



On January 8, 2014 the Court heard oral arguments on the Motions to Determine Parties. At that time the Parties agreed that, although James B. [REDACTED] has not filed a motion to determine parties to his pretermitted child claim, the Court's ruling on these motions will govern all of the Severed Actions. After carefully considering the Motions to Determine Parties, the supporting and opposing Memoranda filed with this Court, and the oral arguments made by all counsel, the Court rules as follows.

Tommie Rae Brown asserts that the Court must exclude from the Severed Actions all Parties to the underlying case except David C. Sojourner, Jr., and then only in Mr. Sojourner's capacity as Limited Special Administrator of the Estate (LSA)<sup>1</sup>. In support, Ms. Brown cites, among other authorities, Sections 62-1-403(2)(ii) and 62-7-303 of the South Carolina Probate and Trust Codes, respectively, for the proposition that the LSA is the only party to the Severed Actions other than the Petitioners in those actions. Those statutory provisions read in relevant part:

**§62-1-403 Pleadings, when parties bound by others; notice**

...

(2) Persons are bound by order binding others in the following cases:

...

(ii) *To the extent there is no conflict of interest between them or among persons represented,*

...

orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; and

orders binding a personal representative<sup>2</sup> bind persons interested in the undistributed assets of a decedant's estate in actions or proceedings by or against the estate.

[emphasis added]

<sup>1</sup> Indeed, Tommie Rae Brown asserts that the Court should exclude Mr. Sojourner, in his capacity as Limited Special Trustee ("LST") of the James Brown August 1, 2000 Irrevocable Trust Agreement ("Trust"). See, Memorandum of Tommie Rae Brown re Motion for Determination of Parties: Omitted Spouse Share Matter, pp. 3-4.

<sup>2</sup> Because Mr. Sojourner has been appointed as LSA instead of personal representative, references in the SCPC to the personal representative apply here to the LSA.

**§62-7-303 Representation by fiduciaries and parents.**

(a) *To the extent there is no conflict of interest between the following beneficiary representatives and the person represented or among those being represented with respect to a particular question or dispute:*

...

(4) A trustee may represent and bind the beneficiaries of the trust with respect to questions or disputes involving the trust;

(5) a personal representative of a decedent's estate *may* represent and bind persons interested in the estate with respect to questions or disputes involving the decedent's estate . . . .

[emphasis added]

In accordance with §62-1-403, if the devisees of the Will ("Devisees") are not made parties to the Severed Actions, then orders issued in the Severed Actions would only bind the Devisees where there are no conflicts of interest among them or between them and the LSA. Likewise, under §62-7-303, the LSA *may* represent and bind non-party Devisees, but, again, only if there is no conflict among them or between them and the LSA.

There are patent conflicts among certain Devisees, between certain Devisees and Tommie Rae Brown, and between certain Devisees, Tommie Rae Brown on the one hand and the LSA and LST on the other. Among others, four of the devisees, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, and Larry Brown (the "Contesting Devisees"), along with Tommie Rae Brown, assert claims against the LSA and LST to set aside the Will and Trust, alleging undue influence, fraud, lack of intent, and illusory trust. Devisee Terry Brown expressly opposes these claims, supports the Will and Trust, and affirmatively seeks the Court's enforcement of the Will's uncontestability (*in terrorem*) clause against the Contesting Devisees. Devisee Daryl Brown also appears to support the Will and Trust.

Given the existence of these undeniable conflicts, Sections 62-1-403 and 62-7-303 suggest that orders issued in the Severed Actions will not bind the Devisees if they are not made

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parties. Likewise, because of these conflicts, Section 62-7-303 may or may not give the LSA the authority to “represent and bind” the Deviseses in relation to the Severed Actions.

If the Deviseses, Tommie Rae Brown, and James B [REDACTED] are made parties to all Severed Actions, then orders issued in those actions will bind them, removing the uncertainty caused by Section 62-1-403 if they are not made parties.

Likewise, making the Deviseses, Tommie Rae Brown, and James B [REDACTED] parties to the Severed Actions also removes the uncertainty placed upon the LSA and LST by Section 62-7-303. Making the Deviseses, James B [REDACTED], and Tommie Rae Brown parties to all Severed Actions, in turn, allows the LSA and LST to more effectively satisfy his fiduciary obligation to defend the Estate and Trust against the Will and Trust Challenges, as established in this Court’s October 1, 2013 Interim Order and the Probate Court’s October 10, 2013 Interim Order Appointing Limited Special Administrator.

Tommie Rae Brown argues that, because she has waived her right to any personal and household effects of every kind as described in the Will, only she, the Estate and the Trust are “interested persons,” under Section 62-1-201(2). As such, Ms. Brown argues that only she and the LSA can be parties to the elective share or omitted spouse claims. The definition of “interested person” does not support this assertion:

(23) “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]

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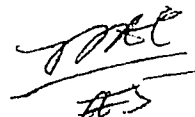
The Devisees meet this definition in several ways. They are "heirs." They are also "devisees." They are also "children." They are also "beneficiaries." In these capacities, they also have certain "priority for appointment as personal representative" under Section 62-3-203.

Moreover, the Devisees have "a property right in or claim against [the Estate]...which may be affected by the proceeding." A threshold determination that must be made in both the elective share and omitted spouse claims is whether Tommie Rae Brown is James Brown's surviving spouse. This determination could have a profound effect upon the Devisees' property rights in or claims against both the Estate and the Trust.

As a child of James Brown and a named Devisee of the Will, Terry Brown has an interest in seeing that his father's estate plan is carried out.

As children and intestate heirs of James Brown, Terry Brown and the other Devisees have potential property interests and/or claims against the Estate that "may be affected" by the Severed Actions. The Contesting Devisees and Tommie Rae Brown each seek to set aside the Will on grounds of undue influence, fraud, lack of intent, and illusory trust. They request that the Court set aside the Will and order that the Estate pass by the laws of intestate succession. See, for example, Tommie Rae Brown's December 19, 2007 Petition to Set Aside Informal Probate filed in a direct predecessor to this case. If Tommie Rae Brown is finally adjudged to be James Brown's surviving spouse, then she could take fully 50% of the Estate under the laws of intestate succession, reducing by half any claim that Terry Brown and the other Devisees might have under those laws.

The LSA's primary duty is defined by the Court's October 1 and 10, 2013 Appointment Orders, which is to defend James Brown's Estate against the claims made in the Will and Trust Challenges. In executing this duty, the LSA must act in the best interest of the Estate and

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successors to the Estate. Section 62-3-703(a). The LSA must execute his duty as a prudent person would, by considering the purposes, terms, distributional requirements and other circumstances of the Estate and Trust, exercising reasonable care, skill, and caution. Sections 62-3-703(a) and 62-7-804.

In light of these obligations and the uncertainty that would be created by excluding the Devises from the Severed Actions, in an abundance of caution, the Court believes it should resolve that uncertainty by allowing the Devises to the Will, Tommie Rae Brown, and James B [REDACTED] to participate fully as named parties in each of the Severed Actions. The Court sees no legal impediment to exercising its discretion in this fashion and finds that such action is in the best interests of the parties, while serving the goal of judicial economy.

For the reasons outlined above, it is hereby:

ORDERED that Tommie Rae Brown be designated as the Petitioner in the Severed Actions for her omitted spouse, 2013-CP-02-02849, and elective share, 2013-CP-02-02850, claims;

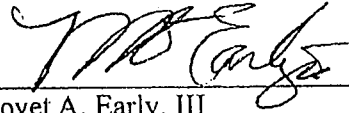
ORDERED that James B [REDACTED] be designated as the Petitioner in the severed Action for his pretermitted child claim: 2013-CP-02-02851;

ORDERED that David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, be designated as a Respondent in each of the Severed Actions: 2013-CP-02-02849, 2013-CP-02-02850, and 2013-CP-02-02851; and

ORDERED that all Devises of the Will, who are Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Terry Brown, and Daryl Brown, be designated as Respondents in each of the Severed Actions: 2013-CP-02-02849, 2013-CP-02-02850, and 2013-CP-02-02851.

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IT IS SO ORDERED.



Doyet A. Early, III  
Chief Administrative Judge  
Second Judicial Circuit

February 7, 2014

Bamberg, South Carolina