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SC Court of Appeals

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

Lower Ct. Case No. 2013-CP-02-1337

Appellate Case No. 2014-00250

Adele J. PopeAppellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,Respondents,

AND:

Robert L. Buchanan, Jr., Interested Party,

INITIAL BRIEF OF RESPONDENTS

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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 does not have standing to assert the causes of action alleged in her complaint, other than her claim for fees.
- II. Appellant Adele Pope's causes of action are moot and/or barred by collateral estoppel, and several of her arguments have been abandoned on appeal; accordingly, none of her arguments has merit.

COUNTER-STATEMENT OF THE CASE

Appellant Adele Pope (hereinafter "Pope") appeals from an order of the Honorable Doyet A. Early, III, which granted in part and denied in part a motion to dismiss Pope's Complaint. (January 17, 2014 Order). Pope filed her Complaint on June 10, 2013, approximately one month after the Supreme Court issued its opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). (June 10, 2013 Complaint). Among other things, the Supreme Court affirmed Judge Early's previous order removing Pope from serving as the personal representative of the Estate of James Brown (hereinafter "Estate") and as the trustee for the James Brown 2000 Irrevocable Trust (hereinafter "Trust"). *Id.* at 448-49, 743 S.E.2d at 766-67.

In Pope's June 10, 2013 Complaint, she sought to void Russell Bauknight's appointment as the Estate and Trust's personal representative and trustee, void a settlement agreement reached between Pope's former co-fiduciary Robert Buchanan and the Estate and Trust regarding the amount of fees Buchanan would receive, and void the "Notice of Disallowance" she received from the Estate and Trust with regard to her petition for fees. (June 10, 2013 Complaint, p. 62-63). Pope also asked that Bauknight be removed, that an accounting be ordered, and that she be awarded attorney's fees and costs. (*Id.*)

Three days after Pope filed her Complaint, Judge Early issued two administrative orders on June 13, 2013, in the myriad cases still pending involving the Estate of James

Brown. (June 13, 2013 Administrative Orders). Among other things, Judge Early's administrative orders (1) appointed Bauknight as the interim special administrator and special trustee until applications for those positions could be received and reviewed;¹ (2) removed Pope 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 (3) refused to consider the motions, memoranda, and proposed scheduling orders filed by Pope after the Supreme Court issued its opinion affirming her removal for cause. (June 13, 2013 Administrative Orders). Pope appealed from those orders *pro se*, and that appeal is pending under Appellate Case Number 2013-001649.

After being appointed as interim special administrator and special trustee, Bauknight moved to dismiss the June 10, 2013 Complaint filed by Pope. (July 10, 2013 Motion to Dismiss). On January 17, 2014, Judge Early partially granted the Estate and Trust's motion, dismissing all of Pope's causes of action but denying the motion insofar as it sought to dismiss Pope's request for payment of her claim for fees. (Jan. 17, 2014 Order). Upon receiving this order, Pope moved to alter or amend. (January 25, 2014 Motion to Alter or Amend). That motion was denied on February 4, 2014, and on February 7, 2014, Pope filed the above-captioned appeal *pro se*. (Feb. 4, 2014 Order Denying Motion to Alter or Amend).

¹ On May 9, 2013, the day after the Supreme Court issued its *Wilson v. Dallas* opinion, the probate court appointed Bauknight to serve as the emergency personal representative until a personal representative could be formally appointed. (May 9, 2013 Order of the Probate Court). Judge Early reiterated this emergency appointment in his June 2013 administrative orders.

FACTS

When James Brown died on December 25, 2006, he left behind what has now become a multi-million dollar estate. *Wilson*, 403 S.C. at 416, 743 S.E.2d at 749. 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”). *Id.* 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. *Id.* Neither Pope nor Bauknight was the original personal representative or trustee of the Estate and Trust. *Id.* at 417, 743 S.E.2d at 749.

I. Pope’s Appointment and Removal 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 (Cannon, Dallas, and Bradley) whom Brown had named in his Will. *Id.*, 403 S.C. at 419, 743 S.E.2d at 751. 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.*

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 cause as the personal representatives and trustees and Bauknight replaced them. *Id.* at 420-22, 743 S.E.2d at 751-52.

Thereafter, Pope and Buchanan filed a notice of claim against the Estate, asserting they were entitled to \$4,993,151 for approximately eighteen months of service. (July 2009 Notice of Claim). Pope and Buchanan also appealed from Judge Early's approval of the settlement agreement. In addition to arguing that the settlement should be undone, they argued that they should not have been removed as fiduciaries. *Id.* at 448, 743 S.E.2d at 766. 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 [Ms. Pope and Mr. 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 noted that Bauknight's appointment resulted from the now overturned compromise agreement. Accordingly, 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.

II. Estate Litigation after *Wilson v. Dallas*

On May 9, 2013, the day after the Supreme Court issued its opinion in *Wilson v. Dallas*, the probate court issued an emergency order appointing Bauknight to serve on an interim basis as the special administrator and trustee of the Estate and Trust. (May 9, 2009 Probate Order). Thereafter, the Estate and Trust served Pope and Buchanan with a notice of disallowance of their \$5 million claim for fees. (May 29, 2013 Notice of Disallowance). The basis of the disallowance tracked the Supreme Court's Opinion in *Wilson v. Dallas* and asserted that their "requested fees and commissions were not earned and therefore are not due and owing" and that "the Estate is entitled to an off-set for any damages suffered as a result of any maladministration during their service as Co-Personal Representative and Co-Trustee." (Notice of Disallowance).

Pursuant to the South Carolina Probate Code, once a creditor receives notice of a disallowance of her claim, the claim is barred unless the creditor protests the disallowance within thirty days of receiving notice. Pope responded to the notice of disallowance by filing the subject complaint, which spans over 60 pages and asserts "causes of action" that either do not exist or that she has no legal authority to assert. For example, in her Complaint, Pope seeks to void Bauknight's appointment as a fiduciary, void the settlement agreement reached between her former co-fiduciary Robert Buchanan

and the Estate and Trust, and void the “Notice of Disallowance” she received from the Estate and Trust with regard to her petition for fees. She also asks that Bauknight be removed, that an accounting be ordered, and that she be awarded attorney’s fees and costs. (June 10, 2013 Complaint).

Three days after Pope filed her Complaint, Judge Early issued two administrative orders. Among other things, these administrative orders appointed Bauknight as the interim special administrator and special trustee while the application period for these fiduciary positions remained open. (June 2013 Administrative Orders). Judge Early also removed Pope’s name as a responding party in all the Estate litigation except her claim for fees. (*Id.*) Pope appealed from those orders *pro se*, and that appeal is pending under Appellate Case Number 2013-001649.

After being appointed as special administrator and special trustee, Bauknight moved to dismiss the June 10, 2013 Complaint filed by Ms. Pope. (July 2013 Motion to Dismiss). As that motion to dismiss was pending, Judge Early received and reviewed numerous applications from individuals seeking to become fiduciaries for the Estate and Trust, and in October of 2013, he issued an order which (1) installed David C. Sojourner as the interim special administrator and special trustee of the James Brown Estate and Trust for the purpose of defending claims challenging the validity of the Will and Trust documents and (2) installed Bauknight as the interim personal representative and trustee of the James Brown Estate and Trust for all other purposes. (October 2013 Order). Pope filed a *pro se* appeal from this order, and that appeal was pending under Appellate Case No. 2013-002582. This Court dismissed that appeal on January 30, 2014, finding both that (1) the order was not immediately appealable and (2) Pope could not champion the appeal because she was not an aggrieved party. (January 30, 2014 Order). Pope has

since filed a petition for writ of certiorari with the Supreme Court, which remains pending.

On January 17, 2014, Judge Early partially granted Bauknight's pending motion to dismiss Ms. Pope's June 10, 2013 Complaint. (January 17, 2014 Order). In his order, Judge Early found that a portion of Pope's Complaint was moot; that her argument regarding the probate court's appointment of Bauknight was not a decision over which the circuit court had appellate review; and that she had no standing to void the settlement between Buchanan and the Estate. (*Id.*) Judge Early also found Pope had no standing to seek Bauknight's removal, to request an accounting, or to request that a special administrator and trustee be appointed. (*Id.*) Upon receiving this order, Pope filed a 68-page Motion to Alter or Amend (not including exhibits). (January 25, 2014 Motion to Alter or Amend). This motion was denied, and it is from these orders that Pope now appeals. (Order denying Motion to Alter or Amend).

LAW/ANALYSIS

I. Except for Pope's claim for fees against the Estate, Pope lacks standing to assert all other causes of action alleged in her Complaint.

The trial court correctly found that Pope, as a former fiduciary whose removal for cause has been affirmed by the Supreme Court, has no interest in the Estate and Trust litigation except with regard to her outstanding claim for fees. Respondents agree and do not dispute Pope's right to protest and adjudicate the disallowance of her claim. However, as illustrated by her Complaint, Pope is attempting to do more. Instead of arguing why she is entitled to her disputed claim, Pope seeks to void Bauknight's appointment; she seeks to void the settlement agreement between Buchanan and the Estate; she seeks to remove Bauknight; she seeks an accounting; and she seeks to appoint a new special administrator and special trustee. In other words, she is asserting claims as

if she were still a party to the Estate and Trust litigation, despite the Supreme Court's unequivocal determination that Pope was properly removed from all her fiduciary positions. The trial court correctly found that Pope lacks standing to bring these causes of action. (January 17, 2014 Order, p. 6, , 10, 12). *See Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006) ("As a general rule, to have standing a litigant must have a personal stake in the subject matter of the litigation."). *See also* 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").

Although standing is a threshold issue, Pope does not address it until her third and final issue on appeal, the heading of which states:

In addition to standing as Interested Persons and creditors, Appellant **and Buchanan** have special interest standing under Section 62-7-405 to enforce the 'I Feel Good' Trust and **for Appellant to serve as GAL pro bono public for Michael and others** because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule. (emphasis added).

That is, Pope argues on behalf of herself *and Buchanan*, and she argues that her standing derives from representing "Michael and others." However, Buchanan has settled his claim with the Estate and Trust and is not a party to this appeal. Moreover, Pope has represented to this Court and to the Respondents that she is representing herself *pro se*; accordingly, she cannot now switch horses and attempt to represent the interests of Buchanan or "Michael and others," especially when those "others" did not serve or file a

notice of appeal. *See Lennon v. S.C. Coastal Council*, 330 S.C. 414, 498 S.E.2d 906 (Ct. App. 1998) (“In his brief, [the appellant] describes himself as a “pro se litigant,” and he cannot obtain standing by alleging he is acting in another’s interest if he himself has suffered no individual injury.”). *See also* Rule 203, SCACR (requiring a party intending to appeal to serve and file a notice of appeal).

Additionally, to the extent Pope argues she has standing in an individual and not representative capacity, her arguments are so conclusory in nature they should be deemed 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). In the body of her brief, Pope addresses standing simply by block quoting the definition “Interested Person” found in S.C. Code Ann. § 62-1-201(23). Citing to this one authority, without further developing her argument, does not save her issue from being abandoned. *See State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited only to an evidentiary rule was abandoned on appeal).

Even if this issue were not deemed abandoned, Pope fails to address the particular reasons given by Judge Early for denying her “Interested Person” standing. Despite providing this Court with a block quote of the definition for “Interested Person,” Pope provides an ellipsis in the quote and deletes the very language upon which Judge Early relied when he found she did not meet the definition. In its entirety, the definition of “Interested Person” reads as follows:

“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.

S.C. Code Ann. § 62-1-201(23) (emphasis added to highlight critical language deleted from Ms. Pope’s definition).

As explained by Judge Early in the order on appeal, even though Pope is a creditor of the Estate based on her pending claim for fees, she does not fall within the definition of “Interested Person” because her claim is not affected by the appointment of Bauknight. This is so because her Complaint “does not contain any allegation, nor any reasonable inference therefrom, that Defendant Bauknight’s actions as special administrator jeopardize or will cause the Estate to be unable to make payment on Plaintiff’s claim against the Estate,” and “nowhere in the Complaint does Plaintiff allege that Defendant Bauknight is wasting or administering the Estate in any manner that will cause assets to be unavailable for payment of her claim” (*See* January 17, 2004 Order, p. 9.) Pope fails to address this ruling in her Appellant’s Brief, and therefore it has become the law of the case. *Ex parte Morrison*, 321 S.C. at 370 n.2, 468 S.E.2d at 651 n.2.

II. Not only does Pope lack standing, her arguments on appeal have no merit.

If this Court agrees that Pope lacks standing to bring claims other than her petition for fees, then it need not address Pope’s other arguments on appeal. For the sake of completeness, the merits of those other arguments are addressed in turn below.

A. Pre-remittitur appointment and disallowance

Pope argued in her Complaint, and continues to argue on appeal, that Bauknight's interim appointment as a special administrator and special trustee post-*Wilson* are void because the appointment was made before remittitur had been sent. Judge Early correctly found that the probate court's emergency appointment is not a final order subject to review and that, in any event, the issue has been rendered moot.

Pursuant to *Estate of Boyce v. Work*, 305 S.C. 43, 406 S.E.2d 184 (Ct. App. 1991), a probate court's order appointing a special administrator on an emergency basis is not reviewable because it is temporary in nature and not final. Pope was involved in the *Estate of Boyce* case, and she is well aware that emergency appointments are not reviewable.

In *Estate of Boyce*, the probate court appointed two daughters to serve as the personal representatives of their mother's estate on an emergency basis, until such time as a personal representative could be formally appointed. The deceased had two other children, and those children, who were represented by Adele Pope, appealed the emergency appointment to the circuit court. The circuit court disqualified one of the appointed sisters from serving as the emergency personal representative. The court of appeals vacated the circuit court's order, finding the circuit court lacked subject matter jurisdiction because the order was temporary and not appealable. *Id.* at 44, 406 S.E.2d at 185.

Like the circuit court in *Estate of Boyce*, Judge Early did not have jurisdiction to undo the probate court's emergency order temporarily appointing Bauknight to serve as the personal representative until a formal appointment could be made. Furthermore, the emergency appointment has been rendered moot in light of the formal appointments of

Sojourner and Bauknight, which occurred after the remittitur was sent.² (June 13, 2103 Order; October 2013 Order). *See Mathis v. S.C. State Hwy. Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973) (“A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.”).

B. Pope’s due process arguments

Pope also argues that “the Court’s failure to conduct hearings and dismissal of the action to remove Bauknight and grant related relief continue the State’s violation of the Due Process and first Amendment rights” of Appellant. (Appellant’s Second Issue on Appeal). However, she does not cite to any legal authority in support of this argument, and therefore, it is abandoned on appeal. *See Mulherin-Howell v. Cobb*, 362 S.C. 588, 600, 608 S.E.2d 587, 593-94 (Ct. App. 2005) (finding appellant abandoned issue by failing to cite any supporting authority for its position and making arguments that were merely conclusory statements); *State v. Colf*, 332 S.C. 313, 322, 504 S.E.2d 360, 364 (Ct. App. 1998) (finding a conclusory, two-paragraph argument that cited only to an evidentiary rule was abandoned on appeal).

Furthermore, Pope’s entire argument reveals that she is attempting to speak on behalf of the Estate and Trust, despite the Supreme Court’s opinion finally deciding that Pope’s continued involvement was not in the Estate’s best interest. For example, Pope claims to be speaking for Brown’s heirs, devisees, and beneficiaries. (See p. 16 of Appellant’s Brief). Pope asserts that she is now working “*pro bono publico*” on behalf of the Estate, that she is “among the first in the State to acquire expertise” in certain aspects

² Pope appealed from the October 2013 order of appointment, and this Court dismissed that appeal based, in part, on Pope’s lack of standing. (Jan. 30, 2014 Order of Dismissal).

of copyright law,³ and that her presence in the litigation is necessary to ensure the Trust “will be safe.” (*Id.* at p. 5, 17, 20, 21). Pope’s brief demonstrates her intent to remain the “voice” of the Estate and Trust and to re-litigate an issue which she has already lost. Settled principles of *res judicata* prevent her from continuing to assert herself in the Estate and Trust litigation. *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). If Pope’s removal as a fiduciary somehow affected her due process rights, the time to argue that issue was during the previous appeal, not this one.

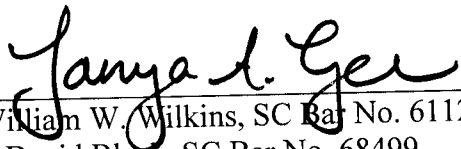
CONCLUSION

The circuit court did not err in dismissing all of Pope’s causes of action other than her request for payment of her claim. Viewing the facts alleged in the complaint and any inferences drawn therefrom in the light most favorable to Pope, Pope has failed to state claims upon which relief may be granted. Accordingly, the circuit court’s order should be affirmed.

[Signature block on following page]

³ In support of this assertion, Ms. Pope cites to an unpublished draft of an article she authored.

Respectfully submitted,


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Irrevocable Trust Agreement

July 30, 2014

Columbia, South Carolina

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STATE OF SOUTH CAROLINA
In The Court of Appeals

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2014-00250

Adele J. Pope,Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as Former *Executor de son tort*, and in Every Current and Former Fiduciary Status Claimed or Held as to the Estate Of James Brown and the James Brown 2000 Irrevocable Trust,Respondents,

AND:

Robert L. Buchanan, Jr.,Interested Party.

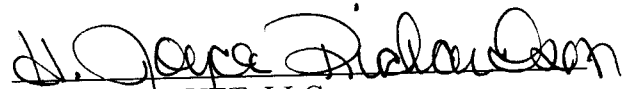
PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing *Respondents' Initial Brief and Designation of Matter* has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 30th day of July, 2014, to the addresses shown below.

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July 30, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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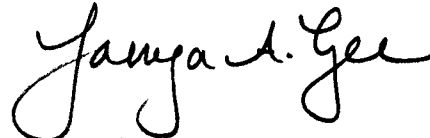
Re: *Adele J. Pope v. Estate of James Brown, Deceased: The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust AND Robert L. Buchanan, Jr.*
Appellate Case No. 2014-00250

Charleston
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Raleigh

Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced matter are the original and two copies of the *Initial Brief Of Respondents* and *Respondents' Designation Of Matter* in the above referenced matter. Please return a received-stamped copy to me via our courier. Also enclosed is the *Proof Of Service* reflecting that counsel of record have been served with copies of the same.

Very truly yours,



Tanya A. Gee
Special Counsel

TAG/hjr
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