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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Lower Court Case Nos. 2008-CP-02-1647; 2009-CP-02-1810; 2007-ES-02-0056

Appellate Case No. 2013-002582

Ex parte: Adele Pope,..... Appellant,
In Re: The Estate of James Brown a/k/a James Joseph Brown,..... Respondent.

RETURN TO PETITION FOR REHEARING

- I. Background of Appellant’s Involvement in the Estate and Trust Litigation**
 - A. Appellant’s appointment and removal as a fiduciary.**

The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court. The Appellant Adele Pope was initially appointed by the circuit court in March 2007 as Special Administrator with the limited duty to oversee the handling of Brown’s Estate after petitions were filed by some of Brown’s family members seeking the removal of the original personal representatives who Brown had named in his Will. *See Dallas v. Wilson*, 403 S.C. 411, 419, 743 S.E.2d 746, 751 (2013). In November of 2007, after the original fiduciaries either resigned or were removed for cause, Ms. Pope became the personal representative and trustee for

Brown's Estate and Trust.¹ *Id.* The South Carolina Attorney General intervened in the Estate and Trust litigation, and in August of 2008, Tommie Rae Hynie (who purports to be the surviving spouse of James Brown), Brown's children and grandchildren, and the Attorney General entered into a compromise agreement, which was submitted to the circuit court for its approval. *Id.* at 420, 743 S.E.2d at 751. Ms. Pope objected to the agreement, and in January of 2009, the circuit court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the limited purpose of providing input and recommendations to the court regarding the compromise agreement. *Id.* The circuit court approved the agreement in May of 2009. Under the terms of the agreement, Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her. *Id.* at 420-22, 743 S.E.2d at 751-52. Ms. Pope appealed.

B. The South Carolina Supreme Court has affirmed Appellant's removal, finding her removal is in the best interest of the Estate.

On May 8, 2013, the Supreme Court issued an opinion reversing the circuit court's approval of the settlement, but affirming the removal of Ms. Pope as personal representative and trustee. Specifically, the Supreme Court rejected Ms. Pope's pleas to the contrary and found that the circuit court "did not violate the statutory provision regarding the removal of [Ms. Pope]" because "it was in the best interests of the estate." *Id.* at 448, 743 S.E.2d at 765. In so finding, the Supreme Court described the good cause for removal as follows:

Appellants [Ms. Pope and Mr. Buchanan] have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants

¹ Robert Buchanan was appointed as Special Administrator and later as the personal representative and trustee along with Ms. Pope during this time frame. Since the Supreme Court issued its opinion in *Wilson v. Dallas* in May of 2013, Mr. Buchanan has had no involvement in the Estate of James Brown litigation other than seeking compensation for his previous service, and he has not joined Ms. Pope in her appeal.

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.

Id. at 448-49, 743 S.E.2d at 767.

In addition to affirming the removal of Ms. Pope for cause, the Supreme Court also found that Mr. Bauknight's appointment was void because it was made in conjunction with the now overturned compromise agreement. However, the Court explained that on remand, "[t]he circuit court may consider [after proper application] whether Bauknight should be appointed to fill a fiduciary position." *Id.* at 449, 743 S.E.2d at 767.

II. Order on Appeal and Dismissal

On remand, Judge Early has attempted to proceed with the Estate and Trust litigation, but his progress has been stifled by Ms. Pope's relentless insistence to remain involved despite her removal for cause and the Supreme Court's rejection of her appeal from that removal. Since the Supreme Court issued its opinion in *Wilson v. Dallas*, Judge Early reviewed numerous applications from individuals seeking to become fiduciaries for the Estate and Trust, and on October 1, 2013, he issued an order which (1) installed David C. Sojourner as the interim special administrator and special trustee of the James Brown Estate and Trust for the purpose of defending claims challenging the validity of the Will and Trust documents and (2) installed Russell L. Bauknight as the interim

personal representative and trustee of the James Brown Estate and Trust for all other purposes. Ms. Pope, who in May of 2009 was removed for cause as a fiduciary and whose removal was affirmed by the Supreme Court in May of 2013, has filed a Notice of Appeal from Judge Early's order appointing new fiduciaries on an interim basis.

Upon receiving Ms. Pope's Notice of Appeal, this Court asked the parties to file appealability memoranda. After reviewing those memoranda, The Honorable Paul E. Short dismissed the appeal for two independent reasons: (1) Ms. Pope was not an aggrieved party and therefore could not champion an appeal of the order, and (2) the underlying order appointing interim fiduciaries was temporary in nature and not immediately appealable. Ms. Pope has now filed a petition seeking a rehearing of that order, which Mr. Bauknight opposes.

III. Ms. Pope Has No Standing to Appeal

To have standing to appeal from an order, Ms. Pope must be "an aggrieved party." See S.C. Code Ann. § 18-1-30 (allowing aggrieved parties to appeal); Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, or sentence may appeal."). To be an aggrieved party, Ms. Pope must show the appealed order "operates on h[er] rights of property or bears directly upon [h]er interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); see also *Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

This is an appeal from an interim order appointing fiduciaries. Ms. Pope was not appointed as a fiduciary, did not apply to become a fiduciary, and indeed *could* not apply to be a fiduciary because the circuit court and the Supreme Court have already determined that her continued participation is not in the best interests of the Estate. Accordingly, other than her claim against the Estate for unpaid fees, which is an entirely different case pending in the circuit court, Ms. Pope has no interest in the James Brown Estate and Trust litigation and cannot champion this appeal. *See Bivens*, 254 S.C. at 13, 173 S.E.2d at 152 (“The right of review is restricted to persons or parties aggrieved by the decision below. A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.”).

In her petition for rehearing, Ms. Pope sets forth numerous arguments for why she has standing to appeal. None of them has any merit.

A. “Special interest standing” is applicable only when a taxpayer attempts to sue the State.

Ms. Pope claims to have “special interest standing” to enforce the Trust. The term “special interest standing” has only ever been used when a taxpayer attempts to sue the State and is required to show a “special interest” beyond the small interest of a general taxpayer. *See, e.g., Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941) (“The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer.”); *Beaufort County v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002) (explaining the general rule of taxpayer standing requires a special interest). Furthermore, Ms. Pope never moved to intervene below as a party with “special interest standing” and cannot now attempt to appeal on that basis.

B. Ms. Pope is not the guardian of Michael Brown and did not file this appeal on behalf of Michael Brown.

In paragraph 6 of her petition for rehearing, Ms. Pope argues, in part, that she has standing “as the proposed guardian ad litem (‘GAL’) for James Brown’s incarcerated son Michael Deon Brown.” However, she has neither been appointed as his guardian, nor has she filed this appeal on Michael Brown’s behalf or in her capacity as an attorney. Ms. Pope’s notice of appeal was filed on her own behalf. She signed her name and purposefully referenced herself as “Appellant, *Pro Se*.” She cannot now try to gain standing based on “guardian status.”

C. Ms. Pope does not have standing under S.C. Code Ann. § 62-7-405.

Ms. Pope also claims to have standing as an “other” under S.C. Code Ann. § 62-7-405. Pursuant to subsection (c): “The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.” Although the term “others” is not defined by the statute, this Court need not determine the universe of individuals who might be included in that subgroup so long as it can determine that a former trustee, removed for good cause because (in the words of the Supreme Court) it would not be in the best interest for her to continue to serve as a fiduciary, is *not* an “other” who can enforce the trust.

D. The order on appeal does not affect Ms. Pope’s property rights, reputation, or liberty.

In paragraph 8 of her petition, Ms. Pope argues that the order on appeal affects her “property rights, and her reputation and liberty.” However, she fails to explain how this is so, and without guidance from her, it is not apparent how her property and liberty interests are affected by an order appointing interim fiduciaries to a position from which she has been removed and for which she did not apply.

E. Ms. Pope's pending claim to fees for her service as a fiduciary does not give her standing to be a party to this action.

Ms. Pope further argues that she is a party to this action because she is an "Interested Person and creditor." Ms. Pope's claim as a creditor, in which she is seeking her share of \$5 million in fees, remains pending in Aiken County under a separate lower court case number. Her creditor's claim is not affected by the interim appointment of fiduciaries and having a claim against the Estate does not give Ms. Pope standing to reinsert herself in the Estate and Trust Litigation, especially when the Supreme Court held that her continued service was not in the best interests of the estate. *Cf. Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

Ms. Pope, who was neither a party to the action below nor aggrieved by the order, may not champion this appeal. Accordingly, her petition for rehearing should be denied.

IV. The Interim Order Is Temporary in Nature and Not Immediately Appealable

In addition to finding Ms. Pope had no standing to appeal from Judge Early's interim order, this Court correctly found that the order was temporary in nature and not appealable. In her petition for rehearing, Ms. Pope argues the order on appeal is final (*see* ¶¶ 1, 3, 12) and that it continues an injunction (*see* ¶¶ 7,11). Neither of these arguments is correct.

According to our Supreme Court, an order is not final "[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). Here, the order on appeal appoints fiduciaries on a temporary basis and is set to expire at the conclusion of the Will and Trust challenges. The temporary

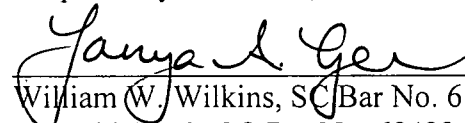
appointment of fiduciaries does not determine the rights of Ms. Pope, who never even applied to be a fiduciary.

Nor does the order appointing temporary fiduciaries continue an injunction, as Ms. Pope argues. It bears repeating that Ms. Pope did not apply to be a fiduciary, and this order did not enjoin her from becoming one. In an effort to manufacture an appellate issue, Ms. Pope refers back to orders issued by Judge Early on June 13, 2013. Those orders are subject to an entirely different appeal. Additionally, the June 13 orders do not contain injunctions either; they merely carry out the Supreme Court's mandate that Ms. Pope be removed as a fiduciary (the only role she played in the underlying litigation).

V. Conclusion

Ms. Pope had the opportunity to appeal from her removal as a fiduciary. She lost that appeal. Her role in this litigation is over. Mr. Bauknight urges this Court to deny the petition for rehearing and send a message to Ms. Pope that any future attempts to insert herself in this litigation will not be tolerated.

Respectfully submitted,



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the James Brown August 1, 2000
Irrevocable Trust Agreement

February 24, 2014

Columbia, South Carolina

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing RETURN TO PETITION FOR REHEARING 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 24th day of February, 2014, to the addresses shown below.

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