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DEC 03 2015 THE STATE OF SOUTH CAROLINA
SC Court of Appeals In the Court of Appeals

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S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early III, Circuit Court Judge

Appellate Case No. 2015-002417

Tommie Rae Brown,.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is the.....Appellant.

APPELLANT'S MOTION TO CERTIFY TO THE SOUTH CAROLINA
SUPREME COURT FOR REVIEW PURSUANT TO RULE 204(b), S.C.A.C.R.

TO: THE HONORABLE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF
THE SOUTH CAROLINA SUPREME COURT:

Appellant David C. Sojourner, Jr., Esquire, in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown, and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 ("Appellant"), by and through his undersigned counsel, respectfully requests the South

Carolina Supreme Court certify the above-captioned appeal pursuant to Rule 204(b) of the *South Carolina Appellate Court Rules*. This appeal is from a probate action related to the Estate of James Brown (“Estate”), specifically, the omitted spouse and elective share claims filed Tommie Rae Hynie Brown (“Respondent”). This case involves both issues of significant public interest and legal principles of major importance and should be certified under the South Carolina Appellate Court Rules.

This Honorable Court well knows of the complex and myriad legal issues involving the Estate of James Brown¹; however, a brief review of the facts and legal proceedings may be helpful. By Last Will and Testament, dated August 1, 2000 (“Will”), the “Godfather of Soul” James Brown, a/k/a James Joseph Brown (“Decedent”) devised all of his personal and household effects to six adult children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown. Decedent left the remainder of his Estate to The James Brown 2000 Irrevocable Trust (“Trust”) via a pour-over provision in his Will. Decedent created the Trust under a separate agreement, also dated August 1, 2000, as part of his estate plan to provide financial assistance via scholarships for the education of his grandchildren and disadvantaged youths in the States of Georgia and South Carolina.

In January 2007, after the death of Decedent on December 25, 2006, Respondent filed claims to obtain either an omitted spouse share or elective share of Decedent’s

¹ See Opinion, *Wilson v. Dallas*, No. 27227, 403 S.C. 411, 743 S.E.2d 746 (2013); see also Appellate Case Nos. 2009-142286, 2010-165127, 2012-212917, 2013-000201, 2013-001649, 2013-001856, 2013-002582, 2014-00794, 2014-001279, 2014-001896, 2014-002222, 2015-000215.

probate estate.² Respondent alleged to be Decedent's "surviving spouse" based on evidence of a ceremonial marriage between Respondent and Decedent that occurred on December 14, 2001 in Aiken County, South Carolina.

Prior to Respondent's purported marriage to Decedent, however, on February 12, 1997, Respondent and another man named Javed Ahmed obtained a marriage license in the State of Texas and on February 17, 1997 participated in a ceremonial marriage. Respondent and Mr. Ahmed never obtained a divorce. After purportedly marrying Decedent in 2001, Respondent attempted to obtain an annulment from Mr. Ahmed in the Charleston County Family Court. *See* Case No. 2003-DR-10-04609 (*Tommie Rae Hynie, a/k/a Tommie Rae Brown v. Javed Ahmed*). On April 15, 2004, the Charleston County Family Court entered a final order granting an annulment of Respondent's marriage to Javed Ahmed.

Respondent asserts in this action that because the Charleston Family Court's 2004 order declared her 1997 marriage to Mr. Ahmed "void ab initio," that 2004 order retroactively validated her otherwise bigamous 2001 marriage to Decedent. On these grounds, Respondent filed a Motion for Summary Judgment on April 28, 2014, seeking to be declared Decedent's "surviving spouse" under South Carolina Probate Code §§ 62-2-201-207 and 62-2-301. On May 29, 2014, Appellant filed a cross Motion for Summary Judgment seeking to have the Court declare Respondent was not Decedent's "surviving spouse" as a matter of law.

The parties to the action entered into and filed a Joint Stipulation of Facts on September 5, 2014. After extensive briefing to the lower court and oral argument on

² Respondent also filed Petitions to Set Aside Informal Probate and to Set Aside Trust Agreement based on allegations of undue influence and fraud. *See* Case No. 2008-CP-02-01647. While related, these petitions are not a part of this appeal.

November 24, 2014, the lower court granted Respondent's Motion for Summary Judgment and denied Appellant's Motion for Summary Judgment on January 13, 2015. Specifically, the Court ruled: "Tommie Rae Brown is the surviving spouse of James Joseph Brown. The Family Court's April 15, 2004 Final Order is binding on James Joseph Brown and his heirs and must be respected by this Court."

On January 26, 2015, Appellant moved to alter, amend and reconsider the Court's order. The lower court asked the parties to brief the narrow issue of application of this Court's and the South Carolina Court of Appeals' decisions in *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). After significant briefing by the parties, and oral argument held on June 30, 2015, the lower court affirmed its January 13, 2015 order granting Respondent's Motion for Summary Judgment and denying Appellant's Motion for Summary Judgment. See Order, October 26, 2015. Appellant filed a notice of appeal on November 20, 2015.³

The legal issues involved in this appeal are related to the public interest in that Respondent's success on her claims to be Decedent's surviving spouse have a direct impact on the Decedent's Estate and the money that will pass to the Decedent's charitable trust under the pour-over clause in the Will. The Decedent intended to devote this money to the education of impoverished children in South Carolina and Georgia. Accordingly, issues of significant public interest are necessarily intertwined with the legal analysis involved in this case.

In addition, this case involves legal principles of major importance. The lower court's orders turn upon significant legal principles concerning the effect of family court

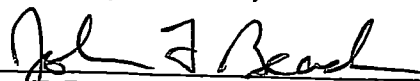
³ Deanna Brown-Thomas and Dr. Yamma Brown filed a Notice of Appeal on November 20, 2015. Michael Deon Brown, Daryl Brown and Terry Brown filed a Notice of Appeal on November 24, 2015.

annulment orders on a decedent's estate. Not only are these issues significant to family and probate courts throughout the state, but in addition, the public interest has a significant interest in understanding the interplay between decisions rendered by different courts, including the family court and probate court. The lower court's decisions, based on *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), purport to define whether a family court annulment order "relates back" so as to retroactively validate an otherwise bigamous intervening marriage.

The public has an interest in ensuring estates are probated efficiently and effectively. This interest has been codified by the General Assembly through its directive to personal representatives and trustees to "settle and distribute [an] estate . . . as expeditiously and efficiently as is consistent with the best interest of the estate" and the "successors to the estate." See S.C. Code Ann. § 62-3-703(a). This is especially so where the public interest has a direct stake in the outcome of litigation through the passing of probate assets to a charitable trust. This public interest is well-served by the acceleration of the appellate review process.

Appellant respectfully requests that the Court certify this appeal under Rule 204(b) of the *South Carolina Appellate Court Rules*.

Respectfully submitted,



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Attorneys for Appellant

December 1, 2015.

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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Doyet A. Early III, Circuit Court Judge S.C. Supreme Court

Civil Action Nos. 2013-CP-02-02849, 2013-CP-02-02850

Appellate Case No. 2015-002417

Tommie Rae Brown, Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is the Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that she has served the foregoing Appellant's Motion to Certify to the South Carolina Supreme Court for Review Pursuant to Rule 204(b), S.C.A.C.R. by depositing a copy of same in the United States Mail, postage prepaid on December 1, 2015 and addressed as follows:

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Brown*

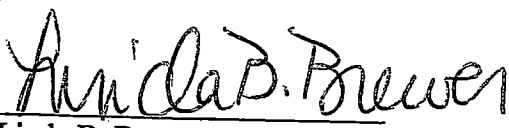
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Attorneys for Appellant

December 1, 2015

ADAMS AND REESE LLP

November 30, 2015

Via U.S. Mail and Electronic Mail: BCreppon@SCCourts.org

Ms. Bethanie K. Creppon
Post Office Box 85411
Lexington, SC 29073

RE: Estate of James Brown a/k/a James Joseph Brown
Appellate Case No. 2015-002417
Civil Action Number: 2013-CP-02-02849 & 2013-CP-02-02850
A&R File No. 022853-000001

Dear Ms. Creppon:

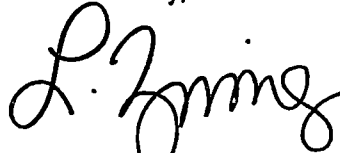
On behalf of the Appellant, David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, and pursuant to Rule 207(a), SCACR, we are requesting that you provide us with a copy of the following hearing transcript:

1. June 30, 2015 motions hearing on the Limited Special Administrator's Motion to Alter, Amend and Reconsider filed January 26, 2015; Larry Brown, Venisha Brown, Deanna Thomas-Brown 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 Pettitt, Cheriquarius Williams and LaRhonda Pettitt's Motion to Reconsider, Alter, Amend January 13, 2015 Order; Daryl Brown's Motion to Alter, Amend and Reconsider filed February 2, 2015 before the Honorable Doyet A. Early, III.

We agree to pay the per charge for this transcript as provided by Rule 607, SCACR.

Thank you for your time and attention to this matter. Please contact me with any questions or concerns.

Sincerely,



Lyndey R. Zwing

LRZ/lbb

cc: David C. Sojourner, Jr., Esquire
✓ The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals
S. C. Office of Court Administration
All Parties of Record

Attorneys at Law

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Florida

Louisiana

Mississippi

South Carolina

Tennessee

Texas

Washington, DC

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SC Court of Appeals

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Via Hand Delivery

The Honorable Daniel E. Shearhouse
Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201

RE: Estate of James Brown a/k/a James Joseph Brown
Appellate Case No. 2015-002417
Civil Action Number: 2013-CP-02-02849 & 2013-CP-02-02850
A&R File No. 022853-000001

Dear Mr. Shearhouse:

Enclosed for filing in the above-referenced matter are the original and seven (7) copies of Appellant's Motion to Certify to the South Carolina Supreme Court for Review Pursuant to Rule 204(b), S.C.A.C.R. together with our firm's check in the amount of \$25.00 to cover the filing fee. Please file the original and six (6) copies pursuant to Rule 240, SCACR, and return the extra copy to me via courier.

By copy of this letter, I am serving all counsel of record and the Clerk of Court for the South Carolina Court of Appeals with the motion as set forth in the enclosed Proof of Service.

Thank you for your assistance in this matter. Please contact me with any questions or concerns.

Sincerely,



John F. Beach

JFB/lbb

Enclosures

cc: David C. Sojourner, Jr., Esquire
✓ The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals
All Parties of Record

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ADAMS AND REESE LLP

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