazillion-dollar estate is inherently unfair to any juror. I cannot ask a guy to take \$20 a day in jury compensation when we are litigating this. That's the simple truth of the matter, and I realize that is not your concern.

But I would strongly recommend that if

you, in your mind, simply lop off a couple of zeros, that's what's got everybody up in arms about this case. This case is no different from somebody who passes away with a \$100,000. It's the same standard in terms of testamentary capacity. It's exactly the same procedure.

And what's got everybody worked up is the money that's involved in this case, which I agree is amazingly substantial. But that's exactly what is going to turn off every juror that you folks want to have to decide this matter. And it's also what prevents me from saying, "Okay. You can have more time to litigate this matter."

Again, if it was nonjury, I would do it all. I would do it all and give you guys all the time in the world. It's jury. We don't have all the time in the world for those reasons. And I have to be sympathetic to that even though you're not. It has to be tried in two weeks. That's the most I can give you.

MR. WOOTEN: Your Honor, if I can just make two points on that.

THE COURT: Sure.

MR. WOOTEN: One is, Your Honor, I think

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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

RECEIVED

JUN 28 2019

SC Court of Appeals

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

v.

Peter Wellin, Cynthia W. Plum, and Marjory 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.

**PROOF OF SERVICE**

I, the undersigned Administrative Assistant of the law offices of Nelson Mullins Riley & Scarborough LLP, attorneys for Peter Wellin, Cynthia Wellin Plum, and Marjorie Wellin King Individually and as Co-Trustees and Beneficiaries of the Wellin Family 2009 Irrevocable Trust, 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 e-mailing and mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings:

## APPELLANTS' PETITION FOR REHEARING

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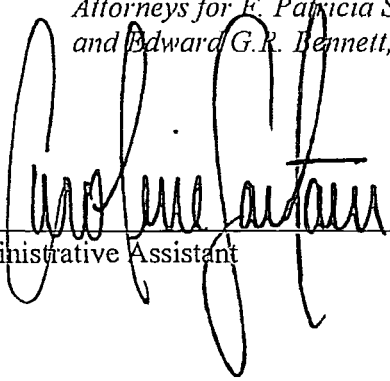
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Administrative Assistant

June 28, 2019



## The South Carolina Court of Appeals

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Re: Wendy Wellin v. Peter Wellin  
Appellate Case No. 2019-000833

Dear Counsel:

This will acknowledge receipt of your petition for rehearing.

By copy of this letter, opposing counsel is requested to file a return to this motion no later than ten (10) days from the date of this letter.

Very truly yours,

*V. Cleve Allen, Deputy*

CLERK

cc: John Thomas Lay, Jr., Esquire  
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John Dwight Hudson, Jr., Esquire  
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**THE STATE OF SOUTH CAROLINA  
In the Court of Appeals**

---

**RECEIVED**

**JUL 26 2019**

**SC 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.<sup>1</sup>

### **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.

---

<sup>1</sup> 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<sup>2</sup>), from which the Wellin Children have plucked

---

<sup>2</sup> 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<sup>3</sup> 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

---

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**).

<sup>3</sup> 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 pretermitt 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.<sup>4</sup>

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<sup>4</sup> 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 pretermittng, 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 preterms a jury trial on their tort-based claims against Mrs. Wellin.<sup>5</sup> 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

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<sup>5</sup> 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.<sup>6</sup>

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,

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<sup>6</sup> 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.<sup>7</sup> 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

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<sup>7</sup> 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, SCRCPP. 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”<sup>8</sup> – a step that Rule 241, SCACR, obligated the Wellin Children to take in the trial court *before* unnecessarily involving this Court.<sup>9</sup> 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

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<sup>8</sup> 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.

<sup>9</sup> 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. The Wellin Children Still Are Seeking Clarification From The Trial Court Regarding The Scope Of The First Trial Phase On The Validity Issues.**

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 preterms 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**).<sup>10</sup> 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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<sup>10</sup> 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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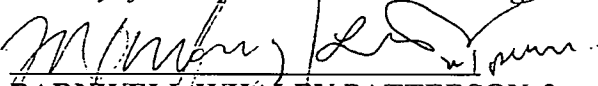
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SC Court of Appeals

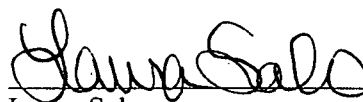
PROOF OF SERVICE

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, ) Civil Action No.  
Petitioner, ) 2014-CP-10-07038  
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, )

(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)

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

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- - -  
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 Joynes; Lydia Spry; Lyndey Bryant; M Dawes Cooke; Marvin Infinger; Melissa Urch; Merritt Abney; DTAA - Molly Craig; Patricia Scarborough; Patrick Wooten; Rutledge Young, Jr.; Stephanie Chickney; 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 15<sup>th</sup> 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 15<sup>th</sup> 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, 8<sup>th</sup> 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.*

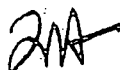
IN THE MATTER OF:  
Keith S. Wellin

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:

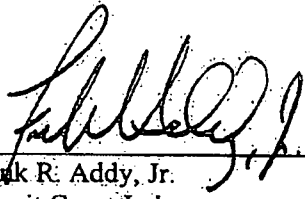


Counsel for both the Wellin Children and for Mrs. Wellin have filed motions for entry of default against each other and both have filed motions to set aside entry of default. The parties have been involved in years of litigation in both state and federal court. Pursuant to Rule 1 of the South Carolina 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 15<sup>th</sup>. 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

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 )

Civil Action No. 2014-CP-10-07038

THE WELLIN CHILDREN'S  
MOTION TO RECONSIDER

FILED  
2019 JUL 10 PM 4:51  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

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.

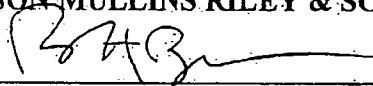
Although the Court's Order dated July 2, 2019, did continue the trial of this matter beyond the term of Court in June 2019, the Court did not rule upon the Wellin Children's above-referenced arguments. To avoid any potential argument by the Wellin Children's adversaries that the Wellin Children failed 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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(843) 853-5200

*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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Lindsay Anne Joyner, Esq.  
Gallivan, White & Boyd, PA  
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*Attorneys for Wendy C.H. Wellin,  
individually*

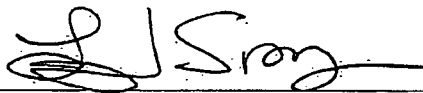
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James B. Hood, Esq.  
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*Attorneys for Wendy C.H. Wellin, as Special  
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Florida Revocable Living Trust*

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*Attorney for Campbell Lane Hart and  
Heather Lane*

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



Administrative Assistant

July 10, 2019

FILED  
2019 JUL 10 PM 4:52  
JULIE J. AMSTON  
CLERK OF COURT

# EXHIBIT A

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:

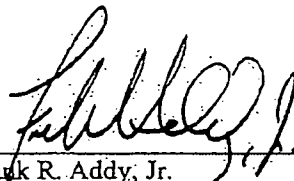


Counsel for both the Wellin Children and for Mrs. Wellin have filed motions for entry of default against each other and both have filed motions to set aside entry of default. The parties have been involved in years of litigation in both state and federal court. Pursuant to Rule 1 of the South Carolina 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 15<sup>th</sup>. 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

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## ORDER

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Appellants' petition for a writ of supersedeas is denied. Respondents' motions to dismiss this appeal are granted because the underlying orders<sup>1</sup> 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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<sup>1</sup> 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,<sup>2</sup> and the remittitur will be sent as provided in Rule 221 of the South Carolina Appellate Court Rules.

H. Burr Wilson

J.

John D. Seaton

J.

D. Marlin

J.

Columbia, South Carolina

**FILED**

June 13, 2019

<sup>2</sup> 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:**

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Molly H. Craig, Esq.

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**Respondents' Attorney:**

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☒ **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, SCRPC)

☐ 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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James B. Hood, Esq.  
Molly H. Craig, Esq.  
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Barnwell Whaley Patterson & Helms, LLC  
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843-577-7700  
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 Sorv; 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 Fargle; 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 contract, 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

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**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>;

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<faddy@lccourts.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

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main 803.254.4190 | direct 803.343.1269 | mobile 803.413.2300  
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-----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](mailto:james.hood@hoodlaw.com)>

Sent: Monday, June 10, 2019 3:47 PM

To: Robert Brunson <[robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com)>

Cc: Addy, Frank R. Secretary (Freda Sartin) <[faddy@sccourts.org](mailto:faddy@sccourts.org)>; 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)>; 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 - GWB <[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)>; 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)>; Caroline Crisler. Leonard <[cclleonard@charlestoncounty.org](mailto:cclleonard@charlestoncounty.org)>; Addy, Frank R. Law Clerk (Meagan White) <[faddy@sccourts.org](mailto:faddy@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: 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](mailto: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](mailto:james.hood@hoodlaw.com)>

> Cc: Addy, Frank R. Secretary (Freda Sartin) <[faddysc@sccourts.org](mailto:faddysc@sccourts.org)>; Bobby Hood <[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)>; 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 - GWB <[jl原因@gwblawfirm.com](mailto:jl原因@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)>; DTAA - 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)>; 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 Flood <[Virginia.Floyd@hoodlaw.com](mailto:Virginia.Floyd@hoodlaw.com)>; Caroline Crisler. Leonard <[cleonard@charlestoncounty.org](mailto:cleonard@charlestoncounty.org)>; Addy, Frank R. Law Clerk (Meagan White) <[faddy1c@sccourts.org](mailto:faddy1c@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: 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)<mailto:robert.brunson@nelsonmullins.com>

>

> On Jun 5, 2019, at 8:21 PM, Jamie Hood

> <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)<mailto:james.hood@hoodlaw.com>> wrote:

> <External Email> - From:

> [james.hood@hoodlaw.com](mailto: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)

> <[faddyse@sccourts.org](mailto:faddyse@sccourts.org)<mailto:faddyse@sccourts.org>>

> Sent: Tuesday, June 4, 2019 4:15 PM

> To: Bobby Hood, Sr. <[bobby.hood@hoodlaw.com](mailto:bobby.hood@hoodlaw.com)<mailto:bobby.hood@hoodlaw.com>>;

Brian Duffy <[bduffy@duffyandyoung.com](mailto:bduffy@duffyandyoung.com)<mailto:bduffy@duffyandyoung.com>>; Bryson Geer <[bryson.geer@nelsonmullins.com](mailto:bryson.geer@nelsonmullins.com)<mailto:bryson.geer@nelsonmullins.com>>; Deirdre McCool <[deirdre.mccool@nelsonmullins.com](mailto:deirdre.mccool@nelsonmullins.com)<mailto:deirdre.mccool@nelsonmullins.com>>; Edward Bennett <[bennett@eckb.com](mailto:bennett@eckb.com)<mailto:bennett@eckb.com>>; Gray Culbreath <[gculbreath@gwblawfirm.com](mailto:gculbreath@gwblawfirm.com)<mailto:gculbreath@gwblawfirm.com>>; Jamie Hood <[james.hood@hoodlaw.com](mailto:james.hood@hoodlaw.com)<mailto:james.hood@hoodlaw.com>>; John Beach <[john.beach@arlaw.com](mailto:john.beach@arlaw.com)<mailto:john.beach@arlaw.com>>; John Hagerty <[john.hagerty@nelsonmullins.com](mailto:john.hagerty@nelsonmullins.com)<mailto:john.hagerty@nelsonmullins.com>>; John Hudson <[jhudson@gwblawfirm.com](mailto:jhudson@gwblawfirm.com)<mailto:jhudson@gwblawfirm.com>>; John Lay <[jlay@gwblawfirm.com](mailto:jlay@gwblawfirm.com)<mailto:jlay@gwblawfirm.com>>; Karen Jessee <[kjessee@barnwell-whaley.com](mailto:kjessee@barnwell-whaley.com)<mailto:kjessee@barnwell-whaley.com>>; Lauren Lynch <[lauren.lynych@nelsonmullins.com](mailto:lauren.lynych@nelsonmullins.com)<mailto:lauren.lynych@nelsonmullins.com>>; Linda Brewer <[linda.brewer@arlaw.com](mailto:linda.brewer@arlaw.com)<mailto:linda.brewer@arlaw.com>>; Lindsay Joyner <[ljoyner@gwblawfirm.com](mailto:ljoyner@gwblawfirm.com)<mailto:ljoyner@gwblawfirm.com>>; Lydia Spry <[lydia.spry@nelsonmullins.com](mailto:lydia.spry@nelsonmullins.com)<mailto:lydia.spry@nelsonmullins.com>>; Lyndey Bryant <[lyndey.bryant@arlaw.com](mailto:lyndey.bryant@arlaw.com)<mailto:lyndey.bryant@arlaw.com>>; M Dawes Cooke <[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)<mailto:mdc@barnwell-whaley.com>>; Marvin Infinger <[minfinger@barnwell-whaley.com](mailto:minfinger@barnwell-whaley.com)<mailto:minfinger@barnwell-whaley.com>>; Melissa Urch <[murch@gwblawfirm.com](mailto:murch@gwblawfirm.com)<mailto:murch@gwblawfirm.com>>; Merritt Abney <[merritt.abney@nelsonmullins.com](mailto:merritt.abney@nelsonmullins.com)<mailto:merritt.abney@nelsonmullins.com>>; Molly Craig <[molly.craig@hoodlaw.com](mailto:molly.craig@hoodlaw.com)<mailto:molly.craig@hoodlaw.com>>; Patricia Scarborough <[scarborough@eckb.com](mailto:scarborough@eckb.com)<mailto:scarborough@eckb.com>>; Patrick Wooten <[Patrick.Wooten@nelsonmullins.com](mailto:Patrick.Wooten@nelsonmullins.com)<mailto:Patrick.Wooten@nelsonmullins.com>>; Robert Brunson <[robert.brunson@nelsonmullins.com](mailto:robert.brunson@nelsonmullins.com)<mailto:robert.brunson@nelsonmullins.com>>; Rutledge Young Jr <[jry@duffyandyoung.com](mailto:jry@duffyandyoung.com)<mailto:jry@duffyandyoung.com>>; Stephanie Chickey <[stephanie.chickey@hoodlaw.com](mailto:stephanie.chickey@hoodlaw.com)<mailto:stephanie.chickey@hoodlaw.com>>; Stephen Bell <[sbell@duffyandyoung.com](mailto:sbell@duffyandyoung.com)<mailto:sbell@duffyandyoung.com>>; Tina Gault <[tina.gault@hoodlaw.com](mailto:tina.gault@hoodlaw.com)<mailto:tina.gault@hoodlaw.com>>; Virginia Floyd <[virginia.floyd@hoodlaw.com](mailto:virginia.floyd@hoodlaw.com)<mailto:virginia.floyd@hoodlaw.com>>

> Cc: Caroline Crisler. Leonard

<[ccleonard@charlestoncounty.org](mailto:ccleonard@charlestoncounty.org)<mailto:ccleonard@charlestoncounty.org>>; Addy, Frank R. Law Clerk (Meagan White) <[faddylic@sccourts.org](mailto:faddylic@sccourts.org)<mailto:faddylic@sccourts.org>>; Al Eargle <[aeargle@lex-co.com](mailto:aeargle@lex-co.com)<mailto:aeargle@lex-co.com>>; Chiles, Gwendolyn D. <[gchiles@mccormickcountysc.org](mailto:gchiles@mccormickcountysc.org)<mailto:gchiles@mccormickcountysc.org>>; Buffey Hodges <[bhodes@mccormickcountysc.org](mailto:bhodes@mccormickcountysc.org)<mailto:bhodes@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.

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> 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  
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