

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

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

Appellate Case No. 2013-001649

Lower Court Case Nos. 2007-CP-02-0122; 2008-CP-02-0872; 2007-CP-02-0322;
2010-CP-02-072; 2012-CP-02-1059; 2008-CP-02-1426; 2008-CP-02-1712; 2008-CP-02-
2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-
CP-02-1647; 2013-CP-02-1348

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 Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and
Tommie Rae 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 and The James Brown 2000 Irrevocable Trust u/a/d
August 1, 2000.....Respondent.

INITIAL BRIEF OF RESPONDENT

William W. Wilkins, SC Bar No. 6112
J. David Black, SC Bar No. 68499
Tanya A. Gee SC Bar No. 70191
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409
WWilkins@nexsenpruet.com
DBlack@nexsenpruet.com
tgee@nexsenpruet.com

Attorneys for Russell L. Bauknight, the
Personal Representative of the Estate of
James Brown and the Trustee of
the James Brown August 1, 2000
Irrevocable Trust Agreement

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COUNTER-STATEMENT OF THE ISSUES ON APPEAL

- I. As a threshold matter, Appellant Adele Pope has no standing to appeal from the administrative orders of Judge Early because she is no longer a fiduciary, she has no personal interests at stake, no statute confers standing upon her, and she cannot achieve standing through the rights of other people.
- II. This Court does not have jurisdiction to consider the arguments Pope makes on others' behalf because she served the notice of appeal *pro se*, representing her own interests whatever they may be, and she cannot now argue on behalf of other parties who did not timely serve a notice of appeal.
- III. Pope is collaterally estopped from arguing that she should be the voice for the Estate and Trust.
- IV. Pope fails to cite to authority for her arguments, and on the merits, her arguments fail.

COUNTER-STATEMENT OF THE CASE¹

This is an appeal from four orders of the trial court, which were issued after the South Carolina Supreme Court reversed a settlement agreement involving the Estate of James Brown and The James Brown 2000 Irrevocable Trust (collectively, “the Estate and Trust”). In addition to reversing the settlement agreement, the Supreme Court affirmed the removal of Appellant Adele Pope as the Estate and Trust’s personal representative and trustee. *See Wilson v. Dallas*, 403 S.C. 411, 419, 743 S.E.2d 746, 751 (2013).

¹ The South Carolina Appellate Court Rules require appellants to include a Statement of the Case in the Initial Appellant’s Brief; “[t]he statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal.” Rule 208(b)(1)(C), SCACR. Additionally, Rule 208, SCACR, prohibits an appellant from including contested matters in the Statement of the Case. Despite these parameters, Appellant Adele Pope’s Statement of the Case includes pages of information that are irrelevant to this appeal as well as a plethora of contested matters. In fact, parts of her Statement of the Case are misleading, such as on page 12, when she block quotes a footnote from a withdrawn Supreme Court opinion without mentioning that the Supreme Court granted rehearing and deleted that footnote from its final opinion. Furthermore, pages 17 to 20 of the Statement of the Case discuss matters that occurred *after* the orders on appeal were issued, and therefore, should not be part of the record in this appeal. *See* Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”).

Following the Supreme Court's opinion in *Wilson v. Dallas*, the Honorable Doyet A. Early, III held a status conference on May 29, 2013, to address the numerous Estate and Trust cases that were revived because of the settlement's reversal. (Bauknight's Memo in Opposition to Pope's Motion to Reconsider p. 1) Pope attended and participated in this status conference. (*Id.*)

Thereafter, on June 13, 2013, Judge Early issued two Administrative Orders. One of those orders listed the status of thirteen outstanding Estate of Brown cases and removed Pope in her fiduciary capacity as a party in light of the Supreme Court's opinion. (June 13, 2013 Order listing 13 separate lower case numbers). Judge Early appointed Russell L. Bauknight on an interim basis to serve as the fiduciary for the Estate and Trust until a permanent fiduciary could be appointed. (*Id.* at 3-4) Based on this appointment, Judge Early directed the Clerk of Court to list Bauknight (not Pope) as the responding fiduciary party in all outstanding Estate and Trust actions. (*Id.* at 8).

In this Administrative Order, Judge Early recognized that Pope had an outstanding fee petition that survived despite her removal. Accordingly, he directed the Clerk of Court to open a new civil action for review of Pope's fees. (*Id.* at 3). The Clerk issued a Form 4 Order assigning the fee petition a new case number. (See June 13, 2013 Form 4 Order).

Also on June 13, 2013, Judge Early issued a second Administrative Order in Case Numbers 2008-CP-020-1647 (addressing challenges to the validity of James Brown's will and trust, spousal claims, and an omitted child claim), 2007-CP-02-122 (addressing whether to award costs and fees to former fiduciaries Albert Dallas and David Cannon), and 2008-CP-02-872 (addressing Will, Trust, and Property matters). In this order, Judge

Early refused to consider the numerous documents filed by Pope in her fiduciary capacity because she is no longer a party to these matters. (June 13, 2013 Administrative Order in Case # -1647, -0122, -0872, p. 2)

After these orders were issued, Pope filed a *pro se* motion to vacate, set aside, alter or amend all three orders. In her motion, Pope asserted that she had standing to remain involved in the pending James Brown cases and argued that Bauknight “has not; cannot; and will not protect the ‘I Feel Good’ Trust.” (Memo in Support of Motion to Vacate p. 21) Ultimately, Pope asked Judge Early to void his June 13 orders, find she has standing to remain in case # -1647, rule on the motions she filed, and void all appointments of Bauknight. (*See id.*, p. 30) A hearing on this motion was held on July 9, 2013. Judge Early denied Pope’s motion in an order dated July 10, 2013. (See July 10, 2013 Order)

Pope appealed *pro se* from all four orders on July 30, 2013, and Bauknight filed a motion to dismiss, arguing Pope lacked standing to appeal. (*See* Notice of Appeal and Motion to Dismiss) The Honorable Paul E. Short issued an order on January 30, 2014, declining to act on the motion because he found that *Bauknight* was not a party to the appeal. (*See* Order of the Honorable Paul E. Short, dated January 30, 2014).

Bauknight filed a petition for rehearing, arguing he was a party to the appeal because he had been appointed by the trial court to represent the interests of the Estate and Trust. (Petition for Rehearing) On May 8, 2014, Judge Short issued an order agreeing that the Estate and Trust were parties to the appeal and that Bauknight should be able to represent the Estate and Trust’s interests on appeal. However, Judge Short denied

Bauknight's previously filed motion to dismiss "at this time," and directed the parties to proceed with initial briefing. (Order of the Honorable Paul E. Short dated May 8, 2014)

STATEMENT OF FACTS

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 Pope nor Bauknight was the original personal representative or trustee of the Estate and Trust.

I. Pope's Appointment as a Fiduciary

Pope became involved in this matter when, in March of 2007, the circuit court appointed her and 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. *See Wilson v. Dallas*, 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, Pope and Buchanan became the personal representatives and trustees for Brown's Estate and Trust. *Id.*

II. Pope's Removal for Cause

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

Pope and 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 Pope and 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 Pope and Buchanan, explaining:

. . . 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.*

Id. at 448-49, 743 S.E.2d at 766-67 (emphasis added).

In addition to affirming the removal of Pope and Buchanan for cause, the Supreme Court also voided Bauknight's appointment. However, unlike Pope and Buchanan, 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.

III. 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 Pope's relentless insistence to remain involved despite her removal for cause and the Supreme Court's rejection of her appeal from that removal. Her former, co-fiduciary, Buchanan, has not joined Pope in this appeal.

After the Supreme Court issued its opinion in *Wilson v. Dallas*, Pope filed several documents with the trial court, including motions, memoranda, and proposed scheduling orders concerning the James Brown Estate and Trust litigation. (See June 13, 2013 Admin Order listing case # -1647, -122, and -0872, p. 2) Judge Early issued an order directing the Clerk of Court to remove Pope's filings from the pending Estate and Trust litigation pursuant to the Supreme Court's Opinion affirming her removal as a party to these proceedings. (*Id.*)

Judge Early also issued an administrative order in the myriad cases still pending involving the Estate and Trust. Among other things, Judge Early's administrative order

appointed Bauknight as the interim special administrator and special trustee until applications for those positions could be received and reviewed; removed Pope's and 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 assigned Pope's fee petition a separate case number so that her interests in that matter would be protected.

It is from these orders that Pope now appeals.

ARGUMENTS

I. Pope Lacks Standing to Appeal

As a threshold matter, this appeal should be dismissed because Pope lacks standing to bring it. To have standing, Pope has the burden of proving (1) she has a concrete and particular legally protected interest that is actual or imminent, not conjectural or hypothetical – this is known as “constitutional standing;” or (2) an issue exists that is of such public importance that a resolution is needed for future guidance; or (3) a statute confers standing upon her. *See Freemantle v. Preston*, 398 S.C. 186, 192-94 728 S.E.2d 40, 43-44 (2012) (outlining the three ways in which standing can be acquired). Pope has failed to show how she has standing under any one of these three means of acquiring it.

A. Pope has no legally protected interest at stake.

Pope has no “constitutional standing” because she has no “legally protected interest that is actual or imminent.” Pope's interest in the Estate and Trust Litigation arose by virtue of being appointed the personal representative and trustee after the original personal representatives and trustees were removed for cause. Approximately

eighteen months after appointing Pope, the trial court removed her for cause, just as he had removed the fiduciaries who preceded her. Pope vehemently disagreed with the trial court's decision to remove her, and she appealed from her removal. The Supreme Court affirmed her removal, and once it did so, Pope's interest in the Estate and Trust litigation ceased.² *See* S.C. Code Ann. § 62-3-608 (providing that “[t]ermination does not affect the jurisdiction of the court over the personal representative, but terminates [her] authority to represent the estate in *any* pending or future proceeding”) (emphasis added); S.C. Code Ann. § 62-7-707 (enumerating as the only power of a removed trustee the duty to “expeditiously deliver the trust property within the trustee’s possession to the cotrustee, successor trustee, or other person entitled to it”).

B. Pope does not have standing based on the public importance doctrine.

Pope never argues she has standing pursuant to the “public importance” doctrine, so this Court need not address this means of acquiring standing. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 694 (2003) (“No point will be considered which is not set forth in the statement of issues on appeal.”); *State v. Bray*, 342 S.C. 23, 27 n.2, 535 S.E.2d 636, 639 n.2 (2000) (finding Court of Appeals erred in considering an expert’s qualification when that issue was not raised on appeal). Even if this issue had been raised, it would fail. The beneficiaries of the Estate and Trust have lawyers representing their individual interests and Bauknight has been appointed to represent the interests of the Estate and Trust. Therefore, Pope’s intermeddling is not needed to protect the public interest. In fact, the Supreme Court has already determined that her involvement is

² Pope’s fee petition for fiduciary commission remains intact and has been assigned a separate case number. Any other “horribles” about which Pope worries are hypothetical in nature and deal with matters in which she has no personal stake.

contrary to the best interests of the Estate. *Wilson v. Dallas*, 403 S.C. at 49, 743 S.E.2d at 767

C. No statute confers jurisdiction on Pope.

Pope argues that she has statutory standing as an “other” under S.C. Code Ann. § 62-7-405. However, she merely relies on conclusory statements without citing relevant authority to support her argument. Accordingly, this issue has been abandoned on appeal. *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); *Glasscock, Inc. v. U.S. Fidelity and Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001) (“South Carolina law clearly states that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not presented for review.”). This failure to cite authority cannot be rehabilitated in Pope’s Reply Brief. *Glasscock, Inc.*, 348 S.C. at 81, 557 S.E.2d at 691.

Even if the issue were properly presented to this Court, it has no merit. Pursuant to subsection (c) of § 62-7-405: “The settlor of a charitable trust, the trustee, and the Attorney General, *among others* may maintain a proceeding to enforce the trust.” (emphasis added). Although the term “others” is not defined by the statute, this Court need not determine the universe of individuals who might be included in that subgroup so long as it can determine that a former trustee, removed for good cause because (in the words of the Supreme Court) 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. *Cf.* S.C. Code Ann. § 62-7-707 (enumerating as the only power of a

III. Pope Is Collaterally Estopped from Arguing that She Should Be the Voice for the Estate and Trust.

In addition to standing and jurisdictional flaws, many of Pope's arguments fail based on the doctrine of collateral estoppel because the issues she raises have already been litigated and finally resolved. *See Zurcher v. Bilton*, 379 S.C. 132, 135-36, 666 S.E.2d 224, 226 (2008) (explaining that a previously litigated issue that has been determined by a valid and final judgment is conclusive in a subsequent action on the same or different claim).

For example, Pope argues that she should not be prohibited from acting on behalf of the beneficiaries and offering them her "expertise" – "either *pro bono publico* or for pay" – to help save the Trust. (*See* Appellant's Brief p. 37) She further argues that if she is not allowed to remain in the litigation, her due process rights will be violated. These arguments, however, have already been litigated and resolved: the Circuit Court and Supreme Court have found that Pope's removal for cause was justified, and therefore, she is no longer a party to the litigation. If removing her as a fiduciary affected her due process rights, the time to argue that issue was during the previous appeal, not this one.

IV. Pope's Due Process Rights Have Not Been Violated and No Fraud on the Court Has Been Committed.

If this Court does not dismiss the appeal based on Pope's lack of standing, it should nonetheless affirm because her remaining arguments regarding due process violations and fraud upon the court are presented as merely conclusory statements without citations to relevant supporting authority. Accordingly, all of Pope's arguments have been abandoned on appeal. *See D.R. Horton, Inc*, 398 S.C. at 548-49, 730 S.E.2d at 351. Moreover, they have no merit.

Pope argues that her due process rights have been infringed because the orders on appeal “enjoin” her from “protecting herself from continuing false felony claims lodged by the State and by Bauknight.” (App. Brief at 36) This argument is apparently based on Bauknight’s disagreement with Pope about the value of the Estate at the time of James Brown’s death. However, this disagreement as to value does not implicate Pope’s due process rights in any way, and for what it is worth, Bauknight has never accused Pope of committing a felony, as she claims.

Pope also argues that the orders on appeal damage her property rights, but she fails to explain how that is so. Likewise, she asserts that her liberty has been threatened by the orders on appeal, an argument that is absurd on its face. The orders on appeal merely remove Pope as a fiduciary, as required by the Supreme Court’s opinion in *Wilson v. Dallas*.

Next, Pope argues that the orders violate procedural due process because Judge Early was biased. However, she raises this issue for the first time on appeal, and therefore it is not preserved for review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 497 S.E.2d 731 (1998) (explaining that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review). Furthermore, Pope does not provide any argument at all to demonstrate how Judge Early is biased. She also argues the orders were issued with no notice; however, she participated in the May 26, 2013 status conference, and she orally argued her motion to vacate. (See Transcript of Hearing on Motion to Vacate)

Finally, Pope argues that the orders enjoin her from practicing her profession (App. Br. p. 36) and from “discussing the widely known contents of Tommie Rae’s

handwritten notes.” (App. Br. p. 39) While it is true that Pope’s removal as a fiduciary results in her having no standing to intermeddle with the Estate and Trust litigation, the Orders on appeal do not enjoin her from practicing law in general. And, in any event, her removal as a fiduciary was fully and finally litigated in the *Wilson v. Dallas* appeal; it was not decided by the June 13, 2013 administrative orders. Likewise, to the extent Pope complains about a “gag order,” that order is not the subject of this appeal, nor does she explain why the gag order is inappropriate.

CONCLUSION

Judge Early’s orders removing Pope from the pending litigation were ministerial in nature and in response to the Supreme Court’s opinion in *Wilson v. Dallas*. Pope would not have been involved in the Estate and Trust litigation, but-for being appointed as a fiduciary. Now that Pope’s role as a fiduciary has ended, so too has her interest in the case. She no longer has standing to complain about Judge Early’s decisions.

“The law regards with jealousy, and even aversion, the officious intermeddling with a dead man’s estate.” *Salvo & Wade v. Schmidt*, 29 S.C.L. 512, 2 Speers 512 (1844). Pope’s obsession with the Estate and Trust litigation illustrates the very harm about which our Supreme Court warned lo so many years ago. By continuing to interject herself into the Estate and Trust proceedings, Pope is wasting assets and causing the Estate and Trust to expend legal fees fighting unnecessary, non-meritorious, and distracting litigation. All of this is on top of previous inappropriate actions she took when she *was* a fiduciary—such as her seeking \$5 million in fees for a relatively small amount of work, paying fees to fiduciaries ahead of other claims, and improperly seeking to sell James Brown’s GRAMMY—which ultimately led to her removal for cause.

Both the Circuit Court and the Supreme Court have ordered that Pope be removed for cause. The Estate and Trust ask that this Court dismiss her appeal and prohibit her from any continued involvement outside her claim for fees.

Respectfully submitted,


William W. Wilkins, SC Bar No. 6112
J. David Black, SC Bar No. 68499
Tanya A. Gee, SC Bar No. 70191
NEXSEN PRUET, LLC
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409
WWilkins@nexsenpruet.com
DBlack@nexsenpruet.com
TGee@nexsenpruet.com

*Attorneys for Russell L. Bauknight, the
Personal Representative of the Estate of
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Agreement*

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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 Appellant,

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Persons.

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August 1, 2000.....Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Initial Brief of Respondent and Designation of Matter** have been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 7th day of July, 2014, to the addresses shown below.

Adele J. Pope, Esquire 1228 Walnut Street Newberry, South Carolina 29108	Matthew D. Bodman, Esquire 1500 Calhoun Street Columbia, South Carolina 29201
Robert N. Rosen, Esquire S. Alan Medlin, Esquire 18 Broad Street, Suite 201 Charleston, South Carolina 29401	David B. Bell, Esquire Law Office of David B. Bell Post Office Box 1011 Augusta, Georgia 30903-1011
David G. Cannon Post Office Box 865 Barnwell, South Carolina 29812	Mr. Albert P. Shahid, Jr., Esquire 89 Broad Street Charleston, South Carolina 29401
Eugene C. Covington, Jr., Esquire Post Office Box 2343 Greenville, South Carolina 29602	



NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409

Columbia, South Carolina

Tanya A. Gee
Special Counsel

July 7, 2014

VIA HAND DELIVERY

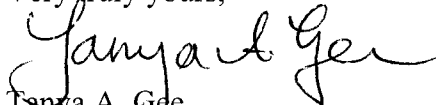
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: *Ex parte: Adele J. Pope, Appellant*
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APPELLATE CASE NO. 2013-001649

Dear Ms. Kitchings:

Please find enclosed the originals and one copy each of *Respondent's Initial Brief* and *Designation of Matter to be Included in the Record on Appeal*. Please return received-stamped-copies to me via our courier. Also enclosed is a Proof of Service reflecting that counsel of record has been served with copies of the same.

Very truly yours,


Tanya A. Gee

Enclosures

cc w/encl.: Adele J. Pope, Esquire
Matthew D. Bodman, Esquire
Robert N. Rosen, Esquire
David B. Bell, Esquire
David G. Cannon
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Albert P. Shahid, Jr., Esquire

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