

RECEIVED

OCT 28 2019

S.C. SUPREME COURT

EXHIBIT A

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

BY _____
JULIE J. ARMSTRONG
CLERK OF COURT
2019 JUL 10 PM 4:51

FILED

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: 

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

Attorneys for the Wellin Children

July 10, 2019
Charleston, South Carolina

2014-C-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**

Counsel/Party Served:

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

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

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

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

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

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

FILED
2019 JUL 10 PM 4:52
JULIE J. ARMSTRONG
CLERK OF COURT



Administrative Assistant

July 10, 2019