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SC SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
The Honorable Doyet A. Early, III, Circuit Court Judge
Case No.: 2008-CP-2-1647

Appellate Case No. 2009-142286

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N. M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, of whom Robert L. Buchanan, Jr., and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are, Appellants, and Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown, Forlando Brown; Cinnamon N. M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are Respondents. In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

RESPONSE TO STATUS REPORT OF DOYET A. EARLY, III BY TERRY BROWN

Respondent Terry Brown, by and through his undersigned counsel, as the only child that did not file any action contesting James Brown estate plan, hereby responds to the Status Report filed May 8, 2015("Status Report") by the Honorable Doyet A. Early, III as requested in this Court's Order of April 20, 2015. There are several issues in the Status Report that Terry Brown believes require further comment and clarification:

1. Discovery was stayed thereby precluding full fact finding.

Discovery was stayed in the underlying matters at a March 31, 2014 hearing at the urging of Tommie Rae Hynie's counsel. Ms. Hynie's counsel requested that the lower court stay the matter, instead of requiring that she produce her diaries or allow further discovery in the matters at hand. Alternatively, she requested that she be allowed to file a motion for partial summary judgment wherein the sole issue that could be addressed was whether or not Ms. Hynie was the spouse of James Brown. Respondents were skeptical that this could be accomplished without using disputed facts. Supposedly understanding Respondents' skepticism, the lower court granted the requested stay and asked the parties to address this limited issue and specifically noted that if Ms. Hynie's motion was based upon any contested facts "the summary judgment goes out the window." March 31, 2014 hearing transcript, pp. 44-66 attached as **Exhibit A**. (The relevant portion of the transcript is attached for the foregoing. The quoted passage is from page 60.) Respondent Terry Brown contends that the ultimate decision reached by the lower court on January 13, 2015 was in fact unequivocally based on disputed facts. The lower court ignored its own March 31, 2014 ruling and has now validated the skepticism and concern voiced by Respondents.

The facts as agreed to by the parties in the Joint Stipulation of Facts (JSF) (an incomplete Joint Stipulation of Facts was uploaded to the Court's docket on the Supreme Court website and

Respondent has attached a complete copy with this Response as **Exhibit B**) attached with the Status Report leads to only one conclusion. Ms. Hynie was a bigamist in accordance with this Court's ruling in Lukich v. Lukich, 379 S.C. 589 (2008). The lower court, however, did not reach this conclusion.

Respondent Terry Brown contends that the Order issued by the lower court on January 13, 2015, which was electronically served on the parties by electronic mail from the Aiken County Clerk on January 23, 2015, is based on disputed facts (as was raised in Respondent Terry Brown's Motion for Reconsideration filed on February 2, 2015, which is currently stayed and pending before the lower court and argues that a forty-six (46) page order inexplicably contains sixty-one (61) enumerations of error) that Respondents were not allowed to challenge or refute through proper discovery tools. As of the date of writing this response, discovery is still incomplete on all underlying matters.

Ms. Hynie's motion for partial summary judgment was filed on April 24, 2014 and the Limited Special Administrator (LSA) filed its own motion for partial summary judgment on June 2, 2014 which opposed Ms. Hynie's motion for partial summary judgment. Thereafter, the parties entered into discussions in an attempt to reach the final JSF to be used for purposes of writing briefs in support of the motions for partial summary judgment on the limited issue of Ms. Hynie's marital status. The JSF was the product of these discussions. Thereafter, numerous briefs, response briefs and reply briefs (which have not been submitted to this Court for review) were filed by Ms. Hynie, the LSA, and several of the Respondents in support of the LSA's motion for partial summary judgment prior to the November 24, 2014 summary judgment hearing. After the November 24, 2014 summary judgment hearing, the lower court asked all parties to submit proposed orders for consideration. The LSA submitted a lengthy proposed

order as did Respondent Terry Brown (these orders have not been submitted to this Court for review). The lower court signed the forty-six (46) page order prepared by Ms. Hynie's counsel without any alteration or amendment. Respondents were surprised, in a case that has been so heavily contested, that the lower court agreed so readily and completely with every word and fact, in Ms. Hynie's proposed order, including several facts that were not in the JSF. After the issuance of the January 13, 2015 Order, almost all Respondents filed a Motion for Reconsideration with voluminous enumerations of error.

2. James Brown, II case is not resolved.

The lower court acts as if the James Brown, II matter is resolved. It specifically notes on page 5 of its January 13, 2015 order that James Brown II is the biological son of James Brown. Respondent Terry Brown has never stipulated to this fact. Further, no petition, motion, hearing or entry of an order by the lower court has occurred which would allow for this determination. Further, the lower court does not believe this has occurred as noted in the Status Report. However, the lower court asserts this as a stipulated fact in its January 13, 2015 Order. The JSF of the parties does not state any such fact.

The parties specifically consented to and agreed to the DNA testing with regard to James Brown, II in a consent order. However, the parties did not agree that such test would be conclusive proof of his paternity contrary to the lower court's incorrect statement of stipulated facts in the summary judgment order issued on January 13, 2015 that "Mrs. Brown gave birth to Mrs. Brown's biological, James Brown II on June 11, 2001", as if it were a foregone conclusion. The parties, in fact, only agreed that it could be admitted into evidence without objection under paragraph 3 of the JSF. Since discovery was not complete and the JSF was being drafted

primarily in support of the sole issue of whether or not Ms. Hynie was the wife of James Brown, the parties contemplated that it might be used in the other issues at hand. As a result, Respondent Terry Brown requested that the last sentence of paragraph 3 of such JSF be inserted which reads: "Respondents reserve the right to move the court for another DNA test should additional evidence become available that challenges the validity of the LabCorp DNA Test Results." Further, Respondent Terry Brown is unaware of any consent order that has been circulated awaiting the lower court's signature agreeing that James Brown, II is the son of James Brown. Respondent Terry Brown has consented to no such order. Finally, one questions why the lower court is even focused on this fact at this time when the sole purpose of the partial summary judgment motions was to determine the marital status of Ms. Hynie.

3. The lower Court has failed to follow this Court's direction in Wilson v. Dallas.

The lower court failed to follow two directives set out in the remand of Wilson v. Dallas, 403 S.C. 411 (2013). The Court failed to appoint three trustees as required by James Brown estate planning documents. The lower court failed to follow this Court's interpretation of Lukich.

This Court specifically instructed the lower court "upon proper application, to appoint fiduciaries to oversee these matters **in accordance with the provisions of Brown's estate and trust documents**, and to evaluate the propriety of all fees, as specified above, that are related to this case." Id. at 451. James Brown's estate plan unequivocally and very clearly called for three trustees. The lower Court reappointed the one Trustee, Mr. Bauknight, without hearing or cross examination, who had been serving unchecked rather than as one of three trustees as required by

James Brown estate planning documents. This issue was raised in a Motion for Reconsideration filed by Scott Keniley and summarily disposed of by the lower court.

It should be noted that Mr. Bauknight publically stated that he would not serve with any other trustees. Further, the specter of conflict has been raised while he currently serves as Trustee. He apparently hired his own accounting firm, Bauknight Pietras & Stormer, PA, that also employs his wife to handle the accounting issues for the Trust. Upon information and belief and pursuant to Trust and Estate accountings provided by Bauknight, this accounting firm is currently receiving unmonitored compensation from the Trust. While no impropriety is being alleged by Respondent Terry Brown, the mere concern over the propriety of a Trustee hiring his own accounting firm where his wife works in a matter as large, complex and contentious as this one should have been avoided. Such action also calls into question the fitness of Trustee's decision making as it relates to conflicts of interest. This is particularly true in light of the fact that this Court removed Mr. Bauknight prior to its remand of this matter. Additionally, the lower court appointed David C. Sojournor, Jr. as the Limited Special Administrator, wherein the Court accepted Mr. Sojournor's requirement that his law firm, Adams & Reese, LLP, provide the litigation support. Again, no impropriety is being alleged, however, like the hiring of Bauknight Pietras & Stormer, PA, there are no checks and balances and no incentive to review or question the validity of the billing.

This Court gave the lower court a roadmap for application of Lukich, as it related to the facts of bigamy existing in this matter, in footnote 16 of Wilson v Dallas. Footnote 16 provided:

> Tommie Rae had claimed her marriage to Ahmed had been procured by fraud because she had discovered that Ahmed already had three or more wives in Pakistan and was merely seeking U.S. citizenship, and that he had refused to live with her as husband and wife. Tommie Rae's request for an annulment from Ahmed was hastily granted by the family court in Charleston County during the pendency of Brown's separate annulment

> action against her. The circuit court noted the decision of the Court of Appeals in *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), in which the Court of Appeals held that an annulment declaring a spouse's first marriage void could not retroactively validate the spouse's second marriage. The circuit court distinguished Brown's situation, opining that the rule in *Lukich* did not apply where the first marriage was never valid because one of the parties was already married. This Court has since affirmed *Lukich*, in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E. 2d 906 (2008). **We express no opinion, however, on the circuit court's interpretation here.**" (Emphasis added). Wilson v. Dallas, 403 S.C. 411, 434 (2013).

In the matter at hand, the parties have stipulated to facts in the JSF that make the application of Lukich, which is not retrospectively or prospectively applied as noted by this Court, irrefutable in determining Ms. Hynie a bigamist under South Carolina law. No other outcome is even remotely possible on these facts. Specifically, it has been agreed in the JSF that: 1) Ms. Hynie was married to Javed Ahmed on February 17, 1997; 2) On December 14, 2001 James Brown and Ms. Hynie participated in a marriage ceremony; 3) From the February 17, 1997 marriage ceremony between Ms. Hynie and Javed Ahmed through the December 14, 2001 marriage ceremony between Ms. Hynie and James Brown, no order of any court or other occurrence ended or caused to end the marriage between Javed Ahmed and Ms. Hynie; 4) Ms. Hynie did not have an annulment granted until April 15, 2004. JSF at ¶¶ 1, 2, 4, 5, 6, 7. These facts in the JSF are the only facts that have been agreed to by the parties that would "eliminate any argument that factual issues precluded Summary Judgement." Status Report, p. 2. Based on these stipulated facts that "eliminate any argument that factual issues precluded summary judgment," the lower court should have reached but one conclusion under Lukich. Ms. Hynie is a bigamist because she was married to Javed Ahmed as of December 14, 2001 and therefore could not have married James Brown. The status of Ms. Hynie's relationship with Javed Ahmed was not changed until April 15, 2004 in an annulment action. The annulment did not retroactively affect the status of the alleged Brown-Hynie marriage as of December 14, 2001 in accordance with this Court's

decision in Lukich. As such, only one conclusion is possible under the Lukich analysis as instructed by this Court on remand. Any other interpretation would require further discovery to refute disputed facts presented by Ms. Hynie.

The Status Report fails to mention or disclose how disparate the parties views have been as related to many of the facts in the case as reflected in the voluminous briefs and proposed orders that were filed in the underlying matter. The lower court opined if the question of the surviving spouse involved factual issues, then the lower court would not grant Petitioner's motion and discovery would recommence. March 31, 2014 Hearing Transcript, pp. 54-61 (relevant pages attached as Exhibit A) (p. 61). Many facts are in dispute and at issue which should have precluded summary judgment for Ms. Hynie. These disputed facts and their existence were not addressed in the Status Report, but were addressed in summary judgment briefs, proposed orders and motions to reconsider. However, based on Lukich, the parties agreed on the only facts that should be necessary to dispose of the issue of Ms. Hynie's alleged marriage to James Brown and remove any shred of doubt that Ms. Hynie is anything other than a bigamist. Amazingly, the lower court reached the opposite conclusion in its January 13, 2015 Order, which is that Ms. Hynie was James Brown wife. Almost all Respondents have filed Motions for Reconsideration of this matter and intend to appeal if the decision stands once the stay is lifted.

4. Status of Cinnamon N. M. Paris

The lower Court has not addressed the status of Cinnamon N. M. Paris as an heir in its status update. Respondent Terry Brown is unclear on her status, but knows that she is a listed party in this Court's caption.

5. Respondent is unaware of a proposed scheduling order.

To Respondent Terry Brown's knowledge no scheduling order was circulated with a day certain trial date to be set no later than February, 2016. The matter was discussed at the November 24, 2014 summary judgment hearing, but no order has actually been circulated.

6. Mediation of case 2010-CP-40-4900.

While it is true that a second mediation has been ordered in the above referenced case, it is a bit of misnomer to state that the parties are "motivated to once again try to reach a global resolution on the issues." The parties were ordered to mediation. The parties are less optimistic than the lower courts that a resolution will be able to be reached, but plan to attend in good faith as ordered by the courts. Requiring parties from all over the country to attend is cumbersome and likely unnecessary since all are and have been represented by counsel, but the parties intend to comply as ordered.

The foregoing is submitted in an effort to assist this Court with its requested status update.

Respectfully submitted,

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