

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS



APPEAL FROM KERSHAW COUNTY
Court of Common Pleas

The Honorable Jean Hoefer Toal, Acting Circuit Court Judge

Appellate Case No. 2019-001632

In the matter of:
Lemuel Whitaker Boykin, II, deceased.

Rigdon H. Boykin, as sole disinterested Co-Trustee of the Lemuel
Whitaker Boykin, II Residuary Trusts A and B,..... Appellant-Respondent

v.

Mary Deas Wortley, individually, as Co-Trustee of the Lemuel
Whitaker Boykin, II Residuary Trusts A and B, Co-Trustee of the
Lemuel Whitaker Boykin Marital Deduction Trusts A and B, and as
Co-Personal Representative of the Estate of Alice S. Boykin; Alice
B. Belger, individually, as Co-Trustee of the Lemuel Whitaker
Boykin, II Residuary Trusts A and B, and as Co-Personal
Representative of the Estate of Alice S. Boykin; Lemuel Whitaker
Boykin, III; and May Cantey Boykin,

Of whom Mary Deas Wortley and Alice B. Belger areRespondent-Appellants

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin areRespondents.

MOTION TO ALLOW LATE FILING

Respondents Lemuel Whitaker Boykin, III, and May Cantey Boykin (“Respondents”) move this Court to allow filing of their amended Response brief, which is being filed contemporaneously with this Motion.

Respondents filed their initial Response brief on Tuesday, August 18, 2020. By letter dated September 1, 2020, this Court notified Respondents that they had neglected to include page numbers in their brief and that this deficiency should be corrected within 10 days. The amended brief being filed contemporaneously herewith now includes page numbers but is otherwise the same brief Respondents filed on August 18, 2020.

There is good cause for this Court to excuse Respondents' late filing, and this Court should therefore grant this Motion.

First, Respondents filed their brief in accordance with the extended deadlines established by this Court for the response briefs of both Appellant-Respondent and Respondent-Appellants, who are the principal parties to this appeal. By order dated July 17, 2020, this Court gave those parties until August 18, 2020, to file their response briefs. Respondents were simply acting consistently with the extensions and briefing deadlines granted to the other parties.

Second, given that Respondents adopt in their brief the arguments of Appellant-Respondent in both his initial brief and response brief, it was both necessary and appropriate that Respondents wait until Appellant-Respondent's initial brief and response brief were finalized and his primary arguments formulated.

Third, there is no prejudice to the other parties in allowing this late filing. Appellant-Respondent and Respondent-Appellants – to whatever extent necessary – have ample time to consider Respondents' brief and reply to the same, the replies of those parties not being due until September 28, 2020, as provided in this Court's recent order granting an extension on the principal parties' reply brief deadlines.

Fourth, Respondents' brief totals only two pages, and merely sets out the basic position of Respondents, which, as already indicated, allies with that of Appellant-Respondent Rigdon H.

Boykin. As explained in greater detail in Respondents' brief, Respondents are two of the four income beneficiaries of the Trust at the center of this litigation. Respondents' fundamental position that the administration of the Trust is beset with a conflict of interest that the court below failed to address by either splitting the Trust or replacing Respondent-Appellants Wortley and Belger with independent trustees deserves to be heard and considered. In addition, Respondent-Appellants have challenged in their appeal the fee award made to Respondents' counsel, thus giving Respondents a financial stake in the outcome of this appeal, and making Respondents' participation all the more appropriate and important.

Prior to filing this Motion, Respondents consulted with counsel for Appellant-Respondent, who consent to the relief requested in this motion, and with counsel for Respondent-Appellants, who also consent to the relief requested in this Motion.

Respondents respectfully request this Court grant this Motion and allow Respondents' voice to be heard in this appeal.

Respectfully submitted,

s/William S. Tetterton
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*Attorney for Respondents Lemuel Whitaker
Boykin, III, and May Cantey Boykin*

Dated: September 9, 2020

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Of whom Mary Deas Wortley and Alice B. Belger areRespondent-Appellants

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin areRespondents.

PROOF OF SERVICE

This is to certify that I have this date caused to be served a true and correct copy of the
foregoing Motion to Allow Late Filing and Proof of Service on counsel of record by depositing
the same in the United States Mail, first class, postage pre-paid, addressed as follows:

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Dated: September 9, 2020

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