

J. David Black
Member
Business Litigation
Admitted in SC

December 23, 2013

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SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: *Wilson v. Dallas, et al.*,
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

The James Brown Estate and Trust submit this letter in response to the memorandum of appealability filed by Adele J. Pope (“Mrs. Pope”). Contrary to the assertions found in that memorandum, the subject appeal must be dismissed because: (1) Mrs. Pope does not have legal standing to pursue the appeal and has no legal interest in this matter. *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 1065 (1979) (“An appeal filed by one who has ceased to be a party to a suit is a mere nullity.”); *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002) (“A party cannot appeal from a decision which does not affect his or her interest”); and (2) the order is not appealable because it is temporary in nature, and none of the exceptions of S.C. Code. Ann. § 14-3-330 apply.

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I. Background

The order that is the subject of this appeal addresses the temporary appointment of fiduciaries to oversee the James Brown Estate and Trust (the “Appointment Order”). The Appointment Order follows directly from the Supreme Court’s decision in *Dallas v. Wilson*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Appointment Order installed Russell L. Bauknight as the *interim* Personal Representative and Trustee of the James Brown Estate and Trust. The interim appointment will be revisited at the conclusion of the litigation over the validity of the Will and Trust documents. The Appointment Order also installed David C. Sojourner as the *interim* Special Administrator and Special Trustee, with authority to oversee

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the Estate and Trust's defense of claims challenging the validity of the Will and Trust documents. Both Messrs. Bauknight and Sojourner owe fiduciary duties to the Estate and Trust, and both have an unflinching obligation to zealously defend the estate plan crafted by the late James Brown. Messrs. Bauknight and Sojourner are not aligned with any of the parties seeking to invalidate James Brown's estate plan. To be very clear, Messrs. Bauknight and Sojourner are working, and are steadfastly committed, to uphold the late James Brown's estate plan against all challenges.

In her memorandum, Mrs. Pope complains that she was not involved in any of the below appointment proceedings; she generally argues that the failure to include her violates notions of due process. These arguments are meritless. Mrs. Pope was not involved in the below proceedings because she is not a party to any of the James Brown Estate and Trust matters. In *Dallas v. Wilson*, the Supreme Court unequivocally held that Mrs. Pope cannot be involved in any future Estate and Trust matters:

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.

Dallas, 403 S.C. at 448-49, 743 S.E.2d at 766-67. Mrs. Pope was not involved in any of the below proceedings because the Supreme Court specifically held that she cannot be involved.

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A. Pope is the Only Individual Challenging the Orders

There is a split among James Brown's heirs as to whether the estate plan was validly enacted, or fraudulently procured. Notwithstanding those divergent views (held by heirs actively involved in these proceedings), it is instructive that not one of James Brown's heirs is challenging any of the subject orders of the circuit court. It is also instructive that Mrs. Pope *does not* represent any heirs. She represents *herself*. And she does not have any legal interest in the future of the Estate and Trust.¹

In its opinion, the Supreme Court noted some of the faithless actions that supported Mrs. Pope's for-cause removal as a fiduciary. It is important to note that those actions, and others, served as a foundation for the breach of fiduciary duty civil action filed against Mrs. Pope by her successor and some of James Brown's heirs. That action was filed in 2010 because some of the factual bases for the claims fell within the trust code's one-year statute of limitations. S.C. Code Ann. § 62-7-1005. That statute provides that a party has one year following receipt of a "report that adequately disclosed the existence of a potential claim." § 62-7-1005(a). Mrs. Pope's assertion that the 2010 breach of fiduciary duty action was filed for the purpose of having her abandon the *Wilson v. Dallas* appeal is meritless. The action was filed because Mrs. Pope committed serious breaches of her fiduciary duties, and those actions damaged the Estate and Trust.

B. Mrs. Pope Seeks to Create a False Narrative

Messrs. Bauknight and Sojourner are vigorously defending the estate plan created by the late James Brown. Notwithstanding that undeniable fact, Mrs. Pope (a member of the South Carolina Bar) actually writes that Mr. Bauknight "has declared his intention to dismantle it [*i.e.*, the estate plan]." (Memorandum, p, 11). She does not provide any citation or proof or evidence for that statement—and she cannot, because the statement is false. Mrs. Pope also writes that, "[b]y August 20, 2013, Bauknight had joined the chorus, saying he was going to follow the 'roadmap' the

¹ Mrs. Pope has a creditor's claim for her share of the nearly \$5 million fee that she filed against the Estate after her removal in 2009. That case is pending in the Aiken County Circuit Court, and it is the only James Brown related case in which Mrs. Pope has any legal interest.

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Supreme Court gave him to redo the settlement ‘to a T.’” (Memorandum, p.22). That is also a false statement. The “roadmap” language comes from the August 20, 2013 deposition of Mr. Bauknight.² In that deposition he testified as follows:

Q. When you say defend the estate and trust, do you mean to defend the documents that constitute the 2000 will and trust of James Brown as written?

A. Yes. That’s my job. That is my job. Frankly, I served -- until the Supreme Court ruled otherwise, I served under the settlement agreement because that was the law of this case. This -- Judge Early said that was the proper roadmap. I served under that roadmap. I followed that roadmap. That roadmap has been torn up by the Supreme Court. Not a problem in the world for me. I’ve got a new roadmap to follow and I will follow that roadmap and I will do it to the best of my ability. This is the -- this is my job and I take it very seriously. There’s no one more independent when it comes to this than I am. I’m straight down the line and I will defend it vigorously.

....

I’ve got a new roadmap, and I’m going to follow this new roadmap to a T.

(Bauknight Deposition, p. 100 ln. 12- p.101 ln. 5; p. 105 ln.15-17) Mrs. Pope’s representation to this Court is false.

² The deposition was taken in *Brown v. Pope*, 3:08-CV-0014 (D.S.C.), which is pending in the South Carolina District Court. That case was filed on January 2, 2008 by one of James Brown’s grandsons (Forlando) to restrain Mrs. Pope from acting as the Trustee. Forlando ultimately dropped his claims against Mrs. Pope but the case is still pending because she filed a number of counterclaims against Forlando Brown, generally alleging that the action was instituted for ulterior purposes. Mr. Bauknight was first appointed as PR/Trustee on May 26, 2009, and was not a witness to any of the events surrounding the lawsuit. Nevertheless, Mrs. Pope subpoenaed Mr. Bauknight to appear for a deposition in that case.

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Mrs. Pope seeks to convince anyone who will listen, that no one but her is interested in protecting the Estate and Trust. Those words, however, do not jibe with the factual findings that the circuit court made in the Appointment Order. In that order, which Mrs. Pope is attempting to appeal, the circuit court praised Mr. Bauknight's service and articulated specific examples of his positive work. The circuit court provided that praise so that a reviewing court would have the benefit of those factual findings when confronted with the "writings" of Mrs. Pope.

Mrs. Pope suffers from an inability to accept the fact of her fiduciary lapses. The Supreme Court detailed some of her faithless actions and noted also that "the extreme discord between the parties convince[d] [the Court] that [Mrs. Pope's] continued service as [a] fiduciary[y] is not in the best interests of the estate." *Dallas*, 403 S.C. at 449, 743 S.E.2d at 767. Mrs. Pope's refusal to comply with the Supreme Court's mandate flows from her inability to accept the fact of her past conduct and is driven by her selfish desire to rewrite history. Her selfish motives are needlessly wasting Estate and Trust resources.

II. The Orders are Not Appealable

A. No Injunction Exists

In an effort to manufacture an appellate issue, Mrs. Pope asserts that the circuit court issued an injunction against her through the administrative orders that were entered following the *Wilson v. Dallas* decision. (The administrative orders are the subject of a separate appeal: Appellate Case No. 2013-001649.) Mrs. Pope writes that the Appointment Order "continue[s] an injunction in place since June 13, 2013 [the administrative orders] against most supporters of the two valid estate plans of James Brown." (Memorandum, p.9).

The administrative orders are not before the Court in this appeal. Nevertheless, it is critical to clarify that those orders do not contain injunctions; the orders effectuate the Supreme Court's decision, which among other things, mandated that Mrs. Pope cannot be involved in future James Brown Estate and Trust proceedings. Moreover, the administrative orders do not prevent "supporters of the two valid estate plans of James Brown" from defending the Estate and Trust. As discussed above, both Messrs. Bauknight and Sojourner are actively defending James Brown's estate plan. Mrs. Pope's "writings" to the contrary are incorrect.

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B. Mrs. Pope does not have Standing

It is important to clearly frame the issue presented. Mrs. Pope does not represent *any* of James Brown's heirs. She represents *herself* and she has no cognizable legal interest in who serves as the interim Personal Representative and Trustee. Moreover, the Supreme Court has held that Mrs. Pope can no longer have any involvement with the Estate and Trust. Once the Supreme Court sent the remittitur to the Aiken County Clerk of Court, Mrs. Pope was legally precluded from further involvement with the James Brown Estate and Trust (save her claim for a portion of the \$5 million creditor claim). Accordingly, the Supreme Court's decision forecloses this appeal.

"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, 1065 (1979). "A party cannot appeal from a decision which does not affect his or her interest . . ." *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."). Mrs. Pope's appeal must be dismissed.

C. The Appointment Order is Not Appealable

The Appointment Order is temporary. The order is set to expire at the conclusion of the Will and Trust challenges. Once the challenges are concluded, the Court will enter a final order appointing permanent trustees. Accordingly, the order is not appealable.

"The right of appeal arises from and is controlled by statutory law." *EnerSys Del., Inc. v. Hopkins*, 401 S.C. 615, 616, 738 S.E.2d 478, 479 (2013). "Generally, a party may only appeal from a final judgment and piecemeal appeals should be avoided because most errors can be corrected through a new trial." *Id.* at 617, 738 S.E.2d at 479. Because the subject order is temporary, it is not appealable.

If an "order . . . fall[s] within one of the enumerated subsections," *Id.* at 617, 738 S.E.2d at 479, of Section 14-3-330, however, it may be appealable. As it relates to the subject appeal, the enumerated exceptions relate to the following types of orders: (1) that pass upon the "merits"; (2) that are made in a "special proceeding";

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(3) that relate to an “injunction” or the “appointment of a receiver”; and (4) that affect a “substantial right” that “determines the action and prevents a judgment from which an appeal might be taken.” *Id.*; *see also* S.C. Code Ann. § 14-3-330. None of these exceptions apply here. The subject order does not pass upon the merits of any litigation involving Mrs. Pope; the subject order does not follow from a special proceeding; the subject order does not relate to an injunction or the appointment of a receiver; and the subject order does not affect a substantial right of Mrs. Pope.

III. Conclusion

In what can only be described as a complete disregard for the rule of law, Mrs. Pope continues to meddle in the affairs of the James Brown Estate and Trust. Her selfish desire to re-write history is needlessly costing the Estate and Trust monies that have been directed for charitable purposes. Mrs. Pope continues to initiate wasteful appeals, and in doing so, the Estate and Trust is forced to incur fees and costs. Her conduct is creating waste, and the Estate and Trust respectfully requests that this Court put an end to it. For the reasons outlined above, respectfully, the Court should dismiss this appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. David Black", with a long horizontal line extending to the right.

J. David Black

JDB/gb