

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

RECEIVED

JAN 22 2016

SC Court of Appeals

Appellate case No. 2015-002417

Trial Court Case No. 2013CP0202849, 2013CP0202850

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, 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, Daryl Brown and Michael
Deon Brown are the.....Appellants.

APPELLANT'S DARYL BROWN'S RETURN TO
RESPONDENT'S MOTION TO DISMISS APPEAL

Appellant Daryl Brown, by and through his undersigned counsel, hereby responds according to SCACR 240(e) to Respondent Tommie Rae Brown's Motion to Dismiss Appeal filed on January 12, 2016. The Motion to Dismiss should be denied and this appeal should continue as the lower court definitively and finally adjudicated that the Respondent was the "surviving spouse" and therefore an heir of James Brown under the foundation of her elective share and omitted spouse claims.

I. THE ORDER APPEALED IS AN ORDER GRANTING SUMMARY JUDGMENT TO RESPONDENT

The Orders on Appeal granted Respondent's Motion for Summary Judgment, determining in the January 1, 2015 Order that the Respondent is the Decedent's "surviving spouse" as a matter of law. The lower court's decision is a determination "affecting the merits" of the Respondent's case because she must prove she is a surviving spouse as the lynchpin of her omitted spouse and elective share claims. While there are other elements in her claims that still need to be proven, the decision to rule in favor of the Respondent is a ruling "affecting the merits" because she must prove she is a surviving spouse as a threshold issue. In the event that the January 1, 2015 Order had not been decided the way the lower court ruled, litigation involving the Respondent's elective share and omitted spouse claims would be over. More litigation would not be needed. She would not be an heir of the Estate of James Brown. Because the Orders on Appeal "finally determined a substantial matter forming part of the [Respondent's case]" the Orders "involve the merits" and are therefore appealable under S.C. Code 14-2-330; see *Baldwin Constr. Co., Inc. v. Graham*, 357 S.C. 227, 593 S.E.2d 146 (2004).

II. APPELLATE COURTS ENJOY DISCRETION TO INCLUDE AN ORDER DENYING A MOTION FOR SUMMARY JUDGMENT

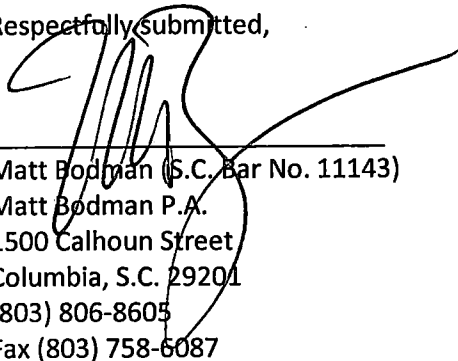
Because the issues involving the Limited Special Administrator and Special Trustee's and others' motions for summary judgment were so connected to the Respondent's motion for summary judgment, this court should consider in this appeal the denial of those summary judgment motions as well. There are powerful arguments on both sides of the cross motions for summary judgment such that they should be weighed together. Extensive briefs took place in the record below including a joint stipulation of facts for review. It would be in the interest of judicial economy to decide these issues in the appellate courts now. Despite the general rule that the denial of a motion for summary judgment is not immediately appealable, the South Carolina appellate courts have examined such orders when they are interwoven with orders connected to the same issues. In *Watson v. Underwood*, 407 S.C. 443, 457, 756 S.E.2d 155 (Ct. App. 2014), the Court of Appeals wrote that "an order that is not directly appealable

will nonetheless be considered if there is an appealable issue before the Court and a ruling on appeal will avoid unnecessary litigation." The Court of Appeals has also said it will "review interlocutory orders when they contain other appealable issues." *Id.* (quoting *Ferguson v. Charleston Lincoln Mercury, Inc.* 349 S.C. 558, 565, 564 S.E.2d 94, 98 (2002)).

The South Carolina Supreme Court has ruled that "[a] summary judgment ruling, as well as a 12(b)(6) dismissal, fits within the "definition" of an order that "determines 'some substantial matter forming the whole or a part of some cause of action or defense.'" *Link v. Sch. Dist of Pickens County*, 302 S.C. 1, 6, 393 S.E.2d 176, 179 (1990) (quoting *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988)). Here, the court should decide that the Orders on Appeal, including the part that denied the LSA and LST's and others' motion for summary judgment, are appealable together.

Based on the foregoing reasons, Appellant Daryl Brown respectfully asks that the Respondent's Motion To Dismiss Appeal be denied, thereby continuing this appeal.

Respectfully submitted,



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January 22, 2016
Columbia, South Carolina

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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, Daryl Brown and Michael Deon Brown are the.....Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that he has served the foregoing Return to Respondent's Motion to Dismiss by depositing a copy of same in the United States Mail, postage prepaid on January 29, 2016 and addressed as follows:

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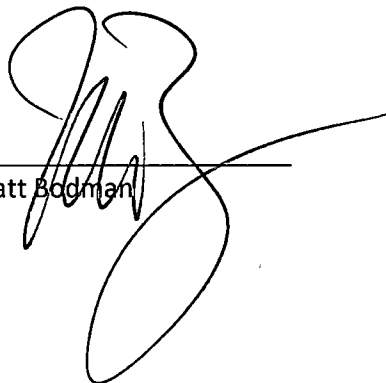
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January 22, 2016
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Friday, January 22, 2016

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, S.C. 29211

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SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown
Tommie Rae Brown v. David C. Sojourner, Jr., et al.
Appellate Case No. 2015-002417

Dear Ms. Kitchings:

Enclosed for filing is an original and seven (7) copies of Appellant's Daryl Brown's Return to Respondent's Motion to Dismiss Appeal in the above-referenced matter together with the Proof of Service. Please file the original and six copies and return the extra clocked-in copy.

If you have any questions or concerns, please do not hesitate to contact me.

With warmest personal regards, I am,

Sincerely,

Matt Bodman

