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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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JUN 28 2016

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

SC Court of Appeals

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 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.

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MEMORANDUM OF LAW IN OPPOSITION TO RESPONDENT  
TOMMIE RAE BROWN'S MOTION TO STRIKE

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Appellant David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown and Limited Special Trustee of the James Brown 2000 Irrevocable Trust ("LSA"), through his undersigned counsel, respectfully opposes Respondent Tommie Rae Brown's Motion to Strike, filed on or about June 21, 2016.

Respondent's motion takes issue with alleged "references" to "matters outside of the record on appeal," notably her diaries. See Motion at pp. 2-3. Respondent contends

“the Initial Briefs of Appellants Terry Brown, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, and [the LSA] have referenced **the content of certain diaries**, allegedly written by Mrs. Brown, which were not included in the Record on Appeal and were not presented to or considered by the Common Pleas Court in making the decision appealed from.” *Id.* at p. 3 (emphasis added).

The *only* references to Respondent’s diaries in the LSA’s Initial Brief, filed May 11, 2016, are in the background section of the LSA’s Initial Brief, and are reflected in these quotes from the Initial Brief:

- The present dispute arose out of a motion filed by the LSA on March 13, 2014 to modify certain protective orders the lower court had issued in February and March 2008, prior to the LSA’s appointment, which had the effect of shielding from discovery certain writings created by Respondent (characterized in this litigation as “Respondent’s diaries”). The LSA sought to review the diaries and asked the Court to remove the protections placed on the diaries so the LSA could use the writings in defending the Estate and Trust against Respondent’s will and trust challenges.
- During a hearing on the LSA’s motion to modify the protective orders, on March 31, 2014, Respondent’s attorneys argued against producing the diaries or further responding to discovery. Respondent’s counsel stated they intended to file a motion for partial summary judgment in which Respondent would show she was Decedent’s “surviving spouse” as a matter of law, without reference to any disputed fact, including whatever evidence might be contained in the diaries. *See* March 31, 2014 Hearing Transcript, pp. 54-61. Based upon Respondent’s assertions, the lower court deferred ruling on the LSA’s motion and stayed discovery pending a decision on the anticipated summary judgment motions.

*See* LSA’s Initial Brief, filed May 11, 2016, at pages 1-2. There are no other references to Respondent’s diaries in the LSA’s brief, and as is patently obvious, the LSA made no reference to “the content of [the] diaries,” as Respondent would have this Court believe.

## ARGUMENT

### **I. THE LSA’S STATEMENT OF THE PROCEDURAL HISTORY OF THIS CASE IS PROCEDURALLY PROPER AND REFERENCES TO RESPONDENT’S DIARIES ARE NOT INAPPROPRIATE.**

It is wholly undisputed that the subject of this appeal, the lower court’s order granting summary judgment to Respondent and denying Appellants’ cross motions for summary judgment, arose out of the LSA’s motion to modify certain protective orders which shielded Respondent’s diaries from discovery. References to Respondent’s diaries are replete throughout the Record on Appeal.<sup>1</sup>

To the extent Respondent argues the “content of the diaries,” i.e., written statements made by Mrs. Brown during her purported marriage to Decedent, was not included within the Joint Stipulation of Facts submitted to the lower court, the LSA will stipulate to that.

The LSA contests Respondents’ statement that the references to her diaries in the LSA’s statement of the case are inappropriate. Rule 208(b)(1) requires an appellant to set forth the “statement of the case,” including:

a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: ... the date and nature of the order, judgment, or decision appealed from ... [and] decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal ....

Rule 208(b)(1)(C), S.C. App. C. R.

The subject appeal arose out of a dispute over Respondent’s production of her

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<sup>1</sup> See Hearing Transcript, March 31, 2014, at p. 9, lines 4, 12; p. 12, lines 14, 16, 21; p. 44, lines 14, 17, 18; p. 45, lines 3, 9, 17; p. 46, line 25; p. 47, lines 7, 13, 16; p. 49, lines 5, 13; p. 50, lines 8, 22, 24; p. 51, lines 2, 13, 18; p. 52, lines 5, 7; p. 53, line 13; p. 54, line 23; p. 56, lines 15, 17, 25; p. 57, line 1; p. 58, lines 1, 3, 13; and p. 61, line 22.

diaries. As of March 31, 2014, Respondent's diaries were still protected from discovery through three separate orders of protection filed in 2008. It was not until the lower court held oral argument on the LSA's motion to modify those three protective orders that the subject of this appeal became an issue before the lower court. Notably, during the hearing, Respondent's counsel took the following position:

**The Court:** What is your position to let [Respondent file a Motion for Summary Judgment] and then depending on how [the Court] rule[s], then [the diaries] may be needed in discovery? But we don't need the diary for your motion for summary judgment.

Mr. Rosen: That's what I'm saying, we don't need the diary.

**The Court:** Because it's a legal argument on annulment, and if it was annulled, and if not, could be married to two people at once.

Mr. Rosen: Right. ...

*See* Hearing Transcript, March 31, 2014, at p. 56, lines 12-21. In response, counsel for the LSA stated:

**The Court:** Let me hear from Mr. Beach. It is -- a diary and the whole surrounding of how the diary was acquired, it's not the most tasteful thing in the world. But on the other side of the coin, if this thing has factual issues that preclude summary judgment, then there may be a lot of stuff in there that could be -- some stuff that may be, I don't know, relevant to the issues at hand. And some of the stuff obviously is not, but it may require in-camera review. I certainly don't want to take on that.

...

Mr. Beach: Well, Judge, we do agree that his case could fall on the question of whether Tommie Rae Brown is the surviving spouse. ... [T]he question of whether the decision that was made in the Charleston family court in 2004 -- I think it was April 15th of 2004 -- that annulled Tommie Rae Brown's marriage to -- 1997 marriage to Javed Ahmed, the question of whether that under the *Lucas* decision legally can be -- can relate back, if you will, to the marriage so that it would make her subsequent marriage to James Brown in 2001 valid, that question is, in fact, a legal question, and we agree that that is a legal question.

*Id.* at p. 56, line 24 – p. 57, line 9; p. 58, line 21 – p. 60, line 5.

Based on this exchange, the lower court decided it would withhold its decision on the LSA's motion to modify until the court could hear the parties' cross motions for summary judgment. *Id.* at p. 60, line 6 – p. 64, line 14.

**The Court:** I [am] [going] [to] hold this motion in abeyance for 30 days, giving [Mrs. Brown] an opportunity ... to file a motion for summary judgment, and if it's strictly a legal question, that may be dispositive. If it involves factual issues, obviously I would not rule on it; I will say you have to have an opportunity to complete discovery before I rule to determine whether or not there were genuine issues of material fact in dispute.

*Id.* at p. 61, lines 6-18.


References to Respondent's diaries, as contained in the LSA's Initial Brief are appropriate under the rules of appellate procedure and do not disadvantage or prejudice the Respondent in any way. References to Mrs. Brown's diaries are already contained in the Record, in briefs filed by the parties, and in arguments made before the lower court. Existence of Mrs. Brown's diaries was not a secret. The lower court was fully informed on the existence and nature of the diaries. Although the content and substance of the diaries may not be relevant to this Court's decision on appeal, evidence as to the diaries' existence is within the Record on Appeal and the LSA's references to same should not be struck from the LSA's Initial Brief.

### **CONCLUSION**

Based on the foregoing, the LSA respectfully requests the Court deny Respondent's Motion to Strike.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,



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June 28, 2016

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PROOF OF SERVICE

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The undersigned hereby certifies that she has served the foregoing Memorandum of Law in Opposition to Respondent Tommie Rae Brown's Motion to Strike by depositing a copy of same in the United States Mail, postage prepaid on June 28, 2016 and addressed as follows:

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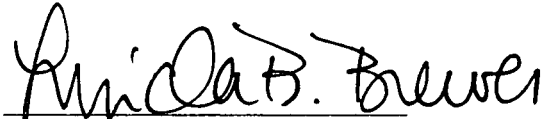
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In Re: The Estate of James Brown a/k/a James Joseph Brown  
Tommie Rae Brown v. David C. Sojourner, Jr., et al.  
Appellate Case No. 2015-002417  
A&R File No. 022853-000001

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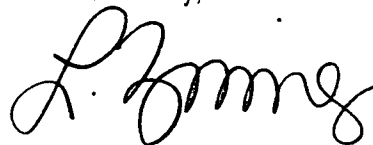
Dear Ms. Kitchings:

Enclosed for filing are an original and seven (7) copies of the Memorandum of Law in Opposition to Respondent Tommie Rae Brown's Motion to Strike in the above-referenced matter together with a Proof of Service. Please file the original and return the clocked-in copy with our courier.

By copy of this letter, I am serving a copy of these documents on all attorneys of record.

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

Sincerely,



Lyndey R. Zwing

LRZ/lbb

Enclosures

cc: David C. Sojourner  
All parties of Record