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

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 STRIKE FROM INITIAL BRIEF OF APPELLANTS ALL REFERENCES TO DOCUMENTS WHICH WERE NOT PRESENTED TO OR CONSIDERED BY THE LOWER TRIBUNAL AT OR BEFORE THE NOVEMBER 24, 2014 HEARING RESULTING IN THE JANUARY 13, 2015 ORDER BEING APPEALED IN THIS CASE AT OR BEFORE THE JUNE 30, 2015 HEARING RESULTING IN THE OCTOBER 26, 2015 ORDER BEING APPEALED IN THIS CASE.

AND

RETURN TO RESPONDENT'S MOTION TO REQUIRE APPELLANTS TO AMEND AND RE-FILE THEIR INITIAL BRIEFS SO AS TO DELETE ANY AND ALL REFERENCES TO ALL DOCUMENTS WHICH WERE NOT PRESENTED TO OR CONSIDERED BY THE COURT OF COMMON PLEAS IN REACHING ITS DECISION IN THE ORDER UNDER APPEAL.

AND

RETURN TO RESPONDENT'S MOTION TO STAY AND EXTEND TIME LIMITS TO FILE AND SERVE HER INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL.

Appellant Terry Brown hereby files this Return, in accordance with Rule 240(e), SCACR, requesting that the South Carolina Court of Appeals deny Respondent's Motion to Strike, Motion to Amend and Re-file and Motion for Extension in the above-captioned appeal.

Respondent Tommie Rae Brown argues that certain matters should be stricken and edited from Appellants' briefs. Specifically, Respondent wishes to strike references to evidence of her own present sense impressions that assist the Appellants in proving that Respondent Tommie Rae Brown is not the wife of James Brown. In effect, Tommie Rae Brown is requesting that this Court "edit" Appellants' briefs on filing a Motion to Strike.

Under South Carolina procedural law there are two general rules allowing a Motion to Strike. Rule 12(f), SCRCP, provides that a Motion to Strike may be filed against an offending pleading:

> Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

Rule 12(f) of the Federal Rules of Civil Procedure provides a similar rule:

> The court may strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The court may act:
>
> (1) on its own; or

(2) on motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading.

The District Court of South Carolina has determined that such motions are disfavored generally and applied the following standard:

> Fed. R. Civ. P. 12(f) allows a court, acting either on its own or on a motion, to 'strike from a pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.' Fed. R. Civ. P. 12(f). Generally, such motions 'are only granted when the challenged allegations 'have no possible relation or logical connection to the subject matter of the controversy' or 'cause some form of significant prejudice to one or more of the parties to the action.' Moore v. Novo Nordisk, Inc., C/A No. 1:10-2182-MBS-JRM, 2011 U.S. Dist. LEXIS 30171 (D.S.C. Feb. 10, 2011) (citations omitted). 'A motion to strike is a drastic remedy which is disfavored by the courts and infrequently granted.' Clark v. Milam, 152 F.R.D. 66, 70 (S.D. W. Va. 1993); see also Waste Mgmt. Holdings, Inc. v. Gilmore, 252 F.3d 316, 347 (4th Cir. 2001) ('Rule 12(f) motions are generally with disfavor 'because striking a portion of a pleading is a drastic remedy and because it is often sought by the movant simply as a dilatory tactic.') (quoting 5A Charles Alan Wright & Arthur R. Miller, Federal Practice & Procedure § 1380 (2d ed. 1990)). Moreover, 'where there is any question of fact or any substantial question of law, the court should refrain from acting until some later time when these issues can be more appropriately dealt with.' United States v. Fairchild Indus., Inc., 766 F. Supp. 405 (D. Md. 1991).
>
> A Rule 12(f) motion falls within the discretion of the district court. Palmetto Pharm. LLC v. Astrazeneca Pharm. LP, No. 2:11-cv-00807-SB-JDA, 2012 U.S. Dist. LEXIS 177185 (D.S.C. Nov. 6, 2012) (citation omitted); Xerox Corp. v. ImaTek, Inc., 220 F.R.D. 241, 243 (D. Md. 2003). When reviewing a motion to strike, 'the court must view the pleading under attack in a light most favorable to the pleader.' Piontek v. Serv. Ctrs. Corp., Civil No. PJM 10-1202, 2010 U.S. Dist. LEXIS 117843 (D. Md. Nov. 5, 2010) (citation omitted).

Affirmative Ins. Co. v. Williams, 2015 U.S. Dist. LEXIS 84617, *11-12 (D.S.C. June 30, 2015).

In this instance, however, there are two very important distinguishing issues related to a Motion to Strike in an appellate matter. First, a Motion to Strike applies to pleadings, not editing briefs, as Respondent Tommie Rae Brown files in this instance. Second, and more importantly, the South Carolina Appellate Court Rules do not contain a

Motion to Strike nor a procedure to file one. As a result, the current Motion to Strike, as filed by Respondent, is procedurally deficient and should be denied.

Instead of filing the editing Motion to Strike, the issues raised by Respondent should be addressed in her response brief rather than end running page limitation restrictions by filing this Motion to Strike. Even though South Carolina appellate courts do not appear to have addressed this issue, the United States Seventh Circuit Court of Appeals, in an opinion written by Judge Easterbrook is directly on point. The opinion harshly criticizes the filing of Motions to Strike and chastises and sanctions the offending parties for filing such an offensive and procedurally deficient motion. The Seventh Circuit noted in its scathing opinion:

> The motion came to me during my stint as the motions judge. It is now denied--and to show that such absurd motions do not come for free, I deduct twice the length of this motion from the permissible length of the offending party's reply brief.
>
> Custom Vehicles believes that its adversary's brief contains unsupported assertions of fact.
>
> ***
>
> Perhaps Custom Vehicles is right about the record and Forest River wrong. But what would lead counsel to think that the court of appeals will redact his adversary's brief? The way to point out errors in an Respondent's brief is to file a reply brief, not to ask a judge to serve as editor. (If a material misrepresentation comes in the adversary's reply brief, the Respondent may ask for leave to file a supplemental statement.) The judiciary has quite enough to do deciding cases on their merits.
>
> One can search the Federal Rules of Appellate Procedure in vain without finding any provision for a 'motion to strike' whole documents, let alone to strike sentences out of briefs. Our Circuit Rules do provide for a motion to strike, but only to get extraneous materials out of the appellate record when documents find their way there by error. Again there is no provision for a judicial blue pencil. The closest match in any of the federal rules is Fed. R. Civ. P. 12(f), which

provides that a district court 'may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.' This rule does not apply to appellate practice and would not help Custom Vehicles if it did, for the motion does not contend that Forest River's brief contains 'any redundant, immaterial, impertinent, or scandalous matter.' Motions may be proper despite the lack of a specific rule. Suppose, for example, that Forest River's brief had included material that Custom Vehicles claimed as a trade secret and that had been held under seal by the district court. We would accept a motion to seal the offending brief pending resolution of any dispute about confidentiality, which could be resolved by requiring the litigant to file two briefs--one under seal with the full text, and a second redacted version for the public record. Likewise the court sometimes strikes entire briefs, either because they so substantially violate the Rules of Appellate Procedure that it would not be worth judicial time to work through them, or because they overlap the presentation of other litigants on the same side, in violation of a scheduling or consolidation order entered under Fed. R. App. P. 33 and Circuit Rule 33. Judicial orders that control the conduct of an appeal will be enforced, if necessary by striking a brief.

But *editing* a brief? That's a different kettle of fish. The sort of motion that Custom Vehicles has filed does nothing but squander time.

***

How could the court tell without resolving the merits? Custom Vehicles's motion could not be granted without a response (Forest River has replied in detail, using about three pages to address each page of Custom Vehicles's challenges) followed by full-fledged adjudication on the question what the record shows about these matters. If the motion were granted, new briefs would be required. No sane judicial system would fritter away resources in that fashion. Why should this court devote resources to whether the A © symbol on a document was affixed in 2002, as opposed to some other year, when that subject may well be irrelevant? Despite the fact that motions to strike portions of briefs are not authorized by the rules and are not only unnecessary (from the parties' perspective) but also pointless (from the judiciary's), they are filed all the time. I see about one such motion during each week that I act as motions judge. I have never granted such a motion (and never will); I don't believe that any of my colleagues grants such motions; yet the flow continues.

For some time I have been treating such motions as a form of "advance" on the allowance of pages or words used for the party's appellate brief. So in the days when an appellate brief could run 50 pages, a pointless five-page motion was deducted from the allowable total and the brief's maximum length cut to 45 pages,

> on the ground that the litigant had forced the court to work through five pages of argument already and thus had 45 left to go.
>
> The court has ample power to change the length of a brief from the presumptive maximum. I have decided to use that power. My practice has not led to a discernible reduction in the number of these motions, however, perhaps because I have not explained it in a published opinion. Now notice has been given--and I have decided to raise the stakes and deduct from the brief double the number of words in a motion to edit an opponent's brief or any other equivalently absurd, time-wasting motion.
>
> Custom Vehicles's motion to strike contains about 1,200 words. The presumptive maximum length of a reply brief under Fed. R. App. P. 32(a)(7)(B)(ii) is 7,000 words. For Custom Vehicles, however, the reply brief in this appeal may not exceed 4,600 words. The motion to strike is denied.

Custom Vehicles, Inc. v. Forest River, Inc., 464 F.3d 725, 728 (7th Cir. 2006) (citations omitted).

As in the Seventh Circuit, the South Carolina Appellate Court Rules do not contain any mention of a Motion to Strike. The Motion to Strike filed by Respondent Tommie Rae Brown is procedurally inappropriate and should be denied.

Even if this Court were to adopt a Motion to Strike as a proper procedural motion, the one filed in this instance is still procedurally and fatally defective under South Carolina law as to the complained excerpts from Appellant Terry Brown's brief. Respondent fails to prove that the material requested to be struck is immaterial or meets any of the standards of a motion to strike. In fact, it is just the opposite. The information they seek to strike is directly relevant to this matter. The entire matter currently before this Court centered on Appellant David C. Sojourner, Jr., in his capacity as the Limited Special Administrator ("LSA") seeking access to the diaries mentioned in Appellants briefs to be used as evidence in this matter. The lower court was clearly aware of their

existence and their general content as were all parties. Respondent and Appellants counsel argued at length in the March 31, 2014 hearing about the diaries and their content. See March 31, 2014 Hearing Transcript, pp. 54-62. This information has properly been referenced in the record and designated to be included in the record on appeal by Appellants.

Additionally, Respondent states that the last two sentences on the Statement of Case on pp. 1-2 of Appellant Terry Brown's Initial Brief should be struck as they are not properly before this Court as part of the record. Respondent argued against producing the diaries as is reflected in the March 31, 2014 transcript that has been made part of the record in the designation of Appellants. Respondent also argues that the references in Appellant Terry Brown's Initial Brief to this Court on p. 36 were never properly placed into evidence before the lower court. This is also not true. These issues were squarely before the Court as reflected in the March 31, 2014 transcript, as well as Appellant Terry Brown's Reply Memorandum dated October 31, 2014 on page 10, attached as part of Exhibit A, and Motion to Alter, Amend and Reconsider filed on February 2, 2015 in paragraph 26, attached hereto as part of Exhibit B, which are designated for inclusion in the record by Appellants. These arguments were briefed to the lower court and squarely before the lower court as part of the November 24, 2014 Summary Judgment hearing, and to state anything else misrepresents the filings and arguments before the lower court. Further, the appropriate time to file Respondent's motion under South Carolina law, if this Court were to allow a Motion to Strike, was thirty (30) days after the filing of the offending pleading (which the documents in this matter are not). As a result,

Respondent Tommie Rae Brown has waived the right to file a Motion to Strike by failing to preserve the same for appeal, the current one as filed is untimely, or it is filed against the wrong document that is not even possible to be filed in the appellate court (i.e. a brief rather than a pleading).

With regard to Section Five, Pages 37-38, Appellant Terry Brown makes the argument that additional evidence is available which has not been considered. The lower court and all parties have been aware of the diaries during the pendency of this portion of the case as the lower court sealed such documents until their release into the public. The content of these diaries is relevant to the matter at hand. In fact, Respondent confirms the references to potential content in the passages is correct when she claims that Appellants have "cherry picked" certain passages and quotes in paragraph 13 of her Motion to Strike. Respondent Tommie Rae Brown does not claim they are incorrect. By making such statement, she verifies that the content as referenced by Appellants (which is actually not direct quotes, but general references) actually exists and is outstanding evidence. Respondent's Motion to Strike helps prove Appellants case that grant of summary judgment to her was legally and factually deficient under the summary judgment standards. Respondent is admitting there is evidence that the lower court did not consider which proves Respondent Tommie Rae Brown is not married to James Brown. That is why Respondent filed a Motion to Strike in an effort to further obfuscate the truth. Finally, and most importantly, these issues were also raised before the lower court in Appellant Terry Brown's Reply Memorandum dated October 31, 2014 on pages 13-14, attached hereto as part of Exhibit A, and Motion to Alter, Amend and

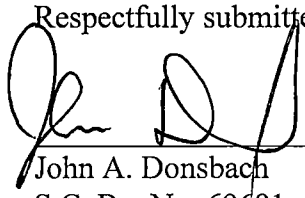
Reconsider filed on February 2, 2015 in paragraph 27, attached hereto as part of Exhibit B, which are designated for inclusion in the record by Appellants.

The timing of Respondents Motion to Strike seems to serve no other purpose than to further delay this proceeding. Filing a Motion to Strike to edit a brief relative to arguments that have been before the Court for almost two (2) years and were considered by the lower court as part of the summary judgment hearing on November 24, 2014 is misplaced, procedurally deficient, and dilatory in nature.

Based on the foregoing, Respondent's Motion to Strike must be denied as should her request for Appellants to re-file their briefs. Finally, this Court should deny Respondent Tommie Rae Brown's request for an extension to file her brief past the July 11, 2016 deadline. The parties have already graciously agreed to the current sixty (60) day extension to July 11, 2016 and an additional twenty (20) days for Appellants to file a Reply brief by August 10, 2016 (which will be the subject of a soon to be filed Motion for Extension on behalf of Appellants). Further, the Court should award any additional relief it deems appropriate.

June 30, 2016

Respectfully submitted,



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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

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Tommie Rae Brown, Respondent,

v.

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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, Michael Deon Brown and Daryl Brown are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on June 30, 2016, he has caused a copy of the Return to Respondent's Motion to Strike from initial brief of appellants all references to documents which were not presented to or considered by the lower tribunal at or before the November 24, 2014 hearing resulting in the January 13, 2015 order being appealed in this case at or before the June 30, 2015 hearing resulting in the October 26, 2015 order being appealed in this case.

and

Return to respondent's motion to require appellants to amend and re-file their initial briefs so as to delete any and all references to all documents which were not presented to or considered by the court of common pleas in reaching its decision in the order under appeal.

and

Return to respondent's motion to stay and extend time limits to file and serve her initial brief and designation of matter to be included in the record on appeal.

to be served upon all parties of record by mailing a copy of the Return addressed as follows:

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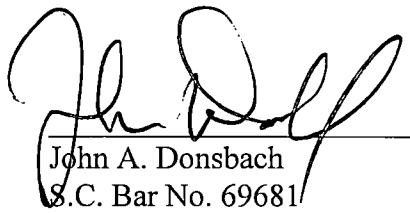

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the parties denote their understanding of their marital relationship, which was that they were not married.[36]

iv. This Honorable Court indicated on March 31, 2014 that should factual issues arise in the presentation of Petitioner's Motion for Partial Summary Judgment that such Motion would be denied.

As noted in the transcript[37] of the March 31, 2014 hearing:

Mr. Beach: Now, Judge, there are –that simple questions could be legal questions. On the other hand, if Mr. Rosen asserts that the - - if Mr. Rosen asserts that James Brown is estopped by that order, then Mr. Rosen is probably going to have to assert some facts to support that estoppel argument…

The Court: Well, if he does that – if he does that, then I think the summary judgment goes out the window.

Clearly several facts have been raised which would preclude summary judgment for Petitioner such as:

1) the supportive effects of Brown-Hynie Consent Order and annulment dismissal which clearly is challenged by Petitioner and used by Respondents in support of their briefs;[38]

2) the corroborating needs of the Hynie Diary[39] as it relates to the Brown-Hynie Consent Order as well as the statements against interest made in such document;

3) the communications between Ms. Hynie's attorney and Mr. Brown's attorney during the Brown Annulment action;

4) the estoppel arguments raised suggesting that because Mr. Brown financed the Hynie-Ahmed Annulment that Mr. Brown desired the annulment of the Ahmed-Hynie relationship

[36] Id. at Exhibit 19.
[37] See March 31, 2014 transcript of hearing Page 60, Line 19.
[38] See. Respondent's Memorandum of Law in Opposition to Petitioner's Motion for Partial Summary Judgment and in Support of Respondent Terry Brown's Counterarguments.
[39] It is Respondents understanding that the use of this piece of evidence is currently being held in abeyance. At a minimum, the parties should be allowed to have an in camera discussion with the Court over the parts of this diary that may be used as admissible evidence.

EXHIBIT
A

which calls into question the correspondence between Mr. Brown's attorney (Jim Huff) and Ms. Hynie's attorney(Robert Rosen);[40]

5) the alleged autobiography statements that Mr. Brown acknowledged Ms. Hynie as his wife without support as to when the manuscript was submitted or when the book was sent to print (possibly prior to information related to Ms. Hynie's bigamy);[41]

6) whether Mr. Brown benefitted from the annulment, as stated by Petitioner as part of their collateral estoppel argument and defacto party argument, but which is never supported by any factual evidence of benefit (this once again calls into question the correspondence that might exist in Mr. Jim Huff's and Robert Rosen's file between the parties during this 2004 time period); [42]

7) the Hynie-Ahmed Marriage license where Mr. Ahmed swore under oath he was not married that has not been refuted by any other evidence other than Ms. Hynie's inadmissible hearsay testimony; [43]

8) Ms. Hynie's knowledge of Mr. Ahmed's whereabouts as it pertains to service of process;

9) private investigator Pannell's full report and search efforts to locate Mr. Ahmed;

11) Mr. Ahmed's immigration status and related paperwork; and

12) evidence from Mr. Brown's attorney regarding the Brown-Hynie Consent Order and the understanding of the status of the parties relationship.

Interestingly enough, however, none of these items would preclude summary judgment being granted to Respondents. As has been noted, Petitioner has no admissible evidence that she and Mr. Ahmed did not enter into a legal marriage and that she is not a bigamist. As such, Respondents should be granted summary judgment.

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[40] See. Petitioner's Reply Memorandum in Support of Tommie Rae Brown's Motion for Partial Summary Judgment, Pages 44-45.
[41] Id. at Page 2.
[42] Id. at Page 10.
[43] See. Respondent's Memorandum of Law in Opposition to Petitioner's Motion for Partial Summary Judgment and in Support of Respondent Terry Brown's Counterarguments and attached Exhibit.

v. Ms. Hynie has failed to present any admissible evidence that Mr. Ahmed was married prior to their marriage.

It should certainly be assumed that Ms. Hynie's qualified and capable legal team would have considered seeking, and certainly sought, Mr. Ahmed's marital records in Pakistan in order to prove their case and they obviously failed to locate and/or collect one shred of evidence linking Mr. Ahmed to any prior marriages. If they had such proof, they would have provided it to the Court, the press and whoever would listen so as to conclude this matter as quickly as possible.

Pakistan is a modern nuclear country with modern data collection capabilities. Ms. Hynie and her legal team easily could have acquired a marriage license, or otherwise known as a Nikah Nama, from the Pakistani National Data and Registration Authority (NADRA) and/or the Karachi Union Councils. A Nikah Nama (marriage contract) is a legal document certifying the solemnization of marriage between a husband and wife. Under the Muslim Family Law Ordinance of 1961, it is mandatory that the Nikah Nama is registered with the local Union Council, where an original copy of Nikah Nama is kept as public record and two other copies to be served to the bride and groom. The Nikah Nama, is registered with a Nikah Registrar, who is appointed by the municipality, Panchayat committee, cantonment board or union council. Ms. Hynie, and/or by and through her attorneys could have, and it is expected they did, seek such documents and failed. They could have done so by going directly to the source, i.e. (NADRA) and/or the Karachi Union Councils, hiring Pakistani attorneys to search and locate such documents or utilize services such as:

http://inp.org.pk/nikkah-nama-registration

http://birthcertificatespakistan.com/how-to-get-pakistani-marriage-registration-certificate/

http://mamooinpakistan.com/services/marriage-certificate/

https://www.facebook.com/jalwastyle/posts/3945661577099

http://birthcertificatekarachi.com/nadra-marriage-registration-certificate/

Based on the foregoing, only one conclusion can be reached. Ms. Hynie, and or her legal team, looked and found nothing. As such Ms. Hynie is unable to provide any actual admissible evidence to any court and most importantly, this Honorable Court of her self-serving claims that Mr. Ahmed was married at the time of her marriage to him. As such, she is a bigamist.

vi. Ms. Hynie has made admissions against her interest that must be considered as evidence and cause the denial of Petitioner's Motion for Partial Summary Judgment.

Ms. Hynie kept a handwritten diary ("Hynie Diary") that was presented to several attorneys involved in this matter and others. This Honorable Court has sealed the Hynie Diary and it remains that way temporarily as indicated by this Honorable Court allowing Ms. Hynie the opportunity to prove she is Mr. Brown's widow without the need for discovery.[44] The fact the Hynie Diary exists is no secret and Counsel does not violate this Honorable Court's gag order referencing the sealed Hynie Diary as the Diary itself is not a secret and the diary has been the subject of pleading, Appellate Briefs, FOIA Requests by third parties in other courts, Hynie public interviews and various media outlets. The contents of the Hynie Diary are sealed. However, in light of the Brown-Hynie Consent Order and likely communications that exist between Mr. Brown's and Ms. Hynie's attorney from 2004, Ms. Hynie's recorded present impressions and admissions against her interest are critically important evidence. Respondents believe that such evidence will lead to a party admission supporting the fact that she knew she was not Mr. Brown's spouse. That she agreed in the Brown-Hynie Consent Order that she was

[44] See. March 31, 2014 transcript of hearing Pages 61-62.

not Mr. Brown's spouse. Respondents also believe the Hynie Diary will show the parties intent was to clear up the legal issues surrounding the invalidity of the marriage and possibly attempt to reconcile and be married legally. Most importantly, it is believed that the document will prove that the parties did not marry after the Brown-Hynie Consent Order. Respondents have a right to pursue this evidence in discovery if the court is not inclined to grant Respondents' Motion for Partial Summary Judgment. The contents of the Hynie Diary very likely will corroborate the Brown-Hynie Consent Order and likely correspondence between attorneys for the parties. Finally, This Honorable Court addressed this issue:

> The Court: And depending on how I rule on that, if need be, we'll come back and revisit the production of the Tommie Rae Brown's diary. But my thoughts on that would probably be if there's factual issues involved, that it would be something that would be discoverable, it would be subject to a very strict protective order, and probably would want some type of in camera review so I will not have read all that stuff that may not be germane to this. That's sort of going through my mind.
>
> Mr. Beach: Well, that is sort of going through our mind too, Your Honor. So we're thinking along the same lines.
>
> Mr. Rosen: That sounds very reasonable, Judge.[45]

The Hynie Diary alone precludes summary judgment for Petitioner. However, as previously noted, Respondents deserve to have their Motion for Partial Summary Judgment granted as their is not one scintilla of evidence in support of Ms. Hynie's position relative to her being a bigamist.

B. THE BROWN-HYNIE CONSENT ORDER IS INCONTESTABLE.

Ms. Hynie in her reply brief responds to the Terry Brown's position that Mr. Brown and Ms. Hynie entered into a Consent Order ("Brown-Hynie Consent Order") wherein Ms. Hynie agreed

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[45] Id., Line 20.

Petitioner and granted to the Respondents on the issue of Petitioner as the surviving spouse of James Brown. Specifically, (1) Petitioner married Javed Ahmed on February 17, 1997; (2) when Petitioner participated in the December 14, 2001 marriage ceremony with James Brown, Petitioner was still lawfully married to Javed Ahmed; (3) it was legally impossible for Petitioner to marry James Brown in December 14, 2001 because of South Carolina's law against bigamous marriages; (4) Petitioner did not have her marriage to Javed Ahmed annulled by the Charleston County Family Court (CCFC) until April 15, 2004; (5) Petitioner cannot use the Ahmed Annulment Order to retroactively validate her bigamous December 14, 2001 marriage to James Brown; (6) Petitioner was not lawfully married to James Brown when he died on December 25, 2006; and (7) Ahmed swore under oath he did not have any other wives at the time he married Tommie Rae Hynie (which incidentally is the only sworn first person testimony regarding Ahmed's marital status and only admissible evidence on the issue in this matter).

26. This Honorable Court erred when it granted summary judgment to Petitioner and failed to consider the following facts:

a. Tommie Rae Hynie was married at the time she married James Brown on December 14, 2001.

b. the supportive effects of Brown-Hynie Consent Order and annulment dismissal which clearly is challenged by Petitioner and used by Respondents in support of their briefs;

c. the corroborating or impeaching evidence contained in the Petitioner's statements in Petitioner's Diaries as it relates to the Consent Order as well as the statements against interest made in Petitioner's Diaries;

EXHIBIT
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d. the communications between Petitioner's attorney and Mr. Brown's attorney during the Brown Annulment action;

e. the estoppel arguments raised suggesting that because Mr. Brown financed the Ahmed Annulment Action that Mr. Brown desired the annulment of the Ahmed-Hynie relationship which calls into question the correspondence between Mr. Brown's attorney (Jim Huff) and Petitioner's attorney(Robert Rosen);

f. the alleged autobiography statements that Mr. Brown acknowledged Petitioner as his wife without support as to when the manuscript was submitted or when the book was sent to print (possibly prior to information related to Petitioner's bigamy);

g. whether Mr. Brown benefitted from the annulment, as stated by Petitioner as part of their collateral estoppel argument and de facto party argument, but which is never supported by any factual evidence of benefit (this once again calls into question the correspondence that might exist in Mr. Jim Huff's and Robert Rosen's file between the parties during this 2004 time period);

h. the Hynie-Ahmed marriage application where Mr. Ahmed swore under oath he was not married that has not been refuted by any other evidence other than Petitioner's own testimony and refuted in her summary judgment brief as self-serving (a fact to be determined);

i. Petitioner's knowledge of Mr. Ahmed's whereabouts as it pertains to service of process;

j. private investigator Pannell's full report and search efforts to locate Mr. Ahmed;

k. Mr. Ahmed's immigration status and related paperwork; and

l. evidence from Mr. Brown's attorney regarding the Brown-Hynie Consent Order and the understanding of the status of the parties relationship.

26. This Honorable Court erred when it determined that Javed Ahmed was given proper notice of the Charleston County Family Court rescheduled hearing in the Ahmed Annulment Action. See. Summary Judgment Order, pp. 7-8.

27. The Court erred in its refusal to allow the parties to use Tommie Rae Hynie's handwritten notes otherwise known as the Hynie Diary ("Diary"). Tommie Rae has asserted that her diary was stolen. Whether the Diary was stolen or not, is a discovery issue. Whether the document is in fact a diary, is another discovery issue. Regardless, the handwritten notes are at least discoverable and at most public domain and material to Tommie Rae Hynie's state of mind as to the marital relationship between her and James Brown. This Honorable Court, on August 10, 2007, with the consent of Tommie Rae Hynie, made the Diary public and knew it had been widely disseminated and the contents of which were known and discussed. Included in the dissemination were the Attorneys General for both South Carolina and Georgia. The Court erred in suppressing the Diary and issuing a gag order ("Gag Order") in February and March of 2008 without a hearing, notice or the laying of a proper foundation and in violation of the Respondents' due process rights. It is widely known and understood that Tommie Rae Hynie, in the Diary, made several substantial statements supporting her present sense mental impressions which support Respondents contention that she was not married to James Brown. Such information goes directly to the issue of the last and only order and contract ("Consent Order") between Tommie Rae Hynie and James Brown wherein they both agreed that they were not

married. Tommie Rae Hynie specifically agreed in the Consent Order: **"Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future."** This Honorable Court erred in failing to consider that a legally married spouse would never have to make such a declaration and the Diary clearly and unequivocally will corroborate and support Tommie Rae Hynie's understanding that at the time of entering into such agreement, she did not believe she was married to James Brown or in the alternative agreed she was not married to James Brown. Therefore, this Honorable Court erred when it failed to consider the Consent Order as a clear, unambiguous and demonstrative statement that the parties did not believe they were married and it was for only that reason that James Brown dismissed his own annulment. This is a binding agreement. Respondents contend the Diary will prove it. As such, this Honorable Court erred in suppressing the Diary.

This Honorable Court's refusal to allow discovery and refusal to lift the "gag" Order on the Diary protects one party over the other thereby snuffing Respondents' due process rights. The resulting Summary Judgment Order created a multi-million dollar windfall in favor of the Petitioner whose only legal argument may be summed that she duped the CCFC into entering a default bigamy annulment without providing any admissible evidence. The Court thereby erroneously allowed Our Lady of Justice to rule with a turned head as opposed to a blind eye. Ironic how someone who agreed to never make a claim against James Brown's estate and who was intentionally left out of a will that she personally witnessed being signed ends the day with a court giving her millions of dollars and taking said sums from the intended beneficiaries.

28. The Court erred in improperly considering that the Consent Order demonstrated James Brown intentional dismissal of his annulment action. See. Summary Judgment Order, p. 21. This Honorable Court took the position in its Summary Judgment Order that James Brown

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June 30, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Estate of James Brown a/k/a James Joseph Brown
Tommie Rae Brown, Respondent v. David C. Sojourner, Jr., et al.
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 the original and seven (7) copies of Appellant Terry Brown's Return to Respondent's Motion to Strike and Proof of Service. 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/djg

Enclosures

cc: Robert N. Rosen, Esq. (w/ encl.)
Corey T. L. Smith, Esq. (w/ encl.)
Erin C. Casey, Esq. (w/ encl.)
John F. Beach, Esq. (w/ encl.)
Lyndey Ritz Zwingelberg, Esq. (w/ encl.)
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