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

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.

FINAL 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

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STATEMENT OF ISSUES ON APPEAL

1. Whether factual findings in a family court order annulling a prior marriage apply to non-parties to the annulment action.

2. Whether an annulment which decrees a pre-existing marriage void *ab initio* relates back so as to give validity to a subsequent, otherwise bigamous, marriage.

STATEMENT OF THE CASE

James Joseph Brown ("Decedent") died on December 25, 2006 in Aiken County, South Carolina. Following his death, Tommie Rae Hynie Brown ("Respondent"), claiming to be Decedent's surviving spouse, brought an action in probate court seeking to set aside Decedent's last will and testament and irrevocable trust agreement based upon claims of undue influence and fraud. Respondent also asserted she was entitled to an elective share or an omitted spouse's share of Decedent's Estate. The probate court transferred Respondent's claims to the circuit court.

This Court is well-versed in the complex and lengthy procedural history of this action. (*See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).) Since the Supreme Court's reversal and remand of the case in 2013, the former personal representatives of the Estate and trustees of the Trust, Adele J. Pope, Esquire, and Robert L. Buchanan, Esquire, were removed for cause. On October 1, 2013, Russell L. Bauknight was appointed as Personal Representative of the Estate and Trustee of the Trust and David C. Sojourner, Jr., Esquire (the "LSA") was appointed as Limited Special Administrator of the Estate and Limited Special Trustee of the Trust. The LSA's appointment is limited to defending the Estate and Trust against certain will and trust challenges, including the claims filed by Respondent.

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, R. pp. 2455-2462.) 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.

Respondent filed a Motion for Summary Judgment on April 24, 2014. (*See* Respondent's Motion for Summary Judgment, R. p. 231.) In the motion, Respondent contended she was entitled to a determination that she is Decedent's surviving spouse based solely upon the legal effect of an order entered by the Charleston County Family Court on April 15, 2004, which annulled Respondent's February 1997 marriage to her first husband, Javed Ahmed ("Ahmed Annulment Order"). (R. pp. 245-248.) The Ahmed Annulment Order was issued *after* Respondent purported to marry Decedent. Respondent argued the Ahmed Annulment Order was "binding on the world" in its entirety, including Decedent and Decedent's heirs and Estate. (March 31, 2014 Hearing Transcript, R. p. 2455.)

On May 29, 2014, the Estate filed its own Motion for Summary Judgment, arguing Respondent cannot be Decedent's surviving spouse because her marriage to

Decedent was bigamous. (*See* LSA's Motion for Summary Judgment, R. pp. 250-251.) The LSA relied upon stipulated evidence that Respondent's previous marriage to Mr. Ahmed, in 1997, was not caused to be ended or annulled before Respondent's marriage to Decedent in 2001. (*Id.*) The LSA contended the Charleston County Family Court's April 2004 order granting Respondent an annulment from Mr. Ahmed cannot relate back to retroactively validate Respondent and Decedent's otherwise bigamous December 2001 marriage and that Respondent's marriage to Decedent was, therefore, void from its inception. Other parties to this action, including Daryl Brown and Terry Brown, also filed supporting and opposing memoranda. In an effort to eliminate genuine disputes of material fact, the parties entered into a Joint Stipulation of Facts. (*See* Joint Stipulation of Facts, filed September 5, 2014, R. pp. 254-350.)

The lower court heard oral argument on the parties' motions on November 24, 2014. (*See* Hearing Transcript, November 24, 2014, R. pp. 2454-2463.) On January 13, 2015, the lower court issued an order granting Respondent's Motion for Summary Judgment, finding Respondent to be Decedent's surviving spouse as a matter of law. (*See* Order, filed January 13, 2015, R. pp. 53-102.) The lower court denied the LSA's cross motion for Summary Judgment. (*Id.*) The court's order was based upon its conclusion that the Charleston County Family Court's April 15, 2004 Order, granting Respondent an annulment "ab initio" from Mr. Ahmed, was "binding on [Decedent] and his heirs and must be respected by this Court." (*See* Order at R. p. 98.)

The lower court applied the underlying factual findings from the Ahmed Annulment Order against all parties, (Order at R. pp. 60, 72-97), concluding the court could not "re-open or re-litigate the underlying findings of fact of the annulment order,

which in this case would have the same effect as disregarding the annulment order." (*Id.* at R. p. 72.) The lower court found, based on findings in the Ahmed Annulment Order alone, that Respondent's "attempted marriage to Ahmed (Marriage 1) was void ab initio and never a marriage. Therefore[,] [Respondent] had no impediment to her marriage to [Decedent], and that marriage (Marriage 2) is valid." (*Id.* at R. p. 68.) Further, the lower court held the Charleston County Family Court's declaration of annulment ("void *ab initio*") applied retroactively so as to validate Respondent and Decedent's 2001 marriage ceremony. (*See* Order at R. pp. 62-72.) Shortly thereafter, the LSA and nine other parties filed motions to reconsider.[1]

On June 30, 2015, the lower court heard oral argument on the parties' outstanding motions to reconsider. (*See* Hearing Transcript, June 30, 2015, R. pp. 2637-2733.) At the hearing, the lower court asked whether its order could be based solely upon application of the undisputed facts to 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.

Respondent filed a Memorandum in Opposition to the Motions to Alter, Amend,

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[1] *See* LSA's Motion to Alter, Amend and Reconsider, filed January 26, 2015 at R. pp. 825-883; Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown's Motion to Alter or Amend Judgment and/or for Reconsideration, filed January 26, 2015 at R. pp. 884-887; Daryl Brown's Motion to Alter, Amend and Reconsider, filed January 28, 2015 at R. pp. 888-896; Jeanette Mitchell's Motion to Reconsider, Alter or Amend, filed January 28, 2015 at R. pp. 897-909; Adele J. Pope's Motion to Alter or Amend and/or Reconsider and Vacate Orders, filed January 30, 2015; Michael Deon Brown's Motion to Alter, Amend and Reconsider, filed February 2, 2015 at R. pp. 913-920; Terry Brown's Motion to Alter, Amend and Reconsider, filed February 20, 2015 at R. pp. 921-1006.

and Reconsider on June 28, 2015. The LSA and Terry Brown filed supplemental memoranda in support of their motions on July 30, 2015. All of the supplemental briefing submitted by the parties focused on applying the *Lukich* decisions to the facts of the present action. Without further oral argument, the lower court denied the parties' motions to reconsider by order dated October 26, 2015. (*See* Order, October 26, 2015, R. pp. 103-121.)

The LSA, along with other parties,[2] timely filed a Notice of Appeal on November 20, 2015.

FACTS

Respondent's first marriage occurred on February 12, 1997 when Respondent and Javed Ahmed obtained a state marriage license in Texas. (*See* Joint Stipulation of Facts at ¶ 1, R. pp. 255, Stipulation Exhibit 1, R. pp. 265-266.) Respondent and Mr. Ahmed were married on February 17, 1997 in Harris County, Texas. (*Id.* at ¶ 2, R. p. 255.) On December 10, 2001, Respondent and Decedent obtained a state marriage license in South Carolina. (*Id.* at ¶ 4, R. p. 256.) Respondent and Decedent participated in a marriage ceremony in Beech Island, South Carolina on December 14, 2001. (*Id.* at ¶ 5, R. p. 256, Stipulation Exhibit 4, R. pp. 269-270.)

Between Respondent's first, February 17, 1997, marriage to Mr. Ahmed and second, December 14, 2001, marriage to Decedent, a span of less than five years' time,[3] no order of any court ended or caused to end the marriage between Respondent and Mr.

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[2] Other parties also filed a notice of appeal, including, Deanna Brown-Thomas, Yamma Brown, and Venisha Brown on November 20, 2015; Michael Deon Brown, November 24, 2015; Terry Brown, November 24, 2015; Daryl Brown, November 24, 2015.

[3] South Carolina law applying a presumption that a spouse who has been absent for a period of five years, and whose whereabouts are unknown, is dead, is therefore inapplicable in this case. *See* S.C. Code Ann. § 20-1-50.

Ahmed. (*See* Joint Stipulation of Facts at ¶ 6, R. p. 256.) Respondent admits no other occurrence of which Respondent is aware, ended or caused to end the alleged marriage.[4] (*Id.*)

Two years after her second marriage to Decedent, Respondent filed a family court action in Charleston County, South Carolina, seeking an annulment of her first marriage to Mr. Ahmed. (*See* Joint Stipulation of Facts ¶ 7, R. p. 256; Stipulation Exhibit 5, R. pp. 271-273.) Respondent apparently made certain efforts to locate and serve Mr. Ahmed with the complaint, (*id.* at ¶ 7, R. p. 256, Stipulation Exhibit 6, R. pp. 274-279,) but Mr. Ahmed was never served personally, and Mr. Ahmed never answered or otherwise appeared. (*Id.* at ¶ 17, R. p. 257; Stipulation Exhibit 13, R. pp. 297-313.) In the annulment proceeding, Respondent asserted her marriage to Mr. Ahmed was, in part, void on the basis of bigamy, on the grounds that Mr. Ahmed was allegedly married to one or more women at the time he and Respondent wed. (*Id.* ¶ 7, R. p. 256, Stipulation Exhibit 5, R. pp. 271-273.) The family court held a final hearing on April 15, 2004 at which the only evidence was Respondent's own unopposed hearsay testimony. (*Id.* at ¶ 18, R. p. 258; Stipulation Exhibit 13, R. p. 297-313.)

The Charleston County Family Court issued an order granting Respondent and Mr. Ahmed an annulment on April 15, 2004 ("Ahmed Annulment Order"). (*See* Joint Stipulation of Facts at ¶ 11, R. p. 257; Stipulation Exhibit 12, R. pp. 293-296.) The Court based the entire order upon Respondent's unopposed verbal testimony, including hearsay testimony about Mr. Ahmed's alleged previous Pakistani marriages. (*Id.* at ¶ 18, R. p.

[4] For the purpose of the present dispute, the LSA contends the only "other occurrence" relevant to the Court's decision would be Mr. Ahmed's death. *See* S.C. Code Ann. § 20-1-80 ("All marriages contracted while either of the parties has a former wife or husband ***living*** shall be void.").

258; Stipulation Exhibit 13, R. pp. 297-313.)

To date, Respondent has admitted she can identify no documents or other tangible evidence showing Mr. Ahmed was married to another person when she and Mr. Ahmed married on February 17, 1997. (*See* Joint Stipulation of Facts at ¶ 9, R. p. 257; Stipulation Exhibits 5-13, R. pp. 271-313.) She relies solely upon her unopposed hearsay testimony which was admitted by the Charleston County Family Court and upon which the Ahmed Annulment Order was based. Similarly, Respondent can identify no person (except, Respondent claims, Mr. Ahmed and the unknown and unnamed "wives" in Pakistan "to whom [Mr. Ahmed] was allegedly married") who can testify Mr. Ahmed was married to another person when the two purported to marry in 1997. (*Id.* at ¶ 10, R. p. 257; Stipulation Exhibit 13, R. pp. 297-313.)

Decedent gave Respondent certain funds which Respondent claimed she used to pay her legal fees for the Ahmed Annulment Action. (*See* Joint Stipulation of Facts at ¶ 13, R. p. 257.) Decedent was aware the Ahmed Annulment Action existed, as Respondent's attorney sent Decedent's attorney a copy of the filed pleadings and the final order. (*Id.* at ¶¶ 13, 14, R. p. 257; Stipulation Exhibit 14, R pp. 314-328.) Decedent was not a named party to the Ahmed Annulment Action and never became a party, through intervention or otherwise. (*Id.* at ¶ 12, R. p. 257.) Decedent did not participate in the hearing or any other facet of the Ahmed Annulment Action, and was not a joint client of Respondent's attorney. (*Id.* at ¶ 12, 15, and 16, R. p. 257; Stipulation Exhibit 13, R. pp. 297-313.)

ARGUMENTS

I. RESPONDENT HAS THE BURDEN OF PROVING SHE IS DECEDENT'S SURVIVING SPOUSE.

To succeed on all three of her will and trust challenges,[5] Respondent must show she qualifies as Decedent's "surviving spouse" as a matter of law. The burden of proving surviving spouse status is on the person claiming an interest in the estate, in this case, Respondent. *See Byrd v. Byrd*, 279 S.C. 425, 308 S.E.2d.788 (1983); *Calhoun v. Calhoun*, 277 S.C. 527, 290 S.E.2d 415 (1982).

If Respondent cannot carry her burden on the threshold element that she is Decedent's surviving spouse, the Estate would be entitled to summary judgment. S.C. R. Civ. P. 56. *See Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). ("With respect to an issue upon which the nonmoving party bears the burden of proof, this initial responsibility 'may be discharged by 'showing'—that is, pointing out to the [trial] court—that there is an absence of evidence to support the nonmoving party's case.") (citation omitted); *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S.Ct. 2548, 2557 (1986) ("If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law."). Based on evidence in the record, or lack thereof, Respondent cannot succeed on the merits of her claims because she has failed to meet her burden of proving she and Decedent were lawfully married to each other at the time of Decedent's death.

As a fundamental tenet of South Carolina law, there is a strong presumption in

[5] Respondent has asserted an elective share claim, pursuant to S.C. Code Ann. § 62-2-201; an omitted spouse claim, pursuant to S.C. Code Ann. § 62-2-301; and has claimed that Decedent's Will and Trust should be set aside on the basis of fraud and undue influence.

favor of marriage. *Tarleton v. Thompson*, 125 S.C. 182, 118 S.E. 421 (1923). Where there are competing marriages, our Supreme Court has set forth a burden shifting analysis for determining which marriage is valid. *Hallums v. Hallums*, 74 S.C. 407, 4 S.E. 613 (1906). This Court has applied the burden shifting inquiry, reversing a lower court for failing to apply the proper analysis. *Yarbrough v. Yarbrough*, 280 S.C. 546, 551-52, 314 S.E.2d 16, 19 (Ct. App. 1984) (finding husband did not overcome presumption that marriage to first wife was terminated by death or divorce).

Once a marriage is shown to exist, the person attacking its validity has the burden of proving invalidity. *Id.* "[W]here the evidence shows that the same person entered into a conflicting marriage, a presumption arises that the former marriage was dissolved by death or divorce. *Yarbrough*, 280 S.C. at 550, 314 S.E.2d at 18 (*citing Hallums*, supra). It is upon the party seeking to invalidate the second marriage, in this case, the LSA, to overcome this initial presumption. *See id.* ("If the law raises a presumption in favor of one party to litigation, the burden of going forward with the evidence devolves on the other party." (citing 52 Am. Jur. 2d *Marriages* § 130 (1970)).

Although Respondent has produced a certificate of marriage showing Respondent and Decedent attempted to marry on December 14, 2001, (*see* Joint Stipulation of Facts Exhibit 4, R. pp. 269-270), the stipulated facts reveal Respondent was married to another man, Javed Ahmed, less than five years earlier, on February 17, 1997, (*id.* at ¶¶ 1, 2, R. p. 255; Stipulation Exhibit 4, R. pp. 269-270.) The statutory presumption of death following a five-year period of unexplained absence is, therefore, inapplicable. *See* S.C. Code Ann. § 20-1-80. Stipulated evidence proves no order of any court or other occurrence (e.g., Mr. Ahmed's actual death) ended or caused to end that marriage, (*id.* at

¶ 14, R. p. 257.) Based on these stipulated facts, the Estate has overcome the presumption that Respondent's second marriage was valid by proving Respondent's first marriage was neither ended by Mr. Ahmed's death nor divorce.

Further evidence of the validity of Respondent's first marriage is Respondent's own act of filing an annulment action in December 2003, after her marriage to Decedent. (*See* Joint Stipulation of Facts at ¶ 7, R. p. 256.) Respondent's filing confirms that in Respondent's own mind in 2003 she was still married to Mr. Ahmed. *Compare In re Watts Estate*, 185 A.2d 781, 787 (Pa. 1962) ("It can hardly be disputed that the parties had not been divorced up until 1945 at the time decedent instituted his divorce action in Philadelphia. The fact that decedent instituted this action renders clearly unlikely and highly improbable that up until that time he had secured a divorce; we cannot attribute to the decedent a vain and useless act.").

Having overcome the presumption that Respondent's marriage to Mr. Ahmed was dissolved by death or divorce, the *Hallums* and *Yarbrough* burden shifting test makes Respondent's first marriage presumptively valid. *See Hallums*, 74 S.C. 407, 54 S.E.2d at 614. Respondent, as the challenging party, therefore must overcome this presumption with specific evidence. *See Yarbrough*, 280 S.C. at 550, 314 S.E.2d at 18 (citing 52 Am. Jur. 2d *Marriages* § 130 (1970)) ("If the law raises a presumption in favor of one party to litigation, the burden of going forward with evidence devolves on the other party.").

Respondent asserts her first marriage to Mr. Ahmed was void, but has admitted in this lawsuit she can identify no documents or other tangible evidence showing Mr. Ahmed was married to another person. (See Joint Stipulation of Facts at ¶ 9, R. p. 257); Stipulation Exhibits 5-13, R. pp. 271-313.) Similarly, Respondent can identify no person

(except, Respondent claims, Mr. Ahmed and the unknown and unnamed "wives" in Pakistan "to whom [Mr. Ahmed] was allegedly married") who can testify Mr. Ahmed was married to another person when he married Respondent in 1997. (*Id.* at ¶ 10, R. p. 257; Stipulation Exhibit 13, R. pp. 297-313.) Rather, Respondent relies solely upon her speculative allegations in her family court pleading and unopposed hearsay testimony which was admitted by the Charleston County Family Court in the Ahmed Annulment Action. Such uncorroborated, unchallenged and obvious hearsay testimony is of questionable credibility to say the least.

The purported "evidence" submitted by Respondent to overcome the LSA's Motion for Summary Judgment is insufficient. "Once the moving party carries its initial burden, opposing party must, under Rule 56(e), 'do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with 'specific facts showing that there is a *genuine issue for trial.*'" *Baughman*, 306 S.C. at 115, 410 S.E.2d at 545 (quotation omitted) (emphasis in original). *See also Ross v. Communications Satellite Corp.*, 759 F.2d 355 (4th Cir. 1985) ("Genuineness means that the evidence must create fair doubt; wholly speculative assertions will not suffice.").

In *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984), this Court addressed the applicable standard for summary judgment when considering alleged "inferences of fact." The Court held: "It is not sufficient that one create an inference which is not reasonable. Similarly, it is not sufficient that one create an issue of fact that is not genuine." *Id.* at 527, 316 S.E.2d at 407. This Court explained:

> It would hardly be argued that the testimony of a witness who said he saw a wreck in South Carolina would raise a factual issue if he simultaneously admitted that he was in a hospital in Boston, Massachusetts, at the time. The judge is not required to single out some one morsel of evidence and

> attach to it great significance when patently the evidence is introduced solely in a vain attempt to create an issue of fact that is not genuine.

Id. Here, Respondent patently asked the lower court to reach a decision in her favor by singling out morsels of speculative and unsupported hearsay evidence from an unopposed family court proceeding, none of which gives rise to a genuine issue of material fact in this case where the Estate and others have come forward with evidence to the contrary.

Respondent's complaint in the family court action alleges only "upon information and belief" that Mr. Ahmed was married to "three or more wives . . . under Pakistani law when the parties married." (Joint Stipulation of Facts at ¶ 7, R. p. 256; Stipulation Exhibit 5 at ¶ 8, R. p. 272.) Affidavits or verified pleadings asserting alleged facts "upon information and belief" are not entitled to evidentiary weight. *See Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003) (requiring supporting and opposing affidavits to "be made *on personal knowledge*," and holding "[a]llegations made upon information and belief do not meet the 'personal knowledge' requirements of Rule 56(e)," SCRCP) (emphasis in original); *see also Cottom v. Town of Seven Devils*, 30 Fed. Appx. 230, 234 (4th Cir. 2002) ("statements based solely upon information and belief do not satisfy the requirements of Rule 56," FRCP) (citations omitted).

Respondent also attempts to rely upon her unopposed hearsay testimony introduced during the family court's final hearing. (Joint Stipulation of Facts at ¶ 7, R. 256, Stipulation Exhibit 13, R. p. 297-313.) During the hearing, Respondent testified:

> Q: And he told you that he already had, what, two or three or four wives?
>
> A: He said he had three wives in Pakistan. I could not come into his house because I was not a Muslim. And he just wanted to get in the country.
>
> ...
>
> Q: So, you're asking the court to annul this marriage to the

Defendant, is that right?

A: Please.

Q: Because he was married to another woman or women, correct?

A: Correct.

Q: That's what he said?

A: Yeah.

(Stipulation Exhibit 13, p. 10, lines 11-15, p. 14, lines 16-23, R. p. 306.)

The exact same testimony has previously been held by the Supreme Court and this Court to be insufficient to overcome a plaintiff's burden of disproving a preexisting marriage in a case involving similar facts. In *Hallums*, 74 S.C. 407, 54 S.E. 613, the plaintiff first married a man named Bill Williams on December 24, 1895. *Id.* Less than five years later, in 1899, the plaintiff married Nero Hallums. *Id.* In the probate action involving Mr. Hallums' estate, the plaintiff contended she was entitled to a portion of the estate as a surviving spouse. *Id.* The estate's representatives challenged the plaintiff's claim on the basis that "her alleged intermarriage with Nero Hallums was an illegal and void marriage; she at that time, as is contended, having a living husband, to wit, Bill Williams." *Id.*

In an attempt to confirm her second marriage to Nero Hallums was valid, the plaintiff contended that at the time she allegedly married Mr. Williams, "he was then a married man, and that therefore the marriage with him was void, and that consequently she was free to make a contract of marriage with Nero Hallums." *Id.* The Court acknowledged that other than the plaintiff's uncorroborated testimony, "there is no evidence of an actual marriage of Bill Williams with another woman." *Id.* The Court concluded:

> While we have been referred to cases in which there was a presumption of a divorce or death of one of the contracting parties since the prior marriage

> in order to sustain the second marriage, we have not been able to find any cases in which there was a presumption that the first marriage was illegal at the time it was solemnized in due form. The reason that no such cases are to be found is that all presumptions are in favor of innocence.

Id., 74 S.C. 407, 54 S.E.2d at 614. The Court rejected the plaintiff's testimony that Mr. Williams was previously married to another woman, holding such testimony, without other substantiating evidence, was "insufficient to annul and make void his actual marriage with the plaintiff." *Id.*, 74 S.C. 407, 54 S.E.2d at 613.

In *Yarbrough*, 280 S.C. 546, 314 S.E.2d 16, this Court held a husband's testimony "that he never received divorce papers" from his first wife, "but was told she divorced him and remarried" was insufficient to overcome his burden of proof. *Id.* at 551-52, 314 S.E.2d at 19. "For a party having the burden of proving [his] divorce, this testimony is unpersuasive." *Id.* "It is clear [husband's] evidence fails to rebut the presumption." *Id.*

In accordance with *Yarbrough* and *Hallums*, the lower court should have required Respondent to present specific evidence proving Mr. Ahmed was previously married to another woman when he and Respondent married on February 17, 1997. Only such evidence would be sufficient to overcome her burden of proof and be enough to create a genuine issue of material fact to overcome the LSA's Motion for Summary Judgment. S.C. R. Civ. P. 56.

Because Respondent did not come forward with "specific facts showing that there is a genuine issue for trial" on the invalidity of Respondent's first marriage to Mr. Ahmed, *see Baughman*, 306 S.C. at 115, 410 S.E.2d at 545, Respondent failed to overcome the *Hallums*' presumption that Respondent's first marriage was valid. Respondent's failure to overcome the presumption of validity of her first marriage to Mr. Ahmed renders Respondent's second marriage to Decedent bigamous, and, therefore a

nullity. The Estate was entitled to summary judgment and the lower court's order should be reversed.

II. RESPONDENT CANNOT ESTABLISH HER SECOND MARRIAGE IS VALID THROUGH THE AHMED ANNULMENT ORDER.

Without any actual evidence of Mr. Ahmed's purported marriage to other women at the time of Respondent and Ahmed's marriage in 1997, Respondent's Hail Mary play is to rely upon an order of the Charleston County Family Court issued *after* Respondent's marriage to Decedent which annulled Respondent's first marriage to Mr. Ahmed. (*See* Joint Stipulation of Facts at ¶ 7, R. p. 256; Stipulation Exhibit 12, R. pp. 293-296.) For a number of reasons, the Ahmed Annulment Order is not binding on non-parties, including Decedent and the Estate, and cannot be used to retroactively validate Respondent and Decedent's otherwise bigamous marriage. The lower court erred in determining the findings of fact and conclusions of law in the Charleston County Family Court order were binding on Decedent and the Estate as the basis for its granting of summary judgment to Respondent in this case. The lower court further erred in holding the Ahmed Annulment Order retroactively applied to validate Respondent and Decedent's 2001 attempted marriage.

A. The Ahmed Annulment Order is a judgment *in rem*, which is binding only on parties.

A decree dissolving the marital status of two parties, whether by divorce or annulment, is a judgment *in rem*. *Carnie v. Carnie*, 262 S.C. 471, 167 S.E.2d 297 (1969); 4 S.C. Jur. *Action* § 5. The terms "in personam" and "in rem" are used to distinguish between actions that have as their object a personal judgment against the

defendant ("in personam") and those for the purpose of obtaining a judgment which operates only upon a specific property or status ("in rem"). *See* 4 S.C. Jur. *Action* § 5; C.J.S., *Actions* § 69; 1 Am. Jur. 2d, *Actions* §§ 39, 40.

It is commonly stated that a judgment "in rem" is "binding on all persons in the world." *See* Restatement (First) of Judgments § 73 (1942), note a. However, "[a]lthough a valid judgment in rem is binding on all the world as to the existence of a status which is the subject of the action, it is not conclusive as to a fact upon which the judgment is based in any subsequent action . . . except as to persons who have appeared and actually litigated the question of the existence of the fact." *Id.* at cmt. c. *See also Rediker v. Rediker*, 221 P.2d 1, 4 (Cal. 1950) (en banc) ("As between strangers or strangers and parties, however, the decree is res judicata only in that it conclusively determines that the parties are thereafter free to remarry so far as any relation to each other is concerned. It does not establish the previous validity of their marriage against third persons who were not and had no right to be heard thereon.") (citations omitted).

In South Carolina, it is undisputed "a decree awarding simply a divorce, dissolving the marital status of the parties, is a judgment in rem, and for such purpose the jurisdiction of a nonresident may be obtained by constructive service." *Carnie*, 252 S.C. at 475, 167 S.E.2d at 299. Such a judgment is binding as to third parties as to the status of the marriage only. *See also Fitchette v. Sumter Hardwood Co.*, 145 S.C. 53, 142 S.E. 828, 833 (1928) ("Judgments in rem are considered binding on third persons, as are judgments or *decrees determining the status* or relations of individuals, as, for instance, decrees of divorce and adjudications as to the mental condition of persons, judgments of a public nature, and, for the purpose of proving title, judgments under which a sale of

land has taken place."). Though the "decree" itself is valid against third parties to establish the relationship of the parties going forward, such judgments are not permitted to be used against non-parties as to facts set forth within the decree.

Courts in other jurisdictions have fully expressed the general rule that judgments in rem are not binding against third parties beyond the status adjudicated therein. *Hunter v. Hunter*, 43 Pac. 756 (Cal. 1896); *Hendrick v. Biggar*, 103 N.E. 763 (N.Y. 1913); Restatement (First) of *Judgments* § 74(2) (1942). The United States Supreme Court has stated: "Establishing a fact and giving a specific effect to it by judgment are quite distinct. A judgment in rem binds all the world, but the facts on which it necessarily proceeds are not established against all the world, . . . and conversely establishing the facts is not equivalent to a judgment in rem." *Becher v. Contoure Labs.*, 279 U.S. 388, 391, 49 S.Ct. 356, 357 (1929) (citation omitted). In other words, findings of fact or conclusions of law necessarily determined by the judgment are not binding against non-parties to the action. *See Hunter v. Hunter*, 43 P. 756 (Cal. 1896) (holding judgment of divorce did not bind defendant as he "was not served with summons and was without the state, and the action was therefore strictly *in rem*").

The Oregon Supreme Court's decision in *In re Rowe's Estate*, 141 P.2d 832 (Ore. 1943), provides helpful guidance. There, the court was asked to determine whether a decedent, Edwin Rowe, died with a surviving child or whether the child was only a stepson and not entitled to inherit under Oregon law. *Id.* at 833-34. The purported "child" attempted to submit as evidence a divorce decree between his mother and her previous husband, which was filed upon a claim that the previous husband deserted and abandoned child's mother. *Id.* at 836. Child argued the findings of fact in the divorce

decree established his mother's first husband had deserted her and the finding therefore conclusively established the first husband did not have access to his mother during the period of desertion so as to permit an inference the decedent was his father. *Id.*

The Supreme Court of Oregon held:

> While the decree in a divorce suit as a decree in rem binds the whole world as to the status of the parties, to the extent that their status is the res adjudicated, with that limitation it is subject to the usual rule that estoppels must be mutual and *is therefore not conclusive for or against any third person in reference to the facts which it necessarily affirms or denies.* Judgments in rem, as such, are not res judicata with respect to facts incidentally though necessarily determined, except as to the res adjudicat[ed]. As between strangers or between parties and strangers, a decree of divorce does not establish the previous validity of the marriage, since the res involved and adjudicated is the condition of subsequent singleness of the parties and not the valid prior existence of marital relations between them.

Id. at 836 (emphasis added). Thus, child was not permitted to rely on the findings of fact from the decree of divorce to establish that his mother's previous husband had deserted her at the time he was conceived. *Id.*

As the foregoing is applied to this case, the Ahmed Annulment Order is binding on third parties, including Decedent and the Estate, only to the extent it conclusively establishes the parties were *from the date of the decree forward* free to remarry. Any factual finding that Mr. Ahmed and Respondent were never legally married because he was previously married to other women cannot be used against third parties to the action. The lower court erred in applying the factual findings against the Estate in this case in order to determine Respondent is Decedent's surviving spouse as a matter of law.

B. Decedent was not a party to the Annulment Action and is not estopped by findings in the Annulment Order.

"Under South Carolina law, '[c]ollateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.'" *Kunst v. Loree*, 404 S.C. 649, 653, 746 S.E.2d 360, 362 (Ct. App. 2013) (quoting *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009)). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

It is axiomatic that in South Carolina, as in virtually every jurisdiction, collateral estoppel only applies to parties to the previous action and their privies. *Carman v. South Carolina Alcoholic Beverage Control Com'n*, 317 S.C. 1, 451 S.E.2d 383 (1994). *See also McClain v. Pactiv Corp.*, 360 S.C. 480, 602 S.E.2d 87 (Ct. App. 2004), reh'g denied, (Sept. 22, 2004) (holding collateral estoppel prevents "a party from relitigating in a subsequent action an issue actually and necessarily litigated and determined in a prior action"); *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 496, 450 S.E.2d 616, 619 (Ct. App. 1994) (holding relitigation of issues is "precluded as to parties and their privies in any subsequent action based upon different claim") (citation omitted).

It is stipulated Decedent was not a party to the Ahmed Annulment Action and never became a party, through intervention or otherwise. (*See* Joint Stipulation of Facts ¶¶ 12, 15, and 16, R. p. 257; Stipulation Exhibit 13, R. pp. 297-313.) Moreover, Decedent could not have become a party to the action because he lacked standing. *See Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006) (denying second

husband's motion to intervene in an annulment action, "finding he did not have standing because he was not a party to the marriage"); *Ex parte Morris*, 367 S.C. 56, 62, 624 S.E.2d 649, 652 (2006) ("As a general rule, to have standing, a litigant must have a personal stake in the subject matter of the litigation.") (quoting *Glaze v. Grooms*, 324 S.C. 249, 255, 478 S.E.2d 841, 845 (1996)). Decedent did not participate in the hearing or any other facet of the Ahmed Annulment Action, and was not a client of Petitioner's attorney in that Action. *Id.*

Moreover, there are insufficient facts to imply Decedent was involved sufficiently to be in privity with Respondent in the Ahmed Annulment Proceeding. It is undisputed Decedent gave Petitioner funds to pay the legal fees for the Ahmed Annulment litigation. (*See* Joint Stipulation of Facts at ¶ 13, R. p. 257.) Moreover, Decedent was aware litigation between Respondent and Mr. Ahmed was ongoing, as evidenced by his attorney's receipt of the summons and complaint and final order. (*Id.* at ¶ 14, R. p. 257; Stipulation Exhibit 14, R. pp. 314-328.) However, these facts alone are insufficient to estop Decedent or his heirs from challenging the factual findings of a lawsuit in which Decedent was not a party. "It is not sufficient [for collateral estoppel] that the [non-party] merely contributed funds or advice in support of the party, supplied counsel to the party, or appeared as amicus curiae." Restatement (Second) of Judgments § 39, cmt. c (1982).

In *Phoenix Bd. of Realtors v. U.S. Department of Justice*, 521 F.Supp. 828 (D.Ariz. 1981), the U.S. District Court for the District of Arizona held "[i]t is clear . . . more than the mere provision of funding for litigation is required for principals of collateral estoppel to operate against a non-party." Similarly, in *McKeown v. Wheat*, 231

F.2d 540 (5th Cir. 1956), the Fifth Circuit held "in Georgia the furnishing of counsel, the payment of counsel's fees is not sufficient" for non-party issue preclusion. *McKeown* at 544 (citing *May v. Loeb*, 196 S.E. 268, 271 (Ga. App. 1938)). "For the 'outsider' to become bound, Georgia requires that he virtually be substituted as a party openly and avowedly in the management, direction and control of the case." *Id.* For these same reasons, Decedent's one-time payment of funds to Respondent in order to enable Respondent to finance the Ahmed Annulment Action and Respondent's receipt of the pleadings and final order in the action are insufficient to render him bound by that action. There is no evidence that Decedent managed, directed, or controlled Respondent's annulment action and therefore, the evidence fails to rise to a level sufficient enough to consider him to be in "privity" with Respondent in that case.

Further, the Ahmed Annulment Order could not be used for collateral estoppel purposes because it was procured against a party in default. "Even where all the elements for collateral estoppel are met, it will not be rigidly or mechanically applied, and the application of the doctrine may be precluded where unfairness or injustice results, or public policy requires it." *Carrigg v. Cannon*, 347 S.C. 75, 81, 552 S.E.2d 767, 770 (Ct. App. 2001) (citing *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)). One area in which the application of the doctrine has been held not to apply is where the previous order was obtained by default: "In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation." *Kunst*, 404 S.C. at 654, 746 S.E.2d at 362 (citations omitted).

South Carolina appellate courts, federal courts, and other state courts have held

"default judgments cannot be used to preclude subsequent litigation under the doctrine of collateral estoppel." *Id.* at 656, 746 S.E.2d at 363 (*citing In re Springhart*, 450 B.R. 725, 727 (Bankr. S.D. Ohio 2011) ("After reviewing the doctrine of collateral estoppel or issue preclusion, as adopted in South Carolina, the court concludes that the default judgment and order awarding damages cannot be afforded preclusive effect.... First, South Carolina does not allow default judgments to have preclusive effect under the collateral estoppel doctrine because no issues were actually litigated.")); *Powell v. Lane*, 289 S.W.3d 440, 451 (Ark. 2008) (Wills, J., dissenting) (citing South Carolina as an example of state law which "adhere[s] to the general rule" that default judgments cannot be used under the doctrine of collateral estoppel)).

The record demonstrates Mr. Ahmed never filed a notice of appearance in the Charleston County Family Court action and there is no evidence he had actual knowledge of the proceedings against him. (*See* Joint Stipulation of Facts at ¶ 17, R. p. 257.) During the family court hearing, Respondent's counsel stated to the court:

> We're here today. The Defendant has not appeared. The Defendant, I guess, arguably, is in default but we're not moving to put him in default. He has notice of this -- he has been served by publication as will appear by affidavit. He was given notice of this hearing personal to [S.C. R. Fam. Ct.] 17, proper notice, as will appear by affidavit. So, we're here to proceed. Since he's not here, I am ready to proceed. I have one witness.

(*Id.* at ¶ 7, R. p. 256; Stipulation Exhibit 13 at p. 4, lines 6-13, R. p. 300.)

After brief testimony of only one witness, Respondent, the family court verbally awarded Respondent an annulment "ab initio," and entered a Final Order on the same day, April 15, 2004. (*Id.* at ¶ 11, R. p. 257; Stipulation Exhibit 12 at pp.1-2, R. pp. 293-294.) The court's order acknowledged Mr. Ahmed was "served by publication" and "notified of the final hearing" but otherwise did not appear. *Id. See* S.C. R. Fam. Ct. 17.

Because the annulment decree was obtained against Mr. Ahmed by default, its findings of fact and conclusions of law have no preclusive effect, not only against the LSA, but even against Mr. Ahmed himself.

The South Carolina Legislature has prohibited a defendant's default in a family court proceeding from constituting an admission of the allegations in the plaintiff's complaint, as it otherwise would in civil proceedings. *See* S.C. R. Fam. Ct. 2(a) ("The following SCRCP, however, shall be inapplicable [in family court proceedings]: ... [S.C. R. Civ. P.] 8(d) to the extent it provides that the failure to file a responsive pleading constitutes an admission"). Thus, South Carolina's bar against giving preclusive effect to default judgments is particularly compelling in family court proceedings.

Based on the foregoing, the lower court erred in applying the factual findings of the Ahmed Annulment Order against the Estate and using such "evidence" as its basis for awarding Respondent summary judgment in this case. The uncorroborated, speculative, and hearsay testimony submitted by Respondent in the Annulment Action is unworthy of evidentiary weight and is legally insufficient to enable Respondent to prove the threshold element of her claims, that she is Decedent's surviving spouse. Without such evidence, the Estate was entitled to summary judgment and the lower court's was in error.

C. The Supreme Court's decision in *Lukich* prevents an annulment order from applying retroactively.

In *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008) ("*Lukich I*"), the Supreme Court held without limitation that an annulment order finding a first marriage void *ab initio* does not "relate back" so as to validate a second bigamous marriage. *Id.* at 592-93, 666 S.E.2d at 907. The Court made no distinction between marriages that are annulled as voidable and those that are annulled as void and appears to apply its holding

to both in equal measure. As a result, although, as to the world, the Ahmed Annulment Order establishes the legal relationship between Respondent and Mr. Ahmed from the date of the order forward, because the annulment order was issued after Respondent's marriage to Decedent, the family court's determination cannot reach back and retroactively validate Respondent's second, otherwise bigamous marriage.

A brief summary of the *Lukich* facts demonstrates the similarities to the case at hand: In 1973, Mrs. Lukich ("Wife") married Charles Havron. *Lukich*, 38 S.C. at 50-51, 627 S.E.2d at 755-756. Like Respondent and Mr. Ahmed, Wife and Mr. Havron never lived together but never divorced. *Id.* In 1985, Wife married Mr. Lukich and the two lived together for eighteen years. *Id.* at 50, 627 S.E.2d at 755. In August 2002, after Wife suffered a debilitating stroke, the Lukiches began to experience marital difficulties. *Id.* Thereafter, Wife filed a complaint against Mr. Lukich for separate support and maintenance. *Id.* During the proceeding, Mr. Lukich learned Wife never obtained a divorce from her first husband, Mr. Havron, and on that ground alone, filed an action in September 2003 to void his marriage to Wife for her alleged bigamy. *Id.* at 50-51, 627 S.E.2d at 756. A hearing was set for November 2003. *Id.*

Shortly before the scheduled hearing, in October 2003, Wife sought to void her first marriage by filing an action for annulment from Mr. Havron. *Id.* at 51, 627 S.E.2d at 756. In her complaint, Wife alleged she and Mr. Havron were married during a night of heavy drinking and had never lived together as husband and wife. *Id.* at 51, 627 S.E.2d at 756. Mr. Havron submitted an affidavit to the family court corroborating Wife's allegations and did not contest the annulment. *Id.* After denying Mr. Lukich's motion to intervene, the family court granted Wife an annulment from Mr. Havron, declaring the

marriage "void *ab initio*." *Id.*

With an annulment from her first husband in hand, corroborated by Mr. Havron's own admissions, Wife moved to dismiss Mr. Lukich's annulment action. *Id.* at 51, 627 S.E.2d at 756. Wife asserted because her prior marriage to Mr. Havron had been annulled, Mr. Lukich could no longer prove their subsequent marriage was bigamous. *Id.* Her argument was premised on the legal position the "annulment decree rendered her marriage to Havron void *ab initio*, which creates the legal fiction that the marriage never existed." *Id.* at 52, 627 S.E.2d at 756. However, despite the corroborated and credible evidence from Havron that Wife's first marriage was void, the family court judge ruled Wife was barred from using her order of annulment from Mr. Havron as a defense to Mr. Lukich's action to void their marriage as bigamous. *Id.* Wife appealed. *Id.*

Like Wife in *Lukich*, Respondent asserts because the Ahmed Annulment Order declared Petitioner's marriage to Ahmed void "ab initio," her marriage to Decedent is valid because it fits into the exception expressed in S.C. Code Ann. § 20-1-80, titled "Bigamous Marriages shall be void: Exceptions," which provides in relevant part:

> 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 first marriage shall be declared void by the sentence of a competent court.*

Id. (emphasis added). Mrs. Lukich made this same argument, contending Section 20-1-80 created an exception for her otherwise bigamous second marriage because her first marriage had been "declared void by a competent court." Both this Court and the Supreme Court rejected Mrs. Lukich's arguments and this Court should similarly reject Respondent's arguments here.

In *Lukich I*, this Court framed the legal issue as follows:

> [W]hether an annulment which decrees a pre-existing marriage void *ab initio* can be used as a defense to an action to void a marriage as bigamous because the annulment relates back so as to give validity to a prior bigamous marriage.

368 S.C. at 53, 627 S.E.2d at 757. The Court answered its question in the negative: "[W]e find an annulment that declares a pre-existing marriage void *ab initio* does not relate back so as to give validity to a marriage that was bigamous before the annulment was granted." *Id.* The Supreme Court in *Lukich II* agreed. The Court foreclosed Mrs. Lukich's argument, holding:

> Under the statute's terms, Wife's "marriage" to Husband #2 was "void" from the inception since *at the time of that marriage* she had a living spouse and [Wife's first] marriage *had not been "declared void."*

379 S.C. at 592, 666 S.E.2d at 907 (citing S.C. Code Ann. § 20-1-80) (emphasis added). The Supreme Court's holding eliminated any doubt regarding how *Lukich* should apply to the present facts.

Section 20-1-80 of the South Carolina Code requires an order declaring the first marriage void to have been issued "*at the time of [the second] marriage.*" *Lukich II*, 379 S.C. at 592, 666 S.E.2d at 907. Therefore, because the order declaring Mrs. Lukich's first marriage void *ab initio* "had not been" issued "at the time of" her second marriage, the exception in Section 20-1-80 did not apply. Likewise, here, because the Ahmed Annulment Order declaring Petitioner's marriage to Ahmed "had not been" issued "at the time of" Petitioner's marriage to Decedent, the exception does not apply here.

> While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second 'marriage.' . . . The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or retroactive perspective. Any other construction of § 20-1-80 would lead to uncertainty and chaos."

Lukich II, 379 S.C. at 592-93, 666 S.E.2d at 907.

Rodman v. Rodman, 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004), cited by the Supreme Court in *Lukich II*, supports the proposition that annulment orders do not relate back. In *Rodman*, this Court considered whether a family court's order annulling a marriage could relate back, and if so, whether the family court maintained jurisdiction over the parties' property distribution. If the annulment "relates back" so that the annulled marriage never existed, then the family court would not have jurisdiction over the annulled-couple's property distribution. In *Rodman*, this Court rejected such an interpretation.

In *Lukich II* the Supreme Court confirmed *Rodman*, stating:

> It would be inconsistent at best to hold that a marriage declared void *ab initio* never existed for bigamy purposes, yet can serve as the foundation for a family court's division of property, alimony, and/or child support.

379 S.C. at 593, 666 S.E.2d at 907. The Supreme Court's reference to the *Rodman* holding strongly suggests the Supreme Court intended its bar to applying annulment orders retroactively applies in all cases.

CONCLUSION

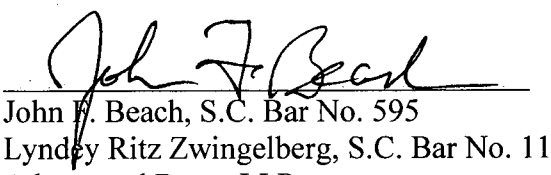
It is Respondent's burden to overcome the presumption that her 1997 marriage to Mr. Ahmed was valid when she purported to marry the Decedent in 2001. She cannot meet her burden by having the Court apply the factual findings of the Ahmed Annulment Order against the Estate in this action, through an estoppel theory or otherwise.

Likewise, Respondent cannot meet her burden by having the Court apply the judgment in the Ahmed Annulment Order retroactively to validate her second, otherwise bigamous marriage to Decedent. The South Carolina's Supreme Court clearly held in

Lukich II that under S.C. Code Ann. § 20-1-80, an order annulling a first marriage, regardless of grounds, can only validate an otherwise bigamous second marriage if the annulment of a first marriage is issued prior to the second marriage. An order issued *after* the second marriage does not relate back so as to retroactively validate the second marriage. This conclusion is consistent with public policy as expressed in *Rodman.*

For the reasons stated above, this Court should determine Respondent is not Decedent's surviving spouse as a matter of law and reverse the lower court's January 26, 2015 order.

Respectfully submitted,



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June 26, 2017.

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

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.

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the Final Brief and Final 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 complies with Rule 211(b), SCACR.

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June 26, 2017