THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

Appellate Case No. 2018-02229

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents,

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Appellant.

RESPONDENTS' FINAL BRIEF

Kenneth B. Wingate, S.C. Bar No. 8004
Mark V. Gende, S.C. Bar No. 72835
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
kbw@swblaw.com
mvg@swblaw.com

ATTORNEYS FOR RESPONDENTS

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STATEMENT OF THE CASE

On December 17, 2018, Appellant filed in the South Carolina Court of Appeals and served a document entitled "Supplemental Notice of Appeal" appealing therein twenty-five lower court orders of two circuit court judges in Case No. 2010-CP-40-4900 ("Case 4900"). Appellant designated the Supplemental Notice of Appeal for filing in Appellate Case No. 2017-001899 ("Appellate Case 1899"). Appellate Case 1899 involves Appellant's appeal of five lower court orders of two circuit court judges in Case 4900. On the date (December 17, 2018) Appellant filed the Supplemental Notice of Appeal, Appellate Case 1899 was over one year and three months old. Appellant's Supplemental Notice of Appeal was not received as a filing in Appellate Case 1899 but was assigned the Appellate Case No. 2018-002229 ("Appellate Case 2229").

Case 4900 is a breach of fiduciary duty action against Appellant alleging that during her period of service as personal representative of the estate of James Brown (hereinafter the "Estate") and trustee of the James Brown 2000 Irrevocable Trust (hereinafter the "Trust"), she failed to

properly administer the affairs of the Estate and Trust resulting in significant financial damages. (R. pp. 215-227; Compl. ¶ 28 (May 19, 2010)).

Robert L. Buchanan, Esquire (hereinafter "Buchanan") was a named defendant in Case 4900, but Respondents and Buchanan settled all claims in July 2012. Thereafter, the court entered an order of dismissal of all claims between Respondents and Buchanan. (R. pp. 125-126; Order of Dismissal of Def. Robert L Buchanan Jr. (July 13, 2012)). Buchanan has not been a party to Case 4900 since that time, and he is not a party to this appeal.

Appellant was appointed personal representative of the Estate and trustee of the Trust on November 20, 2007. (R. pp. 215-227; Compl. ¶ 14). Appellant was removed for cause as personal representative of the Estate and trustee of the Trust on May 26, 2009. (R. pp. 215-227; Compl. ¶ 15).

Appellant appealed her removal as personal representative of the Estate and trustee of the Trust, among other issues not relevant to the instant appeal. (R. pp. 215-227; Compl. ¶ 19). Ultimately the South Carolina Supreme Court upheld Appellant's for cause removal. Our Supreme Court outlined some of the concerns that formed the basis of its opinion:

> Further, all of the settling parties petitioned the circuit court for Appellants' removal well in advance of the hearing, thus providing adequate notice. In addition, the circuit court found an irreconcilable conflict existed between Appellants and the settling parties because Appellants had expressed continuing opposition to their actions. Thus, the circuit court *had cause* to remove them and replace them with a professional fiduciary.
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> We are also aware that Appellants have sought $5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award

> could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate*.

Wilson v. Dallas, 403 S.C. 411, 448-49, 743 S.E.2d 746, 766-767 (2013) (emphasis added).

Respondents filed in the Probate Court in Richland County a Complaint (Case No. 2010-GC-40-00073) on May 19, 2010, with causes of action for breach of fiduciary duty, breach of trust, and negligence. (R. pp. 215-227; Compl. ¶ 16-29). Allegations of the alleged breach of fiduciary, breach of trust, and negligence, against Appellant specifically in her capacity as personal representation of the Estate and trustee of the Trust, include:

> a. Failing to properly manage the estate and trust;
> b. Failing to engage necessary advisors and appropriate assistance to manage the estate and trust, causing, upon information and belief, millions of dollars of lost opportunities for the estate and trust;
> c. Failing to use due diligence in pursuing business opportunities for the estate and trust;
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> e. Mishandling an auction of personal property at great cost to the estate and trust;
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> h. Engaging in self-dealing by paying themselves hundreds of thousands of dollars in fees, which left the estate and trust with a solvency crisis;
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> ***
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> o. Being unequipped and/or unwilling to conduct the administration of the estate, as they admitted by seeking the appointment of a special administrator to handle the administration because the estate was in an "emergency" situation, as further demonstrated by such breaches as:
> i. Failing to understand the fundamentals of the operation of the music business, which constitutes the essential value of the trust and estate, and failing to obtain proper advice, under the pretext of not being able to afford such advice despite paying themselves hundreds of thousands of dollars in fees;
> ii. Failing to understand the basic operation of federal copyright law and its impact on the estate and its valuation, including but not limited to tax valuation;

iii. Failing to timely conduct due diligence, as demonstrated by their own testimony under oath that "2009 was the year of due diligence."

p. Engaging in conflicts of interest, such as

i. Paying themselves hundreds of thousands of dollars in fees while leaving the estate and trust virtually insolvent;

ii. Serving as both Personal Representatives and Trustees while a significant issue in the administration of the trust and estate was whether the trust or the estate owned certain assets.

iii. Continuing to conduct a vicious attack on the proposed settlement, upon information and belief, for the purpose of padding their own fees, which they claim to be $5 million.

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u. Artificially inflating the reported value of the estate, without any substantiation, and without any consistency, for the purpose of justifying their claim for approximately $5 Million in fees.

(R. pp. 215-227; Case 4900 Compl. ¶ 18-29).

Some of the Complaint's allegations parallel the concerns ultimately recognized by our Supreme Court, *compare* Complaint at paragraphs e, h, and p (i) with *Wilson v. Dallas*, *supra*.

On June 11, 2010, Appellant filed a Motion to Remove, therein seeking from Probate Judge Amy W. McCulloch an Order removing the Complaint to the Circuit Court. (R. pp. 229-230; Defs.' Motion to Remove). Judge McCulloch executed and filed an Order for Removal on July 19, 2010, removing the Complaint from the Probate Court to the Circuit Court. (R. p. 89; Order for Removal). On July 26, 2010, the Richland County Clerk of Court acknowledged receipt of the certified true copies of the originals of documents related to the Complaint (R. p. 228; Certificate of Transmittal as to Removal) and assigned Case 4900 to the Complaint.

A. Statement of the Case Relevant to Issue One

The Complaint was served upon Appellant on May 24, 2010. (R. p. 1625; Aff. of Service of Summons and Compl. on Adele Pope (May 24, 2010)). In lieu of an answer, Appellant filed a motion to dismiss, (R. pp. 231-269; Motion to Dismiss of Def. Robert L. Buchanan, Jr. and Adele J. Pope (June 22, 2010)), and a motion to change venue (R. pp. 273-355; Motion to Transfer Venue

(August 2, 2010)). In connection with Appellant's motion to dismiss, Appellant filed on August 13, 2010, a Memorandum in Support of Dismissal of Complaint, on August 25, 2010, a Supplemental Memorandum Supporting Dismissal of Complaint, on August 27, 2010, a Second Supplemental Memorandum in Support of Dismissal of Complaint, and on September 28, 2010, an Affidavit of Buchanan and Pope in Support of Dismissal Based on Statutes of Limitation. Respondents filed on August 27, 2010, Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss, and on October 1, 2010, a Motion to Strike Defendant's Affidavit in Support of Dismissal. A hearing on the motion to dismiss was held before the Honorable L. Casey Manning, Jr., on August 30, 2010. Proposed orders on the motions were due to Judge Manning on October 1, 2010. Appellant and Respondent each submitted proposed orders on that day. *See* (R. pp. 91-98; Order Denying Motion to Dismiss, dated November 8, 2010 (filed on November 9, 2010)), and letters from counsel dated October 1, 2010.

On November 9, 2010, Judge Manning issued an Order Denying Motion to Dismiss. (R. pp. 91-98; Order Denying Defs.' Mot. To Dismiss (November 8, 2010)).

On November 19, 2010, Appellant filed a Notice of Motion and Motion Pursuant to [SCRCP] 59(e) to Alter or Amend Order Denying Motion to Dismiss. (R. pp. 404-406; Def.'s Mot. Alter, Amend and/or Vacate Order Den. Def.'s Mot. to Dismiss (November 19, 2010)). Judge Manning issued an Order (filed on January 12, 2011) denying Appellant's Rule 59(e), SCRCP, motion. (R. pp. 105-106; Order Den. 59(e), SCRCP, Mot. (filed January 12, 2011)).

On February 16, 2011, Appellant filed a Notice of Appeal in the South Carolina Court of Appeals attempting to appeal the Order Denying Motion to Dismiss and the Order denying the related Rule 59(e), SCRCP, motion. (R. p. 1468; Defs.' Notice of Appeal (February 16, 2011)). The Court of Appeals found that "the orders challenged on appeal are not immediately appealable" and dismissed the appeal. (R. pp. 107-109; SCCOA Order filed on March 16, 2011). Appellant

petitioned the Court of Appeals to rehear the dismissal of the appeal, but the Court of Appeals concluded, "After careful consideration, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing or reinstating the appeal." (R. pp. 110-111; SCCOA Order filed on May 31, 2011). Appellant did not file a Petition for Certiorari subsequent to the May 31, 2011, Order of the Court of Appeals, and the appeal was "remitted to the Clerk of Court for Richland County." (R. pp. 112-113; Remittitur filed on July 26, 2011).

B. Statement of the Case Relevant to Issue Two

On September 30, 2010, one day before proposed orders were due to Judge Manning regarding Appellant's motion to dismiss and motion to change venue, and while Respondents' counsel were in the midst of drafting and preparing their substantial proposed orders, and while both sides were exchanging other documents related to the proposed orders, Appellant unexpectedly served an Answer with counterclaims on Respondents' counsel. (R. pp. 362-394; Answer and Counterclaim of Robert L. Buchanan, Jr. and Adele J. Pope (September 30, 2010)). This Answer was hand-delivered to Respondents' counsel's office. (R. p. 1643; Proof of Service of Answer). Appellant was well aware, due to the ongoing, extensive briefing, that two lawyers were working the case for Respondents, Kenneth B. Wingate and Everett A. Kendall, II. Appellant's proof of service listed both attorneys, however, Appellant served only one copy of the Answer by leaving it at the office reception desk. The Answer was forwarded to Wingate. Wingate does not deny receiving the pleading, but has no recollection of doing so and believes it may have been inadvertently misidentified, since many documents related to the pending orders had been exchanged between the parties. Admittedly, the Answer was filed within the counsel's office and not responded to. (R. pp. 1456-1458; Wingate Affidavit (November 16, 2010)).

On November 9, 2010, Judge Manning issued orders denying Appellant's motion to dismiss and motion to change venue. (R. pp. 91-104; Order Den. Defs.' Mot. To Dismiss (November 8, 2010); Order Den. Defs.' Mot. To Change Venue (November 8, 2010)). On November 10, 2012, Respondents' counsel sent an email to Appellant's counsel stating, "I look forward to receiving your Answer on or before November 29, 2010." (R. pp. 397-399; Pl.'s Mot. to Set Aside Entry of Default, Ex. to Wingate Affidavit). On November 15, 2010 Respondents' counsel received, via U.S. Mail, Appellant's Affidavit of Default, which had been filed on November 10, 2010. (R. pp. 1437-1439; Letter from Pope's counsel (November 10, 2010); Affidavit of Default (November, 10, 2010)). The next day, November 16, 2010, Respondents filed an answer to the counterclaims, (R. pp. 400-403; Pls.' Answer to Countercl. (November 16, 2010)), and a motion to set aside the entry of default pursuant to Rule 55(c), SCRCP, (R. pp. 397-399; Pls.' Mot. To Set Aside Entry of Default (November 16, 2010)).

On December 17, 2012, Judge Manning heard oral arguments on Respondents' motion to set aside entry of default. (R. pp. 143-145; Order Grant. Pls.' Mot. to Set Aside Entry of Default (October 12, 2015)). On December 17, 2012, Respondents submitted for the court's consideration supplemental material concerning its meritorious defense. (R. pp. 623-628; Suppl. To Pls.' Mot. to Set Aside the Entry of Default (December 17, 2012)). On October 12, 2015, Judge Manning issued an order granting Respondents' motion to set aside the default. (R. pp. 143-145; Order Grant. Pls.' Mot. to Set Aside Entry of Default (October 12, 2015)). Appellant filed a Motion to Alter, Amend and/or Vacate Order Granting Plaintiffs' Motion to Set Aside Default, on October 20, 2015. (R. pp. 694-698; Defs.' Mot. to Alter, Amend and/or Vacate Order Grant. Pls.' Mot. to Set Aside Default (October 20, 2015)). Appellant's motion to alter, amend, or vacate has not yet been ruled on. Appellant filed a Notice of Appeal on September 12, 2017, appealing the Order Judge Manning (issued on October 12, 2015) granting Respondents' motion to set aside the

default. The appeal of that Order (which is one of five lower court orders in Appellate Case 1899) has not yet been decided.

On May 19, 2016, Respondents filed a Motion for Summary Judgment as to All of the Counterclaims of Defendant Pope. (R. pp. 1753-1755; Pls.' Mot. for Summ. J. as to All of the Countercl. Of Defs. (May 19, 2016)). On the same date Respondents filed a memorandum in support of their motion for summary judgment. (R. pp. 1551-1565; Pls. Mem. in Supp. of Mot. for Summ. J. as to Defs.' Countercl. (filed May 19, 2016)). On August 26, 2016, Appellant filed Defendant/Coun[t]erclaimant Adele J. Pope's Return to Motion of Plaintiff for Partial Summary Judgment. (R. pp. 736-745; Def./Countercl. Pope's Return to Mot. for of Pls. for Partial Summ. J. (filed on August 26, 2016)). On August 29, 2016, Respondents filed Plaintiff's Revised Memorandum in Support of Motion for Summary Judgment as to Defendant's Counterclaims. (R. pp. 1587-1603; Pls.' Revised Mem. in Supp. of Mot. for Summ. J. as to Defs.' Countercl. (filed August 29, 2016)). Also on August 29, 2016, a hearing was held on the motion for summary judgment. (R. pp. 188-203; Order Grant. Pls.' Mot. for Summ. J.as to Defs.' Countercl. (filed on July 8, 2017)). Subsequently, Appellant filed Defendant's Supplemental Memorandum in Opposition to Motion for Summary Judgment and in Support of Defendant's Position as to Other Pending Motions. (R. pp. 1604-1615; Defs.' Supp. Mem. in Opp'n to Mot. for Summ. J. and in Supp. of Defs.' Position as to Other Pending Motions (filed on September 23, 2016)). On June 23, 2017, Judge Early issued an Order Granting Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims. (R. pp. 188-203; Order Grant. Pls.' Mot. for Summ. J. as to Defs.' Countercl. (filed on July 8, 2017)). Appellant then filed Defendant/Coun[t]erclaim Plaintiff Adele J. Pope's Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment as to Counterclaims. (R. pp. 914-940; Def./Countercl. Pl. Pope's Mot. to Alter, Amend, Recons., and/or Vacate Order (filed on July 14, 2017)). On November 25, 2018,

Judge Early signed an Order Denying Defendant/Counter[]claim Plaintiff's Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment. (R. pp. 211-214; Order Den. Def./Countercl. Mot. to Alter, Amend, Recons., and/or Vacate (filed on November 26, 2018)).

By Order of Judge Early dated May 31, 2017, and filed on June 12, 2017, the court granted the Attorney General's motion to be dropped as a party to Case 4900. (R. pp. 180-185; Order Grant. Att'y Gen. to be Dropped as a Party (dated May 31, 2017)). That Order and Judge Early's Order dated August 2, 2017, and filed on August 7, 2017 (R. pp. 204-205; Order Den. Def.'s Mot. to Alter or Amend (dated August 2, 2017) are on currently appeal in Appellate Case 1899.

C. Statement of the Case Relevant to Issue Three

Appellant purports to challenge certain unenumerated orders following May 29, 2013. However, Appellant neither lists the challenged orders nor makes any argument regarding the same.

ARGUMENT

Respondents acted properly in bringing the Complaint in Case 4900 against Appellant. Respondents in Case 4900 seek to recover damages for multiple breaches of fiduciary duty and other acts of negligence on the part of the Appellant. Appellant seeks to confuse matters by raising irrelevant issues that do not bear on the merits of this suit. Appellant seeks to avoid responsibility by attempting to litigate issues that are not before this Court. The denial by the circuit court of Appellant's Motion to Dismiss and the granting by the circuit court of summary judgment as to Appellant's counterclaims, was proper.

I. The circuit court did not err by denying Appellant's Motion to Dismiss where the Court of Appeals previously held that the denial of the motion to dismiss is not immediately appealable and where the law supports the denial of the motion to dismiss.

A. Appealability

Appellant's first issue argues the circuit court erred by denying her Motion to Dismiss, (R. pp. 231-272; Mot. to Dismiss of Def. Robert L. Buchanan and Adele J Pope (dated June 22, 2010)). Pursuant to Rule 12(b), SCRCP, a party may assert a complaint should be dismissed for "(6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim." Section 14-3-330 of the South Carolina Code (2017) states:

> The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:
>
> . . .
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action [.]

"Currently, this Court does not allow immediate appellate review of the *denial* of any Rule 12(b), SCRCP motion." *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000); *see Moyd v. Johnson*, 289 S.C. 482, 347 S.E.2d 97 (1986) (holding denial of a Rule 12(b)(6) motion is not directly appealable). "Although there are no cases addressing appealability in the context of a Rule 12(b)(7) motion, the appellate courts generally do not allow immediate appellate review of the denial of Rule 12(b) motions." Jean Hoefer Toal et al., Appellate Practice in South Carolina 149 (3d ed. 2016). Similar to the denial of a motion for summary judgment, "the denial of a motion to dismiss does not establish the law of the case and the issue raised by the motion can be raised again at a later stage of the proceedings." *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 526 n.2, 443 S.E.2d 539, 540 n.2 (1994).

By an Order filed on November 9, 2010, the circuit court denied Appellant's Motion to Dismiss. (R. pp. 91-98; Order Den. Defs.' Mot. to Dismiss (November 8, 2010)). Appellant previously appealed this same Order Denying Motion to Dismiss. (R. pp. 409-411; Notice of Appeal filed Feb. 16, 2011). On March 17, 2011, this court dismissed Appellant's appeal and remitted it to the circuit court. (R. pp. 112-113; SCCOA Remittitur filed on July 26, 2011). The court found "the orders on appeal are not immediately appealable." (R. pp. 107-109; SCCOA Order filed March 17, 2011). On July 26, 2011, the court remitted the case to the circuit court. Appellant again attempts to appeal the Order denying her Motion to Dismiss through a Supplemental Notice of Appeal. However, since the remittitur entered on July 26, 2011, the circuit court has made no determination of the final issues in this case. Thus, the Order denying Appellant's Motion to Dismiss is still not immediately appealable.

The Order denying Appellant's Motion to Dismiss does not establish the law of the case or preclude Appellant from raising these issues later in the case. The circuit court found Appellant's Motion to Dismiss was raised pursuant to Rule 12(b)(6), (7), and (8). (R. pp. 91-98; Order Den. Defs.' Mot. to Dismiss at 2 (November 8, 2010)). Further, the circuit court found Appellant's affirmative defenses did not apply to the allegations raised in Respondents' Complaint. (R. pp. 91-98; *Id.* at 7). The court determined affirmative defenses raised in pre-answer Motions are not appropriate to consider because "consideration of an affirmative defense usually requires reference to factual allegations and matters which are beyond the scope of allegations set forth in the complaint." (R. pp. 91-98; *Id.* (quoting *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006))). The circuit court's Order Denying Appellant's Motion to Dismiss does not affect a substantial right in this matter. The Order does not terminate this action or prevent Appellant from

raising these issues in the future. To the contrary, the parties have been unable to move forward with the case at the circuit court because of numerous unnecessary appellate filings relating to discovery and other interlocutory orders. It is well-settled law in South Carolina that the denial of a motion to dismiss is not immediately appealable. Therefore, this court should dismiss Appellant's first issue on appeal because the *denial* of her Motion to Dismiss is not immediately appealable.

B. The circuit court did not err by denying Appellant's Motion to Dismiss.

In the alternative, if the court finds Appellant's first issue is appealable, the court should affirm the circuit court's denial of Appellant's Motion to Dismiss.

i. Standard of Review

Dismissal of an action pursuant to Rule 12(b)(6), SCRCP, is appealable under section 14-3-330(1) and (2)(c) of the South Carolina Code (2017). "In reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP, the appellate court applies the same standard of review as the trial court." *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). "In considering a motion to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on the allegations set forth in the complaint." *Id.* The appellate court must determine "whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Id.* at 645 S.E.2d at 247-48 (internal citations omitted). The appellate court should not dismiss the complaint merely because there exists doubt that the plaintiff will prevail in the action.

ii. Appellant's ten grounds for dismissal

1. **Respondents need not comply with S.C. Code Ann. § 15-36-100 (Supp. 2018) because Respondents have not alleged professional negligence.**

Section 15-36-100 of the South Carolina Code (Supp. 2018) requires a plaintiff to "file as part of the complaint an affidavit" of an expert "who is qualified as to the acceptable conduct of a professional whose conduct is at issue" in a case for professional negligence.[1] This code section is inapplicable because Respondents did not allege professional malpractice by Appellant. (*See* R. pp. 215-227; Compl. (May 19, 2010)). Respondents' claims concern Appellant's breach of duties attendant to her as personal representative and trustee (hereinafter collectively "administrator"), not as an attorney at law. (*See* R. pp. 215-227; Compl. (May 19, 2010)).

2. This matter is unique and neither precisely nor substantially the same as any litigation with similar parties or similar claims.

Rule 12(b)(8), SCRCP, states a party may make a motion to dismiss if "another action is pending between the same parties for the same claim." This court determined in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009):

> In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. The rule has historic ties to a former statute providing a defendant a similar opportunity to demur; our supreme court traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of actions and relief. We find this approach consistent with modern day practice under rules similar to our Rule 12(b)(8). Accordingly, we interpret the rule narrowly such

[1] Section 15-36-100(G) of the South Carolina Code (Supp. 2018) provides that an expert affidavit is required for the following professions: (1) architects; (2) attorneys at law; (3) certified public accountants; (4) chiropractors; (5) dentists; (6) land surveyors; (7) medical doctors; (8) marriage and family therapists; (9) nurses; (10) occupational therapists; (11) optometrists; (12) pharmacists; (14) physical therapists; (15) physicians' assistants; (16) professional counselors; (17) professional engineers; (18) podiatrists; (19) psychologists; (20) radiological technicians; (21) respiratory therapists; and (22) veterinarians. A personal representative and a trustee is not enumerated in the provided list of professions.

> that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8).

Id. at 105-06, 674 S.E.2d at 531-32 (internal citations omitted).

In *Corbett v. City of Myrtle Beach*, this court considered whether a prior "claim involve[d] the same parties and [was] based upon the same facts and circumstances" as the case on appeal. 336 S.C. 601, 610, 521 S.E.2d 276, 281 (Ct. App. 1999). In this case, a widow brought a consolidated wrongful death and survivor action. *Id.* at 605, 521 S.E.2d at 278. A year later, she filed a tort claim for negligent infliction of emotional distress as a bystander. *Id.* The court found the tort claim properly dismissed because the facts and circumstances giving rise to the wrongful death and survivor actions were the same as those giving rise to the tort action. *Id.* at 610, 521 S.E.2d at 281.

Our case is distinguishable from *Corbett*. Appellant contends that various cases are substantially similar to this case:

> *McMaster v. Dallas, et al*,. 2009-CP-02-1647 ("Case 1647");
> *McMaster v. Brown, et al.*, 2009-CP-02-1810 ("Case 1810");
> *Thomas, et al v. Bradley, et al*., 2007-CP-02-0122 ("Case 122"); and
> *Brown, et al v. Pope, et al.*, 2008-CP-02-0872 ("Case 872").

Appellant's Initial Br. pp. 30-31 (February 26, 2019). Respondents do not dispute that there were "other action[s] pending" in what can be termed the Brown Estate litigation. Indeed, there were suits contesting the Will and Trust; the suitability of Cannon, Dallas, and Bradley as fiduciaries; and the existence of elective share, omitted spousal share, and omitted child claims. However,

none of these lawsuits brought in relation to the Brown Estate litigation concerned the breaches of fiduciary duty by Appellants in the management of the Estate and Trust.

McMaster v. Dallas, et al., 2009-CP-1647 ("Case 1647"), involved claims challenging the validity of the will and trust, spousal claims, and an omitted child claim.

McMaster v. Brown, et al., 2009-CP-02-1810 ("Case 1810") involved a petition to appoint a special administrator/special trustee during the pendency of Appellant's appeal of the order removing her as personal representative and trustee. This matter became moot upon the Supreme Court's holding in *Wilson v. Dallas* that Appellant had been removed for cause.

Thomas, et al v. Bradley, et al., 2007-CP-02-0122 ("Case 122") involved Dismissing the appeal of Dallas, Bradley and Cannon's removal as fiduciaries and confirming that the prior fiduciaries cannot return to and position of trust and confidence with respect to the Estate or Trust.

Brown, et al v. Pope, et al., 2008-CP-02-0872 ("Case 872") concerned the will and trust challenges, as well as personal property matters.

While other actions were pending at the same time involving the Estate and Trust, none met the requirements of Rule 12(b)(6), SCRCP, that they are between the same parties for the same claims. Case 4900 is distinct from each of these cases in that it alleges breach of fiduciary duty, breach of trust, and negligence on the part of Appellant that caused significant damages to the Estate and Trust.

3. The court orders referenced by Appellant does not amount to a ratification of the acts that give rise to the causes of action in this matter.

Appellant asserts by general reference that circuit court orders ratify the acts of Appellant in her service as administrator. We address each in turn.

All orders generally referenced by Appellant approved specific action based on the information Appellant selectively provided the court at that time. However, none of the orders are blanket approvals all of Appellant's actions during the entire period of her administration.

a. Circuit Court Order dated January 9, 2008

On January 8, 2008, the circuit court granted the payment of fees and costs for Appellant's work as administrator. (R. pp. 3-6; Order Directing Payment of Fees and Costs of Special Administrators and Other Relief (January 8, 2008)). A circuit court's provision of fees does not amount to a ratification of the acts for which the fees are paid. Payment merely acknowledges the completion of those acts, not the reasonableness of such acts. *See In re James*, 267 S.C. 474, 229 S.E.2d 594 (1976) (finding that an award of administrative fees does not shield the administrator from liability as an administrator or as a member of the Bar).

b. Circuit Court Order dated April 8, 2008

On April 8, 2008, the circuit court denied Respondents' Motion to Reconsider Appellant's appointment as administrator. (R. pp. 21-70; Order Den. Mot. To Recons. Appointment of Successor Personal Representatives and Trustees and Grant. Related Relief (April 8, 2008)). The

court observed Appellant "[has] properly performed" and "that [her] service in light of the emerging facts related to the former PR/Trustees has been outstanding." (R. pp. 21-70; *Id.* at 41, 46). The circuit court's statements are dicta. "Judicial dicta is 'not essential to the decision.' Dicta or, as it is also known, dictum, 'is a statement on a matter not necessarily involved in the case, and is not binding as authority. Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, is not the court's decision.'" *Nash v. Tindall Corp.*, 375 S.C. 36, 40-41, 650 S.E.2d 81, 83 (Ct. App. 2007) (internal citations omitted).

An order should be read "in light of the judge's intent as discerned from the order as a whole." *White's Mill Colony Inc. v. Williams*, 363 S.C. 117, 126 n.1, 609 S.E.2d 821, n.1 (Ct. App. 2005) (citing *Weil v. Weil*, 299 S.C. 84, 90, 382 S.E.2d 471, 474 (Ct. App. 1989) ("The determinative factor is the intent of the court, as gathered, not from an isolated part thereof, but from all the parts of the judgment itself. Hence, in construing a judgment, it should be examined and considered in its entirety.")).

The central decision of the April 8 Order was the denial of a motion to reconsider Appellant's appointment as administrator. The court concluded, based on the evidence before it, nothing had changed from the date of appointment to warrant Appellant's removal. The court's order, therefore, does not operate as a ratification of all of Appellant's acts, and the judge's statements of opinion were dictum.

c. Circuit Court Order dated February 20, 2008

On February 20, 2008, the circuit court provided for the disposition of certain tangible personal property and real estate. (R. pp. 7-14; Order Approving Sale of Tangible Personal Property and Real Estate and Grant. Related Relief (February 20, 2008)). The court made this disposition in light of the extensive mishandling of the Brown Estate by Appellant's predecessors,

Albert Dallas, David Cannon and Alfred Bradley. (R. pp. 7-14; *Id.* at 5). Similar to the February 8 Order, this Order was based only on the facts before the court. A sale of these items may have appeared to be a progressive step in the shadow of the deplorable administration of Dallas, Cannon, and Bradley. However, the February 20 Order did not, and could not, contemplate Appellant's widespread mishandling during the course of her administration. Also, the Order does not approve the means and methods Appellant used to dispose of the property, and is not a blanket approval of all her actions.

d. Circuit Court Order dated April 1, 2008

On April 1, 2008, the circuit court determined the February 20 Order (*supra*) had been complied with and the contract and sale contemplated therein should be executed. (R. pp. 15-20; Suppl. Order Directing Execution Contract and Sale (dated April 1, 2008)). While the sale of these items may have seemed to be the appropriate action at that time based on the information provided by Appellant, the court's April 1 Order did not, and could not, contemplate Appellant's widespread mishandling during the course of her administration. At least some of Appellant's mishandling of this sale was recognized and listed in the Supreme Court's *Wilson v. Dallas* decision (discussed *infra*), wherein the Supreme Court also agreed Appellant had been removed for cause. Again, this Order was not a blanket approval of all of Appellant's actions in carrying out the Order.

e. Court of Appeals Order dated July 14, 2008

On July 14, 2008, this court instructed that the Christie's Auction sale should proceed. (R. pp. 71-73; SCCOA Order (July 14, 2008)). This Order concerned a procedural issue (i.e. whether

a stay should be lifted) rather than a substantive evaluation of Appellant's acts as administrators, and therefore, cannot be viewed as a blanket approval of her actions.

4. The Attorney General has the statutory and constitutional authority to intervene on behalf of charitable trusts.

Appellant asserts the Attorney General is exceeding his statutory and constitutional authority by being a plaintiff in a private tort suit. Section 1-7-130 of the South Carolina Code (2005) states:

> The Attorney General shall enforce the due application of funds given or appropriated to pubic charities within the State, prevent breaches of trust in the administration thereof and, when necessary, prosecute corporations which fail to make the General Assembly any report or return required by law.

The Attorney General is given specific authority over the enforcement of charitable trusts. Section 62-7-405(c) of the South Carolina Code (2009 & Supp. 2018) states "[t]he settlor of a charitable trust, the trustee, *and the Attorney General, among others* may maintain a proceeding to enforce [a charitable trust]." The Official Comment to this section of the Code indicates the General Assembly gave the Attorney General standing to sue even when other entities with standing have brought the suit: "The grant of standing to the settlor [in § 62-7-405(c)] does not negate the right of the state attorney general or persons with special interests to enforce either the trust or their interests." Official Comment, S.C. Code Ann. § 62-7-405(c) (2009 & Supp. 2018).

The plain language of the statute reveals this provision is a grant of authority to the Attorney General to protect charitable institutions. Additionally, the statutes make clear that the Attorney General, at least for the purposes of the Trust Code, is a "beneficiary" of a charitable trust. *See* S.C. Code Ann. § 62-7-103(2)(C) (2009 & Supp. 2018) ("'Beneficiary' means a person

that . . . [i]n the case of a charitable trust, has the authority to enforce the terms of the [t]rust"); *see also* S.C. Code Ann. § 62-7-1001(a) (2009 & Supp. 2018) ("A violation by a trustee of a duty the trustee owes to a beneficiary is a breach of trust"). South Carolina statutory law gives the Attorney General the right to intervene to enforce a charitable trust *and* sue the trustee of a charitable trust for breach of trust. The Attorney General, as a representative of the people, is a beneficiary of a charitable trust.

In *Furman University v. McLeod*, our Supreme Court determined:

> [The Attorney General at the time of this case], as Attorney General of South Carolina, upon whom is imposed the responsibility of protecting interests of the public in matters relating to the administration and enforcement of charitable trusts, has been named Defendant . . . Under [the predecessor to S.C. Code Ann. § 1-7-130], the Attorney General of South Carolina is charged with the duty of '[e]nforce the due application of funds given or appropriated to public charities within the State, [and] prevent breaches of trust in the administration thereof.' It is also the general law that in the matter of administering or enforcing charitable trusts, the Attorney General is the proper party to protect the interest of the members of the public at large, as distinct from those having 'immediate or peculiar interests.'

238 S.C. 475, 482-83, 120 S.E.2d 865, 868 (1961). Our Supreme Court reinforced these basic rules of law in the more recent case *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). In *Epworth Children's Home*, the court recognized the Attorney General's authority to oppose an orphanage-trustee's petition to dissolve a charitable trust, even when the trustee and the only other presently existent beneficiary consented to the dissolution. *Id.* at 163-64 n.3, 616 S.E.2d at 713-14 (citing S.C. Code Ann. §§ 1-7-130 (2005), 62-7-503 (1987); *Furman Univ.*, 238 S.C. at 482, 120 S.E.2d at 868 ("The South Carolina Attorney General's Office (the State), as

authorized by statute, responded by opposing the [t]rustee's petition and asking the probate court to protect the interests of the charitable trust").

South Carolina case law is well-established that the Attorney General's office has the authority to represent the interests of the people of South Carolina in matters pertaining to charitable trusts. This authority goes as far as to allow the Attorney General to challenge the decisions of the trustee made with the consent of the beneficiaries. In our case, it is undisputed that the Attorney General's office is performing its statutory duty to act on behalf of charitable trusts. Mr. Brown's Will established two testamentary trusts, the Brown Family Educational Trust and the "I Feel Good" Trust. The latter trust was created to provide scholarships to students in South Carolina and Georgia. The Attorney General intervened in the litigation in September 2007 to protect the interests of any charitable trusts created by Mr. Brown's Will. (R. pp. 1-2; Order Grant. Mot. to Intervene on behalf of S.C. Att'y General Henry D. McMaster and Ga. Att'y General Thurbert E. Baker (October 11, 2007)). The Attorney General has been involved in this case since the circuit court granted its Motion to Intervene. The litigation over Mr. Brown's Will and Trusts settled in 2008 and was approved by the circuit court in May 2009.

Respondent Bauknight was appointed Special Administrator and Special Trustee for the purposes of reviewing the settlement. As part of the settlement, another charitable trust was set up as a successor to the "I Feel Good" Trust. As a result of the continuing existence of a charitable trust, the Attorney General remained in the litigation, actively seeking to recover funds for the trust so that its charitable purpose may be continued and expanded.

Finally, the Attorney General has acted in his *parens patriae* role as chief legal officer for the State.

5. The Attorney General may appoint private attorneys to act as special counsel on behalf of the State.

Appellant argues the Attorney General lacks authority to appoint private attorneys as special counsel to represent the State of South Carolina. A South Carolina circuit court applying Supreme Court precedent resolved this issue in favor of the Attorney General in *South Carolina v. Eli Lilly and Co.*, case no. 07-CP-42-1855. (R. pp. 1415-1431; Attached as Exhibit B to Pl. Mem. in Opp'n to Defs.' Mot. to Dismiss (August 27, 2010)). In this case, the defendant pharmaceutical company moved to disqualify the special counsel appointed by the Attorney General to prosecute the case on behalf of the State. (R. pp. 1415-1431; *Id.*) The defendant argued the employment of special counsel violated the separation of powers doctrine and the due process clauses of the United States and South Carolina Constitutions. (R. pp. 1415-1431; *Id.*; *See* Order Den. Mot. to Disqualify Special Counsel p. 3 (September 22, 2009)). The court found it is within the boundaries of the Attorney General's authority to hire private counsel, even counsel retained on a contingent fee basis:

> [T]here is no question that the Attorney General has authority to hire legal counsel to protect the State's interests . . . the South Carolina Supreme Court has recognized that the Attorney General, as the State's chief legal officer, possesses the authority to appoint and approve private counsel to represent the State. Courts have almost universally recognized that Attorneys General possess broad authority to appoint private attorneys as special counsel on a contingent fee basis to assist in the representation of the public interest.

(R. p. 1415-1431; *Id.* (citing *Cooley v. S.C. Tax. Comm'n*, 204 S.C. 10, 28 S.E.2d 445 (1943)).

In *Cooley*, our Supreme Court recognized the Attorney General's authority to employ special counsel in investigating the appropriate taxable value of a decedent's estate. *Cooley*, 204 S.C. 28 S.E.2d at 447-48. Appellant's contention that the Attorney General may not employ private counsel lacks merit under well-established South Carolina case law.

6. Respondents have joined all necessary parties to the suit. Forlando Brown is not an indispensable party as contemplated under the Rules of Civil Procedure. Further, the appointment of Guardians ad Litem is unnecessary.

Appellant contends the failure to join Forlando Brown and the failure to secure the appointment of *Guardians ad Litem* (GALs) for the minor parties is fatal to this matter. We address each accusation in turn.

a. Failure to join Forlando Brown as a party.

Rule 19(a), SCRCP, requires a person to be joined as a party if:

> (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Dismissal may be an available option under Rule 19(b), SCRCP, when the court determines the indispensable party *cannot*, for whatever reason, be made a party to the suit.

Forlando Brown is not an indispensable party as contemplated under Rule 19, SCRCP. Relief can still be accorded the parties in his absence and a disposition in the case will neither impair Forlando to protect his interest nor leave the present parties subject to a substantial risk of

incurring double or inconsistent obligations. Further, even if Forlando was an indispensable party, the proper relief is for the court to *add* him under Rule 19(a), SCRCP, rather than *dismiss* the suit.

b. Failure to secure the appointment of GALs

The appointments of GALs are unnecessary for the minors involved in this matter. The Probate Code provides, a settlement may be executed by "parents acting for any minor child having beneficial interests or having claims which will or may be affected by the compromise" and that minors "represented only by their parents may be bound only if their parents join with other competent persons in executed of the compromise." S.C. Code Ann. § 62-3-1102(1), (3) (2009 & Supp. 2018). Thus, the parents are sufficient representatives of minors in this matter.

7. This action is unaffected by a statute of limitations

The Probate Code states a proceeding may not be commenced "against a trustee for breach of trust more than one year after the date the beneficiary or a representative of the beneficiary was sent a report that adequately disclosed the existence of a potential claim for breach of trust." S.C. Code Ann. § 62-7-1005(a) (2009 & Supp. 2018). If a report is not sent, a three-year limitations period runs from the earliest of "(1) the removal, resignation, or death of the trustee; (2) the termination of the beneficiary's interest in the trust; or (3) the termination of the trust." *See id.* § 1005(c).

In our case, the earliest of the three potential dates for the three-year limitation period to apply is May 26, 2009. On May 26, 2009, Appellant was removed as trustee and Bauknight

assumed control of Brown's Estate. This date was also the earliest "a report that adequately disclosed the existence of a potential claim for breach of trust," section 62-7-1005(a) of the South Carolina Code (2009 & Supp. 2018), would have come to the attention of a beneficiary or his representative. On May 19, 2010, Respondents filed their Complaint. (R. pp. 215-227; Compl. (May 19, 2010)). Thus, Respondents are within either the one-year statute of limitations pursuant to section 1005(a) or the three-year statute of limitations pursuant to section 1005(c).

8. Respondents have standing because this suit is not against Brown's Estate, but rather against its administrators.

Appellant argues that the James Brown Legacy Trust, Tommie Rae Brown, James B, II, Tonya Brown, and the Attorney General lack standing. Her arguments are without merit and are not based on any actual facts (nor supported by any relevant reference to the Record on Appeal).

Appellant argues the remaining Respondents lack standing because the *in terrorem* clause bars certain Respondents from bringing this suit. Appellant's Br. at 36-37. Brown's Will contains an *in terrorem* clause in Item X of the Will and Article XXI of the Irrevocable Trust. (R. pp. 1193-1219; Will; Trust). The *in terrorem* clause does not apply to this matter. Respondents' causes of action arise under maladministration of the trust and breach of fiduciary duty. The Complaint does not involve attempts by beneficiaries to "contest, claim an interest in or otherwise dispute the disposition of Grantor's estate . . . ." (R. pp. 1193-1219; *Id.*)

9. Because Appellant's acts implicated the Legacy Trust, she is liable even though she never served as trustee of the Legacy Trust.

Appellant argues she never owed a duty to the Legacy Trust (i.e. the settlement trust, which ultimately was not funded and did not come into actuality due to the abrogation of the settlement agreement pursuant to *Wilson v. Dallas*). Appellant's Br. at 37. However, at the time of filing Case 4900 Appellant's derelict actions as administrator of the charitable and family trusts directly affected the Legacy Trust as it was to become the successor-trust to the charitable and family trusts under Appellant's control.

10. Section 33-56-180 is wholly inapplicable to this case.

Section 33-56-180 of the South Carolina Code (2006 & Supp. 2018) applies only "in an action brought against the charitable organization." The "I Feel Good Trust" is not being sued in this matter. Thus, section 33-56-180 does not apply. Even if section 33-56-180 did apply, Respondents could recover individually against Appellant because her conduct was "reckless, willful, or grossly negligent."

11. Venue is appropriate in Richland County pursuant to South Carolina Trust Code

On November 9, 2010, the circuit denied Appellant's Motion to Change Venue to Aiken County along with its Order denying Appellant's Motion to Dismiss. (R. pp. 99-104; Order Den. Defs.' Mot. to Change Venue (November 8, 2010)). Appellant argues Aiken County is the proper venue for this case because the Probate Court has "exclusive original jurisdiction over all subject matter related to estates of decedents and trusts, including, as here, *inter vivos* trusts." Appellants Br. at 37. Subject matter jurisdiction is a fundamental requirement for bringing an action and refers to the court's "power to hear and determine cases of the general class to which the proceedings in question belong. On the other hand, venue is the place or geographical location of

the trial." *Dove v. Gold Kist*, 314 S.C. 235, 237-38, 442 S.E.2d 598, 600 (1994). The South Carolina Trust Code states:

> Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the **trust's principal place of administration** is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. 62-7-204(a) (2009 & Supp. 2018) (emphasis added). A trust's "principal place of administration" is "the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business . . . ." S.C. Code Ann. § 62-8-108(a) (2009 & Supp. 2018).

Appellant confuses subject matter jurisdiction and venue. Appellant correctly states Mr. Brown did not have a testamentary trust created under his will, but rather an inter vivos trust. Thus, the last phrase of section 62-7-204(a) applies to determine *appropriate venue* for this action. The professional trustee in this matter is Russell Bauknight. Mr. Bauknight's usual place of business is his accounting firm, Bauknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept in this location, in Richland County, South Carolina. Therefore, venue is proper in Richland County.

C. Conclusion

Appellant's first issue involves argument that the circuit court erred by denying her Motion to Dismiss. Appellant's first issue should be dismissed because it is not immediately appealable. However, if the court determines Appellant may appeal the circuit court order denying her Motion to Dismiss, the court should determine that the circuit court did not err because none of the "Ten

Grounds" (though there are eleven) even remotely support a reversal of the circuit court order. All eleven grounds were thoroughly briefed and argued in the years 2010 and 2011, when this Court in 2011 dismissed Appellant's appeal of the order denying her Motion to Dismiss.

II. The circuit court did not err by granting Respondent's Motion for Summary Judgment as to Appellant's counterclaims.

As an initial argument, Appellant appears to have abandoned each of her arguments concerning her specific counterclaims, because her statements are conclusory, she makes no real arguments of law, and the purported arguments are so short as to have no real substance. *Fields v. Melrose Lt. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285, at n.3 (Ct. App. 1993). Should this Court find Appellant has not abandoned her arguments, Respondents deal with each below.

A. Standard of Review

The circuit court's decision to grant summary judgment is immediately appealable because it ends the case. *Watson v. Underwood*, 407 S.C. 443, 756 S.E.2d 155 (Ct. App. 2014). "When reviewing a grant of summary judgment, appellate courts apply the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Knight v. Austin*, 396 S.C. 518, 522, 722 S.E.2d 802, 804 (2012). "Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery on file show there is no genuine issue of material fact such that the moving party must prevail as a matter of law." *Id.* at 521-22, 722 S.E.2d at 804. "Our standard of review in evaluating a motion for summary judgment is to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom." *Estes v. Roper Temporary Services, Inc.*, 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). "Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Id.* at 653-54, 661 S.E.2d at 796.

B. Appellant's counterclaims fail as a matter of law as a result of *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

Appellant argues in her second issue on appeal that the circuit court erred by granting Respondents' Motion for Summary Judgment. A motion for summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file,

together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP.

"Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S. Carolina Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* "While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues." *Id.*

In dispensing with the mutuality requirement, our courts have applied collateral estoppel only when the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue. *Id.* at 555, 684 S.E.2d at 782. Under the doctrine of issue preclusion, if an issue of fact or law was actually litigated and determined and necessary to a valid and final judgment, the determination is conclusive in a subsequent action on that claim or a different claim. *Laughon v. O'Braitis*, 360 S.C. 520, 526, 602 S.E.2d 108, 111 (Ct. App. 2004).

Summary judgment is appropriate in this matter because Appellant's alleged counterclaims fail as a matter of law as a result of the Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The grounds for Respondents' motion are based on the contention that *Wilson v. Dallas* conclusively establishes the facts which preclude Appellant's counterclaims as a matter of law. In *Wilson v. Dallas*, the Supreme Court affirmed the circuit court's removal of

Appellant from her role as fiduciary for cause and made other findings which conclusively establish a meritorious basis for the Respondents' claims. In particular, the Supreme Court found "the circuit court did not violate the statutory provisions regarding the removal of personal representatives. *Notice and a hearing were provided, and the court had cause to remove Appellant as it was in the best interests of the estate*." *Id.* at 448, 743 S.E.2d at 766 (emphasis added). Additionally, the Supreme Court cited the following specific examples of Appellant's conduct:

> We are also aware that Appellants have sought $5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellant sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellant also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate*.

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added). The issues regarding Appellant's removal for cause have been actually litigated, finally determined, and were necessary to support the Supreme Court's adjudication of *Wilson v. Dallas.* The elements for collateral estoppel have been met because Appellant's removal for cause was (1) actually litigated in *Wilson v. Dallas*; (2) directly determined by the court in that action; and (3) necessary to support the prior judgment. Additionally, the Supreme Court expressly determined Appellant had notice and a hearing on her removal for cause, and thus Appellant was afforded a full and fair opportunity to litigate that question. Therefore, Appellant's counterclaims fail as a matter of law and the circuit court properly granted Respondents' Motion for Summary Judgment.

C. Response to Appellant's claims regarding discovery

Appellant argues Respondents' Motion for Summary Judgment as to her counterclaims was not ripe because allegedly she intended additional depositions and discovery needed to be taken, which would have been material to her argument to defeat the Motion for Summary Judgment.

As Respondent argued in Plaintiff's Revised Memorandum in Support of Motion for Summary Judgment as to Defendant's Counterclaims and at the August 29, 2016 hearing:

> Summary judgment is appropriate in this matter because each of the counterclaims alleged by Defendant Pope fails as a matter of law as a result of the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). To emphasize, the grounds for this motion are found solely in the *Wilson v. Dallas* opinion, and are based on the contention that *Wilson v. Dallas* conclusively establishes facts which preclude Defendant Pope's counterclaims as a matter of law. *Thus, summary judgment is ripe in this matter and there is no legal or equitable need for discovery prior to the Court ruling on the Plaintiffs' Motion for Summary Judgment as to Defendant Pope's Counterclaims.*

Pl.'s Revised Mem. in Supp. of Mot. for Summ. J. at 3. (emphasis added); *see also* Tr. of Hr'g on Pl. Mot. for Summ. J. on Aug. 29, 2016 (R. pp. 1089-1192).

D. Appellant's counterclaims each fail as a matter of law

1. Civil Conspiracy

One of Appellant's counterclaims is for civil conspiracy. "A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff." *Gordon v. Busbee*, 397 S.C. 119, 136, 723 S.E.2d 822, 831 (Ct. App. 2012). The plaintiff must prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary

purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986).

"[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987). A plaintiff's alleged damages must go beyond the damages alleged in other causes of actions because the essence of a civil conspiracy claim is the damage resulting to the plaintiff. *Pye v. Estate of Fox*, 369 S.C. 555, 568, 633 S.E.2d 505, 511 (2006). Mere speculation is insufficient to sustain a claim for civil conspiracy. *See Gordon*, 397 S.C. at 136, 723 S.E.2d at 831 (Ct. App. 2011) (upholding a directed verdict on a claim for civil conspiracy where the record contained no evidence, only speculation, that any of the parties conspired with each other for the purpose of harming the decedent or her estate).

Respondents' suit for breach of fiduciary duty against Appellant is not an "unlawful enterprise." Respondents have numerous good faith grounds for bringing this lawsuit, which is confirmed by the Supreme Court's finding in *Wilson v. Dallas* that Appellant was properly

removed for cause.[2] By virtue of this ruling, Respondents' pursuit of this lawsuit is unquestionably "lawful" because Respondents have a right of action against Pope for damages she caused while acting as a fiduciary.

Even if no unlawful enterprise exists, the tort of civil conspiracy can arise where one party to the alleged conspiracy has justifiable grounds for an action, but others join in the act who do not have the same justification. *See Charles v. Texas Co.*, 199 S.C. 156, 18 S.E.2d 719, 724 (1942) (nothing that "where an act done by an individual, though harmful to another, is not actionable because justified by his rights, yet the same act becomes actionable when committed in pursuance of a combination of persons actuated by malicious motives and not having the same justification as the individual"). Appellant's assertion that some or all of the Respondents were unjustified in participating in this suit is forestalled. At the time this action was commenced, all of the Plaintiffs, as parties to the settlement agreement between the litigants to the various Brown Estate will contest matters, had the same justification for bringing this suit against Appellant. While the Supreme Court's opinion ultimately abrogated the settlement agreement, at the time of the filing of this suit, all of the Plaintiffs had the same justification for suing Appellant.

[2] In an Order of the circuit court signed January 16, 2019, in Case 1337, following a multi-day bench trial involving Appellant's claim for fees against the Estate, the circuit court found that Appellant was not entitled to a fee for compensation for her services as fiduciary due to Appellants numerous breaches of duty and negative effect on the Estate. Specifically, the Court found the Appellant breached her duties in the following ways: by failing to hire an advisor with entertainment experience to assist her managing the entertainment assets of the Estate; by billing the estate for attempting to learn the entertainment business; by failing to hire an expert with intellectual property experience to advise her on how to administer the musical copyrights; by failing to hire a valuation expert to advise her on how to properly value the musical copyrights and other business assets of the Estate; by failing to analyze the Pullman Bond; by mismanaging the handling of the clearances; by failing to seek guidance on terms of the settlement agreement; by agreeing to withdraw her opposition to a settlement in exchange for remaining the PR/Trustee; by mishandling the Estate and Trust's finances; by failing to file tax returns during her administration; and by overstating the valuation of the Estate's intellectual property on IRS documents. Numerous experts in various disciplines related to fiduciary duties, the entertainment industry, tax and finance matters, and auction of iconic property, testified in support of these findings. Aiken 1337 is currently pending before this court. App. Case No. 2019-000362.

Appellant previously alleged Forlando Brown was part of the civil conspiracy. Forlando is not a plaintiff in this action, but brought suit against Appellant in federal court seeking her removal as fiduciary of the Brown Estate. Appellant filed similar counterclaims in that action, including a cause for civil conspiracy. Forlando eventually dismissed his claims against Appellant, but Appellant continued to assert her counterclaims and both parties moved for summary judgment on those claims. The district court granted Forlando's motion for summary judgment and noted that Appellant's civil conspiracy allegations were made in a "conclusory fashion" and amounted to speculation. *See Forlando J. Brown v. Adele J. Pope*, 3:08cv00014-WOB, Doc. No. 344 *Memorandum Opinion and Order*; *see also Brown v. Pope*, 610 F. App'x 239 (4th Cir. 2015) (affirming grant of summary judgment in favor of Forlando). Appellant is collaterally estopped from asserting Respondents engaged in a civil conspiracy with Forlando because the issue was actually litigated, directly determined by the court, and necessary to support the court's grant of summary judgment to Forlando.

Appellant's other allegations regarding the existence of a conspiracy in this action are made in the same conclusory manner as her allegations against Forlando. More importantly, the core of her allegations has been eviscerated by *Wilson v. Dallas.* After having been validly removed for cause, Appellant cannot now claim damage resulting from efforts to remove her from her role which the Supreme Court has held she was carrying out improperly, at least to some extent, even if multiple parties desired that goal. Therefore, Appellant's counterclaim for civil conspiracy fails as a matter of law.

Respondent also relies on arguments made at the August 29, 2016 hearing. Tr. of Hr'g on Pl. Mot. for Summ. J. on Aug. 29, 2016 (R. pp. 1089-1192).

2. Abuse of Process

Another counterclaim of Appellant is for abuse of process. The essential elements of abuse of process are (1) an ulterior purpose and (2) a willful act in the use of the process not proper in the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 403, 697 S.E.2d 551, 556 (2010). "Some definite act or threat not authorized by the process or aimed at an object not legitimate in the use of the process is required." *Hainer v. Am. Med. Int'l, Inc.*, 328 S.C. 128, 136, 492 S.E.2d 103, 107 (1997). "The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself." *Id.* Importantly, to sustain a claim for abuse of process, "a party must allege facts sufficient to show not only that the lawsuit was brought for an ulterior purpose, i.e., for collateral reasons, but that willful acts were taken through which the process was misapplied or abused." *Food Lion, Inc. v. United Food & Commercial Workers Int'l Union*, 351 S.C. 65, 74, 567 S.E.2d 251, 255 (Ct. App. 2002). "[I]t is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967). "An ulterior purpose exists if the process is used to gain an objective not legitimate in the use of the process. However, there is no liability when the process has been carried to its authorized conclusion, even though with bad intentions." *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 74–75, 451 S.E.2d 907, 914 (Ct. App. 1994).

In order for Appellant to succeed on her counterclaim for abuse of process, Respondents must have maintained an ulterior purpose for filing this suit against Appellant and committed some willful act not proper in the regular course of the proceeding. Appellant argues Respondents' "ulterior purpose was not to replace Buchanan and [Appellant], who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy

Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity." Appellant's Initial Br. at 45. Contrary to Appellant's argument, Respondents have numerous legitimate reasons for bringing suit against Appellant for breach of her fiduciary duties. Pursuant to the *Wilson v. Dallas* decision, the issue of Appellant's proper removal for cause is conclusively established as a matter of law. Specifically, the Supreme Court cited multiple specific examples of Appellant's malfeasance, as quoted above. These findings by the Supreme Court coincide with the allegations in Respondents' complaint. *Wilson v. Dallas* establishes, at a minimum, that Respondents had legitimate grounds upon which to bring suit against Appellant.

Showing "malicious misuse or perversion of the process for an end not lawfully warranted" is critical to prove the "willful act" element of an abuse of process claim. *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967). Examples of malicious use of process include the use of a warrant of arrest to extort money, *Id.* at 213, 153 S.E.2d at 696, and the filing without statutory authority of a petition to seek the commitment of a neighbor to a mental institution, *Pallares v. Seinar*, 407 S.C. 359, 373, 756 S.E.2d 128, 134 (2014)). *Wilson v. Dallas* justifies the Respondents' decision to seek judicial redress for the activities noted in the court's opinion determining Appellant's removal for cause.

"The mere commencement of a civil action by the service of a summons, as required by the Code, cannot amount to the tort known as abuse of process." *Russell v. Risher*, 272 S.C. 182, 185, 249 S.E.2d 908, 909 (1978). In *Russell*, the plaintiff demanded that the defendant resign as a clerk at the House of Representatives, and threatened a cause of action in the event the clerk refused. *Id.* at 184-85, 249 S.E.2d at 909. The defendant-clerk refused to resign, and the plaintiff brought suit. *Id.* On appeal, the Supreme Court held that the defendant-clerk's counterclaim for

abuse of process should have been dismissed, noting that "[i]t is not unusual for plaintiffs, in the negotiation stage, to demand more than they are entitled to receive." *Id*.

Similar to the defendant-clerk in *Russell*, Appellant claims in this case that the Respondents threatened filing this suit in the hopes of obtaining her resignation from her position as a fiduciary of the Estate and Trust during negotiations prior to filing this suit. Appellant's Br. at 45. Taking this allegation in the light most favorable to Appellant, her counterclaim for abuse of process nevertheless fails because it is not unusual during negotiations for potential litigants to ask for more than they are entitled to receive, or to seek to resolve all outstanding claims at one time. Therefore, Appellant's counterclaim for abuse of process fails as a matter of law.

Respondent also relies on arguments made at the August 29, 2016 hearing. Tr. of Hr'g on Pl. Mot. for Summ. J. on Aug. 29, 2016 (R. pp. 1089-1192).

3. Violation of section 62-1-106 of the South Carolina Code (2009 & Supp. 2018) (Fraud and Evasion)

Appellant also brought a counterclaim is for fraud and evasion under section 62-1-106 of the South Carolina Code (2009 & Supp. 2018). Section 62–1–106 of the South Carolina Code (2009) provides:

> Whenever fraud has been perpetrated in connection with any proceeding or in any statement filed under this Code or if fraud is used to avoid or circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefiting from the fraud, whether innocent or not, but only to the extent of any benefit received. Any proceeding must be commenced within two years after the discovery of the fraud, but no proceeding may be brought against one not a perpetrator of the fraud later than five years after the time of commission of the fraud. This section has no bearing on remedies relating to fraud practiced on a decedent during his lifetime which affects the succession of his estate.

Appellant's claim under section 62-1-106 fails because it is not her claim to assert following her removal for cause, and it is barred by the statute of limitations. Appellant ceased to be a fiduciary of the Brown Estate on May 26, 2009. The decision in *Wilson v. Dallas* upheld her removal for cause. Appellant lacks standing because she was removed for cause. Appellant filed her counterclaims on September 10, 2010. (R. pp. 362-394; Answer and Counterclaim of Robert L. Buchanan, Jr. and Adele J. Pope (September 30, 2010)). Appellant was not a fiduciary of the Brown Estate at the time her counterclaim was filed, and thus could not bring a claim on behalf of the Brown Estate. Furthermore, Appellant alleges fraudulent representations by Respondents that have caused injury to the Brown Estate, Trust, and to the Defendants in the underlying action. To the extent Appellant maintains this counterclaim on behalf of the Brown Estate, her actions are also in direct contravention of the Supreme Court's June 2015 Order. (R. pp. 136-140; Sup. Ct. Order dated June 2015). The Supreme Court admonished Appellant to cease her involvement in the affairs of the Brown Estate and Trust. (R. pp. 136-140; *Id*.).

Appellant argues the Attorney General has joined with Forlando Brown and Terry Brown to defraud the court regarding the valuation of the Brown Estate. "It is well settled that an issue may not be raised for the first time in a post-trial motion." *S.C. Dep't Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007). "It is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review." *Id.* (internal citations omitted). "There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *Id.* at 302, 641 S.E.2d at 907 (internal citations omitted). Appellant did not raise this part of her argument to the circuit court and the circuit court did not determine whether the Attorney General defrauded the court based on the

valuation of the Brown Estate. Therefore, this court should find that Appellant's issue is not preserved for appellate review.

Appellant claims the Attorney General failed to address certain issues regarding the correct heirs to the Brown Estate in Aiken County Case 2008-CP-02-0872. Appellant brought this claim on September 10, 2010, more than two years after the Attorney General entered into an agreement on August 10, 2008. This cause of action also fails as a matter of law due to the two-year statute of limitations set forth in section 62-1-106 of the South Carolina Code (2009 & Supp. 2018). Therefore, Appellant's claim for fraud and abuse fails as a matter of law.

Respondent also relies on arguments made at the August 29, 2016 hearing. Tr. of Hr'g on Pl. Mot. for Summ. J. on Aug. 29, 2016 (R. pp. 1089-1192).

4. Intentional Interference with Contract

Appellant also brought a counterclaim is for intentional interference with contract. In order to establish a cause of action for tortious interference with contractual relations, a plaintiff must show: 1) the existence of a contract; 2) knowledge of the contract; 3) intentional procurement of its breach; 4) the absence of justification; and 5) resulting damages. *Kinard v. Crosby*, 315 S.C. 237, 240, 433 S.E.2d 835, 837 (1993). In order to establish a cause of action for intentional interference with prospective contractual relations, a plaintiff must show: 1) intentional interference with prospective contractual relations; 2) for an improper purpose or by improper methods; and 3) resulting in injury. *Eldeco, Inc. v. Charleston Cty. Sch. Dist.*, 372 S.C. 470, 480, 642 S.E.2d 726, 731 (2007).

Appellant's claim fails as a matter of law because her appointment as Personal Representative and Trustee was made pursuant to statute, and thus does not sound in contract. *See* S.C. Code Ann. § 62-3-701, 613; § 62-7-701, 812 (2009 & Supp. 2018). Similarly, the Court's January 8, 2008 Order awarding her fees was grounded in South Carolina law, citing *Donahue v.*

Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989). (R. pp. 3-6; Order Directing Payment of Fees and Costs of Special Administrators and Other Relief at 2 (January 8, 2008)). Thus, both Appellant's tenure as a fiduciary of the Estate and Trust and the court's Order awarding her attorney's fees are unquestionably not contractual in nature, but are rather grounded in the Court's authority pursuant to statute and case law regarding attorney's fees.

Appellant's argument that her fee claim is contractual in nature is further forestalled by the observation of our Supreme Court that "[c]ourts cannot create contracts for the parties," *Trotter v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 465, 472, 377 S.E.2d 343, 347 (Ct. App. 1988). S*ee also Terminix Int'l, Inc. v. Rice*, 904 So. 2d 1051, 1057 (Miss. 2004) ("A scheduling order is not a contract between the parties, but rather an order of the court."); *Boston Prop. Exch. Transfer Co. v. Iantosca*, 720 F.3d 1, 12 (1st Cir. 2013) (holding that an order assigning one party's legal claims to another "was not a contract" where the compelled assignor "did not bargain for, offer, or accept the assignment order, which was imposed on it over its strong objection."); *Lueck's Home Imp., Inc. v. Seal Tite Nat., Inc.*, 142 Wis. 2d 843, 848, 419 N.W.2d 340, 342 (Ct. App.1987) ("[A] restitution consent order is not a contract"); *Goldberg v. Trakas*, 206 F. Supp. 867, 869 (D.S.C. 1962) ("[A]n order of the Court issued by consent of the parties is not to be deemed a contract"); *Ketab Corp. v. Mesriani Law Grp.*, No. CV1407241RSWLMRWX, 2016 WL 911816, at 2 (D. Cal. Mar. 7, 2016) (dismissal of contract claims including intentional interference with contractual relations was appropriate where the claims were based on a settlement order because a "Settlement Order is a court order, and not a contract.").

Appellant's appointment by the court did not create a "contract" based on an attorney-client relationship. Ordinarily, the relationship between the attorney and client is one of contract, either express or implied. However, courts have differentiated between a traditional contractual attorney-client relationship and one based upon court appointment. *See e.g., Am. Mut. Liab. Ins. Co. v.*

Superior Court, 113 Cal. Rptr. 561, 570 (1974) ("*Save where appointed by court*, the relationship of attorney and client is created by contract.") (emphasis added).

In *Moore v. McComsey*, 313 Pa. Super. 264, 269, 459 A.2d 841, 844 (Pa. Super. Ct. 1983), the Superior Court of Pennsylvania held that an inmate could not bring a breach of contract claim against his court-appointed public defender because "there was no contract of employment between [inmate] and trial counsel, for counsel had been court appointed." Similarly, in *Grand Blanc Landfill, Inc. v. Swanson Environmental, Inc.*, 200 Mich. App. 642, 647, 505 N.W.2d 46, 48–49 (Mich. Ct. App. 1993), the court held the court's act of appointing an expert did not give rise to a contract because the required contractual elements were not met.

In the present case, Appellant cannot prevail on an intentional or tortious interference with a contract claim because no contract was created between Appellant and the Brown Estate. Analogous to the *Moore* case, Appellant was appointed by the court; therefore, the relationship between Appellant and the Brown Estate was not a contractual. *See Moore*, 313 Pa. Super. at 264, 459 A.2d at 841. Additionally, like the expert in *Grand Blanc Landfill*, Appellant's court-appointed status and the court order concerning fees do not adequately satisfy the elements required to form a valid contract. *See Grand Blanc Landfill*, 200 Mich. App. at 643, 505 N.W.2d at 47. As a result, Appellant did not have a contractual relationship with the Brown Estate.

Finally, even if Appellant's brief service as a fiduciary is characterized as a contractual relationship with the Brown Estate, she has not presented evidence that the Respondents interfered with the contract. Appellant's removal as PR/Trustee by the circuit court was affirmed in *Wilson v. Dallas*. Therefore, Appellant's counterclaim for intentional interference with contract fails as a matter of law.

Respondent also relies on arguments made at the August 29, 2016 hearing. Tr. of Hr'g on Pl. Mot. for Summ. J. on Aug. 29, 2016 (R. pp. 1089-1192).

5. Attorney's Fees

Although mentioned as a counterclaim in her appeal, (at p. 44), Appellant does not develop any argument for attorney's fees. Therefore, that claim is abandoned. *See Jinks v. Richland Cnty.*, 355 S.C. 341, 585 S.E.2d 281, fn. 3 (2003) ("Since County failed to argue this issue in the body of its brief, the issue is deemed abandoned.") Furthermore, in case 1337, a trial court found Appellant was entitled to no fees for her service as a fiduciary to the Estate. *See* Footnote 2, supra.

III. The Orders after May 29, 2013, and actions of the Attorney General, did not deprive Appellant of rights under the Due Process Clause.

A. Abandonment

Appellant has abandoned her third issue on appeal. "An issue raised on appeal but not argued in the brief is deemed abandoned and will not be considered by the appellate court." *Fields v. Melrose Lt. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993). "[A]n issue is abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority." *Id.* at n.3; *see State v. Jones*, 344 S.C. 48, 548 S.E.2d 541 (2001) (finding Defendant's argument was so conclusory that it had been abandoned); *Jinks v. Richland Cnty.*, 355 S.C. 341, n.3, 585 S.E.2d 281 (2003) (determining that the County's issue was not argued in the body of its brief and was abandoned on appeal).

Appellant asserts the Attorney General, Aiken County Court, and Richland County Court violated her due process rights. Appellant's Initial Br. at 48. Appellant vaguely refers to an argument "set out above" in support of her claim. *Id.* She does not explain which argument she is referring to or incorporate any argument from a previous section into her third issue on appeal.

Appellant's argument consists of two conclusory statements. Appellant does not provide any supporting authority for her argument. Therefore, this court should find that Appellant has abandoned this issue on appeal.

B. Appellant's due process rights have not been deprived

In the alternative, if this court finds Appellant has not abandoned this issue on appeal, this court should find Appellant's due process rights have not been violated. Appellant does not distinguish between substantive due process and procedural due process in her initial brief. "In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law." *Moore v. Moore*, 376 S.C. 467, 472, 657 S.E.2d 743, 476 (2008). "Procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Id.* at 47, 657 S.E.2d at 746. The procedural due process requirements in a particular case "depend on the importance of the interest involved and the circumstances under which the deprivation may occur." *Id.*

Appellant argues she has been denied "a right to a fair playing field." Appellant's Initial Br. at 48. In her notice of appeal, Appellant identifies twenty-five orders from the circuit court. Appellant has been given adequate notice and opportunity for a hearing on all motions relating to this matter before the Richland County Court of Common Pleas. Additionally, many of these orders relate to discovery and other interlocutory matters and Appellant has been given adequate notice and hearing for each of these matters. Further, Appellant does not state, list or identify any due process rights violated pursuant to these orders and has not been deprived of any cognizable property interest rooted in state law. Thus, neither Appellant's procedural nor substantive due process rights have been violated by the Attorney General, Aiken County Court, or Richland

County Court of Common Pleas. Therefore, this court should find that Appellant's due process rights have not been violated.

CONCLUSION

In light of the arguments above, Respondents respectfully request this Court to hold that the circuit court did not err by denying Appellant's Motion to Dismiss, to hold that the circuit court did not err by granting Respondent's Motion for Summary Judgment as to Appellant's counterclaims, and to hold that that Appellant's due process rights have not been deprived.

Respectfully submitted,

s/ Mark V. Gende
Kenneth B. Wingate, S.C. Bar No. 8004
Mark V. Gende, S.C. Bar No. 72835
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
kbw@swblaw.com
mvg@swblaw.com
ATTORNEYS FOR RESPONDENTS

July 2, 2020

Columbia, South Carolina

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Case No. 2010-CP-40-4900

Appellate Case No. 2018-02229

Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents,

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

s/Mark V. Gende
Mark V. Gende, SC Bar No. 72835
SWEENY, WINGATE & BARROW, P.A.
1515 Lady Street
Columbia, SC 29211
(803) 256-2233
mvg@swblaw.com

July 2, 2020