

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

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AUG 29 2018

SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown

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.

**REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO MOTIONS FOR
REHEARING AND SUGGESTION OF REHEARING EN BANC OF APPELLANT
TERRY BROWN**

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Pursuant to SCACR Rule 240(f), without restating the issues or making redundant arguments that have been thoroughly set forth in Appellant's opening Petition for Rehearing, Appellant offers the following points¹ of clarification and rebuttal to the arguments raised by the Respondent in her Return.

Dissection of Respondent's Argument

"Law is whatever is boldly asserted and plausibly maintained."² This is what Respondent has done in this matter. Once again, not once in thirty-nine (39) pages of her Return does Respondent cite or point to any evidence that Javed Ahmed ("Ahmed") had three wives in Pakistan, which is the foundation of the lower court granting and this Court affirming summary judgment that she is the spouse of James Brown. Therefore, at the precise moment Respondent married James Brown, she was, in fact, still married to Ahmed. Bigamist marriages are void ab initio. Period. End of discussion. Not void unless and until someone runs off to a remote court to annul the first marriage and merely testifies without proof or evidence that the first husband told me he had three wives in Pakistan. That genie cannot be put back in the bottle. As in this case, the Respondent cannot resuscitate the alleged marriage with James Brown as it was void ab initio in accordance with S.C. Code § 20-1-80. Respondent's alleged marriage with James Brown was void before she even walked through a courthouse door in 2004.

After eleven years, Respondent continues to ask this Court to assume, through her bold assertions and plausible argument, that the Charleston County Family Court ("CCFC") Order ("CCFC Order") converts her mere, self-serving and baseless

¹ Appellant incorporates all other Petitions for Rehearing and Replies filed by the other Appellants in this matter herein.

² Aaron Burr's sarcastic quote on how law is created in this Country more than applies in this matter.

allegations of Ahmed's bigamy into a retroactive fact. It does not. A panel of this Court has most recently recognized this in Gary v. Lowcountry Med. Transp., Inc., No. 2016-000222, 2018 S.C. App. LEXIS 37, *6-7 (Ct. App. 2018, Rehearing Denied) when it states:

We find the same public policy concerns expressed by this court in *Johns* drive our decision in this case. On one side, we have a marriage which contravened public policy as expressed by the General Assembly. *See* § 20-1-80 (2014). On the other, the doctrine of binding a party to its pleadings exists to protect the integrity of the court process. *See, e.g., Hayne Fed. Credit Union*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (noting the purpose behind the related doctrine of judicial estoppel is to "protect the integrity of the judicial process or the integrity of courts rather than to protect litigants from allegedly improper or deceitful conduct by their adversaries"). While ordinarily the Estate may be bound to its previous assertions, we find that policy should yield to the overriding policy against bigamous marriages, as expressed by the General Assembly. *See Johns*, 309 S.C. at 203, 420 S.E.2d at 859 ("[T]he courts must weigh the competing public policies."); *id.* (finding the public policy of not recognizing bigamous marriages outweighs the public policy favoring finality of judgments).

Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37, *6-7 (Ct. App. 2018).

This Court is bound by Gary and cannot, absent en banc review, overturn this precedent.

While one panel of this court cannot overturn prior published precedent of another panel of this court absent en banc review, we need not do so in order to apply controlling South Carolina Supreme Court precedent.

State v. Hoyle, 397 S.C. 622, 629, 725 S.E.2d 720, 724 (Ct. App. 2012).

For the purposes of the Estate of James Joseph Brown and this action, the bigamist marriage under review is the marriage between James Brown and the Respondent. The question belies whether the Respondent was married at the time she married Mr. Brown. The answer is unquestionably, YES.

1. Respondent married Ahmed on February 17, 1997;³

³ Even now, Respondent continues her attempt to parse and shade the facts when she argues in her Return that she never entered into a marriage with Ahmed, but only

2. Respondent stipulated that no court order concluded or terminated the Respondent-Ahmed marriage prior to the Brown-Respondent marriage;⁴
3. Respondent's marriage to James Brown was less than 5 years after the marriage to Ahmed thereby demonstrating that Ahmed was not missing for more than 5 years;⁵ and
4. Respondent and James Brown obtained a marriage license and participated in a marriage ceremony.⁶

Even though it is Respondent's burden to prove the validity of her alleged marriage to James Brown, the above presentation of evidence provided the prima facie elements of bigamy and more than proved that James Brown was not married to 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); Hallums v. Hallums, 74 S.C. 407, 54 S.E.2d 613 (1906); Yarbrough v. Yarbrough, 280 S.C. 546, 314 S.E.2d 16 (Ct. App. 1984); Day v. Secretary of Health and Human Services, 519 F. Supp. 872, 878 (D.S.C 1982); 52 Am. Jur. (2d) Marriages Section 129 (1970). This proof was established very simply by presentation of both the Brown-Respondent and Respondent-Ahmed marriage certificates and the joint stipulation of facts. The Respondent's sole enumeration of counter arguments to the lower court and this Court is best summed up as; the Respondent's marriage to Ahmed may not have been factually bigamous, but that does not matter because the CCFC signed an order saying the marriage to Ahmed was

stipulated that she "participated in a marriage ceremony." See Respondent's Return, p. 33. This is completely controverted by the actual facts in the form of her marriage license issued on February 12, 1997 signed by Clerk of Harris County Texas Court. See Joint Stipulation of Facts, at ¶ 1, Exhibit 1. (R., Vol. I, p. 255; 265). Further, Respondent's own Complaint for Annulment states that she married Ahmed. Id., at ¶ 7, Exhibit 5, ¶5. (R., Vol. I, p. 256; 271-273)

⁴ See Joint Stipulation of Facts, at ¶ 6 (R., Vol. I, p. 256)

⁵ Id. (R., Vol. I, pp. 271-296)

⁶ Id. at ¶¶ 4 and 5. (R., Vol. I, p. 256)

annulled for bigamy ab initio and there is nothing you can do about it. The CCFC Order is one based on a cornucopia of judicial errors involving such issues as service of process, default judgment, leading witnesses and uncorroborated self-serving hearsay.

What was also established, as additional factual basis upon which the Court of Common Pleas, acting as the Probate Court, and this Honorable Court has at its disposal to adjudicate and avoid legitimizing a proven bigamist marriage involving the subjects of this proceeding (i.e. James Brown and Respondent), were the additional facts enumerated below. ("[T]he courts must weigh the competing public policies."); *id.* (finding the public policy of not recognizing bigamous marriages outweighs the public policy favoring finality of judgments).⁷

1. The fact under consideration as to whether Ahmed was married to three women in Pakistan has never been proven;⁸
2. Respondent further stipulated that she cannot identify any documents or other evidence that proves, or a single person who can testify that Ahmed was married to another person when Respondent and Ahmed participated in the 1997 marriage ceremony;⁹
3. In the 21 years since her marriage to Ahmed, 16 years since her marriage to Mr. Brown, 14 years since filing her annulment action against Ahmed, and 11 years since filing the matter sub judice, Respondent has never provided proof of Ahmed's prior marriage(s) or death;¹⁰

⁷ Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37, *6-7 (Ct. App. 2018).

⁸ R., Vol. II, pp. 515-526. Ahmed can be located as evidenced by the Affidavit of David Bell. See Affidavit of David Bell 9/30/2014. (R., Vol. II, pp. 515-521)

⁹ R., Vol. I, p. 257. Even though Respondent testified to the CCFC as to an alleged Ahmed lawyer and guitar player who had information concerning bigamy, they cannot now be found. See (R. Vol. I, p. 304:10-20; 307:11-16)

¹⁰ Id. at Exhibits 1 through 19. (R., Vol. I, pp. 254-350). As pointed out by Appellant, she could have searched the Pakistan tribal marriage records a/k/a Nikah Namas to find Ahmed's wives. See Appellant's Brief, p. 34-35.

4. the Respondent-Ahmed Marriage license where Mr. Ahmed swore under oath he was not married that has not been refuted by any other evidence other than Respondent's inadmissible hearsay testimony;¹¹ and
5. Affidavit of Attorney David Bell wherein he spoke to Ahmed who said that he never had three wives and Respondent and Ahmed had lived together as husband and wife.¹²

Additionally, the Court of Common Pleas, acting as the Probate Court, and this Honorable Court also has at its disposal to adjudicate and avoid legitimizing a proven bigamist marriage involving the subjects of this proceeding (i.e. James Brown and Respondent), the below enumerated present sense impressions by both the decedent James Brown and the Respondent.

1. Respondent agreed in the Brown-Respondent Consent Order that she was not James Brown's spouse;¹³
2. James Brown amended his own annulment action after the Respondent-Ahmed annulment order was entered wherein Mr. Brown's attached the fact Respondent admitted the first marriage;¹⁴ and
3. The Respondent Diaries, which were conveniently gagged during the summary judgment proceedings from Appellants' use in glaring violation of their due process rights¹⁵, have not been given a full and fair opportunity to be presented because discovery on them was frozen by the lower court.

¹¹ See Affidavit of Scott Keniley 10/2/2014 with attached Ahmed-Respondent Marriage License Application. (R., Vol. II, p. 526, line 8) Respondent continues to argue in page 35 of her Return that this is hearsay when SCRE 803(9) clearly proves otherwise.

¹² Affidavit of David Bell 9/30/2014. (R., Vol. II, pp. 515-521) Even though Ahmed was supposedly unfindable for service of process purposes resulting in the erroneous service by publication in the Respondent-Ahmed Annulment, Mr. Bell found him.

¹³ See Joint Stipulation of Facts, Exhibit 19. (R., Vol. I, pp. 349-350). This Court should strongly consider why an actual spouse would ever have to claim never to seek to be a declared a common law spouse. The answer is easy. The parties are not married.

¹⁴ See Joint Stipulation of Facts, Exhibit 16. (R., Vol. I, pp. 332-335) Why would Mr. Brown file his own annulment and amend his own annulment after the filing and order in the Respondent-Ahmed annulment if he supported Respondent's annulment for bigamy ab initio so he could remain married to Respondent?

¹⁵ Schmidt v. Courtney, 357 S.C. 310, 319, 592 S.E.2d 325,332 (parties must have "a full and fair opportunity for discovery.")

Somehow, even with the foregoing **facts**, this Court has overlooked the summary judgment standard. On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Williams v. Chesterfield Lumber Co., 267 S.C. 607, 610 (1976). Instead, applying a summary judgment standard that Appellant is unfamiliar with, the lower court and this Court have taken Respondent's **mere allegations**, that are not even facts or evidence, in a light most favorable to her as the **moving party**. The result of which is to incredulously uphold Respondent as the surviving spouse of James Brown by granting this unique summary judgment standard based on Respondent's bold assertions and plausibly maintained claim that Ahmed had three wives in Pakistan. This violates every principal of summary judgment argued in Appellant's initial Petition for Rehearing.¹⁶ Additionally, it violates the actual facts of the case which are that Respondent was married when she attempted to marry James Brown. More importantly, it violates to the public policy concerns expressed in Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (Ct. App. 1992) and this Court's most recent ruling in Gary.

I. GARY V. LOWCOUNTRY MED. TRANSP., INC. CANNOT BE DISTINGUISHED FROM THIS MATTER THEREBY MAKING IT BINDING PRECEDENT ON THIS PANEL OF THE COURT.

Respondent attempts to distinguish the binding precedent issued by another panel of this Court when she argues that Gary v. Lowcountry Medical, Inc., No. 2016-000222, 2018 S.C. App. LEXIS 37, (Ct. App. 2018) "has no application to the facts sub judice."¹⁷

¹⁶ See Appellant's Pet. for Rehearing, pp. 2-3.

¹⁷ See Respondent's Return, p. 37.

Gary cannot be distinguished from this case. The bigamous marriage in question in this matter is the marriage between the Respondent and James Brown. The prima facie elements of bigamy were provided by the Brown-Respondent marriage certificate, Respondent-Ahmed marriage certificate, Respondent's stipulation that no court order concluded or terminated the Respondent-Ahmed marriage prior to the Brown-Respondent marriage, and Respondent's marriage to James Brown was less than 5 years after the marriage to Ahmed thereby demonstrating that Ahmed was not missing for more than 5 years. This Court is affirming a lower court's summary judgment order stating the CCFC Order is an acceptable response to the Respondent's bigamy and facts do not matter. Fortunately, as Gary provides, facts do matter.

Gary involved a Personal Representative of an estate filing pleadings in a wrongful death action stating that Charles Gary was the surviving spouse of Blondell Gary. Subsequent to the filing of the pleadings, settlement of the lawsuit for \$2,250,000 on September 14, 2015, and entry of a Consent Order of Dismissal with Prejudice of the wrongful death suit on November 13, 2015, the personal representative became aware of facts indicating the marriage between Charles and Blondell was void due to bigamy, and filed a petition to determine heirs on December 14, 2015. Charles Gary argued the personal representative was estopped from claiming that he was not the surviving spouse because the Consent Order was an adjudication of the merits and made the underlying facts and admissions binding.¹⁸ This Court rejected this argument, in Gary, which is Respondent's argument that has been affirmed in this matter. With Gary, this Court has stated that public policy against bigamous marriages is more important than estoppel or

¹⁸ See Final Appellant Brief Charles Gary, Purported Surviving Spouse, Appellate Case No. 2016-000222, pp. 10-11.

res judicata. Gary v. Lowcountry Medical, Inc., No. 2016-000222, 2018 S.C. App.

LEXIS 37, *6-7 (Ct. App. 2018).

As in Gary, Respondent's marriage to James Brown is clearly bigamous **on the facts**. Charles Gary argued that entry by the lower court of a consent order wherein the pleadings admitted he was married to Blondell Gary precluded the Court from examining the actual underlying facts, which clearly were that he was already married, to prove his marriage with Blondell Gary was bigamous. The same rule applies to Respondent's actual facts in this matter. Respondent argues that the CCFC Order, wherein she presented mere baseless allegations of Ahmed's bigamy, precludes this Court from examining the actual underlying facts, which are that she has no factual evidence of Ahmed's bigamy making it clear the Respondent-Ahmed marriage was not bigamous, which proves Respondent's alleged marriage to James Brown was bigamous. Gary and this case are the application of the same rule. Charles Gary's case involves the situation where you are looking through the finality of a judgment to prove that he was already married when he attempted to bigamously marry Blondell Gary. Respondent's case, like Gary, involves looking through the finality of a judgment¹⁹ to determine that she **was already married (i.e. not bigamously married to Ahmed as the facts prove)**, and therefore factually married when she attempted to marry James Brown. The two cases are not distinguishable.

Just as facts mattered in Gary, Respondent fails to **prove with facts** that her marriage to Ahmed was bigamous. More importantly, Respondent fails to prove she was

¹⁹ Appellant still argues that the CCFC Order does not matter because collateral estoppel does not apply. See Appellant's Pet. for Rehearing, p. 16-23. However, assuming arguendo that it was a binding final judgment it would not matter under the Gary analysis.

not married to Ahmed when she attempted to marry James Brown, and based on her stipulations, she cannot identify any documents or other evidence that proves, or a single person who can testify that Ahmed was married to another person when Respondent and Ahmed participated in the 1997 marriage ceremony. Like Charles Gary argued, which was rejected by this Court, Respondent argues and this panel of this Court has ruled²⁰, in contradiction to Gary, that Appellants are estopped from challenging her marriage to Ahmed was bigamous because the mere allegations of bigamy contained in the CCFC Order were converted to actual retroactive facts to be used against James Brown when the CCFC Order was entered. Under the Gary analysis, this is incorrect.

As Gary denotes, the public policy against not recognizing bigamous marriages dictates that this Court look through the “finality” of the CCFC Order and analyze the actual underlying facts to determine whether or not a bigamous relationship exists. Just as in Gary, as it relates to determining Respondent’s marital status to James Brown, she has never provided, and cannot provide, any evidence that her relationship to Ahmed was factually bigamous or that she was not actually married to him when she attempted to marry James Brown. If it was, she should be able to come forward with those **facts** now. She allegedly presented them before the CCFC. It should be a simple matter of presenting them again, but it is indisputable, based on her stipulations, she had no evidence then, and she has no evidence now. Instead of doing this, Respondent argues, and this Court has ruled²¹, she does not need them because the CCFC Order allows her to

²⁰ Brown v. Sojourner (in re Estate of Brown), 2018 S.C. App. Lexis 53, *11-16 (Ct. App. 2018)

²¹ “Here, Respondent's first marriage to Ahmed was invalid or void from the beginning because he was already married to someone else at the time of the marriage.” Brown v. Sojourner (In re Estate of Brown), 2018 S.C. App. LEXIS 53, *9 (Ct. App.

present a mere allegation of bigamy to create retroactive “facts.” Facts do not vanish or retroactively come into existence. The facts of bigamy should be just as easily presented in this matter as they were in the CCFC matter. Her facts of bigamy certainly existed when she attempted to marry James Brown. This should not be hard for Respondent because she is telling this Court she has already presented them once. She should be able to present them again to prove her marriage to Ahmed was bigamous. This is particularly true since the same attorney has represented her in both matters. Just open up the old file and present all the same evidence. The reason she does not, is because the file is empty. Just as Charles Gary could not, Respondent cannot provide facts proving she was not legitimately married to Ahmed prior to and continuing through her alleged marriage to James Brown. A bigamist marriage is void ab initio and the Respondent cannot undue her bigamist marriage to James Brown.

The foregoing reasons are why this case is exactly like Gary. The public policy against bigamous marriages is too important to allow a party to argue a procedural technicality. This Court’s Gary ruling supports the common sense idea that when it comes to bigamy, we want to get it right. Facts matter. This Court’s panel deciding this matter should apply Gary and determine Respondent is not the wife of James Brown.

II. APPELLANTS’ HAVE MET THE BURDEN OF PROOF TO DETERMINE THAT JAMES BROWN’S MARRIAGE TO RESPONDENT WAS VOID.

As stated hereinabove, Appellants have met their legal burden of proof.

2018). This quote from this panel’s opinion in this matter is in direct contradiction to another part of this panel’s opinion in this matter which states: “However, Respondent is only asserting the family court’s order as to the status of her marriage to Ahmed.” Id. at 15. If the second quote were true, the Gary analysis would apply here and Respondent would be required to present facts of a bigamous relationship with Ahmed.

Respondent's own argument in her Return belies her attempts to distinguish Gary, when she denotes that the **facts** make it clear the parties were not married and "[b]ut for the public policy against bigamy to apply, bigamy must exist on the facts."²² Just as in Gary, **facts** make Respondent a bigamist and her alleged marriage to James Brown void ab initio. She has never proven Ahmed had three wives in Pakistan.²³ It is her burden of proof under the law. Respondent argues that all she needs to prove her alleged marriage to James Brown is her marriage license with him and the ceremony.²⁴ Respondent argues these facts close the case because she told the CCFC to assume Ahmed was a bigamist. She, however, glosses over the fact that she was married to Ahmed at the time she allegedly married James Brown and continued to be married to Ahmed from December 14, 2001 through April 14, 2004.²⁵

The fact that Respondent was married to Ahmed prior to allegedly marrying James Brown changes the landscape of what she is required to prove as it relates to the validity of her alleged marriage with James Brown. It is Respondent's burden to prove her alleged marriage to James Brown was valid. Respondent is required to provide **facts** that meet her burden of proof that her alleged marriage to James Brown (i.e. that she is his surviving spouse) was valid. Because she had a prior valid marriage with Ahmed, her only possible argument to even attempt to prove that her alleged marriage to James Brown was valid was to retroactively contrive that her marriage with Ahmed was

²² See Respondent's Return, p. 37.

²³ Respondent argues on page 5 of her Return that State v. Sellars, 140 S.C. 66, 134 S.E. 873 (1926) applies, but it does not. Unlike Sellars, Respondent has never proven that Ahmed was married when she allegedly married James Brown. Sellars does not apply to this matter.

²⁴ See Joint Stipulation of Facts, at ¶¶ 4 and 5. (R., Vol. I, p. 256); Respondent's Return, p. 33.

²⁵ Id. at ¶¶ 1 and 2, Exhibit 1. (R., Vol. I, pp. 254-256; 265-266; R. Vol. II, pp. 515-526)

bigamous. However, even this is not enough, because Respondent was married to Ahmed when she allegedly married James Brown. S.C. Code § 20-1-80 applies and her alleged marriage with James Brown is automatically void ab initio.

Respondent has completely failed in her burden. She presents no evidence. The CCFC Order did not litigate James Brown's marital status or determine her to be the spouse of James Brown. It had nothing to do with these issues. Respondent attempts to confuse this Court and muddle the actual issue to be determined with her argument otherwise.²⁶ In fact, she only has the retroactive factually deficient CCFC Order to argue. She has nothing else. Respondent continues to cling to this argument with the hope and prayer that this Court will not actually look at the **facts** as required.

III. THIS IS A PROBATE MATTER DETERMINING THE SPOUSAL STATUS OF RESPONDENT AS IT RELATES TO JAMES BROWN.

A. The Court of Common Pleas has jurisdiction, sitting in the shoes through removal from the probate court, to determine spousal status.

Respondent confused this Court with her smokescreen arguments of subject matter jurisdiction regarding annulment actions and the family court. However, Respondent finally admits in her Return that this is a probate matter.²⁷ This action is not Appellants re-litigating a Family Court Order. This action determines whether Respondent is the spouse of James Brown.²⁸ It was error for this Court to determine otherwise.²⁹ It was further error when this Court determined, in its Order, that Appellants' did not have standing to pursue this matter. The lower court had already

²⁶ See Respondent's Return, pp. 9-25.

²⁷ See Respondent's Return, p. 1.

²⁸ See Appellant's Pet. for Rehearing, p. 23-24.

²⁹ Brown v. Sojourner (In re Estate of Brown), 2018 S.C. App. LEXIS 53, *9-15 (Ct. App. 2018).

made this determination granting standing to the Appellants, and Respondent has admitted to not appealing this ruling.³⁰ The lower Court specifically noted:

A threshold determination that must be made in both the elective share and omitted spouse claims is whether Tommie Rae Brown is James Brown's surviving spouse. This determination could have a profound effect upon the Deviseses' property rights in or claims against both the Estate and Trust.

As a child of James Brown and a named Devisee of the Will, Terry Brown, has an interest in seeing that his father's estate plan is carried out.

As children and intestate heirs of James Brown, Terry Brown and the other Deviseses have potential property interests and/or claims against the Estate that "may be affected" by the Severed Actions.³¹

The fact that Appellants had standing is the law of the case, which was not appealed, and therefore not appealable. Further, Respondent in her settlement agreement with the Estate, which was filed with this Court, denotes that if the issue of spousal status is remanded she has agreed to try this issue in the Court of Common Pleas.³² This makes her attempt to further confuse this Court with her disingenuous question in footnote 7 of her Return wherein she ponders where an action for spousal determination would occur, even more suspect.³³ She has waived the right to ask this question with her own settlement. It also shows that Respondent believes that the Court of Common Pleas has jurisdiction, otherwise why submit to the same in a settlement agreement and run the risk of having to re-litigate such jurisdiction chosen. Appellants have standing, as already ruled by the lower court, and the Court of Common Pleas, sitting in the Probate Court's

³⁰ Order determining Parties to Severed Omitted Spouse Claim, Elective Share Claim, and Pretermitted Child Claim (February 7, 2014, Case No. 2008-CP-02-1647); Respondent's Return, ftnt. 10

³¹ Order determining Parties to Severed Omitted Spouse Claim, Elective Share Claim, and Pretermitted Child Claim (February 7, 2014, Case No. 2008-CP-02-1647), p. 5

³² See Respondent's Joint Motion filed March 8, 2017, Exhibit A, p. 3, ¶4.

³³ See Respondent's Return, p. 3, ftnt. 7

shoes through removal, has the right to hear this matter and determine Respondent is not the spouse of James Brown.

B. Respondent attempts to confuse this Court with how her spousal status should be determined with the application of S.C. Code §62-2-802.

This is not a posthumous annulment action as Respondent contends.³⁴ The facts necessary to determine the bigamy of Respondent voiding her alleged marriage to James Brown under S.C. Code § 20-1-80 existed long before his death. This is an action to present those facts to allow the Court of Common Pleas, acting as the Probate Court, to determine Respondent is not the spouse of James Brown. As previously argued, Appellant's believe that a determination of whether someone is the spouse of an estate, which Respondent admits is the purpose of this action³⁵ and the lower court has determined is a threshold issue³⁶, which Respondent did not appeal, is fully within the exclusive jurisdiction of the Probate Court in accordance with the probate of and estate or will in accordance with S.C. Code § 62-1-302(a)(which includes determining heirs). *See Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 757 S.E.2d 399, ftnt 9 (2014); *Thomas v. McGriff*, 368 S.C. 485, 629 S.E.2d 359 (2006). Therefore, based on the foregoing, Respondent's argument that a determination of heirs is only related to intestate estates, and Appellants are incorrect in asserting it for probate court jurisdiction in this matter, is both factually, procedurally, and legally incorrect in this matter.³⁷ "If the ultimate issue is heirship, which is within the probate court's exclusive jurisdiction, then the probate court has jurisdiction to resolve the threshold issue whether the decedent was a party to a

³⁴ *Id.* at 4.

³⁵ *Id.* at 1.

³⁶ Order determining Parties to Severed Omitted Spouse Claim, Elective Share Claim, and Pretermitted Child Claim (February 7, 2014, Case No. 2008-CP-02-1647), p. 5

³⁷ Respondent's Return, p. 10

common-law marriage.” Thomas v. McGriff, 368 S.C. 485, 488, 629 S.E.2d 359, 360 (2006). Respondent argues that S.C. Code § 62-1-302(c), limits the above stated jurisdiction, as it relates to determining heirs (i.e. a marital relationship), only to the “interpretation of marital contract.”³⁸ This argument is contradictory to the language in Thomas. Thomas specifically says the probate court has jurisdiction to determine the marital status (i.e. party to a common-law marriage) if the ultimate issue is heirship. As James Brown is deceased, the ultimate issue is whether Respondent is an heir (i.e. spouse) for purposes of her claims. The Respondent was even intentionally omitted from James Brown’s will. Jurisdiction lies exclusively with the Court of Common Pleas, standing in the Probate Court’s shoes through removal in this matter, to determine this issue.

Appellant will also address Respondent’s argument that S.C. Code 62-2-802 is the sole provision that applies for determination of her spousal status. Respondent, again, glosses over a very important section of S.C. Code § 62-2-802 when she boldly states this section must apply to determine her spousal status.³⁹ Specifically, she neglects to analyze the very first sentence of S.C. Code § 62-2-802(a) which states:

(a) An individual who is divorced from the decedent **or whose marriage to the decedent has been annulled is not a surviving spouse** unless, by virtue of a subsequent marriage, the individual is married to the decedent at the time of death.

S.C. Code Ann. § 62-2-802. (Emphasis added.)

As Appellants’ have already proven, James Brown’s marriage to Respondent is void.⁴⁰

S.C. Code § 20-1-80 is the ultimate annulment action. S.C. Code § 62-2-802(a) does not

³⁸ Id. at 3.

³⁹ Id. at 11.

⁴⁰ See Appellant’s Pet. for Rehearing, p. 3-16.

say that the annulment can only occur by court order, as this Court is aware, it can also occur by operation of statute (i.e. S.C. Code § 20-1-80 which states: “[a]ll marriages contracted while either of the parties has a former wife or husband living shall be void.”) Therefore, S.C. Code § 62-2-802(a) determines that Respondent is not the spouse of James Brown because her marriage was automatically void (i.e. annulled) by operation of the statute. “There is no legal distinction between a marriage which is annulled and one terminated by reason of bigamy.” Splawn v. Splawn, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993). As such, S.C. Code 62-2-802(a), by and through the application of S.C. Code § 20-1-80, declares that Respondent is not the surviving spouse of James Brown as such relationship was void ab initio.

IV. RESPONDENT CONTINUES TO MISSTATE APPELLANT’S POSITION.

Respondent continues her efforts to obfuscate and confuse part of Appellant’s arguments with regard to S.C. Code § 20-1-80 before this Court.⁴¹ Specifically, she continues to state that Appellants’ argue that a bigamous marriage is valid until a court order is issued annulling the same.⁴² Interestingly, that is exactly the Respondent’s position, i.e. her marriage to James Brown may have been void, but the CCFC changed that. Appellant, this Court, and Respondent are unified and in agreement that a bigamous marriage is void ab initio under S.C. Code § 20-1-80. Appellant is not arguing that individuals in bigamous relationships must seek a court order. James Brown certainly was not required to do so because his relationship to Respondent has been factually proven as bigamous and therefore void under S.C. Code § 20-1-80.

What Respondent attempts to mischaracterize, and this Court misapprehend about

⁴¹ See Respondent’s Return, p. 4-5; 27-32.

⁴² Id.

Appellant's argument is that it was necessary for **Respondent** to seek a court order to annul her marriage to Ahmed because her marriage was not factually bigamous. Respondent had no proof of the same before, during, or, even now, after appearing in the CCFC. As a result, the "automatic" voiding of a marriage under S.C. Code § 20-1-80 does not apply to Respondent, as it relates to James Brown, because she has no proof of the same. Therefore, on the date and time she married James Brown she was married to Ahmed. This is Lukich.⁴³ The CCFC Order did not convert her allegations of bigamy into retroactive facts as they relate to determining the status of her relationship with James Brown. When analyzing her alleged marriage to James Brown, the CCFC Order only stands for the "status"⁴⁴ that her marriage to Ahmed was annulled, not the alleged facts on which it was annulled, which Respondent contends, but has failed to prove, supported bigamy. This is black letter and South Carolina law on collateral estoppel that Appellant has already argued.⁴⁵ James Brown's estate and heirs have the absolute right in the threshold issue of spousal determination of Respondent as the alleged wife of James Brown to require her to prove her annulment to Ahmed was based on bigamy. These "facts" can still be challenged by James Brown, his Estate and heirs. As noted before, if the CCFC Order created binding "facts" on James Brown he could not have filled his own action for annulment. Fortunately, his own annulment action was ultimately unnecessary because Respondent admitted to the facts (which existed prior to, at her CCFC hearing, and now) in her own annulment proceeding proving her bigamous

⁴³ Lukich v. Lukich, 379 S.C. 589, 666 S.E.2d 906 (S.C. 2008)

⁴⁴ Respondent continues to argue that she is only relying on the "status" determination of the CCFC order which is not true. See Respondent's Return, p. 10. She is also relying on the facts presented to the CCFC to "prove" bigamy.

⁴⁵ See Appellant's Brief, p. 20-30; Appellant's Pet. for Rehearing, p. 16-23.

marriage to James Brown and the application of S.C. Code § 20-1-80 voiding any alleged marital relationship with James Brown. James Brown could then dismiss his annulment action by entering a consent order with Respondent to secure any possible loose ends, wherein she also agreed she would not seek to be declared his common law wife.⁴⁶

Further, based on Respondent's argument, this Court must ask the question, why did she seek an annulment if her marriage to Ahmed was already annulled? By her argument, there was no need. Respondent's own actions betray her understanding of the situation. Respondent knew she was not in a bigamous relationship with Ahmed. That is why she included additional grounds for annulment to insure that some of her manufactured testimony (i.e. the marriage was never consummated) would be accepted to annul her marriage to Ahmed.⁴⁷ As such, **Respondent** (not individuals whose marriages have already been factually proven to be bigamous) was required to seek an annulment order that included several grounds for annulment. Actions speak louder than words. Respondent manufactured bigamy with mere allegations in her seventeen page transcript before the CCFC because this was her remote chance that she could later argue that her alleged marriage to James Brown was somehow valid.⁴⁸ This has resulted in the twelve years of chaos that Lukich⁴⁹ warned should be avoided and Gary⁵⁰ attempts to stop.

V. RESPONDENT'S CLAIM THAT AN ANNULMENT CANNOT BE ENTERED BY DEFAULT IS INCORRECT.

Respondent's claim that an annulment cannot be entered as a default judgment is

⁴⁶ See Joint Stipulation of Facts, Exhibits 5, 12, 15, 16, 18, 19.

⁴⁷ Id., at ¶ 7, Exhibit 5, ¶5. (R., Vol. I, p. 256; 271-273)

⁴⁸ Id., at ¶ 8, Exhibit 13, (R., Vol. I, p. 256; 297-313)

⁴⁹ Lukich v. Lukich, 379 S.C. 589, 666 S.E.2d 906 (S.C. 2008)

⁵⁰ Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37

incorrect because the Ahmed-Respondent Annulment action is proof that it can happen.⁵¹

Respondent cites to the following language in her Return:

it is of great importance that the presiding judge shall, when necessary, prevent, to the utmost exercise of his judicial power, the dissolution of a marriage contract by collusion, default, or coercive pressure exerted upon either or both of the parties.⁵²

The above language does not say that it cannot happen. It just says that it should not. It is up to the family court judge to insure that it does not happen by being exceptionally careful to avoid such a result. Based on the foregoing language, this Court must ask itself if the CCFC followed the above direction and mandate to prevent default “to the utmost exercise of judicial power” when it:

1. Allowed service by publication buried on page 2 in the Houston Chronicle classified section without any proof of actual due diligence, in violation of South Carolina law⁵³, on behalf of the process server as required to serve by publication.⁵⁴ Further, the CCFC ignored foreign service of process rules under Rule 4(h)(5) SCRCF when it was clear that Ahmed was from Pakistan.
2. Was not sure whether service by publication had occurred until the day of the hearing after all the testimony had been entered when Affidavit of Service by Publication was given to the CCFC Judge by Respondent.⁵⁵
3. Was declared by Respondent’s counsel in open court that Ahmed was in “Default.”⁵⁶
4. Allowed Respondent’s counsel to lead the witness and proffer hearsay testimony throughout the hearing without reservation or question.⁵⁷
5. Failed to ask a single question with regard to any of the sketchy or preposterous allegations made by Respondent before the CCFC or ask any questions with regard to what was done by Respondent to actually serve Ahmed.⁵⁸

⁵¹ See Respondent’s Return, p. 19.

⁵² See Respondent’s Return, p. 20; Fogel v. McDonald, 170 S.C. 506, 157 S.E. 830, 833 (1931)

⁵³ See Ray v. Pilot Fire Ins. Co., 128 S.C. 323, 324 (1924)

⁵⁴ See Joint Stipulation of Facts at ¶7, Exhibit 6, 7, 8, and 9 (R., Vol. I, pp. 256; 274-289)

⁵⁵ Id. at ¶8, Exhibit 13 (R., Vol. I, pp. 256; 299: 3-25; 300:1-5; 312:4-13)

⁵⁶ Id. at 300:6-7.

⁵⁷ Id. at Exhibit 13.

6. Started a hearing at 9:00AM on April 15, 2004, completed the hearing with seventeen pages of transcript testimony laced with mere allegations and self-serving hearsay, signed and accepted the Respondent's pre-prepared order without making any changes to such order or attempting to insure that such order conformed to actual evidence that occurred during court rather than allowing the mere allegations to populate the pre-prepared order, and signed and entered the order by 9:34AM that same day.

Based on the foregoing, and all previous arguments made in prior filings by Appellant in this matter, the above is a default judgment in accordance with SCRCP 55.⁵⁹ The South Carolina Supreme Court suspected this failure in "utmost exercise of judicial power" by the CCFC to avoid default when it referred to the CCFC Order as "hastily granted."⁶⁰ The CCFC completely failed with its duty to insure proper entry of evidence and that the CCFC Order was not a default judgment. This is why Johns⁶¹, Gary⁶² and Lukich⁶³, and the litany of collateral estoppel cases exist so that when egregious errors such as this occur, this Court has the power to step in and correct such egregious errors. This, among many other reasons, is why the CCFC Order does not collaterally estop the Appellants' in this matter.

VI. THE DECISION BY THIS PANEL OF THE COURT AND RESPONDENT'S ARGUMENTS FUNDAMENTALLY CHANGE COLLATERAL ESTOPPEL IN SOUTH CAROLINA.

The panel decision by this Court turns collateral estoppel in South Carolina on its head. Everyone involved with this case agrees that James Brown, his Heirs and Estate were not a party the Ahmed-Respondent annulment action. Yet, this Court cites to

⁵⁸ Id.

⁵⁹ See Appellant's Initial Brief, pp 28-29; Appellant's Reply Brief, pp. 21-24; Appellant's Pet. for Rehearing, pp.19- 21.

⁶⁰ Wilson v. Dallas, 403 S.C. 411, 2013 S.C. Lexis 240 (S.C. 2013), footnote 16.

⁶¹ Johns v. Johns, 309 S.C. 199, 420 S.E.2d 856 (Ct. App. 1992).

⁶² Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37

⁶³ Lukich v. Lukich, 379 S.C. 589, 666 S.E.2d 906 (S.C. 2008)

Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782

(Ct. App. 2009) as support for why Appellants are collaterally estopped:

Collateral 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. (Emphasis added.)⁶⁴

As noted above, James Brown, his Estate or Heirs were not a party to the Ahmed-Respondent Annulment action. They also were not in privity. Respondent makes the argument that because James Brown paid the legal fees for the annulment action he was somehow in privity.⁶⁵ He was not. One who is not a party to an action is not in privity. Further, this Court notes Appellants' argument in its opinion, but never addresses how the Appellants could possibly be in privity so that collateral estoppel can apply to preclude Appellants from challenging Respondent as the wife of James Brown.⁶⁶ Appellants have addressed this issue in detail in prior briefing.⁶⁷

By its ruling, this Court has precluded a non-party to an action from actually litigating an important issue in such party's own action that was never actually litigated in the initial action (i.e. the threshold issue of whether Respondent is James Brown's spouse). This Court is saying that the Ahmed-Respondent annulment action determined that Respondent was James Brown's wife. This is just not possible. This is why this opinion turns collateral estoppel on its head. This court is saying that an order determining third parties marital status has retroactively created facts that actually do not

⁶⁴ Brown v. Sojourner (In re Estate of Brown), 2018 S.C. App. LEXIS 53, *11-16 (2018)

⁶⁵ See Respondent's Return, p. 22-24.

⁶⁶ Brown v. Sojourner (In re Estate of Brown), 2018 S.C. App. LEXIS 53, *16 (Ct. App. 2018).

⁶⁷ See Appellant's Brief, p. 20-30, Reply Brief, p. 21, Appellant's Pet. for Rehearing, p. 16-23.

exist thereby changing James Brown's marital status from void ab initio to Respondent as his wife.

The effect of this Court's ruling is to protect a bigamist. From December 14, 2001 through April 14, 2004, Respondent was a bigamist. She has no evidence otherwise, and admits to the same.⁶⁸ Based on the facts before this Court and immediately on December 14, 2001, S.C. Code Section 20-1-80 applied as to James Brown's alleged marriage to Respondent by declaring it void. Her marriage to Ahmed was not void, at this time, and would not become so on suspect grounds until April 15, 2004. She admits to having no facts that would allow for anything else to be true. Respondent's marriage to James Brown was already void before she filed in the CCFC. The CCFC Order could not revive something that was already void. A voided marriage is void. Yet, that is exactly what this Court has done.

Further compounding the error, this Court's ruling determines that Appellants' are non-parties to the Ahmed-Respondent annulment action and are estopped from proving she is not the spouse of James Brown with facts that prove she was not married to James Brown, which has nothing to do with Respondent's annulment to Ahmed. Collateral Estoppel does not apply in this case. It never has. This only issue presently before the court is the threshold issue of whether Respondent is the wife of James Brown.

VII. THE SUPREME COURT RULING IN JOYE V. YON GOVERNS NOT THE OVERTURNED LAW TO WHICH RESPONDENT CITES.

Respondent attempts to support her position with law that was reversed by the South Carolina Supreme Court when she cites to Joye v. Yon, 345 S.C. 264, 547 S.E.2d

⁶⁸ See Joint Stipulation of Facts at ¶ 1 through 5, 9 and 10 (R., Vol. I, pp. 255-257)

888 (Ct. App. 2001).⁶⁹ Therefore, even though her quoted language in her Return does not support her position, it is unnecessary to really address it because this Court's decision was reversed by the Supreme Court on appeal. Joye v. Yon, 355 S.C. 452, 586 S.E. 2d 131 (2003).

In Joye, Husband and Wife were married in 1970. Id. at 454. After being married for 26 years, the couple divorced in 1996 and Husband was ordered to pay Wife monthly alimony. Id. In March 1999, Wife remarried Vance, but thereafter discovered Vance was not divorced from his former spouse. Id. Wife filed for an annulment. Id. In September 1999, the family court granted wife an annulment on grounds of bigamy, determining her March 1999 marriage to Vance was void *ab initio*. Id. Following the remarriage by wife, Husband ceased paying alimony. Id. Following the annulment, Wife filed for contempt against husband, because she argued, as Respondent does herein, that her marriage to Vance was void *ab initio* meaning that her alimony obligation never terminated. Id.

The lower court and this Court ruled, as they have done in this matter, that the annulment order applied retroactively against the husband because it was void *ab initio*. The Supreme Court rejected this ruling and overturned this position on appeal.

More importantly, the Supreme Court decision in Joye actually supports Appellants' arguments when it holds that a family court order annulling a wife's marriage as bigamous only applies **prospectively**, and **does not relate back to the date of the bigamous marriage**. Id. at 457. This directly supports Appellants' position in this matter. The following excerpt from the Supreme Court's holding rejects Respondent's

⁶⁹ See Respondent's Return, p. 15-18.

argument:

We also hold that regardless of whether the family court determines to reinstate periodic alimony payments or not, Husband has **no obligation to pay retroactive alimony to Wife for the time period that Wife was married to her bigamous husband.**

355 S.C. at 457, 586 S.E.2d at 134 (Emphasis added).

The Supreme Court's ruling in Joye establishes that a family court decree voiding ab initio a bigamous marriage **does not apply retroactively to a non-party to that family court action.** Just as important, the Supreme Court also rejected the void/voidable approach to determine the effect of a subsequent annulment on pre-existing periodic alimony payments:

Courts are split as to how to classify the effect a payee spouse's remarriage and subsequent annulment has on pre-existing periodic alimony payments. They have adopted one of the following rules: (1) the void/voidable approach, (2) the automatic termination approach, or (3) a case by case approach.

We hold that the case by case approach affords the Court the most appropriate method for resolving this novel issue. Just as the family court employs principles of equity in determining support and maintenance, equitable distribution, and child custody, so should it embrace these same principles in determining whether payor spouse's periodic alimony obligation is revived after payee spouse's subsequent marriage is annulled.

Joye v. Yon, 355 S.C. 452, 455-456, 586 S.E.2d 131, 133-134 (2003) (Emphasis added).

The above holding completely forecloses the Respondent's position in this appeal both as to the retroactive impact of an annulment order as well as her void versus voidable argument. When Joye (no retroactive application of annulment orders and case-by-case analysis) is coupled with this Court's ruling in Gary and South Carolina Supreme Court decisions in Lukich, there can be only one determination. Respondent was married to Ahmed when she married James Brown. As such, she is not the spouse of James Brown.

The point of law is for courts to get it right based on actual facts. This is the overriding principal contained in the three cases above, which should be the same in this case.

Respondent is not James Brown's wife because of the actual facts.

VIII. THIS CASE MEETS ALL THE REQUIREMENTS FOR A REHEARING EN BANC.

This case meets all the requirements for a Rehearing En Banc under SCACR Rule 219. While Appellant understands that a rehearing En Banc is not favored and ordinarily not ordered, this case is the quintessential case that should be heard in accordance with SCACR Rule 219. An En Banc hearing is necessary in this matter to secure and maintain the uniformity of this Court's decisions in numerous areas that are all questions of exceptional and far reaching importance in the state of South Carolina because: (1) this panel of the Court failed to apply the public policy of avoiding bigamous marriages as balanced against the finality of judgments in direct conflict with binding precedent issued by this Court in Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37 (Ct. App. 2018), which necessitates En Banc review under State v. Hoyle, 397 S.C. 622, 629, 725 S.E.2d 720, 724 (Ct. App. 2012), for this panel's current decision to even stand; (2) this panel of the Court misapprehended and misapplies the binding Supreme Court precedent of Lukich; (3) this panel of the Court has misapprehended the law as it relates to jurisdiction for determining heirs in South Carolina probate actions and overruled a lower court order that was not even appealed; (4) this panel of the Court misapplies and fundamentally changes the rule of law of collateral estoppel as it relates to non-parties to an action; (5) this panel of this Court misapplies and fundamentally alters the standard of summary judgment by allowing a moving party's mere allegations of retroactively created facts to be enough to grant summary judgment; and (6) this panel of this Court

misapprehended the fundamental principles of due process as they relate to discovery in the context of summary judgment against a non-moving party. Based on all the foregoing reasons, this Court should grant En Banc review to secure and maintain the uniformity of this Court's decisions.

CONCLUSION

After all these years, briefs, hearings, and arguments, Appellants' continue to get drowned out in the din of circular legal arguments, all the while the facts continue to scream. The Appellants' reasoned and factual voices continue to get lost in the noise. This needs to stop.

This case is quite simple when boiled down to the actual facts. Bigamous marriages are void ab initio and are not resuscitated back to life by later occurring events. The Respondent's marriage to James Brown was, at the precise moment they said "I do," bigamous and immediately void and legally incapable of resuscitation. Respondent was married to Ahmed, at the precise moment she married James Brown. At that precise moment, like now and at the CCFC hearing, she could not provide any evidence, testimony or fact corroborating Ahmed bigamy. The facts cannot change.

Because the facts cannot change, the Respondent, who at the time was an Aiken County resident, ran off to Charleston County to annul her Texas marriage in a default judgment hearing where she provided no evidence, testimony or fact corroborating Ahmed's bigamy, and dupes the CCFC into entering default on her unchanged pre-drafted CCFC Order. The South Carolina Supreme Court suspected as much when it referred to the CCFC Order as "hastily granted."⁷⁰

⁷⁰ Wilson v. Dallas, 403 S.C. 411, 2013 S.C. Lexis 240 (S.C. 2013), footnote 16.

James Brown was not interested in a Respondent-Ahmed annulment so he could remain married to the Respondent, as the Respondent claims. He certainly was not a party to the action by paying her legal bills. If any of this was true, why would James Brown file his own annulment against Respondent for bigamy? Why would James Brown amend his annulment for bigamy after the CCFC Order annulled the Respondent-Ahmed marriage for bigamy specifically noting she was bound by her declaration that she was married to Ahmed? Why would James Brown, and Respondent for that matter, enter into a consent order wherein Respondent agreed she would never claim to be James Brown's common law wife? James Brown did all of the above because the Respondent was married to Ahmed when she attempted to marry him.

Because facts cannot change, and the Respondent had no evidence, testimony or fact corroborating Ahmed bigamy, and she has stipulated to the same in this action, the Respondent was in a tough spot proving her marriage to Ahmed was bigamous in contravention to simultaneous actual and factual Respondent-Ahmed and Brown-Respondent marriage certificates. This tough spot forced Respondent to avoid pleading and arguing facts and instead to create twisting circular logic, contrary to law, that the CCFC Order resuscitated the void bigamous marriage to James Brown. Although, Johns, Lukich and Joye dispel the Respondents circular logic, Gary puts the nail in the coffin. **Facts do matter when it comes to bigamy.** ("[T]he courts must weigh the competing public policies."); *id.* (finding the public policy of not recognizing bigamous marriages outweighs the public policy favoring finality of judgments).⁷¹

This Court needs to ask who the wronged party is in this matter. Is it Respondent

⁷¹ Gary v. Lowcountry Med. Transp., Inc., 2018 S.C. App. LEXIS 37, *6-7 (Ct. App. 2018)

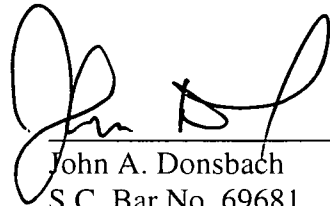
who: 1) signed pre-nuptials and other documents to never receive a share of James Brown's estate or claim to be his wife and was intentionally omitted from his will; 2) made allegations of bigamy but has actually never proven them, but by such allegations will be entitled to tens of millions in federal statutory copyright termination rights; or 3) in an effort to ensure receipt of these valuable copyright termination rights, negotiated a settlement with the Estate to keep it from pressing forward on the actual facts in this matter, wherein she and the Estate would agree to declare her the spouse in exchange for the Estate's right to share with her in tens of millions of dollars of copyright termination rights, rights that the Estate admits it would never actually be entitled to without the settlement⁷², thereby turning James Brown's estate plan on its head. Is it the Estate who: 1) has negotiated with a party, who provides mere allegations she is the wife, in order to gain significant financial advantage by and through tens of millions of dollars of federal copyright terminations, for the estate and remainder beneficiary trust, in direct contradiction to James Brown's actual estate plan, thereby directly harming the value of all of James Brown's children's federal statutory copyright termination rights by reducing them by half?; 2) has ignored its duty of impartiality required of a fiduciary and entered a settlement that benefits some of the heirs of the estate to the detriment of others?; or 3) clandestinely shrouded, and continues to shroud, portions of the settlement from the rightful biological heirs to the copyright terminations for purposes of its own financial gain while in league with the Respondent? Is it the Appellant, who for twelve years now, attempts to enforce his father's estate plan, as written, in the face of Respondent's factually devoid allegations that she is the wife and requests that his own federal

⁷² See Respondent's Joint Motion filed March 8, 2017, Exhibit A.

statutorily granted copyright termination rights be completely and fully upheld instead of reduced in half by such baseless allegations? This is what his Court has to decide. Who is the wronged party? It should be obvious.

Respondent is not the wife of James Brown, for all the foregoing reasons, the Appellant respectfully requests this Court hear this matter En Banc, vacate this panel's decision, and, at a minimum, reverse the lower court's grant of summary judgment to Respondent. However, based on S.C. Code § 20-1-80, Lukich, Gary, and all arguments placed before this Court, the grant of summary judgment should be reversed with a grant of summary judgment to Appellants declaring Respondent is not an heir of the Estate because she is not the surviving spouse of James J. Brown.

This 28th day of August, 2018.



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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2015-002417

RECEIVED

AUG 29 2018

SC Court of Appeals

In Re: The Estate of James Brown a/k/a James Joseph Brown

Tommie Rae Brown, Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown, Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown and Daryl Brown are the Appellants.

PROOF OF SERVICE

The undersigned hereby certifies that on August 28, 2018, he has caused a copy of the **REPLY TO RESPONDENT'S RETURN IN OPPOSITION TO MOTIONS FOR REHEARING AND SUGGESTION OF REHEARING EN BANC OF APPELLANT TERRY BROWN** to be served on all counsel in this matter by depositing a copy of it in the United States Mail, postage prepaid, addressed to the following:

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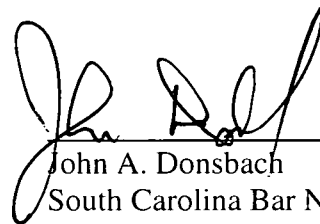
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August 28, 2018

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SC Court of Appeals

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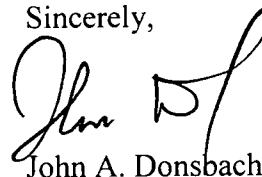
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: Estate of James Brown a/k/a James Joseph Brown
Tommie Rae Brown, Respondent v. David C. Sojourner, Jr., et al.
Appellate Case No. 2015-002417
Civil Action No.: 2013-CP-02-2849 and 2013-CP-02-2850
C/M No.: 2497/1

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Reply to Respondent's Return in Opposition to Motions for Rehearing and Suggestion of Rehearing En Banc of Appellant Terry Brown and Proof of Service Thereof. Please file the original and six copies and return one copy to me in the enclosed self-addressed, stamped envelope. If you have any questions, please feel free to contact me. Thank you.

Sincerely,



John A. Donsbach

JAD/djg

Enclosures

cc: Robert N. Rosen, Esq. (w/encl.)
John F. Beach, Esq. (w/encl.)
Lyndey Ritz Zwingelberg, Esq. (w/encl.)
Louis Levenson, Esq. (w/encl.)

The Honorable Jenny Abbott Kitchings

August 28, 2018

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