

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

69451

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

RECEIVED

The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

AUG 16 2013

SC Court of Appeals

Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872
Case No. 2007-CP-02-0322; Case No. 2010-CP-02-0721
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others..... Plaintiffs,

v.

Albert H. Dallas and others..... Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is Appellant,

AND:

Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae Hynie are Respondents

AND:

Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown
Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

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

**MOTION TO DISMISS APPEAL
FOR LACK OF STANDING**

Pursuant to Rule 240, SCACR, the Estate of James Brown and Russell L. Bauknight, the Special Administrator of the Estate of James Brown and the Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (collectively, "the Estate and Trust") move this Court for an Order dismissing a Notice of Appeal filed by Adele J. Pope, a former trustee and personal representative. The grounds for this Motion are as follows:

1. The removal of Adele Pope as a fiduciary to the James Brown Estate and Trust was previously litigated and decided in the circuit court, wherein Ms. Pope was given notice and an opportunity to be heard. On May 26, 2009, after affording her an opportunity to be heard, the circuit court removed her for cause. In Wilson v. Dallas, __ S.C. __, 743 S.E.2d 746 (2013), the Supreme Court affirmed the circuit court's removal of Ms. Pope as a fiduciary.

2. Undeterred by her removal, Ms. Pope has now switched gears and has attempted to assert herself in the underlying proceedings and re-litigate issues in her individual capacity rather than as a fiduciary. In response to her improper conduct, the circuit court properly relied on the Supreme Court's decision in Wilson to determine that she is not a party and lacks standing.

3. Ms. Pope does not have standing to appeal any of the Orders.

4. This Court, therefore, should dismiss her Notice of Appeal for lack of standing and order her to cease attempting to assert herself in the underlying litigation.

BACKGROUND

The Circuit Court removed Adele Pope for cause from her role as fiduciary on May 26, 2009. Pursuant to Section 62-3-611 of the Probate Code, Ms. Pope received noticed and an opportunity to be heard. The Circuit Court found that her removal was in the best interests of the Estate.

In Wilson v. Dallas, ___ S.C. ___, 743 S.E.2d 746, 766-67 (2013), the Supreme Court affirmed. The Court held that Ms. Pope was given adequate notice and an opportunity to be heard, and that the circuit court properly removed her for cause. Specifically, the Court noted that Ms. Pope (and the other Appellant in that case) (1) had an irreconcilable conflict with the settling parties to the estate litigation, (2) “sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time[,]” (3) diverted a large amount of funds raised for the estate to first pay their own attorneys’ fees, and (4) improperly attempted to sell Mr. Brown’s GRAMMY award at an auction before the National Academy of Recording Arts and Sciences halted the auction and reclaimed the award. Id. 767. The Court concluded that “[t]hese 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.

Following the issuance of the remittitur, and to carry out the Supreme Court’s decision, the circuit court issued an Administrative Order that removed Ms. Pope as a party and ordered that her separate fee petition for fiduciary commissions

proceed under a separate case number. (**Ex. A**, Administrative Order dated June 13, 2013 involving Cases 1647, 0122, and 0872). The Circuit Court also issued a second Administrative Order for administering 13 separate and pending James Brown related cases and claims. (**Ex. B**, Administrative Order, dated June 13, 2013 involving Cases 1647 through 1759).

Undeterred by her removal by the circuit court and Supreme Court, Ms. Pope filed a Motion to Vacate the Orders dated June 13, 2013 (**Ex. C**, Motion to Vacate). In her motion, she claims, among other things, that the Orders are “directly adverse to the *Wilson v. Dallas* and the ‘I Feel Good’ Trust”; that the Orders “place Brown’s \$100 Million ‘I Feel Good’ Trust and Movant in immediate jeopardy; and that the Orders are “materially at odds with the letter and spirit of *Wilson v. Dallas*. *Id.*, pp. 1-3. Ms. Pope also submitted a 23-page affidavit in which she claimed that the current fiduciary is “trying to pay \$20 Million . . . which should go to the ‘I Feel Good’ scholarships”; that the trust funds should be disbursed in a certain order or priority; that the current fiduciaries “cannot properly defend the ironclad 2000 and 1999 Estate Plans” to the detriment of the Estate; that the “I Feel Good Trust” is in jeopardy; and that the State’s involvement of the valuation was “unprecedented and wrong.” (**Ex. D**, Affidavit of Adele Pope). In other words, Ms. Pope is attempting to re-litigate issues involving the Estate and Trust litigation, despite that fact that she is **not** a party, has **no** legal interest in the litigation, and **lacks** standing to pursue these matters.

The Estate and Trust filed a Memorandum in Opposition to Pope’s Motion to Vacate on July 9, 2013. (**Ex. E**). On July 10, the Circuit Court denied Ms. Pope’s Motion to Vacate. (**Ex. F**). On July 29, 2013, Ms. Pope filed a Notice of Appeal with

this Court and, on July 29, filed an Amended Notice. In her Notice, she appeals the two June 13 Administrative Orders, and the denial of her Motion to Vacate. (**Ex. G**). Ms. Pope is not a party to any of those Orders, nor is she referenced in those Orders except to confirm and re-iterate that she is no longer a party to the Estate and Trust litigation. Ms. Pope also seeks to appeal from a Clerk of Court Order creating a separate case to handle a review of fees pursuant to the Wilson v. Dallas decision. Ms. Pope does not have standing to appeal that Order. Moreover, that Order is not immediately appealable; it merely creates a civil action file where former and present fiduciaries, parties, and attorneys have been instructed to file a statement of fees paid by the Estate in relation to the Wilson v. Dallas appeal.

ARGUMENT

ADELE POPE LACKS STANDING TO APPEAL THE ORDERS INVOLVING THE JAMES BROWN TRUST AND ESTATE LITIGATION.

A party dismissed from a lawsuit lacks standing to appeal subsequent orders. “An appeal filed by one who has ceased to be a party to a suit is a mere nullity.” Nance v. Nationwide Ins. Co., 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979). “A party cannot appeal from a decision which does not affect his or her interest, however erroneous and prejudicial it may be to some other person’s rights and interests.” Beaufort Realty Co., Inc. v. Beaufort County, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002); see also Rule 201(b), SCACR (“Only a party aggrieved by an order, judgment, sentence or decision may appeal.”).

In Brock v. Bennett, 313 S.C. 513, 443 S.E.2d 409 (Ct. App. 1994), this Court held that a former trustee of a church lacked standing to enforce a conveyance of land to the church. The Court reasoned that the former trustee’s “interest in the real

property in issue was by virtue of his office as trustee of the church and as a member of [the church].” Id. at 519, 442 S.E.2d at 412. Because he was no longer a trustee or member of the church, he lacked standing to enforce the conveyance. Id.; see also Nalley v. Longdale, 734 S.E.2d 908, 919 (Ga. Ct. App. 2012) (“Because Harley Jr. is no longer the trustee, however, he lacks standing to pursue claims on behalf of the remainder beneficiaries for the return of the trust fund.”); Cavanaugh v. State, 599 P.2d 965, 967 (Colo. Ct. App. 1979) (holding former trustee lacked standing; “after removal, a trustee is no longer acting on behalf of the beneficiaries; thus, he no longer has any interest in the subject matter of the action[.]”).

In this case, Ms. Pope was removed for cause by the circuit court, and the Supreme Court affirmed this removal in Wilson v. Dallas. Nevertheless, she refuses to acknowledge the clear language of Wilson v. Dallas, and is attempting to re-litigate issues involving trust beneficiaries over which she has no standing to pursue. Her removal meant she was no longer acting on behalf of the beneficiaries. It also meant she could not seek the relief she sought in her Motion to Vacate, including claims that:

- The corpus of the trust was “in jeopardy”;
- The June 13 Orders are “materially at odds” with the Wilson decision;
- Twenty million dollars should go to the “I Feel Good” Trust;
- Trust funds should be disbursed in a certain order of priority;
- Current fiduciaries are incapable of defending the trusts; and
- The State’s involvement in the valuation was “unprecedented and wrong.”

(**Exs. C and D**). Even if these alleged claims had merit, they would belong to the Estate and Trust, and not a former fiduciary who was removed for cause.

Ms. Pope has no legal interest in how the Estate and Trust is administered and how related litigation is handled. And she cannot attempt to manufacture standing by asserting that her claims are in an “individual capacity” when they are merely a veiled attempt to re-litigate Estate and Trust claims that have either already been decided or will be decided in the future in litigation involving parties who have standing.¹

When an issue has been actually litigated and determined by a valid and final judgment, that determination is conclusive in a subsequent action on the same or different claim. Zurcher v. Bilton, 379 S.C. 132, 135-36, 666 S.E.2d 224, 226 (2008). Her removal as a fiduciary has been litigated and decided in the circuit court and affirmed by the Supreme Court. The Wilson decision exhausted her right to continue fighting this issue. This Court, therefore, should dismiss Ms. Pope’s appeal.

CONCLUSION

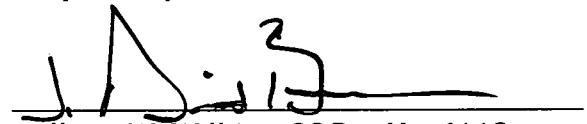
Ms. Pope continues to bring actions purportedly on behalf of the Estate and Trust of James Brown. Her actions, however, are contrary to her words. Rather than helping the beneficiaries of the Estate and Trust, her continued attempts to interject herself into the Estate and Trust proceedings are wasting assets, and causing the Estate and Trust to expend legal fees fighting unnecessary, non-meritorious, and distracting litigation. All of this is on top of previous inappropriate actions when she was a fiduciary—such as seeking \$5 million in fees for a relatively small amount of work, paying fees to fiduciaries ahead of other claims, and

¹ The only individual claim that Ms. Pope has is her separate fee petition for fiduciary commissions, a petition to which the Circuit Court has assigned a separate case number.

improperly seeking to sell Mr. Brown's GRAMMY—which ultimately led to her removal for cause.

Both the Circuit Court and the Supreme Court have ordered her removed for cause. She lacks standing to bring this appeal. The Estate and Trust asks that this Court dismiss the appeal, and order her to cease filing motions in the Estate and Trust litigation (except in her separate fee-petition case). At some point, this has to end.

Respectfully submitted,



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August 16, 2013

Columbia, South Carolina

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Motion To Dismiss Appeal For Lack Of Standing** 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 16th day of August, 2013, to the addresses shown below.

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