



STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2016-CP-46-0820

Vicki Lynn Vergeldt, Individually, and as)
Successor Trustee of the John Vergeldt, Jr.)
Revocable Living Trust dated September)
27, 1978,)

**ORDER GRANTING PETITIONER'S
MOTION TO ALTER OR AMEND**

)
Petitioner,)

)
vs.)

RECEIVED

Aug 02 2021

)
John Edward Vergeldt)

SC Court of Appeals

)
Respondent.)
)
_____)

THIS MATTER came before the Court on June 17, 2020 for a hearing on the Motion to Alter or Amend (“Motion”) filed on May 19, 2020 by Petitioner Vicki Lynn Vergeldt, Individually, and as Successor Trustee of the John Vergeldt, Jr. Revocable Living Trust dated September 27, 1978 (“Petitioner”). Petitioner sought the Court’s clarification of various issues, motions, and other matters ruled upon by the Court in its Order filed May 12, 2020 (“May, 2020 Order”) and/or the alteration thereof. Present at the hearing was Petitioner’s counsel, Taylor A. Peace, Esq., and Respondent John Edward Vergeldt (“Respondent”), appearing *pro se*. Petitioner and Respondent are sometimes collectively referred to herein as “Parties”.

BACKGROUND

On May 7, 2020, the Court held a status conference with Petitioner’s counsel and Respondent to determine which of the Parties’ pre-trial and post-trial motions could proceeding without a hearing in light of the ongoing public health crisis caused by the COVID-19 pandemic. The specific motions discussed were Respondent’s Motion for Contempt filed October 18, 2019, the Contempt of Court filed by Respondent on December 10, 2019, Respondent’s verbal motion

for continuance/objection to evidence Petitioner presented the trial of this case on January 31, 2020, Petitioner's Motion for Sanctions filed on February 19, 2020, the Objection and Motion to Quash Subpoena filed by Teresa A. Shaw Vergeldt on March 13, 2020, and Respondent's Motion for Sanctions filed on April 15, 2020.

As a result of the telephone status conference, the Court ruled in the May, 2020 Order that Petitioner mailed the proposed exhibits to which Respondent objected in a timely manner as part of her supplemental Answers to Interrogatories and Requests for Production; however, Respondent did not receive them in time to prepare for trial. Accordingly, the May, 2020 Order gave Respondent an additional thirty (30) days from the entry thereof to file rebuttal affidavits and an expert's report. The May, 2020 Order stated that no other matters would be considered.

The documents in the Court's file indicates that that Respondent filed the following documents after entry of the May, 2020 Order: 1) a Motion to Exclude Bosler Report and Direct Testimony, 2) an Affidavit of John E. Vergeldt in Response to Motion of T. Peace dated May 19, 2020, and an Affidavit of Audry L. Scheible with exhibits. The Affidavit of Audry L. Scheible contains photographs that Respondent attempted to introduce at trial that were excluded at trial. The Court also notes that Respondent filed two (2) Affidavits of Robert T. Nirenberg after the trial of this matter but before the entry of the May, 2020 Order.

As to the Motion itself, Petitioner seeks clarification of the Court's rulings on the pre-trial and post-trial motions, whether Respondent was required to disclose his witnesses to Petitioner prior to submission of his affidavits and/or reports, and whether Petitioner would have an opportunity to respond thereto.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

With that background established and based upon the pre-trial and post-trial motions and other submissions by Petitioner and Respondent, the May, 2020 Order, and argument presented

at the hearing, Petitioner is entitled have the May, 2020 Order granted to alter or amend and clarify the Court's rulings on the pre-trial and post-trial motions and to rule on the various other filings and developments in the case since the issuance of the May, 2020 Order, and, as a result the Motion is **GRANTED**.

Accordingly, I find, conclude and order that the May, 2020 Order is restated and affirmed unless altered, amended, changed and/or added to by the following:

1. Respondent's Motion for Contempt filed October 18, 2019 should be and is hereby **DENIED**;
2. Respondent's Contempt of Court filed December 10, 2019 should be and is hereby **DENIED**;
3. Petitioner's Motion for Sanctions filed February 19, 2020 should be and is hereby **DENIED**;
4. The Objection and Motion to Quash Subpoena filed by Respondent and Teresa A. Shaw Vergeldt filed March 13, 2020 should be and is hereby **DENIED**;
5. Respondent's Motion or Sanctions filed on April 15, 2020 should be and is hereby **DENIED**; and
6. Neither party shall be entitled or allowed to submit other additional evidence not otherwise already submitted.

Concerning the submission of the Motion to Exclude Bosler Report and Bosler Direct Testimony, Affidavit of Audry L. Scheible, Affidavit of John E. Vergeldt in Response to Motion of T. Peace dated May 19, 2020, and Affidavits of Robert T. Nirenberg that were submitted after the trial of this matter, I find, conclude, and order as follows:

1. Respondent's Motion to Exclude Bosler Report and Bosler Direct Testimony is **DENIED**;

2. The Affidavit of Audry L. Scheible and exhibits attached thereto are **EXCLUDED**, and
3. The Affidavits of Robert T. Nirenberg will be **ALLOWED** by the Court and considered as evidence in this matter.
4. Respondent's objections as to the Affidavit of Timothy Kelley, Affidavit of Thomas Hernick, Affidavit of Brian Carson, Affidavit of Tony Lee Jordan and, and Financial Statement and Pro Forma Financial Statements prepared by Charles E. Bosler are **DENIED**.

IT IS SO ORDERED.

{JUDGE'S SIGNATURE PAGE TO FOLLOW}



York Common Pleas

Case Caption: Vicki Lynn Vergeldt VS John Edward Vergeldt

Case Number: 2016CP4600820

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084