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JUN 17 2013

THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

THE HONORABLE DOYET A. EARLY, III, CIRCUIT COURT JUDGE

Case No. 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem,.....Respondents,

vs.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are.....Appellant,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are.....Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

**RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT
ADELE J. POPE'S MOTION FOR COSTS**

Pursuant to Rule 222, SCACR, Respondents respectfully submit this Return in opposition to Appellant Adele J. Pope's (Ms. Pope) Motion for costs. Respondents object to Ms. Pope's request for the costs of this appeal, and for the reasons stated below, request that the Court deny Ms. Pope's motion.

On May 8, 2013 this Court Affirmed in Part, Reversed in Part, and Remanded this matter back to the circuit court for further proceedings. See *Wilson v. Dallas*, --- S.E.2D ---, 2013 WL 2005103 (2013). On June 7, 2013 Appellant Pope moved for costs alleging that she was the prevailing party as the court granted "nearly" all the relief sought by Appellants. While Rule 222 allows costs to the prevailing party, "[w]hen an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court, Rule 222(a), SCACR (emphasis added). This Court's May 8, 2013 decision Affirmed in Part, Reversed in Part, and Remanded this matter back to the Circuit Court. Ms. Pope is not the prevailing party; accordingly, her request for costs should be denied.

This Court did not grant "nearly" all of the relief Ms. Pope sought. On appeal, Ms. Pope argued that the circuit court's May 26, 2009 order should be overturned on two central grounds:

- I. The settlement agreement was not eligible for court consideration for two reasons. First, the Trust did not agree to it. Second, it was not a compromise of a *bona fide* challenge to the will. But even if the settlement were eligible for consideration by the court, it did not meet the statutory standard required to nullify the testator's estate plan.

- A. The Trust's share of the estate could not be cut in half without the Trust's consent. The Attorney General had no authority to speak for the Trust. The Trust did not agree to the reduction. The court had no authority to order the Trust to accept a reduction.

B. It was unjust and unreasonable to forfeit 28.75% of the foundation's bequest in order to settle the claim of undue influence.

- II. The circuit court erred in removing the appellants from their duties because they opposed the settlement agreement, and then ordering them to sign the agreement after their removal.

See Ms. Pope's Final Appellate Brief (Exhibit A, Ms. Pope Argument Headings)

Based on a two prong approach, Ms. Pope argued that the circuit court's analysis was flawed for two central reasons. First, the Trust did not agree to it, and in the alternative, that the agreement was not just and reasonable. Second, Ms. Pope argued that the circuit court erred in removing appellants as fiduciaries. Ms. Pope's first argument was rejected by this Court. Reasoning that Ms. Pope's signatory argument was moot, the Court further held that "[a]s a general matter . . . we find no error in a court directing fiduciaries to sign a compromise while ordering their removal, as it is understood the acts are to proceed in a logical sequence." *Wilson*, p. 18 n.27. Ms. Pope's second argument was not only rejected, but was the subject of an additional three pages of analysis and holdings by this Court overruling her objections to the lower Court's decision in this area.

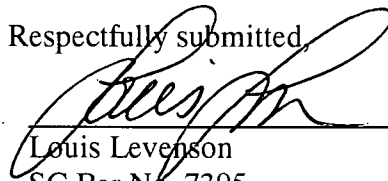
Squarely rejecting Ms. Pope's second argument, this Court held that: "an irreconcilable conflict existed between [Ms. Pope] and the settling parties because [Ms. Pope] had expressed continuing opposition to their actions." *Wilson*, p. 19. Accordingly, the Court further held that, "the circuit court had cause to remove [her] and replace [her] with a professional fiduciary." *Id.* The Court also went on to note that "the extreme discord between the parties convince us that [Ms. Pope's] continued service as [a] fiduciar[y] is not in the best interest of the estate." *Id.*

Further rejecting Ms. Pope's second argument, the Court held that the circuit court did not violate the statutory provisions regarding the removal of Ms. Pope, noting that the circuit court complied with the statutory and procedural requirements. This Court further detailed specific actions that it relied on in holding that Ms. Pope's service as a fiduciary was not in the best interest of the estate. Accordingly, this Court found no error in the circuit court removing Ms. Pope from her fiduciary positions.

Based upon Ms. Pope's own analysis and arguments in her brief, at most, she prevailed on only 25% percent of her arguments, one were to number them. Her removal was affirmed and the matter was reversed and remanded for evidence supporting the just and reasonable and good faith controversy standard. It would be inequitable and unjust to the beneficiaries of the James Brown Estate to award Ms. Pope's fees and costs as the "prevailing" party.

Accordingly, Respondents, respectfully request that this Honorable Court deny Ms. Pope's request for fees and costs related to this appeal.

Respectfully submitted,



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EXHIBIT A

THE STATE OF SOUTH CAROLINA
IN THE Supreme COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge.
Case No. 2008-CP-2-1647

Henry Dargan McMaster, in his
capacity as Attorney General of
the State of South Carolina;
Daryl J. Brown, on behalf of his
minor children, Lindsey B. and
Janise B.; Deanna J. Brown Thomas,
on behalf of her minor child, Jason
L.; Yamma N. Brown, on behalf of
her minor children, Sydney L.,
Carrington L., and Tonya B.;
Vanisha Brown; Larry Brown;
Tommie Rae Hynie Brown; and
James B., through his Guardian
ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
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Trust; Adele J. Pope and Robert
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Jeanette Mitchell; and Russell
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Estate of James Brown and The
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Trust,

of whom Robert L. Buchanan, Jr.,
and Adele J. Pope, as Personal Repre-
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Brown and Trustees of the James
Brown 2000 Irrevocable Trust are , Appellants,

and Albert H. Dallas, Alfred A. Bradley,
and David G. Cannon, Individually
and as (purported) Trustees of the
James Brown 2000 Irrevocable
Trust; Terry Brown; Romunzo Brown;
Forlando Brown; Cinnamon N.
M. Paris; LaRhonda Pettitt;
Jeanette Mitchell; and Russell
L. Bauknight, as Special Adminis-
trator and Special Trustee for The
Estate of James Brown and The
James Brown 2000 Irrevocable
Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable
Trust u/a/d August 1, 2000.

FINAL BRIEF OF APPELLANTS

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Argument:

I. The settlement agreement was not eligible for court consideration for two reasons. First, the Trust did not agree to it. Second, it was not a compromise of a *bona fide* challenge to the will. But even if the settlement were eligible for consideration by the court, it did not meet the statutory standard required to nullify the testator’s estate plan. 7

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PROOF OF SERVICE

The undersigned certifies that a copy of **RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT ADELE J. POPE'S MOTION FOR COSTS** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 17th day of June, 2013, to the address shown below.

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