STATE OF SOUTH CAROLINA)
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COUNTY OF AIKEN)

FILED 10-26-2015
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Deputy Clerk

IN RE THE ESTATE OF
JAMES BROWN A/K/A
JAMES JOSEPH BROWN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Case Nos.: 2013-CP-02-02849 – orig
2013-CP-02-02850 – cert copy

ORDER RE RESPONDENT'S AND AMICI CURIAE'S MOTIONS TO ALTER, AMEND OR RECONSIDER ORDER RE PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND THE LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT

This matter came before the court on June 30, 2015 on the following motions: the Limited Special Administrator's Motion to Alter, Amend and Reconsider filed January 26, 2015; Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown's Motion to Alter or Amend Judgment and/or for Reconsideration dated January 26, 2015; Jeanette Mitchell, Sarah LaTonya Brown Fegan, Ciara Petitt, Cheriquarius Williams and LaRhonda Petitt's Motion to Reconsider Alter Amend January 13, 2015 Order; Daryl Brown's Motion to Alter, Amend and Reconsider filed January 28, 2015; Michael Deon Brown's Motion to Alter, Amend and Reconsider dated February 2, 2015; and Terry Brown's Motion to Alter, Amend and Reconsider filed February 2, 2015. Petitioner filed a Return in Opposition to Respondents' Motions to Alter, Amend or Reconsider on July 6, 2015.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, Arnold S. Goodstein, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach and Lyndey Zwing, counsel for the Limited Special Administrator David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for James Joseph Brown, II; (5) Matthew D. Bodman, counsel for

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Daryl Brown and Michael Deon Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) William Barr and Ittriss J. Jenkins, counsel for Jeanette Mitchell and Amici Curiae LaRhonda Petitt, Ciara Petitt, Cheriquarius Williams, and Sarah LaTonya Brown Fegan; and (8) J. David Black, counsel for Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust Agreement.

I. ISSUES BEFORE THE COURT.

This Court had an extensive hearing on the Respondent's respective Motions on June 30, 2015. All points raised in these Motions have already been considered and denied in this Court's Order filed January 13, 2015 granting Petitioner's Motion for Summary Judgment. In granting Petitioner's Motion for Summary Judgment, this Court relied only upon the applicable law as well as the stipulated facts and took judicial notice of the pleadings and other documents in this case.[1] The only real issue in controversy at the June 30, 2015 hearing was the interpretation of *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008). This Court reiterates that it relied only upon the applicable law and facts as agreed upon in the Joint Stipulation of Facts in granting Petitioner's Motion for Summary Judgment.

At the hearing on Respondents' Motions to Alter, Amend or Reconsider held on June 30, 2015, Respondents argued that *Lukich* was dispositive of this matter and agreed that this Court's determination of the impact of *Lukich* on this case would be determinative. Consequently, this Order focuses specifically on the impact of *Lukich*. Respondents contend that *Lukich* changes prior law by holding that a bigamous marriage is voidable, and Petitioner contends that *Lukich* is

[1] *See* Joint Stipulation of Facts filed September 5, 2014 at p. 5, ¶ 10 which states:

> The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

consistent with the bigamy statute and all case precedent by holding that a bigamous marriage is void and thus never a marriage. For the reasons stated in the previous order and discussed hereinbelow, this Court agrees with Petitioner's position. Determining the impact of *Lukich* on South Carolina jurisprudence first requires an examination of South Carolina law prior to *Lukich*.

A. The Bigamy Statute.

The South Carolina General Assembly has clearly spoken through S.C. Code Ann. § 20-1-80 that a bigamous marriage is "void" — i.e., never a marriage and never valid from the beginning.[2] This section reads as follows:

> All marriages contracted while either of the parties has a former wife or husband living shall be *void*. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80. A void marriage is treated differently from a voidable marriage. A voidable marriage can be valid unless and until a court rules that such a marriage is invalid, but a void marriage is never valid for any purpose.

The South Carolina General Assembly understands the difference between void and voidable. For example, S.C. Code Ann. § 62-3-713, governing self-dealing transactions by a

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[2] For more than a century, that statute has provided that bigamous marriages are void. This is consistent with the public policy against bigamous marriages. For example, entering into a bigamous marriage is a crime. Note, however, that *State v. Sellers*, 140 S.C. 66,134 S.E. 873 (S.C. 1926), recognizes, as do all the other bigamy cases, that a bigamous marriage is void ab initio, so that a void first marriage is not an impediment to a valid second marriage, and thus the second marriage is not bigamous and not a crime.

Lukich confirms the difference between a void marriage — void ab initio because of bigamy — and a merely voidable marriage — valid unless and until a court invalidates it, such as for intoxication. *Lukich* annulled two marriages: a bigamous marriage, held void ab initio, and a marriage annulled for intoxication, held voidable. Unlike bigamous marriages, which are against public policy and necessarily void, "intoxication" marriages are not against public policy and understandably are voidable.

personal representative, provides that such a transaction is "voidable" and can be invalidated at the request of an interested person.

"An annulment declares that a marriage never occurred because of some defect. Defective marriages may be either void or voidable. In a void marriage, the circumstances are such that the marriage could never have come into being. A voidable marriage is recognized under the law as a valid marriage until an action is brought to prove it invalid." Stuckey, *Marital Litigation in South Carolina*, Ch. 3.A. A bigamous marriage is void.[3]

Consequently, when the General Assembly uses the term "void" in the bigamy statute, the meaning is clear: a bigamous marriage is void ab initio and never valid.

B. Case Precedent: A Bigamous Marriage Is Void Ab Initio And Never A Marriage.

The annulment order in this case was granted on the most serious and substantial of all grounds for rendering a marriage void: bigamy. It is against public policy and a crime to commit bigamy. A long line of South Carolina cases, including *Lukich*, holds that a bigamous marriage is not a marriage at all, at any point in time. In fact, every South Carolina case considering the issue has concluded that a bigamous marriage is void ab initio, and thus never a marriage:

> At the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy. S.C. Code Ann. § 20- 1-80 (1985) ("All marriages contracted while either of the parties has a former wife or husband living shall be void"). It was void from its inception, not merely

[3] In fact, "a void [bigamous] marriage technically needs no judicial action to declare that it is void." *Id.*

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> voidable, and, therefore, *cannot be ratified or confirmed and thereby made valid.*

Johns v. Johns, 309 S.C. at 201, 420 S.E.2d at 858 (emphasis added).

> A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, *is not a marriage at all.* Such a marriage is absolutely void, and not merely voidable.

Day v. Day, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) (emphasis added).

> There could not have been a valid marriage between the appellant, Maggie (Craft) Blizzard, and William Blizzard, as William Blizzard had a lawful living wife at the time of the claimed marriage.

Ex parte Blizzard, 185 S.C. 131, 193 S.E. 633, 634 (1937).

> When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, *no common-law marriage may be formed*, regardless whether mutual assent is present.

Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005) (emphasis added). *See also Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993); 52 Am. Jur. 2d, supra, § 57 ("A marriage that occurs while one party is still legally married to another is void from its inception and cannot be retroactively validated by estoppel, by mutual agreement, or by the parties' conduct in holding themselves out as husband and wife.").[4] This is hardly surprising as the courts are required to follow the mandate from the legislature that bigamous marriages are void ab initio.

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[4] Every South Carolina case, as required by § 20-1-80, has concluded that the status of someone entering into a bigamous marriage is that of never having been married. It is Mrs. Brown's status that is critical here. At the time she married Mr. Brown, she had no impediment to their marriage because she had never been married before. Respondents cite several cases that deal with ancillary matters, but all of these cases follow the required rule about status: someone having entered into a bigamous marriage was never married. To the extent these cases also deal with ancillary matters, they are inapposite. *See Splawn v. Splawn*, 311 S.C. 423, 429 S.E.2d 805 (S.C. 1993) (bigamous marriage void ab initio but court had to deal with ancillary equitable apportionment of property issues); *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (S.C. App. 2004) (similar, citing *White v. White*, 283 S.C. 348, 323 S.E.2d 521 (S.C. 1984)); *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003) (second marriage bigamous and void ab initio — court had to decide impact on first husband's obligation to pay alimony, which had ostensibly ended if second marriage was valid, which it was not).

C. *Lukich v. Lukich.*

Both the Court of Appeals and Supreme Court decisions in *Lukich*[5] are in accord with § 20-1-80, case precedent, and Mrs. Brown's position. *Lukich* held that a *bigamous* marriage is void ab initio. *Lukich* also held that a marriage, annulled for *intoxication rather than bigamy*, could be treated as voidable.

Lukich annulled two marriages: one void ab initio for bigamy and another voidable for intoxication.[6] In *Lukich,* the wife sought alimony during a divorce from her second husband (Marriage 2). During the divorce proceeding, the second husband learned that the woman had previously been married (Marriage 1) and had never obtained a divorce or an annulment from the first husband. During the divorce case, which was pending in one county, the wife quickly obtained an annulment for Marriage 1, without her husband's knowledge and in another venue, on the ground of intoxication.[7] Both appellate courts concluded that Marriage 1 was voidable and refused to apply the annulment of Marriage 1 retroactively so that her status would allow her to enter Marriage 2. Marriage 1 in *Lukich* was properly voidable, rather than void, because the annulment was based on intoxication rather than bigamy. One consequence of the *Lukich* court

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[5] 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006); 379 S.C. 589, 666 S.E.2d 906 (2008).

[6] It is highly significant, however, that the annulment of the wife's first marriage was based upon intoxication. A ceremony performed while the parties are intoxicated is not completely ineffective to create a marriage. The marriage is only voidable, not void. *See Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903) ("Intoxication at the time of entering into the marriage contract will not render the marriage void, but only voidable."); *Henley v. Foster*, 220 Ala. 420, 422, 125 So. 662, 664 (1930) ("A nullity decree may be and is properly granted . . . upon a voidable marriage, one subject to ratification, but not ratified, as in the case of drunkenness[.]"). Once the parties return to sobriety, they are free to waive the defect and have a legally recognized marriage. Heavily intoxicated people have the right to seek an annulment of their marriage, but they are not required to exercise that right.

A bigamous marriage, by contrast, is one of the least valid relationships possible. It is not a marriage at all, for any purpose known to the law. The defect cannot be waived or ratified; the law positively forbids the recognition of any form of marriage where one party to the marriage ceremony is already married to someone else.

[7] "[S]he and Havron were married during a night of heavy drinking, [and] had never lived together as husband and wife[.]". *Lukich*, 368 S.C. at 51, 627 S.E.2d at 756.

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treating Marriage 2, the bigamous marriage, as void ab initio, is that the husband in Marriage 2 owed no alimony because Marriage 2 was "never a marriage." If *Lukich* had not treated Marriage 2 as void ab initio because it was bigamous, as required by statute and precedent, the Court would have had to conclude that the husband of Marriage 2 would have owed alimony from the time of Marriage 2 until the annulment of Marriage 2.[8]

In short, a marriage entered into by intoxicated persons is not invalid until the parties decide to attack the marriage and not to waive the defect. Therefore, it is logical, as the *Lukich* Court held, that a voidable marriage was invalid only prospectively from the date of the annulment.

A void marriage, however, is different. A void marriage is never a valid marriage. The parties are not permitted to waive the defect; the marriage is automatically invalid. Both *Lukich* appellate courts concluded that Marriage 2 was void ab initio because it was bigamous. Consequently, Marriage 2 was never a marriage so that the divorce was unnecessary and the second husband could not owe alimony.

In contrast to Mrs. Brown's situation, Mrs. Lukich's *first* husband was *not* already married when he married Mrs. Lukich, and consequently there was no impediment under the bigamy statute for this first husband to enter a marriage with Mrs. Lukich. Therefore it was Mrs. Lukich's *second* marriage, to Mr. Lukich, that was void unless this second marriage fit under one of the three exceptions in the bigamy statute.

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[8] The holding in *Lukich* as to Marriage 1 makes perfect sense, as a voidable marriage is invalid only if it is attacked. The parties to a voidable marriage always have the option of waiving the defect and ratifying the marriage. The annulment of Marriage 1 in *Lukich* was granted on the ground of intoxication. Intoxication is one of the classic grounds that render a marriage voidable, but not void. *See* 52 Am. Jur. 2d Marriage § 23 (Westlaw database updated Nov. 2014); *Abel v. Waters*, 373 So. 2d 1125, 1128 (Ala. Civ. App.), *writ denied*, 373 So. 2d 1129 (Ala. 1979); *Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903).

The Court of Appeals in its *Lukich* decision expressly stated that its holding as to the intoxication annulment was limited to the facts of the marriage and would not apply to bigamous marriages such as this very case, where *Mrs. Brown's first marriage was void and not merely voidable*:

> We note that our holding is limited to the facts of the case at bar, e.g., the situation where the annulled marriage would be valid but for an annulment decree declaring the marriage ab initio. Our holding is not meant to affect a party who enters into one of the three types of marriages that never have legal validity in South Carolina, namely marriages that are void ab initio by operation of statute:
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> (1) bigamous marriages, S.C. Code Ann. § 20-1-80 (Supp. 2004); (2) same sex marriages, S.C. Code Ann. § 20-1-15 (Supp. 2004); and (3) marriages of minors under the age of 16, S.C. Code Ann. § 20-1-100 (Supp. 2004).

Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 n. 2 (Ct. App. 2006).

The Supreme Court in its *Lukich* opinion did not overturn the obvious rule recognized by the Court of Appeals in its *Lukich* opinion. In fact, the Supreme Court opinion confirms that bigamous marriages are void ab initio and are never a marriage at all: "*The [bigamy] statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or retroactive perspective. Any other question of § 20-1-80 would lead to uncertainty and chaos.*" 379 S.C. at 593; 666 S.E.2d at 907 (emphasis added). The Supreme Court opinion in *Lukich* also cites precedential authority for the same principle:

> *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) ('A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.'); *Howell v. Littlefield*, 211 S.C. 462, 46 S.E.2d 47 (1947) ('[Husband's] existing marriage. . .incapacitated him. . .to contract another marriage. . . .').

Id. at 592-93, 666 S.E.2d at 907.

Contrary to Respondents' contention, *Lukich* does not change, but is instead consistent with, S.C. Code Ann. § 20-1-80 and all South Carolina case precedent: a bigamous marriage (Marriage 2 in *Lukich*) is void ab initio and never a marriage.

In their summary judgment arguments, Respondents, in particular Terry Brown, cited the following language from the Supreme Court opinion in *Lukich* as somehow changing the treatment of bigamous marriages in this state:

> Under the statute's terms, Wife's 'marriage' to Husband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse *and that* marriage had not been 'declared void.' § 20–1–80.

Lukich, 373 S.C. at 592, 666 S.E.2d at 907 (Emphasis added).

Respondents contend that *Lukich* creates new law with respect to bigamous marriages. Respondents claim *Lukich* disregards the clear requirement of the bigamy statute and ignores or reverses all case precedent that bigamous marriages are void ab initio. At the summary judgment hearing, Respondents based their contention on the words "and that" emphasized in the above quote. These words, Respondents argue, indicate that regardless of whether a marriage is void or voidable, one has an impediment to marriage and must obtain an annulment before remarriage. Contrary to Respondents' contention, however, the words "and that" do not refer to the bigamous marriage (Marriage 2 in *Lukich*); the words "and that" clearly refer to the intoxication marriage (Marriage 1 in *Lukich*). Thus, *Lukich* cannot be read to change a substantive statutory rule of law: *Lukich* does not hold that a bigamous marriage is void only from the date of the annulment order. This would render a bigamous marriage voidable rather than void. *Lukich* does no such thing. Rather, *Lukich* confirms that a bigamous marriage is void ab initio and never a marriage because it treated Marriage 2 (the bigamous marriage in *Lukich*) as never having been a

marriage, so that the second husband did not need a divorce and did not owe alimony to a wife he never married.

Similarly, at the hearing on the motions to reconsider, Respondents, especially Terry Brown, continue to misplace and misstate the order of marriages in *Lukich* and argue that the order of marriages in this case is parallel, but it is not.[9] Terry Brown tries to shoehorn the first marriage in *Lukich* into Mr. Brown and Mrs. Brown's marriage situation, but that shoe does not fit. The *Lukich* courts clearly distinguish a marriage void for bigamy --- the second marriage in *Lukich* --- from a marriage voidable for intoxication --- the first marriage in *Lukich*. Terry Brown attempts to equate the putative first marriage of Mrs. Brown to Ahmed with the first marriage in *Lukich*, based simply on the order of marriages. But it is the type of annulment that creates the critical distinction between *Lukich* and this case, not the order of marriages. A bigamous marriage --- the first putative marriage in this case and the second marriage in *Lukich* --- is always void ab initio and never a marriage.

Respondents' misreading of *Lukich* would necessarily include both the Court of Appeals and the Supreme Court favorably citing the statute requiring and the cases holding that bigamous marriages are void and thus never valid, yet according to Respondents somehow overturning and contravening them without expressly saying so. For example, the *Lukich* Court of Appeals cited the following cases:

> Section 20-1-80 of the South Carolina Code Annotated sets forth the principle that "[a]ll marriages contracted while either of the parties has a former wife or husband living shall be void." This statute codifies the overriding public policy of this state against bigamy. *Johns v. Johns,* 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct.App.1992) (holding the public policy of not recognizing bigamous marriages overrides the public policy supporting the finality of judgments). A person who is married cannot enter into a valid marriage by participating in a marriage ceremony with a new person. *Day v. Day,* 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) ("A mere marriage ceremony between a man and a woman, where

[9] *See* Transcript, June 30, 2015, pp. 83-84.

one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.").

The Supreme Court opinion in *Lukich* quoted the following cases:

> While an annulment order relates back in most senses, it does not have the ability to validate the *bigamous second 'marriage.'* Since there was no marriage under the plain terms of the statute when the ceremony between Wife and Husband # 2 was performed in 1985, there was nothing to be 'revived' by the annulment order in 2003. *See e.g., Day v. Day,* 216 S.C. 334, 58 S.E.2d 83 (1950) ("A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable")[2]; *Howell v. Littlefield,* 211 S.C. 462, 46 S.E.2d 47 (1947) ("[Husband's] existing marriage ... incapacitated him ... to contract another marriage...."). The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of § 20–1–80 would lead to uncertainty and chaos.

379 S.C. at 592-93, 666 S.E.2d at 907 (emphasis added).[10]

Respondents argue that the *Lukich* courts, without expressly saying so, overruled the very cases they cited favorably for the proposition that bigamous marriages are void ab initio and contravened the bigamy statute that the *Lukich* courts cited. Of course, the *Lukich* courts did no such thing, but instead ruled consistently with the bigamy statute and all South Carolina precedent by holding that a bigamous marriage is never a marriage.[11]

If Respondents were correct that *Lukich* created a new rule, then the *Lukich* court would instead have held that the second husband owed alimony until an annulment order for Marriage 2

[10] The italicized language clearly refers to the bigamous marriage as the second marriage in *Lukich.* The first marriage, annulled for intoxication, was voidable and, because voidable marriage annulments may be prospective only, did not alter the wife's status as already being married when she attempted to enter into a bigamous marriage with her putative second husband. Unlike Mrs. Lukich, it was Mrs. Brown's first putative marriage that was void ab initio for bigamy, so that she had a status of "not married" when she entered into her valid marriage with Mr. Brown because she had no impediment.

[11] In fact, a later decision cites both *Day* and *Lukich* in the same sentence for the proposition that bigamous marriages are void ab initio, without any suggestion that the latter overrules the former. *See Hill v. Bert Bell/Pete Rozelle NFL Player Ret. Plan,* 405 S.C. 423, 426, 747 S.E.2d 791, 792-93 (2013).

was obtained. The clear meaning of *Lukich* is that, as required by § 20-1-80 and all precedent, bigamous marriages are void ab initio and never a marriage.

Moreover, even if Respondents were correct in their position about *Lukich*, i.e., that even a bigamous marriage is valid unless and until an annulment order is obtained, they could still not prevail. Under their theory, *Lukich* changed the law about bigamous marriages so that a bigamous marriage remains valid unless and until an order of annulment is obtained. If that were correct, then under their theory Mrs. Brown had an impediment to marrying Mr. Brown and that marriage was therefore bigamous. But under Respondents' position, Mr. Brown's bigamous marriage to Mrs. Brown would be valid unless and until Mr. Brown obtained an order annulling their marriage, which he did not obtain during his lifetime. It is now too late for Mr. Brown to obtain an annulment.[12] So, even under Respondents' theory, the marriage between Mrs. Brown and Mr. Brown was valid at his death and cannot be invalidated because it is too late.

In this case, unlike *Lukich*, it is the first marriage (Marriage 1), rather than Marriage 2 in *Lukich*, that is bigamous and thus void. Consequently, Mrs. Brown's attempted marriage to Ahmed (Marriage 1) was void ab initio and never a marriage. Therefore Mrs. Brown had no impediment to her marriage to Mr. Brown, and that marriage (Marriage 2) is valid.

Despite the contentions of Respondents, *Lukich* is consistent with the bigamy statute and all precedent involving bigamous marriages: bigamous marriages are void ab initio and never have any effect --- they are "never a marriage." The only difference with respect to bigamous marriages between *Lukich* and this case is that, in *Lukich*, the bigamous marriage was the second marriage, while in this case, the bigamous marriage is the first marriage. That difference has no impact on the treatment of bigamous marriages. The bigamous second marriage in *Lukich* was

[12] *See* the discussion in the January 13, 2015 Order at IV.C.

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void ab initio and never had effect. The bigamous first marriage in this case was void ab initio and never had effect, so that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Were this Court to give only prospective effect to the annulment in this case, it would be holding that a bigamous marriage was not invalid from its inception. Rather, it would be holding that a bigamous marriage was valid from the date of its inception until the date of the annulment.

This Court is unwilling to hold that a bigamous marriage, as determined by a family court of this state, was ever legal. There is no precedent for such a holding. South Carolina law precludes this Court from giving any effect whatsoever to a bigamous marriage. Because the Court cannot give any effect to a bigamous marriage, it is required to hold that the bigamous marriage was never a marriage.

Mrs. Brown and Ahmed never had a valid marriage at any point in time, and Mrs. Brown had no impediment to her valid marriage to Mr. Brown.

Lukich is consistent with *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906), which held that bigamous marriages are void ab initio, in accord with all other cases considering the issue. The LSA argued that *Hallums* was exactly on point and reached a different result. The LSA misses a critical factual distinction between *Hallums* and the current case: in *Hallums*, there was never a court determination that the first marriage (Marriage 1) was bigamous and, in fact, the court found that the Marriage 1 was not bigamous. By contrast, in the current case, there is a valid annulment order finding that the first marriage was bigamous.

The Hallums paradigm actually supports Mrs. Brown's position. If the *Hallums* court had determined that Marriage 1 was bigamous, then the *Hallums* opinion indicates that the

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second marriage (Marriage 2) would have been valid because there would have been no impediment to the wife entering into the second marriage (Marriage 2) with the decedent.

More specifically, in *Hallums*, a woman attempted to get a distributive share from the decedent's estate, claiming to be his surviving spouse. However, the estate contended that she was already married when she attempted to marry the decedent, and thus had an impediment to the attempted marriage to the decedent. The woman then contended that her attempted first marriage was invalid because her putative first husband was already married when they attempted to get married. So far, the LSA is correct: absent the critical distinction missed by the LSA's analysis, the *Hallums* paradigm is the same as the paradigm in the current case because in *Hallums*, the woman argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married.

In the current case, Mrs. Brown argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married. The *critical* difference between the two cases is that in *Hallums*, the woman *did not* have a separate annulment order invalidating Marriage 1 void ab initio and did not get one because the court concluded her first marriage was not bigamous. In the current case, Mrs. Brown *does* have an annulment order invalidating Marriage 1. In *Hallums*, the court was asked to consider the validity of both Marriage 1 and Marriage 2 at the same time. The *Hallums* court determined that Marriage 1 was valid because there was insufficient evidence that the husband in Marriage 1 was already married: consequently, Marriage 1 in *Hallums was not bigamous* and therefore was valid. Thus, the woman in *Hallums* had an impediment to Marriage 2. That is the critical factual difference between the facts in

Hallums and the current case. In the current case, Marriage 1 was determined by a court to be bigamous and thus never valid. In the current case, Mrs. Brown thus had no impediment to Marriage 2 (her valid marriage to Mr. Brown).

Hallums supports Mrs. Brown's position. *Hallums* stands for the proposition that, *if* Marriage 1 had been bigamous and thus void ab initio, Marriage 2 to the decedent would have been valid and the woman would have been entitled to her distributive share from the decedent's estate. That is exactly Mrs. Brown's position. Because she has an order confirming that Marriage 1 was void ab initio as bigamous, Marriage 2 is valid and she qualifies as a surviving spouse.[13]

D. All Bigamous Marriages Are Void, Under *Lukich* And All Other Applicable Law.

Every bigamous marriage is void ab initio. A bigamous marriage is never valid — "never a marriage." In S.C. Code Ann. § 20-1-80, the bigamy statute, the South Carolina General Assembly requires that a bigamous marriage is void ab initio. In accordance with this legislative mandate, every South Carolina case dealing with bigamous marriages, including *Lukich* and *Hallums,* holds that a bigamous marriage is void ab initio and never has effect. Although Respondents contend that *Lukich* somehow changes that rule and instead provides that a bigamous marriage is valid until an annulment order is obtained, that is not the holding in *Lukich* as to bigamous marriages. *In Lukich, it is the second marriage that is bigamous* and both appellate courts treat that second marriage as void ab initio, in accordance with the bigamy statute and all case precedent. *In Mrs. Brown's case, it is the first marriage that is bigamous,*

[13] Unlike this case, the court in *Hallums* looked at the first marriage after the decedent's death because: (1) there was no pre-existing annulment order from a court with exclusive jurisdiction over annulments, as there is today; (2) this was prior to the family court having exclusive jurisdiction over annulments – in fact, this was prior to the existence of family courts in South Carolina; (3) this was prior to § 62-2-802 defining surviving spouse for estate purposes and case law precluding postmortem annulments. *See* the January 13, 2015 Order at IV.C.

and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums is in accord with the bigamy statute, Lukich, and* all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was *found to be bigamous and void*, the first marriage in *Hallums* was *found not to be bigamous and was therefore valid.* However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

II. CONCLUSION.

Respondents would have this Court become the first court ever in the history of South Carolina to hold that any form of validity attaches to a bigamous marriage. The Court declines that invitation. Regardless of whether it is annulled sooner, annulled later, or even not annulled at all, a bigamous marriage is not a marriage for any purpose known to the law. The holding in *Lukich*, which also held that a voidable marriage based on intoxication is valid between the date of marriage and the date of annulment, confirms the statutory and case precedent rule that all bigamous marriages are void and never a marriage.

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that the Respondents' and Amici Curiae's Motions to Alter, Amend and Reconsider are denied.

AND IT IS SO ORDERED.

This 20 day of Oct, 2015, at Bamberg, South Carolina.

DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202851

PLAINTIFF(S)	DEFENDANT(S)
James Brown II Jeanette Mitchell	David Sojourner Yamma Brown Larry Brown Daryl Brown Deanna Brown Thomas Vanisha Brown Terry Brown
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

10/26/2015

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

This judgment was entered on **10-26-15**, and a copy mailed first class or placed in the appropriate attorney's box on **10-26-15**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.