

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

Case Nos. 2007-CP-02-0122, 2007-ES-02-0056

Appellate Case No. 2012-212917

RECEIVED
SEP 24 2012
SC Court of Appeals

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

Adele J. Pope.....Appellant,

v.

Alan Wilson, Attorney General of the State of South Carolina, Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, and Tommie Rae Brown,.....Respondents.¹

**REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS OR STAY APPEAL, OR
FOR EXTENSION OF TIME TO FILE RESPONDENTS' INITIAL BRIEF**

Respondents submit this Reply in further support of the Motion to Dismiss or Stay Appeal, or for Extension of Time to File Respondents' Initial Brief, and in response to Appellant's Return and Memorandum Opposing Motion to Dismiss or Stay Appeal or Grant

¹ Rather than using the circuit court caption in the underlying action, Pope has improperly created her own appellate caption. Not only has she failed to name all of the underlying parties as Respondents, for some of those that she does name, she creates a new party of record. For example, Appellant Pope continues to incorrectly name Respondent Tommie Rae Hynie Brown as "Tommie Rae Hynie" or "Ms. Hynie." The actual caption of the circuit court case clearly refers to her as Mrs. Brown. As previously stated, some of the overwhelming evidence showing that Mrs. Brown was married to James Brown is set forth in Respondents' initial Motion.

Extension, filed on or about September 16, 2012. For the reasons stated below and in Respondents' initial Motion, the Court should dismiss this appeal first for lack of subject matter jurisdiction; second, for lack of standing; and third, under the law of the case doctrine. In the alternative, should the Court decline to dismiss, it should stay the appeal to avoid a ruling on the standing issue that is currently pending before the Supreme Court. Respondents also request that, if the appeal is not dismissed, they be granted an additional thirty (30) days from the date of this Court's ruling or lifting of the stay to file Respondent's initial brief.

In her Return, Pope states at pages 2-3 that "only two things matter to this appeal": (1) her appeal does not raise any issues pending before the Supreme Court in *Wilson v. Dallas* and therefore the present appeal should not be stayed; and (2) whether Tommie Rae Brown is James Brown's surviving spouse and the date of death value of James Brown's estate² are at issue in a different circuit court case from the one in which she is appealing, and she (and fourteen other witnesses for whom Pope believes she speaks) needs to be able to discuss Tommie Rae's stolen personal diaries in that other action. Even assuming these are the only two things that matter to this appeal (which they are not), they are easily addressed.

**POPE'S MOTION AND APPEAL ATTEMPT TO INTERFERE
WITH THE PENDING CASE OF *WILSON V. DALLAS***

A removed, former personal representative and trustee, like Pope, does not have standing to challenge discovery orders in a case that has been settled. By attempting to litigate this case in the circuit court and in this Court, Pope presumes that she has standing. That is the first issue

² The date of death valuation of James Brown's Estate, of course, has nothing to do with Tommie Rae Brown's diaries. Pope raised the valuation issue in her initial brief to this Court. The moving parties briefed Pope's self-interested reason for raising this issue in their Motion to Dismiss.

addressed in Respondents' brief in *Wilson v. Dallas*.³ If the circuit court had entertained Pope's motion below, it would have decided an issue pending before the Supreme Court because it necessarily would have found that Pope had standing.

The circuit court did not hear Pope's motion because it correctly recognized that it lacked jurisdiction to decide the motion under Rule 205, SCACR. Avoiding interference with appellate court decision making is the purpose of Rule 205, SCACR, and served as the correct basis for the circuit court's decision. Pope was not asking the lower court to enforce the diary orders, *see Arnal v. Fraser*, 371 S.C. 512, 519, 641 S.E. 2d 419, 422 (2007), she was asking the court to lift them so that she could put them to her own purposes, including for her "professional writings" (a purpose notably absent in her Return but clearly stated throughout the mountains of hearsay-and-unsupported allegations submitted below).

**THE PENDENCY OF CASE 4900 IS A RED HERRING
AND DOES NOT ALTER THE ABSENCE OF JURISDICTION**

If Tommie Rae Brown's personal diaries are discoverable evidence in another civil court case (the "4900" action pending in Richland County), then Pope should seek them through civil discovery in that action. But she has not done so. Pope has spilled much ink on the issue of her purported First Amendment right to publish Tommie Rae Brown's stolen diaries to the world, but Tommie Rae has an equally important right to due process concerning her private writings. Being a party in litigation does not automatically entitle one to another party's diary. First, the diary must be requested. Next, the party to whom the diary belongs has the right to object to its production. Finally, the requesting party (Pope) has the right to petition the court presiding over

³ It appears that Pope misapprehends the concept of standing. For example, in her Return she argues that the Diary Orders prevent the Attorney General from reading or discussing the diaries with his assistant attorneys general. Not only does Pope lack standing to make this argument, but she makes it on behalf of an opposing party in this same litigation who does not agree that the Diary Orders interfere with his duties.

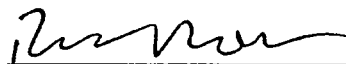
the case in which the diary is purportedly relevant to compel production of the diary. None of this has happened here.

Why would Pope go through such efforts in a different action to obtain the diaries? Respondents submit that it is because Pope's primary purpose in seeking the diaries is not, in fact, to use them as evidence in the 4900 case, but rather to disclose them outside of the 4900 case, including to the Supreme Court in a blatant and inappropriate effort to sway that Court's decision making in a pending case: *Wilson v. Dallas*. Noticeably absent from Pope's Return is her primary request stated in her Motion to the circuit court that she be granted permission "to freely and openly disseminat[e]" her knowledge of the diaries. See Exhibit Y to Respondents' Motion filed September 13, 2012. Pope has apparently reached the conclusion that her need for the diaries in the 4900 case is the only need this Court might entertain, but her failure to even request the diaries in the 4900 case belies her stated motives in this appeal.

CONCLUSION

For the reasons stated above and in Respondents' initial Motion, the Court should dismiss this appeal first for lack of subject matter jurisdiction; second, for lack of standing; and third, under the law of the case doctrine. In the alternative, should the Court decline to dismiss, it should stay the appeal to avoid a ruling on the standing issue that is currently pending before the Supreme Court. Respondents also request that, if the appeal is not dismissed, they be granted an additional thirty (30) days from the date of this Court's ruling or lifting of the stay to file Respondent's initial brief.

Respectfully submitted,



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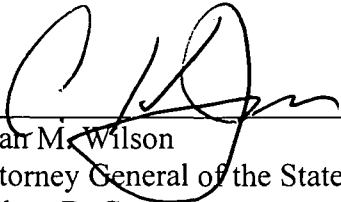
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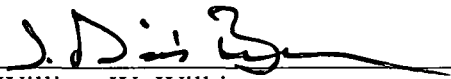
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Attorneys for Respondent Tommie Rae Brown

The Settling Parties hereby join and support Tommie Rae Brown's Motion to Dismiss Adele Pope's appeal regarding the diary orders.

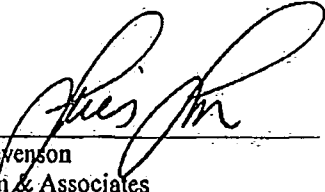


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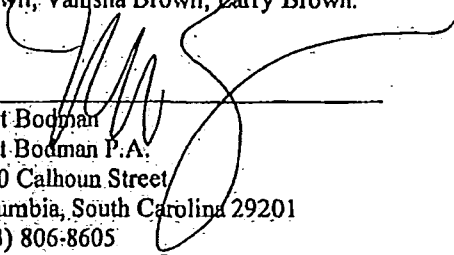
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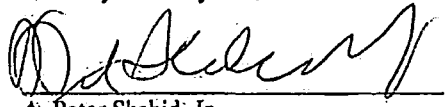
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PROOF OF SERVICE

The undersigned certifies that a copy of the **Reply to Return in Opposition of the Motion To Dismiss Or Stay Appeal, Or For Extension Of Time To File Respondents' Initial Brief** has been served upon the Appellant by U.S. Mail, postage prepaid, addressed to as listed below on the 24th day of September, 2012.

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