



January 28, 2014

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The Honorable Jenny Abbott Kitchings  
Clerk of Court, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: *Wilson v. Dallas, et al.*  
Appellate Case No. 2013-002582  
A&R File No.: 022853-000001

Dear Ms. Kitchings:

David C. Sojourner, Jr, in his capacity as the Limited Special Trustee (“LST”) and Limited Special Administrator (“LSA”) of the James Brown Trust and Estate, by and through his undersigned counsel, submits this letter in response to the Memoranda related to appealability filed by Adele J. Pope.<sup>1</sup> Ms. Pope’s appeal should be dismissed.

Ms. Pope appeals the Interim Order issued by the Honorable Doyet A. Early III on October 1, 2013 in Case No. 2008-CP-02-1647 (the “Interim Order”). Ms. Pope does not have legal standing to pursue this appeal because she is not a party to that underlying action and is not aggrieved by the Interim Order. *See* Rule 201(b), SCACR; S.C. Code Ann. § 18-1-30 (Law. Co-op. 1976); *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 ....”). Moreover, the Interim Order is a temporary, interlocutory order, and none of the exceptions in S.C. Code Ann. § 14-3-330 apply.

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**SC Court of Appeals**

<sup>1</sup> The LSA and LST hereby incorporates into this letter the factual background and legal arguments asserted in J. David Black’s December 23, 2013 letter to this Court on appealability.

**I. Mrs. Pope Lacks Standing to Appeal the Interim Order under Rule 201(b), SCACR.**

Mrs. Pope does not have standing to appeal the Interim Order because she is not a “party” to the underlying action and is not “aggrieved by” the Interim Order.

“Only a *party* aggrieved by an order, judgment, sentence or decision may appeal.” [emphasis added] Rule 201(b), SCACR. In *Wilson v. Dallas*, the South Carolina Supreme Court upheld the lower court’s removal of Ms. Pope as a fiduciary of the Estate, finding that Pope’s “...continued service as fiduciar[y] is not in the best interests of the estate.” *Wilson v. Dallas* 403 S.C. 411, 448-49; 743 S.E.2d 743, 766-67. Pope therefore has no standing because she is not a “party” to the underlying proceedings. See also *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979) (“An appeal filed by one who has ceased to be a party to a suit is a mere nullity.”); and *Glenn v. E.I. Dupont De Nemours & Co.*, 254-S.C. 128, 134, 174 S.E.2d 155, 158 (1970) (dismissing an action for wrongful death instituted by a discharged administratrix because such action was a nullity).

“Only a party *aggrieved by* an order, judgment, sentence or decision may appeal.” [emphasis added] Rule 201(b), SCACR. Under Rule 201(b), “[t]he word ‘aggrieved’ refers to a substantial grievance, a denial of some personal or property right, or the imposition on a party of a burden or obligation.” *North American Rescue Prods., Inc. v. Richardson*, 396 S.C. 124, 134, 720 S.E.2d 53, 59 (Ct. App. 2011) (quoting *Beaufort Realty Co.* at 301, 551 S.E.2d at 589).

The Interim Order is on its face a temporary order that establishes two things: 1. it appoints Russell L. Bauknight as the Personal Representative of the James Brown Estate and Trustee of the James Brown Trust to carry out the Estate’s and Trust’s normal administration during pendency of the Estate litigation; 2. it appoints David C. Sojourner, Jr. as the Limited Special Trustee to defend the Trust against the Will and Trust Challenges until they are resolved. The Will and Trust Challenges are unambiguously defined in the Interim Order to be the claims asserted by certain devisees of the Will and Tommie Rae Brown to set aside the Will and Trust on certain grounds, Tommie Rae Brown’s elective share and omitted spouse claims, and James Brown II’s pretermitted child claims. Neither of these appointments aggrieves Pope, as she is not a party to the Will and Trust Challenges and has asserted no challenge to the Will or the Trust.

Ms. Pope has unsuccessfully attempted during the past several months to inject herself into the underlying case, 2008-CP-02-1647, by seeking authorization from the Circuit Court to act *pro bono publico* on behalf of the Estate and Trust and some of the beneficiaries. In spite of Ms. Pope’s efforts, the Circuit Court has not authorized Ms. Pope to act in this capacity. “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." *Shaw v. City of Charleston*, 351 S.C. 32, 567 S.E.2d 530 (Ct. App. 2002) (quoting *Beaufort Realty*, 346 S.C. at 301, 551 S.E.2d at 589-90; *First Union Nat'l Bank of S.C. v. Soden*, 333 S.C. 554, 565, 511 S.E.2d 372, 378 (Ct. App. 1998)).

In *Powell v. ex rel. Kelley v. Bank of America*, 379 S.C. 437, 665 S.E.2d 237 (Ct. App. 2008) and *Ex Parte Government Employee's Ins. Co.*, 373 S.C. 132, 644 S.E.2d 699 (2007), it was ruled that persons with "insufficient," "merely tangential," and "merely peripheral" interests in the outcome of cases do not have standing to the proceedings or to appeal final determinations. Ms. Pope's interest in the underlying proceeding is either nonexistent or only "tangential and peripheral to the precise [issue before the court]." See *Powell* at 446, 665 S.E.2d at 242. Any interest that Ms. Pope may have in the Estate is addressed in her separate creditor's claim, which is currently pending before the Court of Common Pleas in a completely separate civil action, 2013-CP-02-02-1337.

## **II. The Interim Order is a Non-Appealable Interlocutory Order and no Exceptions Under S.C. Code Ann. § 14-3-330 Apply.**

The Interim Order is temporary and, therefore, not appealable. The Order's appointment of Mr. Sojourner to defend the Estate against the Will and Trust Challenges terminates at the final resolution of the Will and Trust Challenges. The Interim Order expressly states that it "is temporary," and that "the Court will revisit the appointment of fiduciaries upon the conclusion of all Estate litigation."

"Generally, a party<sup>2</sup> may only appeal from a final judgment, and piecemeal appeals should be avoided...." *EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 616, 738 S.E.2d 478, 479 (2013) (citations omitted). "Whether an order issued prior to or during trial is immediately appealable is governed primarily by Section 14-3-330 of the South Carolina Code (1979 & Supp. 2010). *Id.* at 617, 738 S.E.2d at 479.

Of the four bases for appellate jurisdiction set forth in Section 14-3-330, Ms. Pope only asserts a discernable argument that her appeal meets basis 4<sup>3</sup>, which establishes appellate jurisdiction over:

(4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction . . . .

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<sup>2</sup> Consistent with Section I above, this ruling proceeds upon the accepted principle that only a "party" may appeal.

<sup>3</sup> A reading of Section 14-3-330 makes it clear that appellate jurisdictional bases 1-3 do not apply here either.

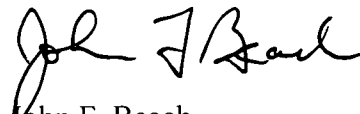
As more fully explained by David Black in his December 23, 2013 letter, Ms. Pope's argument that the Interim Order continues an injunction mischaracterizes the Orders on appeal and is nonsensical.

The holding in *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991) is persuasive. There the probate judge of Marion County had appointed two sisters to serve as special administrators of their mother's estate. The special administrators' other sisters appealed to the circuit court, where the trial judge reversed the probate court's order and disqualified one of the sister-special administrators the probate court had appointed.

The Court of Appeals noted that only final probate court orders may be appealed. The Court ruled that the probate order was "clearly temporary," since it appointed the two sisters "until such time as a Personal Representative shall be formally appointed." The Court vacated the trial judge's order, ruling that the Court of Common Pleas lacked subject matter jurisdiction of the order involved in that case because it was temporary and, therefore, not a "final order."

Ms. Pope's appeal must be dismissed. She lacks standing to appeal because she is neither a "party" to the underlying action nor "aggrieved by" the orders on appeal, and the Interim Order is a temporary, non-appealable interlocutory order.

Sincerely,



John F. Beach

JFB/lis

cc: David B. Bell, Esquire  
Matthew D. Bodman, Esquire  
James M. Griffin, Esquire  
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Louis Levenson, Esquire  
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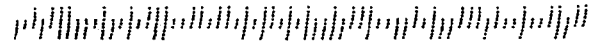
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