

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

**SC Court of Appeals**

Doyet A. Early, III, Circuit Court Judge

Appellate Case Number: 2014-001896 (Order, S.C. Ct. App. filed August 29, 2014)

In re: The Estate of James Brown a/k/a James Joseph Brown

Henry Dargan McMaster, ..... Plaintiff,

v.

Daryl J. Brown, Lindsey Dolores Brown, Vanisha Brown, Larry Brown,  
Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown,  
Sydney Lumar, Carrington Lumar, Tonya Brown, Terry Brown,  
Romunzo Brown, Forlando Brown, Tomm[ie] Rae Hynie Brown,  
James Joseph Brown II, Jeanette Mitchell, Michael Deon Brown,  
Russell L. Bauknight, Adele Pope, David Sojourner, and Lisa Sims, ..... Defendants,

Of whom Michael Deon Brown, James Curtis, Jane Doe and John Doe  
Numbers I, II, III, and IV, by their proposed guardian ad  
litem, and Adele Pope, as Creditor/Proponent of the Will of James  
Brown, dated June 15, 1999, and on behalf of others under S.C. Trust  
Code § 67-2-405, are the..... Petitioners,

and

James Joseph Brown II, Terry Brown, Tommie Rae Hynie Brown, and  
David Sojourner, Jr., are the ..... Respondents.

RETURN OF DAVID SOJOURNER, JR., LIMITED SPECIAL TRUSTEE  
AND LIMITED SPECIAL ADMINISTRATOR OF THE JAMES BROWN TRUST AND  
ESTATE, TO PETITION FOR A WRIT OF CERTIORARI

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## QUESTION PRESENTED

- I. WHETHER THE SOUTH CAROLINA COURT OF APPEALS CORRECTLY DISMISSED THE APPEAL UPON THE LSA'S MOTION TO DISMISS ON THE GROUNDS THAT POPE LACKED STANDING TO APPEAL?**

### COUNTER-STATEMENT OF THE CASE

Adele Pope ("Pope") appealed orders of the South Carolina Court of Common Pleas ("Pope's Appeal") to the South Carolina Court of Appeals on March 31, 2014. Pope alleges that her appeal was brought individually, as "Creditor/Proponent of the Will of James Brown, dated June 15, 1999" and also in a representative capacity as the alleged "proposed guardian ad litem" or as "*pro bono publico*" for Petitioners Michael Deon Brown, James Curtis, Jane Doe and John Doe Numbers I, II, III, and IV. Pope also asserts she has standing "on behalf of others" pursuant to S.C. Trust Code § 62-2-405.

Pope appeals the following Orders (the "Orders on Appeal") issued in the case captioned *In Re: The Estate of James Brown, a/k/a James Joseph Brown*, Civil Action No. 2008-CP-02-1647 (the "Underlying Action"):

- Order of December 16, 2013, severing omitted spouse claim, elective share claim, and pretermitted child claim (collectively, the "Severed Actions") (Case No. 208-CP-02-1647);
- Consent Order of January 8, 2014, dismissing cross-claims of Cinnamon Nicole Parris and LaRhonda Pettit without prejudice (Case No. 2008-CP-02-1647);
- Order of February 7, 2014, determining parties to the Severed Actions (Case No. 208-CP-02-1647); and

- Form Orders of February 24, 2014 and March 10, 2014 denying Pope's Motion to Alter, Amend and Vacate orders dismissing the previously-listed three orders.<sup>1</sup>

Although not a party to the Underlying Case in the circuit court, Pope filed a Notice of Appeal from the Orders on Appeal. She represents no one other than herself and has no legal interest in these cases involving the James Brown Estate and Trust. Acting *pro se*, she is asking this Court to authorize her to challenge the Orders on Appeal. No party with a legal interest in the Estate and Trust, including some heirs who support the estate plan and others who do not, objected to the Orders on Appeal.

On April 10, 2014, the LSA moved for the Court of Appeals to dismiss Pope's appeal because Pope lacked standing to appeal the Orders on Appeal. *See* LSA's Motion to Dismiss (April 10, 2014). The LSA also argued the Orders on Appeal were interlocutory orders for which no exception in S.C. Code Ann. § 14-3-330 applied and, therefore, these orders were not appealable at this time. *Id.*

On June 16, 2014, the Court of Appeals granted the LSA's Motion to Dismiss on the basis Pope lacked standing individually or in any alleged representative capacity and Pope was not a party aggrieved by the Orders on Appeal.<sup>2</sup> (*See* South Carolina Court of Appeals Order, dated June 16, 2014.) Pope filed a Motion for Reconsideration on June 25, 2014 which the Court of Appeals denied on August 29, 2014. (*See* Motion for Reconsideration and South Carolina Court of Appeals Order, dated August 29, 2014.) Pope filed a Petition for a Writ of Certiorari on September 5, 2014.

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<sup>1</sup> Pope's non-specific appeal of "All Orders..." was properly dismissed because Pope defines this class of orders as those already subject to another appeal pending before this Court.

<sup>2</sup> The Court of Appeals did not rule on the issue of whether the Orders on Appeal were interlocutory orders.

## ARGUMENTS

### **I. THERE IS NO BASIS UNDER RULE 242(B), SCACR, FOR THE PETITION FOR WRIT OF CERTIORARI.**

In addition to Pope not having standing to involve herself in this litigation either individually or on behalf of the individual Petitioners, there is nothing significant about this case or the subject appeal. This appeal involves the application of settled law regarding standing and the appealability of certain types of orders. 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, absence of all of these factors should counsel against the Court exercising its discretionary authority. Respectfully, there are no bases for this Court to grant a writ of certiorari in this case, and therefore the Petition should be denied.

#### **A. Rule 242, SCACR, Considerations**

##### *1. Novel Questions of Law*

There are no novel questions of law. Despite Pope's rendition of the "questions presented," the only issue involved in this appeal is whether a non-party to an underlying case may appeal interim orders where such orders have merely the effect of severing claims and designating initial parties and dismissing the cross-claims of two non-parties, upon their consent, without prejudice. The answer to that question is clearly no. The only procedural issue that should be considered by this Court is whether the Court of Appeals properly dismissed Pope's appeal.

## 2. *Dissent at the Court of Appeals*

The order of the Court of Appeals did not contain a dissent. The full panel decided to dismiss the appeal based on Pope's lack of standing both individually and in a representative capacity, 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. See Rule 201, SCACR; *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979).

## 4. *Substantial Constitutional Issues*

Despite Pope's baseless assertions, there are no constitutional issues involved in this appeal. Pope argues that the Orders on Appeal violated numerous constitutional rights, including due process, free speech, and equal protection of the Petitioners.<sup>3</sup> (See Petition, pp. 5, 16.) She argues in essence that the summons and petition were not served and that there was no proper notice. (See *id.*) Because Pope has no legal interest in the Estate and Trust, she was not served with the motions to sever these actions and designate parties nor was she served with the consent motions to dismiss without prejudice the claims of certain heirs to the Estate. Additionally, Pope did not receive notice of any hearings on these motions because she was not entitled to notice as a non-party.<sup>4</sup> There are no constitutional issues present in this case.

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<sup>3</sup> She asserts that these constitutional rights of Petitioners are violated by some vague notion of "state support for Tommie Rae." *Id.*

<sup>4</sup> Pope may have the noble goal of "prevent[ing] a second dismembering of James Brown's 'I Feel Good' Trust and the copyrights to more than 800 songs Brown gave to the Foundation," (see Petition at p. 4) but such desire, regardless of how altruistic, is not a valid ground to be named a party to any litigation involving the Trust and Estate.

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**

There is nothing significant about this case. The Court of Appeals correctly dismissed Pope's appeal because Pope is not a party aggrieved by the Orders on Appeal and she lacks any grounds for standing to appeal.

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 circuit court's factual findings contradict her arguments against the LSA's service on behalf of the James Brown Estate and Trust which, again, is not a subject of the Orders on Appeal.

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,<sup>5</sup> from further interfering in the Estate and Trust. Pope's Petition should be summarily denied.

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<sup>5</sup> In *Wilson v. Dallas*, this Court upheld the circuit court's removal of Pope as a fiduciary of the Estate, finding that Pope's "continued service as fiduciar[y] is not in the best interests of the estate." *Wilson v. Dallas*, 403 S.C. 411, 448-49, 743 S.E.2d 743, 766-67 (2013).

**II. PETITIONERS' PETITION FOR A WRIT OF CERTIORARI DOES NOT REQUEST A REVIEW OF THE ONLY SUBSTANTIVE DECISION OF THE COURT OF APPEALS.**

**A. Petitioners did not appeal the Court of Appeal's finding that Pope lacks standing.**

On June 16, 2014, the Court of Appeals dismissed Petitioners' appeal on the following grounds:

Pope signs her notice of appeal as "Attorney for Appellants." However, "Appellant Michael Deon Brown's attorney, David B. Bell, has notified this Court that Pope does not represent Michael Deon Brown and he asks that his client's name be removed from the caption of this appeal. As to the remaining "Appellants," they are not parties to Case No. 2008-CP-02-1647. In fact, the circuit court's administrative orders of June 13, 2013, remove Pope from all James Brown Estate and Trust litigation, specifically including Case No. 2008-CP-02-1647, noting any litigation regarding Pope's fee petition will be assigned a separate case number.

Because "[o]nly a *party aggrieved* by an order, judgment, sentence or decision may appeal" and an appeal may only be taken "as provided by law[] from final judgment, appealable order or decision," this appeal is dismissed. Rule 201, SCACR (emphasis added); *see also Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979) ("An appeal filed by one who has ceased to be a party to a suit is a mere nullity." (internal quotation marks and citation omitted)).

(*See* Order of South Carolina Court of Appeals, June 16, 2014, in Appellate Case No. 2014-00794 (footnotes omitted).) The Court of Appeals remarked: "We further question whether Pope represents James Curtis, Jane Doe and John Doe Numbers I, II, III, and IV. In her filings, Pope contends she is filing the appeal as a 'proposed guardian ad litem' and as 'Creditor/Proponent of the Will of James Brown.' We note that nothing in our file indicates Pope has been appointed as the guardian ad litem for any of the 'Appellants.'" (*Id.* at note 1.)

In Petitioners' Petition for a Writ of Certiorari pursuant to Rule 242, SCACR, Pope presents five questions to this Court, including:

- I. Do the Circuit Court Orders Violate *Wilson v. Dallas* and Due Process by Endorsing the Attorney General's Continued Alliance with Tommie Rae in the Wingate Suit and FOIA Suits, and Bauknight's FOIA Interference?
- II. Is Sojourner's Destruction of the "I Feel Good" Trust's Copyrights, Even if Inadvertent, Unacceptable?
- III. Do Bell's Fraud and the Siphoning Off of Copyright Termination Rights Confirm the Need for a GAL for Michael [Deon Brown] Under Rule 17(c), [SCRCF], and for Others?
- IV. Is Reversal of the Dismissal Order Appropriate Because the Circuit Court Refused to Conduct a Hearing on Petitioners' Intervention and Request for a GAL?
- V. Do the Damage to the Copyrights and Jeopardy to the 1999 Will Under the 10-Year Rule Support Additional Standing for Appellant Pope Under S.C. Code Ann. § 62-7-405?

(See Petition at p. 2.) Because the Court of Appeals dismissed Pope's Appeal upon the LSA's motion due to Pope's lack of standing, these five questions are not before the Court at this stage. The only issue that could properly be considered by this Court is whether the Court of Appeals erred in dismissing Petitioners' Notice of Appeal on the grounds that either: (i) Pope lacks standing to appeal; or (ii) that the Orders on Appeal are non-appealable interlocutory orders. See Rule 242(a), SCACR ("The Supreme Court . . . may in its discretion, on motion of any party to the case . . . issue a writ of certiorari to **review a final decision of the Court of Appeals.**") (emphasis added). The only decision of the Court of Appeals was that Pope lacked standing to appeal.

**B. The Court of Appeals' dismissal of Petitioners' appeal was correct.**

For the reasons fully expressed in the LSA's April 9, 2014 Motion to Dismiss (Pope Appendix, pp. 20-27) and April 22, 2014 Response to Appellant's Return and Opposition to Motion to Dismiss (Pope Appendix, pp. 71-77), the Court of Appeals was correct in dismissing Pope's Appeal. Pope was not a party to the Underlying Action, and Pope was not a party aggrieved by the Orders on Appeal. In addition to the reasons for which the Court of Appeals dismissed Pope's Appeal, the Orders on Appeal are non-appealable interlocutory orders.

**III. ISSUES PRESENT IN THE PETITION FOR WRIT OF CERTIORARI ARE NOT RELEVANT TO THE ORDERS ON APPEAL AND ARE NOT PROPERLY BEFORE THIS COURT.**

Even if Pope had properly raised an appealable issue in her Petition for Writ of Certiorari, the issues Pope presents in the Petition for a Writ of Certiorari are not relevant to the Orders on Appeal and should not be considered by this Court. While the LSA could fill several pages of this Opposition with the irrelevant issues Pope asserts in her Appeal and Petition for Writ of Certiorari, the LSA will limit himself to three examples of Pope's irrelevant assertions:

- The circuit court has declined to conduct a hearing on 2008 gag orders which allow dozens of people who know the contents of the so-called Hynie 'diary' to speak from it openly. (Petition at p. 10)
- Petitioners were not given notice or an opportunity to be heard on the appointment of Bauknight or Sojourner.<sup>6</sup> (Petition at p. 10)

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<sup>6</sup> Appeals regarding these orders are separately pending before this Court. See Appellate Case No. 2013-002582 and Supreme Court Appellate Case No. 2014-001279. The LSA believes Pope filed a Petition for Writ of Certiorari with this Court on a similar Court of Appeals dismissal which this Court has not yet decided.

- The circuit court has declined to conduct a hearing on the appointment of a GAL for Petitioner children. The Clerk has sent back filings, saying that they cannot be filed. (Petition at p. 12.)

Such issues, even if true, have nothing to do with the Severance Orders which sever the omitted spouse, elective share, and omitted child claims from the Underlying Actions and designate certain parties to the Severed Actions, or the Consent Order of Dismissal Without Prejudice, which dismisses without prejudice Will and Trust challenges asserted by two non-parties to this Appeal. Petitioner's grievances with the circuit court and clerk of court have nothing to do with the Orders on Appeal and, in that regard, are representative of virtually every assertion Pope makes in her Petition.

### CONCLUSION

The LSA respectfully requests this Court deny the Petition for a Writ of Certiorari filed by Pope.

Respectfully submitted,



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Trust and Estate*

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and

James Joseph Brown II, Terry Brown, Tommie Rae Hynie Brown, and  
David Sojourner, Jr., are the ..... Respondents.

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**PROOF OF SERVICE**

---

I, the undersigned paralegal of the law offices of Adams and Reese, LLP., attorney for  
David C. Sojourner Jr. (the "LSA"), as Limited Special Administrator of the Estate of James

Brown a/k/a James Joseph Brown (the "Estate") and as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust"), do hereby certify that I have served all counsel in this action with a copy of the **Return of David Sojourner, Jr., Limited Special Trustee and Limited Special Administrator of the James Brown Trust and Estate, to Petition for a Writ of Certiorari** via first-class mail service this 1st day of October, 2014:

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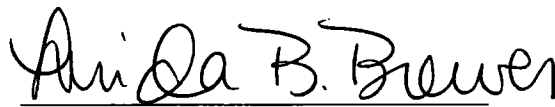
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September 30, 2014