

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002417

RECEIVED

JAN 22 2016

SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown

Tommie Rae Brown, Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown, Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

RETURN TO RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Terry Brown hereby responds to Respondent Tommie Rae Brown's Motion to Dismiss Appeal filed on January 12, 2016, by and through his undersigned counsel, in accordance with SCACR 240(e). The appeal should continue with a briefing schedule set and Respondent's Motion to Dismiss denied as the matter involves a final adjudication of Respondent's status as the wife and therefore an heir of the deceased

James J. Brown.

I. THE ORDER APPEALED BY APPELLANTS IS NOT AN ORDER DENYING SUMMARY JUDGEMENT BUT INSTEAD ONE GRANTING RESPONDENT SUMMARY JUDGMENT.

Respondent contends that the lower court decision was a denial of summary judgment, but it was not. The lower court's decision was a grant of summary judgment to Respondent that she was the wife and therefore an heir of James J. Brown. The lower court specifically granted Respondent's Motion for Summary Judgment, in the order which was filed on January 23, 2015 pursuant to Rule 56, SCRPC, on the sole issue of the marital status of Tommie Rae Brown as the spouse of the decedent James J. Brown to which Appellants filed Motions to Alter, Amend and Reconsider on February 2, 2015, which were subsequently denied in an Order filed October 26, 2015 ("Orders").

Appellants timely appealed these Orders.

It is undisputed that the Orders on appeal granted Respondent's Motion for Summary Judgment. They declared Respondent to be the decedent's surviving spouse and therefore his heir. As such, the lower court reached a decision on the merits of Respondent's claim as the surviving spouse and heir of James J. Brown. Had such decision not been reached, the Respondent's entire remaining actions would be dismissed as she would have no standing to pursue the same as she is not an heir. If this appeal were dismissed, it could result in continued and protracted litigation that could place a tremendous cost on the parties with unnecessary legal expenses with an individual who ultimately would be ruled not to be an heir of the estate. Further, Respondent could use such Orders to improperly claim that she is the surviving spouse for the purpose of

exercising federal copyright terminations of the decedent's music empire in accordance with federal copyright termination statutes as the surviving spouse. Based on the foregoing, the ruling of the lower court is a final determination on the merits.

The Orders are appealable pursuant to S.C. Code §14-3-330(1) as a final judgment on the determination of whether Respondent is the wife and heir of James J. Brown. The Orders completely fix the rights of the parties related to this issue thereby making it final. *See Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). At a minimum, the Orders are "intermediate judgments involving the merits" which are immediately appealable. *See Nauful v. Milligan*, 258 S.C. 139, 143; 187 S.E.2d 511, 513 (1972). To "involve the merits" the order must "finally determine some substantial matter forming the whole or a part of some cause of action or defense." *See Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456 (1988). Determining that Respondent is an heir of the Estate of James J. Brown undoubtedly is such an order thereby making it directly and immediately appealable.

Alternatively, the Orders could be construed to strike part of the pleadings in accordance with S.C. Code §14-3-330(c)(2) (which Respondent is contending is the case as 12(b)(6) motion), which would make the Orders directly and immediately appealable. *See Link v. School District of Pickens County*, 302 S.C. 1, 393 S.E. 2d 176 (1990). Further, the Orders on appeal, including review of the denial of summary judgment, are directly and immediately appealable. *See Briggs v. Richardson*, 273 S.C. 376, 256 S.E.2d 544 (1979) (allowing for denial of summary judgment to be reviewed on appeal where the grant of opposing parties summary judgment was appealable). Based on the foregoing,

this Court should immediately review and ultimately overturn the decision that Respondent is the wife and heir of James J. Brown thereby granting Appellants summary judgment on the matter.

II. THE GRANT OF SUMMARY JUDGMENT TO RESPONDENT IS NOT JUST A GRANT OF STANDING BUT A FINAL ADJUDICATION ON THE MERITS BECAUSE IT DETERMINES AN HEIR OF JAMES J. BROWN'S ESTATE.

While it is true that the lower court's ruling would grant standing to Respondent so that she could continue her claims in the underlying action as an heir of James J. Brown, it is more than a grant or determination of standing as she contends. It is an adjudication of her as the surviving spouse and heir of James J. Brown, which is a far reaching legal determination on the merits. The most important and damaging of which is determining her to be an heir of James J. Brown's Estate. Further, the idea that the Court of Common Pleas (sitting in the shoes of the action removed from the Probate Court) would not have jurisdiction to determine if someone was the surviving spouse for purposes of rights in an estate (i.e. elective share and omitted spouse as have been filed in this case) in accordance with S.C. Code Ann. §63-3-503(B) is unfounded. The Probate Courts in the State of South Carolina have exclusive jurisdiction to determine the heirs of an estate. *See* S.C. Code Ann. § 62-1-302 (a)(1). Whether someone is actually the spouse and was validly married to a deceased individual is a proper action that should be heard **exclusively** before Probate Courts in South Carolina when it is determinative of that person as an heir. Respondent cites no law in support of her contention otherwise. In fact, the rule of law as expressed by the South Carolina Supreme Court is exactly the

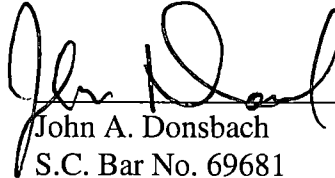
opposite of what Respondent contends. When the ultimate issue is heirship, the Probate Court (not the Family Court as argued by Respondent) has exclusive jurisdiction over determining marital rights. *See Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 757 S.E.2d 399 (2014); *Thomas v. McGriff*, 368 S.C. 485, 629 S.E.2d 359 (2006). As James J. Brown is now deceased, the ultimate issue is heirship. Therefore, the issue left to be determined as it relates to Respondent is whether she is a proper heir of his estate as the surviving spouse. The Court of Common Pleas, sitting in the shoes of Probate Court through removal, has exclusive jurisdiction to review the issue of whether Respondent is the surviving spouse for purposes of being an heir of the estate of James J. Brown. The lower court has exercised this right and made an erroneous final determination that Respondent is an heir of James J. Brown, which this Court needs to rectify. The determination is not merely that Respondent has standing to pursue her actions as she contends, but instead that she is an heir of James J. Brown. Therefore, this Court should review the lower courts determination in accordance with S.C. Code Ann. §14-3-330 with an eye towards ultimately reversing the lower court's decision.

CONCLUSION

For the foregoing reasons, Appellant Terry Brown respectfully requests that this Court deny Respondent's Motion to Dismiss and set a briefing schedule in this matter.

January 21, 2016

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John Donsbach", written over a horizontal line.

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PROOF OF SERVICE

The undersigned hereby certifies that on January 21, 2016, he has caused a copy of the Return to Respondent's Motion to Dismiss Appeal addressed as follows:

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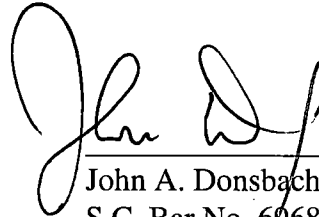
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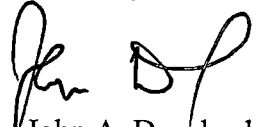
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Appellate Case No. 2015-002417
Civil Action No. 2013-CP-02-2849 and 2013-CP-02-2850

C/M No.: 2497/1

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Return to Respondent's Motion to Dismiss Appeal and the accompanying Proof of Service in the above-referenced case. Please file the original and six copies and return one copy to me in the enclosed self-addressed, stamped envelope. If you have any questions, please feel free to contact me. Thank you.

Sincerely,


John A. Donsbach

JAD/mks
Enclosures

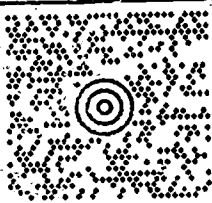

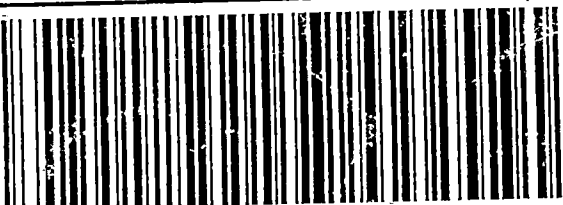

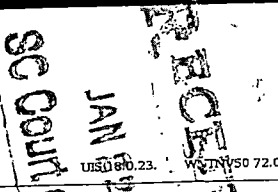
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