

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850  
Appellate Case No. 2015-002417

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.

**APPELLANTS' REPLY IN SUPPORT OF PETITION FOR  
REHEARING AND SUGGESTION FOR REHEARING EN BANC**

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## ARGUMENT

Appellants Deanna Brown-Thomas, Yamma Brown and Venisha Brown (collectively “Appellants”) respectfully submit this Reply in Support of their Petition for Rehearing and Suggestion for Rehearing in *En Banc*.

### I. REHEARING IS APPROPRIATE AND NECESSARY

Respondent’s brief studiously avoids the two key issues that require reversal of the trial court’s summary judgment order and the panels’ opinion. *First*, in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008), our Supreme Court unambiguously ruled that a *post-hoc* annulment of a first marriage for any reason does not retroactively revive a bigamous second marriage, because any other holding would invite chaos and uncertainty on the fundamental question of a person’s marital status. *See Lukich v. Lukich*, 379 S.C. 589, 592, 666 S.E.2d 906, 907 (2008). *Lukich* explicitly provides that a person’s marital status and legal capacity to remarry is determined at the time that person attempts to remarry, yet Respondent ignores this rule and persistently argues that her subsequently obtained, wholly un-litigated 2004 Annulment Order retroactively validated her 2001 marriage to James Brown – three years prior. *Second*, while the Annulment Order terminated the Hynie/Ahmed marriage, and that termination is binding against the world as of 2004, it is black-letter law that the *in rem* Annulment Order’s purported underlying factual findings and conclusions of law are not binding on non-parties to that family court annulment proceeding – including James Brown and Appellants here. This conclusion is required by both the well-settled law governing the doctrine of collateral estoppel (or issue preclusion) and the limited preclusive effect of *in rem* orders.

Instead of forthrightly addressing these legal rules, Respondent presents a series of highly misleading straw-man arguments, each of which is irrelevant to the two key issues raised above that mandate reversal:

1. Contrary to Respondent's stance, determining Respondent's status as James Brown's surviving spouse in no way infringes the jurisdiction of the family court that issued the Annulment Order terminating the Hynie/Ahmed marriage. The trial court, sitting in probate, has exclusive jurisdiction to identify and determine the rights of the *heirs* to James Brown's estate. Such jurisdiction necessarily includes jurisdiction to adjudicate Respondent's claim to be Brown's *surviving spouse*. Moreover, the Annulment Order solely terminated the Hynie/Ahmed marriage as of April 15, 2004 – and Appellants do not seek to re-litigate or overrule this. Thus, no order of the trial court in this case can or would undo the termination of the Hynie/Ahmed marriage in 2004 or impinge upon the family court's jurisdiction. Respondent's repeated suggestion that Appellants somehow seek to reverse the family court's termination of the Hynie/Ahmed marriage is a fiction.

2. Respondent's position that James Brown would have been bound by the termination of the Hynie/Ahmed marriage in 2004 is also legally irrelevant, due to the bedrock rules governing *in rem* judgments and collateral estoppel. James Brown, as a non-party to the Annulment Action, would have been bound – like the rest of the world – only by the Annulment Order's termination of Hynie/Ahmed's *marital status* as of April 15, 2004, the date of the Order. That unremarkable fact in no way changes the law to mean that James Brown (or Appellants) would be bound by the Annulment Order's "findings," including the wholly unsupported allegation that Ahmed was a bigamist. To the contrary, under decades-long U.S. Supreme Court precedent, the Restatement (Second) of Judgments, and binding South Carolina precedent, the one and only aspect of the Annulment Order that bound James Brown or anyone else (besides

Respondent and Ahmed) is that the Hynie/Ahmed marriage terminated on April 14, 2004. That change of marital status in no way precludes Appellants right to litigate Respondent's unsupported claim that her marriage to Ahmed was supposedly bigamous, in the unlikely event that the Supreme Court's unequivocal holding in *Lukich* does not resolve this entire appeal.

3. Respondent's position that an annulment of a first marriage applies *retroactively* to resuscitate a bigamous second marriage, entered into before the first marriage was annulled, directly contradicts *Lukich*. Respondent cannot sweep aside *Lukich's* admonition that the subsequent annulment of a first marriage – regardless of the grounds for annulment – does not serve to revive or validate a facially bigamous second bigamous marriage, as Respondent attempted to do here. Respondent is simply wrong to say that Appellants are applying *Lukich* inconsistently: under *Lukich*, the 1997 Hynie/Ahmed marriage barred Respondent from remarrying from 1997 to April 15, 2004, when the Annulment Order was entered. That is the reason her attempted 2001 marriage to Brown was ineffective. Respondent could have annulled her marriage to Ahmed before marrying Brown in 2001, or could have married Brown after April 15, 2004, but otherwise her marriage to Brown would be invalid in the eyes of the law. These results are wholly consistent with *Lukich*, and necessary to avoid the “chaos and uncertainty” that *Lukich's* bright-line rule is intended to avoid. Nor can Respondent abrogate *Lukich* by citing earlier cases. Moreover, Respondent's citations only serve to undermine her unsupportable position. In *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906), for example, the court rejected a putative wife's attempt to validate her second marriage by claiming that her first marriage was void for bigamy. That is precisely the erroneous position Respondent adopted in this case, contrary to the Supreme Court's mandate in *Lukich*, and prior precedent.

4. Respondent's final argument is an amalgam of non-sequitur statements, to the effect that the “finding” of Ahmed's bigamy in the Annulment Order can never be challenged by

a non-party to Annulment Action or reviewed by this or any court. Respondent cannot refute the well-settled law governing collateral estoppel and the limited preclusive effect of *in rem* judgments, so she dismisses them with a wave of the hand. Respondent's reason for avoiding a frank discussion of collateral estoppel is obvious, as the following dispositive elements are not remotely present in this case: (i) no Appellant was (or could have been) a party to the Annulment Action, nor in privity with a party to that action; (ii) as the trial court barred all discovery, Appellants have never been afforded a full and fair opportunity to take discovery and litigate the unsupported factual assertion that Ahmed was a bigamist, solely relied upon by Respondent to retroactively validate her facially bigamous marriage their father; and (iii) Ahmed's alleged bigamy was *never* "actually litigated" in the Annulment Action, as Ahmed did not appear, resulting in an effective default. Respondent deliberately muddied this clear-cut collateral estoppel analysis during oral argument before the panel, and tries to do so again in her brief.

When Respondent's extraneous arguments are properly stripped away, Respondent's case hinges on only one thing: her bare self-serving allegation that Ahmed was married to others when she married him in 1997. But remarkably, the undisputed facts expose that allegation of bigamy to be a total artifice. There is no evidence of Ahmed's alleged bigamy other than Respondent's unopposed self-serving hearsay at the 2004 annulment hearing that she was supposedly told that Ahmed had other wives in Pakistan. In fact, Respondent has admitted by stipulation that she has no other "evidence," and it is undisputed that no admissible evidence was presented to the family court in the Annulment Action. Indeed, in her brief Respondent does not even attempt to argue that Ahmed *was* in fact a bigamist – just that all courts, including this one, must accept the artifice of Ahmed's "bigamy" because it was included among multiple other purported grounds in the "hastily granted" Annulment Order which Respondent's counsel had drafted for the family court to sign. *Wilson v. Dallas*, 403 S.C. 411, 434, n. 16. Thus,

Respondent's stance that Appellants are bound by that single finding, in an *in rem* order in a case where they could not participate, is not merely wrong as a matter of law. Her position is wrong as a matter of basic fairness, an offense to the due process principles that animate the preclusion doctrines of South Carolina and every other State.

Finally, Respondent invokes her settlement with the Estate in an inappropriate attempt to curry favor and distract from the legal issues presented on appeal. That the Estate has abandoned its former staunch opposition to Respondent's spousal claim is not at all germane to the question of whether Respondent is James Brown's surviving spouse – and Respondent's suggestion that her undisclosed financial settlement with the Estate somehow ratifies her spousal claim is offensive. Contrary to Respondent's stance that the settlement reflects a generous gift from her to the Estate, the March 2017 settlement evinces just the opposite. The Estate's first attempted "Compromise Settlement Agreement" with Respondent (in 2009) would have gifted *her* 23.75% of Brown's entire estate, a clear unjust enrichment to Respondent; accordingly, the South Carolina Supreme Court rejected that attempted settlement in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) and remanded the case back to the trial court. In response to the Supreme Court's rebuke, Respondent and the Estate worked in total secret to produce the March 2017 "settlement" – yet to this day Respondent and the Estate have concealed the full terms of their agreement from this Court and Appellants to whom the Estate owes a fiduciary duty.<sup>1</sup> Respondent's and the Estate's refusal to disclose their full settlement strongly evinces concealed terms that achieve the same unjust gift to Respondent that the Supreme Court invalidated in

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<sup>1</sup> Appellants moved the circuit court to compel disclosure of all settlement terms to both the Court and Appellants themselves, but the circuit court denied the motion in a Form 4 order. Appellants appealed that decision, but the appeal was dismissed as interlocutory. Never once, in all of the briefing or argument devoted to the issue, has the Estate or Respondent claimed that the written document presented to this Court and Appellants as "the" settlement agreement is the full agreement between the parties, nor have they ever denied that there are secret, undisclosed settlement terms.

*Wilson v. Dallas*. Respondent cannot claim the virtue of her “settlement” while repeatedly refusing to disclose its full terms and her full benefits at the Estate’s and Appellants’ expense.

The Court should grant rehearing *en banc* to correct the manifest errors in the trial court’s summary judgment order and panel’s opinion, and put a long overdue end to Respondent’s gamesmanship.

## **II. THE FAMILY COURT ANNULMENT ORDER IS NOT DISPOSITIVE IN THIS CASE.**

### **A. The Circuit Court has Subject Matter Jurisdiction to Decide and Appellants Have Standing to Participate in the Determination of Respondent’s Spousal Rights Under the Probate Code.**

As the first of many straw-men, Respondent conflates the circuit court’s jurisdiction to hear this matter with the entirely separate issue of the *preclusive* effect of the findings of fact and conclusions of law in the 2004 Annulment Order, but ultimately all of her arguments are unavailing. The circuit court properly has subject matter jurisdiction over this matter and Appellants have standing because this matter arises under the South Carolina Probate Code, not in family court. The Probate Court has exclusive jurisdiction to determine the heirs of an estate, including purported spouses. *See* S.C. Code Ann. § 62-1-302 (a)(1); *Bell v. Progressive Direct Ins. Co.*, 407 S.C. 565, 757 S.E.2d 399, (2014); *see also* S.C. Code Ann. § 62-3-105. Respondent’s attempt to obfuscate Appellants’ standing on principles of intestacy (irrelevant to Brown’s estate) is without merit. Dispositive of this issue, the trial court in this case conclusively determined that Appellants are “interested persons” in multiple ways, and Respondent chose not to appeal that ruling, making that lower-court ruling the law of the case.

Moreover, Respondent’s overarching arguments regarding subject matter jurisdiction and standing are based upon another mischaracterization of Appellants’ arguments – namely, that Appellants seek to re-litigate the annulment of the Hynie/Ahmed marriage. As Appellants have clearly and repeatedly stated, they neither seek to undo, nor have any interest in undoing, the

Hynie/Ahmed annulment, and no relief sought here by Appellants would change that annulment. Contrary to Respondent's mischaracterization, Appellants do not dispute that the Family Court had jurisdiction to dissolve the Hynie/Ahmed marriage by way of annulment. The Annulment Order is conclusive as to the termination of the Hynie/Ahmed marriage as of April 15, 2004. It is not, however, dispositive on the ultimate issue in this probate dispute – whether Respondent is the surviving spouse of James Brown. For all of the reasons that follow and are contained in the briefing submitted in this matter, neither James Brown nor his children are bound by the purported factual findings and conclusions of law underlying the Annulment Order, as they were not parties or privies to that family court proceeding. The circuit court is the proper forum to decide the current dispute, which is not about whether the Hynie/Ahmed marriage was dissolved in 2004, but whether Respondent is James Brown's surviving spouse.<sup>2</sup>

**B. Appellants Are Not Bound by Underlying Findings in an *In Rem* Order**

As to the preclusive effect of the *in rem* Hynie/Ahmed Annulment Order, Respondent persistently conflates the binding effect of the annulment *itself* (i.e., that the marriage was forever terminated as of the date of the annulment) with the non-preclusive nature of the *findings of fact* and legal conclusions upon which it proceeds (including Ahmed's unproven bigamy). Respondent disingenuously continually accuses Appellants of attempting to "relitigate" the Hynie/Ahmed Annulment, when nothing could be further from the truth. Again, Appellants agree that the Hynie/Ahmed marriage was terminated on April 15, 2004, the date of the

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<sup>2</sup> Relatedly, Respondent's frivolous assertion that Appellants effectively ask the circuit court sitting in probate jurisdiction to issue an annulment order is without merit. (Resp. Ret. p. 3 n. 7.) Nothing in this matter requires the circuit court to "overturn" the family court (particularly inasmuch as the family court listed several factual findings supporting the annulment that were wholly unrelated to bigamy in its Order). Nor do Appellants request that the circuit court issue a "posthumous annulment". Rather, Appellants simply seek for the circuit court to hold the exact same proceeding that took place in *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906) and determine whether Respondent is Brown's surviving spouse.

Annulment Order. Appellants have no interest in reviving the Hynie/Ahmed marriage. If this trial court found on the merits that the Hynie/Ahmed marriage was not bigamous (as it must because there is *no admissible evidence* whatsoever to support this conclusion), the *in rem* 2004 Annulment Order would stand unaffected.<sup>3</sup>

Respondent's straw-man "re-litigation" argument keep cropping up because her success in this action solely hinges upon binding Appellants to the factual findings from an *in rem* proceeding to which they were never joined as parties, and in which they could not have intervened. This is, however, absolutely and fundamentally contrary to well-established law. The Annulment Order, as a judgment *in rem*, binds the entire world only as to its dissolution of the Hynie/Ahmed marriage on the date of the order. *See Carnie v. Carnie*, 262 S.C. 471, 167 S.E.2d 297, (1969). However, a judgment *in rem* is "not conclusive as to a fact upon which the judgment is based in any subsequent action...except as to persons who have appeared and actually litigated the question of the existence of the fact." Restatement (First) of Judgment § 73 (1942) (1942), cmt. c. The trial court's decision and the panel's opinion that Appellants are bound by the factual findings in the 2004 Annulment Order is directly contrary to black-letter law.

As held by the United States Supreme Court: "Establishing a fact and giving a specific effect to it by judgment are quite distinct. A judgment *in rem* binds all the world, but the facts on which it necessarily proceeds are not established against all the world . . . ." *Becher v. Contoure Labs.*, 279 U.S. 388, 391, 49 S. Ct. 356, 357, 73 L.Ed. 752 (1929) (citation

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<sup>3</sup> Moreover, alleged bigamy is but one of many grounds for the 2004 Annulment. Thus, even in Respondent's imaginary universe where Appellants desire to "undo" the Hynie/Ahmed Annulment, such annulment would be wholly unaffected by a ruling on the merits in this case that Ahmed was not married when he and Hynie wed.

omitted); *see also Gratiot County State Bank v. Johnson*, 249 U.S. 246, 248, 39 S. Ct. 263, 263 (1919) (“judgments in rem [are] not res judicata as to the facts or as to the subsidiary questions of law on which it is based, except as between parties to the proceeding or privies thereto”) (citations omitted). This explicit, bright-line rule makes perfect sense given that family court proceedings often involve sensitive factual allegations in the context of a proceeding where no one else has any ability whatsoever to appear.<sup>4</sup>

Because Appellants were not parties to the annulment action, the factual findings contained in the Annulment Order are not binding on Appellants, plain and simple. Yes, the Annulment Order conclusively established that Respondent and Ahmed were no longer married as of April 15, 2004. It does not, however, establish, nor even tend to establish, any of the so-called “facts” on which the Annulment Order was based, including its wholly unsupported “finding” of fact (drafted by Respondent’s counsel) that Ahmed was already married – the sole fictitious basis for Respondent’s unsupportable spousal claim in this case.

Respondent weakly tries to erase the distinction between an *in rem* change in marital *status* (which is binding on the world), and a finding of fact or law in an *in rem* order (which is not), by redefining “status” to *include* the unproven finding of Ahmed’s purported bigamy in the 2004 Annulment Order.<sup>5</sup> This unprincipled word game reflects a disregard for established law and must be rejected. According to the Restatement, “the existence of a *status*” determined by an *in rem* judgment excludes any “fact upon which the judgment is based.” Restatement (First) of Judgments §73 (1942), note a, cmt. c (emphasis added). And according to the U.S. Supreme Court, the status determination in an *in rem* order excludes any “subsidiary questions of law on

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<sup>4</sup> Respondent’s desire to make the factual findings contained in an *in rem* order binding is not only wholly unprecedented but dangerous, particularly where the reputations and interests of third-parties who are unable to intervene to protect themselves are involved.

<sup>5</sup> Resp. Ret. p. 18.

which it is based[.]” *Gratiot County State Bank v. Johnson*, 249 U.S. 246, 39 S.Ct. 263, 63 L.Ed. 587 (1919). By conflating a “status” determination (*i.e.*, termination of marriage) with the “subsidiary questions” on which that determination was partly based (*i.e.*, Ahmed’s alleged bigamy), Respondent seeks to reverse bedrock law and undo the obvious distinction between an *in rem* status determination and a subsidiary finding of fact or law. Moreover, under South Carolina law, a “status” determination in an *in rem* divorce decree or annulment order includes only the determination of whether the parties’ marriage is valid, dissolved or terminated as of the date of the decree or order. *Johns v. Johns*, 309 S.C. 199, 204, 420 S.E.2d 856, 860 (Ct. App. 1992); *State v. Sellers*, 140 S.C. 66, 134 S.E. 873, 877 (1926). Nothing else about such an *in rem* order is binding upon anyone not a party to the proceeding.<sup>6</sup> No authority suggests that the concept of “marital status” can be expanded to include factual or legal questions that underlie whether a marriage is extant or not extant, and Respondent presents no reason to enact such a disruptive change in the law now.

Notably, Prof. Homer H. Clark’s commentary quoted and highlighted in Respondent’s own brief strongly confirms that only the *change in status* of the Hynie/Ahmed marriage (*i.e.*, its termination), not any underlying findings in the Annulment Order, can bind third-parties. Prof. Clark cites the “well-established rule that” a divorce decree or annulment “is conclusive on third parties *with respect to the termination of the marriage*”; thus, Prof. Clark accurately states the

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<sup>6</sup> Likewise, Respondent’s continued emphasis on the “unappealed” nature of the annulment order is nonsensical. Respondent repeatedly points out that James Brown had no standing to participate in the Hynie/Ahmed Annulment Action, a proposition the panel’s opinion appears to accept, and Ahmed (the only party with any ability to appeal) knew nothing of it.

case law by specifically qualifying that only the marital status change of “*termination*” binds non-parties, not any subsidiary factual findings in the divorce decree or annulment order.<sup>7</sup>

Applying the “well established rule” of *in rem* judgments here, Respondent’s marriage to Ahmed is annulled as of April 15, 2004. But Appellants are not bound by any of the Annulment Order’s underlying findings. Thus, to the extent that the factual issue of whether Ahmed was married to an unidentified other person when Respondent chose to marry him is even relevant under the *Lukich* analysis (it is not), Appellants are guaranteed constitutional due process to litigate that factual question – not to “undo” the annulment, but to determine Appellants’ legal rights, which the lower court and the panel have effectively denied.

**C. Appellants Are Not Collaterally Estopped From Litigating Whether Respondent is the Surviving Spouse of James Brown.**

Respondent’s brief makes only the most conclusory statement that the “elements of collateral estoppel are [] met” to bind Appellants to the findings in the Annulment Order.<sup>8</sup> But Respondent’s effort to skip over a genuine analysis of collateral estoppel loudly signals that Appellants are in no way precluded from litigating the issue of fact which Respondent claims is dispositive of this case: whether Ahmed was purported already married when he married Respondent. To this day, that bare allegation has remained untested in a court of law, and Respondent has stipulated that she has no evidence whatsoever to support the allegation other than her own (self-serving hearsay) testimony at the 2004 annulment proceeding.

It is axiomatic that the doctrine of collateral estoppel or issue preclusion prevents a party to a prior action from re-litigating an issue that was decided in that action. *Carolina Renewal, Inc. v. S.C. Dep’t of Transp.*, 385 S.C. 550, 554 684 S.E.2d 779, 782 (Ct. App. 2009). For

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<sup>7</sup> Resp. Ret. p. 15 (quoting 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987) (emphasis added)).

<sup>8</sup> Resp. Ret. P. 23.

collateral estoppel to apply to a party, the issue must have been (1) actually litigated, (2) directly determined, and (3) necessary to the prior judgment. *Id.* Thus only a party to an action who had a “full and fair opportunity to previously litigate the issue” therein may be collaterally estopped by such action. *Id.* In cursory fashion, the panel mistakenly concluded that Appellants are collaterally estopped from challenging the findings of the Annulment Order, even though they clearly were not parties or in privity with any party to that family court proceeding, nor could they have intervened. *See Ex parte GEICO*, 373 S.C. 132, 138–139, 644 S.E.2d 699, 702 (2007) (holding that a third party does not have standing to intervene in a family court action despite an interest in the validity of the marriage).

It is undisputed that neither Appellants’ nor Brown’s legal interests were determined in the Hynie/Ahmed Annulment proceedings. *See Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998) (holding that “[t]o be in privity a party’s legal interests must have been litigated in the prior proceeding.”) Nor was any finding regarding Brown’s marriage to Respondent included in the Annulment Order. Brown did not attend any hearings, nor is there any assertion that he exerted any control over the legal strategies or theories advanced in the Hynie/Ahmed proceeding. Brown and Respondent’s interests were not even aligned, as Brown had separately sought to terminate his own marriage to Respondent, a proceeding which culminated in a settlement wherein Respondent agreed that she would never even claim to be Brown’s “common law” wife.

In an unpersuasive attempt to evade Appellants’ non-party status, Respondent argues that Brown was somehow in privity with Respondent merely because he paid her legal fees. However, due to the severe legal consequences that flow from collateral estoppel, privity is very strictly construed with respect to issue preclusion. *Wade v. Berkeley County*, 330 S.C. at 317, 498 S.E.2d at 687. The law is crystal clear that the payment of another party’s legal fees does

*not* render one in privity with that party. See Restatement (Second) of Judgments § 39, cmt. c, at 384 (1982). Respondent cites one 1934 Kentucky case in support of her tenuous argument, decided prior to publication of the second series of Restatements, but this case will not overcome strongly worded Fourth Circuit precedent, which, in turn, cites the Restatement (Second) of Judgments on this exact point: “It is not sufficient [for privity], however, that the person merely contributed funds or advice in support of the party, [or] supplied counsel to the party....” *Virginia Hosp. Ass’n v. Baliles*, 830 F.2d 1308, 1313 (4th Cir. 1987) (citing Restatement (Second) of Judgments § 39 comment c, at 384 (1982)); see also *Kunst v. Loree*, 404 S.C. 649, 656, 746 S.E.2d 360, 363 (“South Carolina courts have consistently followed the Restatement (Second) of Judgments with regard to the issue of collateral estoppel.”). Moreover, the idea that payment of some legal fees automatically results in the level of involvement and control required for privity directly contradicts the admonishment in South Carolina Rule of Professional Conduct 1.7, which expressly provides that the mere payment of legal fees cannot confer any right of control over the legal proceedings in question.

Even setting aside that Appellants were not parties or privies to the Hynie/Ahmed Annulment, the issue of whether Ahmed was actually married to another was never “actually litigated” in the Charleston County family court annulment. Even the Supreme Court recognized, *sua sponte*, that the Hynie/Ahmed annulment was “hastily granted.” *Wilson v. Dallas*, 403 S.C. 411, 434 n.16, 743 S.E.2d 746, 759 n.16 (2013) (“Tommie Rae’s request for an annulment from Ahmed was hastily granted by the family court in Charleston County during the pendency of Brown’s separate annulment action against her.”). It is undisputed that Respondent and her counsel ran to the Charleston County family court on December 15, 2003 to obtain a

quickie annulment of the Hynie/Ahmed marriage<sup>9</sup> upon news that Brown would shortly file for annulment (on January 29, 2004) after he learned that Respondent was already married to Ahmed (a fact she concealed from him).<sup>10</sup> In the Hynie/Ahmed annulment proceeding, service of Ahmed was by publication and, unsurprisingly, he did not appear as presumably he had no actual notice of the action. Respondent's uncontested and one-sided annulment hearing was held on April 15, 2004, and the Annulment Order her counsel submitted was signed the very same day.<sup>11</sup> Respondent had asserted several alleged grounds for annulment, supported solely by her unopposed, self-serving hearsay testimony; yet the Annulment Order (prepared by Respondent's counsel) listed and adopted each of these purported grounds by rote.

Despite Respondent's attempt to characterize the annulment as a decision on the merits, the facts remain that Ahmed never appeared, never answered the complaint or otherwise pled, and never participated in any hearing or otherwise defended himself against Respondent's sudden and convenient accusations.<sup>12</sup> There was zero evidence presented at the perfunctory annulment hearing other than Respondent's own self-serving and completely uncorroborated testimony, replete with inadmissible hearsay and double hearsay. These circumstances constitute the very essence of a default judgment to which the doctrine of collateral estoppel also never applies. *State v. Bacote*, 331 S.C. 328, 330 S.E.2d 161, 163 (1998); *Kunst*, 404 S.C. at 649, 746 S.E.2d at 360.<sup>13</sup>

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<sup>9</sup> R. pp. 271–273, Joint Stipulation, Exhibit 5.

<sup>10</sup> R. pp. 349–350, *Id.*, Exhibit 19.

<sup>11</sup> R. pp. 293–313, *Id.*, Exhibits 12, 13.

<sup>12</sup> R. p. 257, *Id.*, ¶ 17.

<sup>13</sup> Respondent fails to support the nonsensical argument that simply because the annulment of a marriage is important, the uncontested annulment proceedings where Ahmed never appeared did not effectively result in a default judgment. Resp. Br. p. 48. Nor can Respondent seriously claim that the annulment order was not a default judgment merely because Respondent did not formally *move* for a default judgment: at the annulment hearing, Respondent's counsel urged the

Nor have Appellants ever been afforded the full and fair opportunity to litigate whether Respondent is the surviving spouse of James Brown. The stakes are far too high for the truth to be hidden behind the “hastily granted” Annulment Order based on nothing more than Respondent’s self-serving hearsay. *Wilson v. Dallas*, 403 S.C. at 434. Thus, even notwithstanding the simple truth that the fundamental requisites for collateral estoppel are not present as to the Appellants in this case, because the doctrine of collateral estoppel is “grounded upon concepts of fairness,” courts always retain discretion to decline to apply it where, as here, it would be highly inequitable and/or thwart the truth-seeking mission of every court. *Bacote*, 331 S.C. at 331, 503 S.E.2d at 163.

Indeed, this Court recently reaffirmed that the public policy against bigamy must outweigh the possible application of collateral estoppel to situations where bigamy is potentially at issue, just as in this case. Respondent misses the irony in her interpretation of *Gary v. Gary*, Op. No. 5563 (S.C. Ct. App. filed May 23, 2018) (Shearouse Adv. Sh. No. 21 at 113), when she accuses Appellants of “bootstrapping” a “bare claim of bigamy” to this case.<sup>14</sup> Thus, Respondent gets the holding of *Gary* entirely backwards. This case presents a straightforward issue of bigamy because Respondent was indisputably married to Ahmed *at the time* she tried to marry Brown in 2001. By contrast, in support of Respondent’s claim of *Ahmed*’s purported bigamy, there is no evidence, no proven facts, and there has been no discovery. There is only a “bare” annulment order containing numerous purported grounds for the annulment. *Gary*

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family court to enter judgment against Ahmed, arguing, “[t]he Defendant, I guess, arguably is in default”. Having obtained the uncontested annulment order she asked for, Respondent cannot now claim that the one-sided findings in that order (which her counsel drafted) were “actually litigated.”

<sup>14</sup> Resp. Ret. p. 37-38.

forcefully instructs that South Carolina's imperative against bigamy requires, at a minimum, actual litigation of Ahmed's alleged bigamy.

Appellants are merely seeking the opportunity to take discovery and present admissible evidence and facts to the court regarding the nature of Respondent's two purported marriages. It is Respondent who seeks to undermine the due process based upon misleading mischaracterizations of her 2004 Annulment proceeding and casting a blind eye to the doctrine of estoppel. What is binding is the "annulled" status of the Hynie/Ahmed marriage as of the date of the family court order, not its purported bigamy finding. The doctrine of collateral estoppel does not and cannot be applied here, where the "truth-seeking mission" of this Court is needed to continue to protect the public policy against bigamy. *Bacote*, 331 S.C. at 331, 503 S.E.2d at 163.

The 2004 Annulment Order is solely binding as to the terminated status of the Hynie/Ahmed marriage as of April 15, 2004, the date of the order. The trial court and panel gravely erred in concluding that all the findings and conclusions in the Annulment Order were preclusive and binding upon non-parties, like Appellants, and in preventing Appellants from taking *any discovery* as to Respondent's uncorroborated claim that her belatedly annulled marriage to Ahmed was bigamous. This Court, however, need not even reach that error, due to the Supreme Court's overriding holding in *Lukich* that the annulment of a first marriage, *for any reason*, after a second marriage cannot revive the bigamous second marriage as a matter of law and public policy.

### **III. LUKICH BARS THE ANNULMENT ORDER FROM HAVING RETROACTIVE EFFECT**

Respondent continues to argue that her second bigamous marriage was not really bigamous because her first bigamous marriage was supposedly bigamous. It is undisputed that at the time Respondent attempted to marry James Brown in 2001, she well knew that she had

previously obtained a marriage license with Javed Ahmed and participated in a marriage ceremony with Javed Ahmed in 1997. When Respondent attempted a second marriage, the critical moment in time under *Lukich*, she had not sought any annulment or divorce of her marriage to Ahmed (but instead, she intentionally concealed her first marriage from Brown and the State of South Carolina). Those facts alone compel one result under *Lukich*: the attempted Hynie/Brown marriage was void under the bigamy statute, because the Hynie/Ahmed marriage had not been “declared void by the sentence of a competent court.” S.C. Code Ann. § 20-1-80.

Respondent’s claim that the Hynie/Brown marriage was valid hinges on one argument: that the bigamy statute does not require a married person to annul her prior marriage *before* marrying again.<sup>15</sup> By taking that counterintuitive stance, Respondent openly contradicts *Lukich*’s central holding, and essentially tries to re-argue the *Lukich* case. However, *Lukich* foreclosed Respondent’s argument. Under *Lukich*’s common-sense, bright-line rule, a first marriage cannot be retroactively annulled, after a bigamous second marriage, in order to revive that second marriage.

Thus, *Lukich* makes clear that Respondent’s attempted marriage to James Brown was void for bigamy and was not resuscitated by Respondent’s *post-hoc* annulment of her first marriage on any ground. According to *Lukich*, South Carolina’s bigamy statute “speaks to the status quo at the time the marriage was contracted, and *does not contemplate either a prospective or a retroactive perspective.*” *Lukich*, 379 S.C. at 592, 666 S.E.2d at 907 (emphasis added)). The Supreme Court rightly concluded that “[a]ny other construction of S.C. Code Ann. § 20-1-80 would lead to uncertainty and chaos”, exemplified here by Respondent’s tortured arguments to arrive at a polar-opposite result. *Lukich*, 379 S.C. at 593, 666 S.E.2d at 907.

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<sup>15</sup> Resp. Ret. p. 14.

In attempting to evade *Lukich* and its practical, common-sense upholding of South Carolina's strong public policy against bigamy, Respondent continues to argue that the unequivocal rule set forth in *Lukich* without any exceptions, applies only to "voidable" marriages, not "void" marriages. *Lukich* says no such thing, and Respondent's mantra that bigamous marriages are void *ab initio* amounts to a distinction without a difference here. All annulled marriages are declared void *ab initio*. *Splawn v. Splawn*, 311 S.C. at 425, 429 S.E.2d at 806 (1993) (there is "no legal distinction between a marriage which is annulled and one terminated by reason of bigamy. Legally, they are both void *ab initio*."). Reflecting this rule, *Lukich* does not distinguish between void and voidable marriages.<sup>16</sup> The Supreme Court refrained from making any distinction between annulments of "void" and "voidable" marriages because the statute contains no such distinction in determining whether a second marriage is bigamous and because the same "uncertainty and chaos" would result from *post-hoc* annulments of a prior marriage, regardless of the alleged grounds for annulment. Instead, the Supreme Court reaffirmed that such a void/voidable distinction would be a "legal fiction": "[i]t would be inconsistent at best to hold that a marriage declared void *ab initio* never existed for bigamy purposes yet can serve as the foundation for a family court's division of property, alimony, and/or child support." *Lukich*, 379 S.C. at 592-93, 666 S.E.2d at 907 (citing *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004)). The undisputed fact that bigamous marriages are void *ab initio* does nothing to alter or alleviate *Lukich*'s concern over the chaotic inability to ascertain a marriage's validity *at the time of marriage* if that were later subject to the parties' choices and legal maneuvering at an indeterminate time, years after that marriage.

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<sup>16</sup> Respondent also argues that the Supreme Court has expressed no view as to whether her marriage to James Brown was void under *Lukich*. While it is true that the *Wilson v. Dallas* opinion contains no indication of a majority opinion on that subject because it was not properly before the Supreme Court at that time, at least one former Justice repeatedly suggested during oral argument that *Lukich* barred Respondent's claim to be the surviving spouse.

subject to the parties' choices and legal maneuvering at an indeterminate time, years after that marriage.

Respondent's disingenuous plea that she should not be asked to re-litigate the circumstances surrounding her first marriage to Ahmed, simply describe a mess of her own making and does not trump well-settled South Carolina law. If Respondent had properly addressed her prior marriage to Ahmed before attempting to marry James Brown, we would not be here. But, having chosen not to do so, Respondent does not get a special exemption from the established South Carolina rule that an annulment order does not have retroactive effect so as to validate a facially bigamous second marriage. If Respondent wanted to rely upon an *in rem* annulment order, then she should have obtained one prior to marrying Brown, instead of concealing her first marriage. Respondent inadvertently concedes this point by asserting that, under South Carolina law, "a bigamous marriage is never valid".<sup>17</sup> Appellants agree, and that is why, under *Lukich*, Respondent was required to annul her marriage to Ahmed *before* attempting to marry Brown: her facially bigamous marriage to Brown could not be retroactively validated years later because "a bigamous marriage is never valid".

Thus, under South Carolina law, the legal capacity to contract a new marriage is not cleared until *after* an annulment order is issued by a competent court. *Lukich*, 379 S.C. at 592, 666 S.E.2d at 907; S.C. Code Ann. § 20-1-80. Here, Respondent actively obtained a marriage license and engaged in a marriage ceremony with Ahmed in 1997.<sup>18</sup> In the five years between her marriage to Ahmed and her attempted marriage to James Brown, Respondent could have

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<sup>17</sup> Resp. Ret. p. 4.

<sup>18</sup> R. p. 256, Joint Stipulation, ¶ 6.

readily obtained an annulment of her first marriage. Instead, she chose to hide her marriage to Ahmed from both Brown and the State of South Carolina.<sup>19</sup>

South Carolina law should not and does not condone or reward such conduct. A person desiring legal marriage has both a legal and moral obligation to ensure that he or she is legally eligible to re-marry *before* attempting to re-marry. This includes, of course, the resolution of any prior marriage *before* undertaking to marry once again. *See Johns v. Johns*, 309 S.C. 199, 202-03, 420 S.E.2d 856, 858-59 (Ct. App. 1992) (noting that even “good faith” will not change this bright-line rule). In the eyes of the law, what matters is that Respondent’s “first marriage shall have been declared void by the sentence of a competent court” *before* she attempted to remarry in 2001. S.C. Code Ann. § 20-1-80.

Respondent badly misstates the holding in *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003), which does not involve the retroactive use of an annulment order to validate a subsequent marriage. At issue in *Joye* was the payment of alimony by a first husband to his ex-wife, who subsequently remarried but then obtained an annulment of that second marriage due to her new husband’s bigamy. The sole issue in *Joye* was “[w]hether [the] annulment *reinstates*” the first husband’s alimony obligations from the date of the annulment going forward. *Id.* at 454, 586 S.E.2d at 133. Thus, nothing in the *Joye* decision stands for the proposition that a post-hoc annulment of a first marriage can be used to retroactively validate a bigamous second marriage, the very argument *Lukich* rejected.

To the contrary, *Joye* firmly contradicts Respondent’s position. First, the Court held that, “regardless of whether” the first husband’s alimony obligation *restarts* from the time of the annulment of the second marriage, there is “no obligation to pay *retroactive* alimony [] for the time period” of the second marriage – strongly confirming the South Carolina rule that an

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<sup>19</sup> R. pp. 329-335, Joint Stipulation, Exhibits 15-16.

annulment of a bigamous marriage does not apply retroactively. *Id.* at 457, 586 S.E.2d at 134. Second, the Court expressly rejected “the void/voidable approach” that Respondents urge here, refusing to adjudicate the case based on “whether the subsequent marriage was [] void *ab initio* or voidable.” *Id.* at 455, 586 S.E.2d at 133.<sup>20</sup> Accordingly, *Joye* held that the first husband was retroactively not bound by the bigamy finding in the order annulling his ex-wife’s remarriage, and was entitled to litigate whether the ex-wife’s second marriage was in fact bigamous. Thus, contrary to Respondent’s distortions, the Supreme Court expressly recognizes well-established law that a third-party may challenge the contents of a prior annulment order to which he or she was not a party. *Id.* at 457, 586 S.E.2d at 134.<sup>21</sup>

Importantly, the case law cited by Respondent only undermines Respondent’s claims. Respondent cites *State v. Sellers*, 140 S.C. 66, 134 S.E. 873 (1926), and *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906), for the proposition that courts are capable of reviewing the validity of multiple marriages at once. That is, of course, exactly what Appellants are seeking and entitled to in this proceeding. It is Respondent who attempts to hijack these proceedings by improperly interposing the Hynie/Ahmed Annulment Order as preclusive and dispositive on all questions, which is flatly contrary to law.

Moreover, Respondent misstates the issues presented in *Sellers* and *Hallums*. First, and importantly here, the *Sellers* Court was concerned about the binding nature of marriage being undercut when court orders are not obtained prior to attempting a subsequent marriage. The concern was rooted in situations similar to the one presented here – groundless annulments based

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<sup>20</sup> Rather, as to the issue of reinstatement of alimony payments, *Joye* instates a “case by case approach,” where the court considers factors including “whether the [wife’s] subsequent marriage was properly annulled.” *Joye*, 355 S.C. at 456, 586 S.E.2d at 134 (citing *In re Marriage of Cargill*, 843 P.2d 1336 (Colo. 1993)).

<sup>21</sup> Respondent admits in her Return that her surviving spouse claim detrimentally impacts Appellants’ unique personal interests.

upon nothing more than the self-serving testimony of people who simply changed their minds. In *Sellers*, the pivotal fact was the putative wife's age, which was easily provable and not disputed. Of course, this case presents the opposite scenario, where the pivotal fact of Ahmed's alleged bigamy is disputed, is not readily provable, and was never demonstrated or even supported by any admissible evidence.

It is also of no small importance that *Sellers* is a criminal case, where the stakes and burden of proof of bigamy are higher. This case is not a criminal case. There is no discussion of punishment, but instead whether Respondent should be rewarded for her concealment and failure to resolve her first marriage before attempting her second marriage.

Second, *Hallums* confirms that there is *no presumption of validity of Respondent's attempted marriage to Brown*. As is the case here, the putative wife in *Hallums* attempted to prove the validity of her second marriage by claiming her first marriage was void *ab initio* due to the alleged bigamy of her first husband. The *Hallums* Court refused to reward her with the status of surviving spouse, noting that, as here, the first husband was not available to defend himself, and refused to declare him to be a bigamist in the absence of any evidence other than the wife's self-serving testimony. The family court that entered the Hynie/Ahmed Annulment Order did what our Supreme Court in *Hallums* refused to do: It declared a man unavailable to defend himself to be a bigamist based upon nothing more than the self-serving testimony of his wife. Yet Respondent takes this unfair factual scenario miles further and now seeks to bind Appellants – strangers to that annulment action – to all the purported findings in the “hastily granted” 2004 Annulment Order without recourse or any semblance of due process.

*Hallums* stands in a long line of cases that forbid what Respondent attempted here, and *Lukich* reaffirms that prohibition by unequivocally holding that annulment orders can never be used retroactively to validate a subsequent marriage.

#### IV. RESPONDENT BEARS THE ULTIMATE BURDEN OF PROOF AS THE INDIVIDUAL CLAIMING SPOUSAL PRIVILEGES.

Respondent's arguments regarding the burden of proof at issue in this matter again attempts to evade the issues by conflating them. The trial court and panel's disregard of established rules governing collateral estoppel and the limited preclusive effect of in rem orders, like the Annulment Order, in no way changes Respondent's burden to prove her central claim in this case: that her 1997 marriage to Ahmed was bigamous.

It is clear that Respondent has the burden of proving she is the decedent's "surviving spouse" in each of her will and trust challenges. See *Byrd v. Byrd*, 279 S.C. 425, 426–27 308 S.E.2d. 788, 789 (1983); *Calhoun v. Calhoun*, 277 S.C. 527, 530, 290 S.E.2d 415, 417 (1982). In this case, however, Respondent's production of a marriage certificate, showing that she and Brown engaged in a marriage ceremony on December 14, 2001, is insufficient to carry that burden of proof. As Respondent still cannot deny, despite her protestations, she *stipulated* that (i) she procured a 1997 marriage license to marry Ahmed, (ii) she participated in a 1997 marriage ceremony with Ahmed, and (iii) her marriage to Ahmed had not been annulled at the time she improperly procured the Hynie/Brown marriage certificate.<sup>22</sup> By asserting that *Appellants* have the burden of proving the validity of the prior *Hynie/Ahmed marriage*, Respondent asks to be relieved from the legal effect of her stipulated facts from the summary judgment record. But Respondent cites no authority, and Appellants are aware of none, to justify ignoring on appeal her stipulated facts that establish a *prima facie* case that Hynie and Ahmed married in 1997.

Ironically, Respondent ignores the Supreme Court's pointed admonition in *Lukich* regarding the "chaos" that would result if subsequent annulment orders were retroactively

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<sup>22</sup> R. p. 256, Joint Stipulation, ¶ 6.

applied to revivify bigamous second marriages, but tries to sway this Court with vague policy arguments about “chaos in the law of marriage”. She erroneously charges Appellants with shifting the burden of proving a marriage’s validity onto those who are married, to distract the Court from the uncontroverted fact that Respondent was secretly already married at the time she tried to marry Brown anyway. As with all her other assertions here, this argument is a straw man. Appellants do not suggest that the burden is on every remarried person to prove the validity of their second marriages to third parties.<sup>23</sup> But in *this* case, the law demands that a party seeking spousal benefits in a probate proceeding be prepared to prove that her admitted first marriage was legally terminated prior to her a purported second marriage with the decedent.

Because the factual stipulations, exhibits and affidavits of record overcome the presumption that the Hynie/Ahmed marriage was dissolved by death or divorce, there is a legal presumption that the Hynie/Ahmed marriage was *valid*. See *Hallums v. Hallums*, 74 S.C. 407, 54 S.E.2d 613, 614 (1906), relied upon in *Yarbrough v. Yarbrough*, 280 S.C. 546, 550, 314 S.E.2d 16, 18 (Ct. App. 1984). As Respondent challenges her marriage to Ahmed on grounds of his alleged bigamy, and has wholly failed to meet her burden of presenting any *admissible* evidence that Ahmed was married to another at the time Respondent married him, her marriage to Brown was void as bigamous. S.C. Code Ann. § 20-1-80; *E.D.M.*, 307 S.C. at 475, 415 S.E.2d at 815; *Yarbrough*, 280 S.C. at 550, 314 S.E.2d 16, 18 (citing 52 Am. Jur. 2d *Marriages*, § 130 (1970)).

The Annulment Order itself cannot serve as evidence of Ahmed’s bigamy because the South Carolina Supreme Court has adopted the holding of *Nipper v. Snipes*, 7 F.3d 415, 416–17 (4th Cir. 1993), and other federal courts, that “judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial.” *Mizell v. Glover*, 351 S.C.

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<sup>23</sup> Resp. Br. p. 71.

392, 402, 570 S.E.2d 176, 181 (2002).<sup>24</sup> Indeed, Respondent tacitly concedes that her sole basis for trying to admit the Annulment Order's findings as evidence in this case is her erroneous assertion that the Order's findings are "legally binding" on Appellants.<sup>25</sup> But because that assertion is based on multiple reversible errors, as discussed above at Parts II.B-C. Respondent has no grounds for citing the Annulment Order as evidence to contradict her conclusive stipulations admitting to her 1997 marriage to Ahmed.

The lower court therefore made a fundamental error of law in mis-assigning the burdens of proof.<sup>26</sup> Notwithstanding that *Lukich* is already dispositive of this issue, because Respondent had the burden of proof, and the Annulment Order is incompetent as evidence of Ahmed's bigamy, the trial court should have granted summary judgment to Appellants because the Annulment Order was the *only* purported "evidence" presented by Respondent to support her bigamy allegations. See *Fairfield County Sch. Dist. Bd. of Trs. v. State*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014); *Hancock v. Mid-S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009).

### CONCLUSION

Despite the serial digressions and distortions in Respondent's brief, Respondent cannot avoid the bedrock legal principles that dispose of her spousal claim. *First*, Respondent's attempted 2001 marriage to Brown was bigamous on its face due to her 1997 marriage to Ahmed and cannot be retroactively revived by her 2004 annulment of her prior marriage. Under the bright-line rule emphasized by the Supreme Court in *Lukich*, Respondent's after-the-fact 2004 annulment of her first marriage has no retroactive application or effect, so as to resuscitate her

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<sup>24</sup> Respondent's disingenuous argument that Appellants refute the collateral estoppel effect of the Annulment Order based on *Nipper* is yet another strawman mischaracterization with no basis.

<sup>25</sup> Resp. Ret. p. 10.

<sup>26</sup> R. p. 96, MSJ Order, at p. 44.

facially bigamous second marriage. *Second*, even apart from *Lukich*, the 2004 Annulment Order's finding of Ahmed's supposed bigamy is not binding on non-parties to the 2004 Annulment Action, including James Brown and Appellants, under our longstanding rules governing collateral estoppel and the limited preclusive effect of *in rem* judgments. Thus, in the unlikely event that *Lukich* does not resolve this entire case, Appellants, who were not and could not have been parties to the 2004 Annulment Action, are fully entitled to litigate the question of Ahmed's alleged bigamy, which has never been actually litigated and for which to this day Respondent has presented and has no admissible evidence. The fundamental requirements of due process cannot abide Respondent's extreme position that no court or party can ever challenge her self-invented claim to be Brown's surviving spouse, even though she had concealed her marriage to Ahmed and her attempted marriage to Brown was clearly bigamous - all in violation of strong South Carolina public policy.

Respectfully submitted,

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August 29, 2018

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

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850  
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 29, 2018, s/he has caused a copy of the  
**APPELLANTS' REPLY IN SUPPORT OF PETITION FOR REHEARING AND  
SUGGESTION FOR REHEARING EN BANC** to be served upon all parties of record by  
mailing a copy of the same addressed as follows:

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