

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM AIKEN COUNTY
COURT OF COMMON PLEAS

HONORABLE DOYET A. EARLY, III, CIRCUIT COURT JUDGE

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JUN 01 2015

APPELLATE CASE No. 2013-001856

SC Court of Appeals

JACQUELYNE HOLLANDER,.....APPELLANT,

v.

THE IRREVOCABLE TRUST ESTABLISHED BY JAMES BROWN ON AUGUST 1,
2000 AND RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE IRREVOCABLE TRUST
ESTABLISHED BY JAMES BROWN ON AUGUST 1, 2000,.....DEFENDANTS,

OF WHOM RUSSELL L. BAUKNIGHT IS THE.....RESPONDENT.

RETURN IN OPPOSITION TO PETITION FOR REHEARING

Respondent Russell L. Bauknight, Trustee of the Irrevocable Trust Established by James Brown on August 1, 2000, submits this return. This Court has not “overlooked or misapprehended” Rule 221(a), SCACR, any of the arguments raised by Petitioner. Indeed, the arguments advanced by Petitioner are nothing more than an improper effort to re-try this case in the Court of Appeals. *Checker Yellow Cab Co., Inc. v. Checker Cab and Parcel Service, Inc.*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986). Accordingly, the petition should be denied.

This Court affirmed the circuit court’s dismissal of Petitioner’s complaint because the pleading showed on its face that it was untimely. *Hollander v. The Irrevocable Trust Established by James Brown on August 1, 2000*, Unpublished Opinion No. 2015-UP-169,

p.1 (Ct. App. Filed April 1, 2015). In this Court, Petitioner did not challenge the circuit court's conclusion that the complaint was untimely; rather, Petitioner argued that Respondent should be estopped from raising the statute of limitations as a complete bar.

This Court correctly concluded that Petitioner's estoppel argument was not preserved for appellate review. Petitioner challenges that conclusion by making the bald statement that "the issue was raised at the Trial Court and ruled on by it before it was brought to this Honorable Court for review." (Petition, 3). Petitioner provides no record cite to support that claim, and that is because it is an incorrect statement of the record.

The first time that Petitioner raised the estoppel issue was in her post-hearing brief served on July 25, 2013. (R. pp. 50-51). The circuit court subsequently signed its order on August 7, 2013, and did not address the issue. Petitioner did not file a Rule 59(e), SCRPC, motion seeking a ruling on this issue by the circuit court. Instead, Petitioner filed a notice of appeal. The issue is not preserved for appellate review. *Great Games Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000) (noting that where a party fails to prompt the circuit court to rule on an issue via a Rule 59(e) motion, the issue is not preserved for appellate review). Accordingly, this Court correctly affirmed the dismissal of Petitioner's complaint.

Petitioner makes a last ditch effort at reconsideration by citing the Supreme Court's recent request to review certain orders related to litigation filed by heirs and putative heirs seeking to invalidate the Will and Trust. This case has nothing to do with the Will and Trust litigation. Accordingly, Petitioner's argument should be disregarded.

This Court correctly affirmed the circuit court's dismissal of Petitioner's complaint. Petitioner has not identified any issue that this Court has "overlooked or

misapprehended.” Rule 221(a), SCACR. Accordingly, the petition for rehearing should be denied.

Respectfully submitted,



J. David Black, SC Bar No. 68499
NEXSEN PRUET, LLC
Post Office Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900
DBlack@nexsenpruet.com

Burl F. Williams, SC Bar No. 77901
NEXSEN PRUET, LLC
55 E. Camperdown Way, Suite 400
Greenville, South Carolina 29601
(864) 282-1165
BWilliams@nexsenpruet.com

Counsel for Respondent
Trustee of the James Brown August 1, 2000
Irrevocable Trust, Russell L. Bauknight

June 1, 2015

Columbia, South Carolina

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ESTABLISHED BY JAMES BROWN IN AUGUST 1, 2000,.....DEFENDANTS,

OF WHOM RUSSELL L. BAUKNIGHT IS THE.....RESPONDENT.

PROOF OF SERVICE

I certify that I have served the **RESPONDENT'S RETURN IN OPPOSITION TO PETITION FOR REHEARING** by depositing a copy of the same in the United States Mail, postage prepaid addressed to Appellant's attorney of record at the address show below on June 1, 2015.

Carl L. Solomon, Esquire
3501 North Main Street
Columbia, South Carolina 29203

Jacquelyne Hollander, *Pro Se*
1850 White Oak Drive
Algonquin, Illinois 60102

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SC Court of Appeals


NEXSEN PRUET, LLC

June 1, 2015

VIA HAND DELIVERY

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

**Re: Jacquelyne Hollander v. The Irrevocable Trust Established
by James Brown / Appellate Case No. 2013-001856**

Dear Ms. Kitchings:

Enclosed for filing with the Court is the original and seven copies of **Respondent's Return In Opposition To Petition For Rehearing and Proof Of Service** in the above-reference matter. Please return a clocked copy to me via our courier.

Thank you for your assistance in this matter.

With kind regards, I remain

Very truly yours,



J. David Black

JDB/hjr
Enclosure
cc w/encl.: Carl L. Solomon, Esquire