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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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

Case No. 2008-CP-02-1647  
Case No. 2013-CP-02-2849  
Case No. 2013-CP-02-2850  
Case No. 2013-CP-02-2851

MICHAEL DEON BROWN, JAMES CURTIS, AND JANE DOE and JOHN DOE  
Numbers I, II, III and IV, by their proposed Guardian *ad Litem*, and Adele Pope, as  
Creditor/Proponent of Will of James Brown dated June 15, 1999 and on behalf of Others  
under S.C. Trust Code § 62-7-405.....Appellants,

v.

James B., Terry Brown, Tommie Rae Hynie and David Sojourner, Jr.,.....Respondents,

IN RE:

THE ESTATE OF JAMES BROWN, A/K/A JAMES JOSEPH BROWN

**MOTION TO DISMISS**

David C. Sojourner Jr., in his capacity as the Limited Special Trustee and Limited  
Special Administrator of the James Brown Trust and Estate (the "LSA"), moves to  
dismiss Appellant Adele Pope's ("Pope") appeal. Through her March 31, 2014 Notice of  
Appeal, Pope appeals the following Orders (the "Orders on Appeal") issued by the  
Honorable Doyet A. Early in *In Re: The Estate of James Brown, a/k/a James Joseph  
Brown*, Civil Action No. 2008-CP-02-1647 (the "Underlying Action"):

- December 16, 2013 and February 7, 2014 orders (collectively, the Severance Orders”) severing and then designating parties to Tommie Rae Brown’s omitted spouse claim (now Civil Action No. 2013-CP-02-2849), Tommie Rae Brown’s elective share claim (now Civil Action No. 2013-CP-02-2850), and James Joseph Brown II’s pretermitted child claim (now Civil Action No. 2013-CP-02-2851) (collectively, the “Severed Actions”);
- January 8, 2014 consent order dismissing without prejudice the cross-claim of Cinnamon Nicole Parris and LaRhonda Pettit which challenged the validity of the decedent’s Will, alleged undue influence and fraud;
- February 24 and March 10, 2014 form orders denying Pope’s Motion to Alter, Amend and Vacate the previously-listed three orders; and
- “All Orders issued...after June 13, 2013 which are the subject of an appeal pending in the South Carolina Court of Appeals....”<sup>1</sup>

Pope does not have legal standing to pursue this appeal because she is neither a party to the Underlying Action (in which all of these orders were issued) nor is she aggrieved by the Orders on Appeal. Moreover, the Orders on Appeal are interlocutory orders for which no exception in S.C. Code Ann. § 14-3-330 applies and, therefore, the orders are not appealable at this time.

**I. Pope is not a Party to the Underlying Action and is not Aggrieved by the Orders on Appeal.**

In this same case, Pope previously appealed Judge Early’s October 1, 2013 Interim Order appointing Russell L. Bauknight to administer the Estate and Trust and the LSA to defend the Will and Trust against all pending Will and Trust challenges. On January 30, 2014 this Court dismissed Pope’s appeal, finding:

Because “[o]nly a *party aggrieved* by an order, judgment, sentence or decision may appeal” and an appeal may only be taken “as provided by law[] from final judgment, appealable order or decision,” this appeal is dismissed. *See* Rule 201, SCACR (emphasis added); *see also Nance v. Nationwide Inc. Co.*; 273 S.C. 617, 619, 258 S.E.2d 105,

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<sup>1</sup> Pope’s non-specific appeal of “All Orders...” must be dismissed because Pope defines this class of orders as those already subject to another appeal pending before this Court.

106 (1979) (“An appeal filed by one who has ceased to be a party to a suit is a mere nullity.”) (internal quotation marks and citation omitted)).

(Emphasis and parenthetical phrases in original.) See Order Dismissing Appeal attached hereto as **Exhibit A**.

For those same reasons, the Court should dismiss Pope’s current appeal as Pope is here asserting the same bases for standing she previously asserted in her appeal of the October 1, 2013 order<sup>2</sup>.

**A. Pope is not a Party to the Underlying Action.**

In *Wilson v. Dallas*, the South Carolina Supreme Court upheld the lower court’s removal of 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 (2013). The Supreme Court remanded the case to the trial court with instructions: “upon proper application, to appoint fiduciaries to oversee...matters in accordance with the provisions for succession outlined in Brown’s trust and estate documents.”

In accordance with the Supreme Court’s directive, Judge Early issued the October 1, 2013 Interim Order in the Underlying Action. Pope appealed. Because the Supreme Court had upheld Pope’s removal from the Underlying Action, she was not a party to the Underlying Action and this Court dismissed her appeal of the October 1, 2013 Order. Nothing has happened since that dismissal to make Pope a party to the Underlying Action.

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<sup>2</sup> The case caption set forth in Pope’s March 31, 2014 Notice of Appeal establishes this.

Pope has tried to bootstrap her way into the position of “party” by seeking to be named guardian *ad litem* for various individuals, including one real person who is a party, but is already represented by counsel (Michael Deon Brown), one presumably real person who is not a party (James Curtis), and several Jane and John Does placed into one party’s case caption as place holders. In spite of Pope’s efforts, no court has authorized Pope to act in any capacity on behalf of the persons named above.

Pope additionally asserts her position as “Creditor.” Pope’s creditor’s claim against the Estate is addressed in a completely separate action, Civil Action No. 2013-CP-02-1337, which is not associated with the Underlying Action.

Pope’s other assertions as “Proponent of Will of James Brown dated June 15, 1999 and on behalf of others under S.C. Trust Code §62-7-405” have never been recognized by any court, are legally nonsensical, and equally without merit.

In sum, Pope does not have standing to appeal any of the orders at issue because she is not a “party” to the Underlying Action. *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.”); *Glenn v. E.I. Dupont De Nemours & Co.*, 254 S.C. 128, 134, 174 S.E.2d 155, 158 (1970) (action for wrongful death instituted by a discharged administratrix was a nullity and, therefore, properly dismissed).

#### **B. Pope is not Aggrieved by the Orders on Appeal**

Pursuant to Rule 201(b), SCACR, “[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) (emphasis added)). *See also 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 ....”).

The Orders on Appeal do not aggrieve Pope, as she is not a party to the Underlying Action. Moreover, Pope’s asserted appeal as an unrecognized representative of various real and fictitious persons does not give her appellate standing. “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)). Likewise, Pope cannot appeal the January 8, 2014 consent order of dismissal because it only affected the interests of Parris and Pettit, both of whom consented to dismiss their challenges to the Will.

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 held that persons with “insufficient,” “merely tangential,” and “merely peripheral” interests in the outcome of a case cannot participate in the proceedings or have standing to appeal final determinations from those proceedings. Pope’s interest in the Underlying Action 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.

## II. The Orders on Appeal are Non-appealable Interlocutory Orders.

### A. The Severance Orders

The Severance Orders were not final orders and, therefore, not appealable by Pope or any party to the Underlying Action at this time.

“Generally, a party<sup>3</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. “Absent some specialized statute, determining if an interlocutory order is immediately appealable depends on whether the order falls within one of several categories of appealable judgments, decrees, or orders listed in S.C. Code Ann. § 14-3-330 (1976 & Supp. [2002]).” *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004) (quotation omitted).

The Severance Orders possess none of the elements of finality under South Carolina standards. They do not expressly or implicitly dispose of issues of fact, fully determine the rights and liabilities of the parties, preclude further proceedings, or dispose of parties, issues, or subject matter of the Underlying Action. None of the four bases for appellate jurisdiction in Section 14-3-330 apply here.

In *Beckham Group, P.C. v. Snyder*, 315 S.W.3d 244 (Tex. App. 2010), the Texas Court of Appeals recognized: “When a suit is severed, two or more independent lawsuits result with their own final appealable judgments.” *Id.* at 246 (citations omitted). “Thus,

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<sup>3</sup> Consistent with Section I above, this ruling proceeds upon the accepted principle that only a “party” may appeal.

although a severance is not a final judgment, it may result in a final judgment.” *Id.* The Court concluded that a trial court order granting severance was not appealable. Similarly, here the Severance Orders split the Underlying Action into separate lawsuits and then named parties to the Severed Actions; the Severance Orders are not final, appealable, judgments and do not finally determine substantive rights of any parties. *See also Lackey v. Bramblett*, 139 S.W.2d 467, 469 (Ark. 2003) (recognizing that the trial court’s order granting severance did not discontinue the litigation and holding that an order granting severance not final for purposes of appeal).

**B. Consent Order Dismissing Cross-Claims of Cinnamon Nicole Parris and LaRhonda Pettit Without Prejudice**

It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right. A dismissal without prejudice is not an adjudication on the merits. *Compare Nelson v. QHG of South Carolina, Inc.* 354 S.C. 290, 580 S.E.2d 171 (Ct. App. 2003) (“A case that is dismissed ‘with prejudice’ indicates an adjudication on the merits....”), *aff’d in part, rev’d in part on other grounds*, 362 S.C. 421, 608 S.E.2d 855 (2005).

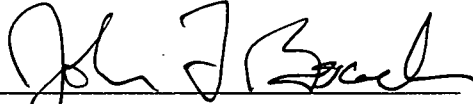
The January 8, 2014 consent order dismissed, without prejudice, challenges Parris and Pettit had asserted against the Will in the Underlying Action. Again, because Pope was not a party to the Underlying Action, she has no interest in this dismissal of Parris’ and Pettit’s challenges to the Will.

**CONCLUSION**

Pope’s appeal must be dismissed. Pope lacks standing to appeal because she is neither a “party” to the Underlying Action nor is she “aggrieved by” the Orders on

Appeal. Additionally, Pope's appeal must be dismissed because the Orders on Appeal are non-appealable interlocutory orders for which no exception under S.C. Code Ann. § 14-3-330 applies.

Respectfully submitted,



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Special Representative of the Estate of James Brown  
and Limited Special Trustee of the James Brown  
August 1, 2000 Irrevocable Trust Agreement

April 9, 2014