

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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,

APPEAL FROM AIKEN COUNTY

Court of Common Pleas

Case Nos. 2013-CP-02-02849

2013-CP-02-02850

2007-ES-02-0056

Appellate Case No. 2018-000104

MEMORADUM OF LAW

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SC Court of Appeals

Tommie Rae Brown¹ submits this memorandum pursuant to the Court's request, dated February 27, 2018, to address the issue of whether or not the orders challenged on appeal are

¹ The Circuit Court did not err in allowing Mrs. Brown to participate in the hearing below and she is entitled to participate in this appeal. In their Motion to Compel heard on October 30, 2017, the Children demanded disclosure

appealable. Because the orders on appeal are interlocutory in nature, they cannot be appealed at this time.

On June 5, 2017, Deanna Brown Thomas, Yamma Brown, and Venisha Brown (collectively, the “Brown Children”) filed a Motion to Compel Disclosure of Settlement Terms in the above-captioned actions. The Brown Children’s motion sought an order from the lower court compelling David C. Sojourner, Jr. in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown (“Estate”) and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000 (“LSA”) and Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust (“Personal Representative”) (collectively the “Estate and Trust Fiduciaries”) to disclose the complete terms of all settlement agreements and negotiations between the Estate and Trust Fiduciaries and Tommie Rae Brown. The motion was heard by the circuit court after removal from the probate court. See 62-1-302(d) S.C. Code. As that section states, once the removal is made, the circuit court hears the matter de novo. Appeals from the circuit court’s de novo decision therefore follow the same procedure as any appeal from the circuit court.

The Brown Children are appealing an order of the lower court denying a motion to compel as well as a form order denying their motion to alter, amend, and/or reconsider. Through their motion, the Brown Children are seeking a document (a putative agreement) as discovery in the pending, and as yet unresolved, probate case involving the Estate of James Brown. The lower court simply denied a motion to compel pre-trial discovery. It is elementary that the denial of discovery orders are not immediately appealable. See S.C. Code Ann. § 14-3-330 (2017) (setting forth the types of orders that are immediately appealable); *Brown v. Cnty. Of Berkeley*, 366 S.C. 354, 361, 622 S.E.2d 533, 537 (2005) (“It is well settled that an interlocutory order is not immediately appealable unless it involves the merits of the case or affects a substantial right.”); *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 709 (2005) (“An order which does not finally end a case or prevent a final judgement from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.”); *Lowndes Prods., Inc. v. Brower*, 262 S.C. 431, 433, 205 S.E.2d 184, 185-86 (1974)

of any confidential settlement agreement between the LSA and Mrs. Brown, as well as any settlement negotiations. Clearly Mrs. Brown is an interested party and has a right to be heard.

(recognizing that generally an order denying pretrial discovery is not directly appealable because it is an intermediate or interlocutory decision).

Even if the orders on appeal are not a discovery order, it is not a final order. See *The Estate of Boyce v. Work*, 305 S.C 43, 406 S.E2d 184 (1991). The Estate is not closed until the Personal Representative petitions the court to close it. See Section 62-3-1001 SC Code. It is only then that the estate administration is over. Even if the motion to compel can be characterized as not involving discovery, then it was a demand on the Estate and Trust Fiduciaries to do what the Brown Children assert was their duty, which clearly is an administrative matter. Until the Estate is closed, the orders on appeal are not final because they are administrative and the administration of the Estate has not concluded. The Brown Children are entitled to notice and a right to respond, pursuant to section 62-3-1001, before a final order is entered in this case at which time an appeal would be ripe.

Therefore the orders on appeal are interlocutory and, under well-settled principles of law is, not immediately appealable.

Respectfully submitted,

 Robert N. Rosen / SAM

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March 9, 2018

STATE OF SOUTH CAROLINA)
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JAMES BROWN A/K/A)
JAMES JOSEPH BROWN)
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IN THE COURT OF APPEALS

Court of Common Pleas

Case Nos.: 2013-CP-02-02849

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Appellate Case No.: 2018-000104

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on March 9, 2018 a true and accurate copy of Tommie Rae Brown's Memorandum of Law was placed in an envelope with first class postage thereon through the United States Postal Service and mailed to the offices of the attorneys of record in this case at the addresses below:

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SC Court of Appeals

RE: *In re: The Estate of James Brown (2)*
Appellate Case No.: 2018-000104
A&R Case No.: 022853-000001

Dear Ms. Kitchings:

I am writing on behalf of Respondent David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee (the "LSA"), in response to the Court's February 27, 2018 letter, to address whether the orders challenged on appeal are currently appealable. Upon review of the applicable law, the LSA believes the orders on appeal are interlocutory and not immediately appealable.

Today Respondent Tommie Rae Brown submitted her memorandum in this appeal addressing the appealability of the orders on appeal. In that memorandum, Ms. Brown provides the legal and factual basis for concluding the orders on appeal are interlocutory and, under well-settled principles of law, not immediately appealable. The LSA concurs with Ms. Brown's memorandum and adopts it verbatim by this reference as the LSA's position.

Please let me know if the LSA can provide additional information on this issue or otherwise related to this appeal.

Respectfully submitted,

John F. Beach

JFB/lbb

cc: All counsel of record