

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

RECEIVED

APR 22 2014

SC Court of Appeals

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

**RESPONSE TO APPELLANT'S RETURN AND OPPOSITION
TO MOTION TO DISMISS**

David C. Sojourner Jr., as Limited Special Trustee and Limited Special Administrator of the James Brown Trust and Estate (the "LSA"), responds to Appellant Adele Pope's ("Pope") Return and Opposition to the LSA's Motion to Dismiss ("Return"). Pope's Return does not enlighten the Court on any issues raised by the LSA's motion or change the need to dismiss her Appeal. Pope lacks legal standing to appeal and seeks to appeal interlocutory orders which are not appealable at this time.

POPE'S OWN POINTLESS ACTIONS ARE FORCING THE ESTATE TO EXPEND SIGNIFICANT RESOURCES.

Pope criticizes the Estate's expenditure of legal fees and asserts all parties but she are working to destroy James Brown's estate plan. Ironically, Pope makes these assertions in an appeal that has no legal basis, but is, nevertheless, forcing the Estate to expend significant resources.

Since the Supreme Court remanded this case to the Circuit Court in May, 2013, Pope has filed thousands of pages of motions and appeals. The LSA and his attorneys must take every one of Pope's filings seriously and respond as appropriate. Pope's baseless filings have *grossly* increased the Estate's expenditure of resources, including resources for the LSA to carry out his Court-ordered obligations.

As an example, Pope here appeals the January 8, 2014 Consent Order dismissing the challenge jointly asserted against the Estate by Cinnamon Nicole Parris ("Parris") and LaRhonda Pettit ("Pettit"). Parris and Pettit's challenge *sought to set aside* James Brown's estate plan by asserting James Brown was unduly influenced and defrauded into executing the Will and Trust. The LSA appropriately moved to dismiss Parris and Pettit's challenge and resolved that motion by a consent order wherein Parris and Pettit, through their counsel of record, voluntarily dismissed their challenge. Anyone purporting to work toward "saving the 'I feel Good' Trust" would applaud the LSA's efficient and certain elimination of this challenge to the Estate. Yet, Pope, through this Appeal, is inexplicably attempting to have this Court reinstate Parris and Pettit's challenge, forcing the LSA to expend substantial Estate resources in opposition. If Pope's Appeal succeeds, the Estate would again be exposed to Parris' and Pettit's challenge to set aside the James Brown Will and Trust. Pope's actions are senseless and costly.

THE COURT SHOULD DISMISS POPE'S APPEAL FOR THE SAME REASONS IT DISMISSED POPE'S APPEAL OF THE OCTOBER 1, 2013 INTERIM ORDER.

Pope's Return asserts the same grounds against the present motion to dismiss she asserted against dismissal of her appeal of Judge Early's October 1, 2013 Interim Order, also issued in the Underlying Action¹. This Court dismissed Pope's prior appeal on January 30, 2014, rejecting the same arguments Pope makes against dismissal of this Appeal. The Court should dismiss Pope's current Appeal for those same reasons.

THE LSA HAS STANDING TO ASSERT THIS MOTION TO DISMISS

In Section I of Pope's Return she asserts the LSA lacks standing to seek dismissal of Pope's present appeal. The LSA is the Court-appointed representative of the Estate and Trust and solely represents the Estate and Trust in the Underlying Actions. The LSA argued for the Estate and Trust in hearings resulting in the Orders on Appeal. Pope herself named the LSA as a party to this Appeal. Pope's argument that the LSA now lacks standing to seek dismissal of Pope's appeal is spurious.

Pope's Return frequently and incorrectly refers to the Personal Representative of the Estate (Russell Bauknight) as "Movant" and argues the LSA lacks standing to pursue this motion to dismiss because the Personal Representative's actions² somehow gave the LSA "unclean hands." Even if unclean hands were a legitimate defense to this motion to dismiss, Pope's argument ignores the trial court's clear separation of the LSA's actions and obligations from the Personal Representative's actions and obligations.

¹ Pope asserts on Page 6 of her Return "[t]here are more than a dozen 'Underlying Actions.'" Pope's Appeal only encompasses Civil Action Nos. 2008-CP-02-1647, 2013-CP-02-2849 (Tommie Rae Brown's newly severed omitted spouse claim); 2013-CP-02-2850 (Tommie Rae Brown's newly severed elective share claim); and 2013-CP-02-2851 (James Brown II's newly severed pretermitted child claim). These are the only four civil actions involved in this Appeal.

² While irrelevant to the LSA's Motion to Dismiss, Pope's recitation of the Personal Representative's alleged actions appears to have little, if any, factual basis.

In appointing Mr. Sojourner to defend the Estate against the Will and Trust challenges, the trial court expressly separated the LSA's role from the Personal Representative's role of administering the Estate. The Court appointed the LSA "solely, specifically, and exclusively for the purpose of defending the Trust and the Estate against the claims made in the Will and Trust Challenges." The Court specified the LSA's independence in this role, requiring "that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity...." October 1, 2013 *Interim Order*, p. 20.

The trial court's Interim Order therefore expressly precludes Pope from asserting the Personal Representative's actions as a defense against the LSA's Motion to Dismiss.

POPE IS NOT AGGRIEVED BY THE ORDERS ON APPEAL

In Section II of her Return, Pope asserts Michael Deon Brown, James Curtis, and the fictitious "Doe" defendants are all aggrieved by the Orders on Appeal and that Pope therefore has standing to pursue this Appeal. The LSA explains in his Motion to Dismiss why none of these parties are aggrieved by these Orders. Even if these so-called "Appellants" were aggrieved by the Orders on Appeal, *Pope* would not have grounds to appeal on their behalf. "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)

Pope must first establish at the trial court that she represents these parties before she can have standing to appeal on their behalf. None of Pope's trial court attempts to establish this representation have succeeded. This Court must therefore reject Pope's assertion that she represents these real and fictitious parties in this Appeal.

THE COURT CANNOT RELY UPON POPE'S FACTUAL OR LEGAL ASSERTIONS.

The Return contains numerous incorrect factual and legal statements. For example, the Return represents:

It is *undisputed* that Michael [Deon Brown], incarcerated in California, must have a GAL to protect his interests in the Hynie, Levenson Intestacy and James B. Proceedings. (emphasis added)

See Return at p. 20. This representation is false. Last Fall Pope moved (unsuccessfully) for the trial court to appoint her as Michael Deon Brown's Guardian *ad litem* ("GAL"), Michael Deon Brown, through his attorneys, filed an Opposition on November 21, 2013.

See **Exhibit A**. In Michael Deon Brown's Opposition, he stated:

Michael Deon Brown is a competent adult *who does not require a guardian ad litem*. (emphasis added)

Id. Michael Deon Brown clearly and directly disputes he "must have a GAL to protect his interests in the Hynie, Levenson Intestacy and James B. Proceedings."

The Return also represents on page 20:

The orders which are the subject of this appeal *finally determine* Michael's and other Appellant's rights to participate in these important cases. (emphasis added)

This representation, again, is false. The two Severance Orders on Appeal name certain parties to the Severed Actions and exclude *no* party. Michael Deon Brown may, through his counsel, move to intervene, under Rule 24, SCRCF. Only the denial of such a motion could finally determine Michael Deon Brown's right to participate in the Severed Actions.

A final example of the Return's inaccuracies is as follows:

The rights of all heir/Appellants to enter into fair arms'-length contracts with the Estate/"I Feel Good" Trust and cooperate in termination rights elections under the Federal Copyright Act is materially and adversely affected by these orders.

See Return at p. 20. To the contrary, there is nothing in the Orders on Appeal which precludes any party from entering into a contract with the Estate related to termination rights. Federal termination rights are entirely separate from the Underlying Actions and are not at issue in this Appeal.

POPE KNOWS SHE HAS NO LEGAL RIGHT TO ASSERT THIS APPEAL ON BEHALF OF MICHAEL DEON BROWN

By asserting she has standing to file this Appeal as Michael Deon Brown's "Proposed Guardian *ad litem*," Pope is representing she has legal authority to speak for Michael Deon Brown in this Appeal. Pope is well-aware she does not represent Michael Deon Brown, who is already represented in the Underlying Actions.

As discussed above, Pope unsuccessfully moved for the trial court to appoint her as Michael Deon Brown's guardian *ad litem*. In response, Michael Deon Brown's counsel filed a letter and Opposition on November 21, 2013. See **Exhibit A**. In that letter, attorney David Bell politely informed Pope and the trial court:

When Ms. Pope filed the motion and wrote the letter, she must have been unaware that Matt Bodman and I represent Michael Deon Brown. Furthermore, Ms. Pope must have been unaware that Matt Bodman and I have made an appearance in the captioned case on behalf of Michael Deon Brown.

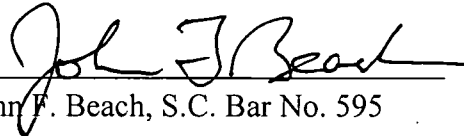
Id.

Pope is aware she does not represent Michael Deon Brown in any capacity as a result of her unsuccessful efforts to be appointed his legal representative. Her pursuit of this Appeal on his behalf is unsupportable.

CONCLUSION

For these reasons and those set forth in the LSA's Motion to Dismiss, the Court should dismiss Pope's Appeal.

Respectfully submitted,



John F. Beach, S.C. Bar No. 595

Lyndey Zwing, S.C. Bar No. 100804

1501 Main Street, 5th Floor (29201)

Post Office Box 2285

Columbia, South Carolina 29202

Telephone: 803-254-4190

Facsimile: 803-779-4749

john.beach@arlaw.com

Attorney for David C. Sojourner, Jr., as Limited
Special Representative of the Estate of James Brown
and Limited Special Trustee of the James Brown
August 1, 2000 Irrevocable Trust Agreement

April 22, 2014

Exhibit A

LAW OFFICE OF
DAVID B. BELL

619 GREENE STREET
POST OFFICE BOX 1011
AUGUSTA, GEORGIA 30903-1011

Received

NOV 25 2013

Adams and Reese LLP

DAVID B. BELL

SHARON BLAIR ENOCH

JOHN C. BELL
(1916-1967)

AREA CODE 706
TELEPHONE 724-1882
706-722-0222
FAX 706-722-2507
E-MAIL ADDRESS:
davidbell@davidbelllawfirm.com

November 21, 2013

The Hon. Doyet A. Early, III
Chief Administrative Judge
P. O. Box 90
Bamberg, SC 29003

Re: *James Brown Estate*

Dear Judge Early:

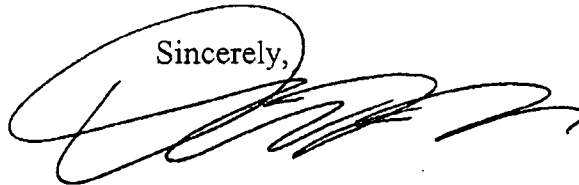
Permit this letter to respond to the November 18, 2013 letter written to Your Honor by Adele J. Pope. In her letter, Ms. Pope seeks to request Your Honor appoint her as the guardian ad litem of Michael Deon Brown.

When Ms. Pope filed the motion and wrote the letter, she must have been unaware that Matt Bodman and I represent Michael Deon Brown. Furthermore, Ms. Pope must have been unaware that Matt Bodman and I have made an appearance in the captioned case on behalf of Michael Deon Brown.

For your benefit, you will find enclosed a copy of the response filed by Michael Deon Brown opposing Ms. Pope's motion.

I am,

Sincerely,



David B. Bell

DBB:chm

cc: Ms. Adele J. Pope
All Counsel of Record

Received

NOV 25 2013

Adams and Reese LLP

LAW OFFICE OF
DAVID B. BELL

619 GREENE STREET
POST OFFICE BOX 1011
AUGUSTA, GEORGIA 30903-1011

November 21, 2013

DAVID B. BELL

SHARON BLAIR ENOCH

JOHN C. BELL
(1916-1967)

AREA CODE 706
TELEPHONE 724-1882
706-722-0222
FAX 706-722-2507
E-MAIL ADDRESS:
davidbell@davidbelllawfirm.com

Ms. Liz Godard
Aiken County Clerk of Court
P.O. Box 583
Aiken SC 29802-0583

Re: The Estate of James Brown a/k/a James Joseph Brown
C/A No. 2008-CP-02-1647

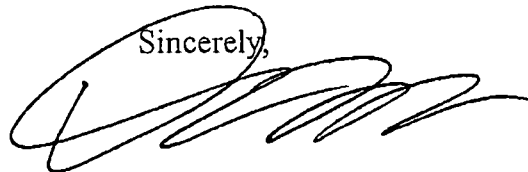
Dear Ms. Godard:

I enclose an original and one copy of the Response in Opposition to Appointment of Adele J. Pope as Guardian Ad Litem for Michael D. Brown in the captioned matter.

Please return a filed stamped copy in the enclosed self-addressed stamped envelope. Thank you for your attention to this matter.

I am,

Sincerely,



David B. Bell

DBB:chm

Enclosures: as stated

cc: All Counsel of Record

Received

NOV 25 2013

Adams and Reese LLP

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN) SECOND JUDICIAL CIRCUIT
)

IN RE: THE ESTATE OF JAMES BROWN) Case No.: 2007-CP-02-0122
a/k/a JAMES JOSEPH BROWN) Case No.: 2008-CP-02-1647
) Case No.: 2008-CP-02-0872
)

**RESPONSE IN OPPOSITION TO APPOINTMENT OF ADELE J. POPE
AS GUARDIAN AD LITEM FOR MICHAEL D. BROWN**

COMES NOW, Michael Deon Brown, by and through counsel, and opposes Adele J. Pope's motion to be appointed Guardian Ad Litem.

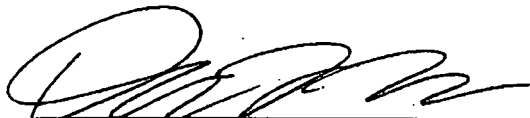
In opposition to Pope's motion to be appointed Guardian Ad Litem to Michael Deon Brown, he shows the Court as follows:

Michael Deon Brown is represented by Matt Bodman and David Bell in and for all matters dealing with the Estate of James Brown or the residual rights.

Michael Deon Brown is a competent adult who does not require a guardian ad litem.

Furthermore, Adele Pope, having been removed by the Supreme Court for cause, should not be allowed back in the case in any capacity.

So moved this 21st day of Nov., 2013.



DAVID B. BELL
David B. Bell, P.C.
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619 Greene St.
Augusta, GA 30901
(706) 724-1882



MATTHEW E. BODMAN
Matt Bodman, P.A.
South Carolina Bar No. 11143
1500 Calhoun Street
Columbia, SC 29201
(803) 806-8605

Attorneys for Michael D. Brown

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

RECEIVED

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SC Court of Appeals

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

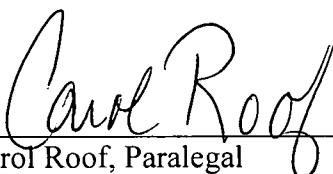
PROOF OF SERVICE

I, the undersigned paralegal of the law offices of Adams and Reese, LLP., attorney for David C. Sojourner Jr. (the "LSA"), as Limited Special Administrator of the Estate of James Brown a/k/a James Joseph Brown (the "Estate") and as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust"), do hereby certify that I have served all counsel in this action with a copy of the Response to Appellant's Return and

Opposition to Motion to Dismiss via electronic and first-class mail service this 22nd day of April, 2014:

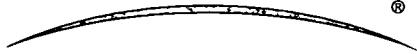
Counsel Served:

Robert N. Rosen, Esq. Rosen Law Firm, LLC 18 Broad Street, Suite 201 Charleston SC 29401	Albert Peter Shahid, Jr., Esq. Shahid Law Office, LLC 89 Broad Street Charleston SC 29401
Louis Levenson, Esq. Levenson & Associates 125 Broad Street, SW Atlanta GA 30303	David B. Bell, Esq. David Bell Law Firm 619 Greene Street Augusta GA 30903
Matthew Day Bodman, Esq. Matt Bodman, PA 1500 Calhoun Street Columbia SC 29201	William Joseph Barr, Esq. Barr Law LLC 108 N. Academy Street Kingstree SC 29556-3422
James Mixon Griffin, Esq. Lewis Babcock & Griffin, LLP PO Box 11208 Columbia SC 29211	S. Alan Medlin 1713 Phelps Street Columbia SC 29205
Adele J. Pope 1228 Walnut Street Newberry, South Carolina 29108	



Carol Roof, Paralegal

Columbia, South Carolina
April 22, 2014



April 22, 2014

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1205 Pendleton Street, Brown Building
Columbia, South Carolina 29201

RECEIVED

APR 22 2014

SC Court of Appeals

John F. Beach

Direct: 803.343.1269

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john.beach@arlaw.com

RE: *Michael Deon Brown, James Curtis, and Jane Doe and John Doe Numbers I, II, III, 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 v. James B., Terry Brown, Tommie Rae Hynie and David Sojourner, Jr. - In Re: the Estate of James Brown a/k/a James Joseph Brown*

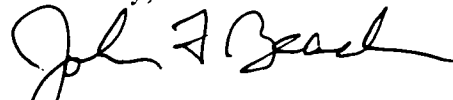
Case Nos. 2008-CP-02-1647, 2013-CP-02-2849, 2013-CP-02-2850,
2013-CP-02-2851, A&R File No.: 022853-000001

Dear Ms. Kitchings:

On behalf of David C. Sojourner, Jr., in his capacity as Limited Special Trustee and Limited Special Administrator of the James Brown Trust and Estate, I am enclosing the original and six (6) copies of the Response to Appellant's Return and Opposition to Motion to Dismiss. Please file the original and return the clocked copy via the bearer of these documents.

By copy of this letter, we are serving this document upon all parties in this action, and enclose our Proof of Service to that effect.

Sincerely,



John F. Beach

JFB/cr

Attachments

cc: Mary Frances Jowers, Esq.
J. David Black, Esq.
David C. Sojourner, Jr., Esq.
All parties of record