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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-002582 (Order, S.C. Ct. App., filed May 22, 2014)

Supreme Court Appellate Case No. 2014-001279

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others.....Plaintiffs,

v.

Albert H. Dallas and others,.....Defendants.

Of whom Adele J. Pope, individually and on behalf of Others under South Carolina Trust
Code Section 62-7-405, is the.....Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Ray Hynie are.....Respondents.

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown a/k/a James Joseph Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

RETURN TO PETITION FOR WRIT OF CERTIORARI

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Irrevocable Trust Agreement*

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The court of appeals dismissed Petitioner Adele Pope's ("Pope") appeal from the circuit court's interim order ("Interim Appointment Order") temporarily appointing Russell L. Bauknight ("Bauknight") as the Personal Representative and Trustee of the James Brown Estate and Trust, and temporarily appointing David C. Sojourner Jr. ("Sojourner") as Limited Special Administrator and Limited Special Trustee of the Estate and Trust. Although *not* a party to this proceeding in the circuit court, Pope filed a Notice of Appeal from the Interim Appointment Order. She represents *no one*. She has *no* legal interest in the James Brown Estate and Trust. Acting *pro se*, she is asking this Court to provide her with the authority to challenge these appointments. It is telling to note that *everyone* who has a legal interest in the Estate and Trust, and that includes some heirs who support the estate plan and others who do not, had no objection and consequently are nowhere to be found in this appeal.

There is nothing significant about this case. The court of appeals correctly dismissed Pope's appeal because the Interim Appointment Order is not appealable, and Pope has not been aggrieved by it. In an effort to create an appellate foothold, Pope's Petition contains extraneous arguments that have nothing to do with this case and bear no resemblance to the reality of the Estate and Trust's affairs. Pope's "writings" are undermined by the absence of any interested party; her meritless arguments are supported by nothing more than her own briefs and affidavits. The factual findings of the circuit court contradict her arguments against Bauknight's service.

Funds that would otherwise be deposited into a scholarship reserve fund are being directed to litigation costs in order to prevent Pope, a former fiduciary *who was removed for cause*, from further interfering in the Estate and Trust. Pope's Petition should be summarily denied. Respectfully, this Court should put an end to Pope's intermeddling.

I. The Interim Appointment Order & Background Information

A. Background Information

On May 8, 2013, this Court handed down its final decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Following entry of the remittitur at the Aiken County Clerk of Court, on May 29, 2013, the circuit court held a status conference with all interested parties to discuss how to proceed.¹ (Order, p. 2 (App. p. 9)). Thereafter, on June 13, 2013, the circuit court issued an order that, among other things, required all individuals seeking the position of Personal Representative and Trustee of the James Brown Estate and Trust to file an application by July 29, 2013. (Order, p. 2 (App. p. 9)).

The circuit court received six applications. Pope, of course, did not submit an application. Bauknight and Sojourner were two of the applicants; they served their applications on all interested parties on July 29, 2013. (Order, p. 2 (App. p. 9)). On September 4, 2013, the circuit court held a hearing to address each applicant and receive their sworn testimony. (Order, p. 3 (App. p. 10)). One of the applicants was unable to attend the September 4, 2013 hearing. As a result, the record was held open and the applicant appeared before the circuit court on September 11, 2013. (Order, p. 3 (App. p. 10)). At the conclusion of the hearing, the circuit court provided ten days for all applicants to file written opposition to any other applicant. (Order, p. 3 (App. p. 10)).

On October 1, 2013, the circuit court issued the Interim Appointment Order that temporarily appointed Bauknight and Sojourner. This order provides that Bauknight will continue to manage the day-to-day affairs of the Estate and Trust and that Sojourner will, acting independently of Bauknight, defend the Estate and Trust against the claims made in the Will and Trust challenges. (Order, pp. 13, 20 (App. pp. 20, 27)). The Interim

¹ Pope was allowed to attend this status conference.

Appointment Order further provided that, “[u]pon the conclusion of all Estate litigation, this Court will revisit this interim determination.” (Order, p. 13 (App. p. 20)).

Pope argues that the Interim Appointment Order’s temporal limitation—“[u]pon conclusion of all Estate litigation”—should be translated to “mean[] when everything is over.” (Petition, p. 16). The James Brown Estate and Trust, however, should last for untold decades, benefitting hundreds, if not thousands, of young students. Pursuant to the circuit court’s order, permanent fiduciaries will be appointed to oversee the scholarship trust and any other Estate issues that remain after the litigation has been concluded.

The circuit court’s decision to enter an interim order followed directly from two factual conclusions: (1) what it saw as a critical need, at this time, for continuous administration of the Estate and Trust by Bauknight while Sojourner defends the estate plan, and (2) the imposition of unnecessary financial burdens, at this time, of adding more fiduciaries. (Order, pp. 11-13 (App. pp. 18-20)).

The circuit court’s factual concern for the continuous administration of the Estate and Trust was tethered to the increasing momentum of the Estate and Trust. The circuit court noted that, “Mr. Brown passed away nearly seven years ago. . . . As detailed above, under Mr. Bauknight’s leadership, the Estate and Trust are poised to launch a series of public events (the documentary, the life story movie, etc.) that should re-catapult James Brown and his musical legacy onto the world stage.” (Order, p. 12 (App. p. 19)). Continuing, the circuit court noted that, “these actions should greatly benefit Mr. Brown’s testamentary plan for scholarships for children in financial need through increased funding of the scholarship reserves.” (Order, p. 12 (App. p. 19)). Against that backdrop, the Court noted that, at this time, it was “reluctant to interrupt these gains.” (Order, p. 12 (App. p. 19)).

The circuit court's concern for the financial burden of adding more fiduciaries, at this time, was tied to the history of *this* Estate and Trust, and the reality of the financial burden attendant to more fiduciaries. The circuit court made this point as follows:

The Estate is presently defending against \$10 Million in fee claims filed against it by the previous personal representatives. Adding more personal representatives and trustees, at this time, could detrimentally increase the personal representative and trustee fee burden to the Estate and Trust. The addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire the institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

(Order, p. 8 (App. p. 15)). The circuit court went on to note that, "I find that it is simply not practicable for the Estate and Trust to bear the additional cost and expense associated with multiple additional fiduciaries . . . until it is demonstrated that the Estate and Trust can satisfy the tremendous liabilities already created by the service of the many *prior* fiduciaries and their professional advisors." (Order, p. 11-12 (App. pp. 18-19)) (emphasis added).

The circuit court issued its Interim Appointment Order on October 1, 2013, which concluded as follows: "This Interim Order is temporary. The [circuit] [c]ourt will revisit the appointment of fiduciaries upon the conclusion of all Estate litigation." (Order, p. 21 (App. p. 28)).

Both Messrs. Bauknight and Sojourner owe fiduciary duties to the Estate and Trust, and both have an unflinching obligation to administer and defend the estate plan crafted by the late James Brown. Messrs. Bauknight and Sojourner are not aligned with any of the parties seeking to invalidate James Brown's estate plan. To be very clear, Messrs. Bauknight and Sojourner are working independently, and are steadfastly committed, to uphold the late James Brown's estate plan against all challenges.

B. Pope is the Only Individual Challenging the Order

As noted above, Pope is the only person challenging the Interim Appointment Order. There is a split among James Brown's heirs as to whether the estate plan was validly enacted, or fraudulently procured. Notwithstanding those divergent views (held by heirs actively involved in the ongoing lower court proceedings), it is instructive that not one of James Brown's heirs or claimed to be heirs is challenging the Interim Appointment Order. It is also instructive that Pope does not represent any heirs. She represents only herself. And she does not have any legal interest in the future of the Estate and Trust.

C. Pope Seeks to Re-Write History

It is apparent that Pope is pursuing this appeal in an effort to re-write history. In order to advance her agenda, Pope is needlessly causing the Estate and Trust to waste scholarship funds. For purposes of completeness, Bauknight will respond to some of the more egregious misstatements set forth in her prior briefing at the court of appeals and this Petition.

1. *Incorrect History of Breach of Fiduciary Duty Suit*

In *Wilson v. Dallas*, this Court noted some of the actions that supported Pope's for-cause removal as a fiduciary. It is important to note that those actions, and others, served as a foundation for the breach of fiduciary duty civil action filed against Pope by her successor and some of James Brown's heirs. Pope intimates, (Petition, pp. 2-3), and sometimes explicitly states, (App. p. 44), that the 2010 breach of fiduciary duty action was filed for the purpose of forcing her to abandon the *Wilson v. Dallas* appeal. That argument has no basis in fact and is meritless. The action alleges that Pope committed serious breaches of her fiduciary duties, and those actions damaged the Estate and Trust.

That action was filed in 2010 because some of the factual bases for the claims fell within the Trust code's one-year statute of limitations. S.C. Code Ann. § 62-7-1005. That statute provides that a party has one year to file suit after receipt of a "report that adequately disclosed the existence of a potential claim." § 62-7-1005(a).

2. *Incorrect Claims of Bauknight Disloyalty*

At the court of appeals, the panel asked Pope to brief the appealability of the Interim Appointment Order. In her memorandum, Pope wrote that Bauknight "has declared his intention to dismantle it [*i.e.*, the estate plan]." (App. p. 49 (first full sentence of the page)). Pope did not provide any citation, proof, or evidence to support that statement—and she could not, because the statement is incorrect. In that same memorandum, Pope also wrote that, "[b]y August 20, 2013, Bauknight had joined the chorus, saying he was going to follow the 'roadmap' the Supreme Court gave him to redo the settlement 'to a T.'" (App. p. 60 (second full sentence of the page)). That statement is also not correct. The "roadmap" language she cited came from the August 20, 2013 deposition of Mr. Bauknight.² Here is what he actually said:

Q. When you say defend the estate and trust, do you mean to defend the documents that constitute the 2000 will and trust of James Brown as written?

² The deposition was taken in the federal suit wherein James Brown's grandson, William Forlando Brown, filed a lawsuit against Pope seeking to enjoin her from acting as trustee. That suit was filed on January 2, 2008; Pope asserted counterclaims generally alleging the suit was filed for improper motives. The case was stayed after the settlement order was entered. When it later became clear that Pope would never again serve in a fiduciary position, the grandson dismissed his claims. Pope, however, pursued her counterclaims against the grandson. Although her claims addressed facts that occurred before Bauknight was even appointed, Pope insisted that Bauknight present for a deposition. As an aside, one of the specific forms of relief that Pope sought was to have the district court transfer all of the grandson's interest in the Estate and Trust to her, individually. *Brown v. Pope et al.*, 3:08-cv-00014-WOB (Doc. 307-1, p.12). On March 28, 2014, the District Court entered summary judgment against her, and on June 16, 2014, denied her motion for reconsideration. Pope recently filed a notice of appeal.

A. Yes. That's my job. That is my job. Frankly, I served -- until the Supreme Court ruled otherwise, I served under the settlement agreement because that was the law of this case. This -- Judge Early said that was the proper roadmap. I served under that roadmap. I followed that roadmap. That roadmap has been torn up by the Supreme Court. Not a problem in the world for me. I've got a new roadmap to follow and I will follow that roadmap and I will do it to the best of my ability. This is the -- this is my job and I take it very seriously. There's no one more independent when it comes to this than I am. I'm straight down the line and I will defend it vigorously.

....

I've got a new roadmap, and I'm going to follow this new roadmap to a T.

(*Brown v. Pope et al.*, 3:08-cv-00014-WOB (Doc. 305-5) (Bauknight Deposition, p. 100 ln. 12 - p.101 ln. 5; p. 105 ln. 15-17)).

At page 12 of her Petition, Pope argues that in "July 2012 Bauknight paid Buchanan \$500,000 from Brown's estate to release Tommie Rae, the AGand [sic] others from his counterclaims in the Wingate Suit." (Petition, p. 12). The truth, however, is that the Estate and Trust negotiated and entered into a global settlement with Mr. Buchanan and pursuant to that settlement the parties exchanged mutual releases.

Also on page 12 of her Petition, Pope argues that Bauknight paid the Sweeny, Wingate and Barrow law firm over \$500,000 in late 2012 for their work on the breach of fiduciary suit against her. What she does not mention, however, is that the funds were designated specifically for use in retaining and paying expert witnesses. She also does not mention that \$500,000 has been returned to the Estate and Trust because that case has been placed in abeyance.

On page 14 of her Petition, Pope alleges that an agent of the Estate helped Tommie Rae Hynie Brown ("Tommie Rae") "file copyright termination notices." (Petition, p. 14). That is not a correct statement. The truth is that Tommie Rae solicited

help from the Estate and Trust's music manager in California; the music manager called Bauknight and he (Bauknight) instructed the music manager to do nothing to aid her.

Finally, Pope alleges that "[e]very act since October 2013 by Bauknight or his appointee has damaged the 'I Feel Good' Trust; helped to destroy the 'I Feel Good' Trust's copyrights in favor of Tommie Rae; and helped defeat the interests or [sic] Petitioner; at least HALF of Brown's real heirs; and all others who seek to save the 'I Feel Good' Trust from a second dismemberment." (Petition, p. 14). With the exception of the Estate and Trust's objection to Pope's fee claim for millions of dollars, these argumentative words have no relationship to reality.

Pope seeks to convince anyone who will listen that no one but her is interested in protecting the Estate and Trust. Those words, however, do not comport with the factual findings that the circuit court made in the Interim Appointment Order. In that order, the circuit court acknowledged Bauknight's service and articulated specific examples of his positive work. (Order, pp. 4-8 (App. pp. 11-15)). These acknowledgements provide a reviewing court the benefit of having those factual findings when analyzing Pope's "writings."

Pope's refusal to comply with this Court's decision in *Wilson v. Dallas* flows from her refusal to accept the fact that her services, as this Court held, are "not in the best interests of the Estate," *Wilson*, 403 S.C. at 449, 743 S.E.2d at 767, and that the millions of dollars in fees she seeks is exorbitant. Her repeated actions are needlessly wasting Estate and Trust resources.

II. What Has Happened After Remand Ordered in *Wilson v. Dallas*

Before turning to the legal arguments that are the subject of Pope's petition, it may be helpful to update the Court on the status of the underlying litigation. After this

Court vacated the settlement agreement in *Wilson v. Dallas*, the previous alignment of the parties shifted. With the settlement vacated, adversarial litigation resumed. Sojourner is now defending the Estate and Trust against the claims made in the Will and Trust challenges. Supporting him in that effort is one of James Brown's sons, Terry Brown. The remaining children who were named in the Will and Tommie Rae are attempting to set aside the estate plan. A more detailed update on the status of the litigation follows.

A. Spousal Claim

The parties have agreed to a summary judgment briefing schedule on the single issue of whether Tommie Rae is the surviving spouse of the late James Brown. On September 30, 2014, the parties will argue cross motions for summary judgment on this precise issue. If the Estate and Trust wins that argument, then that case is over, unless an appeal is filed. But even if summary judgment is granted in favor of Tommie Rae, as this Court noted in *Wilson v. Dallas*, she must still prove that the prenuptial agreement is not enforceable. 403 S.C. at 440, 743 S.E.2d at 762. Further, again as this Court noted in *Wilson v. Dallas*, even assuming Tommie Rae could meet that burden, she would still have to prove that she was not intentionally omitted from the Will. *Id.* at 441, 743 S.E.2d at 762. For her omitted spouse claim, Tommie Rae must also show that James Brown made no transfers to her outside of the Will that were intended to be in lieu of a testamentary transfer. S.C. Code Ann. §62-2-301.

B. Undue Influence Claim

All of the children named in the Will (excluding Terry Brown) are seeking to set aside the estate plan. Tommie Rae is also seeking to set aside the estate plan. All claimants contend the estate plan is subject to attack based upon undue influence. The parties are in the midst of discovery on this issue.

C. Update on Other Claimed Children of James Brown Not Mentioned in the Will

Cinnamon N.M. Paris and LaRhonda Petit asserted claims that they were putative heirs of James Brown and that his estate plan should be set aside for undue influence. Their claims have been dismissed. While these unsuccessful claimants did not appeal, Pope did.³

A California resident named Michael Deon Brown has successfully petitioned the circuit court to recognize that he is a lawful heir of James Brown.⁴ Michael Brown provided sufficient documentation of paternity to meet his burden of proof and the circuit court issued an order acknowledging that Michael Brown is an heir of the late James Brown. Michael Brown is not challenging the validity of the estate plan.

Jeanette Mitchell has petitioned the circuit court to recognize her as a lawful heir of James Brown. The circuit court recently ruled that, although Jeanette Mitchell filed her claim outside of the timeframe set forth in §62-2-109, the circuit court would not dismiss her claim, finding that her facts fit within this Court's holding in *Parker v. Parker*, 313 S.C. 482, 443 S.E.2d 388 (1994).

The Estate and Trust moved the circuit court to issue an order requiring James B. (Tommie Rae's son) to undergo supervised DNA testing to determine the validity of his claim as an omitted child. The circuit court subsequently issued an order, and James B. underwent supervised testing. On June 10, 2014, the results were released. For now, the results of that test are confidential, pursuant to the circuit court's May 21, 2014 Protective

³ On June 16, 2014 the court of appeals dismissed that appeal, noting that she was not a party and had not been aggrieved by the order. The appellate case number is 2014-000794.

⁴ Pope mentions Michael Deon Brown in her petition. She does not represent him. He is represented by David Bell, of Augusta, Georgia, and Matthew Bodman, of Columbia, South Carolina.

Order. James B. does not seek to set aside the estate plan; however, he is making a claim as an omitted child. Like his mother, Tommie Rae, he must (assuming the DNA results are favorable) prove that James Brown did not intentionally omit him from his Will and that James Brown made no transfers to him outside of the Will that were intended to be in lieu of a testamentary transfer. S.C. Code Ann. § 62-2-302.

D. Creditor Claims Against the Estate and Trust

At the time of Bauknight's first appointment in 2009, there were twenty-six creditor claims pending against the Estate and Trust. Since remand the Estate and Trust have continued to work diligently to resolve all of the claims. At present, there are only five remaining claims: (1) Dallas' claim; (2) Pope's claim; (3) a claim by the ALPS Corporation for monies advanced to Pope's attorneys for their fees in the federal case filed by William Forlando Brown, *see supra* n.2; (4) a claim by Charles Bobbit for pre-death personal management services; and (5) a claim by Intrigue for music management services.

E. Pope

As this Court is well aware, Pope was removed from her previous fiduciary position for cause. In *Wilson v. Dallas*, this Court unequivocally held:

Appellants [Pope and 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.

403 S.C. at 448-49, 743 S.E.2d at 766-67.

Pope was not involved in any of the proceedings below as this Court specifically affirmed her removal for cause as a fiduciary. We believe that this Court's holding in *Wilson v. Dallas* contemplated that Pope's involvement with the Estate and Trust as a fiduciary or otherwise was over.

III. Standard for Writ of Certiorari

In addition to Pope not having standing to involve herself in this litigation, there is nothing significant about this case. It involves the application of settled law regarding standing and the appealability of certain types of orders. Respectfully, there is no basis for this Court to grant the Petition for Writ of Certiorari. Rule 242(b), SCACR, sets forth the guidelines for determining whether this Court should utilize its discretionary power to grant the writ. While these factors are not controlling in the Court's decision, the present absence of all of these factors should counsel against the Court exercising its discretionary authority.

A. Rule 242 Considerations

1. Novel Questions of Law

There are no novel questions of law. The question is whether a non-party may appeal from an interim order appointing temporary fiduciaries to an estate and trust. The answer to that question is clearly no.

2. Dissent at the Court of Appeals

The court of appeals decision did not contain a dissent. The full panel decided to dismiss the appeal, and affirmed that decision upon reconsideration.

3. *Court of Appeals Decision Conflicts with Supreme Court Decision*

There is no conflict. The court of appeals faithfully applied this Court's precedent and the appellate court rules promulgated by this Court.

4. *Substantial Constitutional Issues*

There are no constitutional issues involved. Pope contends that the Interim Appointment Order violated her due process rights. (Petition, p. 16). She argues that the "summons and petition were not served . . . [and that there] was no proper notice." (Petition, p. 16). Because Pope has no legal interest in the Estate and Trust, she was not served with Bauknight and Sojourner's applications and she did not receive notice from them because she was not entitled to notice. There are no constitutional issues present in this case.

5. *Federal Question that Conflicts with a United States Supreme Court Decision*

The court of appeals applied state law. This factor is not applicable.

B. Other Considerations

Again, there is nothing significant about this case. Pope does not have standing, and the Interim Appointment Order is not appealable. The court of appeals correctly dismissed the appeal. In an effort to manufacture an appellate foothold, Pope has made extraneous arguments that have nothing to do with this case and bear no resemblance to the reality of the Estate and Trust's affairs. Pope's "writings" are undermined by the absence of any interested party in this appeal; her speculative arguments are supported by nothing more than her own briefs and affidavits. The factual findings of the circuit court contradict her arguments. Funds that should be deposited into a scholarship reserve fund are being directed to pay litigation costs unnecessarily incurred by Pope's frivolous lawsuits and appeals.

IV. Pope is Not a Party & Lacks Standing to Appeal

The court of appeals correctly concluded that Pope lacks standing to appeal. It is important to clearly frame the issue presented. Pope does not represent any of James Brown's heirs. Nor does she represent the Estate and Trust. She represents *only* herself and she has *no* cognizable legal interest in who serves as the interim Personal Representatives and Trustees.

A. Pope is Not a Party

Pope is not a party. Once the Aiken County Clerk of Court received the remittitur, Pope's involvement in the Estate and Trust litigation ceased. "An appeal filed by one who has ceased to be a party to a suit is a mere nullity." *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 1065 (1979). "A party cannot appeal from a decision which does not affect his or her interest . . ." *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002). Pope's appeal is a nullity and should be treated as such.

B. Pope was Not Aggrieved

This is an appeal from an interim order appointing temporary fiduciaries. Pope was not appointed, did not apply to become one, and indeed could not apply to be a fiduciary because the circuit court and this Court had already determined that her continued participation is not in the best interests of the Estate. To have standing to appeal from an order, Pope must be an "aggrieved party." Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, or sentence may appeal."). To be an aggrieved party, 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).

Other than her claim against the Estate for fees, which is a separate and standalone case pending in the circuit court, Pope has no interest in the Estate and Trust and cannot pursue 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 . . .”).

C. Other Arguments Related to Standing

In her petition, Pope cursorily sets forth numerous arguments to support her claim that she has standing to appeal. Not one of them has any merit, as explained below.

1. *Pope Does Not Have Standing Under S.C. Code Ann. § 62-7-405*

Pope claims to have standing as an “other” under S.C. Code Ann. § 62-7-405. Subsection (c) reads as follows: “The settlor of a charitable trust, the trustee, and the Attorney General, *among others* may maintain a proceeding to enforce the trust.” (emphasis added). The term “others” is not defined by the statute. For purposes of this appeal, it is safe to say that a former trustee who was removed for cause and because 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. *Wilson*, 403 S.C. at 449, 743 S.E.2d at 767.

2. *The Interim Appointment Order Does Not Affect Pope*

Pope writes the following regarding the Interim Appointment Order: “Her property, profession and even liability even liberty are at stake.” (Petition, p. 20). She provides nothing to support this assertion. And the Interim Appointment Order does no

such thing. It merely paves the way, at this time, for the continued successful and orderly administration of the Estate and Trust and the defense of James Brown's estate plan until litigation involving the Estate and Trust is concluded.

3. *Pope's Fee Claim Does Not Give Her Standing*

Pope argues that she is a party to this action because she is a "creditor." (Petition, p. 20). Pope's claim as a creditor, in which she seeks, as the Court is well aware, millions of dollars in fees, is presently pending in Aiken County under a separate and standalone civil action. Her creditor's claim is not affected by the Interim Appointment Order and does not give Pope standing to re-insert herself in the Estate and Trust litigation, especially when this Court has held that her continued service was not in the best interests of the estate. *Wilson*, 403 S.C. at 447-49, 743 S.E.2d at 766-67; *cf.* S.C. Code Ann. § 62-3-608 ("Termination [of the personal representative] does not affect the jurisdiction of the court over the personal representative, but terminates his authority to represent the estate in any pending or future proceeding.").

4. *Pope Does Not Have Public Importance Standing*

Pope argues that "[she] and Buchanan⁵ have Public Interest Standing" to challenge the Interim Appointment Order. (Petition, p. 20). Pope is likely referring to the "public importance" doctrine. It is of no benefit to her because it is being raised for the first time in her Petition. Accordingly, it is not properly before this Court. *Norton v. Opening Break of Aiken, Inc.*, 319 S.C. 469, 470, 462 S.E.2d 861, 862 (1995); *accord* Rule 242(d)(2), SCACR.

As to the merits of this claim: first, Buchanan is not a party to this appeal. Second, as discussed in Part IV.B., *supra*, Pope is not an aggrieved party. Thirdly, this

⁵ Buchanan does not challenge the Interim Appointment Order.

Court has already held that Pope's involvement is not in the best interests of the Estate and Trust. *Wilson*, 403 S.C. at 447-49, 743 S.E.2d at 766-67. Finally, "[t]he key to the public importance analysis is whether a resolution is needed for future guidance." *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). Assuming Pope has standing, which clearly she does not, the question before the Court is whether an interim appointment order of an estate and trust fiduciary is subject to appeal. Respectfully, the resolution of that issue is not needed for future guidance.

5. *Petitioner's Counterclaims in Other Litigation Do Not Create Standing*

Pope argues that she has standing to challenge the Interim Appointment Order because she has counterclaims in other litigation. Pope does not explain how the presence of counterclaims in other separate civil actions creates standing for her to challenge the Interim Appointment Order. Her argument is without merit.⁶

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

The Interim Appointment Order is temporary. It is set to expire at the conclusion of the Will and Trust challenges. Contrary to Pope's assertions, the Estate and Trust will live on long past the resolution of these challenges. Once the challenges are resolved, the circuit court will have the opportunity to enter a final order appointing permanent personal representatives and trustees. The Interim Appointment Order is simply not appealable.

"The right of appeal arises from and is controlled by statutory law." *EnerSys Del., Inc. v. Hopkins*, 401 S.C. 615, 616, 738 S.E.2d 478, 479 (2013). "Generally, a

⁶ Summary judgment was granted against Pope on her counterclaims in the federal suit, and reconsideration of that Order was denied. *See supra* n.2. Pope recently filed a notice of appeal in that case.

party^[7] may only appeal from a final judgment and piecemeal appeals should be avoided because most errors can be corrected through a new trial.” *Id.* at 617, 738 S.E.2d at 479. According to this 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 Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). Here, the Interim Appointment Order appoints fiduciaries on a temporary basis and is set to expire at the conclusion of the Will and Trust challenges.

An order may be appealable if it falls within an exception to Section 14-3-330. *EnerSys*, 401 S.C. at 617, 738 S.E.2d at 479. As it relates to the subject appeal, none of these exceptions apply. They are as follows: orders: (1) that pass upon the “merits”; (2) that are made in a “special proceeding”; (3) that relate to an “injunction” or the “appointment of a receiver”; and (4) that affect a “substantial right” that “determines the action and prevents a judgment from which an appeal might be taken.” S.C. Code Ann. § 14-3-330. The Interim Appointment Order does not pass upon the merits of any litigation involving Pope; the Interim Appointment Order does not follow from a special proceeding; the Interim Appointment Order does not relate to an injunction or the appointment of a receiver; and the Interim Appointment Order does not affect a substantial right of Pope.

VI. Bauknight Does Not Have a Conflict

Pope boldly states that Bauknight is the “agent for Tommie Rae and her son.” (Petition, p. 20). That is an incorrect statement. The Interim Appointment Order correctly addresses this issue. In discussing the appearance of a conflict of interest, the circuit court noted that:

⁷ As noted in Part IV.A., *supra*, Pope is not a party.

The Court does not believe that a conflict of interest exists. Mr. Bauknight was bound, as a fiduciary, to follow the prior settlement agreement. That settlement agreement has now been overturned. Accordingly, Mr. Bauknight has a fiduciary duty and must defend the Will and Trust against all challenges.

(Order, p. 9 (App. p. 16)). Bauknight also addressed this issue during his sworn testimony in the federal case discussed in Part I.C.2, *supra*, at pp. 6-7. The sworn testimony is incorporated and restated here.

Bauknight is not an agent for any of the litigating parties. He has an unflinching obligation to administer the James Brown estate plan in a manner that satisfies his fiduciary obligations, and he has done just that. Nothing that Pope has written can change that fact.

VII. The Interim Appointment Order Does Not Violate *Wilson v. Dallas*

In *Wilson v. Dallas*, this Court ruled that “[t]he circuit court should, upon proper application, appoint fiduciaries to oversee these matters in accordance with the provisions for succession outlined in Brown’s trust and estate documents.” 403 S.C. at 449, 743 S.E.2d at 767. This Court further noted that, “[t]he circuit court may consider at that time whether Bauknight should be appointed to fill a fiduciary position.” *Id.* at 449, 743 S.E.2d at 767. The circuit court provided a thorough analysis in its Interim Appointment Order.

Pope claims, without explanation or supporting argument, that the Interim Appointment Order violates this Court’s mandate. (Petition, p. 21). Instead, she focuses the reader on the date of death valuation of the James Brown Estate and makes other misinformed and incorrect statements. It is important to again state the facts: The Internal Revenue Service analyzed the valuation that formed, in part, the date of death value of the Estate. And the Internal Revenue Service *accepted that valuation without*

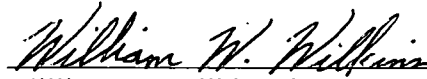
exception. Further, the date of death valuation is not germane to the legal issues before the Court.

The circuit court's decision to temporarily appoint two fiduciaries, as opposed to three, was clearly articulated as stop-gap measure to strengthen and promote the lasting legacy of the Estate and Trust. (Order, p. 12-13 (App. pp. 19-20). "[T]he Estate and Trust are poised to launch a series of public events (the documentary, the life story movie, etc.) that should re-catapult James Brown and his musical legacy onto the world stage. These actions should have a tremendous positive impact to the Estate and Trust, both in terms of good will and financial gain" which "should greatly benefit Mr. Brown's testamentary plan for scholarships for children." (Order, p. 12 (App. p. 19). As a factual matter, the circuit court concluded that "[d]uring this crucial time frame, the [c]ourt firmly believes that it is in the best interest of the Estate and Trust for . . . Bauknight to continue to oversee the administration and management of the Estate and Trust, while . . . Sojourner defends the Estate plan." (Order, p. 13 (App. p. 20).

VIII. Conclusion

Pope is damaging the Estate and Trust by her constant interference and by the filing of frivolous lawsuits and appeals. She is causing monies that should be placed in the scholarship reserve fund to be needlessly expended. She had the opportunity to appeal from her removal as a fiduciary. She lost that appeal. Except for her separate and standalone fee claim case, we believe that this Court's decision in *Wilson v. Dallas* contemplated that Pope's involvement with the Estate and Trust as a fiduciary or otherwise was over. This Court should, respectfully, deny the Petition for Writ of Certiorari and send a clear message to Pope that any future attempts to insert herself into Estate and Trust matters will not be tolerated.

Respectfully submitted,



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James Brown and the Trustee of
the James Brown August 1, 2000
Irrevocable Trust Agreement*

July 14, 2014

Greenville, South Carolina

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Case No. 2013-002582 (Order, S.C. Ct. App., filed May 22, 2014)

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others,.....Plaintiffs,

v.

Albert H. Dallas and others,.....Defendants.

Of whom Adele J. Pope, individually and on behalf of Others under South Carolina Trust
Code Section 62-7-405, is the.....Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Ray Hynie are.....Respondents.

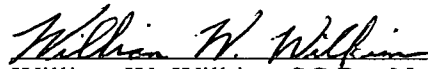
And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown a/k/a James Joseph Brown 2000 Irrevocable Trust
u/a/d August 1, 2000

PROOF OF SERVICE

I certify that I have served the **Return to Petition For Writ Of Certiorari**
on Adele J. Pope by depositing a copy of it in the United States Mail, postage

prepaid, on July 14, 2014, addressed to Adele J. Pope, 1228 Walnut Street,
Newberry, South Carolina 29108.



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