

Exhibit A

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 Nicholas Puleo, as Attorney-in-Fact for Toni Puleo Sperry, and as Attorney-in-Fact for John William Puleo,
 Plaintiff,
 vs.
 Stephen Owen Jacobs, individually and as Personal Representative of the Estate of Terry Lyn Puleo,
 Defendant.

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-23-03396

ORDER

RECEIVED
 NOV 18 2020
 SC Court of Appeals

This matter came before the Court on September 21, 2020, for a hearing on Plaintiff's Motion to Reconsider this Court's Order Granting Motion for Order of Protection of Discovery dated July 13, 2020. For the reasons set forth below, Plaintiff's Motion to Reconsider is denied.

FACTS AND PROCEDURAL BACKGROUND

The Defendant, Stephen Owen Jacobs ("Jacobs"), was engaged to Terry Lyn Puleo ("Decedent") when she lost her battle with cancer on May 1, 2016. On January 15, 2016, the Decedent nominated Jacobs as her attorney-in-fact. Jacobs as submitted an affidavit in this matter attesting that while he was nominated as Decedent's attorney-in-fact, Decedent handled her personal affairs until the time of her death and he never took any action as her attorney-in-fact. Aff. Jacobs, Aug. 25, 2020.

Per the Decedent's Will, Jacobs was named the Personal Representative of Decedent's estate. Jacobs opened the Decedent's estate with the Greenville County Probate Court and was appointed Personal Representative on May 17, 2016. Jacobs filed the required Inventory and Appraisal and Final Accounting. Decedent's adult children, Toni Puleo Sperry ("Toni") and John William Puleo ("John"), nominated their father, Nicholas Puleo (the Decedent's ex-husband)

("Plaintiff Puleo") as their attorney-in-fact. Plaintiff Puleo filed a Demand for Hearing in the probate case. The Greenville County Probate Court held a hearing and issued an order finding in favor of Jacobs on all four allegations made by the person who is now the Plaintiff in this case. Specifically, the probate court found that there were no issues with the estate, and it had been properly accounted for and disbursed and was ready to close.

Plaintiff Puleo filed the present action seeking an accounting and alleging that Jacobs breached his fiduciary duty as attorney-in-fact or as the personal representative of the Decedent's estate. Through the discovery to date and during the hearing on this Motion, Plaintiff Puleo has limited his allegations to a Wells Fargo account ending in -8137 ("Wells Fargo account") held by the Decedent prior to her death. Plaintiff Puleo assert that he deposited over half a million dollars in this account in 2011, almost six years prior to the Decedent's death, as part of a divorce settlement with the Decedent.

Decedent updated her contact information on the Wells Fargo account a couple of months before her death. These changes included making the account payable on her death to Toni and John and listing Jacobs as her power of attorney. These changes were reflected on the March 2016 statement in that in the address portion of the statement it is addressed as follows:

Terry Lyn Puleo
Stephen Jacobs POA
POD John William Puleo
And Toni Lee Puleo
Street Address

The street address listed was the address of the home that the Decedent and Jacobs shared. Upon Decedent's death, Wells Fargo divided the account between the Decedent's children and closed the account. It appears from Plaintiff Puleo's pleadings, discovery responses, and argument of Plaintiff Puleo's counsel, Decedent's children anticipated receiving (or at least Plaintiff Puleo

anticipated that Toni and John would receive) over a quarter of a million dollars each from this account and they only received a few thousand dollars each. Thus, the allegations that Jacobs breached his fiduciary duty as attorney-in-fact and breached his fiduciary duty with regard to the funds in the Wells Fargo account during the time Jacobs was attorney-in-fact.

Plaintiff Puleo is seeking to obtain the Decedent's financial records, specifically bank statements dating back to 2011 for the Wells Fargo account. Jacobs sought a protective order limiting the persons viewing and the reproduction and distribution of the Decedent's financial records based in part on the Decedent's strong desire that her ex-husband not have access to her financial records.

The Court issued an order on July 13, 2020, granting Jacobs' motion for a protective order ("Protective Order") finding the Wells Fargo account was owned by the Decedent and limiting the viewing and dissemination of the Decedent's financial records. The Court did not prohibit counsel for the Plaintiff from obtaining or seeing the records, nor did the Court prohibit the Decedent's children from seeing the records. The Court was troubled that the Decedent's ex-husband wanted to review all of his ex-wife's records, all the way back to the date of the divorce when the time period in question is the last few months of the Decedent's life. Therefore, the Court issued a Protective Order limiting the viewing and dissemination of the Decedent's financial records.

Plaintiff Puleo filed a Motion to Reconsider the Protective Order on July 22, 2020, arguing that Plaintiff Puleo believed that the Wells Fargo account that was the subject of this case should have contained much more money than the Decedent's children received based on the funds deposited into the account in 2011 as part of the divorce settlement between Plaintiff Puleo and the Decedent. Plaintiff Puleo further argued that pursuant to the South Carolina Probate Code Section 62-2-602 the account statements for the Wells Fargo account were property under the

South Carolina law and now belonged to Toni and John. Decedent's financial records, specifically the Wells Fargo account statements.

The Court notes that counsel for Plaintiff Puleo stated more than once during the hearing on Plaintiff Puleo's motion to reconsider the Protective Order that after the Decedent's death, Toni Puleo Sperry and John William Puleo received various records of the Decedent's that were in the home, there were not hard copies of the account statements for the Wells Fargo account in the home to be given to Toni and John.

Plaintiff Puleo also filed a Notice of Appeal with the Circuit Court on July 22, 2020, and an Amended Notice of Appeal on July 27, 2020, regarding the July 13, 2020 Protective Order. However, Plaintiff Puleo failed to file the Notice of Appeal or Amended Notice of Appeal with the South Carolina Court of Appeals. On September 2, 2020, the Court issued an order, consented to by the parties, dismissing/striking Plaintiff Puleo's appeal. The hearing on Plaintiff Puleo's motion to reconsider the Protective Order on September 21, 2020.

LAW AND ANALYSIS

Plaintiff Puleo argues that the Wells Fargo account, a POD (payable on death) account, is a non-probate asset and thus this court has original jurisdiction to order an accounting of this asset. At the same time, Plaintiff Puleo argues that Toni and John, and therefore Plaintiff Puleo as their attorney-in-fact, own the Wells Fargo account statements as the account and the records of the account were inherited by Toni and John as part of the residue of the Decedent's estate under her Will. Thus, the Plaintiff argues, the Court does not have the authority to issue a protective order with restrictions on the viewing and dissemination of the Wells Fargo account statements.

South Carolina Code Title 62 Article 6 addresses non-probate transfers, including accounts with a POD designation. Section 62-6-204 states that “[a] transfer [of a POD account] is effective by reason of the terms of the account involved and this part and not testamentary or subject to Articles 1 through 4 (estate administration)”. S.C. Code § 62-6-204 (citing S.C. Code §62-6-202). Further, § 62-6-303 states that “[a] financial institution, on request, may pay sums on deposit in an account with a POD designation . . . (2) to the beneficiary or beneficiaries”. S.C. Code § 62-6-303.

The plain language of Title 62 Article 6 is clear that a POD account, like the Wells Fargo account in this case, is not a probate asset and is not subject to intestate succession laws or governed by a decedent’s will. The designated beneficiaries are entitled only to the sums on deposit in the account, nothing else. See S.C. Code § 62-6-101(13). The beneficiaries do not inherit the account as part of the residue of the decedent’s estate as it is not a probate asset.

It is important to note that this is a POD account not a TOD account. A POD or pay-on-death account transfers the funds that are in the account from the Decedent’s account to another person who deposits it into his or her own account. This is different from a TOD or transfer-on-death account which transfers ownership of the account itself from the Decedent to the designated beneficiary. The Decedent had the ability to designate this account a TOD, but she did not. She chose only to transfer to the funds not the account itself, which was meant to protect her privacy.

Plaintiff Puleo’s argument that any hardcopies of Wells Fargo account statements left in the personal property of the Decedent are the property of Toni and John as part of the residue of the Decedent’s estate and Toni and John’s under the Will is not within the jurisdiction of this Court. The probate court has sole original jurisdiction to identify, determine, and oversee the assets of the Decedent in the administration of the Decedent’s estate. The Greenville County Probate Court also issued its November 13, 2019 order which is *res judicata* on the matter as the sufficiency

of the Final Accounting, Inventory and Appraisalment, and claims of failure to maintain financial records. Therefore, this Court is bound by the findings of the Greenville County Probate Court on these issues and any further determinations as to property that would be part of the residue of the Decedent's estate lies with the probate court.

Given that Toni and John are adults who are not under any disability, they do not have an ownership interest in the Wells Fargo account itself, the documents at issue are account statements, Toni and John have selected the ex-husband of the Decedent, their father, as their attorney-in-fact, and given that Plaintiff Puleo has yet to provide the Court with any tangible evidence for a basis as to why he needs to review his ex-wife's bank statements for years before Jacobs would have been able to access the Wells Fargo account as Decedent's attorney-in-fact, the Court finds the restrictions on the dissemination and review of the Wells Fargo account statements are reasonable restrictions on the discovery process. Should evidence that Jacobs breach his fiduciary duties after his nomination as attorney-in-fact of the Decedent on January 15, 2016, and the Decedent's death on May 1, 2016, Plaintiff Puleo may present such evidence to the Court to ask for a modification of the Protective Order.

CONCLUSION

The Wells Fargo account itself is a non-probate asset and the probate court has sole original jurisdiction of any claims or issues related to assets transferred pursuant to the Decedent's will. Therefore, for the reasons outlined above, the Protective Order is reasonable under the circumstances and Plaintiff Puleo's Motion to Reconsider the Protective Order is denied.

[Judge's Signature Page to Follow]



Greenville Common Pleas

Case Caption: Nicholas Puleo , plaintiff, et al vs. Stephen Owen Jacobs
Case Number: 2019CP2303396
Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763