

81524

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

RECEIVED

NOV 09 2016

SC Court of Appeals

Tommie Rae Brown,Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is the.....Appellant

APPELLANT DAVID C. SOJOURNER, JR.'S MOTION
TO STRIKE IRRELEVANT AND PREJUDICIAL STATEMENTS
FROM INITIAL BRIEF OF RESPONDENT TOMMIE RAE BROWN

**TO: THE HONORABLE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF THE
SOUTH CAROLINA COURT OF APPEALS:**

Pursuant to Rules 240, 208 and 210 of the *South Carolina Rules of Appellate Procedure*, Appellant David C. Sojourner, Jr., Esquire, in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown, and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 ("Appellant"), through his undersigned counsel,

moves to strike irrelevant and prejudicial statements from the Initial Brief of Respondent Tommie Rae Brown, filed October 10, 2016.

Respondent admits “the trial court’s order stands on matters of law only.” Initial Brief of Respondent at p. 61. She alleges throughout her seventy-five page initial brief Respondent “repeats [only] the key facts, all stipulated, which support the trial court’s decision to grant summary judgment.” *Id.* She frequently references the Joint Stipulation of Facts which was the sole foundation of the lower court’s decision. *Id.* at pp. 2-3 (“For purposes of this summary judgment action, the parties signed a Joint Stipulation establishing certain facts.”). Respondent made these same statements in the proceedings before the lower court during which Respondent’s counsel stated she intended to file a motion for partial summary judgment showing she was James Brown’s surviving spouse as a matter of law, with no reference to any disputed fact, including whatever evidence might be contained in her diaries. *See* March 31, 2014 Hearing Transcript, pp. 54-61.

At a June 30, 2015 hearing before the lower court, the court asked whether its order in this case could be based solely upon application of the undisputed facts, in the parties’ Joint Stipulation of Facts, and the appellate court decisions in *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006) (“*Lukich I*”), *modified* 379 S.C. 589, 666 S.E.2d 906 (2008) (“*Lukich II*”). *Id.* at p. 54, lines 2-5, 10-13; p. 55, lines 7-15; p. 67, line 15 – p. 68, line 4; p. 87, line 24 – p. 88, line 9. The parties agreed additional briefing limited solely to application of the undisputed facts of this case to the *Lukich* decisions would be useful to the court’s decision.

The only facts relevant to this appeal are set forth in the Joint Stipulation of Facts. Nevertheless, Respondent refers to alleged “facts” that are wholly unsupported, speculative, and which were not considered by the lower court because they do not appear in the Joint Stipulation

of Facts and were not presented to the court. These unsupported and speculative statements are prejudicial to Appellants and irrelevant to this Court's determination of the issues on appeal. Accordingly, the Court should strike the following matter from Respondent's Initial Brief.

**IRRELEVANT AND PREJUDICIAL STATEMENTS
TO BE STRICKEN FROM RESPONDENT'S INITIAL BRIEF**

- “One of [Mr. Brown's trustees] was found to have lied under oath to the court. Another is under house arrest for stealing from Mr. Brown.” Initial Brief of Respondent at p. 5, footnote 5.
- “Mr. Brown ... willing[ly] ceded such total control over his assets while alive....” *Id.* at p. 5.
- “Discussion of the annulment began during the marriage between Mr. Brown and Mrs. Brown, when David Cannon, an associate of Mr. Brown who is currently under house arrest for stealing from Mr. Brown, expressed doubt over the validity of the Brown-Brown marriage. Specifically, Mr. Cannon expressed a belief that the marriage was bigamous because Mrs. Brown was previously married to Javed Ahmed.” *Id.* at p. 30.
- “The purpose of the annulment action was to address the doubts raised by Mr. Cannon. Mrs. Brown has always believed that her marriage to Ahmed was void and that her marriage to Mr. Brown was valid.” *Id.* at pp. 30-31.
- “There was a difference of opinion on th[e] subject [of Mrs. Brown's marriage to Mr. Ahmed] between Mr. Cannon and Mrs. Brown, and Mrs. Brown brought the annulment action, *at Mr. Brown's request*, to have that difference resolved authoritatively.” *Id.* at p. 31 (emphasis added); *see also id.* at p. 31 (“The action was brought at his request.”); *see also id.* at p. 55 (“Mr. Brown asked Mrs. Brown to procure an annulment”).
- “*Mr. and Mrs. Brown* desired, as any reasonable person in that situation would, to resolve ... doubts” regarding the validity of their marriage. *Id.* at p. 31 (emphasis added); *see also id.* at p. 32 (“he had just as much interest in determining the legal status of his marriage to Mrs. Brown as she did.”).
- Mr. Brown's payment of legal fees “made the action possible, which suggests he had a strong interest in the subject matter of the action.” *Id.* at p. 32; *see also id.* at p. 52 (“Mr. Brown evidently agreed that his interests in the annulment action were represented by Mrs. Brown, as he retained no attorney of his own, filed no claim of his own, and paid Mrs. Brown's attorney.”).

- Mr. Brown gave “full support” to Mrs. Brown to pursue the Ahmed annulment action. *Id.* at p. 33; *see also id.* at p. 51 (insinuating Mr. Brown “support[ed], encourage[d], and insist[ed] upon [Mrs. Brown’s annulment action against Mr. Ahmed]”; *id.* at p. 52 (implying Mr. Brown “fostered” Mrs. Brown’s annulment action”).
- “With funds provided *for that purpose by Mr. Brown*, Mrs. Brown hired Robert Rosen, who, in December 2003, brought an action on her behalf to obtain an annulment from Ahmed.” *Id.* at p. 1 (emphasis added).
- “In January 2004, soon after Mr. Brown was arrested in a domestic violence dispute....” *Id.* at p. 1; *see also id.* at p. 4 (“After a quarrel with Mrs. Brown....”); *id.* at p. 31 (“Mr. Brown was later arrested on a domestic violence charge involving Mrs. Brown on January 28, 2004”).
- “Mr. Brown clearly accepted the benefits of [Tommie Rae Brown’s] Charleston County Family Court order....” *Id.* at pp. 2, 52; *see also id.* at p. 31 (“Mr. Brown clearly accepted the benefits ... when he utilized the Order to advance his own position in the Aiken County action.”); *see also id.* at pp. 51, 52 (“Mr. Brown also accepted substantial benefits of the judgment during his lifetime.”); *id.* at p. 51 (“The effect of the annulment was to resolve uncertainty as to the validity of a marriage to which both spouses were parties, and Mr. Brown therefore benefitted from as much from the judgment as Mrs. Brown did.”).
- “[I]f Mr. Brown had truly intended not to be married to Mrs. Brown, surely he would have pursued his annulment action to its conclusion.” *Id.* at p. 32.
- “what Mr. Brown wanted: his marriage to Mrs. Brown.” *Id.* at p. 5.
- “In July 2004, Mr. and Mrs. Brown reconciled....” *Id.* at p. 2.
- “Mr. and Mrs. Brown then continued to reside together as husband and wife until Mr. Brown’s death.” *Id.* at p. 32.
- “Mr. Brown died knowing he was married to Mrs. Brown.” *Id.* at p. 4.

ARGUMENT

Respondent’s initial brief contains wholly speculative statements regarding the thoughts, opinions, and perceptions of Mr. Brown. These speculative statements are unsupported by any factual basis, lack reference to any document or testimony in the record, and were not presented through any evidence to the lower court.

Respondent has also asserted unsupported “factual” statements which should be stricken on two grounds (i) they are without reference to any document or testimony; (ii) they were not presented to the lower court for consideration with respect to the motions for summary judgment. Rule 208(b), SCACR, governs the content of the Initial Brief, and provides in pertinent part:

(b)(1)(D) Argument. ... A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party’s contention.

Respondent makes all of the above referenced “factual” statements with no reference to documents or testimony in the record. None of these purported “facts” were presented to the lower court.

As Respondent noted in her own Motion to Strike, filed June 24, 2016 (referring to statements in her purported diaries), “Mrs. Brown’s numerous and varied diary entries were not before the lower court in the motion for summary judgment. The motion for summary judgment was based on affidavits filed with the court and on agreed stipulations of fact.” Respondent’s Motion to Strike at p. 5. Because Respondent’s own factual statements in her Initial Brief are similarly unsupported and irrelevant, they should be stricken from her initial brief in this appeal.

CONCLUSION

For these same reasons governing this Court’s decision to strike references to the alleged diaries of the Respondent, *see* Order Granting Respondent’s Motion to Strike, filed August 19, 2016, Respondent’s Initial Brief includes speculative and unsupported “factual” references that are prejudicial to Appellants, without evidentiary support, and should be stricken. Respondent should be compelled to file an amended initial brief without reference to these statements.

Respectfully submitted,



John F. Beach
Lyndey Ritz Zwingelberg
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201
Telephone: (803) 254-4190

*Attorneys for Appellant David C. Sojourner,
Jr., Limited Special Administrator of the
Estate of James Brown and Limited Special
Trustee of the James Brown Irrevocable
Trust, u/a/d August 1, 2000*

November 9, 2016.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

NOV 09 2016

SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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.

PROOF OF SERVICE

The undersigned hereby certifies that she has served the foregoing Appellant David C. Sojourner, Jr.'s Motion to Strike Irrelevant and Prejudicial Statements from Initial Brief of Respondent Tommie Rae Brown, by depositing a copy of same in the United States Mail, postage prepaid on November 9, 2016 and addressed as follows:

Robert N. Rosen, Esq.
Erin C. Casey, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston SC 29401
Attorneys for Tommie Rae Brown

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia SC 29205
Attorney for Tommie Rae Brown

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta GA 30303
*Attorney for Deanna Brown Thomas,
Yamma Brown, Venisha Brown and Larry
Brown*

David B. Bell, Esq.
David Bell Law Firm
619 Greene Street
Augusta GA 30903
*Attorney for Daryl Brown, Michael Deon
Brown and Lisa Sims*

Matthew Day Bodman, Esq.
Matt Bodman, PA
1500 Calhoun Street
Columbia SC 29201
*Attorney for Daryl Brown and Michael
Deon Brown*

John A. Donsbach, Esq.
Donsbach & King, LLC
504 Blackburn Drive
Augusta GA 30907
*Attorney for Terry Brown and Forlando
Brown*

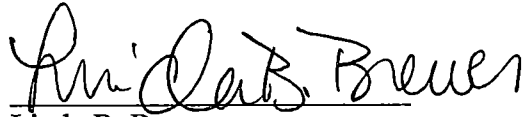
William Joseph Barr, Esq.
Barr Law LLC
108 N. Academy Street
Kingstree SC 29556-3422
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*

Itriss Jenkins, Esquire
Itriss J. Jenkins, LLC
215 E. Bay Street, Suite 203
Charleston, SC 49401
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*

A. Peter Shahid, Jr., Esquire
Shahid Law Office
89 Broad Street
Charleston, SC 29401
*Attorney for Guardian ad Litem, Stephen
M. Slotchiver*

Robert C. Byrd, Esquire
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
*Attorneys for Appellants, Deanna Brown-
Thomas, Dr. Yamma Brown and Venisha
Brown*

Vera Gilford, Esquire
Post Office Box 12553
Miami, Florida 33101
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*



Linda B. Brewer
Paralegal for Adams and Reese LLP

1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
(803) 254-4190

*Attorneys for Appellant David C. Sojourner,
Jr., Limited Special Administrator of the
Estate of James Brown and Limited Special
Trustee of the James Brown Irrevocable
Trust, u/a/d August 1, 2000*

November 9, 2016

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

RECEIVED

NOV 09 2016

SC Court of Appeals

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 she has served the foregoing Initial Reply Brief of Appellant David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 and Appellant David C. Sojourner, Jr.'s, in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 Supplemental Designation of

on Appeal, by depositing a copy of same in the United States Mail, postage prepaid on
November 9, 2016 and addressed as follows:

Robert N. Rosen, Esq.
Erin C. Casey, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston SC 29401
Attorneys for Tommie Rae Brown

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia SC 29205
Attorney for Tommie Rae Brown

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta GA 30303
*Attorney for Deanna Brown Thomas,
Yamma Brown, Venisha Brown and Larry
Brown*

David B. Bell, Esq.
David Bell Law Firm
619 Greene Street
Augusta GA 30903
*Attorney for Daryl Brown, Michael Deon
Brown and Lisa Sims*

Matthew Day Bodman, Esq.
Matt Bodman, PA
1500 Calhoun Street
Columbia SC 29201
*Attorney for Daryl Brown and Michael
Deon Brown*

John A. Donsbach, Esq.
Donsbach & King, LLC
504 Blackburn Drive
Augusta GA 30907
*Attorney for Terry Brown and Forlando
Brown*

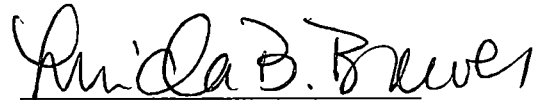
William Joseph Barr, Esq.
Barr Law LLC
108 N. Academy Street
Kingstree SC 29556-3422
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*

Itriss Jenkins, Esquire
Itriss J. Jenkins, LLC
215 E. Bay Street, Suite 203
Charleston, SC 49401
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Petitt and Cherquarius Williams
for LaRhonda Petitt*

A. Peter Shahid, Jr., Esquire
Shahid Law Office
89 Broad Street
Charleston, SC 29401
*Attorney for Guardian ad Litem, Stephen
M. Slotchiver*

Robert C. Byrd, Esquire
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
*Attorneys for Appellants, Deanna Brown-
Thomas, Dr. Yamma Brown and Venisha
Brown*

Vera Gilford, Esquire
Post Office Box 12553
Miami, Florida 33101
*Attorney for Tonya Brown a/k/a Sarah
LaTonya Brown-Fegan, Jeanette Mitchell
and Ciara Pettitt and Cherquarius Williams
for LaRhonda Pettitt*



Linda B. Brewer
Paralegal for Adams and Reese LLP

1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
(803) 254-4190
*Attorneys for Appellant David C. Sojourner,
Jr., Limited Special Administrator of the
Estate of James Brown and Limited Special
Trustee of the James Brown Irrevocable
Trust, u/a/d August 1, 2000*

November 9, 2016

November 9, 2016

Attorneys at Law
Alabama
Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

Via Hand Delivery

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

John F. Beach
Direct: 803.343.1269
E-Fax: 803.343.1224
john.beach@arlaw.com

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

RECEIVED

NOV 09 2016

SC Court of Appeals

Dear Ms. Kitchings:

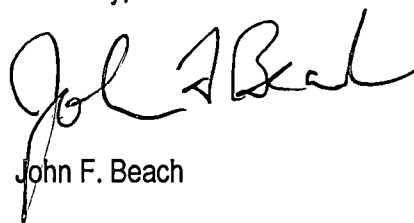
Pursuant to Order extending the LSA's deadline to November 9, 2016, enclosed for filing are an original and one copy of the Initial Reply Brief and Supplemental Designation of Matter to be Included in the Record on Appeal of Appellant David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 in the above-referenced matter together with a Proof of Service. Please file the original and return the clocked-in copy with our courier.

Also enclosed for filing are an original and seven copies of the Appellant David C. Sojourner, Jr.'s Motion to Exclude Irrelevant Documents from Record on Appeal and Appellant David C. Sojourner, Jr.'s Motion to Strike Irrelevant and Prejudicial Statements from Initial Brief of Respondent Tommie Rae Brown together with Proofs of Service. Please file the originals and return a clocked-in copy of each Motion with our courier. Our checks in the amount of \$25.00 each are enclosed to cover the motion fee.

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,



John F. Beach

JFB/ibb

Enclosures

cc: David C. Sojourner
All parties of Record