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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge
Case No. 2013-CP-02-1337

Appellate Case No. 2022-001195

Adele J. Pope, ……..…… Petitioner,

v.

Estate of James Brown and The James Brown
2000 Irrevocable Trust, ... Respondents

CORRECTED RETURN TO PETITION FOR WRIT OF CERTIORARI

Respondents, the Estate of James Brown (the "Estate") and The James Brown 2000 Irrevocable Trust (the "Trust"), pursuant to Rule 242(f), SCACR, respectfully submit this Return to the Petition for Writ of Certiorari ("Petition") filed by Petitioner Adele J. Pope.

BACKGROUND

The entertainer James Brown died on December 25, 2006. Brown's Will left his household goods to certain relatives but provided that the vast majority of his assets would be poured into a small trust for the education of certain of Brown's grandchildren and the much larger "I Feel Good" trust, a charitable trust intended to provide scholarships to "qualified and deserving" students attending schools in South Carolina

and Georgia. (R. p. 2593-2594 (Trust, at 4-5).)

Pope and Robert Buchanan were appointed as PR/Trustees in November 2007, after original PR/Trustees Albert Dallas, David Cannon, and Alfred Bradley had all resigned. (R. p. 19 (Order 11/20/07).) Pope and Buchanan served as PR/Trustees until May 2009, when the circuit court approved a settlement (the "2008 settlement") that called for their removal. Although this Court subsequently vacated the 2008 settlement, it affirmed the removal of Pope and Buchanan for cause. *Wilson v. Dallas*, 403 S.C. 411, 448, 743 S.E.2d 746, 766 (2013).[1]

The Petition presently before the Court arises out of the complaint Pope filed in June 2013, seeking over $2 million in compensation for her service as PR/Trustee from November 2007 to May 2009, a period of only 18 months. Following a multi-day bench trial with numerous witnesses and approximately 200 exhibits, the circuit court issued a detailed order concluding that Pope was not entitled to any compensation because "any benefits [she] provided to the Estate and Trust were overwhelmed and surpassed by the detriments she caused." (R. p. 351 (Fee Order, at 60).)

Pope appealed. Following briefing and oral argument, the Court of Appeals

[1] Pope's involvement in the Estate and Trust did not end with her removal. In fact, Pope's continual meddling eventually led this Court to prohibit her "from filing any further motions or appeals in actions involving the Estate and Trust of James Brown … in which she has no standing." *Ex Parte Adele J. Pope*, Appellate Case No. 2013-001649 (S. Ct. June 10, 2015).

unanimously affirmed in an unpublished, per curiam decision issued on May 25, 2022 (the "Opinion"). The Court of Appeals recognized that Pope "is a well-regarded and accomplished lawyer" who "worked hard throughout her service" as PR/Trustee, and that some of her actions "benefitted the [E]state." (Opinion at 2.) The Court of Appeals also noted that "it would not be appropriate to hold [Pope's] administration to a standard of perfection," especially given that "Brown's estate faced a mountain of challenges." (Opinion at 11.) Nevertheless, the Court of Appeals carefully examined the Fee Order in light of the record evidence and the parties' arguments and concluded that the circuit court correctly denied Pope's compensation claim.

Pope's petitioned for rehearing, asserting several new arguments regarding alleged misconduct by non-fiduciaries that occurred after Pope's removal in May 2009. All of these arguments were wholly irrelevant to the basic issue on appeal, namely, whether the circuit court correctly denied Pope's claim for PR/Trustee fees. The Court of Appeals denied rehearing on July 28, 2022.

Pope filed the present Petition for Writ of Certiorari (the "Petition") on August 29, 2022, and Respondents now submit this Return.

ARGUMENT

The Court should deny the Petition. First, Pope fails to establish the presence of any of the circumstances listed in Rule 242(b), SCACR, as having "the character of reasons which will" support certiorari review. Second, several of Pope's grounds for certiorari

review must be excluded under Rule 242(d)(2), SCACR, because Pope failed to assert them in her appellate briefs *and* in her petition for rehearing. Third, a substantial portion of the Petition consists of a nearly word-for-word repetition of arguments from Pope's opening appellate brief.

I. Pope's Mismanagement of the Estate

As a preface and context for their arguments in response to the Petition, Respondents offer the following summary of the trial testimony and evidence underlying the circuit court's denial of Pope's claim for PR/Trustee fees. These facts are set forth in greater detail in the Fee Order and in Respondents' appellate brief.

A. Loss of Impartiality

Pope devoted virtually her entire professional life to the responsibilities of PR/Trustee as she perceived them, routinely billing over 200 hours per month. As expert Tiffany Provence observed, it seemed that "at times [Pope] felt *she* was the estate." (R. p. 1928 (Trial Tr. 1601 (emphasis added)).) Perhaps because of her decision to forgo other work and immerse herself in all aspects of the Estate and Trust, Pope lost the neutrality required of a fiduciary.

Pope focused her efforts as PR/Trustee on litigation, commencing a lawsuit "against every heir and claimed heir of Mr. Brown." (R. pp. 298-99 (Fee Order, at 7-8).) At the same time, critical tasks in the Administration of the Estate were neglected. For example, Pope noted in her first PR/Trustee report that the prior PR/Trustees left "no

accurate records of assets, liabilities and/or income and expenses" of the Estate and Trust and "never prepared appropriate accountings of their acts as PR/Trustees." (R. p. 2668 (Pl. Ex. 9, at 2).) Many of these tasks remained undone under Pope's administration, including that Mr. Brown's numerous copyrights were never cataloged. Consequently, for "the biggest asset of the estate, there was no documentation pulled together that would tell you what was in that group of assets." (R. p. 1810 (Trial Tr. 767).) Another urgent matter identified in Pope's first report was the need to file the estate tax return and the 2006 income tax returns for Mr. Brown, the Trust, and certain entities affiliated with Mr. Brown. (R. p. 296-297 (Fee Order, at 5-6).) When he took over as PR/Trustee, Mr. Bauknight "found no evidence whatsoever of Pope filing any income tax returns." (R. p. 1834 (Trial Tr. 822).)

Pope also failed to address the ongoing deterioration of Mr. Brown's Beech Island home. The need for repairs was well known to Pope before her appointment as PR/Trustee; indeed, failure to take care of the house was one of the reasons for the prior PR/Trustees' removal. (R. p. 334 (Fee Order, at 43).) And yet, when Mr. Bauknight took over in late May 2009, he found that nothing had been done:

> It was leaking. The roof leaked. The plumbing leaked. There were a lot of structural issues … mainly caused by water.
>
> … [T]he pool house … contained a lot of business/personal property such as band uniforms, some instruments, lots of costumes, lots of posters advertising concerts, and that type of material. [T]he pool house, … had no working heating or air, the roof and the ceiling, you could stand in that structure and look up and see the sky. It had holes

> all the way through and there was mold growing on the property that was in that structure.

(R. pp. 1814-1815 (Trial Tr. 774-75).) The caretaker, Mr. Washington, was "assigned … to wipe down the walls of the home itself" to combat mold growing on the walls. (*Id.*)

B. Financial Mismanagement

Pope's neglect of the Beech Island property is but one example of her pervasive failure to deal effectively with the cash-poor condition of the Estate. Attorney Jonas E. Herbsman, who represents the estates of John Lennon, Jimmy Hendrix, and Roy Orbison, among others, testified as an expert in the management of musicians' estates. (R. p. 1876 (Trial Tr. 1066); R. p. 1877 (Trial Tr. 1069).) He explained that it is common for celebrities' estates to be cash-poor and for there to be multiple family members battling for their piece of the pie, but the fiduciary still must perform the basic, expected functions needed to properly manage the estate. (R. pp. 1890, 1896-1897 (Trial Tr. 1085, 1105-06).) Mr. Herbsman's testimony was echoed and amplified by Ms. Provence, whose expert testimony established that a lack of cash does not alleviate a South Carolina fiduciary's duties. (R. p. 1925 (Trial Tr. 1554).) Based on this testimony, the circuit court found that Pope's fiduciary obligations were not diminished by the poor financial condition of the Estate. (R. pp. 315-317 (Fee Order, at 24-26).)

Further, the evidence showed that Pope played a role the Estate's lack of available cash. Forensic accounting expert W. Ellison Thomas, CPA, testified that the Estate had

$151,823[2] in the bank in November 2007, when Pope was appointed PR/Trustee, and received additional deposits of $703,608 during her 18-month tenure.[3] (R. p. 3030 (Def. Ex. 28, at 32).) During that same period, the Estate disbursed $843,038, with most of the payments—458,624, or about 54%—going to Pope, Buchanan, and their attorneys. (R. pp. 2988, 3030 (Def. Ex. 28, at 23, 32).)

The enormous outflow of cash left an ending balance of only $12,332 (R. p. 3030 (Def. Ex. 28, at 32)), such that the Estate was effectively insolvent when Mr. Bauknight took over as PR/Trustee in May 2009. He had to take out an unsecured personal loan "to have a little bit of cash to be able to pay the bills and protect the estate assets." (R. pp. 1811-1812 (Trial Tr. 771-72).).

C. Failure to Obtain Expert Advice

Pope lacked experience with the music business and had never managed the estate of a famous musician, much less one of Mr. Brown's caliber. (R. p. 2107 (Trial Tr. 2216).) Nevertheless, she failed to obtain assistance from qualified professionals willing to work on a deferred-pay basis. Two specific instances illustrate the serious consequences of Pope's "do-it-yourself" approach to her fiduciary duties.

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[2] All amounts have been rounded to the nearest whole dollar.

[3] Most of the additional deposits were proceeds of $544,078 from the Christie's auction. (*Id.*)

1. Failure to Obtain Professional Analysis of the Pullman Bond

At the time of his death, revenues from Mr. Brown's song catalog were pledged to pay down approximately $18.4 million owed on a Pullman Bond.[4] (R. p. 324 (Fee Order, at 32).) "[T]he Pullman Bond was ***the albatross*** of this Estate" because royalty revenue could not flow to the Estate until the bond was paid off. (R. p. 323-324 (Fee Order, at 32-33) (emphasis in original).) Despite the enormity of the debt and the Estate's pressing need for cash, Pope allowed the Bond "to operate on autopilot" so long as payments were being made on time. (R. p. 324 (Fee Order, at 33).) This passivity resulted in concrete financial harm to the Estate.

Following his appointment as PR/Trustee, Mr. Bauknight obtained a professional analysis of the Pullman Bond, which revealed that approximately $485,000 held in an escrow account should have been credited toward the interest, principle, and expenses of the bond. (R. pp. 1817-1829 (Trial Tr. 779-91).) Using this information, Mr. Bauknight engaged in negotiations with music publishers that resulted in approximately $5.2 million that could be used to reduce the principle of the Pullman Bond without incurring prepayment penalties. If Pope had performed these tasks during her tenure, $643,849 less in interest would have been paid on the Pullman Bond.[5] (R. p. 325 (Fee Order, at 34).)

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[4] A Pullman Bond is "a financial vehicle that permits an artist to realize, as a lump sum, the value of a stream of royalty revenues accruing over time." *Holland v. Fahnestock & Co.*, 210 F.R.D. 487, 491 (S.D.N.Y. 2002) (internal quotation marks omitted).

[5] Importantly, the circuit court did not deny Pope's claim for PR/Trustee fees merely because she did not take exactly the same steps or achieve exactly the same results as Mr.

2. Mismanagement of Clearance Requests

Clearance requests—short-term licenses to use a song in an advertisement, TV show, or movie—were a key source of revenue for the Estate. Pope claims she successfully managed clearances and obtained substantial revenue for the Estate. (Pet. at 8.) The evidence, however, showed that Pope substantially mismanaged clearance requests, including by not responding timely to requests and failing to keep records of requests and responses. (Resp. Br. at 22-24.)

Most egregiously, Pope admitted that in most cases, she simply accepted the terms offered, reasoning that since they were short-term deals it couldn't "hurt" to accept them without negotiating. (R. pp. 2106-08 (Trial Tr. 2215-17).) Testimony from defense expert Bradley Sharp proved otherwise. His analysis showed that that the approval rate for clearance requests was about 60 percent in 2008 and declined significantly in 2009, before increasing to "north of 80 percent" during Mr. Bauknight's tenure. (R. p. 1854 (Trial Tr. 936).) Mr. Sharp also testified that the number of clearance requests (and the resulting revenues) increased significantly after Pope's removal, a change he attributed to the fact that Mr. Bauknight had retained a professional, Peter Afterman, to handle clearance requests. (*Id.*)

Bauknight. Nevertheless, the actions of Mr. Bauknight, an experienced, professional fiduciary, unquestionably provide a relevant point of comparison.

D. Failure to Identify and Preserve Estate Assets

Mr. Herbsman identified several basic tasks that must be undertaken as soon as possible by the fiduciary for a musician's estate, including:

- Gather all contracts and agreements and understand all obligations and responsibilities the performer has, to identify rights that are (or are not) exploitable;
- Catalog all unreleased or archived recordings and any content that may be in the hands of third parties;
- Conduct a trademark review, secure social media accounts, and secure internet domain names;
- Develop a plan to release new material over time so the fan base does not dissipate.

(R. pp. 1877-87 (Trial Tr. at 1069-79).) Pope knew these tasks had not been accomplished when she and Mr. Buchanan became PR/Trustees; the absence of "accurate records of assets, liabilities and/or income and expenses of the Estate or the 2000 Trust" was specifically noted in a report they filed in May 2008. (R. pp. 2669-2675 (Pl. Ex. 9).) Despite the importance of these tasks, Pope left them undone throughout her 18 months as PR/Trustee. (R. p. 346 (Fee Order, at 55).)

E. Mismanagement of the Christie's Sale

Pope's failure to obtain professional advice negatively impacted an auction of Mr. Brown's personal property conducted by Christie's in July 2008 (the "Christie's Sale"), causing financial and reputational harm to the Estate and Trust. (R. pp. 329-330 (Fee Order, at 38-39).) The circuit court approved the Christie's sale "based upon the

recommendation of [Pope]" who, "unbeknownst to the Court at the time ... did not consult a qualified professional in making this decision" even though she "had a fiduciary duty" to determine whether an auction "was in the best interest of the Estate and Trust." (R. pp. 329-30 (Fee Order, at 38-39).) In failing "to consult with anyone who had the experience to advise her," Pope "breached her duty of prudence." (R. p. 330 (Fee Order, at 39).)

Pope's mismanagement of the Christie's auction resulted in poor sales and embarrassment to the Estate. (R. pp. 329-330 (Fee Order, at 38-39).) For example, Pope was aware of the long lead time necessary for a successful auction, and yet "caused the sale to occur with insufficient time to obtain maximum value." (R. p. 346 (Fee Order, at 55).) As a result, the auction catalog was inadequately prepared, with many items lacking value-enhancing descriptions about when they were worn or used by Mr. Brown. (R. pp. 1908-1910, 1912-1913 (Trial Tr. 1335-36, 1353, 1359-60).) Additionally, the auction was conducted in July, an off-season for auctions. (R. p. 1914 (Trial Tr. 1363).). These serious missteps resulted in disappointing results that were widely reported in the media. *See, e.g.*, *Godfather of Soul James Brown Disappoints At Auction*, MCCLATCHY NEWSPAPERS (July 18, 2008); Guy Trebay, *More Tag Sale Than Tribute*, NEW YORK TIMES (July 20, 2008).

After the auction, Pope failed to use the proceeds for their intended purposes. On March 24, 2008, Pope filed a "Hardship Request for Extension to Pay Estate Taxes," in which she informed the IRS, under penalty of perjury, that "[t]he PR/Trustees intend to

make a substantial deposit toward the Estate Taxes when the net proceeds of the Christie's sale are received." (R. p. 2666 (Def. Ex. 14, at 5).) However, "upon receipt of the auction proceeds, Pope paid $10,000 to the IRS as estate taxes, ***and a substantially larger sum to herself***." (R. p. 329 (Fee Order, at 38 n.8) (emphasis added).) The payment Pope made to herself was one of the reasons the Supreme Court removed her for cause. *See Wilson*, 403 S.C. at 448–49, 743 S.E.2d at 767.

F. Unsupported Valuation of the Estate

One large issue throughout this litigation has been whether Pope appropriately valued the Estate as of the date of Mr. Brown's death on December 25, 2006. The estate tax return Pope filed on September 24, 2008 claimed the Estate was worth $84 million: $100 million gross value less the amount owed on the Pullman Bond. (R. p. 2716.) Although Pope has steadfastly defended the $100 million valuation for many years, she has never provided a credible, evidence-based explanation of how she calculated that value. (R. p. 337 (Fee Order, at 46) (finding "no evidence to support Pope's valuation").)

The evidence at trial showed that the $100 million value was a fabrication concocted by Buddy Dallas and Terry Cox. Mr. Cox testified that Mr. Dallas directed him to draft a sham letter of intent to purchase the James Brown estate for $100 million. (R. p. 338-39 (Fee Order, at 47-48).) Mr. Dallas picked the $100 million value based on the fact that Elvis Presley's estate had recently sold for a value in that range. (R. p. 338 (Fee Order, at 47).) Pope has repeatedly touted the sham letter of intent as a firm offer establishing

the value of the Estate, but the circuit court found that "[t]he letter of intent was never an offer, and *[Pope] should have known it*." (R. p. 339 (Fee Order, at 48) (emphasis added).)

Pope also claimed that her valuation was supported by a formula submitted to the circuit court prior to her appointment as PR/Trustee, which was based on a Tennessee court order concerning the valuation of the estate of songwriter Harlan Howard. The circuit court concluded that Pope had never offered a credible explanation of the origin of the formula, nor had she offered any admissible expert testimony to support it, while defense expert Sharp stated that he had never seen such a valuation.[6] (R. p. 1852 (Trial Tr. 913).)

G. Ill-Informed, Self-Interested Opposition to the 2008 Settlement

Pope admitted that she was only "vaguely familiar" with termination rights at the time of the hearing for confirmation of the 2008 settlement. (R. p. 1799 (Trial Tr. 505).) But rather than retain an entertainment lawyer with experience in termination rights, Pope attempted to make herself an "expert" in this esoteric field. Consequently, Pope failed to understand that the 2008 settlement provided certain advantages with respect to termination rights. Additionally, Pope's opposition to the 2008 Settlement "was linked, at least in part, to its removal of her as a PR/Trustee." (R. p. 333 (Fee Order, at 42).)

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[6] In contrast, the circuit court determined that the evidence did support Mr. Bauknight's valuation of the Estate, which resulted from a professional valuation by Philpott Ball & Werner. (R. p. 343 (Fee Order, at 52).) Moreover, this valuation was independently vetted by various teams with the IRS (who, as the circuit court noted, had every incentive to support a higher value).

II. None of the Circumstances in Rule 242(b), SCACR, Is Present Here

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Rule 242(b) provides a non-exhaustive list of circumstances that "indicate the character of reasons" that may support certiorari review:

> (1) Where there are novel questions of law.
> (2) Where there is a dissent in the decision of the Court of Appeals.
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
> (4) Where substantial constitutional issues are directly involved.
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id. Pope contends that this case fits criteria (1), (3), and (4), but this claim falls apart under scrutiny.

A. There Are No Novel Questions of Law or Substantial Constitutional Issues

Pope claims that certiorari is warranted because this case involves novel questions of law, *see* Rule 242(b)(1), and substantial constitutional issues, *see* Rule 242(b)(4). However, she fails to identify any such novel question or constitutional issue, nor are any novel questions or constitutional issues identified by the Court of Appeals in its Opinion. To the contrary, the fact that the Court of Appeals affirmed in an unpublished, per curiam opinion strongly suggests the absence of such factors.

B. There Is No Conflict With *Wilson* or *Estate of Kay*

Pope also contends that the Court of Appeals' decision conflicts with this Court's decisions in *Wilson*, *supra*, and *In re Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018).

1. There Is No Conflict with Wilson

There is no conflict between the Court of Appeals' decision and this Court's ruling in *Wilson*. Pope contends that "*Wilson* is not only binding precedent … but also constitutes the law of the case among the parties to this action as to the appropriateness of the AG's settlement." (Pet. at 18.) Pope appears to take the position that *Wilson's* rejection of the 2008 settlement vindicates her opposition to the settlement (which she pursued as a private citizen following her removal as PR/Trustee in May 2009) and that such vindication, by itself, entitles her to fees for work she did during her tenure as PR/Trustee. But the Court of Appeals correctly recognized that these are two very different questions, as demonstrated by the fact that this Court "set the settlement aside" but also "affirmed [Pope] and Buchanan's removal, finding the circuit court had cause to remove them." (Opinion at 3.) Moreover, the Court of Appeals avoided any conflict with *Wilson* by ruling that "[e]ven if … the circuit court erred in re-scrutinizing" the 2008 settlement, "other parts of the order would stand and support rejection of [Pope's] claim." (Opinion at 12.)

2. There Is No Conflict with Estate of Kay

In *Estate of Kay*, this Court held that a PR who prosecutes or defends an action in

good faith is entitled to reimbursement of "necessary expenses and disbursements including reasonable attorneys' fees." 423 S.C. at 487, 816 S.E.2d at 548 (quoting S.C. Code Ann. § 62-3-720).[7] Pope maintains that the Court of Appeals' decision conflicts with *Estate of Kay* because "[t]here was no evidence presented nor any finding that [she] acted in bad faith" in defending challenges to Mr. Brown's estate plan or "the numerous other proceedings involving the Estate and/or Trust." (Pet. at 3.)

This argument is waived because Pope presented it for the first time in her petition for rehearing. *See* Rule 242(d)(2), SCACR ("Only those questions raised in the Court of Appeals *and* in the petition for rehearing shall be included in the petition for writ of certiorari as a question presented to the Supreme Court."). Additionally, the portion of *Estate of Kay* on which Pope relies addresses S.C. Code Ann. § 62-3-720, titled "Expenses in Estate Litigation." This provision is irrelevant because Pope has never made a claim under § 62-3-720 for reimbursement of litigation expenses.

III. The Petition Presents New Arguments, in Violation of Rule 242(d)(2), SCACR

Pope asks this Court to grant certiorari on the basis of arguments that either were not presented, or were presented in only conclusory fashion, in the Court of Appeals. However, Rule 242(d)(2) plainly prohibits Pope from seeking certiorari on the basis of

[7] The Court of Appeals cited *Estate of Kay* for the propositions that (1) "a case challenging compensation for one's services in administering an estate is an action in equity"; and (2) that the 2008 payment order did not require the circuit court to award the full commission claimed by Pope. (Opinion, at 7, 10 (citing *Estate of Kay*, 423 S.C. at 480, 484-87, 816 S.E.2d at 544, 547-48).)

these arguments.

A. Pope's Alleged $2.1 Million Settlement Offer

Pope complains that the circuit court erroneously found that she "had delayed and complicated the case by [making] unreasonable settlement demands," including a demand for $19 million to settle this case and "Richland 4900," the Estate's claim against Pope for breach of fiduciary duty. (Pet. at 14.) Pope maintains that the circuit court instead should have focused on Pope's "reasonable" offer to settle her claim for $2.1 million. (Pet. at 13-14.) Pope cannot assert this purported error as a basis for certiorari because she failed to properly raise this point in her opening appellate brief.

There is a cursory reference to the $2.1 million settlement offer on page 33 of Pope's opening brief. Comprised of only a few sentences, the brief claims that the circuit court "ignored" an offer to settle before or during trial for a mere $2.1 million. (Appellant's Br. at 33-34.) The brief cites no authority and does not explain how the alleged $2.1 settlement offer supports Pope's claim for PR/Trustee fees. By raising the argument in this conclusory fashion, Pope has waived and abandoned it. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) ("South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.").

In any event, the supposed $2.1 million settlement offer does not undermine the circuit court's finding that Pope unreasonably delayed and complicated the proceedings.

(R. p. 307 (Fee Order, at 16).) The circuit court based this finding on Pope's demand of $19 million to settle this case and Richland 4900, an "offer" she made only with great reluctance. (R. p. 2129 (Trial Tr. 2378).) The circuit court found, and Pope does not seriously dispute, that this outrageous monetary demand "caused undue delay" and "required Respondents to resolve this case through a trial." (R. p. 307 (Fee Order, at 16).) Moreover, Pope attempted to use the $19 million "offer" as a means ensuring her continuing involvement in the Estate and Trust notwithstanding her removal as PR/Trustee. The evidence—including Pope's testimony and a document she prepared—shows that $10 million of the settlement would have been used to fund scholarships in Mr. Brown's name but under Pope's control. In essence, the "settlement" would have given Pope control over $10 million that otherwise would have been poured into the charitable trust.

B. The Never-Realized "Plan" to Reinstate the 2008 Settlement

As this appeal has progressed, Pope has become increasingly fixated on her belief that during a status conference on May 29, 2013, some person or persons (exactly who varies from filing to filing but generally including Mr. Brown's putative wife, Tommie Rae Hynie,[8] and attorney Louis Levenson) announced a plan to "reinstate" the 2008 settlement this Court vacated in *Wilson*. Pope's complaint in this action, filed less than

[8] In 2020, this Court ruled that Ms. Hynie's was not the surviving spouse of Mr. Brown. *See In re Estate of Brown*, 430 S.C. 474, 498, 846 S.E.2d 342, 354 (2020).

two weeks after the May 29, 2013 status conference, contains no allegations concerning the supposed scheme. Similarly, very little testimony or evidence concerning this supposed plan was presented at trial in 2017-2018. And Pope's appellate briefs, filed in 2020, mention the 2008 settlement only briefly, in the context of Pope's argument that the circuit court was biased against her. (Appellant's Br. at 46-47; Reply Br. at 4.) Since briefing was completed in 2020, however, the supposed plan to reinstate the 2008 settlement has become a major focus of Pope's appellate filings, including post-briefing motions filed in this case.

Although the supposed plan to reinstate the 2008 settlement is never mentioned in the Court of Appeals' 12-page decision, it pervaded Pope's petition for rehearing, being referenced on 23 pages of a 32-page filing. The supposed reinstatement plan is nearly as ubiquitous in the Petition currently before this Court.

This Court should not allow itself to be distracted by Pope's increasingly vociferous claims regarding "the May 29, 2013 announced plan of Hynie to disregard *Wilson* and reinstate the … 2008 settlement." (*E.g.*, Pet. at 2-3.) No matter how stridently Pope insists that such a plan exists, she has never pointed to a shred of evidence supporting the plan's existence. More importantly, even if such a plan existed, *it was never implemented*—the 2008 settlement was not reinstated. The circuit court made this clear in its May 2015 status report to this Court. (R. pp. 993-999 (Status Report).) With respect to events at the status conference on May 29, 2013, the circuit court wrote:

> The Order requesting this status report· inquired whether any proposed settlement agreement has been submitted for court approval. The answer is an unequivocal no. No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. ·Neither am I aware of any rumor or "courthouse talk" of any proposed settlement.

(R. p. 998 (Status Report, at 6).)

But even if Pope could somehow prove that the supposed scheme to reinstate the 2008 settlement existed and had been implemented—she cannot—this fact would not justify the exercise of this Court's discretion to grant certiorari. This case is only about whether Pope should receive fees for her 18 months of service as PR/Trustee. Resolution of this question requires consideration only of Pope's actions and whether they benefitted or harmed the Estate and Trust. The actions of others—including any plan by Hynie, Levenson, and/or others to reinstate the 2008 settlement—simply have no bearing on the issue of PR/Trustee fees.

Attempting to bridge the chasm between the supposed reinstatement plan and issues relevant to this case, Pope now makes the astonishing—and entirely new—claim that the circuit court "full[y] support[ed]" the reinstatement scheme. (Pet. at 2.) According to Pope, certiorari review is needed because the Court of Appeals failed to recognize the "profound effect" of the circuit court's support of the reinstatement scheme on its assessment of Pope's claim for PR/Trustee fees. (Pet. at 2-3.)

Because Pope did not raise this issue at trial or in her appellate briefs, Pope has waived this claim and cannot rely on it as grounds for certiorari review. *See* Rule

242(d)(2). Regardless, the claim is substantively deficient because Pope makes no attempt to identify the "profound effects" the Court of Appeals overlooked, nor does she explain the impact of any such effects on the circuit court's ruling.

C. Efforts to "Redress" Cannon's $17 Million Theft

In yet another new argument, Pope claims that the Court of Appeals "overlooked the extraordinary efforts of Buchanan and [Pope] to redress the damages caused by Cannon's $17 million dollar theft" of Mr. Brown's assets during his lifetime. (Pet. at 8.) According to Pope, during 2008 attorneys engaged by the Estate made substantial progress toward recovering funds stolen by Cannon, but "[i]n June 2009 Respondents began their sabotage of the $17 million Cannon recovery effort" by directing counsel not to discuss the recovery efforts with Pope and Buchanan. This argument was not raised in Pope's appellate briefing, barring her from asserting it as a basis for certiorari review. *See* Rule 242(d)(2), SCACR. Moreover, this claim lacks merit. There is nothing suspicious or improper about instructing retained counsel not to communicate with *former* PR/Trustees about matters related to the representation; indeed, such an instruction is essential to preserve the attorney-client privilege. And, yet again, Pope makes no attempt to explain how events that occurred *after* Pope's tenure as PR/Trustee could have impacted her claim for fees for services performed *during* her term.[9]

[9] Again, Pope is raising a new issue that was not asserted as such in her appellate briefs. Although Pope's appellate briefs discussed Cannon's misconduct, Pope did not argue, as she does in the Petition, that Respondents improperly interfered with such efforts or that,

Additionally, Pope fails to account for the Court of Appeals' explicit recognition that Pope and Buchanan "uncovered serious financial misconduct by Cannon, Dallas, and Bradley," leading to their appointment as PR/Trustees. (Opinion, at 2.) Despite this and other positive statements regarding Pope's service as PR/Trustee, the Court of Appeals ultimately agreed with the circuit court that whatever good Pope had done was outweighed by the harm she had caused by focusing on litigation (including litigation directed at recovering funds from Cannon) to the detriment of day-to-day administration of the Estate. (Opinion, at 11.) Pope does not explain why this assessment is wrong, much less why it presents a "special and important reason" for certiorari review.

IV. Arguments Cut-and-Pasted from Pope's Opening Appeal Brief Cannot Support Certiorari Review

Fully ten pages of Pope's 25-page Petition are occupied by arguments that Pope has copied, nearly word-for-word, from her opening brief on appeal. Specifically, the arguments that appear on pages 15-23 of the Petition correspond exactly to the arguments that appear on pages 39-48 of Pope's opening brief, and the argument on pages 24-25 of the Petition corresponds to the argument on pages 35-36 of Pope's opening brief. All of these arguments concern alleged errors in the circuit court's Fee Order, not aspects of the Court of Appeals' Opinion that might support certiorari review.

Pope's wholesale copying of her opening brief is plainly improper. Her burden

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in the absence of such interference, the circuit court would have awarded Pope a PR/Trustee fee.

under Rule 242, SCACR, is to establish the existence of "special and important reasons" why this Court should grant certiorari to review to review the decision of the *Court of Appeals*, not the underlying decision of the circuit court. *See* Rule 242(b), SCACR. Pope cannot meet this standard simply by restating her challenges to the circuit court's decision, especially since the Court of Appeals clearly conducted an independent analysis and did not simply restate the circuit court's conclusions.

CONCLUSION

Pope has failed to identify any "special and important reasons" for this Court to grant certiorari. Both the Court of Appeals' Order and the circuit court's Fee Order carefully examined the evidence and the parties' arguments and determined that because Pope did more harm than good during her tenure as PR/Trustee, she was not entitled to any fees for this work. Aside from the celebrity of the decedent, there is nothing at all remarkable about either the Fee Order or its affirmance by the Court of Appeals. On the other hand, a grant of certiorari would serve only to further prolong this litigation, delaying still further the day when the Estate can be closed, the charitable trust can be funded, and James Brown's dream of providing scholarships to deserving students attending schools in South Carolina and Georgia can finally be fulfilled.

Respectfully submitted,

s/ J. David Black

J. David Black, SC Bar No. 68499
Kirsten E. Small, SC Bar No. 75681
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
ksmall@nexsenpruet.com

Attorneys for Russell L. Bauknight as Personal Representative of Respondent the James Brown Estate and as Trustee of Respondent the James Brown 2000 Irrevocable Trust

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