

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

FEB 16 2018

SC Court of Appeals

Doyet A. Early, III, Circuit Court Judge

Circuit Court Case Nos. 2013-CP-02-02849, 2013-CP-02-02850 and 2007-ES-02-0056
Appellate Case No. 2018-000104

Tommie Rae Brown..... Petitioner below,

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,

IN RE The Estate of James Brown a/k/a James Joseph Brown

Of which Deanna Brown-Thomas, Yamma Brown, Venisha
Brown are the Appellants,

and

David C. Sojourner, Jr., in his capacity as Limited Special Administrator
and Limited Special Trustee, and Russell L. Bauknight, Estate Trustee and
Personal Representative are the Respondents.

INITIAL BRIEF OF APPELLANTS

Robert C. Byrd, SC Bar #1069
bobbybyrd@parkerpoe.com
A. Smith Podris, SC Bar #78051
smithpodris@parkerpoe.com

Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301 (29401)
Post Office Box 160
Charleston, SC 29402

Telephone: (843) 727-2650

Facsimile: (843) 727-2680

Attorneys for Appellants

Deanna Brown-Thomas, Dr. Yamma Brown,
and Venisha Brown

OF COUNSEL . .

Pro Hac Vice Application to be Submitted:

Marc Toberoff

mtoberoff@toberoffandassociates.com

Toberoff & Associates, P.C.

23823 Pacific Coast Hwy, Suite 50-363

Malibu, CA 90265

Telephone: (310) 246-3333

Facsimile: (310) 246-3101

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE CIRCUIT COURT ERR BY REFUSING TO COMPEL ESTATE REPRESENTATIVES TO CONFIRM THE EXISTENCE OF UNDISCLOSED SETTLEMENT TERMS, AND TO DISCLOSE SUCH TERMS, TO THE DECEDENT'S CHILDREN, WHO ARE BENEFICIARIES OF THE ESTATE AND WHO MAY BE HARMED BY THE TERMS OF THE SECRET SETTLEMENT AGREEMENT?

STATEMENT OF THE CASE

The legendary music artist James Brown ("Decedent" or "James Brown") died on Christmas Day, December 25, 2006, in Atlanta, Georgia. His will devised his personal effects to six named children, including the Appellants, and the remainder of his estate was left to an irrevocable trust ("Trust").¹

Following Brown's death, the respondent Tommie Rae Brown, a.k.a. Tommie Rae Hynie ("Hynie"), brought an action in probate court to set aside Decedent's entire will, which named neither her nor her son as beneficiaries. Her action to set aside the will was based upon alleged undue influence and fraud. She separately claimed an elective share or an omitted spouse's share of the Brown Estate. The probate court transferred Hynie's claims to the circuit court where litigation proceeded.

Russell Bauknight has served as Personal Representative since 2013, which represents the bulk of the spousal claims litigation. On October 1, 2013, the trial court appointed David C. Sojourner, Jr. to serve as Limited Special Trustee of the Trust specifically to defend the Estate and Trust against the will and trust challenges, and on October 10, 2013, the Probate Court appointed Mr. Sojourner as the Limited Special Administrator (hereinafter Mr. Sojourner is referred to in both capacities as the "LSA",

¹ See *Wilson v. Dallas*, 403 S.C. 411, 449, 743 S.E.2d 746, 767 (2013) (containing a detailed description of the factual history).

and the Personal Representative and the LSA are hereafter referred to jointly as “Estate Fiduciaries).

The present motion arose as a result of a settlement agreement between the Personal Representative, the LSA, and Hynie resolving her spousal claims against the Estate (the “Agreement”).² Pursuant to the Agreement, the Estate abandoned its strongly-held position that Hynie is not James Brown’s spouse under South Carolina law and withdrew from the still-pending appeal. As a result, the LSA filed a motion to withdraw its appeal in the related appeal. Attached to the motion filed with this Court was a copy of the document purporting to be “the” settlement agreement between the Estate and Tommie Rae Hynie. The Agreement does not contain the typical “merger clause” or other representation indicating that the written document represented as the settlement agreement is the full and complete agreement between the Estate and Ms. Brown.

The Appellants (the “Children”), who are James Brown’s children and beneficiaries under his Estate, were never made aware that any settlement negotiations were taking place between the Estate and Hynie, and the existence of a settlement agreement between those parties was a surprise. The Children requested repeatedly, in writing, that the Personal Representative and Limited Special Administrator (1) confirm that the Agreement is, in fact, the complete agreement of the parties and, if it is not, (2) disclose all additional terms not included in the written agreement filed with the Court. The Children never received any response

² In a separate appeal denominated as Appellate Case No. 2015-002417, the Children continue to challenge the circuit court’s finding that Ms. Brown is the legal surviving spouse of James Brown.

whatsoever to their reasonable requests, which resulted in the Children being forced to file a Motion to Compel Disclosure of Settlement Terms (the “Motion”).

The circuit court finally held a hearing on the Motion on October 31, 2017.³ Neither the Personal Representative nor his counsel attended the hearing, and the Children never received any opposition to their Motion from the Personal Representative. At the hearing, the circuit judge informed the parties that his office had received an *ex parte* telephone call from the Personal Representative’s attorney, informing the Court that he did not believe his attendance was required. The Children were unaware of the Personal Representative’s stated intention not to appear until after the hearing had started.

From the bench, the circuit judge indicated that he expected at least one party to the settlement agreement to disclose the terms of the deal: “Is there anything more to the agreement than what was presented to this Court and the Court of Appeals?...[T]hat’s going to be the ultimate question. So who wants to answer it?”⁴ The LSA dodged the question at which point, Hynie’s counsel interjected that he would “deal with that” in his argument, but ultimately also never answered the judge’s question, clearly evincing that additional secret settlement terms indeed existed.⁵ Inexplicably, on December 6, 2017 the circuit court entered a form order denying the Children’s Motion. The form order contained no reasoning or basis for the court’s ruling.⁶ The Children filed a Motion to

³ The Children’s Motion was originally filed June 5, 2017. The hearing on the Motion was noticed for August 29, 2017, but the LSA requested a continuance. After the circuit court provided five alternate days, the hearing date was moved to September 20, 2017. Counsel for the LSA again requested a continuance of the hearing, along with counsel for Hynie, and the hearing ultimately was continued until October 31, 2017.

⁴ Mot. to Compel Disclosure of Settlement Terms Hr’g Tr. 12:18-13:1, Oct. 31, 2017.

⁵ Hr’g Tr. 13:2-3.

⁶ Order Den. Mot. to Compel Disclosure of Settlement Terms.

Alter or Amend on December 15, 2017. On December 19, 2017, the court issued another form order denying the Motion to Alter or Amend again without stating any explanation or basis for the ruling.⁷

The Children timely filed and served their Notice of Appeal of the above orders (collectively, the “Orders”) on January 18, 2018.⁸

STATEMENT OF THE FACTS

As this Court is aware, there is a separate pending appeal for the circuit court’s ruling that Tommie Rae Hynie was the legal spouse of James Brown, denominated as Appellate Case. No. 2015-002417. For many years, the Estate’s consistent strongly-held position has been that Hynie was not James Brown’s spouse due to her bigamy. On March 8, 2017, without any prior notice to the Children, the LSA and Tommie Rae Brown filed a joint Motion to Stay Appeal Pending Consummation of Settlement (“Motion to Stay”) in the appeal in the spousal determination case.⁹ In their Motion to Stay, the LSA and Hynie represented to this Court that they had entered into a Settlement Agreement, and they attached a copy of “the” Settlement Agreement to their Motion as an exhibit.¹⁰ Until the Children received a copy of the Motion to Stay, they were not aware the Estate was even engaged in settlement negotiations with Hynie, much less that a settlement agreement had actually been reached between those parties.

⁷ Order Den. Mot. to Alter or Amend.

⁸ Appellants’ Notice of Appeal.

⁹ Appellant David C. Sojourner, Jr.’s and Respondent Tommie Rae Brown’s Mot. to Stay Appeal Pending Consummation of Settlement, filed March 8, 2017 in Appellate Case No. 2015-002417; Hr’g Tr. 3:15-4:2. The LSA and Ms. Brown again represented the written document to be “the” settlement agreement in their Notice of Settlement Between Appellant David C. Sojourner, Jr. and Respondent Tommie Rae Brown and Withdrawal of Appeal of David C. Sojourner, filed August 4, 2017, in Appellate Case No. 2015-002417.

¹⁰ Mot. to Stay Appeal Pending Consummation of Settlement at p.2; Hr’g Tr. 3:15-4:2, 7:5-17, 28:1-7.

Likewise, on the same day, the LSA and Hynie filed a Joint Motion to Dismiss Tommie Rae Brown's Petitions to Set Aside Informal Probate and to Set Aside Irrevocable Trust Based on Undue Influence and Fraud.¹¹ In their Joint Motion, the LSA and Hynie again referred to the document attached as an exhibit to their Joint Motion as "the" settlement agreement.¹²

The stated terms of the Settlement Agreement provided that Brown would (1) withdraw her undue influence claims, fully and finally ending her challenges to the 2000 Will and 2000 Trust and (2) contribute 65% of the proceeds from her federal copyright termination rights to the charitable trust created by the 2000 Trust.¹³ The Settlement Agreement further states and also that "[Hynie] will receive the proceeds she will contribute only if she is Decedent's Surviving Spouse."¹⁴ In exchange for the withdrawal of Hynie's unsupported claims and hypothetical contribution to the Trust, the LSA agreed to withdraw from the appeal.¹⁵ The Agreement was represented to the Court and to the Children to be "the Settlement Agreement", but does not contain a merger clause or any other representation that the agreement reflects the full and complete agreement of the parties to the settlement.

At the hearing held before the circuit judge on April 26, 2017, regarding Hynie's motion to dismiss her undue influence claims pursuant to the Settlement Agreement, counsel for the Children expressed his concerns to the circuit court that the Children are

¹¹ Joint Mot. to Dismiss Tommie Rae Brown's Petitions to Set Aside Informal Probate and to Set Aside Irrevocable Trust Based on Undue Influence and Fraud, filed March 8, 2017, Civil Action No. 2008-CP-02-01647; Hr'g Tr. 3:21-4:2.

¹² Joint Mot. to Dismiss at p. 2; Hr'g Tr. 3:21-4:2, 7:5-17, 28:1-7.

¹³ Mot. to Compel Disclosure of Settlement Terms, Ex. A, p. 2.

¹⁴ *Id.*

¹⁵ *Id.* at p. 3.

entitled to understand the complete terms of this agreement entered into by the Estate and requested a representation that the document purporting to be *the* settlement agreement filed with the court reflected the complete agreement of the settling parties.¹⁶ Judge Early asked Hynie's counsel, Mr. Medlin, whether he was willing to make such a representation, but he declined to do so.¹⁷

Because the Settlement Agreement itself does not represent that it is the complete agreement between its parties, the Children made a formal request in writing to the LSA and to the Personal Representative to confirm that the Settlement Agreement was truly a complete picture of the deal between the Estate and Hynie.

The day after the hearing, on April 27, 2017, the Children's counsel sent a letter to counsel for the LSA formally requesting confirmation that the Settlement Agreement document provided to the Children reflected the complete terms of settlement between the parties.¹⁸ Counsel for the LSA never responded to the letter.

On May 3, 2017, counsel for the Children sent a letter to counsel for the Personal Representative again requesting confirmation about any undisclosed settlement terms. Counsel for the PR likewise never responded to the letter.¹⁹

Faced with silence from Estate Fiduciaries, the Children filed the Motion to Compel Disclosure of Settlement Agreement that forms the basis of this appeal. In the several months between the filing of the Children's Motion and the October 31, 2017 hearing, the Children never received any response of any sort to their Motion from either

¹⁶ Hr'g Tr. at 4:7-24.

¹⁷ *Id.*

¹⁸ Mot. to Compel Disclosure of Settlement Terms, Ex. B.

¹⁹ *Id.* at Ex. C.

of the Estate Fiduciaries other than communications regarding scheduling the hearing.²⁰ The first acknowledgment of the Children's repeated requests for information came in the form of the LSA's memorandum in opposition to the Motion (served by U.S. Mail on the Friday before Tuesday's hearing), but tellingly, the LSA neither admitted or denied the existence of additional material settlement terms. Surprisingly, neither the Personal Representative nor his counsel bothered to appear at the hearing. The circuit judge explained from the bench that counsel for the Personal Representative had called chambers to notify the court that he didn't believe his attendance was required, but the court's recitation of the communication did not include any explanation as to why the Personal Representative would have held such a belief.²¹

During the hearing, the circuit judge indicated several times that he believed disclosure was appropriate. First, Judge Early asked counsel for the LSA, "Is there any other agreement?"²² Counsel responded that he was "unable to answer the question" because he was only present for the LSA.²³ Judge Early replied that counsel for the LSA had to answer his question, but counsel for Hynie interjected and offered to answer the question.²⁴ Judge Early responded, "All right. You want to answer it? Is there anything more to the agreement than what was presented to this Court and the Court of Appeals?" When counsel for Hynie attempted to sidestep the question, Judge Early stated that the

²⁰ As indicated above in footnote 3, the hearing date was rescheduled a number of times.

²¹ Hr'g Tr. at 9:15-10:3, 11:17-12:1. Moreover, counsel for the LSA's office previously represented to the circuit court that it had communicated with counsel for the Estate, and that counsel for the Estate was available to attend the hearing on four different dates, including October 31, the day on which the hearing was ultimately held.

²² Hr'g Tr. at 10:23.

²³ *Id.* at 10:3-4, 7-8.

²⁴ *Id.* at 11:12-14; 12: 14-17.

question about the side agreement was “going to be the ultimate question. So who wants to answer it?”²⁵ Counsel responded that he would “deal with that” in his argument, but never did. Ultimately, neither counsel for Hynie nor counsel for the LSA ever (1) denied the existence of a secret side deal or (2) disclosed the terms of a secret side deal, and both conspicuously evaded the question.²⁶

Despite this exchange and the circuit judge’s apparent frustration at the obfuscation by the parties opposing the Children’s Motion, the circuit court five weeks later entered a form order denying the Children’s Motion, without explanation.²⁷ The Children timely filed their Motion to Alter or Amend, which was also denied by form order.²⁸

STANDARD OF REVIEW

The circuit judge’s refusal to compel disclosure of the complete agreement between the Estate Fiduciaries and Hynie is subject to *de novo* review. The circuit judge did not articulate any reasoning in either the December 6, 2017 form order or the December 19, 2017 form order, but the scope of a fiduciary’s duties is a question of law. *See Miller v. City of Camden*, 317 S.C. 28, 31, 451 S.E.2d 401, 403 (Ct. App. 1994) (noting that the scope of a duty is a question of law). Questions of law are reviewed *de novo*. *Mitul Enterprises, L.P. v. Beaufort County Assessor*, 410 S.C. 430, 764 S.E.2d 720 (Ct. App. 2014).

²⁵ *Id.* at 12:18-13:1.

²⁶ *Id.* at 13:2-3.

²⁷ Order Den. Mot. to Compel Disclosure of Settlement Terms.

²⁸ Mot. to Alter or Amend; Order Den. Mot. to Alter or Amend.

Even if the abuse of discretion standard is applied, “[a]n abuse of discretion occurs when . . . the ruling is based upon an error of law.” *Bayle v. S.C. Dep’t of Transp.*, 344 S.C. 115, 542 S.E.2d 736 (Ct. App. 2001).

SUMMARY OF ARGUMENT

The effect of the circuit court’s Orders, if allowed to stand, would be to permit estate representatives to enter into secret deals behind the backs of estate beneficiaries, to whom they owe a duty of full and fair disclosure, without any accountability or recourse. Such a decision is in direct contravention of South Carolina’s well-established law regarding the nature of fiduciary relationships. Moreover, the circuit court’s refusal to even investigate the existence and/or nature of such a secret side deal, particularly where the Estate Fiduciaries go to great lengths to sidestep and evade the issue, clearly affects the court’s ability to oversee the legal and fair administration of the Estate. Any supposed confidentiality concerns can be remedied by a simple confidentiality order, as previously suggested by the Children. South Carolina probate law does not reside in the “Wild Wild West”, and the interests of justice, transparency and fairness among fiduciaries and the court demand that the secret settlement terms between the Estate Fiduciaries and Hynie be disclosed, at the very least when requested by Estate beneficiaries.

ARGUMENT

I. APPELLANTS ARE ENTITLED TO KNOWLEDGE OF THE FULL AGREEMENT BETWEEN THE PR, LSA, AND TOMMIE RAE HYNIE BECAUSE APPELLANTS ARE IN A FIDUCIARY RELATIONSHIP WITH THE PR AND LSA.

Despite myriad opportunities to do so, the Personal Representative, the LSA, and Tommie Rae Hynie have never denied the existence of a secret side deal with undisclosed settlement terms. To the contrary, they have gone to extraordinary lengths to avoid

answering the question altogether; despite repeated requests for confirmation by the Children and the circuit court. There is no room in a probate proceeding or any fiduciary relationship for “secret backroom deals”. The nature of both probate law and fiduciary relationships in South Carolina demand disclosure of all settlement terms between the Estate and Tommie Rae Hynie, particularly when requested by Estate beneficiaries to whom the fiduciary duty is owed.

A. Under Well-Settled South Carolina Law, the Estate Owes a Fiduciary Duty of Full Disclosure to the Children.

South Carolina law is well-settled that the administrators of a probate estate are fiduciaries to the heirs and devisees of the estate. S.C. Code Ann. §§ 62-3-703(a); 62-3-617 (2017). Section 62-3-703(a) clearly states that the Personal Representative “is a fiduciary,” and he must use his powers “for the best interests of successors to the estate”. S.C. Code Ann. § 62-3-703(a) (2017); *see also Witherspoon v. Stogner*, 182 S.C. 413, 189 S.E. 758 (1937) (“That a fiduciary relationship exists between each heir or beneficiary of an estate and the administratrix thereof is fundamental.”). The Children, as the biological children of James Brown, are “successors” to the Estate of James Brown, and therefore are within the category of persons to be protected by section 62-3-703(a). Likewise, the LSA is also a fiduciary to the Children. S.C. Code Ann. § 62-3-617 (2017) (“A special administrator appointed by order of the court in any formal proceeding has the power of a general personal representative except as limited in the appointment and duties prescribed in the order.”).

One of the fundamental characteristics of a fiduciary relationship between the estate administrators and the estate beneficiaries is the duty of full and fair disclosure. In *Turpin v. Lowther*, 404 S.C. 581, 745 S.E.2d 397 (Ct. App. 2013), this Court held that the

personal representative of an estate breached his fiduciary duty to beneficiaries by failing to disclose his negotiations regarding estate assets with third parties. “Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute a fraud.” *Id.* at 404 S.C. at 590-91 (quoting *Moore v. Moore*, 360 S.C. 241, 251, 599 S.E.2d 467, 472 (Ct. App. 2004). The *Turpin* Court rejected the personal representative’s attempt to create a false dichotomy between estate assets and non-estate assets, stating that the personal representative “define[d] the issue too narrowly”. *Id.* at 404 S.C. at 590.

Here, the same unavailing argument is presented; namely, that the property stated to be subject to the settlement between the Estate and Hynie is federal copyright termination rights and thus not properly considered part of these probate proceedings. But like the personal representative in *Turpin*, the Estate’s argument is circular, and defines the issue too narrowly.

First, the Children and the circuit court would have no idea whether the Estate and Hynie’s side agreement concerns the subject of the probate proceedings because the Estate Fiduciaries refuse to confirm or disclose their secret side agreement. The question presented here is not whether agreeing to the apparent secret side deal is a breach of the fiduciary duty owed by the Personal Representative and LSA to the Children. That ultimate issue is not the basis for the Children’s motion to compel disclosure. The fundamental ground for the Children’s motion is that the estate representatives, by virtue of their fiduciary duty to the Children, must be transparent when purporting to enter an

agreement on the Estate's behalf. The Children and the court are not required to "take the Estate's word for it" in probate proceedings.

Second, the disclosed *and undisclosed* agreements reached between the Estate and Hynie resulted in the withdrawal of the Estate's appeal of Hynie's purported spousal status and the dismissal of Hynie's claims against the Estate. Regardless of the specific property included in their undisclosed agreement, the agreement itself is inexorably related to the Estate, because that agreement and/or the property it concerns is part and parcel of the consideration for the Estate's settlement with Hynie. As beneficiaries of the Estate, the Children are entitled to understand exactly what exchange has taken place and the full basis for the Estate's concessions to Hynie.

In light of such clear instruction on the disclosure obligations of estate fiduciaries, it seems absurd to require children in an estate proceeding to invoke legal process to compel the estate to respond to their "very simple" request to understand the terms of a potentially harmful secret side deal between their fiduciaries and their legal adversary.²⁹ Yet, here we are. The Children's first requests for information from the Estate Fiduciaries were met with absolute stony silence. The Estate didn't even bother to state that it wouldn't respond, it just continued in its absolute silence.

After almost a year of the Children making their very simple request for information, the Estate Fiduciaries to whom the requests were directed continue to ignore the Children's repeated requests and to sidestep the circuit court's direct questions. And yet, counsel for Tommie Rae Hynie, adverse to the Children in almost every issue that has arisen in the probate of this Estate, suggests that the Children should simply rely upon

²⁹ *Id.* at 8:17

his word that any secret side deal, which he and the Estate Fiduciaries continue to not even acknowledge, does not affect estate assets or involve self-dealing.³⁰

Even setting aside the fact that such an assurance by Hynie's counsel is not an assurance at all, it is impossible to ignore that this self-serving assertion begs the question. South Carolina law does not require estate beneficiaries to engage in blind faith, but instead provides that they get to "see" the facts and judge the impact on themselves by requiring full and complete disclosure by fiduciaries. The Children respectfully request that this Court uphold South Carolina's high mantle for estate fiduciaries and require the Personal Representative and the LSA to disclose the complete terms of their agreement with Tommie Rae Hynie.

B. By Failing to Confirm the Existence of Any Undisclosed Settlement Terms and to Disclose Such Terms, the Estate and Tommie Rae Hynie Are Essentially Misrepresenting the Nature of Their Agreement to Both This Court and the Circuit Court, Leaving the Children Unable to Protect Their Own Legal Interests and the Circuit Court Unable to Properly Oversee Legal and Fair Administration of James Brown's Estate.

In all of their filings regarding the settlement agreement executed among themselves, including the Motion to Stay Appeal Pending Consummation of Settlement Agreement and the Motion to Withdraw From Appeal filed in this Court in Appellate Case No. 2015-002417, the Personal Representative, the LSA and Tommie Rae Hynie have referred to the document entitled "Settlement Agreement" as "the" agreement. Of course, their persistent refusal to deny the existence of a secret side deal strongly suggests that the "Settlement Agreement" document is not "the" actual complete agreement, but only "part of" the agreement. Wordsmithing

³⁰ *Id.* at 23:13-24.

that blurs so as to *hide* the truth can have no place in either a fiduciary relationship or a court of law.

The purpose of judicial oversight and involvement in the probate proceeding is, in large part, to ensure transparency and fairness in the process: “Each probate judge has the continuing duty to monitor every matter pending in the probate court and to enforce prompt compliance with all requirements imposed by law upon administrators, executors, guardians and attorneys in the performance of their duties before the probate court.” Rule 2, SCRPC (2018). For this reason, our legislature has charged estate representatives with fiduciary duties, and made them subject to the court for discharge from those duties. S.C. Code Ann. § 62-1-302; 62-3-703; 62-3-1001 (2017). How can a court sitting in a probate case discharge and release an estate fiduciary without full knowledge of any secret deals taking place behind closed doors and the backs of successors to the estate? And how can beneficiaries begin to protect their own interests unless they are also informed of the complete terms of the estate’s agreements? It cannot be. To preserve the integrity of the probate judicial process, this Court must reverse the decision of the circuit court and compel disclosure of the full and complete terms of settlement between the Estate and Tommie Rae Hynie.

C. Any Concerns Regarding Confidentiality Can Be Remedied By Issuance of a Confidentiality Order, to Which the Children Have Expressly Consented.

South Carolina law recognizes the appropriateness of confidentiality orders to balance the need for disclosure and concerns regarding unnecessary disclosure. The Children have stated on the record their willingness to enter into an appropriate

confidentiality order.³¹ Importantly, Hynie's arguments to the circuit court focused on a need for confidentiality, which both underscores the existence of a secret side deal and provides the obvious solution. Where, as here, the individual seeking information has articulated a willingness to enter into a confidentiality agreement and has a right under South Carolina law to the information, fear of disclosure cannot justify continued secrecy.

D. The Circuit Court Erred in Denying the Children's Motion Where Neither the Personal Representative Nor His Counsel Submitted Any Objection to the Motion and Failed to Attend the Hearing.

Neither the Personal Representative nor his legal counsel submitted any brief or objection opposing the Motion, and neither the Personal Representative nor his counsel took time to appear at the October 31, 2017 hearing. As noted above, the Children were not notified in advance of the hearing that the Personal Representative did not plan to attend. Likewise, the Children never received any communication from the Personal Representative indicating the reason he believed that a motion specifically addressed to him by name and served upon both him and his legal counsel did not require his attention. Because South Carolina law is clear regarding the requirement of full and fair disclosure in the context of a fiduciary relationship, the Personal Representative's failure to object to the Children's Motion further supports the Children's request that the circuit court be reversed and the Estate Fiduciaries be compelled to disclose the complete settlement terms between themselves and Tommie Rae Hynie.

³¹ *Id.* at 28:17-20.

E. The Circuit Court Erred By Accepting an Untimely Brief and Allowing Oral Argument From Counsel for Tommie Rae Hynie.

It was error for the circuit court to accept an untimely brief and allow oral argument from Tommie Rae Hynie. The Children's Motion was specifically addressed to the Personal Representative and the LSA because those are the individuals who owe a fiduciary duty to the Children. Hynie is not a fiduciary of the Children and thus was not a party to the Motion.

Nevertheless, Hynie's counsel appeared at the hearing, handed up a brief not previously served on the Children and proceeded to argue at length against the Children's Motion, over the Children's objection. It is impossible to know from the circuit court's form order to what extent the court was persuaded by the arguments of Hynie's counsel. As the trial court erred in allowing this untimely briefing and argument by an individual who was not a party to the Motion, and may well have based its decision on Hynie's untimely arguments, the decision should be reversed and the Estate Fiduciaries compelled to disclose all terms of the agreement between themselves and Tommie Rae Hynie.

CONCLUSION

As the circuit court denied the Motion to Compel Disclosure of Settlement Terms, the Children still do not know the extent and terms of any back-room side-agreements between the fiduciary representatives of the Estate of James Brown and Tommie Rae Brown, nor do they know the extent to which the Children, the very people whom the Estate fiduciaries are bound by law to protect, may have been injured by such secret dealings.

The Children therefore respectfully request that this Court REVERSE the orders issued by the circuit court and compel disclosure of the complete and full settlement terms between the Estate and Tommie Rae Hynie.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

John E. Deane Jr. on Behalf of Robert C. Byrd

Robert C. Byrd, SC Bar #1069

bobbybyrd@parkerpoe.com

A. Smith Podris, SC Bar #78051

smithpodris@parkerpoe.com

Parker Poe Adams & Bernstein LLP

200 Meeting Street, Suite 301 (29401)

Post Office Box 160

Charleston, SC 29402

Telephone: (843) 727-2650

Facsimile: (843) 727-2680

Attorneys for Appellants

Deanna Brown-Thomas, Dr. Yamma Brown,
and Venisha Brown

February 16, 2018

OF COUNSEL

Pro Hac Vice Application to be Submitted:

Marc Toberoff

mtoberoff@toberoffandassociates.com

Toberoff & Associates, P.C.

23823 Pacific Coast Hwy, Suite 50-363

Malibu, CA 90265

Telephone: (310) 246-3333

Facsimile: (310) 246-3101

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

Circuit Court Case Nos. 2013-CP-02-02849, 2013-CP-02-02850 and 2007-ES-02-0056
Appellate Case No. 2018-000104

Tommie Rae Brown..... Petitioner below,

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,

IN RE The Estate of James Brown a/k/a James Joseph Brown

Of which Deanna Brown-Thomas, Yamma Brown, Venisha
Brown are the Appellants,

and

David C. Sojourner, Jr., in his capacity as Limited Special Administrator
and Limited Special Trustee, and Russell L. Bauknight, Estate Trustee and
Personal Representative are the Respondents.

PROOF OF SERVICE

The undersigned hereby certifies that on February 16, 2018, he/she has caused a
copy of the Initial Brief of Appellants to be served upon all parties of record by mailing a
copy of the same addressed as follows:

David C. Sojourner, Jr., Limited Special Administrator
Sojourner Caughman & Thomas
PO Box 12127
Columbia, SC 29211

Russell L. Bauknight, Estate Trustee and Personal Representative
Bauknight Pietras & Stormer, P.A.
PO Box 1330
Columbia, SC 29202

Robert N. Rosen, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston, SC 29401

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia, SC 29205

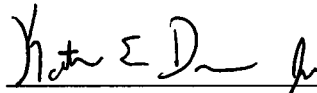
T. Heyward Carter, Jr., Esq.
Andrew Chandler, Esq.
M. Jean Lee, Esq.
Evans, Carter, Kunes & Bennett, PA
PO Box 369
Charleston, SC 29402

David L. Michel, Esq.
192 East Bay Street, Suite 202
Charleston, SC 29401

Sen. Arnold S. Goodstein
Goodstein Law Firm, LLC
PO Box 2350
Summerville, SC 29484-2350

John F. Beach, Esq.
Lyndey Ritz Zwing, Esq.
Adams and Reese LLP
PO Box 2285
Columbia, SC 29202

J. David Black, Esq.
Fred L. Kingsmore, Jr., Esq.
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202-2426



Robert C. Byrd, SC Bar #1069

bobbybyrd@parkerpoe.com

A. Smith Podris, SC Bar #78051

smithpodris@parkerpoe.com

Parker Poe Adams & Bernstein LLP

200 Meeting Street, Suite 301 (29401)

Post Office Box 160

Charleston, SC 29402

Telephone: (843) 727-2650

Facsimile: (843) 727-2680

Attorneys for Appellants

Deanna Brown-Thomas, Dr. Yamma Brown,
and Venisha Brown



Robert C. Byrd
Partner
Telephone: 843.727.2665
Direct Fax: 843.727.2680
bobbybyrd@parkerpoe.com

Atlanta, GA
Charleston, SC
Charlotte, NC
Columbia, SC
Greenville, SC
Raleigh, NC
Spartanburg, SC

February 16, 2018

VIA HAND DELIVERY

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

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FEB 16 2018
SC Court of Appeals

Re: Tommie Rae Brown v. David C. Sojourner, Jr., et al.

IN RE The Estate of James Brown a/k/a James Joseph Brown

Of which Deanna Brown-Thomas, Yamma Brown, Venisha Brown are the Appellants and David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, and Russell L. Bauknight, Estate Trustee and Personal Representative are the Respondents

Appellate Case No. 2018-000104

Dear Mrs. Kitchings:

Enclosed please find an original and one copy of each of the following:

1. Initial Brief of Appellant; and
2. Appellants' Designation of Matter to be Included in the Record on Appeal.

Please file the originals and return file-stamped copies to me via our courier.

Thank you for your attention to this matter.

Sincerely,

Robert C. Byrd

RCB/kxl
Enclosures

cc (w/enc.): David C. Sojourner, Jr.
Russell L. Bauknight
Robert N. Rosen
S. Alan Medlin

T. Heyward Carter, Jr.
Andrew Chandler
M. Jean Lee
David L. Michel
Sen. Arnold S. Goodstein
John F. Beach