THE STATE OF SOUTH CAROLINA
In The Court of Appeals

71562

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Case No. 2013-CP-02-1337

Adele J. Pope .....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust, ...Respondents,

AND:

Robert L. Buchanan, Jr., ... Interested Party,

MOTION TO DISMISS

"The law regards with jealousy, and even aversion, the officious intermeddling with a dead man's estate."[1]

Russell L. Bauknight, in his individual capacity as well as in his capacity as special administrator of the Estate of James Brown and as special trustee of The James Brown 2000 Irrevocable Trust, moves to dismiss Appellant Adele Pope's appeal. A review of Ms. Pope's Initial Brief and Designation of Matter reveals that the brief and designation violate the Appellate Court Rules and that the issues she raises on appeal have no merit and primarily address irrelevant matters or matters that have already been

[1] *Salvo & Wade v. Schmidt*, 29 S.C.L. 512, 2 Speers 512 (1844).

fully and finally litigated. Accordingly, dismissal is appropriate pursuant to Rule 260(a), SCACR (directing the clerk to dismiss appeals when appellant fails to comply with the requirements of the Appellate Court Rules) and Rule 269, SCACR (allowing the appellate court to issue "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require" when an appeal is "frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules"). *See also Forbes v. Dehon*, 17 S.C. Eq. 45 (Ct. App. 1843) (explaining that the appellate court is not bound to adhere to the ordinary schedule for deciding appeals and that frivolous appeals may be dismissed because they "ought not to be permitted to encumber the docket and delay the parties").

I. Ms. Pope Previously Served as a Fiduciary of the Estate and Trust, was Removed for Cause, and That Removal was Affirmed by the Supreme Court.

When James Brown died on December 25, 2006, he left behind what is now a multi-million dollar estate ("Estate"). According to his Will dated August 1, 2000 ("Will"), his personal and household effects were devised to six named children, and the remainder of his Estate poured over into The James Brown 2000 Irrevocable Trust ("Trust"). The purpose of this Trust was to provide financial assistance for the education of his grandchildren and for disadvantaged youths in South Carolina and Georgia. Neither the Appellant Ms. Pope nor the Respondent Mr. Bauknight was the original personal representative or trustee of the Estate and Trust.

A. Ms. Pope's Appointment as a Fiduciary

Ms. Pope became involved in this matter when, in March of 2007, the circuit court appointed her and another gentleman, Robert Buchanan, to serve as special administrators 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 and Mr. Buchanan became the personal representatives and trustees for Brown's Estate and Trust. *Id.*

B. Ms. Pope's Removal for Cause

After Ms. Pope and Mr. Buchanan's appointment, 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 and Mr. Buchanan objected to the agreement, and in January of 2009, the circuit court appointed Mr. 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 and Mr. Buchanan were removed for good cause as the personal representatives and trustees and Mr. Bauknight replaced them. *Id.* at 420-22, 743 S.E.2d at 751-52.

Ms. Pope and Mr. Buchanan appealed. In addition to arguing that the settlement should be undone, they argued that they should not have been removed as fiduciaries. 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 and Mr. Buchanan as personal representatives and trustees. The Supreme Court specifically noted that even though it

ultimately agreed that the settlement should be undone, the trial court had cause to remove Ms. Pope and Mr. Buchanan, explaining:

> . . . 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 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 766-67 (emphasis added).

In addition to affirming the removal of Ms. Pope and Mr. Buchanan 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. Ms. Pope's Persistent Litigation Despite Being Removed for Cause

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.

After the Supreme Court issued its opinion in *Wilson v. Dallas*, Ms. Pope filed a Summons and 63-page Complaint (not counting attached exhibits) on June 10, 2013. In

her Complaint, she sought to void Mr. Bauknight's appointment as a fiduciary, void the settlement agreement reached between her former co-fiduciary Robert Buchanan and the Estate and Trust, and void the "Notice of Disallowance" she received from the Estate and Trust with regard to her petition for fees. She also asked that Mr. Bauknight be removed, that an accounting be ordered, and that she be awarded attorney's fees and costs.

Three days after Ms. Pope filed her Complaint, Judge Early issued two administrative orders on June 13, 2013, in the myriad cases still pending involving the Estate of James Brown. Among other things, Judge Early's administrative orders appointed Mr. Bauknight as the interim special administrator and special trustee until applications for those positions could be received and reviewed; removed Ms. Pope and Mr. Buchanan's names as responding parties in all of the Estate and Trust's pending litigation in Aiken County, with the exception of their claim for fees, which Judge Early directed be considered in a separate civil action; and refused to consider the motions, memoranda, and proposed scheduling orders filed by Ms. Pope after the Supreme Court issued its opinion affirming her removal. Ms. Pope appealed from those orders *pro se*, and that appeal is pending under Appellate Case Number 2013-001649.

After being appointed as special administrator and special trustee, Mr. Bauknight moved to dismiss the June 10, 2013 Complaint filed by Ms. Pope. As that motion to dismiss was pending, Judge Early received and reviewed numerous applications from individuals seeking to become fiduciaries for the Estate and Trust, and on October 1, 2013, Judge Early 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 filed a *pro se* appeal from this order as well, the Appellate Case No. for which is 2013-002582. This Court dismissed the appeal on January 30, 2014, finding both that (1) the order was not immediately appealable and (2) Ms. Pope could not champion the appeal because she was not an aggrieved party. Ms. Pope has since filed a petition for rehearing and motion to hold the appeal in abeyance; both of these motions remain pending.

On January 17, 2014, Judge Early granted Mr. Bauknight's pending motion to dismiss Ms. Pope's June 10, 2013 Complaint. In his order, Judge Early found that a portion of her Complaint was moot; that her argument regarding the probate court's appointment of Mr. Bauknight was not a decision over which the circuit court had appellate review; and that she had no standing to void the settlement between Mr. Buchanan and the Estate. Judge Early also found Ms. Pope had no standing to seek Mr. Bauknight's removal, to request an accounting, or to request that a special administrator and trustee be appointed. Upon receiving this order, Ms. Pope filed a 68-page Motion to Alter or Amend (not including exhibits). This motion was denied, and Ms. Pope filed the above-captioned appeal *pro se*.

III. The Frivolous Nature of Ms. Pope's Appeal

Rule 269, SCACR, permits the appellate court to sanction a party who files an appeal that is frivolous or taken solely for the purposes of delay, or is not in compliance with the Appellate Court Rules. *See also* Rule 260(a) (directing the clerk to dismiss appeals when appellant fails to comply with the requirements of the Appellate Court Rules). A "frivolous appeal" is defined as "[a]n appeal having no legal basis, usu[ally] filed for delay to induce a judgment creditor to settle or to avoid payment of a judgment." APPEAL, Black's Law Dictionary (9th ed. 2009). As explained further below, the

arguments raised on appeal demonstrate that Ms. Pope's appeal has no hope of success and that she is arguing irrelevant issues for the purpose of enhancing her claim for fees. Furthermore, her Brief and Designation of Matter do not comply with the Appellate Court Rules in many significant respects. Accordingly, this appeal should be dismissed.

A. The Issues Raised on Appeal Fail to Address the Reasons Judge Early Gave for Dismissing Ms. Pope's Complaint.

Just days after filing this Notice of Appeal, Ms. Pope filed her Initial Brief and Designation of Matter. Despite its length, her Brief does not address Judge Early's rulings regarding mootness, lack of jurisdiction to review the probate court's appointment of a special administrator, or her lack of standing with regard to Buchanan's settlement agreement. Thus, these ruling have become the law of the case. *In re Morrison*, 321 S.C. 370 n.2, 468 S.E.2d 651 n.2 (1996) (noting that an unappealed ruling is the law of the case and precludes further consideration of the issue on appeal).

To the extent Ms. Pope argues that she has standing to seek Bauknight's removal, she has abandoned the issue by failing to cite to any relevant authority and by relying instead on conclusory statements. *See D.R. Horton, Inc. v. Wescott Land Co., LLC*, 398 S.C. 528, 548-49, 730 S.E.2d 340, 351 (Ct. App. 2012) (finding issue abandoned where appellants made conclusory arguments and cited to only one case in their reply brief).[2] In

[2] Ms. Pope states in her third issue on appeal: "In addition to standing as Interested Persons and creditors, Appellant and Buchanan have special interest standing under Section 62-7-405 to enforce the 'I Feel Good' Trust and for Appellant to serve as GAL pro bono public for Michael and others because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule." This summary statement is the only reference she makes to special interest standing or standing as a guardian, so those issues are abandoned on appeal. *D.R. Horton*, 398 S.C. at 548-49, 730 S.E.2d at 351. Moreover, Ms. Pope has represented to this Court and to the Respondents that she is representing herself *pro se*; accordingly, she cannot now switch horses and attempt to represent the interests of "Michael Brown and others," especially when "Michael Brown and others" did not serve or file a notice of appeal. *See Lennon v. S.C. Coastal Council*, 330 S.C. 414, 498 S.E.2d 906 (Ct. App.

the body of her brief, Ms. Pope addresses standing simply by block quoting the definition "Interested Person" found in S.C. Code Ann. § 62-1-203(23). Citing to this one authority, without further developing her argument, does not save her issue from being abandoned on appeal. *See State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited only to an evidentiary rule was abandoned on appeal).

Even if this issue were not deemed abandoned, Ms. Pope fails to address the particular reasons given by Judge Early for denying her "Interested Person" standing. Despite providing this Court with a block quote of the definition for "Interested Person," Ms. Pope provides an ellipsis in the quote and deletes the very language upon which Judge Early relied when he found she did not meet the definition. In its entirety, the definition of "Interested Person" reads as follows:

> "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person ***which may be affected by the proceeding***. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

(Emphasis added to highlight critical language deleted from Ms. Pope's definition.)

As explained by Judge Early in the order on appeal, even though Ms. Pope is a creditor of the Estate based on her pending claim for fees, she does not fall within the definition of "Interested Person" because her claim is not affected by the appointment of

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1998) ("In his brief, [the appellant] describes himself as a "pro se litigant," and he cannot obtain standing by alleging he is acting in another's interest if he himself has suffered no individual injury."). *See also* Rule 203, SCACR (requiring a party intending to appeal to serve and file a notice of appeal).

Mr. Bauknight. This is so because her Complaint "does not contain any allegation, nor any reasonable inference therefrom, that Defendant Bauknight's actions as special administrator jeopardize or will cause the Estate to be unable to make payment on Plaintiff's claim against the Estate," and "nowhere in the Complaint does Plaintiff allege that Defendant Bauknight is wasting or administering the Estate in any manner that will cause assets to be unavailable for payment of her claim . . . ." (*See* Order on Appeal, p. 9.) Ms. Pope fails to address this ruling in her Appellant's Initial Brief, and therefore it has become the law of the case. *In re Morrison*, 321 S.C. at 370 n.2, 468 S.E.2d at 651 n.2.

B. The issues raised on appeal have already been fully litigated and finally decided or are irrelevant to the order on appeal.

Ms. Pope's failure to address issues explains why this appeal has no merit; however, her persistence in raising other issues, which have either been fully and finally litigated or are completely irrelevant to the order on appeal, demonstrates why this appeal is frivolous. *Cf. Nagy v. FMC Butner*, 376 F.3d 252, 256-57 (4th Cir. 2004) (explaining that the term "frivolous," in the context of 28 U.S.C. § 1915(a), "is inherently elastic and not susceptible to categorical definition," and therefore requires "courts to conduct a flexible analysis, in light of the totality of the circumstances" (internal quotations omitted)).

In her brief, Ms. Pope discusses at length the actions she took as a fiduciary, her "vigorous" defense of James Brown's estate plan, and her "mission" to save the Trust. (*See, e.g.*, Appellant's Initial Brief, p. 2-3, p. 8) All of these matters were before the Supreme Court and finally litigated when it determined that Ms. Pope's further service to the Estate and Trust were not in their best interests. Despite the Supreme Court's opinion that finally decided this issue, Ms. Pope attempts to speak on behalf of the Estate and

Trust throughout her brief as though she still had a fiduciary role. For example, Ms. Pope asserts that she is now working "*pro bono publico* to help see that the 'I Feel Good' Trust is not dismembered again." (*Id.* at p. 8) She also claims to be one of "five or fewer experts in the State" who understands certain aspects of copyright law,[3] and argues she should be able to "help" the Estate and Trust. (*Id.* at p. 32)

In addition to focusing on an issue that has already been finally decided, Ms. Pope also devotes many pages of her brief to matters completely irrelevant to the orders on appeal. For instance, she argues at length about why her claim for fees should be paid. This issue has yet to be litigated, so her arguments in this regard are premature and not ripe for review.[4] (*See id.* at p. 10-13) Although irrelevant to this appeal, Ms. Pope's fees are at the heart of this and every filing she has made in courts below and at the appellate level, and this persistence reveals that her motive for continuing to insert herself in the affairs of James Brown's Estate may be to induce the Estate to settle her fee claim, in which she seeks millions of dollars. Such a motive underscores the frivolous nature of this appeal. *See* APPEAL, Black's Law Dictionary (9th ed. 2009) (defining "frivolous appeal" as "[a]n appeal having no legal basis, usu. filed for delay to induce a judgment creditor to settle or to avoid payment of a judgment").

Not only do the issues raised in Ms. Pope's brief demonstrate her intent to remain the "voice" of the Estate and Trust and/or her motive to induce the Estate to settle her claim for fees, but the items she has designated for the Record on Appeal also reveal her intentions and motivations. Because this is an appeal from an order granting a 12(b)(6)

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[3] In support of this assertion, Ms. Pope cites to an unpublished draft of an article she authored.

[4] Ms. Pope also purports to speak on behalf of Mr. Buchanan, even though she filed this appeal *pro se* and even though Mr. Buchanan has opted to settle his fee claim. (*Id.* at p. 27-28)

motion, the only matters properly designated for the Record are the Summons and Complaint, the Motion to Dismiss and Return, the transcript of the hearing, the Motion to Alter or Amend, and the Orders on appeal. *See* Rule 210(c) ("The Record shall not, however, include matter which was not presented to the lower court or tribunal."). Ms. Pope's Designation of Matter lists over 100 different items, including pleadings from other cases, transcripts from other cases, affidavits and e-mails that date back to 2008, and several items that post-date the orders on appeal. Ms. Pope's Designation of Matter further demonstrates that she is using this appeal, not as a means to raise meritorious issues, but rather to re-argue why she ought to be a fiduciary and to complain that her replacement is not protecting the Estate and Trust as well as she could. (*See, e.g.*, Appellant's Initial Brief, at p. 24: "Bauknight abandoned Brown's estate plan in favor of Tommie Rae, her son and the settling parties. He tried to cause tens of millions of dollars damage to the 'I Feel Good' Trust. He is still trying." (emphasis in original))

C. Ms. Pope's Initial Brief and Designation of Matter flagrantly violate the Appellate Court Rules.

In addition to having no merit, Ms. Pope's appeal fails to comply with the Appellate Court Rules in several significant ways. For instance, pursuant to Rule 208(b)(1)(C), SCACR, the brief of the appellant must include a Statement of the Case, which "shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal," and it "shall not contain contested matters . . . ." Ms. Pope's Statement of the Case is 21 pages long, and rather than providing a concise and undisputed history of the proceedings, it is littered with charged rhetoric and contested matters. Ms. Pope's Statement of the Case uses terms like "juggernaut" and "vitriolic" (p. 1, 4, 15), reproaches the Attorney General for "giving half of the 'I Feel Good' Foundation to Tommie Rae and the Levenson clients" (p. 2), accuses Mr. Bauknight of

engaging in *ex parte* communications (p. 6, 18), and states as though it were fact that Mr. Bauknight seeks to protect the interests of Tommie Rae to the detriment of James Brown's children (p. 19, 21). Those are but a few examples of disputed material contained in Ms. Pope's Statement of the Case.

Rule 208 also requires that briefs refer "to the transcript, pleadings, orders, exhibits or other materials which may be properly included in the Record on Appeal . . . to support the salient facts alleged." Rule 208(b)(4), SCACR. For initial briefs, the references should be "to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced." *Id.* Abbreviations may be used so long as those abbreviations are intelligible. *Id.* Despite the large quantity of matter designated, Ms. Pope's brief contains very few references to the record. For instance, her Statement of Facts contains only four references to the record, and two of those references ("Voice Tape, 2/24/99" and "Curtis DNA Request") are to items that were not presented to the trial court and are not properly included in the Record on Appeal. *See* Rule 210(c), SCACR. To the extent Ms. Pope provides references to the record in other portions of her brief, many of the references are unintelligible, such as "Ltr. AG" (when there are several letters from the Attorney General's office designated), "Comp. Buchanan ltr.," "Mots. (3), Pope," "Mot. Aff.," and "Mot., Ret., Comp." Ms. Pope also cites to transcripts without identifying the page or line number. (*See, e.g.,* Initial Brief p. 27, citing to "Tr. 10/8/13.")

Finally and as already discussed above, Ms. Pope's Designation of Matter ignores the requirements of Rules 209 and 210, SCACR. Her designation includes irrelevant material as well as material that had never been presented to the trial court. *See* Rule 209(b), SCACR (restricting designations to those matters properly included in the record

on appeal and prohibiting parties from including matters not relevant to the appeal"); Rule 209(c), SCACR (requiring a certificate signed by the party's counsel that the designation does not contain matter which is irrelevant to the appeal); Rule 210(c), SCACR ("The Record shall not, however, include matter which was not presented to the lower court or tribunal.").

IV. Dismissal Is the Appropriate Sanction to Discourage Ms. Pope's Vexatious Litigation

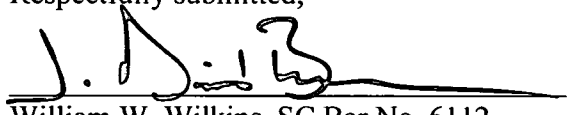
Mr. Bauknight asks this Court to dismiss Ms. Pope's appeal so that she is discouraged from future frivolous filings.

In 2009, our Supreme Court issued an order in *Doe v. Duncan* (attached as **Exhibit A**), curtailing the petitioner's ability to file future lawsuits related in any way to an issue that had already been fully and finally litigated. As explained in the Supreme Court's Order, the Petitioner J. Doe had filed "a number of frivolous actions . . . relating to the revocation of her medical staff privileges at East Cooper Community Hospital *in 1997*." (italics in original.) The Court noted that J. Doe actually went by the name Cynthia Collie at times and at other times, she went by Cynthia Holmes. Ms. Collie/Holmes was both a licensed attorney and a medical doctor, and while representing herself *pro se*, she engaged in "vexatious litigation." In its Order, the Supreme Court denied Ms. Collie/Holmes' petition for a writ of certiorari, found the petition was frivolous, and directed "the Clerks of Court in this state to refuse to accept further filings from petitioner" regarding the same issue that had been fully and finally litigated "unless they are filed by an attorney, other than petitioner, licensed to practice law in this state."

Like Ms. Collie/Holmes, Ms. Pope has made a number of frivolous filings – from pleadings to motions to this appeal and others – all of which relate to her removal as a fiduciary *in 2009* and affirmed by the Supreme Court in May of 2013. Her relentless

litigation evidences a pattern of officious intermeddling with the affairs of James Brown's Estate and Trust, and the potential remains for her to continue to do so if this appeal is not deemed frivolous and dismissed. Just as the Supreme Court recognized in *Wilson v. Dallas*, Ms. Pope's involvement in the Estate and Trust continues to cause extreme discord; her litigiousness has caused waste and has stymied the new fiduciaries' ability to orderly and efficiently handle the affairs of the Estate and Trust. Accordingly, Mr. Bauknight urges this Court to dismiss this appeal and send a message to Ms. Pope that her intermeddling in this matter will not be tolerated.

Respectfully submitted,



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March 13, 2014

Columbia, South Carolina

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AND:

Robert L. Buchanan, Jr., ... Interested Party,

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Motion To Dismiss** has been served upon counsel of record and interested party by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 13th day of March, 2014, to the addresses shown below.

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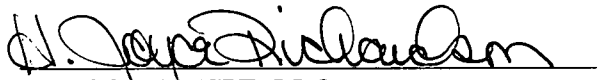

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