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.

INITIAL REPLY BRIEF OF APPELLANT TERRY BROWN

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Without restating the issues or making redundant arguments which have been thoroughly set forth in their opening brief, Appellant offers the following points of clarification and rebuttal to the arguments raised by Respondent. Appellant, in accordance with SCACR 208(6), adopts the reply briefs of all Appellants in this matter as if set forth and incorporated herein.

INTRODUCTION

In order to weed through the seventy-five pages of Respondent's brief, in what may be best described as analogous to political rhetoric, sound bites and logic twisting, this reply will eliminate the noise. The truth will be all that remains. The summary of Respondent's position is that a bigamous marriage is revived by a post bigamous marriage annulment *ab initio*, on the grounds of bigamy, regardless as to whether the first marriage was factually bigamous or not. Respondent legally could have remained married to Javed Ahmed("Ahmed"), if she so chose as there is no impediment to the continued relationship. Respondent provides no evidence of Ahmed's bigamy and no evidence of any effort to present evidence, testimony, marriage certificates, actual wives (or their names), witnesses presented (or their names), etc. Reducing this argument to simple logic, Respondent has no evidence of Ahmed's bigamy because if she did she would have presented it. That is why Respondent hides behind the Charleston County Family Court ("CCFC") order annulling Respondent's marriage to Javed Ahmed ("Ahmed") on April 15, 2004[1]("CCFC Order"). Respondent's arguments are grounded in technicalities behind twisted facts, red herrings and camouflage. Without the court

[1] *See* Joint Stipulation of Facts, Exhibit 12.

manufactured, default judgment CCFC Order, which was based entirely on uncontested, self-serving, hearsay testimony and unprovable bigamy of Ahmed, the Respondent's case is dead in the water.

I. RESPONDENT MISSTATES THE LAW AND FACTS IN HER INTRODUCTION.

A. The action in this matter is not a posthumous annulment but rather a determination of heirs which falls squarely within the jurisdiction of the Probate Court.

The CCFC Order did not directly determine whether or not Respondent was the wife of James Brown, and therefore his heir. This action determines whether or not Respondent is an heir of the Estate of James Brown ("Estate"). The Family Court in South Carolina does not have this right, as Respondent claims. The Probate Court in South Carolina has 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 the Probate Court in South Carolina when it is determinative of that person as an heir. 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, based on the CCFC Order, which this Court needs to rectify.

Further, it is Respondent, in her twisted logic, who is arguing that posthumous annulments can occur in South Carolina rather than Appellants as Respondent contends. If the lower court's ruling were allowed to stand, then posthumous annulments could occur in South Carolina. Respondent has gone to great lengths to argue, before the lower court and this Court, that neither James Brown nor his heirs had standing to be involved in the CCFC decision as it was an annulment action between Ahmed and Respondent.[2] If the ruling in this matter is allowed to stand, which purportedly collaterally estops a challenge to decedent's own marital status, posthumous annulments in South Carolina would be allowed from this point forward. In fact, based on the Respondent's arguments, James Brown could not have challenged the CCFC Order in his own annulment action. This argument is ludicrous, chaotic and unfounded.

For instance, if James Brown died in 2003, prior to Respondent obtaining the annulment order, then by her argument and the lower court's ruling, she could file an action for annulment after the death of James Brown. As she contends, neither James Brown nor the Estate have standing to be involved in a Respondent-Ahmed annulment action as they are not parties. The family court in which she was applying for the annulment action would have no reason to know that she had a second husband who was dead and would not even think to ask about such a fact because it is bigamy. The family court ruling would occur, and based on Respondent's argument, it would be binding on

[2] *See* Respondent's Brief, p. 33.

James Brown, the Estate and his heirs posthumously (which is really no different than what she has done in this matter). The only facts that would be necessary, under Respondent's argument for the above to occur, are that she and Ahmed were both alive and still married in accordance with their marriage ceremony and license on the records. Based on this logic, Respondent could file the annulment action years from now and become James Brown's spouse. This is the chaos that Lukich addresses. Respondent's analysis and argument is the type of prospective/retrospective application that Lukich warns cannot happen. Based on the foregoing, Respondent's argument is logically flawed. Ruling in Respondent's favor would validate the ability of bigamists to obtain an order from a family court invalidating a prior marriage at any point in time, including after the death of a second bigamously married spouse, who, according to Respondent, would have no ability to challenge the result. With Respondent's logic, a decedent in South Carolina could become posthumously married even though the relationship was supposed to be void *ab initio* in accordance with S.C. Code Ann. § 20-1-80. Lukich precludes this result when applied in accordance with Appellants and the South Carolina Supreme Court's approach.

Respondent attempts to argue that Appellants are challenging the CCFC Order.[3] Appellants are challenging its effect based on timing, collateral impact on James Brown's marital status, and as a default judgment that does not bind James Brown. These are wholly different issues, which this Court should examine and determine in favor of Appellants as already argued in their initial briefs.

[3] *See* Respondent's Brief, p. 35.

B. The Personal Representative and heirs have standing to determine the heirs of an estate.

Respondent first argues that surviving spouse status is determined under the South Carolina Probate Code[4] and then in the very next section of her brief attempts to argue that Appellants have no standing to address such an issue.[5] These sections could not be more contradictory. As noted above, this matter is one to determine the heirs of the Estate of James J. Brown. In fact, the first sentence of Respondent's brief states: [t]he issue sub judice is whether Mrs. Brown is the surviving spouse of James Brown for purposes of her elective share and omitted spouse claims ("spousal claims").[6] Respondent apparently agrees that surviving spouse status is at issue and determined under the South Carolina Probate Code.[7] Therefore, this is clearly a probate action. S.C. Code Ann. § 62-3-105 provides:

> Persons interested in decedents' estates may apply to the court for determination in the informal proceedings provided in this article [Sections 62-3-101 et seq.], and may petition the court for orders in formal proceedings within the court's jurisdiction including but not limited to those described in this article.

S.C. Code Ann. § 62-3-105.

Appellants are all clearly interested persons, as defined in the South Carolina Probate Code. As interested persons, the Appellants all have standing to be involved in the determination of the heirs of the Estate and spousal status of Respondent.

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[4] Id., pp. 6-10.
[5] Id., p. 10-11.
[6] Id., p. 1.
[7] Id., p. 6 (citing to S.C. Code § 62-2-802(a))

C. The Consent Order does not make James Brown married.

Respondent and James Brown entered into a Consent Order of Dismissal dated August 14, 2004("Consent Order").[8] The Consent Order does not determine that James Brown is married. In fact, it is the opposite. Appellant addressed this in detail in his initial brief.[9] While Respondent attempts to argue that Lukich was not decided at the point that James Brown and Respondent entered into the Consent Order[10], S.C. Code § 20-1-80 existed at that time. James Brown based his dismissal on such statute because it legally determined that his relationship to Respondent was void *ab initio* and the parties consented to the same. Contrary to Respondent's argument in her brief[11], Appellants are not taking the position that dismissal of the James Brown's annulment action granted him an annulment. Appellants merely argue that the annulment was unnecessary because of the application of S.C. Code §20-1-80, which voided the relationship from the beginning thereby making it unnecessary for James Brown to continue with his own annulment action. Respondent claims this argument is inconsistent with Appellants' position, in that if James Brown's marriage is void *ab initio*, then the same would be true for Respondent's marriage to Ahmed[12]. Nothing could be farther from the truth. At the time of the execution of the Consent Order, Respondent's bigamy was a proven fact before a court. The CCFC Order addressed it. Respondent herself admitted that she was married to another man at the time she married James Brown.[13] She had to seek an annulment action to clear her capacity wherein she admitted to such prior marriage. Therefore, there

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[8] *See* Joint Stipulation of Facts, Exhibit 19.
[9] Brief of Appellant Terry Brown, pp. 37-39.
[10] *See* Respondent's Brief, p. 12, footnote 15.
[11] Id.
[12] Id., p. 15.
[13] *See* Joint Stipulation of Facts, Exhibit 13, 6:17-20.

was no need to continue the annulment action as facts necessary to invoke S.C. Code § 20-1-80 had been proven thereby enabling the parties to reach a Consent Order. Respondent had no such order at the time she married James Brown relative to her marriage with Ahmed. As such, at the same time Respondent annulled her marriage to Ahmed, she proved that her marriage to James Brown was void for bigamy. No additional action was necessary on the part of James Brown relative to an alleged statutory marriage.

The CCFC Order is further proof as to why the Consent Order only addressed common law marriage. An alleged statutory marriage was impossible based on the facts that Respondent admitted to in the CCFC proceeding. This Court should not confuse the Respondent's binding admitted facts (i.e admissions of a party opponent) with the unsupported hearsay testimony that was created to obtain her court manufactured default judgment annulment. In the same vein, Respondent claims the language in the Consent Order wherein she "waived any claim of a common law marriage" did not waive an alleged statutory marriage. A waiver of an alleged statutory marriage was unnecessary as James Brown and Respondent were not statutorily married based on her own testimony that resulted in the CCFC Order. Therefore, the Consent Order needed only to waive Respondent's right to claim she was James Brown's wife in a common law proceeding or posthumous common law proceeding as contemplated by S.C. Code § 62-2-802(b)(4). As noted under Section II of this brief, Respondent was not James Brown statutory wife in accordance with S.C. Code § 62-2-802. Contrary to Respondent's argument[14], the Consent Order did not need to address this issue.

[14] *See* Respondent's Brief, pp. 6-9.

D. Respondent completely misstates the compensation provisions contained in the estate documents as support for an undue influence claim.

Respondent contends that the estate planning documents of James Brown gave "three discredited men" the right to fifty percent of the gross income plus trustees' fees of the Estate and James Brown Irrevocable Trust u/a/d/ August 1, 2000 ("Trust").[15] First, this is irrelevant to this matter, as it is not an issue at hand, and arguably only interjected for bias. Second, it is factually incorrect based on the actual documents in this matter. Respondent apparently attempts to argue that the provision under Article X(2)[16] of the Trust is a compensation provision. It is not. Item IV(3) of the Last Will and Testament dated August 1, 2000("Will") and Article VIII(3) of the Trust are the compensation provisions.[17] The improperly alleged Article X(2) of the Trust is a tax allocation provision that limits the amount of income, for tax purposes, that may be allocated to administrative expenses for deductibility purposes. It does not allow the Trustee to receive or be paid fifty percent of the gross income of the Trust or Estate as Respondent alleges. Article X(2) of the Trust is in place to protect the charitable status of the Trust, in accordance with Internal Revenue Service regulations and rulings, by limiting the amount of income that can be allocated to a

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[15] *See* Respondent's Brief, p. 5.

[16] Article X(2) of the Trust states: "The stated intent(s) of the Trust Agreement and various Trust(s) established or to be established does not prevent my Trustee(s) from making or directing an allocation of up to 50% of gross income from this Trust for the payment of administrative and managerial expenses incurred on behalf of this Trust as in the sole discretion of my Trustee may be advisable."

[17] The Will compensation provisions are contained in ITEM IV(3): "the individual personal representative shall receive reasonable compensation...." and the Trust compensation provisions in Article VIII(3): "the Trustee shall receive reasonable compensation...".

charitable trust's administrative expenses thereby protecting such trust's charitable exempt status. This provision does not in any way effect the actual compensation paid to the personal representative of the Estate or trustee of the Trust. The compensation paid to the trustee and personal representative is governed by and restricted by the reasonable compensation standard clearly delineated in the documents.[18] To interpret these documents otherwise, is not only misleading but an error.

II. RESPONDENT'S ANALYSIS OF S.C. CODE ANN. §62-2-802(a) FAILS.

Respondent claims that Appellants are precluded from addressing the issue of Respondent as James Brown's wife because the Appellants failed to challenge the issue prior to James Brown's death.[19] Specifically, Respondent argues that Appellants' attempt a post mortem annulment or divorce. Respondent's analysis and case law citation is inapposite to the facts at hand. The cases and argument that Respondent presents relate to claims, by and among, the actual parties that were married (or not married as the case was), who were seeking relief or enforcement of their own rights. The instant action is clearly distinguishable. This action revolves around the impact of a third party order (CCFC Order) on the marital relationship of James Brown and Respondent. The CCFC Order did not involve a direct action between the parties in this matter. Further, if Respondent's argument was correct, an individual, who was already married, could marry a terminally ill individual and then seek to enforce their rights thereafter in the second spouse's estate. Based on Respondent's interpretation of S.C. Code Ann. § 62-2-802, such decedent's estate and heirs would have no right to challenge such individual as a

[18] Id.
[19] *See* Respondent's Brief, p. 7.

bigamist. This cannot be correct. As a result, Respondent's argument that Appellants' are precluded from challenging that she is an heir of the Estate is incorrect. Appellants' seek a declaration that Respondent is not an heir of the Estate because she is not James Brown's wife. They do not seek a post mortem annulment or divorce as Respondent suggests.

Respondent's argument, as to the application of S.C. Code Ann. § 62-2-802, fails on a more fundamental level. This section states:

> An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, the individual is **married to the decedent at the time of death**... (Emphasis added).

S.C. Code Ann. § 62-2-802.

Respondent glosses over a critically important fact relative to her analysis of S.C. Code Ann. § 62-2-802. She had to actually be married to James Brown at his death for it to apply. S.C. Code § 20-1-80 addresses the issue of her marriage to James Brown at the time of his death. It was void *ab initio* as she was a bigamist. Her CCFC Order and underlying proceeding provided the facts to prove this issue. No marital relationship existed to be analyzed under S.C. Code Ann. §62-2-802.

III. RESPONDENT'S ANALYSIS OF LUKICH V. LUKICH FAILS.

A. The CCFC Order and self-serving, uncontested, inadmissible hearsay testimony used to obtain a default judgment are all that Respondent has in support of her argument.

A simple review of the evidence along with a deep sense of justice and common sense point to but one result this Court should reach. Respondent has no actual evidence that her relationship with Ahmed was bigamous. During the last almost three (3) years of this case while addressing this particular issue, Respondent continues to walk into each

and every hearing, look at the court, state: "CCFC Order", drop the microphone, and walk away. Appellants have been quite frankly confounded by Respondent's continued success in this approach. The reason she does this is because she has not one shred of actual evidence of a bigamous relationship with Ahmed. She has never and does not now present any of the evidence she claims in her testimony to the CCFC that could exist. Without the CCFC Order, this case was over before it began.

She used the CCFC Order to confound the lower court and now attempts to again take the parties and this Court down a rabbit hole of Lukich analysis. She continues her attempt to dazzle and amaze with her legal analysis of Lukich, case law and other statutes all the while hoping no one actually pulls back the shroud on her actual evidence. It is this shroud Respondent creates to hide the conflated facts and conjecture that is the CCFC Order, on which she solely relies.

If she had actual evidence that her relationship with Ahmed was bigamous, it would have and should been presented long ago in an effort to resolve this matter. The reason she continually points to the CCFC Order is because it is all she has. When the self-serving, hearsay laced, court manufactured, default judgment CCFC Order is examined for what it is, only one conclusion can be reached. It is a fantastical story of hearsay and whimsy. It is her portrayal of a self-created bigamous relationship with Ahmed so she could attempt to continue her relationship with the famous James Brown. There is no admissible factual bigamy, no legal bigamy, or even bigamy as it relates to Ahmed. She attempts to present a legal technical argument in the hopes that it will completely remove the evidentiary scales of justice. Respondent desperately wants to avoid further discovery in this matter because she knows she will turn over hollow

weights for her side of the scales. Without, the CCFC Order, her claim as the surviving spouse was over before it began. That is Lukich, pure and simple. Now, she wants this Court to allow this self-created fiction to continue. This cannot and should not happen. This Court should see through her shroud of technical arguments and twisted facts and see this case in its simplest form.

Respondent was married to Ahmed at the time she married James Brown. In an effort to save her chance at being declared James Brown's wife, she had but one option, and that is the attempt to create a technicality on which she could win. The CCFC Order is such attempt.

It is time for this Court to brush aside this collateral attack, and address the matters head on. Respondent was married when she married James Brown. All evidence points to this one easily identifiable and simple set of facts. When this Court weighs the evidence and law on its scales, they should only tip in one direction. Lukich must apply and declare Respondent a bigamist. Any other result would be a gross miscarriage of justice and a legal fallacy based on the state of the law and facts at hand.

B. Respondent's marriage to Brown was void from the beginning.

Contrary to Respondent's arguments in her response brief, Appellants assert, in concert with the South Carolina law, that bigamous marriages are void, not voidable. South Carolina Code §20-1-80 provides:

> All marriages contracted while either of the parties has a former wife or husband living **shall be void**. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court. (Emphasis added.)

S.C. Code Ann. §20-1-80.

The South Carolina Supreme Court in Wilson v. Dallas[20] referenced the Respondent-Ahmed annulment as follows:

> Tommie Rae had claimed her marriage to Ahmed had been procured by fraud because she had disco vered that Ahmed already had three or more wives in Pakistan and was merely seeking U.S. citizenship, and that he had refused to live with her as husband and wife. **Tommie Rae's request for an annulment from Ahmed was hastily granted by the family court in Charlesston County during pendency of Brown's separate annulment action against her.** (Emphasis added.)

Although the Respondent-Ahmed marriage was not an issue before the Court in Wilson v. Dallas, the CCFC Order with its timing and procedural protocol was taken into consideration when contemplating the legitimacy of the settlement and dissolution of James Brown's testamentary intent. The South Carolina Supreme Court was neither requested to nor did it need to opine on the legitimacy of the CCFC Order or Respondent's marital status to James Brown in order to reach a decision to invalidate the dismembering of James Brown's Will and Trust, but chose to do so.

The Wilson v. Dallas court, in footnote 16, gave some direction regarding bigamous marriages citing Lukich v. Lukich:

> The circuit court noted the decision of the Court of Appeals in Lukich v. Lukich, 368 S.C. 47, 627 S.E. 2d 754 (Ct. App. 2006), **in which the Court of Appeals held that an annulment declaring a spouse's first marriage void could not retroactively validate the spouse's second marriage**. The circuit court distinguished Brown's situation, opining that the rule in Lukich did not apply where the first marriage was never valid because one of the parties was already married. This Court has since affirmed Lukich, in Lukich, 379 S.C. 589, 666 S.E. 2D 906 (2008). **We express no opinion, however, on the circuit court's interpretation here.** (Emphasis added.)

The following provides clear reasoning why the South Carolina Supreme Court correctly questioned and refused to opine on the lower court's Lukich analysis that Respondent has

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[20] Wilson v. Dallas, 403 S.C. 411, 2013 S.C. Lexis 240 (S.C. 2013), footnote 16.

now adopted. It is undisputed that **at the actual time** (dated December 14, 2001) when Respondent married Mr. Brown, she was still married to Ahmed. Bigamist marriages are void. Respondent, at the time of Wilson v. Dallas, and since has never, in any court, document or deposition, provided a scintilla of support that Ahmed was married when he married Respondent. It is an indisputable fact that Respondent married Ahmed on February 17, 1997 ("Respondent-Ahmed Marriage")[21] and Respondent married James Brown on December 14, 2001.[22] In fact, Respondent further stipulated to the following:

> no order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between her and Ahmed.[23]
>
> ...
>
> cannot identify a single person who can testify that Ahmed was married to another person when Tommie Rae and Ahmed participated in the 1997 marriage ceremony."[24]

Although, as identified above, Respondent stipulated that she was not aware of any "order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between her and Ahmed" or she "cannot identify a single person who can testify that Ahmed was married to another person when Tommie Rae and Ahmed participated in the 1997 marriage ceremony". Respondent's testimony in the Ahmed annulment proceeding interestingly lacked equivalent information, testimony, or evidence.

The Respondent-Ahmed marriage certificate is evidence demonstrating Respondent's marriage to Ahmed on February 17, 1997.[25] The Respondent-Ahmed

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[21] *See* Joint Stipulation of Facts, Exhibit 1.
[22] Id., at ¶¶ 4 and 5.
[23] Id. at ¶ 6.
[24] Id. at ¶¶ 9-10.
[25] Id. at Exhibit 1.

marriage license application is additional evidence that was also conveniently not presented prior to obtaining the CCFC Order. This marriage license application document[26] contains the only evidence in the form **of sworn testimony from Ahmed that he was, in fact, not married when he married** Respondent.[27] Respondent again provided convenient information as part of her annulment action, but withheld other admissible information and evidence that could have assisted the trial judge.

C. Respondent's analysis of Lukich allows for retrospective application and post mortem annulment.

Respondent's entire Lukich analysis is based on a logical fallacy. If Respondent's Lukich argument is correct, then why did Respondent even file the annulment action in 2004? Under her theory, the CCFC Order was unnecessary and irrelevant. Respondent's argument when carried to its logical conclusion is that without the CCFC Order any court in this state would find her marriage to Ahmed annulled because bigamous relationships are void *ab initio*. Therefore, based on Respondent's argument, she did not need a court to clear her capacity to marry James Brown. She could have done so with or without the CCFC Order. This is the chaotic position that this Court and

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[26] Respondent argues that this document is inadmissible hearsay as it is an application and not a public record. *See* Respondent's Brief, p. 70. This is the first time Respondent has raised this issue and as such should not be allowed. Even so, Respondent's argument is incorrect. First, Appellant argued that it was an exception to hearsay under 803(9), SCRE not 803(8) as Respondent contends. Further, it also qualifies as an exception under 803(8). As Appellant Terry Brown noted in his initial filing in this matter wherein the Texas Statute was cited, the application was filed with Texas Clerk as prescribed by the Bureau of Vital Statistics of the State Department of Health. Upon request, the license and application were provided as records which were kept as part of the process (i.e. activity of the office) for marriage licenses in Texas. 803(8), SCRE applies, but 803(9) as actually argued by Appellant is directly on point in providing a hearsay exception to this evidence.

[27] *See* Affidavit of Scott Keniley 10/2/2014 with attached Ahmed-Hynie Marriage License Application.

the Supreme Court of South Carolina identified in Lukich. S.C. Code Ann. § 20-1-80 clearly requires entry of an order to declare a marriage void for it to be effective when it states in its last sentence that the "first marriage shall be declared void by the sentence of a competent court." This is so regardless of what type of order is entered. In this instance, it just so happened to be an entry declaring Respondent's first marriage annulled for among other grounds bigamy. The entry of an order is necessary so that third parties (i.e. James Brown) would know whether or not an individual is already married. Without such a procedure, the floodgates of litigation would open in both family courts and probate courts to determine if bigamy was committed.

Respondent attempts to twist and pervert the idea of a bigamous marriage being void *ab initio.* Appellants have never disagreed that a bigamous marriage is void *ab initio*. Neither party to a bigamous relationship has a right to enforce marital contract rights on the other because they were never married. What does have to occur is letting the world know they are no longer married because they attempted to tell the world they were married (otherwise why would annulments for bigamy even exist as a cause of action – they would be unnecessary under Respondent's argument). This case would not be in the Court of Appeals at this moment if Respondent had never obtained the CCFC Order. She would factually and legally remain married to Ahmed at the time of her marriage to James Brown and be declared a bigamist. Obtaining the CCFC Order did not change the facts that clearly make her a bigamist. Understanding this legal and factual relationship is why her argument fails.

Respondent argues that because she obtained an annulment before James Brown sued her for annulment that she is no longer a bigamist. From February 17, 1997 to April

15, 2004, in the eyes of the law, based on the facts stipulated to in this matter, and the facts presented to obtain the CCFC Order, Respondent was married to Ahmed.[28] Had James Brown sued her for annulment prior to her filing in Charleston County, this Court would have upheld any annulment granted to James Brown by a lower court on the factual and legal basis that she was married prior to and continuing through her marriage to him. There would have been no legal or factual basis annulling her marriage to Ahmed. The CCFC Order does not erase or change this result. This is Lukich. This is the chaos that is so easily identified by this Court and the South Carolina Supreme Court in the Lukich decisions. Respondent wants South Carolina to be a race annulment notice jurisdiction rather than what it is now which is an annulment notice jurisdiction. This is the point that South Carolina Supreme Court makes in it Lukich decision regarding prospective and retrospective analysis. At the time she married James Brown, she was factually and legally married to Ahmed. No other facts or law need to be examined. Respondent is a bigamist and not the wife of James Brown.

The Respondent tries to delineate between void and voidable in her argument.[29] Specifically, Respondent points to footnote 2 of this Court's opinion as controlling in the analysis in this matter.[30] However, this Court indicated that:

> the general rule applicable in situations as before us is stated in 52 Am. Jur. 2d Marriage § 57:
>
> Apart from statute, **bigamous (Respondent-Brown)** marriage does not acquire validity when the prior subsisting **(Respondent-Ahmed)** marriage is legally terminated by divorce or by the death of the first spouse. The same rule is generally followed where the prior subsisting **(Respondent-Ahmed)** marriage is annulled **after** the second **(Respondent-Brown)** marriage is contracted, even

[28] *See* Joint Stipulation of Facts, ¶¶1, 2 and 6.
[29] *See* Respondent Brief, pp. 13-20.
[30] Id., p. 20-21.

> though the purpose of an **(Respondent-Ahmed)** annulment proceeding is to declare that no valid marriage ever took place between the parties **(Respondent-Ahmed)** or that no valid marriage relation ever existed between the parties **(Respondent-Ahmed)**. Even where the **(Respondent-Ahmed)** annulment decree expressly declares the first **(Respondent-Ahmed)** marriage null and void ab initio, it does not relate back so as to validate the second **(Respondent-Brown)** marriage. In order for the subsequent **(Respondent-Brown)** marriage to be valid, it has been held that there must be a new ceremony **following** the termination of the earlier **(Respondent-Ahmed)** marriage. (Emphasis Added.)

Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758, 2006 S.C. App. LEXIS 16, *10-11 (S.C. Ct. App. 2006)

In this case, the Respondent's marriage to Ahmed was valid until she made it void with the CCFC Order declaring it void. Because Respondent could have remained married to Ahmed because there is no evidence of bigamy, she chose to annul the marriage thereby making it voidable. Without the CCFC Order her marriage would not have been declared void and Lukich would clearly apply, as Respondent has presented no facts otherwise. As a result, the distinction that Respondent attempts to make in this matter related to void versus voidable is irrelevant in the context of court obtained annulments. Interestingly enough, the South Carolina Supreme Court affirmed this Court's ruling in Lukich but did not affirm the analysis. The South Carolina Supreme Court chose to write its own opinion and analysis. This opinion was based on a strict statutory construction in the context of bigamous marriages.

Query these issues. Under Respondent's argument how would the rest of the world ever know on what grounds a marriage was voided? Respondent argues that a bigamous marriage is "automatically" void by being bigamous. How does the world (i.e third parties) know that the original relationship was a bigamous one? How would one know if a marriage was declared void for bigamy or intoxication, as the Respondent attempts to do with its hair splitting attempt to distinguish Lukich? The only way this can

occur is through an entry of a court order thereby setting a date in time when the prior marriage is dissolved for whatever reason.

Respondent's argument analyzes the bigamous relationship only from the perspective of the parties involved in the bigamous relationship and fails to address the chaos created for third parties. Appellants argument, and the correct Lukich analysis, addresses the issue from all parties perspectives including unwitting third parties who marry one of the original parties to a bigamous relationship. Appellants' analysis and the correct application of Lukich creates a consistent, logical result every time based on the point in time when all of the parties were married, which is completely in the control of the parties in the relationships (i.e. an individual can clear capacity to marry before entering into a bigamous relationship). Respondent's analysis changes based on who obtained what court order first (i.e. an individual no longer commits the crime of bigamy if he or she files in the courthouse first).

Respondent argues, that by obtaining a suspect default judgment determination with inadmissible, uncontested, self-serving, hearsay evidence as the only evidence she presented in 2004, that she made her first marriage void rather than merely voidable. She fails to come forward, in this proceeding or any other for that matter, with any admissible evidence that would actually declare her marriage to Ahmed void. This calls into question whether her marriage was in fact void or voidable based on the facts as presented to the CCFC.

Respondent's analysis requires a court to inquire into the type of bigamy that occurred (i.e was it void or voidable). This creates the opportunity for gamesmanship and chaos, as has occurred in this matter. The South Carolina Supreme Court recognized

this and took a more common sense approach. Its Lukich decision simply declared bigamy to be bigamy. It does not matter what type of bigamy occurs. Respondent knew she was previously married when she married James Brown. She should have sought an annulment prior to marrying James Brown. Instead, she chose to conceal it and try to fix the problem later. Bigamy is bigamy. Appellants' Lukich analysis is the only sensible and logical result when applied as a snapshot in time of the facts as they relate to the respective parties' marriage relationships, rather than as Respondent contends, a constantly morphing set of facts and filing dates. How can a bigamous marriage be void if it can later be revived by an annulment? Void is void.

Additionally, Respondent fails to address the argument that her CCFC Order clearly and effectively ended her marriage to James Brown. As noted in Appellants initial brief, Respondent would be estopped from challenging certain facts as entered in the CCFC Order and underlying hearing.[31] The facts contained in the CCFC Order and related transcript bind Respondent as a party to the proceeding.[32] The facts of such underlying matter indicate she was married to Ahmed prior to marrying James Brown. As such, a court of competent jurisdiction entered an order that not only annulled her marriage to Ahmed, but also confirmed facts sufficient to invoke the application of S.C. Code Ann. § 20-1-80. This resulted in confirmation with both facts and law, with the CCFC Order, that both marriages (Ahmed-Respondent and Brown-Respondent) did not exist *ab initio*. James Brown's counsel reached this conclusion as to James Brown's

[31] *See* Appellant Brief of Terry Brown, pp. 20.

[32] Appellants' have consistently argued the same is not true for them as James Brown was not a party to such initial proceeding and therefore not preclude by collateral estoppel or res judicata from challenging the same.

annulment action, negotiated the signed Consent Order, and disposed of the only marital issue remaining, which was a potential claim for common law marriage by Respondent.

IV. THE CCFC ORDER IS NOT BINDING ON JAMES BROWN OR HIS HEIRS.

Appellants have extensively addressed the binding effect of the CCFC Order in their initial briefs.[33] However, as additional response to Respondent's brief, Appellants are not arguing that Respondent had to foresee every foreseeable third person who might question the validity of her marriage to James Brown as she contends.[34] She only had to foresee one party, James J. Brown. Additionally, her claim that she would have to spend the rest of her life litigating the issue with third parties or future husbands as it relates to her relationship with Ahmed is completely unfounded.[35] As she obtained the CCFC Order on April 15, 2004, no additional action would be necessary to address claims by third parties related to her relationship with Ahmed. The only party she had issue with after her annulment with Ahmed was James Brown, which she continued to deal with an ultimately resolved in the form of the Consent Order.

V. RULE 4(d)(8), SCRCP APPLIED TO THIS MATTER NOT RULE 5(b)(1) IN ACCORDANCE WITH RULE 17, SCRFC THEREBY MAKING THE CCFC ORDER A DEFAULT JUDGMENT.

Respondent, yet again, twists the facts in effort to shroud the default judgment that was obtained by her in the CCFC Order. The idea the CCFC Order was a suspect and hastily granted order was not first raised by Appellants. The Supreme Court of South Carolina noted: "Tommie Rae's request for an annulment from Ahmed was hastily

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[33] *See* Appellant Brief of Terry Brown, pp. 20-30.
[34] *See* Respondent's Brief, p. 33.
[35] *See* Respondent's Brief, p. 33.

granted by the family court in Charleston County during the pendency of Brown's separate annulment action against her." Wilson v. Dallas, 403 S.C. 411, 434, 2013 S.C. LEXIS 240, *35 (S.C. 2013), footnote 16.

The similarities in the procedural posture in this matter and Lukich are striking. In fact, Respondent notes that Mrs. Lukich sneaked off and obtained an annulment before Judge Frances Segars-Andrews in Charleston County while the second husband's matter was pending in Berkeley County.[36] In Lukich, "[a]n uncontested hearing was held on October 31, 2003 before Judge Frances Segars-Andrews."[37] The complaint was filed October 21, 2003, the hearing was held October 31, 2003, and the order annulling that marriage signed the same day as the hearing.[38] As in Lukich, Respondent sneaked off to the Charleston County family court in front of, ironically, the same Judge Frances Segars-Andrews and obtained an uncontested default judgment to have her first marriage annulled.[39] Respondent's hearing was held on April 15, 2004 and the order annulling her marriage signed the same day as the hearing.[40] As occurred in Lukich, this Court should find that the declaration of an annulment with Ahmed did not validate the Brown-Respondent marriage, but conclusively determined that she was married to neither Ahmed or James Brown.

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[36] *See* Respondent's Brief, p.14.
[37] Lukich v. Lukich, 368 S.C. 47, 51, 627 S.E.2d 754, 756, 2006 S.C. App. LEXIS 16, *2 (S.C. Ct. App. 2006).
[38] Lukich v. Lukich, 379 S.C. 589, 591, 666 S.E.2d 906, 906, 2008 S.C. LEXIS 284, *2 (S.C. 2008), footnote 1.
[39] *See* Joint Stipulation of Facts, Exhibits 12 and 13.
[40] Id.

Further, Respondent claims that there is nothing suspect related to the CCFC Order in this matter and Ahmed was properly served.[41] Specifically, she claims that Rule 17, SCRFC makes rule 5(b)(1) apply to her attempted service of her **Summons and Complaint** in accordance with Schleicher v. Schleicher.[42] Upon review of Schleicher, it becomes clear that Rule 5(b)(1) allows service in the Family Court to be complete "upon mailing of all pleadings and papers **subsequent to service of the original summons and complaint**". The Schleicher case cited by Respondent specifically denotes that service of the Summons and Complaint is governed by Rule 4(d)(8), SCRCP. The Schleicher case does not state that Mr. Schleicher was never properly served the Summons and Complaint (as occurred in Ahmed-Respondent matter). It states he did not answer. This is wholly different than this matter. Respondent attempted to serve her Summons and Complaint on Ahmed, but failed.[43] In fact, Respondent noted in several affidavits that such documents were never served on Ahmed.[44] The family court ultimately ordered Ahmed served by publication, which resulted in the entry of a default judgment. The Schleicher case supports Appellants' position that Rule 4(d)(8) applies, and as argued in their initial briefs, the CCFC Order is a default judgment. The idea that this Court would validate Respondent's request to use a default judgment as a weapon against James Brown without any actual proof of the self-serving, uncontested, inadmissible hearsay testimony is patently unjust and procedurally deficient. At a minimum, discovery should continue to disprove Respondent's alleged claim of being the wife and therefore an heir

[41] *See* Respondent's Brief, pp. 55-60.
[42] Schleicher v. Scheicher, 310 S.C. 275, 277, 423 S.E.2d 147, 148-149 (Ct. App. 1992).
[43] *See* Joint Stipulation of Facts, Exhibits 5, 6, 7, 8, 9, 10, 11, 12.
[44] Id.

of the Estate. In reality, the correct declaration is that she is not an heir, as she is not James Brown's wife.

VI. APPELLANTS ARE NOT BOUND BY A PRIVATE SETTLEMENT AGREEMENT.

Respondent attempts to argue that Appellants are bound by the private settlement agreement that the parties executed in 2009 in this matter.[45] First, the lower court, in the order that is the subject of this appeal, did not rule that Respondent was the surviving spouse as a result of the parties signing the 2009 settlement agreement. Therefore, this issue is not properly before the Court.

Second, if the settlement agreement was such an enforceable and binding agreement, the Respondent should have filed suit on this contract years ago. The statute of limitations to enforce a contract action in South Carolina is three (3) years.[46]

Third and most importantly, the 2009 settlement agreement was struck down as illegal by the South Carolina Supreme Court in Wilson v. Dallas.[47] As a result, the settlement agreement to which Respondent refers, failed as it was illegal, lacked consideration and was rescinded thereby making the settlement agreement void ab initio and a nullity. See Crowe v. Cherokee Wonderland, Inc., 379 F.2d 51 (1967) (failure of consideration nullifies a contract); Groesbeck v. Marshall, 44 S.C. 538 (1895) (contract based on illegal consideration is null and void); Rice & Santos, Inc. v. Jones, 279 S.C. 201 (1983) (rescission occurs where the parties are returned to the status quo). Based on the foregoing, the 2009 settlement agreement is an illegal, unenforceable, and rescinded

[45] Id., pp. 62-65.
[46] *See* S.C. Code Ann. § 15-3-530(1).
[47] Wilson v. Dallas, 403 S.C. 411, 2013 S.C. Lexis 240 (S.C. 2013).

contract that has no binding effect on any of the parties in this matter. As such, S.C. Code § 62-3-912 cannot apply.

VII. APPELLANTS DO NOT BEAR THE BURDEN OF PROOF AS IT IS RESPONDENT WHO IS ATTEMPTING CLAIM THAT HER MARRIAGE TO JAMES BROWN IS VALID.

Appellants do not bear the burden of proof. Respondent does. This issue was addressed by Appellant in his initial brief.[48] Even if Appellants did bear the burden of proof, such burden was met when Appellants' proved, and Respondent agreed to in the Joint Stipulation of Facts, that she was legally and factually married to Javed Ahmed at the time she married James Brown.

CONCLUSION

For the reasons stated above, the Appellant respectfully requests that this Court, at a minimum, reverse the lower court's grant of summary judgment to Respondent. However, based on Lukich, and all arguments placed before this Court, Respondent's grant of summary judgment should be reversed and remanded with a grant of summary judgment to Appellants declaring Respondent is not an heir of the Estate because she is not the surviving spouse of James J. Brown.

This 10th day of October, 2016.

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[48] *See* Brief of Appellant Terry Brown, pp. 39-48.

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.

PROOF OF SERVICE

The undersigned hereby certifies that on October 10, 2016, he has caused a copy of the INITIAL REPLY BRIEF OF APPELLANT TERRY BROWN to be served on all counsel in this matter by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

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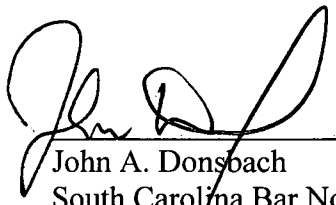

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October 10, 2016

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 an original and one (1) copy of the Reply Brief of Appellant and Proof of Service in the above-referenced case. Please file the original and return a time-stamped 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

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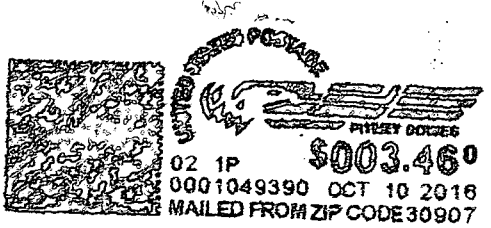

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