

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 09 2018

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

In re: The Estate of James Brown

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,

Of whom Deanna Brown-Thomas, Yamma Brown,
and Venisha Brown are the Appellants,

And of whom David C. Sojourner, Jr. in his capacity as
Limited Special Administrator and Limited Special Trustee
is theRespondent.

Ex parte: Russell Bauknight, as the court-appointed
Personal Representative of the Estate of James Brown
is alsoRespondent.

APPELLANTS' MEMORANDUM OF LAW REGARDING APPEALABILITY

Appellants Deana Brown-Thomas, Dr. Yamma Brown, and Venisha Brown (the “Children”) respectfully submit this memorandum of law in response to the Court’s inquiry into the appealability of the Orders on appeal.

BACKGROUND

The Children’s Motion to Compel Disclosure of Settlement Terms (“Motion”) that is the subject of this appeal may, at first glance, appear to be a simple discovery motion, particularly in light of the Form 4 Orders issued by the circuit court. However, it is not. To the contrary, the Children’s Motion was a formal request to the circuit court to enforce a substantial right of the Children, as beneficiaries owed a fiduciary duty by the Personal Representative and Limited Special Administrator (“Estate Fiduciaries”), to know the complete terms of a settlement agreement entered into by the same Estate Fiduciaries with Tommie Rae Hynie, the putative spouse of the decedent.

Specifically, it was the Estate Fiduciaries and Tommie Rae Hynie who brought their settlement agreement before this Court in connection with their request to withdraw the LSA’s appeal in the separate appeal in the same case from the circuit court’s spousal determination, Appellate Case No. 2015-002417 (the “Spousal Determination Appeal”).

As the Court was previously informed, prior to receiving their mailed service copies of the LSA’s motion to withdraw from the appeal, the Children were completely unaware that the Estate Fiduciaries were in any sort of settlement discussions with Hynie, much less that any agreement had been reached. Because the document submitted to this Court was represented to be “the” settlement agreement, but did not contain a standard merger clause, the Children asked this Court to make the disclosure of any undisclosed

settlement terms a condition of the LSA's withdrawal from the appeal, which this Court declined to do, instead leaving the issue to be adjudicated by the circuit court.¹

The Estate Fiduciaries contemporaneously submitted the same document purporting to be "the" settlement agreement to the circuit court in connection with the dismissal of Hynie's undue influence claims against the Estate. The Children formally requested, in writing, that the Estate Fiduciaries confirm that the purported settlement agreement contained the complete terms of their settlement with Hynie or disclose any and all undisclosed terms to the Children. The Estate Fiduciaries refused to respond to the Children's written requests in any manner, necessitating the filing of the Motion in both the underlying cases and the general Estate case. No other relief was sought in the Motion.

During the hearing on the Children's Motion held October 31, 2017, 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?"² Counsel responded that he was "unable to answer the question" because he was only present for the LSA.³ Judge Early replied that counsel for the LSA had to answer his question, but counsel for Hynie interjected and offered to answer the question.⁴ 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 question about the side agreement was "going to

¹ See Order filed September 19, 2017 in Appellate Case No. 2015-002417.

² Hr'g Tr. at 10:23.

³ *Id.* at 10:3-4, 7-8.

⁴ *Id.* at 11:12-14; 12: 14-17.

be the ultimate question. So who wants to answer it?”⁵ Counsel for Hynie responded that he would “deal with that” in his argument, but, of course, never did. Ultimately, neither Hynie’s counsel nor the LSA’s counsel ever (1) denied the existence of a secret side deal between Hynie and the Estate or (2) disclosed the terms of their secret side deal, and both conspicuously evaded the question.

Five weeks later, the circuit court entered a form order denying the Children’s Motion, without explanation. The Children timely filed their Motion to Alter or Amend, which was also denied by form order.

**THE ORDERS REFUSING TO COMPEL DISCLOSURE OF ALL
SETTLEMENT TERMS ARE IMMEDIATELY APPEALABLE.**

As this Court is no doubt aware, appellate jurisdiction is derived from South Carolina statutory law. Through section 14-3-330 of the South Carolina Code, the General Assembly has provided for immediate appeal where, as applicable here, a ruling (1) is final or (2) is interlocutory and involves the merits or affects a substantial right. (2018). The circuit court’s denial of the Children’s Motion constitutes either a final ruling on the merits of the settlement terms disclosure issue or, alternatively, an interlocutory ruling that involves the merits and affects a substantial right of the Children.

A. The circuit court’s ruling is a final ruling on the merits and is immediately appealable.

Section 14-3-330 of the South Carolina Code outlines that the Supreme Court has appellate jurisdiction “for correction of errors of law in law cases” and “shall review on appeal . . . any intermediate judgment, order or decree in a law case involving the merits”. (2018). “If there is some further act which must be done by the court prior to a

⁵ *Id.* at 12:18-13:1.

determination of the rights of the parties, the order is interlocutory.” *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dept. of Heath & Envtl Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 894 (2010).

The circuit court’s denial of the Children’s Motion reflects a final ruling on the merits as contemplated by section 14-3-330, as there is no “further act which must be done by the court”. *Id.* Moreover, there are no pending trials or other proceedings that would afford an opportunity to appeal the circuit court’s decision at a later date. The Children must assume that the circuit court’s Form 4 denial of the Children’s Motion decides those issues with finality, even if the orders lack any explanation as to the basis for the circuit court’s decision.⁶ The Children’s demand for disclosure of the full and complete settlement terms among the Estate Fiduciaries and Hynie is the only relief requested by the Children in the Motion.

B. In the alternative, the circuit court’s ruling on the Children’s Motion is an interlocutory ruling involving the merits and affecting a substantial right.

Alternatively, the circuit court’s ruling on the Motion involves the merits of the Children’s simple request for important information from the Estate and clearly affects a substantial right.

“An order which involves the merits is one that ‘must finally determine some substantial matter forming the whole or a part of some cause of action or defense.’”

Edwards v. SunCom, 369 S.C. 91, 94, 631 S.E.2d 529, 530 (2006) (quoting *Mid-State*

⁶ The Children requested an explanation from the circuit court in their Rule 59(e) motion, but the judge declined to give one. “Lawyers cannot force a trial judge to address a disputed issue.” Charles E. Carpenter, Jr. Preserving Error for Appeal, *South Carolina Lawyer*, 15, 18 (Mar./Apr.1995). Successive Rule 59(e) motions do not stay the time for appeal. *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004).

Distribs. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993)).

The sole issue in the Motion is the Children's right to information about any side deals between the Estate Fiduciaries and one of the other putative beneficiaries, particularly when they have presented a document to the circuit court and this Court which purports to be, but apparently is not, their sole agreement. At issue is whether the Estate Fiduciaries are allowed to make side deals whose terms are kept secret from the Court and from the individuals to whom they owe a fiduciary duty. Unless the Children are permitted to appeal the circuit court's final ruling on their request for information that the Estate Fiduciaries have a duty to disclose, the impact of the circuit court's ruling is that the Children must remain in the dark regarding the Estate Fiduciaries' secret dealings with one of the putative beneficiaries, dealings that may materially prejudice the Children's rights and interests.

The circuit court's decision clearly affects substantial rights of the Children, including their right to appeal the circuit court's decision to deny them full disclosure from the estate representatives who owe them a fiduciary duty. The South Carolina Supreme Court has previously determined that the right to appeal is a substantial right. *Edwards*, 369 S.C. at 94 ("Orders affecting a substantial right 'discontinue an action, prevent an appeal, grant or refuse a new trial, or strike out an action or defense.'")(quoting *Mid-State Distribs.*, at 335 n.4, 426 S.E.2d 780 n.4). As stated above, there are no future proceedings anticipated in which the Children could appeal the circuit court's ruling allowing the Estate Fiduciaries to participate in secret negotiations with other beneficiaries. When the Children first attempted to raise this issue in the Spousal Determination Appeal, this Court left it up to the circuit court to decide it in the

first instance.⁷ Following the procedures set forth in Rule 241(a), SCACR, the Children proceeded with their Motion in circuit court and, having been denied the relief requested, are now here on appeal from the final decision on their Motion. Importantly, this appeal involves both a final decision of the circuit court and a substantial right of the Children. Moreover, it involves a question at the heart of South Carolina probate law: Can estate fiduciaries enter into secret side deals and refuse to disclose the terms of those deals to the court overseeing the probate process and/or the very beneficiaries to whom the estate representatives owe a fiduciary duty? The efficient and transparent functioning of South Carolina probate law dictate the answer: “no”.

Respectfully submitted,

Hot E Danner on behalf of Robert C. Byrd

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March 9, 2018

⁷ Order filed October 17, 2017 in the same case clarifying that the September 19, 2017 Order did not constitute a ruling on the Children’s Motion pending before the circuit court.

OF COUNSEL

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Ex parte: Russell Bauknight, as the court-appointed
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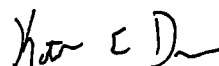
PROOF OF SERVICE

The undersigned hereby certifies that on March 9, 2018, he/she has caused a copy
of the Appellants' Memorandum of Law Regarding Appealability to be served upon all
parties of record by mailing a copy of the same addressed as follows:

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March 9, 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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Tommie Rae Brown v. David C. Sojourner, Jr., et al.

Of whom Deanna Brown-Thomas, Yamma Brown, and Venisha Brown are the Appellants and of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee is the Respondent


Ex parte: Russell Bauknight, as the court-appointed Personal Representative of the Estate of James Brown is also Respondent

Dear Mrs. Kitchings:

Enclosed please find an original and one copy of *Appellants' Memorandum of Law Regarding Appealability*. Please file the original and return a file-stamped copy to me via our courier.

Thank you for your assistance with this matter.

Sincerely,

 on behalf of Robert C. Byrd
Robert C. Byrd

RCB/kxl
Enclosures

cc (w/enc.): John F Beach, Esq.
J. David Black, Esq.
Fred L. Kingsmore, Jr., Esq.