

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
CASE NO.: 14-CV-4531

IN RE THE MATTER OF THE GUSTAF
WESTFELDT MCILHENNY TRUST
U/A/D JANUARY 30, 1998

EDWIN R. RODRIGUEZ, JR., as
Co-Trustee, and JUDITH GOODWIN
McILHENNY, Individually and as Co-
Trustee, of the Gustaf Westfeldt McIlhenny
Trust u/a/d January 30, 1998

Plaintiffs,

v.

BARBARA McILHENNY FITZ-HUGH,
ROSEMARY McILHENNY DINKINS,
PAUL WESFELDT McILHENNY
LUQUETTE, the MINOR ISSUE OF
BARBARA McILHENNY FITZ-HUGH, the
MINOR ISSUE OF ROSEMARY
McILHENNY DINKINS, the UNBORN
AND UNASCERTAINED ISSUE AND
HEIRS OF BARBARA McILHENNY FITZ-
HUGH, the UNBORN AND
UNASCERTAINED ISSUE AND HEIRS OF
PAUL WESFELDT McILHENNY, and the
UNBORN AND UNASCERTAINED ISSUE
AND HEIRS OF ROSEMARY McILHENNY
DINKINS

Defendants.

**COMPLAINT FOR DECLARATORY
JUDGMENT**

Come now, Plaintiffs Judith Goodwin McIlhenny ("Mrs. McIlhenny"), individually, and as co-trustee, and Edwin R. Rodriguez, Jr., as co-trustee, by and through counsel, and complaining of Defendants, say and allege as follows:

PARTIES AND JURISDICTION

1. This action presents issues appropriate for judicial resolution pursuant to the Uniform Declaratory Judgment Act, Article 26 of Chapter 1 of the General Statutes of North Carolina, and N.C. Gen. Stat. § 1A-1, Rule 57.
2. All necessary parties have been named as Defendants in this action.
3. Paul Carr Polk McIlhenny (the "Decedent") died on February 23, 2013. He was a resident of Avery Island, Louisiana. His wife and surviving spouse is Plaintiff Mrs. McIlhenny. The Decedent was also survived by his two daughters, Barbara McIlhenny Fitz-Hugh ("Barbara"), and Rosemary McIlhenny Dinkins ("Rosemary"). Mrs. McIlhenny, Barbara, and Rosemary are the heirs and legatees of the Decedent's estate (the "Estate"). The Estate is being administered in Iberia Parish, Louisiana, under the laws of Louisiana. Attached is a copy of the Last Will of the Decedent (the "Will") (attached hereto as **Exhibit A**). The Decedent was survived by four grandchildren, namely, Paul Wesfeldt McIlhenny Luquette, Clifford Pipes Fitz-Hugh, John McIlhenny Dinkins and Frank McIlhenny Dinkins.
4. The Decedent was a beneficiary of the Gustaf Westfeldt McIlhenny Trust (the "Trust"). The Decedent's interest was initially comprised of a 1/16th share in the Trust and is currently, and at the time of his death was, a 1/15th share (The Decedent's interest is referred to herein as the "Trust Share"). A copy of the Trust is attached hereto as **Exhibit B**. The Decedent was also a co-trustee of the Trust. Upon his death, Mrs. McIlhenny succeeds the Decedent as successor co-trustee of the Trust.
5. Section 1.3 of the Trust provides that the Trust "shall be construed, regulated, and governed by the laws of the State of North Carolina."
6. Barbara's child, Clifford Pipes Fitz-Hugh is under eighteen (18). Pursuant to N.C. Gen. Stat. § 36C-3-303, Barbara, as the parent of Clifford Pipes Fitz-Hugh, is entitled to represent and bind Clifford Pipes Fitz-Hugh.
7. Rosemary's children, John McIlhenny Dinkins and Frank McIlhenny Dinkins, are under eighteen (18). Pursuant to N.C. Gen. Stat. § 36C-3-303, Rosemary, as the parent of John McIlhenny Dinkins and Frank McIlhenny Dinkins, is entitled to represent and bind John McIlhenny Dinkins and Frank McIlhenny Dinkins.
8. The unborn and unascertained heirs of Barbara are contingent beneficiaries of the Trust. Pursuant to N.C. Gen. Stat. § 36C-3-303, Barbara is entitled to represent and bind her unborn issue.
9. The unborn and unascertained heirs of Rosemary are contingent beneficiaries of the Trust. Pursuant to N.C. Gen. Stat. § 36C-3-303, Rosemary is entitled to represent and bind her unborn issue.

10. No conflict of interest exists that would preclude any natural parent from representing the interests of their minor children or any other issue, whether born, unborn, or unascertainable, as provided for under N.C. Gen. Stat. §§ 36C-3-303 and 36C-3-304.

11. The Superior Courts of North Carolina have subject matter jurisdiction pursuant to N.C. Gen. Stat. § 36C-2-203 and N.C. Gen. Stat. § 1-255(3).

12. The Superior Courts of North Carolina have jurisdiction over the Trust pursuant to N.C. Gen. Stat. §§ 36C-2-203.

13. Venue is proper in Mecklenburg County, North Carolina, pursuant to N.C. Gen. Stat. §§ 1-82.

14. N.C. Gen. Stat. § 1-255(3) provides that a trustee may apply for a declaration to determine any question arising in the administration of the trust, including questions of construction of wills. Judith Goodwin McIlhenny and Edwin R. Rodriguez, Jr., as the current co-trustees of the Trust, bring this claim for Declaratory Judgment seeking a determination by the Court of the parties' respective rights.

FACTS AND COMPLAINT

15. The Trust was executed on January 30, 1998, in Asheville, Buncombe County, North Carolina. It was created and settled by Gustaf Westfeldt McIlhenny, as the settlor of the Trust.

16. The Trust provided for the Trust res to be subdivided into sixteen (16) equal shares, with fifteen beneficiaries having an equal one-sixteenth (1/16) interest and two remaining beneficiaries each having a one-thirty-second (1/32) interest. Under Section 2.2 of its terms, the Trust is scheduled to terminate and be distributed to the then existing beneficiaries according to their respective fractional shares on the date that is twenty-one years following the death of the Trust's settlor, Gustaf W. McIlhenny, who died on February 28, 2001. Accordingly the final termination of the Trust is set to occur on February 28, 2022.

17. The Decedent was the income and principal beneficiary of a one-sixteenth (1/16) interest in the Trust initially, and was the income and principal beneficiary of a one-fifteenth (1/15) interest at his death.

18. The Trust provided that upon each beneficiary's death prior to final termination and division of the Trust, that beneficiary held a limited testamentary power of appointment over the beneficiary's outstanding interest in the Trust under Article II, Paragraph 2.3 of the Trust, as follows:

Notwithstanding the foregoing, if [The Decedent] dies during the term of this trust with natural descendants and a surviving spouse who is the parent of such natural descendants, [The Decedent] may by Will bequeath his... interest (or a usufruct or income interest therein) to his... surviving spouse.

19. The Decedent's Will provided that his estate be distributed under Article III as follows:

"I give the remainder of my estate to Barbara and Rosemary, in equal portions, subject to a lifetime usufruct in favor of Judy."

20. Under the terms of the Trust and the Will of the Decedent, Plaintiffs allege that the Decedent properly exercised his special power of appointment over his share of the Trust and effectively appointed his Trust interest to Defendants' subject however, to a usufruct interest in favor of his wife, Mrs. McIlhenny.

21. If a beneficiary of the Trust does not validly exercise his power of appointment in his Trust Share, the Trust provides in Article II, Paragraph 2.3, that the beneficiary's Trust Share shall pass to his natural descendants in equal portions in fee.

22. Rosemary and Barbara are real parties in interest in the trust as the Decedent's natural descendants and contingent remainder beneficiaries.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiffs pray the Court to grant the following relief:

1. Judith Goodwin McIlhenny and Edwin R. Rodriguez, Jr., as co-trustees of the Trust, be granted a judicial declaration that the Decedent made a valid exercise of his testamentary special power of appointment over his 1/15th interest in the Trust.

2. That Judith Goodwin McIlhenny has a valid usufruct interest in the Decedent's interest in the Trust and is entitled to receive the Decedent's rights of distribution in the event the Trust terminates during her lifetime.

3. That Barbara McIlhenny Fitz-Hugh and Rosemary McIlhenny Dinkins have an interest in the Trust subject to the usufruct of Judith Goodwin McIlhenny.

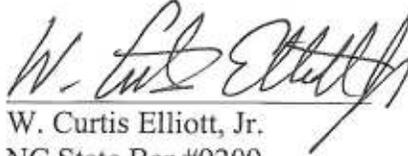
4. For such other and further relief to which the parties may be entitled.

(Signature appears on the following page)

This the 3rd day of March, 2014.

W. CURTIS ELLIOTT, JR.

ATTORNEY FOR PLAINTIFFS



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