

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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Sep 23 2020
SC 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 are Respondent-Appellants

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin are..... Respondents.

AMENDED RESPONSE BRIEF OF RESPONDENTS LEMUEL WHITAKER BOYKIN,
III AND MAY CANTEY BOYKIN

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III, and May Cantey Boykin*

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STATEMENT OF RESPONDENTS

Respondents Lemuel Whitaker Boykin, III, and May Cantey Boykin (“Respondents”) file this brief in support of Appellant-Respondent Rigdon H. Boykin (“Rigdon”) in this appeal. Respondents further adopt the arguments of Rigdon as set forth in his Amended Initial Brief and Response Brief.

As detailed in Rigdon’s briefs, Respondents are two of the four income beneficiaries of the Trust but are not now – and have never been – trustees of the Trust. Further, Respondents do not have children who stand to inherit the remaining assets of the Trust after the deaths of the income beneficiaries. These facts have led to an inherent conflict of interest in administration of the Trust, as Respondents’ two siblings, Wortley and Belger, have children that will inherit the remaining assets.

Rigdon’s actions as a trustee prior to the litigation and his ultimate litigation posture were taken with this conflict in mind and were aimed at ensuring that Respondents were treated fairly in the administration of the Trust and in distributions from it. Respondents intervened in the litigation below and throughout that litigation supported Rigdon’s position. Respondents remain concerned that the underlying conflicts that led to this case have not fully and finally been resolved by the actions of the trial court, and for that reason Respondents support Rigdon’s argument in his Amended Initial Brief that the best long-term solution for the Trust would be for this Court to split the Trust in two and/or appoint independent trustees to replace Wortley and Belger. Such a solution would indeed be a helpful step towards the family reconciliation that all hope will occur here.

Respondents also dispute the arguments of Wortley and Belger attacking Respondents’ fee award. As should be obvious from the arguments of all Parties, the matter below was complicated,

“involving nuanced legal issues related to fiduciary management, prudent investment, appropriate beneficiary distributions, conflicts of interest, powers and duties of trustees, and other matters made even more challenging by the highly contentious nature of this litigation.” (Final Order at 58) It was necessary for Respondents, as two of the four income beneficiaries, to have a voice and independent representation in this complicated matter, and Respondents’ counsel provided that voice and representation ably and effectively. In addition, and as detailed in Rigdon’s briefs, this matter was unquestionably beneficial to Trust, as it resulted in “comprehensive, long-term plans for the management of the Trust’s assets.” (Order Denying Motions to Alter or Amend at 9) Such a plan would never have been developed by Wortley and Belger had this suit not been brought and prosecuted through trial.

Respondents respectfully request this honorable Court grant the relief requested in Rigdon’s Amended Initial brief and affirm the award of fees and costs to their counsel and Rigdon’s.

Respectfully submitted,

s/William S. Tetterton

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Camden, South Carolina 29021

*Attorney for Respondents Lemuel Whitaker
Boykin, III, and May Cantey Boykin*

Dated: September 23, 2020

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

And

Lemuel Whitaker Boykin, III, and May Cantey Boykin are..... Respondents.

PROOF OF SERVICE

This is to certify that I have this date caused to be served a true and correct copy of the foregoing Amended Response Brief of Respondents Lemuel Whitaker Boykin, III and May Cantey

Boykin 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 23, 2020

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