

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-002582

(Sup. Ct. Appellate Case No. 2014-001279)

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

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 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.

**RETURN TO PETITIONER ADELE J. POPE'S MOTION TO REOPEN
APPEAL AND CERTIFY TO THE SOUTH CAROLINA SUPREME COURT**

SUMMARY OF ARGUMENT

Because the Court of Appeals has remitted this matter to the Court of Common Pleas, there is no appeal to “reopen” and certify. No procedural mechanism or avenue allows Pope to request the relief she seeks before the Court of Appeals or the Supreme Court. Assuming only for the sake of argument that such a mechanism existed, Pope fails to factually or legally substantiate her request. The Court should summarily deny Pope’s motion without a hearing.

PROCEDURAL HISTORY

On October 1, 2013, Judge Doyet A. Early III issued an Interim Order appointing Russell L. Bauknight as Personal Representative of the Estate of James Brown (the “Estate”) and Trustee of the The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000 (the “Trust”), and David C. Sojourner, Jr. as Limited Special Trustee solely to defend the Trust against will and trust challenges (the “Appointment Order”). On December 5, 2013 Petitioner Adele J. Pope (“Pope”) appealed the Appointment Order (the “Appeal”). On January 30, 2014 the Court of Appeals summarily dismissed Pope’s Appeal because Pope, who was neither a party to the underlying case nor a representative of any party to the underlying case, lacked standing as an “aggrieved party.”¹ On May 22, 2014, the Court of Appeals denied Pope’s motion for reconsideration.² On October 23, 2014 the Supreme Court denied Pope’s petition for a writ of certiorari³ and on

¹ See Order, filed January 30, 2014 in Appellate Case No. 2013-002582.

² See Order, filed May 22, 2014 in Appellate Case No. 2013-002582.

³ See Order, filed October 23, 2014 in Sup. Ct. Appellate Case No. 2014-001279.

October 28, 2014 the Court of Appeals issued its Remittitur, remitting the matter to the Court of Common Pleas in Aiken County.⁴

ARGUMENT

Pope now asserts two motions: one requesting the Court of Appeals “reopen” the Appeal⁵ and a second requesting the Supreme Court certify the resulting “reopened” matter for review.⁶ Pope’s motions must be denied for at least the following reasons.

Once the Court of Appeals remitted the matter to the Court of Common Pleas (pursuant to Rule 221 SCACR and following the denial of Pope’s Petition for Rehearing and the denial of Pope’s Petition for a Writ of Certiorari), no case remained in either the Court of Appeals or Supreme Court to “reopen.”⁷ The Supreme Court has held “[w]hen the remittitur has been properly sent, the appellate court no longer has jurisdiction over the matter and no motion can be heard thereafter.”⁸

Here, the Court of Appeals properly sent the remittitur, after Pope had exercised her right to file both a Petition for Rehearing before the Court of Appeals, and a Petition

⁴ See October 28, 2014 Remittitur letter from V. Claire Allen to Liz Godard.

⁵ The South Carolina Appellate Court Rules provide no mechanism through which a party may seek to have an appeal “reopened” months following dismissal and remittitur. This is likely because, as discussed below, the jurisdiction of South Carolina’s appellate courts in civil proceedings ends with the remittitur.

⁶ While Pope’s motion is unclear, it appears Pope is first moving the Court of Appeals to reopen and then the Supreme Court to certify. This Response proceeds upon that theory.

⁷ In point of fact, the Court of Appeals *never* “opened” a substantive appeal of the Appointment Order. In summarily dismissing Pope’s appeal because she lacked standing, the Court of Appeals quoted *Nance v. Nationwide Inc. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979), as follows: “An appeal filed by one who has ceased to be a party to a suit is a mere nullity.” January 30, 2014 Order in Appellate Case No. 2013-002582, p. 2. A court cannot “reopen” a case that was a nullity to begin with.

⁸ *Wise v. S.C. Dept. of Corr.*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007).

for Writ of Certiorari before the Supreme Court. Because the remittitur was issued in accordance with Rule 221 SCACR, the Court of Appeals now lacks jurisdiction to hear Pope's motion to reopen.

Likewise, Pope's request for certification under Rule 204(b), SCACR, must also be denied because there is no case pending before the Court of Appeals that could be certified. Rule 204(b) states the Supreme Court may only certify a case "which is pending before the Court of Appeals" (emphasis supplied). Because the Court of Appeals has no matter before it to "reopen," there can be no "case which is pending before the Court of Appeals" for the Supreme Court to certify.

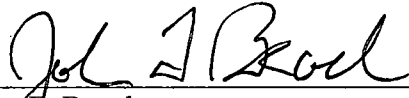
Finally, assuming only for the sake of argument that the Court could "reopen" this matter and consider the substance of the Pope's requests, Pope submits no evidence or sound legal basis in support of the relief she seeks. In *State v. Hill*, 394 S.C. 280, 715 S.E.2d 368 (Ct. App. 2011), the Court of Appeals recognized "a challenge is without merit where it consists solely of an attorney's statements, unsworn and unsupported by any proof or offer of proof." *Id.* at 288, 715 S.E.2d at 373.

The purported "factual representations" in Pope's motion are unsworn and unsupported by any proof or offer of proof, and the legal assertions set out therein are unsupported. Therefore, Pope has offered no evidence or legal basis in support of her motions. Even if Pope's assertions were supported by substantive evidence, she asserts no new matter or arguments regarding her standing that the Court of Appeals and the Supreme Court have not already fully considered.

CONCLUSION

For the foregoing reasons, Sojourner respectfully requests that the Court of Appeals deny Pope's motion to reopen and the Supreme Court reject Pope's request for certification.

Respectfully submitted,



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

April 1, 2015.

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Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown
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PROOF OF SERVICE

I, the undersigned paralegal, of the law offices of Adams and Reese, LLP,
attorneys for Attorney for David C. Sojourner, Jr., as Limited Special Representative of
the Estate of James Brown and Limited Special Trustee of the James Brown August 1,
2000 Irrevocable Trust Agreement, do hereby certify that I have served the South

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SC Court of Appeals

Carolina Court of Appeals as well as all counsel in this action with a copy of the Return to Petitioner Adele J. Pope's Motion to Reopen Appeal and Certify to the South Carolina Supreme Court to the following address(es) as indicated below on the 1st day of April, 2015:

Counsel Served:

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April 1, 2015 SC Court of Appeals

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VIA HAND-DELIVERY

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VIA HAND-DELIVERY

The Honorable Jenny Abbott Kirchings
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South Carolina Court of Appeals
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Columbia, SC 29201

RE: Wilson and others, v. Dallas and others
Appellate Case No. 2013-002582
Sup. Ct. Appellate Case No. 2014-001279


Dear Mr. Shearouse and Ms. Kitchings:

Enclosed please find the original and six (6) copies of the Return to Petitioner Adele J. Pope's Motion to Reopen Appeal and Certify to the South Carolina Supreme Court for filing in the above-referenced matter. Please stamp the copy of this letter and return via the bearer of these documents.

By copy of this letter, we are also serving the Return to Motion upon the all parties of record, and include our Proof of Service to that effect.

With kind regards, I am

Yours truly,



John F. Beach

JFB/ltd
Enclosures