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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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NOV 28 2018
S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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NOV 28 2018
S.C. SUPREME COURT

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.

RECORD ON APPEAL – VOLUME I

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
)	
HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; DARYL J. BROWN, on behalf of his minor children, L D B and J. V. B DEANNA J. BROWN THOMAS, on behalf of her minor children, J B L YAMMA N. BROWN, on behalf of her minor children, S L C. L , and T B VANISHA BROWN; and LARRY BROWN; TOMMIE RAE HYNIE BROWN)	Case No.: 08-CP-02-1647 - original (Case No.: 07-CP-02-0122) - cert. copy. (Estate of James Brown) (Case No.: 08-CP-02-00872) - cert. copy (Wills/Trust/Heirs Matter)
Petitioners,)	**ORDER APPROVING SETTLEMENT AGREEMENT**
- vs-)	FILED 5-26-2009 Liz Godard C.C.C.P.&G.S. Anita Knoepke 9:45 AM Deputy Clerk
RUSSELL L. BAUKNIGHT, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, TERRY BROWN, ROMUNZO BROWN; FORLANDO BROWN; CINNAMON N.M. PARIS; LARHONDA PETITT; and JEANNETTE MITCHELL)	STATE OF SOUTH CAROLINA COUNTY OF AIKEN I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this MAY 26 2009 Liz Godard C.C.C.P. & G. S., Aiken County, S.C. Anita Knoepke Deputy Clerk
Respondents.)	
In Re:)	
The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000)	

This matter comes before the Court on a Motion for Approval of Settlement Agreement. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

DAE #1

on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. The following counsel appeared at the hearing related to the Motion for Settlement Approval: (1) Louis Levenson, counsel for Deanna J. Brown, Larry Brown, Yamma N. Brown, individually and on behalf of her minor children S and C , Vanisha Brown, Daryl J. Brown, individually and on behalf of his minor children child J. V a B L D B , J B L and T B , (2) Robert N. Rosen, S. Alan Medlin, T. Heyward Carter, David L. Michel, M. Jean Lee, Andrew W. Chandler, and F. Patricia Scarborough, counsel for Tommie Rae Hynie Brown; (3) Tressa Hayes and James D. Bailey, counsel for Adele J. Pope and Robert L. Buchanan, Jr., (4) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (5) Stephen M. Slotchiver, Guardian ad Litem for J B II; (6) David B. Bell and Matt Bodman, counsel for Terry Brown, Forlando Brown, and Romunzo Brown; (7) C. Havird Jones, Jr., J.C. Nicholson, III, and Mary Frances Jowers, on behalf of the South Carolina Attorney General; (8) R. Wayne Byrd, counsel for Albert Dallas and Alfred Bradley; (9) James M. Griffin, counsel for LaRhonda Petitt and Cinnamon Paris; (10) Fred L. Kingsmore, Jr., counsel for Russell Bauknight; (11) Jan L. Warner and Max Pickelsimer, counsel for David Cannon; (12) William Barr, counsel for Jeanette Mitchell; (13) Sonja R. Tate, counsel for Albert Dallas; and (14) Kaymani D. West, counsel for Greenberg Traurig and Joel Katz.

I. Statement and History of the Case

A. Facts and Procedural History

This matter arises out of the Estate of James Joseph Brown, Jr. Mr. Brown died on December 25, 2006, a resident of Aiken County, South Carolina. Mr. Brown's will, dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. His will

DAE #2

nominated three individuals as Personal Representatives, and they were appointed by the Probate Court by Order dated January 18, 2007: Albert H. Dallas, David G. Cannon, and Alfred A. Bradley. These same individuals were appointed Trustees of the Trust by the express terms of the Trust.

Mr. Brown's will named six children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown (collectively "named children"). Mr. Brown left "all [his] personal and household effects of every kind . . ." to these named children in equal shares per stirpes. All of the named children were alive at the time of Mr. Brown's death. Mr. Brown left the remainder of his Estate to the Trust created under his Irrevocable Trust Agreement dated August 1, 2000. The will provided that the remainder of his Estate would go to the Trust as a pour-over devise.

Mr. Brown's Irrevocable Trust Agreement created two trusts: the Brown Family Educational Trust and the James Brown "I Feel Good" Trust. The Brown Family Educational Trust provides for income to be paid for the benefit of each then-living grandchild who has not reached the age of thirty-five (35) for his education and related expenses. Upon termination of the Family Trust, the balance would be added to the "I Feel Good" Trust. The "I Feel Good" Trust is for the "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions in the State of South Carolina and Georgia." In addition to the three appointed Trustees, the Trust created an Advisory Board of three initial members. The Trust describes the powers of the Trustees, including the power to allocate up to 50% of the gross income from the Trust for the payment of administrative and managerial expenses. The

DAE #3

Trust provides for Trustee Succession. If the Trustee resigns, the Trust provides that he appoint a successor, or upon failure of that, the successor shall be determined by unanimous vote of the advisory board then existing. Failing this, the Court having jurisdiction shall select the successor Trustee. The Trust included a Schedule A listing initial funding of the following: (1) Fifty Dollars ($50.00); (2) all ownership in James Brown Enterprises, Inc.; and (3) ownership of Mr. Brown's primary residence at 430 Douglas Drive, Beech Island, South Carolina.

Mr. Brown's will was admitted to informal probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the Court of Common Pleas. From this time forward, the Aiken County Probate Court continued to remove all matters filed in this Estate to the Court of Common Pleas.

On February 1, 2007, Tommie Rae Hynie Brown filed a Petition for Elective Share or Omitted Spouse's Share, asserting she is the widow of Mr. Brown. She and Mr. Brown were married on December 14, 2001, in Beech Island. She had previously been involved in a putative marriage ceremony with Javed Ahmed on February 17, 1997, in Texas. Mrs. Brown subsequently brought an action to annul her marriage to Ahmed, and the Charleston County Family Court found her marriage to Ahmed void *ab initio* by Order dated April 15, 2004. Among other conclusions, the Court found that Mr. Ahmed was married at the time he entered into his marriage with Mrs. Brown, and therefore he lacked capacity to marry her.

The six named children filed an Emergency Petition for Termination of Appointment of and Removal of Personal Representatives on January 24, 2007. On February 1, 2007, Tommie Ray Hynie Brown filed an Emergency Petition for Appointment of Special Administrator. The Court held a hearing on these Petitions on February 9, 2007. By Order dated February 20, 2007, the Court denied the Petition for Removal of the Personal Representatives and granted the

CAE
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Petition for Special Administrator. By Order filed March 12, 2007, the Court appointed Adele J. Pope and Robert L. Buchanan, Jr., as Special Administrators. At that time, the Special Administrators' duties were limited and included the power to "monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same." By Order filed June 25, 2007, the Court granted the Special Administrators "complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust and all trusts created thereunder, and all Brown Entities or Interest, however titled."

In addition to the six named children, several other individuals have appeared and claimed rights as children of Mr. Brown: (1) J. B (2) Cinnamon Nicole Parris; (3) LaRhonda Petit; and (4) Jeannette Mitchell. J. B seeks his rights as a pretermitted child, having been born on , 2001, after Mr. Brown wrote his will. Steven Slotchiver was appointed Guardian ad Litem for J. B by Order filed June 13, 2007. J. B filed a Petition for Adjudication of Paternity on August 24, 2007. LaRhonda Petitt filed an action on August 23, 2007. Cinnamon Nicole Parris filed an action on September 21, 2007. Jeannette Mitchell filed a motion on April 21, 2008.

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives and one or more of the Trustees. A hearing was held on this Motion on August 10, 2007. At the hearing, David G. Cannon resigned as Personal Representative of the Estate, Trustee of the Brown Trusts, and as director, officer, agent, and/or fiduciary of any kind as to

DAE #5

Mr. Brown, the Estate, the Brown Trusts, and all Brown Entities (except Seventh Decade Productions). Dallas and Bradley remained Personal Representatives and Trustees.

The Court held a hearing on September 24, 2007. At the hearing, the Court heard issues related to David Cannon's obligation to account to the Court. The Court found Cannon in contempt by Order filed October 2, 2007. A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007. By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay $373,00.00 as ordered, and for amending tax returns on behalf of Brown entities after being ordered to give up authority in regard to the Brown entities and for deliberately disobeying the order of this Court. The Court ordered him to confinement with the South Carolina Department of Corrections for six months, though he could purge himself of the confinement by payment of the $373,000.00, payment to the court of $50,000.00 to be applied towards various parties' attorney fees, and a fine of $10,000.00. Cannon appealed this Order, and as of the date of the present Order, the appeal is still pending.

The South Carolina Attorney General appeared at the hearing on September 24, 2007, and requested to intervene to enforce and protect the funds given or appropriated to any charitable trust created by the will or Trust of Mr. Brown, or any other assets of the Estate which may be impressed with a charitable trust. The Georgia Attorney General also appeared and requested to intervene. By Order filed October 11, 2007, the Court granted the Motions to Intervene. The South Carolina Attorney General continues to remain involved in the case. The Georgia Attorney General is no longer participating in the action, as discussed below.

At the hearing on November 20, 2007, Alfred Bradley and Albert Dallas submitted their resignation as Personal Representatives of the Estate and Trustees. By Order dated November

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20, 2007, the Court accepted their resignations, and immediately appointed Buchanan and Pope to serve as Personal Representatives and Trustees. The Court did not consult the Advisory Board regarding their appointment. By Motion dated November 30, 2007, Dallas and Bradley moved the Court to vacate its Order accepting their resignations, arguing the Court did not have authority to accept the resignations or authority to appoint Pope and Buchanan as Trustees. The Court heard this matter on February 20, 2008, and denied Dallas and Bradley's Motion by Order filed March 7, 2008. Dallas and Bradley appealed, and as of the date of the present Order, the appeal is still pending.

On December 20, 2007, Tommie Rae Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six named children (all but Terry Brown)[1] filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

On January 4, 2008, the Court held a hearing on the Motion for Recusal filed by Dallas and Bradley. By Order filed February 20, 2008, the Court denied this Motion.

The Court held a hearing on February 7, 2008. At that hearing, the Court granted the motion of the Levenson clients to revoke the pro hac vice admission of the Georgia Attorney General, though no written Order has been issued on this matter. The Georgia Attorney General became involved in this matter based on an understanding of the Trust that only students in South Carolina and Georgia qualify for benefits under the "I Feel Good" Trust. However, a careful reading revealed that students can be from anywhere; the only limitation is that they desire to attend a school in South Carolina or Georgia. The Court found that the South Carolina

[1] The six named children, and their children who are Mr. Brown's grandchildren, were all originally represented by Louis Levenson. David Bell was substituted as counsel for Terry Brown, Forlando Brown, and Romunzo Brown.

DAE #7

Attorney General was the appropriate party to adequately protect the interests of the charitable beneficiaries because the trust situs is in South Carolina.

Also arising out of the hearing on February 7, 2008, the Court issued an Order filed February 25, 2008, allowing the PR/Trustees to sell Mr. Brown's tangible personal property and his home in Beech Island. The PR/Trustees desired to sell the personal property through an auction, and hired Christie's Auction House to conduct the sale. Over objection by other counsel, the Court allowed the sale of personal property.

The Court held a hearing on March 7, 2008. At the hearing, the Court heard arguments on the Attorney General's Objection to the Appointment of Pope and Buchanan as Personal Representatives and Trustees, filed December 14, 2007. The Court heard testimony from Pope, Dallas, and Bradley in connection with the Objection. The Court overruled the objection by Order filed April 10, 2008. The Attorney General filed a Motion to Alter or Amend this Order on April 24, 2008, and subsequently, by Motion dated June 18, 2008, asked the Court to hold the Motion to Alter or Amend in abeyance. This request was based on the fact that the Motion relates to the appointment of successor Trustees, and the pending appeal of Dallas and Bradley also relates to the appointment of Trustees and its outcome may make the Motion moot. Because of the request to hold the matter in abeyance, the Court has not ruled on the Motion to Reconsider.

By Order filed March 10, 2008, the Court required service by publication of the Summons and Order in the case caption 07-CP-02-1222. The Notice was published in the Aiken Standard on April 19 and 26, 2008, and May 3, 2008. The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to

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rights under state and federal laws." No additional parties have appeared as a result of the publication.

On August 10, 2008, the following parties participated in an informal mediation: Tommie Raye Hynie Brown; the named children and grandchildren represented by Louis Levenson; and the South Carolina Attorney General. The parties reached a settlement which was reduced to writing and signed by all of the participating parties.

At the hearing on August 19, 2008, the parties reported the partial settlement to the Court during an in-chambers conference. The parties also reported in open court that they had reached a resolution among themselves. At that time, the parties did not disclose their signed settlement document.

On September 29, 2008, the South Carolina Attorney General filed a Petition for Removal and Restraint of Trustees, asking that Dallas and Bradley be removed as Trustees, in the event they are Trustees. On November 7, 2008, the Attorney General and the other settling parties filed an Amended Petition for Removal and Restraint of Trustees Dallas, Bradley, and Cannon, and PR/Trustees Pope and Buchanan. The Court has not heard this matter pending the settlement approval. Also on November 7, 2008, the settling parties filed an Emergency Petition for Appointment of Special Administrator and Special Trustee.

During the pending settlement, Pope and Buchanan have filed numerous pleadings in the matter, including the following which were filed in addition to their Responses and Returns to other matters: (1) Motion for Partial Summary Judgment, dated September 12, 2008; (2) Supplemental Motion to Dismiss All "Spousal" Claims of Tommie Rae Hynie Brown, dated September 12, 2008; (3) Motion to Dismiss all Causes of Action to Set Aside the James Brown 2000 Irrevocable Trust, dated September 15, 2008; (4) Motion to Dismiss, dated October 9,

DAE #9

2008; (5) Motion to Intervene and Dismiss, dated October 24, 2008; (6) Motion to Dismiss Robert L. Buchanan, Jr. and Adele J. Pope as Individual Parties, dated November 14, 2008; (7) Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008; (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008; (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009; (10) Motion to Alter or Amend Judgment, dated January 14, 2009; (11) Motion for Partial Summary Judgment, dated January 20, 2009; (12) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust; the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid; and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel; and Petition for Mandatory Guidance under section 62-7-932(D), dated February 23, 2009; (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009; (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009; and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009.

In addition, they also filed numerous affidavits after the settlement was announced to the Court, including the following; (1) Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope Supporting Demand for Due Process Hearing and Related Relief, dated November 24, 2008; (2) Joint Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated January 20, 2009; (3) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in Support of Injunction and Damages for Intentional Interference, dated February 17, 2009; (4) Joint Affidavit of Robert L. Buchanan, Jr.

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and Adele J. Pope, dated February 19, 2009; (5) Affidavit of Adele J. Pope Opposing Removal of PR/Trustees Buchanan & Pope; Denying Emergency; Supporting Stay and Proper Joinder Supporting Proper Notice of Hearings; Supporting Order Compelling parties to Appeal with records to Testify; and Seeking Ruling Under S.C. Trust Code section 62-7-932(D) Related to Principal and Income Charges Under Will/Trust *In Terrorem* Clauses, dated February 23, 2009; and (6) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope as PR/Trustees Supporting Emergency Motion for Appointment of Special Administrator and Special Trustee with Full Authority to Manage, Preserve and Protect Assets of the Estate of James Brown, the James Brown 2000 Trust, James Brown Enterprises, Inc. and other Brown Entities pending final resolution of all formal testacy/resignation/removal/appointment matters and challenges to the validity of the James Brown 2000 Trust.

The Court held a hearing on November 25, 2008, and at that time the settling parties disclosed the terms of the settlement on the record and reported they were ready to move forward with a hearing to approve the settlement. The Court scheduled a hearing for settlement approval on January 30, 2009. The Court continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009.

By Order filed January 7, 2009, the Court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case." Ms. Pope and Messrs. Buchanan, Dallas, and Bradley appealed the Court's January 7, 2009 order to the Court of Appeals. The appeals were dismissed.

At the hearing on January 30, 2009, the settling parties reported that Terry Brown had joined the settlement. Thus, all beneficiaries of the Brown Estate/Trust were part of the

BAE #11

settlement agreement. The settlement agreement does not include Cinnamon Parris, LaRhonda Petitt, or Jeannette Mitchell. However, those parties each stated they have no objection to the settlement, pursuant to a stipulation with the settling parties that the settling parties do not intend for the settlement to in any way impact or affect their rights.

B. Related Litigation

While the above actions have been pending, there are numerous collateral matters pending in other jurisdictions. Forlando Brown sued Pope and Buchanan in South Carolina District Court on January 2, 2008. As a grandchild and beneficiary of the Family Educational Trust, Forlando Brown contends in the action that he has not received the scholarship money he is entitled to. His allegations against Pope and Buchanan include the following: (1) that they have irreconcilable conflicts of interest; (2) that they have breached their fiduciary duties; and (3) that they have disregarded the terms of the Trust. He seeks removal of Pope and Buchanan and injunctive relief. This action remains pending in the district court.

The CORBIS litigation is pending in Illinois. This action involves claims brought by Mr. Brown during his life for violation of rights of publicity, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, and a claim for profiteering on the name and likeliness of Mr. Brown without his consent based on CORBIS' sale and offering for sale over the internet of Mr. Brown's photographs for commercial purposes. There is a pending settlement in the CORBIS litigation, and on March 24, 2008, Buchanan and Pope brought an action against the South Carolina Attorney General in Aiken County, asking the Court to approve the terms of the CORBIS settlement agreement.

The Pullman litigation is pending in New York. During his life, Mr. Brown sued the Pullman Group when he was unable to secure a loan from the Royal Bank of Scotland using

DTE #12

future song royalties as collateral because Pullman Group claimed it had exclusive authority to broker the transaction. The Pullman Group filed a counterclaim, and this action remains pending against the Estate.

On April 6, 2009, Jacqueline Hollander filed an action in the Northern District of Illinois against Pope, Buchanan, and the State of South Carolina. She seeks a finding that she and Mr. Brown were partners and the "I Feel Good" Trust was an extension of the partnership, which she owns as the surviving partner.

C. Synopsis of Settlement Agreement

The settlement agreement dated August 10, 2008, and amended and restated on March 3, 2009, was entered into by and among Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, J B , Larry Brown, individually and on behalf of his minor child J B L B Venisha Brown, Deanna J. Brown, J B L , Yamma N. Brown, individually and on behalf of her minor children, S I and C L , Daryl J. Brown, and T B , and Terry Brown (the "Settling Parties").

The salient points of the settlement agreement are as follows:

1. The purpose of the agreement was to settle any and all differences among the settling parties concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and of substantial significance, to come together as a family to honor the legacy of Mr. Brown.

2. The settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement.

DAC #13

3. Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse.

4. The children and grandchildren who are parties to the agreement were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life and at the time of his death, and qualify as his surviving issue. No DNA testing will be required of any child or grandchild who is a party to the agreement.

5. A professional fiduciary will replace Robert Buchanan and Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown.

6. A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable. The South Carolina Attorney General will have sole authority to select, remove, and replace the Trustee who will manage the Charitable Trust. The children and Tommie Rae shall each be empowered to select a trustee from whom the managing trustee will seek input and advice.

7. The settling parties will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination

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rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to royalty, persona, image, likeness, royalties etc. (collectively, the "James Brown Assets"). The parties will divide any and all such assets and/or proceeds, and maintain beneficial ownership interests in the settlement entity, in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) a net 47.5% to the Charitable Trust; (2) a net 23.75% to Tommie Rae, which includes any share attributable to J. B (by agreement between Tommie Rae and the Guardian ad Litem for J. B , he will receive a 4.79% interest in the settlement entity to be held in trust and the remainder interest in another 4.79% interest in the settlement entity to be held in trust); and (3) a net 4.79% interest in the settlement entity to each of the children who are settling parties (with the exception of J. B who is provided for as discussed above). The Charitable Trust retains a 50% voting and control interest in the Settlement Entity, and the named children and Tommie Rae Brown (including any share attributable to J. B) shall each retain a 25% voting and control interest. Tommie Rae waives any spousal right she may have to such assets to the extent that they might otherwise exceed her interest in the settlement entity. The children waive any rights to the Brown Assets to the extent that they might otherwise exceed their interests in the settlement entity.

8. All settling parties waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were in good faith and with probable cause.

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9. The promissory note and security deed currently due from the parties represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

10. Terry Brown will receive an exclusive due diligence period of six months during which he can market the assets of the Estate and a Right of First Refusal that terminates in 10 years. However, the settling parties do not have to agree to sell any or all of the assets and a 2/3 majority is required to do so.

11. A trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the Charitable Trust.

12. Any and all will and trust contests will be dismissed.

13. The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from the date of the agreement, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying expenses of relocation. The settling parties shall all have reasonable opportunities to visit privately the

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gravesite upon reasonable notice. The parties waived any right to otherwise direct the location of the gravesite as a result of their status under law.

II. Findings of Fact and Conclusions of Law

A. Parties, Notice, and Jurisdiction

For several reasons, I find that the interested parties have been properly notified, given an opportunity to be heard, afforded all appropriate due process rights, and thus appropriately represented at the hearing to approve the settlement. Ms. Pope and Mr. Buchanan claim a lack of notice. The notice for the hearing commenced on January 30, 2009, was provided on December 5, 2008, in advance of the time required under any applicable rule. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. Because these dates involved the conduct of the same hearing commenced on January 30, 2009, notice was proper.

1. The settling parties' agreement does not impact rights other than their own. Thus, assuming arguendo that there were interested persons in the Estate of James Brown who were not properly notified and given an opportunity to be heard (although there are none), their lack of participation in the hearing, assumed for the sake of argument, would not affect the ability of this Court to approve the settlement.

South Carolina Probate Code (SCPC) section 62-3-912 recognizes that parties may enter into a private settlement agreement without court approval. The agreement may be among fewer than all persons interested in an estate. Moreover, that section requires personal representatives to honor the terms of the private settlement and to continue the administration of the estate for the benefit of those who are not parties to the settlement. By requiring the personal representatives to both honor the settlement and to continue administering the estate for those

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successors who are not parties to the agreement, section 62-3-912 evidences the legislative intent to recognize as valid settlements among some but not all of the successors to an estate. Moreover, the parties to the settlement agreement are all successors to the Estate. SCPC section 62-1-201(42) broadly defines "successors" to include "those persons, other than creditors, who are entitled to property of a decedent under his will or this Code." The charitable successors are properly represented by the Attorney General of South Carolina, as discussed below.

SCPC sections 62-3-1101 and 62-3-1102, authorizing a court to approve a settlement agreement, also recognize the validity of a settlement by fewer than all parties. Section 62-3-1102 requires that the settlement be signed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. As with section 62-3-912 discussed above, section 62-3-1102 thus recognizes that a settlement agreement may be effectuated by fewer than all the interested persons in an estate; only those whose interests will or may be affected by the settlement must be signatories.

Section 62-3-1102 also provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto a settlement presented to the court for approval. Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,[2] it provides that a fiduciary who is not a

[2] The ability of a fiduciary to agree to be a party to a settlement is recognized in *University of Southern California v. Moran*, 365 S.C. 270, 617 S.E.2d 135, (Ct. App. 2005), providing that when a trustee joins in the execution of a settlement agreement, a trust beneficiary, although given the opportunity to notice and to be heard, cannot veto the settlement. *Moran* does not apply to the matter *sub judice*, which deals with a different situation: the fiduciary did not join in the execution of this settlement agreement. In the case *sub judice*, section 62-3-1102 clearly provides that, because the fiduciaries did not join in the settlement agreement, this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement.

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party to the settlement can be directed by the court to execute the agreement after it is approved by the court.

2. Even though fewer than all interested persons can enter into a private settlement agreement and a court can approve such an agreement, all necessary parties are represented in this matter.

The SCPC provides that personal representatives and trustees represent and bind their beneficiaries for purpose of notice and hearing. See SCPC sections 62-1-403, 62-7-301, and 62-7-303.

Ms. Pope and Mr. Buchanan, the personal representatives of the Estate, were appointed to represent any successor of the Estate, whether by any valid will of Mr. Brown or by intestate distribution. Thus, any successor who would take from the probate estate of Mr. Brown would be properly represented by Ms. Pope and Mr. Buchanan, who do not have a conflict of interest with any of the successors.

Similarly, any beneficiaries of the 2000 Irrevocable Trust, if valid, would be represented by Ms. Pope and Mr. Buchanan as trustees of that trust. Any beneficiaries of the 1999 Revocable Trust, if valid, would be represented by Messrs. Bradley, Cannon, and Dallas as trustees of that trust who participated in the settlement hearing.

There can be no other successor or beneficiary with an interest in the Estate of James Brown or in the 2000 Irrevocable Trust or the 1999 Revocable Trust. Any successor or beneficiary of the Estate or those trusts were represented by the appropriate fiduciaries. Moreover, minor children of the settling parties were also properly represented by their parents

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who executed the agreement, and any charitable beneficiaries of the Estate and trusts were also properly represented by the South Carolina Attorney General.[3]

3. In addition to the notice and opportunity to be heard afforded by the representation discussed above, I find that any interested person also received notice and an opportunity to be heard pursuant to the publication of notice directed by order of this Court filed on March 10, 2008, as discussed above.

4. It is clear that the Attorney General in his *parens patriae* capacity has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. See *South Carolina Dep't of Mental Health v. McMaster, et al.*, 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); and *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

[3] Ms. Pope and Mr. Buchanan contend that notice and hearing opportunities should have been afforded Salkehatchie, Voorhees, and USC Aiken as beneficiaries of the 1999 Revocable Trust and to the members of the advisory board they attempted to appoint in their capacities as trustees. If these parties were interested, they were represented as discussed above. However, none of these three institutions of higher learning nor the advisory board members are interested persons. The colleges are not the beneficiaries of any trust; as noted by Mr. Buchanan in his testimony, it is the students who would attend those schools who are the beneficiaries, and they are already represented as discussed above. (If those three colleges would have to be parties to any action involving the 1999 trust, then by extension every educational institution in South Carolina and Georgia would have to be parties to any action involving the 2000 trust.) The advisory board members have no beneficial interest in the trust.

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It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with "special interests"] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office's lack of resources to be in all charitable trust cases. See Bogert *Trusts and Trustees* § 411 - "The attorney general as the protector, supervisor and enforcer of charitable trusts." However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take charge and control that portion of the litigation which relates to the charitable trust. *Kolin, et al. v. Leitch, et al.*, 99 N.E.2d 685, 687 (Ill. 1951). As previously stated, the South Carolina Attorney General's Motion to Intervene in this matter was granted by Order filed October 11, 2007.

This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation.[4] See *Sarkeys v. Independent School Dist.*, 592 P.2d 529 (Okla. 1979).

In *Sarkeys*, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General. Settlor's descendants appealed. The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case. Similarly in *Application of Schlussel*, 89 N.Y.S.2d

[4] See 81 A.L.R. 124 (with updates, originally published in 1932), citing *Cooley v. South Carolina Tax Comm'n*, 204 S.C. 10, 28 S.E.2d 445 (1943) and *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E.2d 116 (1908), at page 7: The general authority of the attorney general, at common law under the various constitutional and statutory provisions, to compromise or settle disputes in litigation in which the state is an interested party, and to direct dismissal of the proceedings, so far at least as the public interest is concerned, provided there is doubt and an honest dispute as to the state's rights and the compromise or settlement is a bona fide one, is well settled.

47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement: "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]." Also see *In Re Estate of Smith*, 349 N.Y.S.2d 281 (N.Y. Surr. Ct. 1973), appeal dismissed, 355 N.Y.S.2d 994 (N.Y. App. Div. 1974), appeal denied, 321 N.E.2d 555 (N.Y.) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection; rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries; observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled; nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift"; noting that failure to settle risked charities ending up with nothing; observing that settlement of cases is desirable; holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case.).

Therefore it is for the Attorney General, as the officer charged with the duty of protecting charitable beneficiaries, to exercise his discretion as to the appropriateness of a settlement. It is the responsibility of this Court in reviewing the record to determine if the Attorney General acted in good faith entering into this compromise agreement. Factors to be considered by the Court include whether the Attorney General has given careful consideration to his decision with relation to the compromise and whether the Attorney General's decision is based upon solid legal judgment and a full consideration of all the facts and circumstances available. It would be appropriate for the Attorney General to include in his review whether there was a possibility that the final outcome of this litigation was in doubt and the continued expense to the charitable trust

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by additional litigation. See *In Re Estate of Smith*, supra at 283-4. These factors for my consideration are subsumed in the requirements of section 62-3-1102 that the settlement be in good faith and that it is just and reasonable. Therefore I find that the Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to compromise and settle such interests where appropriate.

B. Standard for Approving Settlement

South Carolina Probate Code section 62-3-1102 provides that the Court shall approve the settlement and direct the fiduciaries to execute the agreement if it: (1) finds the contest or controversy is in good faith, and (2) the effect of the agreement on interested persons is just and reasonable.

1. Good faith controversy

Based on the history of matters involving the Estate and other issues related to James Brown, I find that it is incontrovertible that a good faith controversy exists. Any of the factors discussed hereinafter could constitute grounds for finding that a good faith controversy exists. The cumulation of these issues creates an overwhelming set of grounds for finding that a good faith controversy exists. Some of the more salient issues are as follows:

a. The Levenson clients and Tommie Rae Brown brought actions to contest the 2000 Will and the 2000 Irrevocable Trust. Although the contestants raised other reasons for the contest, a compelling argument was that Cannon, Dallas, and Bradley unduly influenced Mr. Brown into executing those documents. Without deciding whether the undue influence argument has merit, I find that argument certainly has a foundation in good faith. The 2000 Trust names Cannon, Dallas, and Bradley as trustees. The 2000 trust authorizes the trustees to expend up to

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50% of gross income for management expenses.[5] Based on testimony from Ms. Pope and Mr. Ruff, the estate planning expert presented by Ms. Pope and Mr. Buchanan, such a provision is unprecedented, especially in a charitable trust. On behalf of the estate and trust, Ms. Pope and Mr. Buchanan have brought an action against Messrs. Cannon, Dallas, and Bradley, alleging inter alia that Messrs. Cannon, Dallas, and Bradley practiced undue influence on Mr. Brown and used various entities controlled by them to syphon off his assets, effectively under the guise of management expenses. Ms. Pope testified that Mr. Cannon told her he could get half of Mr. Brown's estate, if he wanted.

Moreover, the voluminous file of the drafter of the 2000 will and trust (and of the 1999 will and trust), Mr. Herring, is in evidence. That file contains a blank deed apparently signed by Mr. Brown and witnessed. There is no valid reason to create such a document, and its existence certainly adds additional credence to the argument against the validity of any document prepared for Mr. Brown by Mr. Herring. Upon questioning, Mr. Buchanan could testify to the existence of only one document that may be in that voluminous file that possibly represents direct correspondence between Mr. Herring and Mr. Brown. There is evidence in the file that Mr. Herring and Mr. Cannon are good friends.

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable. Mr. Herring is in jail for murder. The accuracy and veracity of the testimony in this matter by Messrs. Cannon, Dallas, and Bradley is suspect and at times

[5] Whether the 50% provision would be valid, in light of the charitable savings clause language in the trust, is irrelevant to the issue of undue influence. The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 will and trust that the 50% provision would be enforceable. Assuming they did, otherwise why would a known invalid provision be included, that could be evidence of undue influence.

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contradictory. For example, Mr. Dallas testified that he signed a stipulation presented to this Court knowing it to be false because he did not want to lose his position as fiduciary. This is an astonishing admission that he did and would lie to this Court to protect his position as a fiduciary. The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims.

If the 2000 will and trust were found to be invalid for undue influence, and the issue of whether the 1999 will and trust were valid was then raised, the same arguments as above could be asserted against the validity of the 1999 will and trust, and that controversy would also be in good faith.

In her testimony, Ms. Pope asserted that the case of *Russell v. Wachovia Bank, N.A.*,[6] was controlling. That case is not controlling. The issue before this Court is whether the proposed settlement agreement is the result of a good faith controversy and whether the agreement is just and reasonable. There was no settlement agreement in *Russell*. The gist of the *Russell* case was whether a federal appellate court judge still sitting on cases until a few weeks before his death was the victim of undue influence practiced by family members. The circumstances of Mr. Brown's execution of the 2000 will and trust documents are not the same as in the *Russell* case.

b. In addition to the controversy over the validity of any will and trust executed by Mr. Brown, a good faith controversy exists over what property if any was funded into the 2000 trust and what property if any would pass through the probate estate pursuant to the 2000 will.

[6] 370 S.C. 5, 633 S.E.2d 722 (2006); 353 S.C. 208, 578 S.E.2d 329 (2003).

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Testimony demonstrates that records that would adequately prove the provenance of any trust or probate assets are either non-existent or too scanty to provide adequate proof. Moreover, testimony from the three original trustees is contradictory. They executed a stipulation representing that the only assets of the 2000 trust were the Beech Island real estate and 50 dollars. Subsequently, Mr. Dallas testified that the stipulation was incorrect and that he had joined in the stipulation to avoid losing his position as fiduciary. The fiduciaries ultimately sought to withdraw the stipulation.

More specifically, questions remain as to whether James Brown Enterprises, Inc. ("JBE, Inc.") was transferred to the trust during Mr. Brown's lifetime. Available documentation shows that any attempted transfer was incomplete. Furthermore, income tax returns filed on behalf of JBE, Inc. showed Mr. Brown, not the 2000 trust, as the owner. Nevertheless, the ownership of JBE., Inc is uncertain. Even if the ownership of JBE., Inc. could be confirmed, determining what assets if any JBE, Inc. owns is also problematic due to a dearth of documentation.

The ownership of the relevant assets as between the estate and the trust could affect the assets subject to the spousal share claims of Tommie Rae Brown, as discussed below, as well as the omitted child share claim of J B as discussed below.

Any assets that would pass pursuant to the 2000 will would be subject to spousal share claims and omitted child claims. Also, a good faith argument exists for subjecting any assets of the 2000 trust to the elective share, pursuant to the *Seifert* and *Dreher* decisions,[7] and by analogy, to the omitted spouse and omitted child shares. Because testimony demonstrated that Mr. Brown retained control of the 2000 trust, it could be deemed a revocable trust, which would

[7] *Seifert v. Southern Nat. Bank of South Carolina*, 305 S.C. 353, 409 S.E.2d 337 (1991); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E.2d 646 (2006).

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be subject to the elective share and, by extension, to the omitted spouse share and omitted child share.

Moreover, certain assets, such as the copyright termination rights would not belong to the 2000 trust or to the probate estate, instead passing by federal law to the federal statutory heirs.

Further confusing the question of ownership is the question of the validity of the 1999 revocable trust. Mr. Dallas, one of the trustees of that trust, testified that he did not know if the 1999 trust had been revoked in accordance with its provisions. Nor was any evidence produced from Mr. Herring's file that the 1999 trust had been revoked. If that trust was valid and was not revoked, then ownership issues similar to the 2000 trust arise as to the 1999 trust. If the 1999 trust was valid and not revoked, then any assets owned by that trust might not be included in the 2000 trust or the probate estate. Furthermore, any assets owned by the 1999 revocable trust would clearly be subject to the elective share pursuant to *Seifert* and *Dreher* and, by analogy would be subject to the omitted spouse's share and the omitted child's share.

If the 1999 trust was valid, funded, and not revoked, then the trustees of the 2000 trust had no power or control over those assets.

c. A compelling factor in finding that a good faith controversy existed is the assertion of Tommie Rae Brown (Mrs. Brown) of elective share and omitted spouse's share claims. If Mrs. Brown qualifies as a surviving spouse, then she would clearly be entitled to an elective share and may well qualify for an omitted spouse's share. The elective share would be one-third of the probate assets plus any assets held by a revocable trust, pursuant to *Seifert* and *Dreher*. The omitted spouse's share would be one-half of the probate assets plus, by analogy to *Seifert* and *Dreher*, any assets held by a revocable trust. In addition, Mrs. Brown would have a

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claim as a surviving spouse under federal copyright law to receive one-half of the copyright termination rights.

Asserting the *Lukich* decisions,[8] the personal representatives and trustees have argued vigorously that Mrs. Brown does not qualify as a surviving spouse. They contended that she had an impediment to her marriage to Mr. Brown because she was already married at the time to Javed Ahmed. However, the evidence demonstrated that the Charleston County Family Court held as a finding of fact and a conclusion of law that Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to that purported marriage: he was already married at the time. The family court order shows that Javed Ahmed was properly served by publication.

The *Lukich* decisions effectively held that an annulled marriage could not relate back to the time of the creation of the annulled marriage for purposes of removing an impediment to a subsequently attempted marriage. However, Mr. Buchanan admitted in his testimony that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage. Thus, rather than supporting the position of the personal representatives and trustees, *Lukich* supports the position of Mrs. Brown as Mr. Brown's surviving spouse.

Moreover, Mr. Buchanan also admitted in his testimony that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her

[8] 379 S.C. 589, 666 S.E.2d 906 (2008); 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).

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marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.

The personal representatives and trustees assert that Mr. Brown brought his own annulment action against Mrs. Brown. The record shows that action was commenced after the commencement of the Javed Ahmed action. Mr. Brown and Mrs. Brown mutually consented to a dismissal of the annulment action brought by Mr. Brown. Although the personal representatives and trustees assert that the consent order of dismissal includes a waiver by Mrs. Brown to ever claim any status as a common-law spouse, that waiver, even if valid under the law, is immaterial to the matter *sub judice*. Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate.

The evidence also demonstrates that, in his authorized autobiography, Mr. Brown represented that he was married to Tommie Rae Brown. Significantly, his autobiography was copyrighted and first published in 2005, after the conclusion of both family court matters discussed above.

Thus, based on *Lukich*, Mr. Brown (or any third party) did not have the right to intervene or contest the family court order holding that there was an impediment to the purported marriage between Mrs. Brown and Javed Ahmed. If he did not have that right, neither do his fiduciaries. Thus, as to the estate and any trust, that family court order, as well as the marriage license, constitute the law of the case as to that issue.

In the settlement agreement, the settling parties agree that Mrs. Brown is the surviving spouse of Mr. Brown, presumably spurred on by the compelling factors discussed above. Treating Mrs. Brown as the surviving spouse provides substantial benefit to the settling parties,

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including the charitable beneficiaries. Her status as surviving spouse allows the estate to claim a marital deduction for those assets passing to her, which increases the net amount passing to the settlement entity, in which the charitable beneficiaries have a share and thereby benefit from that tax savings.

d. Another factor evidencing the existence of a good faith controversy is the omitted child's claim submitted on behalf of J B by his guardian ad litem. Pursuant to SCPC section 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will. The 2000 will was executed before the birth of J B . Although the personal representatives contested that J B was the biological child of Mr. Brown, substantial evidence would demonstrate that J B is indeed the biological child of Mr. Brown. Mr. Brown's describes J as his son in his autobiography. Mr. Brown is listed as the father on the birth certificate. Mr. Brown obtained health insurance and social security benefits for J. B by representing that he was his son;[9] he named him as his son in his medical directive. The guardian ad litem procured a DNA test demonstrating that there was a greater than 99 percent probability that they were father and biological son. J B is presumed to be the child of the marriage of Mr. Brown and Mrs. Brown because that marriage was valid, as discussed above. Even though J B was born before that marriage, the subsequent marriage of Mr. Brown and Mrs. Brown would legitimize J. B pursuant to SCPC section 62-2-109.[10] Although J. B would not

[9] Thus, to find that J B was not the son of Mr. Brown opens the door for a claim that Mr. Brown defrauded the health insurance carrier and social security.

[10] This would be true even if the marriage was not valid. SCPC section 62-109 legitimizes a child if his parents

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need to be legitimate to qualify under section 62-2-302 for his intestate share, it is an additional factor to consider.

J B is not automatically entitled to an omitted child's share merely because he is found to be Mr. Brown's son. One operative exception to the granting of the omitted child's share is if the testator specifically provides for overriding the statutory share. One might argue that language in Mr. Brown's 2000 will does specifically provide for such an override, but there is compelling authority to the contrary.[11] Ultimately, that issue would be decided by determining Mr. Brown's intent.

The settling parties agree that J B is the biological child of Mr. Brown. Treating him as a child provides substantial benefit to the settling parties, including the charitable beneficiaries. His status as a child allows him to claim, for the benefit of the settlement entity, a federal copyright termination rights share. Moreover, treating J. B as the child of Mr. Brown does not detrimentally impact the settlement entity, including the charitable beneficiaries, because according to the settlement agreement his share is paid from Mrs. Brown's share.

e. Another factor indicating the existence of a good faith controversy involves the applicable time to contest the 2000 trust. Section 62-7-5 provides that a trust is voidable if it resulted from fraud, coercion, or undue influence — the gravaman of the contestant's actions to contest the trust. The fiduciaries contend that the statute of limitations to contest the 2000 trust

subsequently attempt to marry even in the attempted marriage is not valid.

[11] See, e.g., *Estate of Robbins*, 756 A.2d 602 (N.H. 2000); *Estate of Torregano*, 352 P.2d 505 (Cal. 1960). The estate would bear the burden of proof. *In re Estate of Hoigaard*, 360 N.W.2d 360 (Minn.App.1984).

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has run. However, for the reasons discussed below, the contestants would have viable arguments that no statute of limitations would bar their contest.

i. As to fraud

Assuming arguendo that the 2000 trust is irrevocable, South Carolina follows the discovery rule for fraud, which commences the running of the statute of limitations from discovery of the fraud itself or of such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). A suspicion alone is not sufficient to place a party on inquiry. *Beattie v. Pool*, 13 S.C. 379 (1880); *Hunt v. Smith*, 202 S.C. 129, 24 S.E.2d 164 (1943). The burden would be on the fiduciaries to show that the contestants had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. *Grayson v. Fidelity Life Ins. Co.*, 114 S.C. 130, 103 S.E. 477 (1920); *Means v. Feaster*, 4 S.C. 249 (1873); *Richardson v. Mounce*, 19 S.C. 477 (1883). The contestants would also assert that the fraud was continuing, so that any applicable statute of limitations did not commence any sooner than Mr. Brown's death.

The original trustees would be the alleged perpetrators of the fraud. The commission of a fraud or an intentional misrepresentation therefore estops the trustees from asserting any statute of limitations. *See R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Moreover, even if the trustees did not engage in fraud or make intentional misrepresentations, they are estopped from asserting any statute of limitations because the settling parties reasonably relied on the words and conduct of the trustees in allowing any limitations period to expire. *See Regions Bank v. Schmauch*, 582 S.E.2d 432 (Ct.

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App. 2003); *Hedgepath v. American Telephone and Telegraph Co. ,559* S.E.2d 327 (Ct. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co., 526* S.E.2d 218 (2000); *Harvey v. South Carolina Dept of Corrections,* 527 S.E.2d 765 (Ct. App. 2000); *Brown v. Pearson,* 483 S.E.2d 477 (Ct. App. 1997).

The fiduciaries assert that the recordation of the certificate of trust commenced the running of the statute of limitations. However, recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. *Tucker v. Weathersbee*, 98 S.C. 402, 82 S.E. 638 (1914); *Means v. Feaster*, 4 S.C. 249 (1873).

ii. As to undue influence

Statute of limitations for fraud would not apply to the contestants' claims for undue influence because undue influence is an action in equity. *Dixon v. Dixon,* 362 S.C. 388, S.E.2d 849 (2005).

iii. Tolling as to minors

To the extent that any statute of limitations would apply to the trust contests, the contestants would assert that the statute of limitations would be tolled for a minor, such as J.

J B i.

iv. If the trust is deemed revocable, then SCPC section 62-7-604 provides that the trust contests were timely commenced.

f. One additional salient factor demonstrating the existence of a good faith controversy involves the issue of the ownership of federal copyright termination rights. Federal copyright law provides a termination right to a songwriter who has assigned some or all of his

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copyright rights to a third party, such as a publisher.[12] Testimony revealed, Mr. Brown assigned at least a substantial number of his copyrights to one or more publishers and he assigned to one or more third party entities the remaining rights to a substantial number of his copyrights. Federal copyright law allows a songwriter who is alive after a certain number of years pass from any assignment of some or all of his copyrights to terminate, or revoke, that assignment, thereby regaining control of the assigned right with the freedom to negotiate a new assignment.[13] However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right. See 17 U.S.C.A. §§ 203, 304; Ann Bartow, *Intellectual Property and Domestic Relations: Issues to Consider When There Is an Artist, Author, Inventor, or Celebrity in the Family*, 35 Fam. L.Q. 383.

Under the settlement agreement, those settling parties who would qualify as statutory heirs for federal copyright law termination rights purposes have contributed their termination rights, and any proceeds therefrom, to the settlement entity, which includes the charitable beneficiaries. If it were not for this contribution to the settlement entity, there is no way that the charitable beneficiaries could receive any benefits from the federal copyright termination rights.

[12] Typically, the publisher's share of any royalties is 50 percent of the total and the songwriter's share is 50 percent.

[13] For songs copyrighted before the 1976 copyright act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured. For songs copyrighted after the 1976 copyright act, that time period is 35 years from the assignment.

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2. Just and Reasonable

Including those discussed above, there are many reasons supporting the conclusion that the proposed settlement is just and reasonable. The key issue is how the charitable beneficiaries fare under the proposed settlement. I find that the settlement is just and reasonable and provides a just and reasonable result for the charitable beneficiaries.

From the perspective of the charitable beneficiaries, the risks of not approving the settlement agreement are substantial. As discussed above, significant arguments can be made that the 2000 will and trust are not valid. If the 2000 will and trust are overturned, essentially the same arguments can be made that the 1999 will and trust are invalid. If the contestants would prevail in these contests, an intestacy would result and the charitable beneficiaries would get nothing — a substantial risk.[14]

Even if the 2000 will and trust (or the 1999 will and trust) are upheld, significant arguments can be made to recognize Mrs. Brown's spousal share claims, as discussed above. No matter Mr. Brown's intent, she would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust. And unless Mr. Brown demonstrated an intent to override SCPC section 62-2-301 (the omitted spouse's share), which is questionable, Mrs. Brown would be entitled to one-half of the probate estate[15] and likely one-half of the assets of any revocable trust. If Mrs. Brown would prevail in her claims, the charitable beneficiaries' share of the

[14] The risk for the charitable beneficiaries would be enhanced by the burden of proof. Because Messrs. Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Mr. Brown's execution of the 2000 will and trust documents, the burden of proof would fall on the proponents of the will and trust because Messrs. Cannon, Dallas, and Bradley were in a confidential relationship with Mr. Brown. Dixon v. Dixon , 362 S.C. 388, S.E.2d 849 (2005).

[15] As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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probate estate and any revocable trust would be reduced by either one-half or one-third — a substantial risk.

Even if the 2000 will and trust (or the 1999 will and trust) are upheld (and even if Mrs. Brown is not entitled to any spousal share), significant arguments can be made to recognize J. B. I's omitted child claim, as discussed above. Unless Mr. Brown demonstrated an intent to override SCPC section 62-2-302 (the omitted child's share), which is questionable, J. B would be entitled to his intestate share of the probate estate[16] and likely the same share of the assets of any revocable trust. If J B would prevail in his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share — a substantial risk.

Even if the 2000 will and trust are upheld and the spousal and omitted child's claims are unsuccessful, the time and expense to litigate through appeal all of these and other issues would be extraordinary. The cost to the estate and trust for fees and costs and related expenses are substantive. It has taken more than two years of estate administration and millions of dollars of fees and costs just to get to the point of considering a settlement. The time and expense necessary to carry out all litigation to completion and appeal boggles the mind.

The Court has been apprised as to the distribution of the settling parties' interest as more fully set forth in the settlement agreement, and the settlement agreement has been made a part of the record. The percentages assigned to each settling party are fair and reasonable. The Attorney General's Office has ensured a substantial portion of the Estate will be dedicated to the specific intent of James Brown, that is providing an educational trust. The Court has also considered and

[16] As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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is satisfied that the minor child, J B will receive his share of the estate assets as distributed through his Mother's share and that he will receive another equal portion from his Mother in the form of a second trust.

The protection of a public trust is of paramount concern to the Court and the Court is satisfied that through the diligent efforts of the Attorney General's Office, the assets to fund the public trust will now be available. Furthermore, any issues as to the protection of the minor child's interest have been preserved through this agreement.

Consideration of these factors demonstrates that the allocation of the proposed settlement is just and reasonable. However, an additional, and perhaps substantial additional benefit to the charitable beneficiaries is the contribution by the other settling parties of their federal copyright termination rights. As discussed above, these rights may have considerable value and, without the settlement, the charitable beneficiaries could derive no benefit from these rights.

Replacement of the currently serving fiduciaries is also just and reasonable. The propriety of their appointment as trustees is currently on appeal, and their replacement should moot that issue. Moreover, both fiduciaries testified that they intended to appeal the approval of the settlement; that action would place them in the position of an irreconcilable conflict of interest.

The settling parties propose that Mr. Russell Bauknight be appointed as the replacement personal representative and trustee. I find that he is qualified and willing to serve and suffers from no conflict of interest because the settling parties have all consented to his appointment and, because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both personal representative

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and trustee. Pursuant to Mr. Bauknight's testimony, I find that no transition period is necessary before the appointment of Mr. Bauknight to replace Ms. Pope and Mr. Buchanan.

C. Tax Issues

1. Charitable Exemption Concerns

I find that the Settling Parties have carefully considered the impact of the Settlement Agreement and participation in the Settlement Entity and the James Brown Legacy Trust on the tax exempt status of the 2000 "I Feel Good" Trust.

As the Trustee of the 2000 "I Feel Good" Trust will be selected by, and can be removed for any reason by, the South Carolina Attorney General, the Settling Parties believe there is no private inurement problem. Additionally, all transactions between the Brown family members, the 2000 "I Feel Good" Trust, and the James Brown Legacy Trust are at fair market value. The provisions of the James Brown Legacy Trust effectively grant the 2000 "I Feel Good" Trust a veto over major decisions, allowing the 2000 "I Feel Good" Trust sufficient control over the settlement entity to prevent the Settling Parties from conducting the business of the James Brown Legacy Trust in such a manner as to allow them to use the assets or income of the "I Feel Good" Trust for their own private benefit.

Marital Deduction – In order to receive the marital deduction, Tommie Rae Brown must have been the spouse of James Brown. The Attorneys for Mrs. Brown strongly believe that they have sufficient evidence to prevail in a trial on the merits as to whether Tommie Rae Brown was the spouse of James Brown. The other Settling Parties agree that Mrs. Brown has a material chance of success, as they are willing to settle with Mrs. Brown and recognize her status as surviving spouse.

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Charitable Deduction – The Settling Parties recognize that the charitable deduction will be limited to the amount that the 2000 "I Feel Good" Trust actually receives, per Regulation §20.2055-2(d) and Reed v. U.S., 26 AFTR 2d 70-6042 (DC Ill. 1970), and that the amount of the charitable deduction cannot exceed the amount the 2000 "I Feel Good" Trust otherwise would be entitled to under the terms of the Will, per Terre Haut First National Bank v. U.S., 67 AFTR 2d 91-1217 (DC Ind. 1991).

I find that the Settling Parties took the issues discussed above into account in drafting the Settlement Agreement, and, other than the loss of the charitable deduction for assets passing to heirs/devisees other than the 2000 "I Feel Good" Trust, the Settling Parties have planned to preserve the Estate's right to a charitable deduction for the value of the assets passing to the 2000 "I Feel Good" Trust.

The specific concerns of the Personal Representatives/Trustees, as expressed by their expert witness, Harley Ruff, Esquire, are addressed below.

Attorneys' Fees – According to the settlement agreement, each party is ultimately responsible for his or her own attorneys' fees. These fees are therefore not additional costs to the charitable beneficiaries. These attorneys' fees may be deductible for estate tax purposes. Treasury Regulation §20.2053-3(c)(3) provides "[a]ttorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney's fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate." This regulation allows attorneys fees incurred by beneficiaries to be deductible for estate tax purposes if they were incurred in litigation that was

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essential to the proper settlement of the estate. The Settling Parties plan to contend that the majority of their legal fees have been incurred in litigation essential to the proper settlement of the Estate and, thus, are deductible by the Estate. By providing a pro-rata reduction of the elements of the Estate which are subject to estate taxes, the net amount to be received by the Settling Parties, including the charitable beneficiaries, would be increased.

The Settling Parties plan to assert that the payment of the Settling Parties' legal fees are deductible as an estate administration expense under §2053. The Settling Parties' legal fees were necessary in determining the proper distribution of the estate due to (i) the alleged undue influence asserted against Mr. Brown, and (ii) establishing Tommie Rae Brown as the spouse of James Brown, and her entitlement to either the elective share or the omitted spouse share. Additionally, the efforts of the Settling Parties, Pope and Buchanan, and their counsel uncovered the mismanagement and misappropriation by the initial fiduciaries and led to their resignation. Pending the outcome of additional litigation, these efforts may lead to the Estate's recovering substantial sums.

Due Diligence – The Settling Parties are aware that it is in the best interest of all beneficiaries of the Estate of Mr. Brown, whether Settling Parties or not, that the Estate minimize any potential estate tax due by Mr. Brown's estate. For that reason, the Settling Parties assert that they have carefully examined the potential estate tax consequences of the Settlement Agreement and are confident that they have drafted the Agreement in such a way as to preserve the charitable and marital deduction to the greatest extent possible in line with the provisions of the settlement.

Effect of Settlement on Charitable Deduction – Mr. Ruff expressed concerns that the structure of the Settlement Agreement and the James Brown Legacy Trust would jeopardize the

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charitable deduction because it results in a non-qualified split interest trust under §2055(e)(2). The Settling Parties disagree that a non-qualified split interest trust is created, and, even if it was, assert that the form of the James Brown Legacy Trust can be revised to satisfy the split interest trust rules of §2055(e)(2).

The Settlement Agreement provides that each Settling Party will receive a specified percentage of the Estate assets. These assets are first distributed to and/or are owned by the Settling Parties outright. The Settling Parties have contractually obligated themselves to then contribute these assets to the James Brown Legacy Trust for consolidated management and marketing of the "James Brown assets." The assets do not pass directly from Mr. Brown's estate to the James Brown Legacy Trust. The assets pass directly to the Settling Parties, who in turn contribute these assets to a co-investment entity, the James Brown Legacy Trust. Such co-investment between charitable and non-charitable beneficiaries is specifically permitted by Section 4943 of the Internal Revenue Code.

Even if the IRS or a federal court were to disregard the distribution of assets to the Settling Parties and their subsequent contribution to the James Brown Legacy Trust, and treat the assets of the Estate of James Brown as passing directly to the James Brown Legacy Trust, the Settling Parties could amend the structure of the James Brown Legacy Trust (as they are required under the settlement agreement to do if necessary to preserve the charitable deduction) to allow the contribution to qualify for the charitable deduction. In *Galloway v. U.S.*, 99 AFTR2d 2007-3412, the case cited by Mr. Ruff in support of his opinion that the charitable deduction would not be allowed if the Settlement Agreement were approved, the Court emphasized that there was a single Trust that did not divide until distributions were to be made some years in the future. The Settling Parties believe that amending the James Brown Legacy Trust to provide for a charitable

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share, to which the 2000 "I Feel Good" Trust assets would be contributed, and a non-charitable share, to which all other "James Brown assets" would be contributed, is one option that would resolve the issue of the non-qualified split interest trust, if necessary.

2. Self Dealing

Mr. Ruff alleged that the right of first refusal granted to Terry Brown in the Settlement Agreement would constitute self-dealing and would generate an excise tax and/or a loss of charitable exemption for the 2000 "I Feel Good" Trust.

The Settling Parties opine that the granting of the right of first refusal and the exercise of the right of first refusal (presuming such exercise is done while the estate is still open for federal income tax purposes) fall within the "estate administration" exception to self-dealing found in Regulation §53.4941(d)-1(b)(3). If the right of first refusal does not fall within the "estate administration" exception to self-dealing, the Settling Parties could propose that the 2000 "I Feel Good" Trust become a public charity (such as a Supporting Organization supervised and controlled by the South Carolina Attorney General's Office), which is not subject to the self-dealing prohibition.

If the right of first refusal does not meet the "estate administration" exception, and the 2000 "I Feel Good" Trust cannot be converted to a public charity, the Settlement Agreement provides that "[i]f any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust." This type of curative language is used by planners as the ultimate safeguard to prevent charitable exemption problems.

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3. Marital Deduction

Mr. Ruff addressed the case of *Commissioner of Internal Revenue v. Estate of Bosch, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967)*, and its impact on the marital deduction. In *Bosch*, the issue of whether the estate was due a marital deduction was dependent on the interpretation of state law (i.e. whether the widow's purported release of a power of appointment was valid). The Supreme Court of the United States ruled that only an opinion of the state's highest court as to a state law issue is binding on federal authorities when applying federal law.

Bosch does not directly affect whether or not the Estate of James Brown will be entitled to a marital deduction for assets that pass to his wife, Tommie Rae Brown. *Bosch* simply states that the IRS and the federal courts are not required to accept a South Carolina court's ruling that Tommie Rae Brown is the spouse unless that ruling comes from the South Carolina Supreme Court. As is the case with any surviving spouse, nothing in *Bosch* prevents the Estate of James Brown from arguing the merits of Tommie Rae Brown's claim that she was the wife of James Brown. If the Estate prevails on the merits of that claim, it will be entitled to a marital deduction for assets that pass to Mrs. Brown, despite the lack of a Supreme Court ruling that she is the wife of Mr. Brown.

4. Private Letter Ruling

The Settling Parties have not yet sought a Private Letter Ruling ("PLR"). *Revenue Procedure 2009-1* states that a PLR is issued only to a "taxpayer" and must be signed by the taxpayer or an "authorized representative." In this case, the Settling Parties have no authority to act on behalf of either the estate or the 2000 "I Feel Good" Trust.

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The Settling Parties anticipate that an independent professional fiduciary appointed by this Court will carefully consider whether or not to apply for a PLR on one or more issues, after consulting with the Settling Parties, especially the Attorney General.

Thus, after conducting substantial due diligence with the advice of highly-regarded tax lawyers, including a number of certified tax specialists, the Settling Parties assert that the Settlement Agreement does not disqualify the charitable exemption, cause excise tax problems, or prevent the Estate from receiving a charitable deduction for property passing to the 2000 "I Feel Good" Trust. However, to the extent that there may be a problem, the Settling Parties have a number of options. They can pursue the estate administration exception. They can pursue the conversion of the private foundation to a public charity (which they may choose to do for nontax reasons as well). If such options fail to protect the charitable exemption, the Settling Parties are required by the Settlement Agreement to take whatever curative action is necessary to protect the charitable exemption, which would be enforced by the Attorney General.

IV. Conclusion

Based on the foregoing, I find as follows:

1. All necessary parties are properly joined;
2. Notice has been provided to all necessary parties;
3. The settlement agreement has been executed by all persons having beneficial interests which are affected by the compromise;
4. The controversy is in good faith; and
5. The settlement is fair, equitable, and reasonable.

I therefore Order as follows:

1. The settlement is approved;

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2. Adele J. Pope and Robert L. Buchanan, Jr., are directed to execute the agreement; and

3. Russell L. Bauknight is immediately appointed as Personal Representative of the Estate and Trustee of the James Brown 2000 Irrevocable Trust in replacement of Ms. Pope and Mr. Buchanan.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early, III

May 26, 2009

Aiken, South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2008CP0201647

Henry Dargan Mcmaster

PLAINTIFF(S)

Albert H Dallas
Alfred A Bradley
David G Cannon
Daryl J Brown
Lindsey Delores Brown

DEFENDANT(S)

CHECK ONE:

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order. (Formal order to follow)
☐ Statement of Judgment by the Court:

Dated at Aiken, South Carolina, this 26th day of May, 2009.

Court Reporter:

PRESIDING JUDGE:

This judgment was entered on the 26th day of May, 2009, and a copy mailed first class this 26th day of May, 2009, to attorneys of record or to parties (when appearing pro se) as follows:

See attached list

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: [redacted]
	)	2013-CP-02-02850 Cert. COPY
	)	
	)	**ORDER RE PETITIONER TOMMIE RAE BROWN'S MOTION FOR SUMMARY JUDGMENT AND THE LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT**
IN RE THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	
	)	

This matter came before the court on November 24, 2014 on Petitioner Tommie Rae Brown's Motions for Summary Judgment filed October 30, 2007, November 26, 2007, and April 28, 2014, and the Limited Special Administrator's (LSA's) Motion for Summary Judgment dated May 29, 2014. Each of these Motions requests summary judgment determining whether Mrs. Brown is the surviving spouse of James Joseph Brown. All parties have submitted detailed memoranda in support of their respective positions as well as responsive memoranda, and all parties have consented to a Joint Stipulation of Facts filed September 5, 2014.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, M. Jean Lee, David L. Michel, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach, counsel for the LSA David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for J B ; (5) David B. Bell and Matthew D. Bodman, counsel for Daryl Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) Louis Levenson, counsel for Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, and Larry Brown; and (8) William Barr and Vera Gilford, counsel for amicus curiae Jeanette Mitchell.

[redacted]
C.C.C.P.&G.S.
Deputy Clerk

I. SUMMARY JUDGMENT STANDARD.

The standard for granting summary judgment is clear:

> Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbankv. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181-82 (2013).

II. HISTORY OF THE CASE AND STATEMENT OF FACTS.

A. These Proceedings.

Mrs. Brown filed a petition for Elective Share or Omitted Spouse's share on February 1, 2007, asserting she is the surviving spouse of Mr. Brown. She filed a Motion for Summary Judgment on October 30, 2007 on the issue of her ceremonial marriage to Mr. Brown and the legality of said marriage. Mrs. Brown filed the same motion along with the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment on November 26, 2007.

On December 20, 2007, Mrs. Brown filed Petitions to Set Aside the Will and Trust. Similarly, on December 26, 2007, five of the six Devisees from the 2000 will filed Petitions to Set Aside the Will and Trust. Before these Petitions were heard, Mrs. Brown and other parties to the estate litigation participated in mediation which resulted in a private settlement agreement. In the settlement agreement, Mrs. Brown was recognized by all parties thereto as the surviving spouse of Mr. Brown. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law. The settlement agreement expressly provided that the provision

recognizing Mrs. Brown as the surviving spouse survived regardless of whether the agreement was approved by a court.

On May 26, 2009, this Court issued an Order that, inter alia, approved the settlement agreement and found that the contest or controversy was in good faith and that the effect of the agreement on interested parties was just and reasonable in satisfaction with S.C. Code Ann. § 62-3-1102(3). This Court issued another Order which removed the then Personal Representatives and Trustees (Pope and Buchanan), and at the request of the settling parties, this Court appointed Russell Bauknight as Personal Representative and Trustee.

Pope and Buchanan appealed the order approving the settlement agreement and the order removing them from their fiduciary positions to the Court of Appeals, and at the request of the Court of Appeals the consolidated appeals were certified to the Supreme Court pursuant to Rule 204(b), SCACR. In reviewing this Court's finding that there was a good faith controversy under S.C. Code Ann. § 62-3-1102, the Supreme Court determined that the settlement failed the second element of the S.C. Code Ann. § 62-3-1102 test, *i.e.*, that the effect of the agreement on interested parties is just and reasonable. *Wilson v. Dallas*, 403 S.C. 411, 447, 2013 S.C. LEXIS 240, *64 (2013). The Supreme Court upheld the removal of the prior fiduciaries, finding that they had irreconcilable differences with the estate and trust beneficiaries, but reversed and remanded the approval of the settlement because of a lack of evidence showing a fair and reasonable settlement of a good faith controversy. The Supreme Court also vacated Mr. Bauknight's appointments and remanded the case to this Court.

This Court held a status conference on May 29, 2013 concerning the Supreme Court Opinion and issued an Order on June 13, 2013 requiring all interested persons to submit applications to serve as fiduciaries of the Estate and Trust by July 29, 2013. Mr. Bauknight was

ordered to continue serving in a fiduciary capacity as Special Administrator and Special Trustee in the interim. This Court conducted a hearing to receive testimony from all applicants on September 4 and 11, 2013. This Court then issued its October 1, 2013 Order appointing Mr. Bauknight as the Personal Representative of the Estate and Trustee of the Trust and David C. Sojourner as Limited Special Trustee of the Trust. The Probate Court of Aiken County appointed Mr. Sojourner as the Limited Special Administrator (LSA) of the Estate by its Order filed October 10, 2013.

On March 10, 2014 the LSA served a Motion to Modify Protective Orders Related to Diaries of Tommie Rae Hynie Brown asking this Court to lift the Court's protective orders and to require Mrs. Brown to produce her diaries. Mrs. Brown filed a Return to Motion to Modify Protective Orders Related to Diaries of Tommie Rae Brown and Motion for Protective Order or Order of Confidentiality along with her supporting Affidavit on March 27, 2014, and a hearing was held on March 31, 2014. This Court determined that the LSA's Motion to Modify Protective Orders and all discovery would be held in abeyance pending resolution of Mrs. Brown's Motion for Summary Judgment and later indicated the parties should negotiate a scheduling order.

Mrs. Brown filed another Motion for Summary Judgment and supporting Affidavit on April 28, 2014. She filed a Motion for Protective Order and the Affidavit of Robert N. Rosen on May 12, 2014 requesting that, other than answering the LSA's First Requests to Admit, all discovery be stayed pending resolution of her Motion for Summary Judgment. Petitioner and the LSA subsequently entered an Agreement Resolving Petitioner's Motion for Protective Order dated May 16, 2014, and this Court issued a Scheduling Order filed June 10, 2014 staying all discovery (other than the LSA's April 23, 2014 1st Requests for Admission, 2nd Interrogatories,

and 2nd Requests for Production) pending resolution of Mrs. Brown's April 24, 2014 Motion for Summary Judgment. The LSA subsequently served his own Motion for Summary Judgment on May 29, 2014.

The parties have served memoranda in support of their respective positions and responsive memoranda in accordance with the Scheduling Order, and a hearing was held on the aforementioned Motions for Summary Judgment at the Bamberg County Courthouse on November 24, 2014.

B. Stipulated Facts.

Petitioner Tommie Rae Brown ("Mrs. Brown") and James Joseph Brown ("Mr. Brown") were married by ceremonial marriage on December 14, 2001 at Beech Island in Aiken County, South Carolina.[1] Prior to their marriage, Mrs. Brown gave birth to Mr. Brown's biological son, J ; B , on 2001.[2] Following their marriage, Mr. Brown learned that Mrs. Brown had participated in a putative marriage ceremony with another man, Javed Ahmed ("Ahmed") in February of 1997 in Texas, where both Mrs. Brown and Ahmed resided at the time. In December 2003, with Mr. Brown paying her attorney's fees, Mrs. Brown filed an action against Ahmed in the Family Court of South Carolina for an annulment on the grounds of bigamy, among other grounds.[3]

Mrs. Brown's counsel hired a licensed private investigator, Mr. Ronald Pannell, to locate Ahmed, and he was unable to do so. Mr. Pannell submitted an Affidavit of Attempted Service,

[1] *See* Joint Stipulation of Facts, p. 3, ¶¶ 4-5 and Exhibit 4 at 000005-6 (License and Certificate for Marriage).

[2] *See* Joint Stipulation of Facts, p. 2, ¶ 3 along with Exhibit 2 (birth certificate) at 000003 and Exhibit 3 (LabCorp DNA Test Results) at 000004.

[3] *Id.* at 3, ¶ 7 and Exhibit 5 at 000007-9 (Summons and Complaint for Annulment). James Brown paid for Mrs. Brown's annulment, and Mrs. Brown's attorney kept Mr. Brown's attorney informed of the proceedings. *See id.* at 4, ¶¶ 13-14 and Exhibit 14 at 000050-64; Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, dated January 11, 2008, pp. 3-4, Request and Response Nos. 9 and 10.

filed in the Family Court on February 4, 2004, stating he conducted numerous searches in national databases in an attempt to locate Ahmed, and he found two addresses.[4] One address was Houston, Texas, Mr. Pannell stated in his affidavit that Ahmed no longer resided at that address. The other address was Houston, Texas, which Mr. Pannell stated in his affidavit was the address on Mr. Ahmed's driver's license issued in 1999. As a result, this address (Houston Texas,) was Ahmed's last known address. Mr. Pannell stated in his affidavit that Ahmed no longer resided at that address either.

Mrs. Brown filed an Affidavit in the Family Court on February 4, 2004, with Mr. Pannell's Affidavit of Attempted Service, requesting an Order of Publication.[5] In her affidavit, Mrs. Brown stated that Mr. Pannell conducted a full skip trace report and was unable to locate Ahmed. She also said Mr. Pannell found an address where Ahmed apparently had resided since she last knew of his whereabouts. Judge Jocelyn B. Cate of the Family Court issued an Order of Publication on February 3, 2004 finding that Mrs. Brown had made a diligent effort to locate Ahmed and that it appeared to the satisfaction of the Family Court that Ahmed's current address and whereabouts were unknown.[6] The Order of Publication scheduled a Final Hearing for March 26, 2004 at 9:30 A.M. Mrs. Brown properly published the Summons and notice of the hearing in the Houston Chronicle, a newspaper of general circulation in the area, and filed an Affidavit of Publication as directed by the Order of Publication.[7] Ahmed was served by publication.

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[4] Joint Stipulation of Facts at 000010 (Affidavit of Ronald Pannell).

[5] *Id.* at 000016 (Affidavit of Tommie Rae Hynie, a/k/a Tommie Rae Brown).

[6] *Id.* at 000017 (Order of Publication).

An Order of Continuance was filed by the Family Court on March 24, 2004, rescheduling the Final Hearing to April 15, 2004 at 9:00 A.M.[8] Mrs. Brown's counsel sent Ahmed notice of the rescheduled hearing by regular mail *and* certified mail, return receipt requested, to both of the addresses found by Mr. Pannell, which included Ahmed's last known address at Houston, Texas, the address he had given to the Texas Department of Motor Vehicles.[9] Mrs. Brown's counsel therefore properly gave written notice of the rescheduled hearing pursuant to Rule 17, SCRFC as determined by Judge Segars-Andrews' April 15, 2004 Order.

At the trial in Family Court, Mrs. Brown testified that Ahmed told her he was married to several other women at the time of their purported marriage ceremony and that none of those marriages had been dissolved.[10] A final judgment was entered on April 15, 2014 annulling the purported marriage between Mrs. Brown and Ahmed ("the annulment order").[11] Judge Segars-Andrews found that Ahmed was already married at the time of his putative marriage ceremony to Mrs. Brown, that Ahmed lacked capacity to marry Mrs. Brown, and that the purported marriage between Mrs. Brown and Ahmed was "wholly null and void *ab initio*."[12]

The stipulated facts show that Mr. Brown was aware of the litigation between Mrs. Brown and Ahmed because (1) Mr. Brown paid Mrs. Brown's legal fees, (2) Mrs. Brown's

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[7] *Id.* at 000026-27 (Affidavit of Publication); *see also id.* at 000017-18 (Order of Publication).

[8] *Id.* at 000028 (Order of Continuance).

[9] *Id.* at 000019-25 (Affidavit of Marcia F. Jones); 000010 (Affidavit of Ronald Pannell).

[10] *Id.* at 000040, lines 16-20; 00004, lines 13-15 (April 15, 2004 Transcript of Record).

[11] *Id.* at 000029-32 (April 15, 2004 Final Order).

[12] *Id.* at 000030-32 (April 15, 2004 Final Order).

counsel sent Mr. Brown's attorney a copy of the Summons and Complaint in February, 2004, and (3) Mrs. Brown's counsel sent Mr. Brown's attorney the Final Order in April, 2004.[13]

Mr. Brown filed an annulment action of his own against Mrs. Brown on January 29, 2004 in the Family Court of Aiken County.[14] Just weeks after the April 15, 2004 Final Order was filed, Mr. Brown filed an Amended Complaint for Annulment in the Family Court requesting the Court to issue a judgment that the "Findings of Facts of the Charleston Family Courts are binding on [the Aiken County Family Court]..." and that "[p]ursuant to the Order of the Charleston Family Court, Defendant is collaterally and judicially estopped from denying the allegations in [Mr. Brown's annulment action]."[15] Mrs. Brown counterclaimed for a divorce and other relief.[16] Mr. and Mrs. Brown reconciled in July 2004 and signed a Consent Order on August 16, 2014 dismissing Mr. Brown's action.[17]

Mr. Brown died on December 25, 2006, and his will, dated August 1, 2000 was filed with the Aiken County Probate Court on January 18, 2007.

C. The Annulment Action.

Mrs. Brown properly brought the annulment action in South Carolina, properly served Ahmed, and properly notified him of the date of rehearing. The Family Court concluded that Ahmed "was married at the time he entered into his marriage with [Mrs. Brown] and therefore he lacked the capacity to marry [Mrs. Brown]."[18]

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[13] *Id.* at 4, ¶¶ 13-14 and Exhibit 14 at 000050-64 (Correspondence with James B. Huff, Esquire).

[14] *Id.* at 000065-67 (Mr. Brown's Summons and Complaint for Annulment).

[15] *Id.* at 000070, ¶¶ 10-11 (Mr. Brown's Amended Complaint for Annulment).

[16] *Id.* at 5, ¶ 19 and Exhibit 17 at 000072-82.

[17] *Id.* at 000085-86 (Consent Order of Dismissal).

[18] *Id.* at 000031, ¶ 4 (April 15, 2004 Final Order).

The Respondents have argued that the annulment order was improper because the summons and complaint were not properly served and notice of the final hearing was not given. The Court has already found that service and notice were proper. Mrs. Brown's counsel hired a licensed private investigator to locate the Defendant. That investigator's affidavit was found to be sufficient by the Family Court.

South Carolina law does not permit direct or collateral attacks upon an order authorizing service by publication:

> An order for service by publication may be issued pursuant to S.C. Code Ann. § 15-9-710 (Supp.1999) when an affidavit, satisfactory to the issuing officer, is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of action exists against him. § 15-9-710(3). *When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion.*

Wachovia Bank of S.C., N.A. v. *Player*, 341 S.C. 424, 428-29, 535 S.E.2d 128, 130 (2000) (emphasis added); *see also Hendrix v. Hendrix*, 296 S.C. 200, 203, 371 S.E.2d 528, 530 (1988). The Respondents do not contend there was fraud in the procurement of the annulment. The order authorizing service by publication therefore cannot be attacked. *See also Schleicher v. Schleicher*, 310 S.C. 275, 277, 423 S.E.2d 147, 148-49 (Ct. App. 1992) (holding that service of the notice of the time and date for a merits hearing is effective upon mailing when sent by certified mail, return receipt requested and that Rule 5(b)(1), SCRCP, rather than Rule 4(d)(8), SCRCP, is the applicable rule).

Some of the Respondents object that the annulment action should have been filed in Aiken County, not Charleston County. This is a mere matter of venue, which has no effect on the validity of the judgment. In *Lillard v. Searson*, 170 S.C. 304, 170 S.E. 449 (1933), the court held that a defect in venue cannot be used to attack a final judgment:

> Since it clearly appears that the defendant named in the case was not a resident of Richland county, at the time the action was instituted against him, but was a resident of Allendale county, the action was instituted in the wrong county, and the proper course to have pursued was for the defendant to have moved to have the case transferred to Allendale county. . . . However, the defendant did not do this, and waited until judgment had been rendered in the cause before taking any steps in the matter. *Therefore the defendant waived the jurisdictional question, and, in effect, gave to the court of Richland County authority to hear the said case on its merits,* and judgment was thereafter rendered in said court against the defendant as in any other default case.

170 S.E. at 450-51 (1933) (emphasis added). Note that the judgment in *Lillard*, like the annulment in this case, was entered without entry of an appearance by the defendant.

"The failure to bring the proceedings within the proper venue, when such is determined by the place of residence, does not render them void, the error being in practice and not jurisdictional." *In re Lemack's Estate,* 207 S.C. 137, 144, 35 S.E.2d 34, 37 (1945) (quoting 32 C.J. 633). "The irregularity [in venue] complained of is not jurisdictional." *State v. Richardson,* 149 S.C. 121, 124, 146 S.E. 676, 677 (1928).

Under the above authority, venue is clearly not jurisdictional, and it is therefore not a sufficient basis for attacking a final judgment. The Family Court has statewide jurisdiction. *See* S.C. Code Ann. § 14-2-10 (establishing "the statewide family court system").

III. BECAUSE MRS. BROWN HAD NO IMPEDIMENT, HER MARRIAGE TO MR. BROWN IS VALID.

A. The Bigamy Statute.

The South Carolina General Assembly has clearly spoken through S.C. Code Ann. § 20-1-80 that a bigamous marriage is "void" — i.e., never a marriage and never valid from the beginning.[19] This section reads as follows:

[19] For more than a century, that statute has provided that bigamous marriages are void. This is consistent with the public policy against bigamous marriages. For example, entering into a bigamous marriage is a crime. Note, however, that *State v. Sellers,* 140 S.C. 66,134 S.E. 873 (S.C. 1926), recognizes, as do all the other bigamy cases,

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80. A void marriage is treated differently from a voidable marriage. A voidable marriage is valid unless and until a court rules that such a marriage is invalid, but a void marriage is never valid for any purpose. *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008), confirms the difference between a void marriage — void ab initio because of bigamy — and a merely voidable marriage — valid unless and until a court invalidates it, such as for intoxication. *Lukich* annulled two marriages: a bigamous marriage, held void ab initio, and a marriage annulled for intoxication, held voidable.

The South Carolina General Assembly demonstrates that it understands the difference between void and voidable. For example, S.C. Code Ann. § 62-3-713, governing self-dealing transactions by a personal representative, provides that such a transaction is "voidable" and can be invalidated at the request of an interested person.

Consequently, when the General Assembly uses the term "void" in the bigamy statute, the meaning is clear: a bigamous marriage is void ab initio and never valid.

B. Case Precedent.

1. A Bigamous Marriage Is Void Ab Initio And Never A Marriage.

The annulment order in this case was granted on the most serious and substantial of all grounds for rendering a marriage void: bigamy. It is against public policy and a crime to commit bigamy. A long line of South Carolina cases, including *Lukich*, holds that a bigamous marriage is not a marriage at all, at any point in time. In

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that a bigamous marriage is void ab initio, so that a void first marriage is not an impediment to a valid second marriage, and thus the second marriage is not bigamous and not a crime.

fact, every South Carolina case considering the issue has concluded that a bigamous marriage is void ab initio, and thus never a marriage:

> At the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy. S.C. Code Ann. § 20-1-80 (1985) ("All marriages contracted while either of the parties has a former wife or husband living shall be void"). It was void from its inception, not merely voidable, and, therefore, *cannot be ratified or confirmed and thereby made valid.*

Johns, 309 S.C. at 201, 420 S.E.2d at 858 (emphasis added).

> A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, *is not a marriage at all.* Such a marriage is absolutely void, and not merely voidable.

Day v. Day, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) (emphasis added).

> There could not have been a valid marriage between the appellant, Maggie (Craft) Blizzard, and William Blizzard, as William Blizzard had a lawful living wife at the time of the claimed marriage.

Ex parte Blizzard, 185 S.C. 131, 193 S.E. 633, 634 (1937).

> When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, *no common-law marriage may be formed*, regardless whether mutual assent is present.

Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005) (emphasis added). *See also Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993); 52 Am. Jur. 2d, supra, § 57 ("A marriage that occurs while one party is still legally married to another is void from its inception and cannot be retroactively validated by estoppel, by mutual agreement, or by the parties' conduct in holding themselves out as husband and wife.").[20] This is hardly surprising as

[20] Every South Carolina case, as required by § 20-1-80, has concluded that the status of someone entering into a bigamous marriage is that of never having been married. It is Mrs. Brown's status that is critical here. At the time she married Mr. Brown, she had no impediment to their marriage because she had never been married before. Respondents cite several cases that deal with ancillary matters, but all of these cases follow the required rule about status: someone having entered into a bigamous marriage was never married. To the extent these cases also deal

the courts are required to follow the mandate from the legislature that bigamous marriages are void ab initio.

2. *Lukich v. Lukich.*

Both the Court of Appeals and Supreme Court decisions in *Lukich v. Lukich*[21] are in accord with § 20-1-80, case precedent, and Mrs. Brown's position. *Lukich* held that a *bigamous* marriage is void ab initio. *Lukich* also held that a marriage, annulled for *intoxication rather than bigamy*, could be treated as voidable.[22]

Lukich annulled two marriages: one void ab initio for bigamy and another voidable for intoxication. In *Lukich*, the wife sought alimony during a divorce from her second husband (Marriage 2). During the divorce proceeding, the second husband learned that the woman had previously been married (Marriage 1) and had never obtained a divorce or an annulment from the first husband. During the divorce case, the wife quickly obtained an annulment for Marriage 1, without her husband's knowledge and in another venue, on the ground of intoxication.[23] Both appellate courts concluded that Marriage 1 was voidable and refused to apply the annulment of Marriage 1 retroactively so that her status would allow her to enter Marriage 2. Marriage 1 in *Lukich* was properly voidable, rather than void, because the annulment was based on intoxication

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with ancillary matters, they are inapposite. See *Splawn v. Splawn*, 311 S.C. 423, 429 S.E.2d 805 (S.C. 1993) (bigamous marriage void ab initio but court had to deal with ancillary equitable apportionment of property issues); *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (S.C. App. 2004) (similar, citing *White v. White*, 283 S.C. 348, 323 S.E.2d 521 (S.C. 1984); *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003) (second marriage bigamous and void ab initio — court had to decide impact on first husband's obligation to pay alimony, which had ostensibly ended if second marriage was valid, which it was not).

[21] 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006); 379 S.C. 589, 666 S.E.2d 906 (2008).

[22] "An annulment declares that a marriage never occurred because of some defect. Defective marriages may be either void or voidable. In a void marriage, the circumstances are such that the marriage could never have come into being. A voidable marriage is recognized under the law as a valid marriage until an action is brought to prove it invalid." Stuckey, *Marital Litigation in South Carolina*, Ch. 3.A. A bigamous marriage is void. In fact, "a void [bigamous] marriage technically needs no judicial action to declare that it is void." *Id.*

[23] The annulment at issue in *Lukich* was granted on the ground of intoxication. *Lukich*, 368 S.C. at 51, 627 S.E.2d at 756 ("[S]he and Havron were married during a night of heavy drinking, [and] had never lived together as husband and wife[.]").

rather than bigamy. One consequence of the *Lukich* court treating Marriage 2, the bigamous marriage, as void ab initio, is that the husband in Marriage 2 owed no alimony because Marriage 2 was "never a marriage." If *Lukich* had not treated Marriage 2 as void ab initio because it was bigamous, as required by statute and precedent, the Court would have had to conclude that the husband of Marriage 2 would have owed alimony from the time of Marriage 2 until the annulment of Marriage 2. [24]

In short, a marriage entered into by intoxicated persons is not invalid until the parties decide to attack the marriage and not to waive the defect. Therefore, it is logical, as the *Lukich* Court held, that a voidable marriage is invalid only prospectively from the date of the annulment.

A void marriage, however, is different. A void marriage is never a valid marriage. The parties are not permitted to waive the defect; the marriage is automatically invalid. Both *Lukich* appellate courts concluded that Marriage 2 was void ab initio because it was bigamous. Consequently, Marriage 2 was never a marriage so that the divorce was unnecessary and the second husband could not owe alimony.

Lukich does not change, but is instead consistent with, S.C. Code Ann. § 20-1-80 and all South Carolina case precedent: a bigamous marriage (Marriage 2 in *Lukich*) is void ab initio and never a marriage. Respondents, in particular Terry Brown, cite the following language from the Supreme Court opinion in *Lukich* as somehow changing the treatment of bigamous marriages in this state:

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[24] The holding in *Lukich* as to Marriage 1 makes perfect sense, as a voidable marriage is invalid only if it is attacked. The parties to a voidable marriage always have the option of waiving the defect and ratifying the marriage. The annulment of Marriage 1 in *Lukich* was granted on the ground of intoxication. Intoxication is one of the classic grounds that render a marriage voidable, but not void. See 52 Am. Jur. 2d Marriage § 23 (Westlaw database updated Nov. 2014); *Abel v. Waters*, 373 So. 2d 1125, 1128 (Ala. Civ. App.), writ denied, 373 So. 2d 1129 (Ala. 1979); *Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903).

> Under the statute's terms, Wife's 'marriage' to Husband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse *and that* marriage had not been 'declared void.' § 20–1–80.

Lukich, 373 S.C. at 592, 666 S.E.2d at 907 (Emphasis added).

Respondents contend that *Lukich* creates new law with respect to bigamous marriages. Respondents claim *Lukich* disregards the clear requirement of the bigamy statute and ignores or reverses all case precedent that bigamous marriages are void ab initio. Respondents base their contention on the words "and that" emphasized in the above quote. These words, Respondents argue, indicate that regardless of whether a marriage is void or voidable, one has an impediment to marriage and must obtain an annulment before remarriage. Contrary to Respondents' contention, however, the words "and that" do not refer to the bigamous marriage (Marriage 2 in *Lukich*); the words "and that" clearly refer to the intoxication marriage (Marriage 1 in *Lukich*). Thus, *Lukich* cannot be read to change a substantive rule of law, namely that a bigamous marriage is void only from the date of the annulment order. This would render a bigamous marriage voidable rather than void. *Lukich* does no such thing. Rather, *Lukich* confirms that a bigamous marriage is void ab initio and never a marriage because it treated Marriage 2 (the bigamous marriage in *Lukich*) as never having been a marriage, so that the second husband did not need a divorce and did not owe alimony to a wife he never married.

If Respondents were correct that *Lukich* created a new rule, then the *Lukich* court would instead have held that the second husband owed alimony until an annulment order for Marriage 2 was obtained. Moreover, if Respondents are correct, then the *Lukich* appellate courts favorably cite cases holding that bigamous marriages are void ab initio while somehow overturning those cases and ignoring § 20-1-80. The clear meaning of *Lukich* is that, as required by § 20-1-80 and all case precedent, bigamous marriages are void ab initio and never a marriage.

Moreover, even if Respondents were correct in their position about *Lukich*, i.e., that even a bigamous marriage is valid unless and until an annulment order is obtained, they could still not prevail. Under their theory, *Lukich* changed the law about bigamous marriages so that a bigamous marriage remains valid unless and until an order of annulment is obtained. If that were correct, then under their theory Mrs. Brown had an impediment to marrying Mr. Brown and that marriage was therefore bigamous. But under Respondents' position, Mr. Brown's bigamous marriage to Mrs. Brown would be valid unless and until Mr. Brown obtained an order annulling their marriage, which he did not obtain during his lifetime. It is now too late for Mr. Brown to obtain an annulment.[25] So, even under Respondents' theory, the marriage between Mrs. Brown and Mr. Brown was valid at his death and cannot be invalidated because it is too late.

In this case, unlike *Lukich*, it is the first marriage (Marriage 1), rather than Marriage 2 in *Lukich*, that is bigamous and thus void. Consequently, Mrs. Brown's attempted marriage to Ahmed (Marriage 1) was void ab initio and never a marriage. Therefore Mrs. Brown had no impediment to her marriage to Mr. Brown, and that marriage (Marriage 2) is valid.

Despite the contentions of Respondents, *Lukich* is consistent with the bigamy statute and all precedent involving bigamous marriages: bigamous marriages are void ab initio and never have any effect --- they are "never a marriage." The only difference with respect to bigamous marriages between *Lukich* and this case is that, in *Lukich*, the bigamous marriage was the second marriage, while in this case, the bigamous marriage is the first marriage. That difference has no impact on the treatment of bigamous marriages. The bigamous second marriage in *Lukich* was void ab initio and never had effect. The bigamous first marriage in this case was void ab initio and never had effect, so that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Were this Court to give only prospective effect to the annulment in this case, it

[25] See the discussion at IV.C. below.

would be holding that a bigamous marriage was not invalid from its inception. Rather, it would be holding that a bigamous marriage was valid from the date of its inception until the date of the annulment.

This Court is unwilling to hold that a bigamous marriage, as determined by a family court of this state, was ever legal. There is no precedent for such a holding. South Carolina law precludes this Court from giving any effect whatsoever to a bigamous marriage. Because the Court cannot give any effect to a bigamous marriage, it is required to hold that the bigamous marriage was never a marriage.

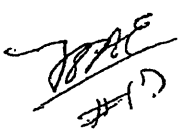
Mrs. Brown and Ahmed never had a valid marriage at any point in time, and Mrs. Brown had no impediment to her valid marriage to Mr. Brown.

3. ***Hallums v. Hallums.***

The LSA argued that *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (S.C. 1906), was exactly on point and reached a different result. The LSA misses a critical factual distinction between *Hallums* and the current case: in *Hallums*, there was never a court determination that the first marriage (Marriage 1) was bigamous and, in fact, the court found that the Marriage 1 was not bigamous. By contrast, in the current case, there is a valid annulment order finding that the first marriage was bigamous.

The Hallums paradigm actually supports Mrs. Brown's position. If the *Hallums* court had determined that Marriage 1 was bigamous, then the *Hallums* opinion indicates that the second marriage (Marriage 2) would have been valid because there would have been no impediment to the wife entering into the second marriage (Marriage 2) with the decedent.

More specifically, in *Hallums*, a woman attempted to get a distributive share from



the decedent's estate, claiming to be his surviving spouse. However, the estate contended that she was already married when she attempted to marry the decedent, and thus had an impediment to the attempted marriage to the decedent. The woman then contended that her attempted first marriage was invalid because her putative first husband was already married when they attempted to get married. So far, the LSA is correct: absent the critical distinction missed by the LSA's analysis, the *Hallums* paradigm is the same as the paradigm in the current case because in *Hallums*, the woman argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married.

In the current case, Mrs. Brown argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married. The *critical* difference between the two cases is that in *Hallums*, the woman *did not* have a separate annulment order invalidating Marriage 1 void ab initio and did not get one because the court concluded her first marriage was not bigamous. In the current case, Mrs. Brown *does* have an annulment order invalidating Marriage 1. In *Hallums*, the court was asked to consider the validity of both Marriage 1 and Marriage 2 at the same time. The *Hallums* court determined that Marriage 1 was valid because there was insufficient evidence that the husband in Marriage 1 was already married: consequently, Marriage 1 in *Hallums was not bigamous* and therefore was valid. Thus, the woman in *Hallums* had an impediment to Marriage 2. That is the critical factual difference between the facts in *Hallums* and the current case. In the current case, Marriage 1 was determined by a court to be bigamous and thus never valid. In the current case, Mrs. Brown thus had no impediment to Marriage 2 (her valid marriage to Mr.

Brown).

Hallums actually supports Mrs. Brown's position. *Hallums* stands for the proposition that, *if* Marriage 1 had been bigamous and thus void ab initio, Marriage 2 to the decedent would have been valid and the woman would be entitled to her distributive share from the decedent's estate. That is exactly Mrs. Brown's position. Because she has an order confirming that Marriage 1 was void ab initio as bigamous, Marriage 2 is valid and she qualifies as a surviving spouse.[26]

4. All Bigamous Marriages Are Void.

Every bigamous marriage is void ab initio. A bigamous marriage is never valid — "never a marriage." In S.C. Code Ann. § 20-1-80, the bigamy statute, the South Carolina General Assembly requires that a bigamous marriage is void ab initio. In accordance with this legislative mandate, every South Carolina case dealing with bigamous marriages, including *Lukich* and *Hallums,* holds that a bigamous marriage is void ab initio and never has effect. Although Respondents contend that *Lukich* somehow changes that rule and instead provides that a bigamous marriage is valid until an annulment order is obtained, that is not the holding in *Lukich* as to bigamous marriages. *In Lukich, it is the second marriage that is bigamous* and both appellate courts treat that second marriage as void ab initio, in accordance with the bigamy statute and all case precedent. *In Mrs. Brown's case, it is the first marriage that is bigamous*, and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums* is in accord with the bigamy statute,

[26] Unlike this case, the court in *Hallums* looked at the first marriage after the decedent's death because: (1) there was no pre-existing annulment order from a court with exclusive jurisdiction over annulments, as there is today; (2) this was prior to the family court having exclusive jurisdiction over annulments – in fact, this was prior to the existence of family courts in South Carolina; (3) this was prior to § 62-2-802 defining surviving spouse for estate purposes and case law precluding postmortem annulments. See IV.C below.

Lukich, and all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was *found to be bigamous and void*, the first marriage in *Hallums* was *found not to be bigamous and was therefore valid*. However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

IV. THE ANNULMENT ORDER IS FINAL AND BINDING.

A. Introduction.

Because the bigamy statute and case law, including *Lukich*, hold that a bigamous marriage is void ab initio, the annulment order confirms that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Respondents contend that the annulment order is not valid and that this Court should refuse to recognize the annulment order or alternatively disregard the findings of fact of the annulment order. For a number of reasons, this Court concludes that the annulment order is final and binding. Nor will this Court re-open or re-litigate the underlying findings of fact of the annulment order, which in this case would have the same effect as disregarding the annulment order. All of these reasons are explained in greater detail below at IV.B-G, but generally the reasons are as follows:

First, only the family court has jurisdiction over annulments. This Court does not have jurisdiction over annulments. If this Court failed to recognize the annulment order as valid, then

the result would be to re-litigate the annulment in this Court. If this Court does not have jurisdiction to hear an annulment action, it does not have jurisdiction to re-litigate an annulment action. Nor can this Court re-open or review the findings of fact underlying the annulment order. Even if this court had jurisdiction to do so, doing so would lead to only two possible results: (1) this Court's determination that the family court was correct or (2) that the family court reached an incorrect conclusion. This, presumably, would mean that the annulment order, which was not appealed, is rendered invalid by this Court. This Court simply does not have such jurisdiction.

Second, even if this Court had jurisdiction to not recognize or to re-litigate the annulment order, the appropriate parties would not be available. Mrs. Brown and Ahmed would be the necessary parties, and Ahmed is not a party to this action nor should he be. If this Court allowed Ahmed to participate as a party in the re-litigation of the order, this would allow him to collaterally attack a family court order he cannot now directly attack. The only way to invalidate a marriage in South Carolina is to bring an annulment action. Mr. Brown obviously knew that because he brought an annulment action, which he eventually dismissed. Annulment actions cannot be brought postmortem. Nor can Respondents do so. Any right they may have is derived from Mr. Brown, and they cannot have greater rights than he did.

Third, a court has to have a reason to refuse to recognize an order, and the only reason is the failure of due process, either by failure to obtain personal jurisdiction or a lack of subject matter jurisdiction. Even if this Court had jurisdiction concerning the annulment order, it finds that there is no defect in personal jurisdiction —i.e., the service was proper — and the family court had subject matter jurisdiction. There is no failure of due process and so there is no reason to refuse to recognize the order.

Fourth, even if this Court had jurisdiction, the issue of the finality of the annulment order — i.e., whether it is binding on those not parties to the action — in this case applies only to Mr. Brown because, as noted, Respondents at best stand in his shoes. The Respondents concede that an annulment is an in rem action, and in rem actions are binding on non-parties as to status. Even if Mr. Brown was not precluded by the reasons stated above, and for other reasons, he would be bound by the status determination of an in rem action. The status determination of the annulment order was that Mrs. Brown was never married to Ahmed and thus her status at the time of her marriage to Mr. Brown was that she had no impediment to that marriage. Mrs. Brown's status is the only relevant issue here.

Finally, to disregard or relitigate the annulment order would create a chaotic precedent. No marital determination of status – validation of marriage, invalidation of marriage (annulment) or termination of marriage (divorce) — would ever be final and binding. Families are critically affected by the status of family court actions and their status determinations must be sacrosanct. To allow any third party to attack a status determination would permit endless litigation over family matters and continuing uncertainty over such critical relationship matters as paternity and legitimacy, as well as a person's ability to enter into valid marriages. Some examples of unacceptable problems which would result in this case are as follows:

1. Mr. Brown brought and dismissed an annulment action attacking his marriage to Mrs. Brown. This Court takes judicial notice that Mr. Brown did not thereafter attempt to file an action in court to invalidate their marriage, which he obviously knew how to do if he wished. Mr. Brown did not annul his marriage to Mrs. Brown before his death, but Respondents now wish to do so.

2. The annulment order legitimizes J B . Because the annulment action confirmed that Mrs. Brown had no impediment to her marriage to Mr. Brown, their marriage makes J , born before the marriage, legitimate. Effectively overturning the annulment order would render J illegitimate, affecting critical rights of his.

3. If Ahmed is not a party to relitigation of the annulment order, an overturning or disregard of that order could impact his family status. According to the sworn affidavit of Daryl Brown's attorney in this matter, David Bell, Ahmed has known for at least six years that his marriage to Mrs. Brown was annulled. This Court takes judicial notice that Mr. Ahmed has taken no judicial action to attack the annulment order. Relying on the validity of the annulment order, Ahmed may have married subsequently and had children: if the annulment order is overturned, then his marriage would be invalidated and his children rendered illegitimate.

B. This Court Lacks Subject Matter Jurisdiction To Relitigate Or Disregard The Annulment Order.

Respondents would have this Court relitigate or disregard the annulment order issued by the family court. However, this Court does not have jurisdiction over annulments. *Only* the family court has jurisdiction over actions for annulments. S.C. Code Ann. § 63-3-530(A)(6)[27] provides that the family court has *exclusive* jurisdiction over annulments.

The only way for Mr. Brown to have invalidated his marriage to Mrs. Brown would have been through an annulment of their ceremonial marriage. "Annulments are actions to establish the invalidity of marriages." See Stuckey, *Marital Litigation*, Ch. 3.A. Mr. Brown obviously understood that an annulment action is the method to seek an invalidation of a marriage because he brought an action to annul his marriage to Mrs. Brown. As discussed above, Mr. Brown dismissed that action through a consent order. It is now too late for Mr. Brown, or anyone acting for or through him, to bring an annulment action to invalidate his marriage to Mrs. Brown. See the discussion at IV.C below.

Consequently, if this Court lacks subject matter jurisdiction over annulments, it cannot relitigate or disregard the family court annulment order. Redetermining the underlying facts of

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[27] Formerly S.C. Code § 20-7-140.

the annulment order would be engaging in an annulment action, which this Court lacks jurisdiction to do.

Having this Court relitigate or disregard an existing valid family court order would create a precedent resulting in chaos.[28] If a third party is allowed to attack an order of annulment or divorce obtained during a decedent's lifetime, relationships relied on by the decedent during his lifetime and taken to his grave could be undone, and great damage would be done to the public policy of stability of marriage.

S.C. Code Ann. § 63-3-530(A)(6) grants the family court exclusive jurisdiction over annulments. To allow the Respondents to challenge Mrs. Brown's annulment from Ahmed in this Court would subvert the exclusive authority granted to the family court by the South Carolina General Assembly.[29] According to the plain language of the statute, the General Assembly granted exclusive jurisdiction over annulments to the family court.[30] In so doing, the General Assembly prohibited all other courts from going behind the family court's annulment orders.

Lukich fits this statutory scheme because it involved an appeal from the family court, which had jurisdiction over annulments. *Lukich* did not allow an annulment order to be challenged in a court outside of the family court. Unlike Mr. Lukich, Mr. Brown withdrew his family court action for annulment during his lifetime. The legislative scheme did not give Mr.

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[28] *See, e.g., Neely*, discussed below.

[29] "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.' Black's Law Dictionary 602 (7th ed. 1999)." Hodges v. Rainey, 533 S.E.2d 578, 582, 341 S.C. 79, 86 (2000).

[30] In S.C. Code § 63-3-530(A)(6), the Legislature says that "[t]he Family Court has exclusive jurisdiction...to hear and determine actions for annulment of marriage".

Brown the ability to challenge the annulment order outside of the family court during his lifetime, and his heirs likewise cannot go behind a family court order in this Court.

C. Even If This Court Had Jurisdiction, A Postmortem Annulment Action Is Not Possible.

The issue before this Court on summary judgment is whether Mrs. Brown is the surviving spouse of Mr. Brown. South Carolina Probate Code § 62-2-802 is the statute governing the determination of surviving spouse qualification. Section 62-2-802 specifically addresses annulment in this context. It provides that a surviving spouse is someone from whom the decedent did not get a divorce or an annulment:

> **Section 62-2-802. Effect of divorce, annulment, decree of separate maintenance, or order terminating marital property rights.**
> (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. A decree of separate maintenance that does not terminate the status of husband and wife is not a divorce for purposes of this section.

Section 62-2-802(c) requires that any divorce decree or annulment be signed by the court and filed in the office of the clerk of court. It is too late for Mr. Brown, or those acting for or through him, to bring such an annulment action. In *Hatchell-Freeman v. Freeman*, 340 S.C. 552, 532 S.E.2d 299 (Ct. App. 2000), the Court of Appeals, addressing S.C. Code § 62-2-802, held that a divorce decree was invalid when it was filed three days after the husband's death, although his death occurred more than a week after the final divorce hearing. In *Bayne v. Bass*, 302 S.C. 208, 394 S.E.2d 726 (Ct. App. 1990), the wife committed suicide after the trial judge orally granted her request for divorce but before he signed a divorce decree. The judge signed the decree two days after she died but vacated it on motion by the husband's counsel. The Court of Appeals held that the order granting the divorce was void and that the court properly vacated its own order. Mr. Brown neither divorced nor had his marriage to Mrs. Brown annulled during his

lifetime. Therefore, under the Probate Code Mrs. Brown was still his wife at the time of Mr. Brown's death, and she is his surviving spouse.

Respondents – in privity with Mr. Brown and deriving any rights they have through him -- are attempting to do after his death what he chose not to do in life. The exclusive method to invalidate a marriage is to bring an annulment action in the Family Court. Mr. Brown obviously knew that because he brought an annulment action in the Family Court, which he dismissed.[31] Again, this Court has no jurisdiction over annulment actions, but even if it did, it is too late for Mr. Brown to collaterally attack an annulment order. Annulment actions cannot be brought postmortem. Nor can Respondents do so.

D. Even If This Court Had Jurisdiction Over Annulments And Did Not Lack Necessary Parties, There Is No Reason To Disregard The Annulment Order.

A court has to have a reason to refuse to recognize an order, and the only reason is the failure of due process, either by failure to obtain personal jurisdiction or a lack of subject matter jurisdiction. *Yarbrough v. Collins*, 293 S.C. 290, 360 S.E.2d 300 (S.C. 1987) ("A judgment may be collaterally attacked if the court lacked jurisdiction and the lack of jurisdiction appears on the face of the record. *Turner v. Malone*, 24 S.C. 398 (1886)."); *Miles v. Lee*, 319 S.C. 271, 460 S.E.2d 423 (S.C. App. 1995) (similar); *Henry v. Cottingham*, 253 S.C. 286, 170 S.E.2d 387 (S.C. 1969) ("The decree of a Probate Court admitting a will to probate is final and conclusive if not reversed by the appellate court, or set aside and revoked by direct proceeding, and cannot be questioned collaterally. *Weinberg v. Weinberg*, 208 S.C. 157, 37 S.E.2d 507; *Reed v. Lemacks*, 204 S.C. 26, S.E.2d 441; Davis v. Davis, 204 S.C. 26, 28 S.E.2d 441." . . . . "*In Wilkinson v. Wilkinson*, 178 S.C. 194, 182 S.E. 640, this court said: 'As a proceeding to probate a will is a

[31] Notably, even in Mr. Brown's short-lived annulment action, he did not attack the annulment order but rather insisted that it was binding on Mrs. Brown.

judicial one, a judgment or decree admitting a will to probate stands on the same footing as a judgment of any other Court of competent jurisdiction; and while it is not conclusive in the sense that a person having a requisite interest may not attack it by a direct proceeding within the period of time allowed by statute, without a statute conferring the right to contest, the order admitting the will to probate would be final on all parties.'") *McCampbell v. Warrich Corporation*, 109 F.2d 115 (7th Cir. 1940) (a collateral attack "is not permissible if the court had jurisdiction over the parties and the subject matter."); *Burlington Data Processing, Inc. v. Automated Medical Systems, Inc., Clinical Management Systems, Inc., and William Carlson*, 492 F.Supp. 821 (D. Vermont 1980) ("A final, valid judgment, though erroneous, is not subject to collateral attack unless it can be shown that the court rendering it was without jurisdiction. *See Midissa Television Co. v. Motion Pictures for Televisions, Inc.*, 290 F.2d 203 (5th Cir. 1961), *cert. denied* 368 U.S. 827, 82 S.Ct. 47, 7 L.Ed.2d 30 (1961). *Anderson v. Tucker*, 68 F.R.D. 461 (D.Conn.1975). *1B J. Moore, Federal Practice*, s .407."); *Popp Telcom v. American Sharecom, Inc.*, 210 F.3d 928 (8th Cir. 2000) ("When a judgment is alleged to be simply erroneous or attacked on the basis of anomalies unrelated to the court's jurisdiction, collateral attack is not an option."). *See also* Fouche v. Royal Indemnity Company, 217 S.C. 147, 60 S.E.2d 73 (S.C. 1950) ("The probate court of Orangeburg County which rendered the judgment in this case is a court of record, and had full jurisdiction over the administration proceedings. It has been held in many cases in this state that a judgment is not open to successful collateral attack unless void on its face, or upon an inspection of the judgment roll. This principle seems to be self evident, and the authority of adjudged cases support it."...."As heretofore stated, the record in the probate court of Orangeburg County does not affirmatively disclose that the court was without jurisdiction of these appellants, hence their collateral attack on the judgment cannot succeed, and the order of

discharge is binding upon them.")

Even if this Court had jurisdiction concerning the annulment order, it finds that there is no defect in personal jurisdiction —i.e., the service was proper — and the family court had subject matter jurisdiction. There is no failure of due process and so there is no reason to refuse to recognize the order.

E. The Annulment Order Is Binding On All Parties.

The annulment order is binding on all parties. South Carolina provides:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not [sic] to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80.

The validity of the attempted marriage between Mrs. Brown and Ahmed has already been addressed by the South Carolina court with jurisdiction. That court issued a final judgment invalidating the attempted marriage between Mrs. Brown and Ahmed, on the ground of bigamy. This annulment order is binding on Mr. Brown, and consequently is binding on Respondents.

In addition to *Lukich v. Lukich*, other South Carolina case law confirms this rule. In *Joye v. Yon*, 345 S.C. 264, 547 S.E.2d 888 (Ct. App. 2001), a husband and wife were divorced, and the husband was ordered to pay alimony. Some years later, the wife remarried. Six months later, her remarriage was annulled for bigamy, as the second husband had never divorced his prior wife. The first husband refused to resume paying alimony after the annulment, and the wife filed a contempt action to enforce the original decree. The husband then argued that the wife's remarriage, bigamous though it may have been, still terminated his ability to pay support.

The court of appeals resolved the main issue in the case by holding that a bigamous remarriage, which is void ab initio, does not terminate a prior spousal support obligation. The husband then argued in the alternative that the wife's remarriage could not be treated as bigamous *against him,* as he was not a party to the annulment action in which the remarriage was declared void. This is the same argument that Respondents make in the present case. But the court of appeals rejected this argument. It held directly that the annulment was binding upon the first husband even though he was not a party to the action:

> Yon also argues the court erred in reinstating his alimony obligation because he was not a party to Joye's annulment action. He asserts that he should have been made a party to the annulment action because its outcome directly affected him. We disagree.
>
> Generally, a person must be joined as a party to an action if his absence precludes complete relief among those already parties or his interest in the subject matter is so intertwined that he would not receive complete relief or resolution without his participation. Rule 19(a), SCRCP; see *First Citizens Bank & Trust Co.* v. *Strable,* 292 S.C. 146, 148,355 S.E.2d 278,279 (Ct. App.1987).
>
> Since Yon had no standing to challenge the granting of the annulment, it was not necessary for Joye to include him as a party to the action. Moreover, Yon suffered no prejudice by not being made a party to the action. Under South Carolina law, Joye's marriage to Vance was void ab initio and Yon's presence as a party to the action could not have altered the decision to grant the annulment.

Id. at 276, 547 S.E.2d at 894 (emphasis added). For exactly the same reasons, Respondents have no standing to question the invalidation of Mrs. Brown's previous attempted marriage to Ahmed because of Ahmed's bigamy.[32] That order can be questioned only in a direct attack by those who

[32] A leading authority on family law supports this South Carolina rule. "[A]nnulment decrees are binding upon nonparties as well as parties respecting the validity of the marriages involved." 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987). Professor Clark recognizes that this issue highlights the tension between the opportunity to be heard, on the one side, and the need for finality on the other. Although he recognizes that the rights of third persons may be affected by whether or not a marriage exists, he concludes: "No matter how clearly these [third-party] rights may depend on the existence of a marriage, they are not of the same degree of importance, seriousness or consequence as the interests of the spouses themselves in the marriage. It is perhaps this factor that has led to the well-established rule that a decree of divorce is conclusive on third parties with respect to the termination of the marriage. It is the writer's view that a decree of annulment should have the same effect."

were party to it, and only if that direct attack was timely and properly brought. Just as the first husband in *Joye* was bound by the annulment of the marriage between the wife and her second husband, so is the estate of Mr. Brown bound by the order invalidating ab initio the attempted marriage between Mrs. Brown and Ahmed.

In *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003), the Supreme Court necessarily agreed with the court of appeals regarding the husband's standing to attack the annulment. The Court of Appeals was reversed as to the *effect* of the annulment upon the prior support obligation, and not as to the *existence* or *validity* of the annulment.[33]

The result reached in *Joye* is further consistent with S.C. Code § 20-1-520, which provides that third parties were generally bound by a court's determination that a marriage is valid:

> When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage and, upon due proof of the validity thereof, it shall be decreed to be valid and *such decree shall be conclusive upon all persons concerned.*

S.C. Code Ann. § 20-1-520 (emphasis added).[34]

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[33] The effect of the final and binding Family Court order invalidating the attempted marriage between Mrs. Brown and Ahmed is that the Brown-Brown marriage is valid, per the *Lukich* case, as discussed below.

[34] If third parties were able to contest family court orders, the order would never be final and chaos in family relations would ensue. *See Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (2005). As to precedent regarding finality, the Court of Appeals in *Neely* cited cases as follows:

> Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884) (alteration and emphasis added) (quoting Freeman Judgments § 12), cited with approval in *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). A decree of divorce is generally a final judgment of the court. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); cf. Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) ("The final written order contains the binding instructions which are to be followed by the parties.")...See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) *(holding an unappealed ruling is the law of the case and cannot be later challenged).*

Neely v. Thomasson, 355 S.C. 521, 536, 586 S.E.2d 141, 144 (Ct. App. 2003) (emphasis added).

An annulment action and an action to validate a marriage, as described in § 20-1-520, are symmetrical: one brings an action to validate a marriage to confirm a marriage's validity while one brings an annulment action to confirm a marriage's invalidity. See Stuckey, *Marital Litigation in South Carolina*, Ch. 3-A. Thus, because "all persons concerned" are bound by a court determination that a marriage is valid, "all persons concerned" are likewise bound by a court's finding that a marriage is invalid. If third parties were able to contest final family court orders, the order would never be final and chaos in family relations would ensue.

Other states have held that annulments cannot be collaterally attacked by those who are not parties to the action. See, e.g., *Johnson County National Bank & Trust Co. v. Bach*, 189 Kan. 291, 369 P.2d 231 (1962) (certain beneficiaries made exactly the same argument that Respondents make—that the annulment was not binding on third parties – and the Kansas Supreme Court agreed with the wife that the annulment was dispositive and that it could not be questioned by third parties).

Just as the annulment decree in *Bach* was conclusive on the validity of the alleged marriage in that case, so is the annulment in this case likewise dispositive. The annulment can be attacked only in a prior direct attack filed by the parties to the action—Mrs. Brown and Ahmed.

A New York court stated the fundamental principle of law that underlies South Carolina's position:

> It is ancient law that a judgment in rem is res judicata to all the world with regard to the res or status that is determined therein. In a matrimonial action the condition of marriage or non-marriage is involved. An essential issue is, therefore, one of status—or, put another way, there is a marital res subject to in rem jurisdiction. As a consequence, in ordinary circumstances *a judgment determining marital status is binding on the whole world, and it is not confined in effect to the immediate parties to the action in which the*

judgment determining status was rendered.

Presbrey v. Presbrey, 6 A.D.2d 477, 480, 179 N.Y.S.2d 788, 792 (1958) (emphasis added), *aff'd*, 8 N.Y.2d 797, 168 N.E.2d 135, 201 N.Y.S.2d 807 (1960); *see also Luke v. Hill*, 137 Ga. 159, 73 S.E. 345, 346 (1911) ("So far as the adjudication fixes the status of the parties, the judgment concludes both parties and strangers[.]").

The *Restatement (Second) of Judgments* states the rule as follows:

> *A status determination is ordinarily binding on non-parties* because it effects a transformation of the legal status of the person involved which others have no legal authority to challenge. In this respect it is similar to status changes that parties are free to make without adjudicative proceedings, such as entry into marriage, renunciation of citizenship, or voluntary surrender of one's property to a conservator or trustee.

Restatement (Second) § 31 cmt. *f* (emphasis added); *see also id.* § 31 cmt. *a* ("Proceedings for the determination of status include divorce and annulment actions[.]").

The annulment order involves Mrs. Brown's status, and this status cannot be collaterally attacked by any third party. Because Mrs. Brown's putative marriage to Ahmed was void ab initio for bigamy, Mrs. Brown's status at the time of her marriage to Mr. Brown was that she had no impediment to that marriage.

Therefore, the Respondents have no legal authority to challenge the Family Court Order of annulment.

F. The Family Court Order Is Binding On Respondents Who Are in Privity with Mr. Brown.

Respondents are bound by the Family Court order. Heirs are in privity with their ancestors. *Thompson v. Hudgens*, 161 S.C. 450, 463, 159 S.E. 807, 812 (1931). Consequently, heirs are barred from asserting claims that their ancestors would have been barred from asserting. *Watson v. Watson*, 172 S.C. 362,369-71, 174 S.E. 33, 36 (1934). In *Watson*, the decedent was

barred from attacking a divorce; the Court held that those in privity with him, such as his children, were likewise barred. These rulings are obvious because heirs and devisees of a decedent cannot acquire any greater rights through the decedent than the decedent had himself. Similarly, a personal representative's relationship with the decedent exemplifies the classic case of privity with the decedent. It would be illogical for a personal representative, representing the decedent, or Respondents, claiming through the decedent, to have greater rights than the decedent had himself.

More generally, "[t]he term 'privity' when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right." *H.G. Hall Constr. Co. v. J.E.P. Enters.*, 283 S.C. 196, 204, 321 S.E.2d 267, 271 (Ct. App. 1984). *Carolina Baking Co. v. Geilfuss*, 169 S.C. 348, 168 S.E. 849, 852 (1933), held that a judgment is binding upon nonparties who "sought, consented to, or acquiesced in" the judgment. *Id.* To similar effect is *Tillman v. Tillman*, 93 S.C. 281, 76 S.E. 559 (1912). There, a father executed a deed giving custody of his children to his parents. A custody action then followed between the father's parents and the mother, in which the mother prevailed. The court held that the father was bound by the judgment:

> It is true that [the father] was not a formal party to that proceeding, but he submitted an affidavit therein making no claim on his own behalf, but insisting on the claim of his father and mother, to whom he had solemnly conveyed all his rights of custody. *It is clear that by this action he became bound by the decree rendered in the former proceeding.*

Id. (emphasis added). By supporting his parents in the custody case, therefore, the father became bound by the result.

In *Neely v. Thomasson*, 365 S.C. 345, 618 S.E.2d 884 (2005), the decedent was divorced from his wife during his lifetime, and the divorce decree held that a daughter was born during the

marriage. After the decedent's death, the decedent's heirs argued that they were not parties to the divorce case, that they were not bound by the court's decision, and that the daughter was actually not the child of the decedent. The South Carolina Supreme Court held that the decedent was bound by the judgment, and that the heirs were likewise bound:

> Because the issue of paternity was raised and ruled upon in a prior action, Decedent, if alive, would have been barred from challenging paternity at a later date. *See Eichman*, 285 S.C. at 380, 329 S.E.2d at 766. As a result, Decedent's heirs are likewise barred from asserting claims that Decedent himself would have been barred from asserting. *See Watson*, 172 S.C. at 370-71, 174 S.E. at 36. Moreover, we find that it would be unjust to allow Decedent's siblings to assert a claim that Decedent himself never chose to assert during his lifetime. In fact, there is no evidence in the record that Decedent took any steps whatsoever during his lifetime to disclaim Nancy as his daughter. To the contrary, Decedent acknowledged, on more than one occasion, that Nancy was his child. Therefore, we hold that Decedent's siblings should not have been permitted to challenge the prior paternity determination.

Id. at 354-55, 618 S.E.2d at 889 (emphasis added). The stipulated facts show that Mr. Brown supported the annulment litigation by paying Mrs. Brown's legal fees. After signing the Consent Order of Dismissal concerning his own annulment action, Mr. Brown never again sought to annul his marriage to Mrs. Brown. As such, the Respondents, in privity with Mr. Brown, are bound by the Family Court's order.

G. Binding Effect Of In Rem Judgments.

1. General Rule.

The LSA and other Respondents argue that this Court is not bound by the factual findings set forth in the judgment annulling Mrs. Brown's marriage to Ahmed. The Court respectfully disagrees.

The LSA expressly cites section 73 of the Restatement (First) of Judgments. That section applies on its face only to "Proceedings with Respect to Property." This case is governed by section 74, which applies to "Proceedings with Respect to Status." The validity

of the marriage between Mrs. Brown and Ahmed is a matter of status, not a matter of property. There is no question that a judgment annulling a marriage is a judgment in rem.

Section 74 of the Restatement provides:

> (1) In a proceeding in rem with respect to a status the judgment is conclusive upon all persons as to the existence of the status.
>
> (2) A judgment in such a proceeding will not bind anyone personally unless the court has jurisdiction over him, and it is not conclusive as to a fact upon which the judgment is based except between persons who have actually litigated the question of the existence of the fact.

Restatement § 74.

2. Section 74(1).

The above language states two competing rules. The first rule provides that an in rem judgment is binding upon "all persons" when the issue is the existence of the status. The drafters elaborate:

> *Effect of judgment on the status.* Where in a proceeding for the creation or termination or judicial determination of a status a competent court has after proper notice given a valid and final judgment, the judgment is binding on all persons in the world as to the existence of the status. The judgment is not subject to collateral attack by anyone. . . . *As far as the status is concerned, the judgment is binding not only on persons who were subject to the jurisdiction of the court which rendered the judgment, but also on persons not personally subject to the jurisdiction of the court.*

Restatement § 74 cmt. *a*. As regards the existence of the status itself, therefore, a judgment of annulment binds everyone, including persons not parties to the action or otherwise not subject to personal jurisdiction.

Mrs. Brown provides compelling authority in support of section 74(1). "*[A]nnulment decrees are binding upon non-parties* as well as parties respecting the validity of the marriages involved." 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987) (emphasis added). Professor Clark

continues:

> No matter how clearly these [third-party] rights may depend on the existence of a marriage, they are not of the same degree of importance, seriousness or consequence as the interests of the spouses themselves in the marriage. It is perhaps this factor that has led to the well-established rule that a decree of divorce is conclusive on third parties with respect to the termination of the marriage. It is the writer's view that a decree of annulment should have the same effect.

Id.

Clark's rule has been followed in South Carolina. *See Joye v. Yon*, discussed above.

The holding of a New York decision is squarely on point:

> It is ancient law that a judgment in rem is res judicata as to all the world with regard to the res or status that is determined therein. In a matrimonial action the condition of marriage or non-marriage is involved. An essential issue is, therefore, one of status—or, put another way, there is a marital res subject to in rem jurisdiction. As a consequence, in ordinary circumstances *a judgment determining marital status is binding on the whole world*, and it is not confined in effect to the immediate parties to the action in which the judgment determining status was rendered.

Presbrey v. Presbrey, 6 A.D.2d 477, 480, 179 N.Y.S.2d 788, 792 (1958) (emphasis added), *aff'd*, 8 N.Y.2d 797, 168 N.E.2d 135, 201 N.Y.S.2d 807 (1960).

In *Johnson County Nat. Bank & Trust Co. v. Bach*, 189 Kan. 291, 369 P.2d 231 (1962) and *Michelli v. Michelli*, 527 So.2d 359, 361 (La. Ct. App. 1988), courts directly held that annulments were binding upon third parties. These decisions did not draw any distinction between the facts and the law. They held, consistently with § 74(1) of the first Restatement, that in rem judgments of status bind all parties on the issue of status itself.

Another similar case is *Headen v. Pope & Talbot, Inc.*, 252 F.2d 739, 744 (3d Cir. 1958), where the court, dealing with South Carolina facts, expressly acknowledged the exception of § 74(2), but held that the case was controlled by the general rule of § 74(1). An in rem judgment of status binds the world on the question of status itself. Third parties are not bound only as to

questions collateral to status. As to status, and necessarily the facts determining status, all parties are bound. *See also Bair v. Bair*, 91 Idaho 30, 31, 415 P.2d 673, 674 (1966) (denying decedent's heirs' attempt to attack a divorce decree obtained by decedent's widow and stating that the heirs "as strangers to the divorce decree, have no right to attack its validity. To hold otherwise could cause chaos and uncertainty in the lives of thousands of persons" and that "[o]nce a divorce decree is final, it should not be disturbed by strangers who had no preexisting rights or interests adversely affected by such judgment); *Brown v. United States*, 196 F.2d 777, 777-78 (D.C. Cir. 1952) ("Appellant was a stranger to the divorce proceedings. She had no interest in the same; no right or standing to qualify as a party to the proceedings and oppose a divorce").

The rule was applied to an annulment in *Deyette v. Deyette*, 92 Vt. 305, 104 A. 232 (1918). That case was a Vermont divorce action. The wife had been previously married, but the marriage had been annulled in New York on grounds that the parties were underage. The husband attempted to collaterally attack the judgment on grounds that the wife and her first husband were not actually underage, but the court held that he lacked standing. 104 A. at 234.

The Court further finds that the rule of section 74(1) is good policy. If annulment judgments are not binding upon third parties, then there would be no such thing as a final judgment of annulment. Persons whose marriages are annulled would never have any security, because the judgment would always be subject to collateral attack by persons not parties to the original action. For example, if a woman's first marriage is dissolved by annulment, and she then marries again, the facts of the annulment would not be binding on third parties. She would be required to prove the merits of her annulment every time the validity of her second marriage becomes a contested issue. That would happen not only in her divorce action after the second marriage, but also when she takes title to property with

her second husband or files a joint federal or state income tax return. The LSA's argument boils down to an assertion that a decree of annulment is itself a nullity if the facts are contested.

There are strong reasons why annulments should be binding upon all third parties on issues of status—that is, as to the invalidity of the marriage annulled. The Court finds that on the issue of status, the judgment annulling Mrs. Brown's marriage to Ahmed is binding on all third persons, regardless of whether they were parties to the proceedings. Specifically, on the issue of status, the judgment is binding on Mr. Brown and his heirs.

3. Section 74(2).

The LSA recognizes the rule of section 74(1), but argues that this case is controlled by another rule. The LSA at points cites section 73 for this rule, but section 73 applies only to property judgments and not to status judgments. But the LSA also cites section 74(2), and as noted above, that section clearly does apply to status judgments.

The LSA argues under section 74(2) that the annulment does not bind James Brown on issues of fact. The LSA misconstrues section 74(2). That subsection again provides:

> A judgment in such a proceeding will not *bind anyone personally* unless the court has jurisdiction over him, and it is not conclusive as to a fact upon which the judgment is based except between persons who have actually litigated the question of the existence of the fact.

Restatement § 74(2) (emphasis added). The LSA construes this section to hold that an in rem judgment does not bind anyone on questions of fact. This position sweeps too broadly.

The Restatement provides, in section 74(1), that judgments of annulment are binding on all third parties *as to the existence of the status itself.* But if a judgment is binding on the issue of status, both its findings and its conclusions are necessarily binding. Indeed the

LSA and Respondents claim that they are not disputing Mrs. Brown's status. It is nonsensical to say that a person is bound only by a court's conclusions, and not by the factual findings that lead inevitably to those conclusions. If the factual findings are not binding, then the court in a future action is free to find different facts and reach a different result, and nothing is binding at all.

The LSA's position uses section 74(2) to functionally destroy section 74(1). The Court rejects that position. The Court holds that where the issue is the existence (or necessarily, the nonexistence) of a status itself, an in rem judgment regarding status binds all third parties. It is binding not only as to its conclusions, but also as to its factual findings.

This result is completely consistent with section 74(2). The key phrase in that section is highlighted in the quotation above. A judgment does not "bind anyone personally" unless the court has jurisdiction over him. That is, a judgment in rem cannot have the binding effect of a judgment in personam unless the court has personal jurisdiction over the defendant. But a judgment that cannot be binding in personam can still be binding in rem. The status change itself is clearly an in rem action, so as regards the issue of status itself, the judgment binds anyone. But as to issues *other than status*, which may require in personam jurisdiction, the judgment is not binding.

Comment *b* to section 74 sheds considerable light upon the relationship between section 74(1) and (2). That comment states:

> *Personal liabilities.* Although a valid judgment in rem is binding on all the world as to the existence of a status which is the subject of the action, it will not bind anyone personally over whom the court does not have jurisdiction. The court cannot impose a personal liability upon a person who is not subject to the power of the court. *The question of the power of the court to impose a personal liability in a proceeding in rem to affect a status arises most frequently in a suit for divorce with respect to a judgment for alimony.*

Id. § 74 cmt. *b* (emphasis added).

The emphasized last sentence gives a direct example of the distinction between section 74(1) and (2). The drafters had in mind the well-known rule that a divorce binds everyone as to the validity of the divorce itself (and necessarily the grounds of the divorce). But when the issue is not the existence of a status, but rather personal liability for alimony, the judgment does not even bind the named defendant unless the court had personal jurisdiction over him. *See Estin v. Estin*, 334 U.S. 541, 548-49 (1948); *Kreiger v. Kreiger*, 334 U.S. 555 (1948) (companion case to *Estin* reaching the same result); *Vanderbilt v. Vanderbilt*, 354 U.S. 416 (1957).

Section 74(2), therefore, is aimed only at issues other than the status change itself. Section 74(2) says that on issues collateral to status, the judgment is binding only on persons who appear, and over whom the court has jurisdiction. Likewise, factual findings in a status change judgment cannot be binding on issues other than status, because those issues require personal jurisdiction and not merely in rem jurisdiction.

This rule makes perfect sense. In rem jurisdiction allows the court to adjudicate only the question of status. The status here is Mrs. Brown's marital or non-marital status when she married Mr. Brown. If the order is binding, her status was unmarried. It cannot be used as a jurisdictional piggyback to allow the court to decide issues other than the question of status, which are not properly a basis for in rem jurisdiction. The effect of section 74(2) is that in rem judgments bind third parties only as to issues that are proper subjects for in rem jurisdiction, such as status. An in rem judgment cannot be used to bind third parties on an issue that is not subject to personal jurisdiction.

But the LSA seeks to give a broader effect to section 74(2). The LSA argues under

section 74(2) that the factual findings in an in rem judgment do not bind third parties on the central issue of the status change itself. That is going too far. If the factual findings do not bind third parties on issues of status, the third parties are necessarily not bound by the entire judgment, and section 74(1) is pointless. If section 74(1) is to have any effect at all, an in rem judgment must be functionally binding on all issues regarding the status change itself. The judgment is not functionally binding unless both its factual findings and its conclusions are binding. To say that the latter is binding, but the former is not, is to reject the entire premise of section 74(1).

The Court therefore holds that the annulment order in this case binds all third parties on the question of status itself. Third parties are bound on status issues by both the judgment's factual findings and its conclusion. On issues other than the status change itself, however, the annulment does not bind third parties unless they were subject to the personal jurisdiction of the court.

The cases cited by the LSA are consistent with this discussion. For example, in *Gratiot County State Bank v. Johnson*, 249 U.S. 246 (1919), the Supreme Court held:

> The [bankruptcy] adjudication is, for the purpose of administering the debtor's property, that is, in its legislative effect, conclusive upon all the world. Compare *Shawham v. Wherritt*, 7 How. 627, 643, 12 L. Ed. 847. So far as is [sic] declares the status of the debtor, even strangers to the decree may not attack it collaterally. *Michaels v. Post*, 21 Wall. 398, 428, 22 L. Ed. 520; *New Lamp Chimney Co. v. Ansonia Brass & Copper Co.*, 91 U. S. 656, 661, 662, 23 L. Ed. 336. Compare *Hebert v. Crawford*, 228 U. S. 204, 208, 209, 33 Sup. Ct. 484, 57 L. Ed. 800. But an adjudication in bankruptcy, like other judgments in rem, is 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.

Id. at 248.

The LSA cites the last sentence and argues that the Court held that the factual findings

in the bankruptcy case were not binding anywhere. But the Supreme Court expressly held, in the first two sentences, that the bankruptcy judgment was "conclusive upon all the world," *id.*, as regards the issue of status. If the factual findings in the bankruptcy judgment were not likewise binding against the world, *on the issue of status*, then the Court's third sentence completely destroyed its first two sentences. That was not the Court's intent. *Gratiot County* recognizes the same two competing rules as section 74(1) and (2). It simply held on the facts that the issue in the later action was not one of status.

In *Hunter v. Hunter*, 111 Cal. 261, 43 P. 756 (1896), the issue was the effect of a divorce judgment. The court held that the judgment "was conclusive against all the world that the plaintiff in that suit was no longer the wife of Joseph Milam, and it was an adjudication of nothing else." *Id.* at 265, 43 P. at 757. Likewise, the present annulment is conclusive against all the world that Mrs. Brown was never validly married to Ahmed.

In *Becher v. Contoure Laboratories*, 279 U.S. 388 (1929), the first case was a state court action to declare a party trustee of a patent, while the second case was a federal court action for patent infringement. The Supreme Court very emphatically pointed out that these were different cases, presenting different issues. Whether the patent was placed in a trust said nothing about whether the patent was infringed. *Becher* therefore involved a collateral right, not a direct question of status.

In *Hendrick v. Biggar*, 209 N.Y. 440, 442, 103 N.E. 763, 764 (1913), the issue was whether a judgment in a divorce case finding that a spouse committed adultery was binding in a later action for alienation of affections. The issue in the alienation of affections case was not the validity of the divorce; it was whether the defendant had alienated the affections of a spouse. The second action was therefore a question collateral to status, on which personal

jurisdiction was required.

Fromm v. Glueck, 161 Misc. 502, 293 N.Y.S. 530 (Sup. Ct. 1937), involved an in rem judgment from another state. The case involved jurisdictional issues not present here, where both the former and present actions arise in South Carolina. The court also recognized that the judgment was binding on direct questions of status. "[I]t must be conceded that, even though personal jurisdiction of the defendant had not been obtained, the Court of Chancery had the full power to decree the foreclosure of the mortgage and the sale of the property." *Id.* at 504, 293 N.Y.S. at 533.

Finally, *In re Rowe's Estate*, 172 Or. 293, 141 P.2d 832 (1943), is distinguishable on several grounds. To begin with, the case involved a decree of divorce, not a decree of annulment. The issue was whether a finding of desertion in the divorce decree conclusively established lack of access for the purpose of paternity. The fact at issue was therefore again not the status of marriage itself, but rather a fact collateral to status. The court expressly held that the divorce was binding on issues of status. "[T]he decree in a divorce suit as a decree in rem binds the whole world as to the status of the parties, to the extent that their status is the res adjudicated[.]" *Id.* at 302, 141 P.2d at 836.

In short, all of the cases cited by the LSA recognize the same basic two rules stated in section 74(1) and (2). An in rem judgment binds the world on the direct question of status. It does not bind any nonparty on collateral issues, which are not subject to in rem jurisdiction, and which require that the court have personal jurisdiction over the defendant. The textbook example, cited expressly in the *Restatement* comments, is alimony in a divorce case.

Having stated the competing rules of section 74(1) and (2), the Court must now decide which of those two competing rules applies here. The issue presented here is whether Mrs.

Brown is Mr. Brown's surviving spouse. Mrs. Brown has presented a valid marriage certificate, placing upon the Respondents the burden of proving that her most recent marriage is invalid. They seek to defeat Mrs. Brown's claim by proving that her marriage to Mr. Brown was bigamous. But it is bigamous only if Mrs. Brown had a valid marriage to someone else at the time she married Mr. Brown. To prove that Mrs. Brown's marriage to Mr. Brown was bigamous, the Respondents must prove that Mrs. Brown's marriage to Ahmed was valid.

The issue here is therefore directly one of status: Was Mrs. Brown's marriage to Ahmed valid? The judgment of annulment held that it was not. The Respondents argue that the judgment of annulment was wrong. If the judgment of annulment was wrong, it would obviously affect Mrs. Brown's status. The entire issue turns upon whether the annulment judgment correctly held that Mrs. Brown's status had been that of a single person all along, because her marriage to Ahmed was void from its inception.

Because the central issue in this case is the effect of the annulment judgment upon Mrs. Brown's status, this case falls squarely under section 74(1). Section 74(2) states that the factual findings in an in rem judgment are not binding, but only on issues other than the status change itself, which turn upon jurisdiction in personam and not upon jurisdiction in rem. *Section 74(2) cannot be used to attack the factual findings of an in rem judgment on the question of status itself.* To permit that is to allow section 74(2) to completely destroy section 74(1). Regarding the issue of status itself, the judgment annulling Mrs. Brown's marriage to Ahmed is binding upon all third parties, including Mr. Brown and his heirs.

The LSA and most, if not all, of the Respondents agreed in their arguments before

the Court that Mrs. Brown's marriage to Ahmed was legally annulled. They stated that they were not questioning her status. They agreed that the annulment order is binding "on all the world." Their disagreement is on the facts underlying the annulment. However, this Court cannot separate the judgment from the facts. If Mrs. Brown's marriage to Ahmed was annulled, it was annulled on the grounds set forth in the Order. It could not be annulled for no reason. The factual findings are binding on direct questions of status, although, arguably, factual findings on collateral matters are not binding.

To that end, the Respondents have cited no case holding that the factual findings of an annulment or divorce are not binding when the issue being raised in the second action is the direct question of status itself, and not a collateral issue. For the foregoing reasons, the Family Court Order of annulment is binding on the Respondents.

V. CONCLUSION.

This Court finds that the conclusion it has reached is not unfair or inequitable to Mr. Brown or the estate. Mr. Brown was well aware of Mrs. Brown's annulment action. He paid Mrs. Brown's legal fees. He was copied on pleadings. He sought to have the findings of fact set forth in the annulment order adopted in his own later annulment case. It has long been settled that a person who accepts the benefits of even a void order is estopped to question its validity. *Edwards v. Edwards*, 254 S.C. 466, 176 S.E.2d 123 (1970) ("Since [husband] proposed the transfer of the property and has accepted the benefits accruing to him therefrom, he is now estopped to assert the invalidity of the judgment."); *Scheper v. Scheper*, 125 S.C. 89, 118 S.E. 178 (1923) ("Even where one who did not procure it accepts the benefits of a void judgment, he is estopped to assert its invalidity.").

Mr. Brown knew he could pursue an annulment from Mrs. Brown as he initiated such an action himself. If he wanted to annul his marriage, he could have proceeded with the action he commenced. But he decided not to proceed with it. As he never obtained an annulment during his lifetime, his marriage was never annulled and he was married to Mrs. Brown at the time of his death, certainly for the purposes of surviving spouse pursuant to S.C. Code Ann. § 62-2-802, which required him to take action. Further, in this case, Mr. Brown affirmatively sought to benefit specifically from the Findings of Fact in the annulment order. These are the very Findings of Fact the LSA now wants this Court to ignore. He alleged in his own short-lived annulment action that the "Findings of Facts of the Charleston Family Courts" were binding.[35]

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that Tommie Rae Brown is the surviving spouse of James Joseph Brown. The Family Court's April 15, 2004 Final Order is binding on James Joseph Brown and his heirs and must be respected by this Court.

It is further ORDERED, DECREED and ADJUDGED that the Petitioner Tommie Rae Brown's Motion for Summary Judgment on her status as James Joseph Brown's wife and surviving spouse is granted, and the Limited Special Administrator's Motion for Summary Judgment is denied.

It is further ORDERED, DECREED and ADJUDGED that all other issues, including the validity of the prenuptial agreement between Tommie Rae Brown and James Joseph Brown are reserved for a future determination.

This 13 day of January 2015, at Aiken, South Carolina.

DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

[35] Joint Stipulation of Facts at 000070, ¶ 10 (Mr. Brown's Amended Complaint for Annulment).

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202849

PLAINTIFF(S)	DEFENDANT(S)
Tommie Rae Hynie-Brown	David Special Administrato Soujourner Terry Brown Deanna Brown Thomas Yamma Brown Vanisha Brown Larry Brown Daryl Brown Jeanette Mitchell Michael Deon Brown

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

1/14/2015

Circuit Court Judge **Judge Code** **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **14th day of January, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Robert N. Rosen 18 Broad Street Suite 201 Charleston, SC 29401

J. David Black PO Drawer 2426 Columbia, SC 29202-2426 .
John Fisher Beach 1501 Main St., 5Th Floor Columbia, SC 29201
Matthew Day Bodman 1500 Calhoun St. Columbia, SC 29201
William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422
John Andrew Donsbach Sr. PO Box 212139 Martinez, GA 30917-2139

ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

Court Reporter

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Thomas Jumper

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202850

Tommie Rae Hynie-Brown	David Soujourner, Terry Brown, Deanna Brown Thomas, Yamma Brown, Vanisha Brown, Larry Brown, Daryl Brown, Jeanette Mitchell, Michael Deon Brown
PLAINTIFF(S)	DEFENDANT(S)

Submitted by: Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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1/14/2015

Circuit Court Judge **Judge Code** **Date**

For Clerk of Court Office Use Only

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This judgment was entered on **14th day of January, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

probate

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Sharon Jowers

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

10-26-15

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

FILED 10-26-2015
C.C.P. & G.S.
Deputy Clerk

IN RE THE ESTATE OF
JAMES BROWN A/K/A
JAMES JOSEPH BROWN

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT
Case Nos.: 2013-CP-02-02849 – orig
2013-CP-02-02850 – Ord Copy

ORDER RE RESPONDENT'S AND AMICI CURIAE'S MOTIONS TO ALTER, AMEND OR RECONSIDER ORDER RE PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND THE LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT

This matter came before the court on June 30, 2015 on the following motions: the Limited Special Administrator's Motion to Alter, Amend and Reconsider filed January 26, 2015; Larry Brown, Venisha Brown, Deanna Brown-Thomas, and Yamma Brown's Motion to Alter or Amend Judgment and/or for Reconsideration dated January 26, 2015; Jeanette Mitchell, Sarah LaTonya Brown Fegan, Ciara Petitt, Cheriquarius Williams and LaRhonda Petitt's Motion to Reconsider Alter Amend January 13, 2015 Order; Daryl Brown's Motion to Alter, Amend and Reconsider filed January 28, 2015; Michael Deon Brown's Motion to Alter, Amend and Reconsider dated February 2, 2015; and Terry Brown's Motion to Alter, Amend and Reconsider filed February 2, 2015. Petitioner filed a Return in Opposition to Respondents' Motions to Alter, Amend or Reconsider on July 6, 2015.

The following counsel appeared at the hearing: (1) Robert N. Rosen, S. Alan Medlin, Arnold S. Goodstein, and Corey T. L. Smith, counsel for Tommie Rae Brown; (2) John F. Beach and Lyndey Zwing, counsel for the Limited Special Administrator David C. Sojourner; (3) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (4) Stephen M. Slotchiver, Guardian ad Litem for J B (5) Matthew D. Bodman, counsel for

DDE
#1

Daryl Brown and Michael Deon Brown; (6) John A. Donsbach and Scott Keniley, counsel for Terry Brown; (7) William Barr and Ittriss J. Jenkins, counsel for Jeanette Mitchell and Amici Curiae LaRhonda Petitt, Ciara Petitt, Cheriquarius Williams, and Sarah LaTonya Brown Fegan; and (8) J. David Black; counsel for Russell Bauknight, Personal Representative of the James Brown Estate and Trustee of the James Brown 2000 Irrevocable Trust Agreement.

I. ISSUES BEFORE THE COURT.

This Court had an extensive hearing on the Respondent's respective Motions on June 30, 2015. All points raised in these Motions have already been considered and denied in this Court's Order filed January 13, 2015 granting Petitioner's Motion for Summary Judgment. In granting Petitioner's Motion for Summary Judgment, this Court relied only upon the applicable law as well as the stipulated facts and took judicial notice of the pleadings and other documents in this case.[1] The only real issue in controversy at the June 30, 2015 hearing was the interpretation of *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd*, 379 S.C. 589, 666 S.E.2d 906 (2008). This Court reiterates that it relied only upon the applicable law and facts as agreed upon in the Joint Stipulation of Facts in granting Petitioner's Motion for Summary Judgment.

At the hearing on Respondents' Motions to Alter, Amend or Reconsider held on June 30, 2015, Respondents argued that *Lukich* was dispositive of this matter and agreed that this Court's determination of the impact of *Lukich* on this case would be determinative. Consequently, this Order focuses specifically on the impact of *Lukich*. Respondents contend that *Lukich* changes prior law by holding that a bigamous marriage is voidable, and Petitioner contends that *Lukich* is

[1] *See* Joint Stipulation of Facts filed September 5, 2014 at p. 5, ¶ 10 which states:

> The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

consistent with the bigamy statute and all case precedent by holding that a bigamous marriage is void and thus never a marriage. For the reasons stated in the previous order and discussed hereinbelow, this Court agrees with Petitioner's position. Determining the impact of *Lukich* on South Carolina jurisprudence first requires an examination of South Carolina law prior to *Lukich*.

A. The Bigamy Statute.

The South Carolina General Assembly has clearly spoken through S.C. Code Ann. § 20-1-80 that a bigamous marriage is "void" — i.e., never a marriage and never valid from the beginning.[2] This section reads as follows:

> All marriages contracted while either of the parties has a former wife or husband living shall be *void*. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80. A void marriage is treated differently from a voidable marriage. A voidable marriage can be valid unless and until a court rules that such a marriage is invalid, but a void marriage is never valid for any purpose.

The South Carolina General Assembly understands the difference between void and voidable. For example, S.C. Code Ann. § 62-3-713, governing self-dealing transactions by a

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[2] For more than a century, that statute has provided that bigamous marriages are void. This is consistent with the public policy against bigamous marriages. For example, entering into a bigamous marriage is a crime. Note, however, that *State v. Sellers*, 140 S.C. 66,134 S.E. 873 (S.C. 1926), recognizes, as do all the other bigamy cases, that a bigamous marriage is void ab initio, so that a void first marriage is not an impediment to a valid second marriage, and thus the second marriage is not bigamous and not a crime.

Lukich confirms the difference between a void marriage — void ab initio because of bigamy — and a merely voidable marriage — valid unless and until a court invalidates it, such as for intoxication. *Lukich* annulled two marriages: a bigamous marriage, held void ab initio, and a marriage annulled for intoxication, held voidable. Unlike bigamous marriages, which are against public policy and necessarily void, "intoxication" marriages are not against public policy and understandably are voidable.

personal representative, provides that such a transaction is "voidable" and can be invalidated at the request of an interested person.

"An annulment declares that a marriage never occurred because of some defect. Defective marriages may be either void or voidable. In a void marriage, the circumstances are such that the marriage could never have come into being. A voidable marriage is recognized under the law as a valid marriage until an action is brought to prove it invalid." Stuckey, *Marital Litigation in South Carolina*, Ch. 3.A. A bigamous marriage is void.[3]

Consequently, when the General Assembly uses the term "void" in the bigamy statute, the meaning is clear: a bigamous marriage is void ab initio and never valid.

B. Case Precedent: A Bigamous Marriage Is Void Ab Initio And Never A Marriage.

The annulment order in this case was granted on the most serious and substantial of all grounds for rendering a marriage void: bigamy. It is against public policy and a crime to commit bigamy. A long line of South Carolina cases, including *Lukich*, holds that a bigamous marriage is not a marriage at all, at any point in time. In fact, every South Carolina case considering the issue has concluded that a bigamous marriage is void ab initio, and thus never a marriage:

> At the time the parties began residing together in September 1983, and throughout their cohabitation, the respondent was legally married to another woman. Thus, any marriage between the parties while respondent had a subsisting marriage was void as a matter of public policy. S.C. Code Ann. § 20- 1-80 (1985) ("All marriages contracted while either of the parties has a former wife or husband living shall be void"). It was void from its inception, not merely

[3] In fact, "a void [bigamous] marriage technically needs no judicial action to declare that it is void." *Id.*

> voidable, and, therefore, *cannot be ratified or confirmed and thereby made valid.*

Johns v. Johns, 309 S.C. at 201, 420 S.E.2d at 858 (emphasis added).

> A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, *is not a marriage at all.* Such a marriage is absolutely void, and not merely voidable.

Day v. Day, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) (emphasis added).

> There could not have been a valid marriage between the appellant, Maggie (Craft) Blizzard, and William Blizzard, as William Blizzard had a lawful living wife at the time of the claimed marriage.

Ex parte Blizzard, 185 S.C. 131, 193 S.E. 633, 634 (1937).

> When, however, there is an impediment to marriage, such as one party's existing marriage to a third person, *no common-law marriage may be formed*, regardless whether mutual assent is present.

Callen v. Callen, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005) (emphasis added). *See also Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993); 52 Am. Jur. 2d, supra, § 57 ("A marriage that occurs while one party is still legally married to another is void from its inception and cannot be retroactively validated by estoppel, by mutual agreement, or by the parties' conduct in holding themselves out as husband and wife.").[4] This is hardly surprising as the courts are required to follow the mandate from the legislature that bigamous marriages are void ab initio.

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[4] Every South Carolina case, as required by § 20-1-80, has concluded that the status of someone entering into a bigamous marriage is that of never having been married. It is Mrs. Brown's status that is critical here. At the time she married Mr. Brown, she had no impediment to their marriage because she had never been married before. Respondents cite several cases that deal with ancillary matters, but all of these cases follow the required rule about status: someone having entered into a bigamous marriage was never married. To the extent these cases also deal with ancillary matters, they are inapposite. *See Splawn v. Splawn*, 311 S.C. 423, 429 S.E.2d 805 (S.C. 1993) (bigamous marriage void ab initio but court had to deal with ancillary equitable apportionment of property issues); *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (S.C. App. 2004) (similar, citing *White v. White*, 283 S.C. 348, 323 S.E.2d 521 (S.C. 1984)); *Joye v. Yon*, 355 S.C. 452, 586 S.E.2d 131 (2003) (second marriage bigamous and void ab initio — court had to decide impact on first husband's obligation to pay alimony, which had ostensibly ended if second marriage was valid, which it was not).

C. *Lukich v. Lukich.*

Both the Court of Appeals and Supreme Court decisions in *Lukich*[5] are in accord with § 20-1-80, case precedent, and Mrs. Brown's position. *Lukich* held that a *bigamous* marriage is void ab initio. *Lukich* also held that a marriage, annulled for *intoxication rather than bigamy*, could be treated as voidable.

Lukich annulled two marriages: one void ab initio for bigamy and another voidable for intoxication.[6] In *Lukich*, the wife sought alimony during a divorce from her second husband (Marriage 2). During the divorce proceeding, the second husband learned that the woman had previously been married (Marriage 1) and had never obtained a divorce or an annulment from the first husband. During the divorce case, which was pending in one county, the wife quickly obtained an annulment for Marriage 1, without her husband's knowledge and in another venue, on the ground of intoxication.[7] Both appellate courts concluded that Marriage 1 was voidable and refused to apply the annulment of Marriage 1 retroactively so that her status would allow her to enter Marriage 2. Marriage 1 in *Lukich* was properly voidable, rather than void, because the annulment was based on intoxication rather than bigamy. One consequence of the *Lukich* court

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[5] 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006); 379 S.C. 589, 666 S.E.2d 906 (2008).

[6] It is highly significant, however, that the annulment of the wife's first marriage was based upon intoxication. A ceremony performed while the parties are intoxicated is not completely ineffective to create a marriage. The marriage is only voidable, not void. *See Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903) ("Intoxication at the time of entering into the marriage contract will not render the marriage void, but only voidable."); *Henley v. Foster*, 220 Ala. 420, 422, 125 So. 662, 664 (1930) ("A nullity decree may be and is properly granted . . . upon a voidable marriage, one subject to ratification, but not ratified, as in the case of drunkenness[.]"). Once the parties return to sobriety, they are free to waive the defect and have a legally recognized marriage. Heavily intoxicated people have the right to seek an annulment of their marriage, but they are not required to exercise that right.

A bigamous marriage, by contrast, is one of the least valid relationships possible. It is not a marriage at all, for any purpose known to the law. The defect cannot be waived or ratified; the law positively forbids the recognition of any form of marriage where one party to the marriage ceremony is already married to someone else.

[7] "[S]he and Havron were married during a night of heavy drinking, [and] had never lived together as husband and wife[.]". *Lukich*, 368 S.C. at 51, 627 S.E.2d at 756.

treating Marriage 2, the bigamous marriage, as void ab initio, is that the husband in Marriage 2 owed no alimony because Marriage 2 was "never a marriage." If *Lukich* had not treated Marriage 2 as void ab initio because it was bigamous, as required by statute and precedent, the Court would have had to conclude that the husband of Marriage 2 would have owed alimony from the time of Marriage 2 until the annulment of Marriage 2.[8]

In short, a marriage entered into by intoxicated persons is not invalid until the parties decide to attack the marriage and not to waive the defect. Therefore, it is logical, as the *Lukich* Court held, that a voidable marriage was invalid only prospectively from the date of the annulment.

A void marriage, however, is different. A void marriage is never a valid marriage. The parties are not permitted to waive the defect; the marriage is automatically invalid. Both *Lukich* appellate courts concluded that Marriage 2 was void ab initio because it was bigamous. Consequently, Marriage 2 was never a marriage so that the divorce was unnecessary and the second husband could not owe alimony.

In contrast to Mrs. Brown's situation, Mrs. Lukich's *first* husband was *not* already married when he married Mrs. Lukich, and consequently there was no impediment under the bigamy statute for this first husband to enter a marriage with Mrs. Lukich. Therefore it was Mrs. Lukich's *second* marriage, to Mr. Lukich, that was void unless this second marriage fit under one of the three exceptions in the bigamy statute.

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[8] The holding in *Lukich* as to Marriage 1 makes perfect sense, as a voidable marriage is invalid only if it is attacked. The parties to a voidable marriage always have the option of waiving the defect and ratifying the marriage. The annulment of Marriage 1 in *Lukich* was granted on the ground of intoxication. Intoxication is one of the classic grounds that render a marriage voidable, but not void. *See* 52 Am. Jur. 2d Marriage § 23 (Westlaw database updated Nov. 2014); *Abel v. Waters*, 373 So. 2d 1125, 1128 (Ala. Civ. App.), *writ denied*, 373 So. 2d 1129 (Ala. 1979); *Barber v. People*, 203 Ill. 543, 546, 68 N.E. 93, 94 (1903).

The Court of Appeals in its *Lukich* decision expressly stated that its holding as to the intoxication annulment was limited to the facts of the marriage and would not apply to bigamous marriages such as this very case, where *Mrs. Brown's first marriage was void and not merely voidable*:

> We note that our holding is limited to the facts of the case at bar, e.g., the situation where the annulled marriage would be valid but for an annulment decree declaring the marriage ab initio. Our holding is not meant to affect a party who enters into one of the three types of marriages that never have legal validity in South Carolina, namely marriages that are void ab initio by operation of statute:
>
> (1) bigamous marriages, S.C. Code Ann. § 20-1-80 (Supp. 2004); (2) same sex marriages, S.C. Code Ann. § 20-1-15 (Supp. 2004); and (3) marriages of minors under the age of 16, S.C. Code Ann. § 20-1-100 (Supp. 2004).

Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 n. 2 (Ct. App. 2006).

The Supreme Court in its *Lukich* opinion did not overturn the obvious rule recognized by the Court of Appeals in its *Lukich* opinion. In fact, the Supreme Court opinion confirms that bigamous marriages are void ab initio and are never a marriage at all: "*The [bigamy] statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or retroactive perspective. Any other question of § 20-1-80 would lead to uncertainty and chaos.*" 379 S.C. at 593; 666 S.E.2d at 907 (emphasis added). The Supreme Court opinion in *Lukich* also cites precedential authority for the same principle:

> *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) ('A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.'); *Howell v. Littlefield*, 211 S.C. 462, 46 S.E.2d 47 (1947) ('[Husband's] existing marriage. . .incapacitated him. . .to contract another marriage. . . .').

Id. at 592-93, 666 S.E.2d at 907.

Contrary to Respondents' contention, *Lukich* does not change, but is instead consistent with, S.C. Code Ann. § 20-1-80 and all South Carolina case precedent: a bigamous marriage (Marriage 2 in *Lukich*) is void ab initio and never a marriage.

In their summary judgment arguments, Respondents, in particular Terry Brown, cited the following language from the Supreme Court opinion in *Lukich* as somehow changing the treatment of bigamous marriages in this state:

> Under the statute's terms, Wife's 'marriage' to Husband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse *and that* marriage had not been 'declared void.' § 20–1–80.

Lukich, 373 S.C. at 592, 666 S.E.2d at 907 (Emphasis added).

Respondents contend that *Lukich* creates new law with respect to bigamous marriages. Respondents claim *Lukich* disregards the clear requirement of the bigamy statute and ignores or reverses all case precedent that bigamous marriages are void ab initio. At the summary judgment hearing, Respondents based their contention on the words "and that" emphasized in the above quote. These words, Respondents argue, indicate that regardless of whether a marriage is void or voidable, one has an impediment to marriage and must obtain an annulment before remarriage. Contrary to Respondents' contention, however, the words "and that" do not refer to the bigamous marriage (Marriage 2 in *Lukich*); the words "and that" clearly refer to the intoxication marriage (Marriage 1 in *Lukich*). Thus, *Lukich* cannot be read to change a substantive statutory rule of law: *Lukich* does not hold that a bigamous marriage is void only from the date of the annulment order. This would render a bigamous marriage voidable rather than void. *Lukich* does no such thing. Rather, *Lukich* confirms that a bigamous marriage is void ab initio and never a marriage because it treated Marriage 2 (the bigamous marriage in *Lukich*) as never having been a

marriage, so that the second husband did not need a divorce and did not owe alimony to a wife he never married.

Similarly, at the hearing on the motions to reconsider, Respondents, especially Terry Brown, continue to misplace and misstate the order of marriages in *Lukich* and argue that the order of marriages in this case is parallel, but it is not.[9] Terry Brown tries to shoehorn the first marriage in *Lukich* into Mr. Brown and Mrs. Brown's marriage situation, but that shoe does not fit. The *Lukich* courts clearly distinguish a marriage void for bigamy --- the second marriage in *Lukich* --- from a marriage voidable for intoxication --- the first marriage in *Lukich*. Terry Brown attempts to equate the putative first marriage of Mrs. Brown to Ahmed with the first marriage in *Lukich*, based simply on the order of marriages. But it is the type of annulment that creates the critical distinction between *Lukich* and this case, not the order of marriages. A bigamous marriage --- the first putative marriage in this case and the second marriage in *Lukich* --- is always void ab initio and never a marriage.

Respondents' misreading of *Lukich* would necessarily include both the Court of Appeals and the Supreme Court favorably citing the statute requiring and the cases holding that bigamous marriages are void and thus never valid, yet according to Respondents somehow overturning and contravening them without expressly saying so. For example, the *Lukich* Court of Appeals cited the following cases:

> Section 20-1-80 of the South Carolina Code Annotated sets forth the principle that "[a]ll marriages contracted while either of the parties has a former wife or husband living shall be void." This statute codifies the overriding public policy of this state against bigamy. *Johns v. Johns,* 309 S.C. 199, 203, 420 S.E.2d 856, 859 (Ct.App.1992) (holding the public policy of not recognizing bigamous marriages overrides the public policy supporting the finality of judgments). A person who is married cannot enter into a valid marriage by participating in a marriage ceremony with a new person. *Day v. Day,* 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950) ("A mere marriage ceremony between a man and a woman, where

[9] *See* Transcript, June 30, 2015, pp. 83-84.

one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.").

The Supreme Court opinion in *Lukich* quoted the following cases:

> While an annulment order relates back in most senses, it does not have the ability to validate the *bigamous second 'marriage.'* Since there was no marriage under the plain terms of the statute when the ceremony between Wife and Husband # 2 was performed in 1985, there was nothing to be 'revived' by the annulment order in 2003. *See e.g., Day v. Day,* 216 S.C. 334, 58 S.E.2d 83 (1950) ("A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable")[2]; *Howell v. Littlefield,* 211 S.C. 462, 46 S.E.2d 47 (1947) ("[Husband's] existing marriage ... incapacitated him ... to contract another marriage...."). The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of § 20–1–80 would lead to uncertainty and chaos.

379 S.C. at 592-93, 666 S.E.2d at 907 (emphasis added).[10]

Respondents argue that the *Lukich* courts, without expressly saying so, overruled the very cases they cited favorably for the proposition that bigamous marriages are void ab initio and contravened the bigamy statute that the *Lukich* courts cited. Of course, the *Lukich* courts did no such thing, but instead ruled consistently with the bigamy statute and all South Carolina precedent by holding that a bigamous marriage is never a marriage.[11]

If Respondents were correct that *Lukich* created a new rule, then the *Lukich* court would instead have held that the second husband owed alimony until an annulment order for Marriage 2

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[10] The italicized language clearly refers to the bigamous marriage as the second marriage in *Lukich.* The first marriage, annulled for intoxication, was voidable and, because voidable marriage annulments may be prospective only, did not alter the wife's status as already being married when she attempted to enter into a bigamous marriage with her putative second husband. Unlike Mrs. Lukich, it was Mrs. Brown's first putative marriage that was void ab initio for bigamy, so that she had a status of "not married" when she entered into her valid marriage with Mr. Brown because she had no impediment.

[11] In fact, a later decision cites both *Day* and *Lukich* in the same sentence for the proposition that bigamous marriages are void ab initio, without any suggestion that the latter overrules the former. *See Hill v. Bert Bell/Pete Rozelle NFL Player Ret. Plan,* 405 S.C. 423, 426, 747 S.E.2d 791, 792-93 (2013).

was obtained. The clear meaning of *Lukich* is that, as required by § 20-1-80 and all precedent, bigamous marriages are void ab initio and never a marriage.

Moreover, even if Respondents were correct in their position about *Lukich*, i.e., that even a bigamous marriage is valid unless and until an annulment order is obtained, they could still not prevail. Under their theory, *Lukich* changed the law about bigamous marriages so that a bigamous marriage remains valid unless and until an order of annulment is obtained. If that were correct, then under their theory Mrs. Brown had an impediment to marrying Mr. Brown and that marriage was therefore bigamous. But under Respondents' position, Mr. Brown's bigamous marriage to Mrs. Brown would be valid unless and until Mr. Brown obtained an order annulling their marriage, which he did not obtain during his lifetime. It is now too late for Mr. Brown to obtain an annulment.[12] So, even under Respondents' theory, the marriage between Mrs. Brown and Mr. Brown was valid at his death and cannot be invalidated because it is too late.

In this case, unlike *Lukich*, it is the first marriage (Marriage 1), rather than Marriage 2 in *Lukich*, that is bigamous and thus void. Consequently, Mrs. Brown's attempted marriage to Ahmed (Marriage 1) was void ab initio and never a marriage. Therefore Mrs. Brown had no impediment to her marriage to Mr. Brown, and that marriage (Marriage 2) is valid.

Despite the contentions of Respondents, *Lukich* is consistent with the bigamy statute and all precedent involving bigamous marriages: bigamous marriages are void ab initio and never have any effect --- they are "never a marriage." The only difference with respect to bigamous marriages between *Lukich* and this case is that, in *Lukich*, the bigamous marriage was the second marriage, while in this case, the bigamous marriage is the first marriage. That difference has no impact on the treatment of bigamous marriages. The bigamous second marriage in *Lukich* was

[12] *See* the discussion in the January 13, 2015 Order at IV.C.

TOAC #2

void ab initio and never had effect. The bigamous first marriage in this case was void ab initio and never had effect, so that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Were this Court to give only prospective effect to the annulment in this case, it would be holding that a bigamous marriage was not invalid from its inception. Rather, it would be holding that a bigamous marriage was valid from the date of its inception until the date of the annulment.

This Court is unwilling to hold that a bigamous marriage, as determined by a family court of this state, was ever legal. There is no precedent for such a holding. South Carolina law precludes this Court from giving any effect whatsoever to a bigamous marriage. Because the Court cannot give any effect to a bigamous marriage, it is required to hold that the bigamous marriage was never a marriage.

Mrs. Brown and Ahmed never had a valid marriage at any point in time, and Mrs. Brown had no impediment to her valid marriage to Mr. Brown.

Lukich is consistent with *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906), which held that bigamous marriages are void ab initio, in accord with all other cases considering the issue. The LSA argued that *Hallums* was exactly on point and reached a different result. The LSA misses a critical factual distinction between *Hallums* and the current case: in *Hallums*, there was never a court determination that the first marriage (Marriage 1) was bigamous and, in fact, the court found that the Marriage 1 was not bigamous. By contrast, in the current case, there is a valid annulment order finding that the first marriage was bigamous.

The Hallums paradigm actually supports Mrs. Brown's position. If the *Hallums* court had determined that Marriage 1 was bigamous, then the *Hallums* opinion indicates that the

second marriage (Marriage 2) would have been valid because there would have been no impediment to the wife entering into the second marriage (Marriage 2) with the decedent.

More specifically, in *Hallums*, a woman attempted to get a distributive share from the decedent's estate, claiming to be his surviving spouse. However, the estate contended that she was already married when she attempted to marry the decedent, and thus had an impediment to the attempted marriage to the decedent. The woman then contended that her attempted first marriage was invalid because her putative first husband was already married when they attempted to get married. So far, the LSA is correct: absent the critical distinction missed by the LSA's analysis, the *Hallums* paradigm is the same as the paradigm in the current case because in *Hallums*, the woman argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married.

In the current case, Mrs. Brown argues that she had no impediment to marrying the decedent (Marriage 2) because she was never married to her first husband (Marriage 1) as the first husband himself was already married. The *critical* difference between the two cases is that in *Hallums*, the woman *did not* have a separate annulment order invalidating Marriage 1 void ab initio and did not get one because the court concluded her first marriage was not bigamous. In the current case, Mrs. Brown *does* have an annulment order invalidating Marriage 1. In *Hallums*, the court was asked to consider the validity of both Marriage 1 and Marriage 2 at the same time. The *Hallums* court determined that Marriage 1 was valid because there was insufficient evidence that the husband in Marriage 1 was already married: consequently, Marriage 1 in *Hallums was not bigamous* and therefore was valid. Thus, the woman in *Hallums* had an impediment to Marriage 2. That is the critical factual difference between the facts in

Hallums and the current case. In the current case, Marriage 1 was determined by a court to be bigamous and thus never valid. In the current case, Mrs. Brown thus had no impediment to Marriage 2 (her valid marriage to Mr. Brown).

Hallums supports Mrs. Brown's position. *Hallums* stands for the proposition that, *if* Marriage 1 had been bigamous and thus void ab initio, Marriage 2 to the decedent would have been valid and the woman would have been entitled to her distributive share from the decedent's estate. That is exactly Mrs. Brown's position. Because she has an order confirming that Marriage 1 was void ab initio as bigamous, Marriage 2 is valid and she qualifies as a surviving spouse.[13]

D. All Bigamous Marriages Are Void, Under *Lukich* And All Other Applicable Law.

Every bigamous marriage is void ab initio. A bigamous marriage is never valid — "never a marriage." In S.C. Code Ann. § 20-1-80, the bigamy statute, the South Carolina General Assembly requires that a bigamous marriage is void ab initio. In accordance with this legislative mandate, every South Carolina case dealing with bigamous marriages, including *Lukich* and *Hallums*, holds that a bigamous marriage is void ab initio and never has effect. Although Respondents contend that *Lukich* somehow changes that rule and instead provides that a bigamous marriage is valid until an annulment order is obtained, that is not the holding in *Lukich* as to bigamous marriages. *In Lukich, it is the second marriage that is bigamous* and both appellate courts treat that second marriage as void ab initio, in accordance with the bigamy statute and all case precedent. *In Mrs. Brown's case, it is the first marriage that is bigamous,*

[13] Unlike this case, the court in *Hallums* looked at the first marriage after the decedent's death because: (1) there was no pre-existing annulment order from a court with exclusive jurisdiction over annulments, as there is today; (2) this was prior to the family court having exclusive jurisdiction over annulments – in fact, this was prior to the existence of family courts in South Carolina; (3) this was prior to § 62-2-802 defining surviving spouse for estate purposes and case law precluding postmortem annulments. *See* the January 13, 2015 Order at IV.C.

and that first marriage is therefore void ab initio, meaning that Mrs. Brown had no impediment to her marriage to Mr. Brown.

Despite the contention of the LSA, *Hallums is in accord with the bigamy statute, Lukich, and* all other case precedent in treating bigamous marriages as void ab initio. Unlike Mrs. Brown's first marriage, which was *found to be bigamous and void*, the first marriage in *Hallums* was *found not to be bigamous and was therefore valid.* However, if the first marriage in *Hallums* had been found to be bigamous and void, the opinion indicates that the second marriage would have consequently been valid because the wife would have had no impediment to her second marriage and thus could inherit. That is exactly Mrs. Brown's case: her first marriage has been found to be bigamous and void, so that she had no impediment to her marriage to Mr. Brown: their marriage is valid and she is his surviving spouse.

II. CONCLUSION.

Respondents would have this Court become the first court ever in the history of South Carolina to hold that any form of validity attaches to a bigamous marriage. The Court declines that invitation. Regardless of whether it is annulled sooner, annulled later, or even not annulled at all, a bigamous marriage is not a marriage for any purpose known to the law. The holding in *Lukich*, which also held that a voidable marriage based on intoxication is valid between the date of marriage and the date of annulment, confirms the statutory and case precedent rule that all bigamous marriages are void and never a marriage.

Therefore, it is hereby ORDERED, DECREED and ADJUDGED that the Respondents' and Amici Curiae's Motions to Alter, Amend and Reconsider are denied.

AND IT IS SO ORDERED.

This 20 day of Oct, 2015, at Bamberg, South Carolina.

DOYET A. EARLY, III
JUDGE, SECOND JUDICIAL CIRCUIT

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP0202851

PLAINTIFF(S)	DEFENDANT(S)
James Brown II Jeanette Mitchell	David Sojourner Yamma Brown Larry Brown Daryl Brown Deanna Brown Thomas Vanisha Brown Terry Brown
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ ACTION DISMISSED (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ ACTION STRICKEN (*CHECK REASON*): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge | Judge Code | Date: 10/26/2015

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on 10-26-15, and a copy mailed first class or placed in the appropriate attorney's box on 10-26-15, to attorneys of record or to parties (when appearing pro se) as follows:

Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401
William Joseph Barr 108 N. Academy St. Kingstree, SC 29556-3422

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. David Black PO Drawer 2426 Columbia, SC 29202-2426
John Fisher Beach 1501 Main St., 5Th Floor Columbia, SC 29201
John Andrew Donsbach Sr. PO Box 212139 Martinez, GA 30917-2139
Louis Levenson 125 Broad St., SW Atlanta, GA 30303

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

STATE OF SOUTH CAROLINA **COUNTY OF AIKEN**	))	**IN THE PROBATE COURT** **CASE NUMBER: 2007-ES-02-0056**
STATE OF SOUTH CAROLINA **COUNTY OF AIKEN**	))	**IN THE COURT OF COMMON PLEAS** **CASE NUMBER: 2007-CP-02-0122**
IN RE: THE ESTATE OF **JAMES BROWN** **a/k/a JAMES JOSEPH BROWN**	)))	**AMENDED AFFIDAVIT OF** **TOMMIE RAE BROWN** **IN SUPPORT OF HER MOTION** **FOR SUMMARY JUDGMENT**

PERSONALLY APPEARED before me Tommie Rae Brown who, first being duly sworn, states as follows:

1. I am a Petitioner in this case and ask the Court to recognize my ceremonial marriage to James Brown and declare that I was legally married to James Brown and that I am his widow.

2. I met James Brown in 1997 when I was a back-up singer with his band. We began a long-term relationship. We were very much in love despite unkind and sometimes racist comments from others. In 2000, I became pregnant with James' son, J B .

3. We were married on December 14, 2001 in Aiken County, South Carolina by Reverend Larry Fryer. Attached hereto as Exhibit "A," is a copy of my marriage license to James.

4. In 2003, David Cannon told Mr. Brown that I was married to someone else, namely Javed Ahmed and had never been divorced. James and I both wanted our marriage to be legal and so James told me to have the marriage annulled. I had no funds to retain Mr. Rosen and James gave me the money to pay the legal fees for the annulment. See Exhibit "B." James and I continued to live as husband and wife. We attended events together, traveled together, spent a lot of time together and enjoyed each other's company.

5. I retained the services of Robert N. Rosen at Rosen, Rosen and Hagood in Charleston, South Carolina. Mr. Rosen brought an action to annul the purported marriage to Mr. Ahmed on December 15, 2003. A copy of the Summons and Complaint is attached hereto as Exhibit "C."

6. I kept James apprised of what I was doing. In fact, my attorney kept James's attorney, James Huff, apprised of the progress of the case for annulment. See letter dated February 5, 2004, attached as Exhibit "D."

7. I told Mr. Rosen all I knew about my marriage to Mr. Ahmed. I testified in the Family Court in Charleston on April 15, 2004. I explained to the judge that while I thought I was married to Mr. Ahmed. I also believed that marriage had been annulled before I married James. I also was told by Mr. Ahmed, after the marriage ceremony, that he would not live with me because he was married to three or more other females in Pakistan. Thus my purported "marriage" never existed. It was also never consummated. I believed Mr. Ahmed "married" me to become a U.S. citizen. Thus, I learned during the annulment proceeding that actually I was never legally married to Mr. Ahmed and so my marriage to James was legal and valid.

Filed: 12-26-2007
Sue H. Roe
Judge of Probate
By:

8. The Court accepted my testimony and found that I was never married to Ahmed. The Final Order filed on April 15, 2004 is attached hereto as Exhibit E.

9. After the Order was issued, my attorney promptly sent it to James' attorney, Mr. Huff. See letter dated April 16, 2004, attached hereto as Exhibit F.

10. James always believed we were married and he was happy about the annulment. In his 2005 biography, "James Brown I feel Good, A Memoir of a Life of Soul" (New American Library: 2005) he wrote that "having married Tomi Rae Brown, I once again, much to my amazement, wanted children." See Exhibit G, p.232

11. It is true that after a physical altercation in which James was arrested for criminal domestic violence, his lawyer filed a pleading in family court to annul our marriage. However, this was the result of undue influences upon him by David Cannon and others and because he was upset about the criminal charge. He withdrew that action and we reconciled. See Consent Order of Dismissal dated August 16, 2004, attached hereto as Exhibit H.

12. James and I lived together from February 17, 1997 until his death in December 2006.

13. I am asking the Court to recognize my ceremonial marriage to James Brown and the legality and finality of the Order of the Family Court finding that I was never married to Javed Ahmed and therefore am legally married to James Brown.

TOMMIE RAE BROWN

Sworn and subscribed to me on this
15th day of November, 2007

Marcia F. Jones

Notary Public for the State of South Carolina
My Comm. Exp. December 12, 2014

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

207020 — LICENSE NUMBER

AIKEN — COUNTY

GROOM-NAME (1)	(FIRST) JAMES	(MIDDLE)	(LAST) BROWN	BIRTHDATE (MONTH, DAY, YEAR) (2a)	AGE (2b) 68
BIRTHPLACE (State or foreign country) (3) SOUTH CAROLINA	RACE (4) BLACK	RESIDENCE (Street and Number) (5a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION (5b) BEECH ISLAND	COUNTY (5c) AIKEN	STATE (5d) SOUTH CAROLINA	NO. OF THIS MARRIAGE (1st, 2nd, etc.) (6) 4		
BRIDE-NAME (7)	(FIRST) TOMMIE RAE	(MIDDLE)	(LAST) HYNIE	BIRTHDATE (MONTH, DAY, YEAR) (8a) , 1969	AGE (8b) 32
BIRTHPLACE (State or foreign country) (9) NEVADA	RACE (10) WHITE	RESIDENCE (Street and Number) (11a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION (11b) BEECH ISLAND	COUNTY (11c) AIKEN	STATE (11d) SOUTH CAROLINA	NO. OF THIS MARRIAGE (1st, 2nd, etc.) (12) 1		

MAIDEN NAME OF BRIDE (If Different From Above)

(13)

Application for a license was filed with this court at 3:15p M., on the 10 day of DECEMBER, 2001. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 3:20 P.M., this the 11th day of December, A.D. 2001.

Signature of Issuing Officer — JUDGE OF PROBATE — Title of Issuing Officer

GROOM-Signature (14) Brown

BRIDE-Signature (15)

I certify that the above named persons were married on (16) December 14 (MONTH) (DAY) (YEAR) 2001

Place of Marriage (17) (CITY) Beech Island (COUNTY) Aiken SOUTH CAROLINA

OFFICIANT-Signature (18a) Rev. Larry Fryer

OFFICIANT-Title (18b) Rev. Larry Fryer

OFFICIANT-Mailing Address (18c) 1115 - 6th Avenue, Augusta, Georgia 30901

~~STATE OF SOUTH CAROLINA~~
~~COUNTY OF AIKEN~~

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

DHEC 0681 (12/1998)

PROBATE JUDGE

MAR 16 2007

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Rosie Lowman
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT WITNESS MY HAND AND SEAL OF THE COURT THIS THE 19th DAY OF March AD 20 04

Judge of Probate for Aiken County, S.C.

BY Martha Bartley
CLERK

EXHIBIT Q

FILED
AIKEN COUNTY
MAY 06 2004
4:55p
CLERK OF COURT

Marriage Certificate

LICENSE NO. 207020

STATE OF SOUTH CAROLINA,
AIKEN COUNTY

PROBATE COURT

To Whom It May Concern:

THIS IS TO CERTIFY, That on the 14th day of DECEMBER, 2001

at BEECH ISLAND in Aiken County, State of South Carolina,

JAMES BROWN	BEECH ISLAND, SC	68	and
MAN'S NAME	ADDRESS	AGE	

TOMMIE RAE HYNIE	BEECH ISLAND, SC	32
WOMAN'S NAME	ADDRESS	AGE

were united in the Bonds of Matrimony by LARRY FRYER

MINISTER in accordance with the law of South Carolina,
OFFICIAL TITLE

in such cases made and provided, and as shown by the records of this Court that the information given is that their race is BLACK/WHITE and their Nationality is American.

Witness my Hand and Seal of said Court, this the 8th day of JANUARY, 2003

A TRUE COPY

Attest: Sue H. Rye
JUDGE OF PROBATE

OFFICIAL CHECK
WACHOVIA
SEVEN THOUSAND FIVE HUNDRED DOLLARS AND 00 CENTS
Dollars
FOR AMT. Wachovia Bank, National Association
Remitter:
Issued by Integrated Payment Systems, Inc., Englewood, Colorado

EXHIBIT 33

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 03-DR-10-4609

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting Street, Suite 202, Post Office Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

THE ROSEN LAW FIRM, LLC

By:_____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

EXHIBIT

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4609

TOMMIE RAE HYNIE, a/k/a)
TOMMIE RAE BROWN,)
)
Plaintiff,)
)
-vs-) COMPLAINT
)
JAVED AHMED,)
)
Defendant.)

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANT NAMED ABOVE:

The Plaintiff above named would respectfully show unto this Honorable Court, as follows:

1. The Plaintiff is a citizen and resident of South Carolina, and has so resided in said state for at least one (1) year prior to the commencement of this action.
2. The Plaintiff is informed, and believes that the Defendant is a citizen and resident of Texas.
3. The Plaintiff is informed and believes that jurisdiction is proper in the Family Court pursuant to §20-7-420(6) and §20-1-530 of the South Carolina Code.
4. The Plaintiff alleges that in February 1997, the Defendant was an immigrant from Pakistan, who unbeknownst to Plaintiff, wanted to marry Plaintiff so that he could become a United States citizen.
5. On February 17, 1997, the Plaintiff and Defendant married in Harris County, Texas.
6. Thereafter, the Defendant refused to live with the Plaintiff and Plaintiff returned to her domicile. The Plaintiff alleges she never saw or heard from the Defendant again.
7. The Plaintiff alleges that the parties never lived together as husband and wife and never engaged in any sexual contact or activity whatsoever, therefore failing to consummate their marriage.
8. Plaintiff is informed and believes that prior to their marriage, the Defendant had three or more wives to whom he was lawfully married under Pakistani law when the parties married on February 17, 1997.
9. Plaintiff alleges there has been no collusion between the parties.
10. The Plaintiff now seeks to have this marriage annulled as the Defendant was already married to another woman, the Defendant perpetrated a fraud on the Plaintiff, and the parties did not consummate their purported marriage, nor did they live together as husband and wife, all of which constitute grounds for annulment pursuant to S.C. Code Ann. Section 20-1-530 (Lawyers Co-op 1976).

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order as follows:

1. Granting the Plaintiff an annulment of the marriage between the parties; and
2. For any such other relief this Court deems just and proper.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

****
*** TX REPORT ***
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TRANSMISSION OK

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RESULT	OK

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
P.O. BOX 1510
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 577-6726
FAX (843) 724-8036
WWW.ROSEN-LAWFIRM.COM

February 5, 2004

Via Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
03-DR-10-4609

Dear Mr. Huff:

Enclosed you will find a copy of the Summons and Complaint with regard to the above-referenced matter.

Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

:mfj
xc: Tommie Brown

ROSEN LAW FIRM, LLC

ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
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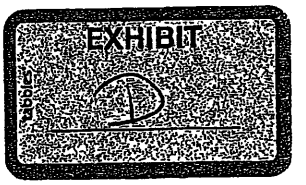
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Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

:mfj
xc: Tommie Brown



STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4609

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting Street, Suite 202, Post Office Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

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(843) 377-1700- Office
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ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

COMPLAINT

TO: THE DEFENDANT NAMED ABOVE:

The Plaintiff above named would respectfully show unto this Honorable Court, as follows:

1. The Plaintiff is a citizen and resident of South Carolina, and has so resided in said state for at least one (1) year prior to the commencement of this action.
2. The Plaintiff is informed, and believes that the Defendant is a citizen and resident of Texas.
3. The Plaintiff is informed and believes that jurisdiction is proper in the Family Court pursuant to §20-7-420(6) and §20-1-530 of the South Carolina Code.
4. The Plaintiff alleges that in February 1997, the Defendant was an immigrant from Pakistan, who unbeknownst to Plaintiff, wanted to marry Plaintiff so that he could become a United States citizen.
5. On February 17, 1997, the Plaintiff and Defendant married in Harris County, Texas.
6. Thereafter, the Defendant refused to live with the Plaintiff and Plaintiff returned to her domicile. The Plaintiff alleges she never saw or heard from the Defendant again.
7. The Plaintiff alleges that the parties never lived together as husband and wife and never engaged in any sexual contact or activity whatsoever, therefore failing to consummate their marriage.
8. Plaintiff is informed and believes that prior to their marriage, the Defendant had three or more wives to whom he was lawfully married under Pakistani law when the parties married on February 17, 1997.
9. Plaintiff alleges there has been no collusion between the parties.
10. The Plaintiff now seeks to have this marriage annulled as the Defendant was already married to another woman, the Defendant perpetrated a fraud on the Plaintiff, and the parties did not consummate their purported marriage, nor did they live together as husband and wife, all of which constitute grounds for annulment pursuant to S.C. Code Ann. Section 20-1-530 (Lawyers Co-op 1976).

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order as follows:

1. Granting the Plaintiff an annulment of the marriage between the parties; and
2. For any such other relief this Court deems just and proper.

THE ROSEN LAW FIRM, LLC

By: _____

ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

****
*** TX REPORT ***
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February 5, 2004

Via Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
03-DR-10-4609

Dear Mr. Huff:

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Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

:mfj
xc: Tommie Brown

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
P.O. BOX 1510 (29402)
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 377-1700
FAX (843) 377-1709
WWW.ROSEN-LAWFIRM.COM

April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

Now that this issue is resolved, I am hopeful this couple can reconcile their differences. If not, I would suggest mediation with Mark Andrews in Mr. Pleasant, South Carolina. I am sure that if you investigate Mr. Andrews, you will find that he is the leading domestic mediator in South Carolina.

Please advise if this suits your client.

Sincerely,

Robert N. Rosen

:mfj
xc: Mrs. James Brown

FILED
2004 APR 15 AM 9:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 03-DR-10-4609
TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN,)	
Plaintiff,)	
-vs-)	FINAL ORDER
JAVED AHMED,)	
Defendant.)	

HEARING DATE:	**April 15, 2004**
JUDGE:	**Honorable F. P. Segars-Andrews**
ATTORNEY FOR PLAINTIFF:	**Robert N. Rosen, Esquire** **Donald B. Clark, Esquire**
ATTORNEY FOR DEFENDANT:	**N/A**
COURT REPORTER:	

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action.

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was in Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as , Houston, Texas.

This Court issued an Order of Publication on February 3, 2004. This Court found that the Plaintiff made a diligent effort to locate the Defendant, and it appeared to the satisfaction of the

JPSA 104

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has been properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.

6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

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*** TX REPORT ***
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TRANSMISSION OK

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ST. TIME	04/16 14:57
TIME USE	01'27
PAGES SENT	5
RESULT	OK

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

154 MEETING STREET, SUITE 202
P.O. BOX 1510 (29402)
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 377-1700
FAX (843) 377-1709
WWW.ROSEN-LAWFIRM.COM

April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

Now that this issue is resolved, I am hopeful this couple can reconcile their differences. If not, I would suggest mediation with Mark Andrews in Mr. Pleasant, South Carolina. I am sure that if you investigate Mr. Andrews, you will find that he is the leading domestic mediator in South Carolina.

Please advise if this suits your client.

Sincerely,

Robert N. Rosen

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FINAL ORDER

HEARING DATE:	**April 15, 2004**
JUDGE:	**Honorable F. P. Segars-Andrews**
ATTORNEY FOR PLAINTIFF:	**Robert N. Rosen, Esquire** **Donald B. Clark, Esquire**
ATTORNEY FOR DEFENDANT:	**N/A**
COURT REPORTER:	

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

CC/RNR(P) 4-15-04

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action.

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as Houston, Texas.

This Court issued an Order of Publication on February 3, 2004. This Court found that the Plaintiff made a diligent effort to locate the Defendant, and it appeared to the satisfaction of the

EXHIBIT C

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has been properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.

6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiff is entitled to an order and judgment annulling the marriage between the Plaintiff and the Defendant solemnized on February 17, 1997. It is further

ORDERED, ADJUDGED AND DECREED that the marriage between Tommy Rae Hynie a/k/a Tommie Rae Brown and Javed Anmed is annulled. It is further,

ORDERED, ADJUDGED AND DECREED that the marriage between Plaintiff and Defendant be, and is hereby, declared to be wholly null and void ab initio, and the parties are, and each of them is, freed from the obligations of such marriage.

AND IT IS SO ORDERED!

F. P. SEGARS-ANDREWS
JUDGE OF THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
April 15, 2004

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
BY: _____
DEPUTY CLERK

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
P.O. BOX 1510 (29402)
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 377-1700
FAX (843) 377-1709
WWW.ROSEN-LAWFIRM.COM

April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

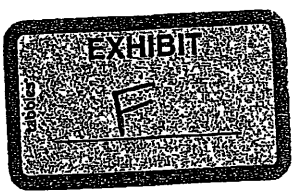
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Please advise if this suits your client.

Sincerely,

Robert N. Rosen

:mfj
xc: Mrs. James Brown



STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

FILED
2004 APR 15 AM 9:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FINAL ORDER

HEARING DATE: April 15, 2004
JUDGE: Honorable F. P. Segars-Andrews
ATTORNEY FOR PLAINTIFF: Robert N. Rosen, Esquire
Donald B. Clark, Esquire
ATTORNEY FOR DEFENDANT: N/A
COURT REPORTER:

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action.

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as , Houston, Texas.

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JPSA 104

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FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

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7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

****
*** TX REPORT ***
****

TRANSMISSION OK

TX/RX NO	0704
RECIPIENT ADDRESS	18034424422
DESTINATION ID	
ST. TIME	04/16 14:57
TIME USE	01'27
PAGES SENT	5
RESULT	OK

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
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CHARLESTON, SOUTH CAROLINA 29401
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April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

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Please advise if this suits your client.

Sincerely,

Robert N. Rosen


JAMES BROWN
I FEEL GOOD
A MEMOIR OF A LIFE OF SOUL
WITH AN INTRODUCTION BY MARC ELIOT

EXHIBIT
6



James Brown with his wife, Tomi Rae Brown, receiving the prestigious Kennedy Center Honor for his lifetime contribution to the arts, on December 7, 2003, in Washington, D.C.

FROM THE COLLECTION OF THE AUTHOR



As long as the fire still burns in his heart, James Brown will continue to wow audiences worldwide. Here he is performing his trademark cape drama with longtime MC, Danny Ray.

FROM THE COLLECTION OF THE AUTHOR

points, and to operate at the same speed of life. Another problem is that both sides usually don't want the same things at the same time.

Children, for instance. It's very difficult to be the father of even one child in a man's life. I happen to be the father of many, but with a younger woman, the talk inevitably turns to starting a new family, and it's hard to go down that road all over again after you've seen your children from earlier marriages grow into adulthood. When a man is older, he has a tendency to feel he has done his part. He wants to relax and spend time with just his woman. A young girl, however, has all that ahead of her. This is an issue couples have to be straight on and agree on before they walk down that aisle; otherwise there is no way their marriage will survive.

Ironically, one of the biggest issues between Adrianne and me had been children. We both wanted them but couldn't seem to have them. I had built a beautiful home for her and the family we had both hoped to have. I had wanted her to feel she was living with an ambassador, which, in many ways, I had become. For myself, I never needed much. I could just as easily live in a small place and that would be just fine with me, but I wanted her to feel that she had the best.

Now, having married Tomi Rae Brown, I once again, much to my amazement, wanted children. And happily, so did she. We started living together in the big house in South

Form 4

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
FAMILY COURT

JUDGMENT IN A CIVIL CASE
CASE NO. 04-DR-02-157

JAMES JOE BROWN, JR. VS. TJOMMIE RAE BROWN

CHECK ONE:

[X] **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and an order rendered.

[ ] **ACTION DISMISSED** .(CHECK REASON): [ ] Rule 12 (b), SCRCP [ ] Rule 41(a), SCRCP (Vol. Nonsuit); [ ] Rule 43 (k), SCRCP (Settled) [ ] Other

[ ] **ACTION STRICKEN** (CHECK REASON): [ ] 27 Day Rule; [ ] Other

IT IS ORDERED AND ADJUDGED: [X] See attached order; [ ] Statement of Judgment by Court:

Dated at Aiken, South Carolina, this 16 day of AUGUST, 2004

JUDGE

This judgment/order was entered/filed on the 16 day of AUGUST, 2004
And a copy mailed/hand-delivered/boxed this 16 day of AUGUST, 2004
To attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY (S) FOR PLAINTIFF (S)

JAMES B. HUFF

ATTORNEY (S) FOR DEFENDANT (S)

ROBERT N. ROSEN
134 MEETING STREET STE. 202
CHARLESTON, SC 29402

GUARDIAN AD LITEM

CLERK OF COURT

By: CHRISTEE D. JOHNSON

EXHIBIT 4

SCRCP FORM 4-F (Revised 3/04)

STATE OF SOUTH CAROLINA)
COUNTY OF Aiken)

IN THE COURT OF COMMON PLEAS

James Joe Brown, Jr.
☒ Plaintiff

CASE NO. 04-DR-02-157

v.

Donnie Kae Hyde Ahrend Brown
☐ Defendant.

MOTION INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: James B Huff, Bar No.	Defendant's Attorney: Mr. Rosen, Bar No.
Address: 1417 Ga. Avenue N. Augusta, SC 29841	Address: 134 Meeting Street Suite 20 Charleston, SC. 29402
phone: fax: (803) 278-2889	phone: fax:
e-mail: other:	e-mail: other: 843-377-1700

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion:
Estimated Time Needed: Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion Type

☐ Written motion attached
☒ Form Motion --
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: 25.00
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☒ Other: Consent Order

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: CM Date Filed:

☑ MOTION FEE COLLECTED: 768269
☐ CONTESTED – AMOUNT DUE:

SCCA/233 (1/2003)

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
JAMES JOE BROWN, JR., Plaintiff	)	CASE NUMBER: 04-DR-02-15
vs.	)	**CONSENT ORDER OF DISMISSAL**
	)	
TOMMIE RAE HYNE AHMED BROWN, Defendant.	)	

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Goodwin, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this
MAR 16 2007
CCCP. & G.S., Aiken County, S.C.
Deputy Clerk

FILED
AIKEN COUNTY
AUG 16 2004
CLERK OF COURT

HEARING DATE:	July 22, 2004
PRESIDING JUDGE:	Peter R. Nuessle
ATTORNEY FOR PLAINTIFF:	James B. Huff
ATTORNEY FOR DEFENDANT:	Robert N. Rosen
COURT REPORTER:	Lisa Hicklin

This matter was scheduled to come before the Court for a Temporary Hearing on the above listed date. Prior to the hearing the parties informed the Court that they had reached an Agreement in this matter. The Agreement is as follows:

1. The parties hereby dismiss their respective pleadings without prejudice to either party.

2. Plaintiff will pay the sum of $12,000.00 to Defendant for her attorney fees and costs in this matter. This will be paid within 10 days of the filing of this order.

3. Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future.

4. The parties agree to seal the courts file in this matter.

Based upon the review of the court's file I make the following Findings of Fact:

1. The Agreement is fair and reasonable to both parties and should be approved by the Court.

2. The Court has considered the factors enunciated in SCRCP 41.1. I find that sealing the Courts file in this matter is proper. Both parties are entertainers. The parties have mutually consented to having the case dismissed without being litigated. The parties have resolved their differences and

are currently residing together. As such, the parties are entitled to retain their privacy as to the documents that have been filed with the Court. The parties mutual request and consent to seal the Courts file is in the best interest of both parties, will avoid disclosure of the parties private financial matters, avoid harm to any minor child involved with this case and causes no prejudice to either party or to any public interest with this case.

Based upon these Findings of Fact, I make the following Conclusions of Law:

1. That the parties and subject matter are properly before and subject to the jurisdiction of this Court.

Based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED:

a. That the agreement of the parties is approved by this Court.

b. The Courts' file shall be sealed and not opened to anyone without further court order of this court allowing such disclosure.

AND IT IS SO ORDERED:

Honorable Peter R. Nuessle
Family Court Judge
Second Judicial Circuit

Aiken, South Carolina

This 14 day of ~~July~~ Aug, 2004

I SO CONSENT:

James B. Huff, Esq.
Attorney for Plaintiff

I SO CONSENT:

Robert N. Rosen, Esq.
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
JAMES JOE BROWN, JR., Plaintiff	)	CASE NUMBER: 04-DR-02-157
	)	
vs.	)	**NOTICE OF MOTION AND MOTION**
	)	
TOMMIE RAE HYNE AHMED BROWN, Defendant.	)	
	)	

PLEASE TAKE NOTICE that the parties, by and through undersigned attorneys, intend to move and do hereby move before the Presiding Judge of the Family Court of the Second Judicial Circuit, on the 22nd day of July, 2004, at 11:00 A.M., or as soon thereafter as counsel may be heard for an Order sealing the record in the above listed matter.

Pursuant SCRCP 41.1 sealing of the Courts file in this matter is proper. Both parties are entertainers. The parties have mutually consented to having the case dismissed without being litigated. The parties have resolved their differences and are currently residing together. As such, the parties are entitled to retain their privacy as to the documents that have been filed with the Court. The parties mutual request and consent to seal the Courts file is in the best interest of both parties, will avoid disclosure of the parties private financial matters, avoid harm to any minor child involved with this case and causes no prejudice to either party or to any public interest with this case.

I SO MOVE:

James B. Huff, Esq.
Attorney for Plaintiff

July 21, 2004

I SO MOVE:

Robert N. Rosen, Esq.
Attorney for Defendant

AIKEN COUNTY
AUG 19 2004
8:30 AM

RECEIVED
MAY - 2 2011
S C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

THE HONORABLE DOYET A EARLY, III, CIRCUIT COURT JUDGE

Case No 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J Brown, on behalf of his minor children, Lindsey B and Janise B , Deanna J Brown Thomas, on behalf of her minor child, Jason L , Yamma N Brown, on behalf of her minor children, Sydney L , Carrington L , and Tonya B , Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, and James B , through his
Guardian ad Litem, Respondents,

vs

Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Adele J Pope and Robert L Buchanan, Jr , Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Parris, LaRhonda Pettitt, Jeanette Mitchell, and Russell L Baukright, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L Buchanan, Jr and Adele J Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust
are Appellants,

And Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Parris, LaRhonda Pettitt, Jeanette Mitchell, and Russell L Baukright, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust
are Respondents

In re The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000

FINAL BRIEF OF RESPONDENTS

Alan Wilson
Attorney General, State of South Carolina
C Havird Jones, Jr , Sr Asst Attorney General
Robert D Cook, Asst Deputy Attorney General
J C Nicholson, III, Asst Attorney General
Mary Frances Jowers, Asst Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549
(803) 734-3970
Attorneys for the State of South Carolina

William W Wilkins
J David Black
Fred L Kingsmore, Jr
NEXSEN PRUET, LLC
55 East Camperdown Way (29601)
Post Office Drawer 10648
Greenville, South Carolina 29603-0648
(864) 370-2211
Attorneys for Respondent Russell L Bauknight as the Court-Appointed Trustee of the James Brown 2000 Irrevocable Trust and Personal Representative for the Estate of James Brown and as the Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust

Louis D Levenson
LEVENSON & ASSOCIATES
125 Broad Street
Atlanta, Georgia 30303
(404) 659-5000
Attorneys for James Brown Children and Grandchildren Daryl J Brown Individually and on Behalf of His Minor Children L D B and J V B Deanna J Brown Thomas Individually and on Behalf of her Minor Child J B L Yamma N Brown Individually and on Behalf of Her Minor Children S L C L and T B Vanisha Brown Larry Brown

Robert N Rosen
T Heyward Carter, Jr
S Alan Medlin
David L Michel
Post Office Box 1510
Charleston, South Carolina 29402
(843) 377-1700
Attorneys for Tommie Rae Hynie Brown

Matt Bodman
MATT BODMAN P A
1500 Calhoun Street
Columbia, South Carolina 29201
(803) 806-8605
Attorney for Terry Brown

Albert P Shahid, Jr
SHAHID LAW OFFICE, LLC
89 Broad Street
Charleston, South Carolina 29401
(843) 853-4500
Attorney for Stephen M Slotchiver Guardian ad I for James B

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ISSUES ON APPEAL

I Whether Appellants lack standing?

II Whether the circuit court correctly approved the Settlement Agreement under S C Code Ann § 62-3-1102, where the Settlement Agreement (1) resolved a good-faith controversy and (2) was just and reasonable?

III Whether the Attorney General possessed the authority, pursuant to his *parens patriae* and statutory authority, to steer and compromise litigation on behalf of the charitable beneficiaries?

IV Whether the circuit court properly removed Appellants as personal representatives and trustees, replacing them with an independent fiduciary?

STATEMENT OF THE CASE AND STATEMENT OF FACTS

This is an appeal by former personal representatives and trustees, Adele Pope (Pope) and Robert Buchanan (Buchanan) (collectively, Appellants), from an Order of the circuit court approving a settlement agreement (the Settlement Agreement) pursuant to S C Code Ann § 62-3-1102 The Settlement Agreement resolved nearly all litigation concerning the Estate of James Brown (Mr Brown), the world-famous "Godfather of Soul" Further, the Settlement Agreement ensured that a charitable trust will not be invalidated and left with nothing for its charitable beneficiaries

During the course of settlement negotiations, the individual settling parties were represented by privately-retained counsel The beneficiaries of the public charitable trust were represented by the Attorney General of South Carolina pursuant to his *parens patriae* and statutory authority The Settlement Agreement approved by the circuit court resolved the vast majority of the controversy surrounding Mr Brown's Estate and allowed its administration to move forward without contentious litigation and divisive administration The Order approving the Settlement Agreement also removed Appellants, who are not professional fiduciaries, from their positions as personal representatives and trustees The circuit court replaced them with a professional fiduciary If the settlement is upheld, the only remaining litigation will involve issues typical of estate administration, such as creditors' claims

Appellants claim they are owed $5 million for their 18-month tenure as fiduciaries This claim is in direct conflict with their position in this litigation They profess to represent and protect the beneficiaries of the charitable trust, yet seek recovery of their claim from those same beneficiaries

James Brown s Estate Plan

Mr Brown, a resident of Aiken County, died testate on December 25, 2006 He purportedly executed a will and trust (2000 Will, R pp 2068-76, and Trust, R pp 2077-97) on August 1, 2000 The 2000 Will was filed with the probate court on January 18, 2007 and immediately admitted to informal probate The 2000 Will named six of his children to whom he left his personal and household effects [1] (2000 Will, R p 2071) The 2000 Will poured over the remainder of his Estate into the 2000 Trust

The 2000 Trust divides into two trusts First, the Brown Family Educational Trust is for the benefit of certain of Mr Brown's grandchildren and is intended to pay for their educational expenses [2] (2000 Trust, R pp 2082-83) Second, the James Brown "I Feel Good" Trust is for the benefit of certain members of the public and is intended to provide "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions available in the States of South Carolina and Georgia" (R pp 2083-84) The probate court removed all matters related to the Estate and Trust to the Aiken County Court of Common Pleas

Litigation Concerning James Brown s Estate

The litigation concerning Mr Brown's estate included both statutory claims for various spousal and omitted-child's shares, as well as two petitions contesting the validity

[1] The six children named in the 2000 Will are Deanna J Brown Thomas, Yamma N Brown, Vanisha Brown, Daryl J Brown, Larry Brown and Terry Brown

[2] The Brown Family Educational Trust eventually pours into the "I Feel Good" Trust Consequently, the Family Trust falls within the statutory definition of a charitable trust under S C Code Ann § 62-7-103(3) and is properly represented by the Attorney General

of the 2000 Will and Trust If any of the spousal or omitted-child's claims were successful, it would materially diminish the amount of Mr Brown's Estate received by the 2000 Trust Additionally, if any of the Will and Trust contests were successful, nothing would pass to the charitable beneficiaries Accordingly, all parties, including Appellants, agreed that a settlement was necessary (*See* Offer of Compromise, March 31, 2009, Supplemental R pp 2935-39, R p 1668, lines 8-18)

Three actions, which were consolidated for purposes of this matter, constitute the bulk of litigation that has plagued Mr Brown's Estate since his death [3] These lawsuits were (1) a will and trust contest, as well as a claim for an elective share or, alternatively, an omitted spouse's share, brought by Mr Brown's surviving spouse, Tommie Rae Hynie Brown (Mrs Brown), (2) a claim to an omitted child's share brought on behalf of Mr Brown's son, J B (Brown), by his Guardian ad Litem, and (3) a Will and Trust contest brought by five of the six children named in Mr Brown's Will

Administration of James Brown s Estate and Trust

Mr Brown's 2000 Will and Trust nominated David G Cannon (Cannon), Albert

[3] There is a fourth category of claimants whose success could have altered Mr Brown's putative estate plan alleged children not included in the 2000 Will However, these alleged children would take only if the 2000 Will and Trust were overturned One child, B filed an omitted-child's claim and is a party to the Settlement Agreement Three other alleged children filed claims against Mr Brown's estate However, these three alleged children would take only if the Will and Trust were overturned Only two of these children joined in the Will and Trust contests These three children entered into a stipulation that consents to the Settlement Agreement, including the dismissal of the Will and Trust contests But these children reserved any federal copyright rights they may have (R p 1330, lines 5-23) Because all of the Will and Trust contestants agreed to dismiss the Will and Trust contests, no alleged child, other than B could take from the Estate or Trust Moreover, the Settlement Agreement and the Order approving it specifically provide that the Settlement Agreement will not affect the rights of any beneficiary not a party to it Thus, the status of these three children is irrelevant for purposes of this appeal, and all beneficial interests were represented in the settlement

H Dallas (Dallas), and Alfred A Bradley (Bradley) to serve as personal representatives of his estate and trustees of the Trust, respectively (2000 Will, R p 2073, 2000 Trust, R p 2081) Dallas, Cannon, and Bradley's tenure as personal representatives and trustees was clouded with controversy, including but not limited to, allegations of undue influence in the execution of Mr Brown's 2000 Will and Trust

On January 24, 2007, the six children named in Mr Brown's Will filed an emergency petition seeking the removal of Dallas, Bradley, and Cannon as personal representatives (R pp 958-65) On February 1, 2007, Mrs Brown filed an emergency petition for appointment of a special administrator (R pp 966-69) The circuit court denied the children's petition for removal of personal representatives, but granted Mrs Brown's petition for the appointment of a special administrator On March 12, 2007, the circuit court appointed Appellants to serve as special administrators (R pp 179-80)

On July 27, 2007, Appellants filed a motion in the circuit court requesting that it remove Dallas, Cannon, and Bradley as personal representatives and trustees (R pp 975-79) At a hearing on Appellants motion, Cannon resigned from his fiduciary positions (R p 2022, lines 8-22) On September 24, 2007, a hearing was held regarding allegations that Cannon misappropriated estate assets both before and after his resignation[4] (R p 2024, line 1-p 2025, line 19, *see also* R pp 161-67) Subsequently, Dallas and Bradley each resigned their positions as personal representative and trustee

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hearing

[4] The court found Cannon in contempt by Order filed October 2, 2007 (R pp 173-78) A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007 By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay $373,000 in restitution to Mr Brown's Estate, as previously ordered by the Court (R pp 161-67)

(R p 2032, lines 9-16) By order, the circuit court accepted their resignations [5] (R pp 168-70) In that same Order, the circuit court also appointed Appellants to serve as personal representatives of Mr Brown's estate and trustees of the 2000 Trust (R p 169)

The Attorney General Intervenes

At the hearing regarding misappropriation of estate assets by Cannon, the Attorney General of South Carolina appeared and moved to intervene in order to enforce the 2000 Trust and protect the beneficial interests No one objected to the Attorney General's intervention This includes Appellants, who were serving as special administrators at the time, and their predecessors serving as personal representatives and trustees The circuit court granted the Attorney General's motion to intervene by Order dated October 4, 2007 [6] (R pp 171-72) Specifically, the circuit court granted the motion for intervention so the Attorney General could "represent and protect the interests of the beneficiaries of any charitable trust created by the Last Will of James Brown dated August 1, 2000, and the Irrevocable Trust Agreement of James Brown dated August 1, 2000, or any other assets of the Estate of James Brown that may be impressed with a charitable trust" (R p 172)

The Attorney General objected to Appellants' appointment as personal representatives and trustees After a hearing on the matter, the circuit court denied the

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[5] Dallas and Bradley filed a motion asking the court to vacate its order accepting their resignation, arguing that the court lacked the authority to appoint Appellants as personal representatives and trustees The circuit court denied this motion, and Dallas and Bradley appealed The Supreme Court dismissed the appeal as moot

[6] The Attorney General of Georgia also appeared and moved to intervene Although the circuit court granted this motion, the *pro hac vice* admission of the Georgia Attorney General was later withdrawn because the Court found that the South Carolina Attorney

Attorney General's request The Attorney General filed a motion to alter or amend, (R pp 993-1003), but later asked the circuit court to hold the motion in abeyance while Dallas and Bradley's appeal regarding their removal as personal representatives and trustees was pending (R pp 1008-09) The circuit court never ruled on the Attorney General's motion to alter or amend [7]

Informal Mediation and Settlement Agreement

Five of the six children named in the 2000 Will, the Attorney General, and Mrs Brown held mediation on August 10, 2008 The Settlement Agreement was reached and signed by all parties participating in the mediation The parties to the agreement are Mrs Brown, individually and on behalf of her minor child, B , Larry Brown, individually and on behalf of his minor child J ıse V 3 Lindsey Delores Brown, Venisha Brown, Deanna J Brown, Jason Brown-Lewis, Yamma N Brown, individually and on behalf of her minor children S / I nd C I Daryl J Brown, Tonya Brown, and the Attorney General, on behalf of the charitable beneficiaries of the 2000 Trust Terry Brown, one of the six children named in the 2000 Will, later joined in the Settlement Agreement The Settlement Agreement does not affect the rights of anyone not a party to it (R p 2365, ¶¶ 6-7) The circuit court's Order approving the Settlement Agreement reiterated this provision (R p 25)

Despite the fact that they were unaware of its terms and had previously supported settlement efforts, Appellants filed a motion opposing the Settlement Agreement (R pp 1056-78) On the following day, the settling parties disclosed the existence and terms of

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General was the appropriate party to represent the interests of the charitable beneficiaries

[7] That motion to reconsider is one of the numerous matters that will become moot if the circuit court's approval of the Settlement Agreement is affirmed

the Settlement Agreement to the circuit court Appellants' counsel was present in chambers at the time the terms of the agreement were disclosed The parties also disclosed the existence of the Settlement Agreement in open court, but did not disclose its precise terms in that setting Appellants claim they purposely did not allow anyone to inform them of the terms of the Settlement Agreement, notwithstanding the fact that their counsel knew the terms and the fact that Appellants had already challenged the terms of the Settlement Agreement Following disclosure, Appellants began filing numerous and unnecessary pleadings to obstruct a resolution of this matter [8]

The Terms of the Settlement Agreement

The Settlement Agreement created an entity containing all of Mr Brown's

[8] After the announcement of the settlement, Appellants filed the following (1) Motion for Partial Summary Judgment dated September 12, 2008 (R pp 1182-84), (2) Supplemental Motion to Dismiss All "Spousal" Claims of Mrs Brown dated September 12, 2008 (R pp 1185-86), (3) Motion to Dismiss All Causes of Action to Set Aside the Irrevocable Trust Agreement dated September 15, 2008 (R pp 1187-89), (4) Motion to Intervene and Dismiss dated October 24, 2008 (R pp 200-09), (5) Motion to Dismiss Buchanan and Pope as Individual Parties dated November 14, 2008 (R pp 244-47), (6) Motion to Disqualify C Havird Jones, Jr and Mary Frances Jowers as Counsel and Related Relief dated November 14, 2008 (R pp 251-55), (7) Emergency Motion to Quash Subpoena and Protect Evidence dated November 14, 2008 (R pp 259-62), (8) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery dated January 9, 2009 (R pp 329-46), (9) Motion to Alter or Amend Judgment dated January 14, 2009 (R pp 495-504), (10) Motion for Partial Summary Judgment dated January 20, 2009 (R pp 534-40), (11) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust, the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid, and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel, and Petition for Mandatory Guidance under Section 62-7-932(D) dated February 23, 2009 (R pp 612-20), (12) Emergency Motion for Appointment of Special Administrator and Special Trustee dated February 27, 2009 (R pp 629-36), (13) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders dated March 12, 2009 (R pp 660-71), and (14) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment dated March 17, 2009 (R pp 684-89)

probate and non-probate assets (Settlement Entity) Additionally, the family members increased the Settlement Entity's worth by contributing valuable assets, including federal copyright termination rights, that under federal law would never have been in the 2000 Trust even if the contests and statutory claims were all unsuccessful [9] After Terry Brown later joined in the settlement, the charitable beneficiaries own a 47 5 percent interest in the Settlement Entity and the other settling parties share the remaining 52 5 percent [10] (R pp 2381-82, ¶ 11B) Critically, the Settlement Agreement also includes a provision addressing the removal of Appellants and replacing them with a professional fiduciary (R p 2363, ¶ 5(a)) Each party to the agreement waived any claim or right he or she had in Mr Brown's Estate to the extent such claim or right might exceed the value of their respective share in the Settlement Entity (R p 2363, ¶ 5(d)) Each of the settling parties agreed to dismiss any and all will contests (R p 2364, ¶ 5(j)) The parties agreed that Mrs Brown was the surviving spouse of Mr Brown and that the six children named in the 2000 Will were his children (R p 2362, ¶ 1-2) Mrs Brown agreed to dismiss her spousal claims (R p 2364, ¶ 5(j))

The Attorney General, on September 29, 2008, filed a petition for removal and

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[9] After a certain number of years pass from the assignment of a copyright by a songwriter, federal copyright law allows the songwriter, if alive, to terminate or revoke that assignment thereby regaining control of that assigned right with the freedom to negotiate a new assignment However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right by will or otherwise *See* 17 U S C §§ 203, 304, Ann Bartow, *Intellectual Property and Domestic Relations Issues to Consider When There Is an Artist Author Inventor or Celebrity in the Family*, 35 FAM L Q 383 (2001)

[10] Specifically, Mrs Brown and B ı II share a 23 75 percent interest in the Settlement Entity, and each of the children that are parties to the Settlement Agreement receive a 4 79 percent interest in the Settlement Entity

restraint of trustees, asking that Dallas and Bradley be removed, in the event they were still trustees if they prevailed in their appeal of the circuit court's refusal to accept their rescission of their resignations (R pp 196-99) Further, on November 7, 2008, the settling parties filed an amended petition for the removal and restraint of the original trustees Cannon, Dallas, and Bradley, and Appellants (R pp 223-30) The circuit court did not immediately take up these motions, pending hearings on the approval of the Settlement Agreement However, the circuit court did appoint a new special administrator, Russell L Bauknight, by Order dated January 7, 2009 (R pp 58-61) The Order indicated he was appointed for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement" (R p 60) The appointment order was appealed by Appellants (R p 911)

Approval of the Settlement Agreement

Although the Settlement Agreement provides that it was a binding private agreement under S C Code Ann § 62-3-912,[11] the settling parties also sought court approval pursuant to S C Code Ann §§ 62-3-1101 and -1102 On November 25, 2008, the circuit court held a hearing in which the settling parties disclosed the terms of the Settlement Agreement on the record and reported they were ready to move forward with a hearing regarding its approval (R p 1296, line 20-p 1297, line 23) The circuit court commenced a hearing on January 30, 2009, which spanned seven non-consecutive days [12] The circuit court issued its Order approving the Settlement Agreement and removing

[11] Section 62-3-912 does not require court approval of a settlement agreement, but does require the personal representative to abide by it

[12] Specifically, the hearing was held on January 30, 2009, March 4, 5, 6, 25, and 26,

Appellants as personal representatives and trustees on May 26, 2009 (R pp 9-53)

All persons interested in the Estate, as well as Appellants, were present at the hearing and had an opportunity to be heard For the numerous reasons set forth in its Order, the circuit court found that all interested parties received proper notice[13] (R p 25) Additionally, the circuit court found that the Attorney General "has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts" (R p 28) Further, the circuit court found that the authority of the Attorney General allows it to "control the litigation"[14] and "settle or compromise litigation" (R p 29)

With respect to the merits of the Settlement Agreement, the circuit court found that it (1) resolved multiple good-faith controversies and (2) was just and reasonable These are the two requirements for approval pursuant to S C Code Ann § 62-3-1102 The circuit court found that "an overwhelming set of grounds" supported its conclusion that multiple good-faith controversies existed (R p 31) First, the circuit court found

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2009, and April 6, 2009

[13] Supporting this conclusion was the Court's Order of March 10, 2008, whereby it required service by publication (R pp 184-87) The Notice was published in the Aiken Standard on April 19 and 26, 2008 and May 3, 2008 The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws" No additional parties have appeared as a result of the publication

[14] The Court recognized the Attorney General's authority, once having intervened, to control the litigation on behalf of the charities However, the Attorney General did not purport to control the administration of the 2000 Trust, nor did the Court indicate that he had that authority Thus, the Order follows the distinction between controlling the litigation, which the Attorney General is empowered to do, and controlling the trust, which the Attorney General did not attempt to do

that the claims of undue influence "certainly [have] a foundation in good faith" (R p 31) The fact that the 2000 Trust authorized the trustees to pay themselves up to *fifty percent* of gross income was a significant factor in the circuit court's analysis [15] (R pp 31-32) The circuit court also concluded that the credibility of the only four witnesses concerning the execution of the 2000 Will was questionable (R pp 32-33) Not only are Cannon, Dallas, and Bradley self-interested persons, but the draftsman of this Will, Dewain Herring, is in prison for murder Second, the circuit court found that significant questions existed concerning what property would fund the trusts and what property would pass through the probate estate [16] (R pp 33-35) The circuit court viewed these questions as additional support for its conclusion that the Settlement Agreement resolved a good-faith controversy Third, the circuit court found that Mrs Brown's claim to an elective share or omitted-spouse's share constituted grounds of a good-faith controversy (R pp 35-38) Fourth, the circuit court found that a good-faith controversy existed as to the claim of B , an omitted-child's claim (R pp 38-39) The circuit court found that substantial evidence existed to support the conclusion that B was Mr Brown's son, despite the fact that Appellants contested this finding of fact [17] (R pp 38-

[15] Appellants' expert admitted that the fifty percent provision was extraordinary and endangered any charitable deduction (R p 1911, line 7-p 1913, line 23) Nevertheless, Appellants now contend that the fifty percent provision is a "limitation" on trustees (Appellants' Brief at 32)

[16] Appellants admitted the dearth of documentation and uncertainty of ownership in their testimony, and Appellants' documents confirm this (*See* Pope Affidavit, 2/23/09, (Ex A, Letter to Attorney General McMaster stating they don't know ownership of assets (R pp 2248-49)), R p 1415, line 9-p 1416, line 1, R p 1470, lines 1-4, R p 1690, line 11-p 1691, line 24)

[17] Appellants argued that there was no good-faith controversy underlying the Settlement Agreement because the applicable statutes of limitation barred any action contesting the trust The circuit court disagreed, finding that any applicable statutes had been tolled (Order, May 26, 2009, R pp 40-41)

39)

The circuit court found that the Settlement Agreement was just and reasonable (R p 43) In so doing, the circuit court identified as a key issue the way in which the agreement treated the beneficiaries represented by the Attorney General (R p 43) Supporting its conclusion that the agreement provided them with a just and reasonable result, the circuit court found "the risks of not approving the settlement are substantial" (R p 43) Each of the claims filed by the settling parties posed significant threats to the charitable interests, including the possibility that the charitable beneficiaries would receive nothing (R p 43) The circuit court found that continued litigation would cost the Estate millions of dollars of fees and costs (R p 44) Further, the percentages allocated to each of the settling parties by the agreement were "fair and reasonable" (R p 44) The circuit court also found that the contribution of certain assets to the Settlement Entity by the settling parties increased the value of the Settlement Entity and further supported that the agreement was just and reasonable (R p 45)

Removal of Appellants and Appointment of a Professional Fiduciary

Also by its Order dated May 26, 2009, the circuit court removed Appellants as the personal representatives of Mr Brown's Estate and trustees of the 2000 Trust (R p 45) The circuit court appointed Russell Bauknight, a professional fiduciary, to serve in those capacities (R pp 45-46) When Mr Bauknight was appointed, he learned that the balance of the bank account for Mr Brown's Estate was less than $15,000 (Estate Accounting, R p 2732) He was forced to borrow money to pay outstanding liabilities, such as insurance premiums on Mr Brown's home at Beech Island, South Carolina The fact that the Estate was forced to borrow money after Appellants' removal is particularly

egregious because, while they were still fiduciaries, Appellants petitioned, (R pp 980-92), and received the circuit court's approval, (R pp 149-56), to conduct a sale of Mr Brown's household and personal effects, yet spent a substantial portion of the proceeds paying themselves Specifically, the sale netted $554,077 87 (R pp 2758-59, 2761, 2763 (note entry of "receipts," *e g*, 8/25/08 $463,326 12)) Appellants paid themselves $264,000, (R pp 2758, 2761-63, 2766-67, 2769) (note "disbursements" to Pope and Buchanan, *e g*, 9/2/08 $100,000 00), and their lawyers and accountants $126,816 42 from the sale proceeds, (R pp 2758, 2760-63, 2765, 2767-69) (note "disbursements" to Bailey and Hayes and Sellars) Additionally, Appellants paid themselves $42,000, (R pp 2750, 2753, 2755) (note "disbursements" to Pope and Buchanan), and their lawyers and accountants $45,773 79 from other Estate assets, (R pp 2744, 2749-51, 2753-55) (note "disbursements" to Bailey and Hayes and Sellars)

The record is replete with additional evidence supporting the circuit court's removal of them as fiduciaries First, Appellants failed to conduct an appraisal of Mr Brown's Estate, (R p 1616, line 8-p 1617, line 15), which their own expert opined should have been done (R p 1914, line 8-p 1915, line 12) Despite their failure to conduct an appraisal, Appellants have asserted various values for the Estate ranging anywhere from $86 to $150 million Second, Appellants have taken numerous inconsistent and contradictory positions throughout their tenure as fiduciaries [18] This

[18] For example (1) Appellants claim that the Attorney General does not have the authority to represent the charitable beneficiaries, but brought three actions on behalf of the Trust in which they asked the Attorney General to represent the charitable beneficiaries *in settlements* (Offer of Compromise, Supplemental R pp 2935-2939, Complaint for Expedited Approval of Corbis Settlement filed 3/24/09, R pp 1272-74 (Appellants named the Attorney General as the only defendant), Complaint for Declaratory Judgment filed 11/27/07, (R p 989, ¶ 37) (2) Appellants' testimony during

erratic behavior fueled the volatility surrounding the Estate and Trust administration Third, Appellants intentionally failed to utilize the assets of Mr Brown's Estate to maintain and increase its worth They claimed they did so to deter creditors, (R p 1687, line 3-p 1689, line 21), yet Appellant Pope asserted that a successor would not protect creditors as a reason Appellants should remain as fiduciaries (R p 1485, line 1-16) Fourth, the Settlement Agreement provided that it was a binding private settlement pursuant to S C Code Ann § 62-3-912, which requires fiduciaries to abide by such agreements Nonetheless, Appellants refused to abide by the Settlement Agreement Fifth, Appellants filed a 51-page motion opposing the Settlement Agreement before they knew its terms (R p 1638, lines 12-24) This is contrary to their fiduciary duties of impartiality and fairness (Motion in Opposition to Settlement Agreement, R p 1056-78) Finally, as the circuit court found, Appellants' promise to appeal the approval of the Settlement Agreement created an "irreconcilable conflict" between Appellants and the

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the settlement hearings presented a running theme that it was too early to settle the family litigation because they did not have enough information (*E g*, R p 1565, lines 8-13, R p 1574, lines 19-25, R p 1622, lines 20-25, R p 1631, lines 16-24) Nonetheless, later in the same hearing they proposed their own settlement (Offer of Compromise, Supplemental R pp 2935-2939) (3) Appellants asserted that the settling parties did not satisfy notice requirements by failing to notify three colleges named in the 1999 Trust that Appellants never attempted to determine was valid, yet they failed to notify those three colleges when they asked for the court to approve their fees and to sell Mr Brown's iconic personal property in order to create a fund to pay their fees (R p 1513, line 9-p 1514, line 12) (4) Appellants claim there is not a scintilla of proof that Cannon, Dallas, and Bradley exercised undue influence over Mr Brown in the execution of the 2000 Will and Trust, yet Appellants sued the same individuals alleging they exercised undue influence over Mr Brown (R p 1505, line 12-21, *see also Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-322, R p 1201, ¶ 25(b)) ("in pursuance of the objectives of such conspiracy, they procured the signature of James Brown on various documents by *undue influence fraud and/or forgery*" (emphasis added)) (5) Appellants asserted that the Estate was not in an emergency situation, (Supp Return, R p 313), yet later asserted that the Estate was in an emergency situation asking the court to appoint a professional fiduciary (R p 1401, lines 20-21)

beneficiaries of Mr Brown's Estate (R p 45)

Appellants are not professional fiduciaries, (R p 1636, line 21-p 1637, line 3, R p 1404, lines 10-17), and their management of Mr Brown's Estate, as well as their conduct during the course of litigation surrounding it, created a contentious and unstable atmosphere In contrast, Russell Baukmght is a certified public accountant, a professional fiduciary, and has the experience necessary to manage the complex estate and the Settlement Entity created by the Settlement Agreement His appointment, as well as the circuit court's approval of the Settlement Agreement, will bring stability to Mr Brown's Estate as its long-awaited administration moves forward

STANDARD OF REVIEW

The standard of review applicable to an appeal of matters originating "in the probate court is controlled by whether the cause of action is at law or in equity "[19] *Dean v Kilgore*, 313 S C 257, 259, 437 S E 2d 154, 155 (Ct App 1993) Where the underlying proceeding is in the nature of an action at law, an appellate court may not disturb the underlying findings except where a review of the record makes clear there is no evidence to support them *In re Estate of Pallister*, 363 S C 437, 447, 611 S E 2d 250, 256 (2005) A will contest is an action at law, and an order approving the settlement of a will contest is reviewed pursuant to this heightened standard *See Johnson v Johnson*, 235 S C 542, 546, 112 S E 2d 647, 649 (1960), *In re Estate of Weeks*, 329 S C 251, 262, 495 S E 2d 454, 460 (Ct App 1997) (internal citations omitted)

Further, settlement agreements are viewed as contracts under South Carolina law

[19] Matters removed by the probate court to the circuit court are treated as having "originated in" the Probate Court *See Waddell v Kahdy*, 309 S C 1, 4, 419 S E 2d 783, 784 (1992)

Pee Dee Stores Inc v Doyle, 381 S C 234, 241, 672 S E 2d 799, 802-03 (Ct App 2009) And where the action is one to construe a contract, the court applies the heightened and deferential "any evidence" standard of review *Felts v Richland County*, 303 S C 354, 356, 400 S E 2d 781, 782 (1991) Under this standard, "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings" *Hofer v St Clair*, 298 S C 503, 508, 381 S E 2d 736, 739 (1989) (internal citations omitted)

ARGUMENT

I APPELLANTS LACK STANDING

Appellants lack standing to pursue this appeal because they do not have an interest in the subject matter of the litigation *Duke Power Co v S C Pub Serv Comm n*, 284 S C 81, 96, 326 S E 2d 395, 404 (1985), *Furman Univ v Livingston*, 244 S C 200, 204, 136 S E 2d 254, 256 (1964) To obtain relief from a court the person or entity seeking relief must have a *personal stake* in the subject matter of the litigation *Sea Pines Ass n for the Prot of Wildlife Inc v S C Dep t of Natural Res*, 345 S C 594, 600, 550 S E 2d 287, 291 (2001) Possession of a personal stake in the subject matter of the litigation is what gives a party seeking relief the standing required to obtain such relief *See id*

"In other words, one must be a real party in interest" *Id* "A real party in interest is one who has a real, material, or substantial interest in the subject matter of the action, as opposed to one who has only a nominal or technical interest in the action" *Id* (citation omitted) Under the statutory scheme governing approval of the Settlement Agreement now challenged on appeal, Appellants have no more than a nominal or

technical interest in the circuit court's decision Appellants do not have a beneficial interest in the 2000 Will or Trust *E g*, S C Code Ann § 62-7-404 ("A trust and its terms must be for the benefit of its beneficiaries") Thus, their appeal should be dismissed for lack of standing

A Appellants Lack Standing to Appeal the Circuit Court s Approval of the Settlement Agreement and the Attorney General s Involvement in the Negotiations

Appellants lack standing to appeal the approval of the Settlement Agreement as well as the Attorney General's role in the process This is because, under applicable law, Appellants had no vote or veto power over the settlement at the trial level, therefore, they do not have standing to attack it on appeal

The South Carolina Probate Code imposes certain duties and limitations on fiduciaries when the beneficiaries have reached a settlement over a dispute concerning an estate For instance, the fiduciaries *have no power to scuttle the settlement itself* Section 62-3-1102 provides that personal representatives and trustees may "submit the agreement to the court for its approval" and must have notice of an agreement But, in cases such as this one where the beneficiaries and not the fiduciaries submit the agreement, that section provides that the court *shall* direct the personal representative or trustee to sign the agreement "if it finds that the contest or controversy is in good faith and that the effect of the agreement upon the interests of persons represented by fiduciaries or other representatives is just and reasonable" Section 62-3-1102 clearly anticipates that fiduciaries do not have to consent to a settlement agreement or else this language mandating that the court direct them to sign the agreement is meaningless

The reason Section 62-3-1102 does not give fiduciaries a vote or veto on approval

of settlement agreements is that fiduciaries may have a conflict of interest in wanting their fees to continue rather than end upon settlement This concern is particularly applicable in this matter As the comment to Uniform Probate Code Section 3-1102 states

> The thrust of the procedure is to put the authority for initiating settlement proposals with the persons who have beneficial interests in the estate, and to prevent executors and testamentary trustees from vetoing any such proposal *The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator s intention the judgment of the Court is substituted for that of such fiduciaries in appropriate cases A controversy which the Court may find to be in good faith as well as concurrence of all beneficially interested and competent persons and parent representatives provide prerequisites which should prevent the procedure from being abused* Thus, the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan

(Emphasis added)[20] It is telling in this case that Appellants claim $5 million in fees[21] and want to scuttle a settlement so that the litigation will continue This stands in stark contrast to the settling parties (*i e* the real parties in interest), none of whom has appealed the circuit court's approval of the Settlement Agreement

The Probate Code does not give Appellants a vote or veto, *because* their interest is peripheral and contrary to the South Carolina Probate Code's intent that fair settlements be approved Appellants simply do not have standing to challenge a decision

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[20] It is appropriate to use uniform comments to explain statutes derived from the uniform code *See* S C Code Ann § 62-1-102(b)(5), *Estate of Guide v Spooner*, 318 S C 335, 338, 457 S E 2d 623, 625 (Ct App 1995) Sections 62-3-1101 and -1102 are taken verbatim from the Uniform Probate Code S C Code T 62, Art 3, Pt 11, Misc Table

[21] Notice of Creditor's Claim, (R pp 2879-80), filed days after the circuit court denied Appellants' Motion to Alter or Amend its Order Approving the Settlement Agreement

affecting interests in which they have no real say, regardless of the propriety of their removal In sum, the South Carolina Probate Code itself recognizes that fiduciaries are not real parties in interest when it comes to settling an estate dispute, and therefore, Appellants should not be able to attack the settlement by appeal Thus, this Court should dismiss Appellants' appeal of the issues concerning the Settlement Agreement and the Attorney General's involvement therein for lack of standing [22]

B Appellants Lack Standing to Appeal Their Removal as Personal Representatives and Trustees

Appellants lack standing to appeal their removal as fiduciaries of the 2000 Will and Trust As argued *infra* at Part IV, Appellants waived the issue of whether their removal as fiduciaries was erroneous Assuming *arguendo* this Court finds Appellants did not waive this argument, they nonetheless lack standing to appeal their removal because their only remaining interest is a claim for $5 million in fees relating to the 18-month period during which they held the positions of fiduciaries, and that claim will be handled separately in the usual manner that claims are handled under the Probate Code

Appellants' interest in this matter is analogous to a former client's divorce attorney who seeks to intervene personally in an appeal from a divorce action to collect his fees Just as the divorce attorney lacks standing because his interest is "peripheral" and unrelated to "the real interest at stake" in a divorce case,[23] removed personal representatives and trustees such as Appellants have no interest in the action because

[22] *See also In re Liss*, 184 N J Super 184, 190 (N J Super Ct 1981) (holding that an executor may appear in a will contest "to protect the interest of creditors, taxing authorities and successors who are not parties to the agreement, and to insure that the costs of administration are paid," but that he lacks standing "to resist the interested parties' wish to settle")

[23] *Bailey v Bailey*, 312 S C 454, 458, 441 S E 2d 325, 327 (1994)

their fiduciary relationship with the beneficiaries who have a personal stake in the litigation has terminated

In so far as it concerns Appellants' argument that they were erroneously removed as personal representatives of Mr Brown's Estate, the Supreme Court of Washington addressed this precise issue and held that an administrator of an estate had no standing to appeal an order revoking his appointment *Cairns v Donahey*, 109 P 334, 335 (Wash 1910) The *Cairns* court came to this conclusion despite the fact that the administrator's collection of his fees was an outstanding issue *Id* Specifically, the *Cairns* court said of the former fiduciary's appeal "[w]e fail to understand how the administrator has any interest in the subject-matter of this appeal, or how he is injuriously affected by the final order entered He has no interest in the estate other than for compensation that may be due him" *Id* , *see also In re Pedroli s Estate*, 193 P 852, 853-54 (Nev 1920) (holding that a person removed from his position as administrator of a decedent's estate could not maintain an appeal regarding the removal)

Furthermore, assuming Appellants did not waive the argument, Appellants do not have standing to assert that their removal as trustees was erroneous After all, once Appellants were removed as trustees, they had no duties or interests related to the 2000 Trust Addressing this issue, an appellate court of Indiana has recognized that an order removing a trustee is "self-executing," thus immediately canceling any connection to a trust or its administration *Union Savs & Trust Co v Eddingfield*, 134 N E 497, 498 (Ind Ct App 1922) (holding that an order removing a trustee from its fiduciary position "completely stripped [it] of its authority, and took away its representative capacity Thereby its prior connection with the estate was completely severed") The court

concluded its analysis by stating, "after [the order removing the former trustee was entered] it had no more standing as an administrator than a dead man." *Id.* The same is true of Appellants in this case.

II THE SETTLEMENT AGREEMENT APPROVED BY THE CIRCUIT COURT WAS A JUST AND REASONABLE RESOLUTION TO A GOOD-FAITH CONTROVERSY

As former fiduciaries, Appellants are attempting to veto the Settlement Agreement reached by all of the beneficial interests of Mr. Brown's Estate and approved by the circuit court. The Settlement Agreement was approved by the circuit court pursuant to Section 62-3-1102, which provides that a "settlement, or compromise, is valid and binding where the court finds (1) the controversy is in good faith, and (2) the agreement's effect is just and reasonable." *Univ. of S. Cal. v. Moran*, 365 S.C. 270, 280, 617 S.E.2d 135, 140 (Ct. App. 2005).

If the Court finds that Appellants have standing and proceeds to the merits, it should affirm the circuit court's order approving the Settlement Agreement because the record provides abundant evidence supporting the circuit court's conclusions. *Hofer v. St. Clair*, 298 S.C. at 508, 381 S.E.2d at 739 (noting that "the findings of fact of the judge will not be disturbed upon appeal unless found to be without evidence which reasonably supports the judge's findings.") Further, "[s]ettlement of family difficulties or controversies arising out of the distribution of estates are favored, both at law and in equity, if at all reasonable and entered into understandingly." *Detroit Trust Co. v. Neubauer*, 38 N.W.2d 371, 378 (Mich. 1949). Because the evidence supporting the circuit court's conclusion is overwhelming,[24] and because the Settlement Agreement was

[24] As discussed in the circuit court's Order, the evidence on behalf of the settling parties

signed by all of the beneficial interests of the Estate, and was a just and reasonable resolution to a good-faith controversy, this Court should affirm

A The Settlement Agreement Resolved a Good-Faith Controversy

Good faith is defined, in relevant part, as "honesty in belief or purpose" BLACK'S LAW DICTIONARY 713 (8th ed 2000) The requirement of a good-faith controversy in Section 62-3-1102 does not mandate that a proponent of a settlement agreement present conclusive proof that a contestant would prevail on a challenge Rather, the statute simply requires the honest belief, based on evidence in the record, that a controversy exists "This requirement is to avoid sham arrangements designed to prejudice unknown parties or parties whose addresses are unknown but would be bound by an order confirming the agreement" S C Code Ann § 62-3-1102, reporter's comments

Mr Brown's Estate has been involved in controversy since shortly after his death, when control of his corpse was an issue disputed by several beneficiaries of his Estate But that controversy was small when compared to the controversies involving the validity of the 2000 Will and Trust, the ownership of the Estate's assets, and the claims made against the Estate by Mr Brown's widow, youngest son, and adult children All of these controversies spawned lawsuits and disputes that the Settlement Agreement resolved Standing alone, each of the individual controversies satisfies the requirements of Section 62-3-1102 Taken together, these controversies create an overwhelming set of grounds supporting the circuit court's finding that multiple good-faith controversies existed Each

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included testimony of Appellants and their expert witness as well as voluminous documents included in the record, including the file of Dewain Herring, who drafted the estate planning documents

individual controversy is discussed below

1 Appellants Conceded a Good-Faith Controversy Exists by Making an Offer of Compromise

A compelling demonstration that a good-faith controversy exists comes directly from Appellants' own conduct Although Appellants now contend that no good faith controversy exists, on April 6, 2009—the day the settlement hearings concluded—they held a different belief On that day, Appellants submitted their own "Offer of Compromise" that offered to settle disputes related to Mr Brown's Estate (Offer of Compromise, Supplemental R pp 2935-39) Presumably, after hearing all of the evidence presented during the hearings, Appellants finally realized that a good-faith controversy exists

Again, when it suits their interests—and their $5 million in claimed fees—Appellants believe a good-faith controversy exists that can be resolved through settlement [25] But when Appellants are removed as fiduciaries, they change positions and now argue that no good-faith controversy exists Appellants should be judicially estopped from taking contrary positions, and the Court should likewise take judicial notice of their "Offer of Compromise" as conceding the existence of a good-faith controversy [26]

2 Controversy About Validity of 2000 Will and Trust

Five of the children named in the 2000 Will and Mrs Brown brought actions to contest the 2000 Will and Trust The contests were based on several grounds, but each

[25] Appellants' Offer of Compromise stipulated that they remain as trustees (Offer of Compromise, Supplemental R p 2937, ¶ 5)

[26] The Offer of Compromise and other attempts to settle estate litigation, *see* n 18 (1), *supra*, operate as a concession by Appellants that the Attorney General has authority to

party argued that Appellants' predecessors—Cannon, Dallas, and Bradley—exercised control over Mr Brown and unduly influenced his execution of the 2000 Will and Trust Appellants argue in their brief that Respondents "offered no evidence that the undue influence claim had any merit" *Appellants Brief* at 24 When that assertion is juxtaposed to the fact that Appellants filed a lawsuit against their predecessors for the exact same conduct, it becomes evident that their argument is without merit *Appellants previously brought an action against Cannon Dallas and Bradley for undue influence which is still pending* (R p 1505, lines 12-21, *see Complaint Pope and Buchanan v Cannon Dallas and Bradley*, 2008-CP-02-233, R p 1201, ¶ 25(b) "in pursuance of the objectives of such conspiracy, they procured the signature of James Brown on various documents by *undue influence fraud and/or forgery*" (emphasis added))

Again, when it benefitted Appellants' interests, they asserted that Cannon, Dallas, and Bradley unduly influenced Mr Brown But now that this position no longer suits their interests, Appellants claim that there is no evidence of undue influence Putting aside whether Appellants should be estopped from taking contrary positions during the course of related litigation involving the same parties,[27] the controversy whether Brown's

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compromise

[27] Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation" *Hayne Fed Credit Union v Bailey*, 327 S C 242, 251, 489 S E 2d 472, 477 (1997) Appellants are well aware of judicial estoppel as they were judicially estopped from taking inconsistent positions in the Dallas appeal *In re Estate of James Brown*, 2007-CP-02-00122, Court of Appeals Order Granting Motion to Substitute dated 2/12/10, (R p 75 & n 3) Now, in this matter, it appears that Appellants again intend to take an inconsistent position Although judicial estoppel applies only to factual, and not legal, positions, Appellants first claimed that one set of facts suggested undue influence and now suggest the same set of facts does not suggest undue influence The facts are the same, but Appellants' interpretation of those facts has changed This Court should estop Appellants from asserting their most recent interpretation of the facts

former handlers and confidants took advantage of and unduly influenced him has a good-faith basis

First, the 2000 Trust was drafted in a manner that allowed Cannon, Dallas, and Bradley to enrich themselves under the guise of "management expenses," in addition to trustees' fees The 2000 Trust authorizes trustees Cannon, Dallas, and Bradley to receive up to fifty percent of gross income for management expenses [28] This is a significant fact because, after estate assets are poured over into the 2000 Trust, it would be funded substantially with intellectual property The only significant income generated by the 2000 Trust would be through royalty payments derived from licensing or selling Mr Brown's music and image Thus, the 2000 Trust is drafted in a way that would allow the trustees to siphon off fifty percent of the annual income generated from Mr Brown's lifetime of work

During the March 25, 2009 hearing, upon inquiry from the circuit court, Appellant Pope testified that Cannon admitted he could take half of the Estate if he wanted (R p 1785, lines 7-10) Appellant Pope further testified that Cannon even admitted that "[i]f I had wanted Mr Brown to leave me his estate, I could have done it" (R p 1787, lines 16-17) Certainly, Appellant Pope recognized the level of control that Cannon had over Mr Brown "[Cannon] was mean and conniving, and I [Pope] knew that" (R p 1787, lines 2-3) Unfortunately, at the end of the day, Cannon, Dallas, and

[28] Whether the fifty percent provision would be valid, in light of the charitable savings clause language in the 2000 Trust, is irrelevant to the issue of undue influence The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 Will and Trust that the fifty percent provision would be enforceable Presumably they did, otherwise why would a known invalid provision be included that could be evidence of undue influence Moreover, another fact exists that would show undue influence Mr Brown placed great trust in Dallas and Cannon (R p

Bradley's undue influence over Mr Brown appears to have prevailed Mr Brown essentially left half of his Estate to Cannon, Dallas, and Bradley through the fifty percent management expense clause According to Appellant Pope's estate planning expert, Harley Ruff, the fifty percent management fee provision is unprecedented and problematic—especially in a charitable trust (R p 1911, line 7-p 1912, line 23)

Second, the voluminous file of Dewain Herring, the draftsman of the 2000 Will and Trust, contains a blank deed apparently signed by Mr Brown and witnessed by Messrs Cannon and Herring (Blank Deed signed by James Brown, R pp 2728-30) There is no legitimate reason to have a client sign a blank deed, despite Appellant Pope's testimony that she has seen lots of lawyers have blank deeds signed (R p 1499, lines 4-24) The fact that this document exists casts doubt on the validity of *any* document prepared by Herring for Mr Brown Appellant Buchanan testified that he "wouldn't [be] surprise[d]" if there was not a "single piece of correspondence from Mr Herring to his client Mr Brown" (R p 1673, lines 21-25, 1-18) Appellant Buchanan explained, "that happens all the time" (R p 1673, line 7) The record evidence shows that rather than communicate with Mr Brown, Herring communicated with Appellants' predecessors Record evidence also suggests that Herring and Cannon were good friends and that Cannon introduced Mr Brown to Herring (R p 1670, lines 1-12)

Finally, the credibility of four principal witnesses to the validity of the 2000 Will and Trust is questionable Herring is now in prison for murder *State v Herring*, 387 S C 201, 692 S E 2d 490 (2009) And the accuracy of the testimony of Cannon, Dallas,

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1507, line 21-p 1508, line 1)

and Bradley[29] is suspicious and often contradictory For example, Dallas admitted that he presented a stipulation to the circuit court knowing it was false because he wanted to keep his position as fiduciary (R p 2048, lines 7-24) Cannon is accused of misappropriating at least $900,000 from the Estate and has been indicted on nine counts by the criminal division of the South Carolina Attorney General's Office The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 Will and Trust overwhelmingly suggests a good faith controversy exists as to whether Cannon, Dallas, and Bradley exercised undue influence over Mr Brown to enrich themselves

3 Controversy About Ownership of Assets

A good-faith controversy also exists over the assets funding the 2000 Trust, including what property would pass through the probate Estate under the 2000 Will According to witnesses, including Appellant Pope, the records that would show the source of the Trust's assets are either too inadequate or do not exist Appellant Pope testified that the evidence was insufficient to determine whether Mr Brown's related assets were in the Trust or in the Estate, (R p 1470, lines 1-4), and later asserted that the Trust contained only the homestead real estate and an interest in a music company (R p 1278, ¶ 14) The three original trustees have also given inconsistent testimony as to the assets funding the Trust They presented a stipulation representing that the Trust was funded with only the Beech Island property, Mr Brown's primary residence, and $50 (R pp 2153-59) But Dallas later testified that the stipulation was inaccurate and that he signed the stipulation to avoid losing his position as fiduciary (R p 2048, lines 7-24)

[29] Bradley is now deceased

Further, it is unknown whether a company owned by Mr Brown, James Brown Enterprises, Inc (JBE), was transferred to the Trust during Mr Brown's lifetime The documents show that the attempted transfer was incomplete Mr Brown never signed the documents transferring ownership of the stock to the Trust The income tax returns filed on behalf of JBE show Mr Brown, not the 2000 Trust, as the owner (JBE, Inc Tax Returns, R pp 2198, 2200, 2204, 2206, 2210, 2212, Supplemental R pp 2940-2954) Putting aside the question of which entity owns JBE—the Estate or Trust—determining what assets JBE owns is nearly impossible due to the lack of adequate records Without the Settlement Agreement resolving the controversies related to property ownership, it would be nearly impossible for a probate court to determine which assets go where

Even assuming the 2000 Trust is valid, a good-faith argument exists for subjecting assets of the 2000 Trust to the elective share and the omitted-spouse and omitted-child shares because Mr Brown retained control of the 2000 Trust "[Counsel for Mrs Brown] Mr Dallas, Mr Brown was so adamant about retaining control of the property that even though you were named trustee of a trust he retained de facto control and you really had no responsibilities other than when he asked you to do something Is that a fair assessment of the trust?" [Dallas] I think that's a fair assessment" (R p 2046, lines 7-13) Accordingly, the 2000 Trust would likely be deemed a revocable trust *Dreher v Dreher*, 370 S C 75, 634 S E 2d 646 (2006), *Seifert v S Nat l Bank of S C*, 305 S C 353, 409 S E 2d 337 (1991)

4 The Controversy Concerning Mrs Brown's Claim for an Elective or an Omitted-Spouse's Share

Another good-faith controversy affecting Mr Brown's Estate is Mrs Brown's claim for an elective share or omitted-spouse's share under S C Code Ann §§ 62-2-207

through -301 If Mrs Brown qualifies as a surviving spouse, which the evidence strongly supports, she would be entitled to an elective share and may qualify for an omitted-spouse's share The elective share would be one-third of the probate assets plus any assets held by a revocable trust The omitted-spouse's share would be one-half of the probate assets plus any assets held by a revocable trust [30]

The circuit court correctly found that Mrs Brown's spousal claims were the basis of a good-faith controversy because the overwhelming evidence showed that she was married to Mr Brown Mr and Mrs Brown participated in a ceremonial marriage on December 14, 2001 The marriage was confirmed with a South Carolina marriage license and certificate (R p 970) Mr Brown also represented that Mrs Brown was his lawful wife in his 2005 autobiography (Autobiography, R pp 2905-2907A) A binding family court order concluded that there was no impediment to her marriage when she married Mr Brown (R pp 192-95)

Appellants assert that Mrs Brown's spousal claims are not the basis of a good-faith controversy However, they failed to preserve any challenge to the validity of Mrs Brown's elective share and omitted-spousal claim In fact, Appellants have *expressly* abandoned their prior challenges to the validity of Mr and Mrs Brown's marriage [31]

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[30] *See Dreher v Dreher*, 370 S C 75, 634 S E 2d 646 (2006), *Seifert v S Nat l Bank of S C*, 305 S C 353, 409 S E 2d 337 (1991)

[31] In their brief, Appellants mention *Lukich v Lukich*, 379 S C 589, 666 S E 2d 906 (2008) (holding under the particular facts an annulment order will not relate back to make current marriage valid) However, Appellants do not address that opinion except to mention that a footnote appearing in the court of appeals opinion disappears from the Supreme Court's opinion 368 S C 47, 627 S E 2d 754 (Ct App 2006) Appellants have abandoned their argument under *Lukich* for good reason Although Mrs Brown previously had a putative marriage ceremony with Javed Ahmed before she married Mr Brown, that marriage was never valid because, as the family court determined, Ahmed was already married at the time of the putative marriage ceremony As *Lukich* makes

Appellants' brief merely mentions the marriage in passing and suggests the Attorney General paid too much to settle her claim Appellants then indirectly suggest there is no need to reach that question (Appellants' Brief at 41) Thus, Mrs Brown's claim as the lawful spouse of Mr Brown is no longer disputed It created a good-faith controversy that had a substantial impact on Mr Brown's Estate The Settlement Agreement resolved this controversy

5 The Controversy Concerning Brown II's Claim for an Omitted-Child's Share

The Settlement Agreement also resolved a good-faith controversy concerning Brown II's claim for an omitted-child's share Pursuant to S C Code Ann § 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will The 2000 Will was executed before the birth of B

Finally, although Appellants previously contested that B was the biological child of Mr Brown, they have now abandoned that challenge [32] Thus, B 's claim was another good-faith controversy resolved by the Settlement Agreement

B The Settlement Agreement Was Just and Reasonable

The just and reasonable requirement of section 62-3-1102 involves the judgment

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clear, its holding would not apply to Mrs Brown since her marriage to Ahmed was void *ab initio Id* at 55 n 2, 627 S E 2d at 758 n 2 Appellant Buchanan admitted in testimony that *Lukich* did not apply and that Appellants would not have standing to contest the family court Order holding that Mrs Brown was not married before she married Mr Brown (R p 1650, line 1-p 1656, line 15)

[32] Appellants have abandoned their challenge against the validity of B 's claim with good reason In his autobiography, Mr Brown describes B as his son (Autobiography, R pp 2906-2907A) Mr Brown is listed as the father on B 's birth certificate (R p 1557, lines 8-15) Mr Brown obtained health insurance and social security benefits for B and named him as his son in his medical directive (R p 1559, line 14-p 1561, line 25) Finally, a DNA test performed by the Guardian ad Litem showed a greater than 99% probability that Mr Brown was the biological father of

of the circuit court Under this provision, the circuit court's judgment is substituted for an opposing fiduciary *See supra* Part I A *& infra* Part II D (comments to Uniform Probate Code Section 3-1102) In order for Appellants to prevail on this issue, they must show that no evidence supported the decision of the circuit court On this record, that is a burden they cannot overcome Rather, the evidence overwhelmingly supports the circuit court's decision

1 Benefit to Charitable Beneficiaries

For the charitable beneficiaries, the risk of not approving the Settlement Agreement was substantial Significant arguments, supported by evidence, were made that the 2000 Will and Trust are not valid [33] If the challenging parties had prevailed in these contests, intestacy would have resulted and the charitable beneficiaries would have received nothing The Settlement Agreement ensured that this did not happen [34]

Further, even if the challenges to the validity of the 2000 Will and Trust had failed, the charitable beneficiaries still ran the risk that Mrs Brown's spousal share claims would reduce the amounts available to them Regardless of Mr Brown's intent, Mrs Brown would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust Further, unless Mr Brown demonstrated an intent to

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Brown II (Supplemental R p 2922, line 12-p 2923, line 2)

[33] Prior to his execution of the 2000 Will and Trust, Mr Brown executed a 1999 Will and Trust If the 2000 Will and Trust are overturned, the same arguments can be made that the 1999 Will and Trust are invalid Therefore, the existence of the 1999 Will and 1999 Trust is of no consequence to the Court's analysis of this issue

[34] The risk for the charitable beneficiaries would be enhanced by the burden of proof Because Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Brown's execution of the 2000 Will and Trust documents, the burden of proof would fall on the proponents of the Will and Trust because Cannon, Dallas, and Bradley were in a confidential relationship with Brown *See Dixon v Dixon*, 362 S C 388, 398, 608 S E 2d

override section 62-2-301, which establishes the omitted-spouse's share, Mrs Brown is entitled to one-half of the probate estate[35] and likely one-half of the assets of any revocable trust Thus, if Mrs Brown had prevailed on her claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by either one-half or one-third Moreover, under the Settlement Agreement, Mrs Brown contributes her share of half of the termination rights, discussed in Part II B 2, *infra*, to the Settlement Entity This contribution of assets that the charitable trust would never have received further supports the circuit court's determination that the Settlement Agreement was just and reasonable

Even if the 2000 Will and Trust are upheld, B s omitted-child claims also pose a substantial risk to the charitable beneficiaries Unless Mr Brown demonstrated an intent to override section 62-2-302, which establishes the omitted-child's share, B would be entitled to his intestate share of the probate estate and the same share of the assets of any trust deemed to be revocable If B had prevailed on his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share

The charitable beneficiaries risk pecuniary loss due to the time and expense necessary to litigate all of the issues surrounding Mr Brown's estate Courts have noted that avoiding protracted and unnecessary litigation often supports the settlement of an estate *See e g Merkel v Long*, 117 N W 2d 130, 136 (Mich 1962) (noting "harmonious disposition of the matter will serve to 'avoid the expense, bitterness of

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849, 853 (2005)

[35] As discussed above, determining the proper ownership of probate and non-probate assets will be difficult if not impossible

feeling and disturbance of the orderly pursuits of life which are so often the incidents of lawsuits' as well as the needless delay of distribution of the corpus of the trust fund"), *Detroit Trust Co* , 38 N W 2d at 381 ("[T]hat it was for the benefit of all parties interested in the estate, presently or prospectively, to avoid litigation that might perhaps prove expensive and protracted is obvious ")

In this case, it took more than two years of estate administration and possibly millions of dollars of fees and costs just to get to the point of considering a settlement All of these factors demonstrate that the allocation of ownership interests in the Settlement Entity among the settling parties is just and reasonable [36] Even if viewed as having standing, Appellants cannot meet the "any evidence" standard necessary to reverse the circuit court's approval of the Settlement Agreement

2 . Federal Copyright Termination Rights

The family contributed valuable termination rights that the charitable trust would never have received When a songwriter assigns some of his copyrights to a third party, as Mr Brown did during his lifetime, under federal law he still retains the right to terminate or revoke the assigned copyrights after a period of time has passed [37] And if the songwriter dies before that period of time passes, the termination rights pass by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to transfer the termination rights by will or otherwise *See* 17

[36] Appellants also contend that the settlement creates tax problems, but the Order discusses why there are no tax problems In any event, assuming *arguendo* a tax problem exists, it is just one factor among all the factors considered as part of the settlement being just and reasonable

[37] For songs copyrighted before the 1976 Copyright Act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured For songs copyrighted after the 1976 Copyright Act, that time period is 35 years from the

U S C §§ 203, 304, Ann Bartow, *Intellectual Property and Domestic Relations Issues to Consider When There Is an Artist Author Inventor or Celebrity in the Family*, 35 FAM L Q 383 (2001)

Under the Settlement Agreement, the settling parties, who are all heirs to the copyright termination rights under federal law, have contributed their termination rights and any proceeds to be derived from them to the Settlement Entity (Settlement Agreement, R p 2363, ¶ 5d, Addendum, R pp 2377-78, ¶ 1) Had the statutory heirs not agreed to contribute these rights to the Settlement Entity, the charitable beneficiaries could never have received any benefits from the termination rights Although there is not enough information to yet determine the precise value of Mr Brown's termination rights, such rights have been described as "immensely valuable" and may contribute substantial value to the Settlement Entity ("Superman Article," R pp 2308-14) Therefore, pursuant to the Settlement Agreement, many of the settling parties contributed significant assets to the Settlement Entity that otherwise would have been unavailable to the charitable beneficiaries

Mrs Brown provides substantial benefit to the settling parties, including the charitable beneficiaries Her status as surviving spouse allows her to claim, for the benefit of the Settlement Entity, a fifty percent share of the federal copyright termination rights This claim will reduce the detrimental impact to the Settlement Entity of any claim to those rights by someone qualifying under federal law as a statutory heir but who is not a settling party Moreover, her status as a surviving spouse allows the Estate to claim a marital deduction for those assets passing to her, which increases the net amount

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assignment 17 U S C §§ 203, 304

passing to the Settlement Entity in which the charitable beneficiaries have a share

B provides substantial benefit to the settling parties, including the charitable beneficiaries His status as a child allows him to claim, for the benefit of the Settlement Entity, a share of federal copyright termination rights, thereby reducing the detrimental impact to the Settlement Entity of any claim to those rights by someone qualifying under federal law as a statutory heir but who is not a settling party Moreover, B does not reduce the percentage of assets in the Settlement Entity created by the Settlement Agreement because the Settlement Agreement provides that his share is to be paid from Mrs Brown's share

C Sections 62-3-1101 and -1102 Apply to a Settlement Involving the 2000 Trust

Appellants imply that sections 62-3-1101 and -1102 are not applicable to a settlement involving the 2000 Trust because it is an inter-vivos, irrevocable, charitable trust and not a testamentary trust This argument is another contradiction of prior assertions by Appellants in these proceedings and ignores the plain language and history of those statutes

The 2000 Will and Trust cannot be read as two separate documents The 2000 Will is a pour-over will that directs assets passing through the Estate to the 2000 Trust Moreover, if the 2000 Will's devise of the residuary estate to the 2000 Trust were to fail for any reason, the Will specifically incorporates the terms of the 2000 Trust The two documents go hand-in-hand and together comprise Mr Brown's Estate plan On numerous occasions, Appellants' own filings with the circuit court and testimony refer to these two documents together as Mr Brown's "Estate Plan" (*E g*, Motion to Sell Household Effects, R p 982, ¶ 9) Appellants apparently now assert that these

documents should be considered separately and that any modification to the 2000 Trust pursuant to the settlement should be accomplished solely under the authority of the South Carolina Trust Code This argument is inconsistent with Appellants' own prior characterization of the documents at issue

The South Carolina Trust Code is part of the broader South Carolina Probate Code under Title 62 The South Carolina Trust Code has no specific provisions for judicially-approved settlement of litigation involving trusts because sections 62-3-1101 and -1102 already existed at the time the Trust Code was incorporated into Title 62 This conclusion is further supported by the history of the South Carolina Probate Code In 1986, South Carolina adopted the original Uniform Probate Code versions of sections 3-1101 and 3-1102 A technical amendment was made to the Uniform Probate Code sections 3-1101 and 3-1102 in 1993 The Comment to Uniform Probate Code Section 3-1101 explains the amendment as follows

> 1993 technical amendments to this and the following section *clarified original intention that the described procedure would be available to resolve controversies other than those concerning a will*

(Emphasis added) [38]

The 1993 technical amendment clarifies that sections 62-3-1101 and -1102 always covered settlements involving more than just wills Appellants nevertheless cleave to an impractical and narrow view of the Probate Code In their view, the provisions favoring settlement agreements—sections 62-3-1101 and -1102—favor settlements of only will disputes Such a strained interpretation runs contrary to the legislative expression of

[38] It is appropriate to consider comments to the Uniform Probate Code when construing SCPC provisions, especially when taken verbatim from the UPC *See e g Estate of Guide v Spooner*, 318 S C 335, 338, 457 S E 2d 623, 625 (Ct App 1995)

South Carolina's public policy favoring family settlements *Dibble v Dibble*, 248 S C 165, 171, 149 S E 2d 355, 358 (1966) The Uniform Probate Code Commissioners made clear by technical amendment that the original intention was always to include other instruments, including trusts [39]

The South Carolina Reporter's Comments to section 62-3-1101 confirm the Uniform Comments' view that the settlement of controversies involving a decedent's will could involve inter-vivos trusts The Comments to section 62-3-1101 state as follows

> After court confirmation, the agreement is binding even though the agreement affects a trust contained in an instrument separate from decedent's will, and even though it affects an unalienable right

The comments are supported by the express language of section 62-3-1102(2) It lists a broad class of persons who are to execute an approved agreement "the personal representative, the trustee of every affected testamentary trust, *and other fiduciaries and representatives*" (Emphasis added) Section 62-3-1102(3) broadly requires notice to, among others, "all affected trustees of trusts," without any limitation that those affected trusts be testamentary trusts If inter-vivos trusts could not be affected by section 62-3-1102, then the statutory language would be rendered meaningless

D Appellants Were Not Necessary Parties to the Settlement Agreement

Section 62-3-1102 does not require that trustees approve the Settlement Agreement when the circuit court has determined that the trustees' interests are contrary to the interests of the trust and where removing the trustees is necessary to reach a just and reasonable resolution to a good-faith controversy Appellants, however, claim that

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[39] *See e g In the Matter of Estate of Grimm*, 784 P 2d 1238 (Utah Ct App 1989) ("Under [state version of Uniform Probate Code section 3-1101, settlement agreement] is

they are the only persons who could enter into a settlement affecting the 2000 Trust under section 62-3-1102 Appellants cite *University of Southern California v Moran* as their authority 365 S C 270, 617 S E 2d 135 (Ct App 2005) But, *Moran* is different from and much narrower than what Appellants propose In *Moran*, the court of appeals held that a trust beneficiary, although given the notice and the opportunity to be heard, cannot veto the settlement when a trustee signs a settlement agreement on behalf of a trust The matter here deals with a different factual situation Appellants did not join in the execution of this Settlement Agreement Appellants propose to broaden the holding of *Moran* to give a trustee absolute and sole control over settlements, arguing that a trustee can block a settlement agreed to by the beneficiaries of the trust This is not what section 62-3-1102 does

Under Appellants' theory, the beneficiaries of a trust might never reach a settlement, because the trustees could always veto it This is true in cases such as this one where the charitable, beneficial interests join in the settlement Section 62-3-1102 simply does not give trustees veto power over trust dispute resolutions Section 62-3-1102(3) provides that a court can approve a settlement agreement and direct the fiduciaries to sign the settlement agreement even if they object to it To interpret section 62-3-1102 as Appellants suggest would make any settlement of litigation involving a trust dependent upon the consent of persons who have a financial interest in seeing that wasteful litigation continues As mentioned above, but equally applicable here, the comments to section 3-1102 of the Uniform Probate Code provide as follows

> The thrust of the procedure [for approving a settlement] is to put the authority for initiating settlement proposals with the persons who have

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thus binding, even though it may affect a trust or an inalienable interest")

> beneficial interests in the estate, and to prevent executors and testamentary trustees from vetoing any such proposal The only reason for approving a scheme of devolution which differs from that framed by the testator or the statutes governing intestacy is to prevent dissipation of the estate in wasteful litigation *Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out testator s intention the judgment of the Court is substituted for that of such fiduciaries in appropriate cases* A controversy which the Court may find to be in good faith, as well as concurrence of all beneficially interested and competent persons and parent representatives provide prerequisites which should prevent the procedure from being abused Thus, *the procedure does not threaten the planning of a testator who plans and drafts with sufficient clarity and completeness to eliminate the possibility of good faith controversy concerning the meaning and legality of his plan*

(Emphasis added) Here, Appellants claim a fee of approximately $5 million This is a perfect example of why section 62-3-1102 provides that the fiduciary cannot veto a settlement Appellants have five million reasons to scuttle the settlement

III THE ATTORNEY GENERAL POSSESSES THE *PARENS PATRIAE* AND STATUTORY AUTHORITY TO PROTECT THE PUBLIC INTEREST BY COMPROMISING LITIGATION ON BEHALF OF CHARITABLE BENEFICIARIES

The Attorney General has broad power in his *parens patriae* capacity to protect the public interest As stated in *Condon v Hodges*, 349 S C 232, 239, 562 S E 2d 623, 627 (2002) (quoting *State ex rel Daniel v Broad River Power Co* , 157 S C 1, 68, 153 S E 537, 560 (1929) (citation omitted and italics added by *Daniel* Court)

> As the chief law officer of the State, the Attorney General may, in the absence of some express legislative restriction to the contrary, exercise all such *power* and *authority as public interest may from time to time require* and may institute, conduct and maintain all such suits and *proceedings* as *he deems* necessary for *the enforcement of the laws of the State*, the *preservation of order*, and the *protection* of *public rights*

See also 1 S C JUR *Attorney General* § 16 Functions, Powers and Duties of Office

Pursuant to that authority, the Attorney General is the appropriate party to protect

the interests of the public at large in the matter of administering or enforcing charitable trusts *S C Dep t of Mental Health v McMaster (The Bull Street Case)*, 372 S C 175, 179 n 3, 642 S E 2d 552, 554 n 3 (2007), *Epworth Children s Home v Beasley*, 365 S C 157, 164 n 3, 616 S E 2d 710, 714, n 3 (2005), *Furman Univ v McLeod*, 238 S C 475, 483, 120 S E 2d 865, 868 (1961), *Watson v Wall*, 229 S C 500, 507-08, 93 S E 2d 918, 921 (1956), *see also* S C Code Ann § 1-7-130 (1976) In fulfilling his responsibilities, which include discharging his litigation duties, "the Attorney General is authorized to enter into a binding compromise or settlement of a suit involving the State " 1 S C JUR *Attorney General* § 16 Functions, Powers and Duties of Office (citing *Cooley v S C Tax Comm n*, 204 S C 10, 28 S E 2d 445 (1943)), *see also* S C Code Ann § 1-7-100(2) As section 1-7-100(2) explains, when the Attorney General appears in litigation representing the public interest, he manages and controls the litigation with respect to the public interest It is also recognized that when necessary, the Attorney General can intervene in matters, as he did in this case, to protect the interests of beneficiaries of a charitable trust *Watson v Wall*, 229 S C 500, 93 S E 2d 918 (1956)

Shortly after the Attorney General intervened, it became clear that the family litigation presented a real threat to the charitable trust From the Attorney General's perspective, if any of the family's Will challenges were successful, the charitable trust's share of the Estate would be significantly reduced, if not completely eliminated Of course, there was always the chance that none of the Will challenges would succeed But the Attorney General was not tasked with taking a chance on the public interest, he was (and is) tasked with protecting the public interest The Appellants did not (and do not) share the same legal obligation to the public What they considered an acceptable risk to

the future of the charitable trust was not considered acceptable to the Attorney General Therefore, the Attorney General agreed to a compromise

A compromise was reached, the circuit court was notified, and hearings were scheduled to determine whether it would be approved pursuant to section 62-3-1102 *Before* the terms of the Settlement Agreement were presented, Appellants filed a 51 page brief in opposition to the compromise Seven days worth of hearings followed As noted above, the settling parties presented testimony setting forth the requirements of section 62-3-1102(3) Importantly, Appellants were presented every opportunity to challenge the basis of the compromise, and they did Indeed, Appellants presented their own expert witness who testified in opposition to the agreement

Appellants' principal legal challenge with respect to the Attorney General's involvement in the settlement negotiations is best captured in the following sentence "The Attorney General has no right to set aside the trustees and put himself in the position of super-trustee " (Appellants' Brief at 12) That statement is nothing more than hyperbole unsupported by the record The important point here, though, is that Appellants' principal challenge is a red herring the Settlement Agreement is before this Court because it was approved by the circuit court The Attorney General did not singlehandedly settle the family litigation Instead, the Attorney General helped craft a compromise Appellants disagreed with that compromise and zealously opposed it during the seven days worth of hearings The real challenge is not to the Attorney General's involvement but the circuit court's decision, for without the circuit court's approval there would have been no compromise under section 62-3-1102, and this case would not be before this Court

The Attorney General acted well within his authority in the following respects (1) South Carolina common law supports his role in seeking to reach a compromise, (2) he has statutory authority to do so, and (3) the probate statutes utilized to seek court approval of the compromise—sections 62-3-1101 and -1102—refute Appellants' assertion that only the trustees of a charitable trust can consent to a compromise For these reasons, the Attorney General's involvement was proper and helped to end contentious litigation that could have endured for many years and caused great loss to the charitable beneficiaries

A The South Carolina Common Law and Statutes Provide the Attorney General with the Authority to Speak for the Beneficiaries of a Charitable Trust During Settlement Negotiations

As previously stated, in his *parens patriae* capacity, the Attorney General protects the public interest by enforcing the due application of funds given or appropriated to any charitable trust Additionally, "[p]ursuant to S C Code Ann § 1-7-130 (1976), the Attorney General is charged with the protection of public charities and is required to enforce the due application of funds given or appropriated to such charities "[40] *The Bull Street Case*, 372 S C at 179 n 3, 642 S E 2d at 554 n 3 "The Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts " *Epworth Children s Home*, 365 S C at 164 n 3, 616 S E 2d at 714 n 3, *accord Furman Univ* , 238 S C at 483, 120 S E 2d at 868, *Watson*, 229 S C at 507-08, 93 S E 2d at 921

In *Watson supra*, this Court recognized the power of the Attorney General to intervene in a will contest and advocate for the public interest when the contest

[40] There can be no greater exercise of an Attorney General's protection of a charitable

threatened to divert funds devised to a charitable trust In that case, the decedent's heirs sought a judicial finding that an item in the will did not create a charitable trust because the language was "merely precatory, appointed no trustee, and was so indefinite and general as to be ineffectual to create a charitable trust" *Id* at 507, 93 S E 2d at 921 Because the heirs had already convinced the lower court that two "renounced devises passed as intestate property to the testator's heirs," a ruling that the charitable trust was invalid would have caused the renounced devises to flow to them *Id* But because the lower court found that the charitable trust was valid, the heirs appealed to this Court

It was not until the case came before this Court in *Watson* that the Attorney General petitioned to intervene for "the purpose of protecting the interest of the public in the charitable trust" *Id* at 508, 93 S E 2d at 921 Without discussion, this Court granted the petition and "granted [him] permission to file exceptions to so much of the circuit decree as held that the renounced devises passed to the heirs at law" *Id* After analyzing the relevant cases, this Court affirmed the lower court's ruling that the will created a valid charitable trust, reversed its finding that the renounced devises passed to the heirs, and found they flowed via the "residuary provisions into the charitable trust" *Id* at 518, 93 S E 2d at 927

As a general principle of law, *Watson* recognizes that it is the Attorney General's job to protect the public interest in a charitable trust Factually, *Watson* provides precedent for the Attorney General to engage himself in a will contest that threatens the flow of assets devised to a charitable trust Indeed, the Attorney General's mandate to protect the charitable trust is so strong that his intervention was allowed at the appellate

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trust than to settle a case that threatens the charitable trust's very existence

stage of litigation

Watson supports the Attorney General's involvement in this case *Cooley v South Carolina Tax Commission*, 204 S C 10, 28 S E 2d 445 (1943) supports the Attorney General's authority to seek a resolution of litigation, when doing so protects the interest of the public—that is, the charitable beneficiaries If the Attorney General can intervene in a will contest to advocate for the public interest of a charitable trust, it must follow that the Attorney General can also seek out a compromise *See Cooley*, 204 S C at 24, 28 S E 2d at 450 (holding that the Attorney General has the authority to settle a tax dispute between an estate and the state's tax commission) [41]

To accept the Appellants' position and reject *Cooley* would lead to an absurd result if the Attorney General is empowered to intervene in a will contest but cannot seek a compromise, then the right of intervention is of little use to the public interest Further, if that were the law, then the Attorney General would have two options once he entered litigation (1) determine his entry was in error and remove himself from the litigation, or (2) "go for broke" and litigate all the way to the end These options alone are unworkable If the Attorney General is to protect the public interest, he must be able to operate in between these two extremes and compromise on behalf of the charitable beneficiaries The need for the Attorney General to intervene and seek compromise is only amplified where, as here, the trustees of a charitable trust place the very existence of the charitable trust at risk To follow Appellants' position to its illogical conclusion

[41] *See also* BOGERT'S TRUSTS AND TRUSTEES § 411 "If a court is asked to approve a compromise or settlement agreement affecting the interests of charitable beneficiaries, the Attorney General is held to be a necessary party " What purpose could the Attorney General serve as a necessary party to a compromise involving charitable beneficiaries other than to represent the interests of the charitable beneficiaries?

would presumably create a rule that precluded the Attorney General from ever compromising a case, because he is representing the public interest in every case in which he is involved To rule for Appellants would create precedent resulting in chaos

Cooley and S C Code Ann § 1-7-130 provide the Attorney General with ample authority to protect the public interest by allowing him to engage in a compromise *See also Condon*, 349 S C at 239, 562 S E 2d at 627 Section 62-7-405(c) confirms that authority Moreover, in this case, the settling parties sought approval under section 62-3-1102 Execution of the Settlement Agreement was the first step and the circuit court's approval of the Settlement Agreement was the final step

B Probate Code Sections 62-3-1101 and -1102 Refutes Appellants Argument That Only They Could Agree to the Settlement Agreement

Appellants' argument that the absence of their consent is fatal to the compromise directly conflicts with the express language of the statutory mechanism used by Respondents to bring about an end to this costly and contentious litigation Accordingly, their argument that the charitable trust "was not represented in the settlement and did not agree," *Brief of Appellants*, p 13, is also a red herring First, the charitable trust was represented by the Attorney General and, according to Appellants, by Appellants Second, the Appellants' argument that they did not agree to the Settlement Agreement asks the Court to disregard sections 62-3-1101 and -1102 of the South Carolina Probate Code Implicit in Appellants' latter argument is that this Court should ignore the glaring fact that the ultimate decision to approve a settlement agreement rests with the circuit court and further ignore their conflict of interest

1 The Beneficiaries of the Charitable Trust Were Represented

For a settlement agreement pursuant to sections 62-3-1101 and -1102 to be

effectuated, the agreement "shall be executed by all competent persons *having beneficial interests or having claims which will or may be affected by the compromise* S C Code Ann § 62-3-1102(1) (emphasis added) Under this statutory framework, what matters is whether all beneficial interests are represented As discussed above, the Attorney General represents the beneficial interest of a charitable trust, and, for the reasons discussed in the Order approving the Settlement Agreement, all persons with any beneficial interest under Mr Brown's Estate or Trust were represented at the settlement hearing

In litigation that threatens the funding of a charitable trust, the Attorney General speaks for its beneficial interests Granted, it is possible that both the trustees and the Attorney General can agree with or against the terms of a compromise, which would have the effect of allowing the trustees to speak for the beneficial interest But, where the Attorney General agrees to a compromise and the trustees do not, the trustees have no statutory right to stop a compromise

Assuming *arguendo* that, as Appellants contend, the Attorney General did not represent the charitable beneficiaries, the charitable beneficiaries were nevertheless represented at the hearing by Appellants, who contend that they represent the "trust," which would include the charitable beneficiaries The trust beneficiaries were, therefore, represented at the hearing, either by the Attorney General or Appellants Consequently, Appellants' argument that the charitable beneficiaries were not represented is without merit Section 62-3-1102 grants the circuit court the ultimate authority to approve the settlement agreement Thus, the issue is not whether the charitable beneficiaries were represented—because they were—but whether the circuit court properly concluded that

the Settlement Agreement was just and reasonable

2 The Settlement Agreement Did Not Require the Appellants' Assent

The second half of Appellants' argument is that they, in their capacity as trustees, must agree to the Settlement Agreement The express language of section 62-3-1102(3) tells a different story Once the circuit court determines the challenge presents a good-faith controversy, the resolution of which is just and reasonable to all concerned, then it "shall make an order approving the agreement and directing all fiduciaries subject to its jurisdiction to execute the agreement" S C Code Ann § 62-3-1102(3) The language could not be any clearer

The circuit court recognized the fallacy of Appellants' argument On April 6, 2009, day seven of the hearings, Appellants argued that the Attorney General cannot consent to the Settlement Agreement without first attaining their approval (R p 2013, line 16-p 2014, line 14) The circuit court, thinking out loud, queried how that argument squared with section 62-3-1102(3) "[Counsel], 62-3-1102, subsection three, mandates me to make a finding as to whether or not the controversy is, number one, in good faith, and secondly, [whether] the effect of the agreement upon the interest of persons represented by fiduciaries or other representatives is just and reasonable" (R p 2014, line 18-p 2015, line 23) The circuit court continued, "So that's the two things If I find those two things then I shall make an order approving the agreement and directing all fiduciaries subject to my jurisdiction to execute the agreement" The circuit court concluded with the following salient inquiry "So, how do you reconcile that language with your position that it requires the consent of the trustees for the settlement if the [Attorney General's] office wants to participate [?]" (R p 2015, lines 3-6)

It is against the backdrop of this statute that the Appellants' argument must be analyzed If, as the Appellants contend, they are the parties with the absolute right to speak for the beneficial interest of the 2000 Trust, then why does section 62-3-1102 preclude them from stopping a compromise? That is the question that guided the circuit court's decision and should also guide this Court's decision

As discussed above, section 62-3-1102 is designed to end costly and contentious litigation so long as the statutory requirements are met That section is meant to substitute the judgment of the fiduciary with the judgment of the circuit court This result is sought because often times the judgment of the fiduciary may be clouded with a conflict of interest As the comment notes "Because executors and trustees may have an interest in fees and commissions which they might earn through efforts to carry out the testator's intention, the judgment of the Court is substituted for that of such fiduciaries in appropriate cases "

The present controversy is the "appropriate case" noted in the comment Appellants have made a claim for $5 million in fees Appellant Pope testified that "no one but [Appellant] Buchanan and I can defend [Mr Brown's] estate plan " (R p 1435, lines 19-23) In pursuit of their fees, they have constructed every possible obstacle to slow down and/or challenge the compromise reached, at great expense to the Estate And this conduct has continued to occur even after the circuit court approved the compromise [42] This conduct highlights the need for, and the present applicability of,

[42] In their motion to reconsider Judge Early's May 26, 2009 Order approving the Settlement Agreement, Appellants identified 404 grounds for the circuit court to alter or amend its decision *See* July 10, 2009 Order Denying Pope and Buchanan's Motion to Alter or Amend, (R p 6) ("[c]ounsel for former Personal Representatives/Trustees filed an 80-page Motion containing 404 grounds") Furthermore, over the past year alone,

section 62-3-1102 and its judgment transferring effect

The New Jersey case of *In re Liss*, 184 N J Super 184 (N J Super Ct 1981), provides a textbook example for approval of compromises involving charitable beneficiaries and comprises facts and issues directly related to this case In *Liss*, the decedent's purported will directed a significant portion of her assets to charities The daughter of the testatrix filed a challenge to the validity of her mother's will, asserting, among other claims, lack of testamentary capacity *Id* at 187 The court then noted the various facts that supported the daughter's will challenge *Id* The executor of the estate moved to dismiss the daughter's challenge At the motions hearing, however, it was announced that the interested parties had reached a settlement However, the "executor expressed adamant opposition to any compromise of the litigation" *Id* at 189 The settlement was nevertheless reduced to a written agreement and submitted to the court for approval

Upon receipt of the agreement, the court instructed the parties to include the Attorney General by serving a copy upon his office The Attorney General responded to the settlement with approval Notably, the Attorney General stated that, "our office is satisfied that the settlement is in the best interest of the charities since there is a substantial chance that they would lose the will contest" *Id* at 189 Nevertheless, the executor objected The *Liss* court then looked to the terms of its compromise statute Like South Carolina's version of the Uniform Probate Code section 3-912, the New Jersey statute provided that "the personal representative shall abide by the terms of the

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Appellants have filed over 20 motions, replies, and returns in the South Carolina Court of Appeals all related to their opposition to Russell Baukmight's substitution in the James Brown appeals

agreement " Next, the court analyzed the Attorney General's approval of the settlement, and noted that it "is not bound to accept the Attorney General's view of the proposed settlement, [but] his position is entitled to great respect " *Id* at 460 The court approved the agreement The analysis of the *Liss* court is consistent with the manner in which the circuit court reached its decision to approve the compromise, and provides compelling support for this Court to affirm the decision of the circuit court

C *None of the Authority Cited by the Appellants to Support Their Position That the Attorney General Exceeded His Authority Pertains to This Case*

Appellants' entire argument against the involvement of the Attorney General rests upon authorities that have no application to the controversy at issue Rather than cite to any case holding that the Attorney General lacks the authority to compromise on behalf of charitable beneficiaries, Appellants' brief cites authorities that generally stand for the proposition that the Attorney General may not commandeer the day-to-day operations of running a charitable trust The day-to-day operations deal with decisions to invest and other similar management decisions The key here is that the authorities relied upon by Appellants stand for the proposition that the Attorney General may not usurp what are essentially management decisions

None of these authorities addresses the role of the Attorney General when ongoing litigation threatens to prevent the initial funding of the charitable trust Instead, these authorities merely state the proper allocation of power between trustees and the Attorney General concerning the administration of an operational valid charitable trust For these reasons, none of the authorities cited are relevant to this Court's analysis A few of the cases cited by Appellants are worthy of discussion, however

First, Appellants cite *Trustees of Dartmouth College v Woodward*, 17 U S 519

(1819), which is a significant case involving charities However, it does not address any issues related to the Attorney General's involvement in a charitable trust Rather, the case relates to the charter for Dartmouth College and whether that document is a contract within the meaning of the United States Constitution which states, in part, that [n]o State shall pass any Law impairing the Obligation of Contracts " U S CONST art I, § 10, cl 1 The *Dartmouth College* Court found that the charter was protected by the Constitution and held unconstitutional the New Hampshire legislature's attempt to interfere with the charter via legislation

Additionally, *Murphey v Dalton*, 314 S W 2d 726 (Mo 1958), is cited by Appellants for the proposition that the Attorney General is not authorized to act as the attorney for the trustees of a charitable trust during a will contest The Attorney General does not challenge this rule of law Moreover, it is not relevant The trustees have every right to pick any lawyer they want to represent their office, and they have The argument is not about representing trustees It is about representing the public interest and the charitable beneficiaries, whom the Attorney General represents

Furthermore, Appellants cite *Ferguson v Gardner*, 327 S W 2d 947 (Ky 1959) for the proposition that the Attorney General is not allowed to intervene in a will contest This case is in direct conflict with *Watson v Wall*, a decision of this Court Moreover, the reasoning of that court is in conflict with section 1-7-130 *Ferguson* reasoned that the Attorney General does not have an interest in the will contest, as his role with respect to the charitable trust does not arise until the funds flow to the trust following the validation of the will This reasoning runs counter to section 1-7-130, which instructs the South Carolina Attorney General to "enforce the due application of funds given or appropriated

to public charities within the State" S C Code Ann § 1-7-130 Moreover, here the charitable trust was purportedly created in 2000 [43]

IV THE CIRCUIT COURT PROPERLY REMOVED APPELLANTS AS PERSONAL REPRESENTATIVES AND TRUSTEES AND REPLACED THEM WITH A PROFESSIONAL FIDUCIARY

The circuit court appointed Appellants to serve as personal representatives and trustees on November 20, 2007 Since that time, Appellants' appointment has been a point of controversy The Attorney General objected to the appointment of Appellants as personal representatives and trustees His objection was denied (Order, April 8, 2008, R p 79) The Attorney General filed a motion to alter or amend the circuit court's denial, but later asked the circuit court to hold the motion in abeyance [44] (R pp 1008-09) The circuit court held the Attorney General's motion in abeyance It is important to point out that the Attorney General's motion to remove Appellants from their fiduciary positions is still pending at the circuit court Litigation surrounding Mr Brown's Estate continued Paragraph 5(a) of the Settlement Agreement states

> [A] joint motion or other pleading will be filed seeking the replacement of [Appellants] as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased, and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law

(Settlement Agreement, R p 2363, ¶5(a)) On November 7, 2008, the settling parties

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[43] Appellants also cite *Spang v Cleveland Trust Co*, 134 N E 2d 586 (Ohio Common Ct 1956), for the same proposition Again, the case is in direct conflict with *Watson v Wall*, *supra* Further, *Spang* found that the Attorney General could not intervene because an Ohio statute controlled the situations where the Attorney General could intervene and none of those situations were present in that case *Spang* is specific to Ohio statutory law

[44] The Attorney General asked for this motion to be held in abeyance because Dallas and Bradley's appeal of their removal was pending and, depending on its outcome, may have

filed an amended petition for the removal of Appellants as personal representatives and trustees (R pp 223-30) The circuit court chose to address the matter at the hearing concerning its approval of the Settlement Agreement

On January 16, 2009, the settling parties moved for the approval of the Settlement Agreement, which contemplated the removal of Appellants as fiduciaries In their motion, the settling parties asked the circuit court to approve the Settlement Agreement and "[f]or such other relief as this Court deems necessary and proper" (R p 506) The circuit court began the hearing on January 30, 2009, and it spanned seven non-consecutive days The issues addressed at the hearing were (1) whether the Settlement Agreement should be approved and (2) whether Appellants should be removed as fiduciaries as recommended by all settling parties

A Appellants Waived the Issue Regarding Their Removal as Fiduciaries

In their brief, Appellants present the issue of whether their removal was proper, but address the matter in passing and inadequately cite authority (Appellants' Brief at 42-43) Rule 208(b)(1)(D), SCACR, requires that each "particular issue to be addressed [in a brief] shall be set forth in distinctive type, followed by discussion and citations of authority" Appellants raise the issue regarding the propriety of their removal in approximately one page and only cite four code provisions in support of their position [45] Appellants' failure to adequately brief the issue operated as a waiver of the argument *See Guinan v Tenet Healthsystems of Hilton Head Inc*, 383 S C 48, 54 n 4, 677 S E 2d 32, 36 n 4 (Ct App 2009) (holding specific issue was waived on appeal because it was

---

mooted the motion to reconsider

[45] Footnote removed due to Appellants correcting typographical errors and authority citation in final brief

inadequately briefed) Further, Appellants also waived this issue because they failed to support their scant argument with sufficient authority *See Hunt v Forestry Comm n*, 358 S C 564, 573, 595 S E 2d 846, 851 (Ct App 2004) (holding that issues raised in a brief but not supported by authority are deemed abandoned and will not be considered on appeal)

B Appellants Were Properly Removed as Trustees and Personal Representatives

Assuming *arguendo*, this Court finds that Appellants did not waive this issue on appeal, the circuit court appropriately removed Appellants as fiduciaries because the procedure utilized was proper and the removal supported by sufficient cause The South Carolina Probate Code sets forth the procedures for the removal of trustees and the removal of personal representatives Appellants' removal was proper under both sets of procedure Even if this Court finds that the traditional procedures were not followed, their removal was proper pursuant to section 62-3-1102 because it impliedly grants courts authority to remove fiduciaries when their removal is contemplated by the very settlement agreement being approved and when they refuse to honor a settlement agreement the court approves

1 Appellants' Removal as Fiduciaries Was Proper Under the Traditional Procedures Set Forth in the South Carolina Probate Code

Appellants were removed as fiduciaries pursuant to the Order of the circuit court dated May 26, 2009 The procedures governing the removal of a trustee are found in section 62-7-706 Those governing the removal of a personal representative are found in section 62-3-611 The circuit court's removal of Appellants complied with both of these procedures

a) The Circuit Court's Removal of Appellants as Trustees Complied With S C Code Ann § 62-7-706

Section 62-7-706(a) sets forth the persons who may petition the court for the removal of a trustee and section 62-7-706(b) sets forth the reasons for which a trustee may be removed The circuit court's removal of Appellants as trustees complied with both subsections (a) and (b)

First, the proper individual petitioned for the removal of Appellants as trustees Section 62-7-706(a) provides that a trustee may be removed where "the settlor, a cotrustee, or a beneficiary request[s]" removal The settling parties petitioned the circuit court for the removal of Appellants as trustees on November 7, 2008, and their Settlement Agreement also provided for their removal

Second, the circuit court found sufficient cause to remove Appellants as trustees Section 62-7-706(b)(3) provides that a court may remove a trustee where such removal "best serves the interests of the beneficiaries " The circuit court found that Appellants' opposition to the Settlement Agreement and promise to appeal its approval created an "irreconcilable conflict" sufficient to remove them as trustees This reasoning sets forth the circuit court's finding that Appellants' removal as trustees was in the best interest of the beneficiaries

b) The Circuit Court s Removal of Appellants as Personal Representatives Was Proper Under S C Code Ann § 62-3-611

Appellants were removed as personal representatives pursuant to the Order of the circuit court dated May 26, 2009 The procedures governing the removal of a personal representative are found in section 62-3-611 Section 62-3-611(a) sets forth the procedures by which a court may remove a personal representative and section 62-3-

611(b) sets forth the reasons for which a court may remove a personal representative The circuit court's removal of Appellants as personal representatives complied with both subsections (a) and (b)

First, the circuit court's removal of Appellants as personal representatives of Mr Brown's Estate was procedurally proper Section 62-3-611(a) states, "[a] person interested in the estate may petition for removal of a personal representative for cause at any time " As indicated above, *all* of the settling parties petitioned the circuit court for the removal of Appellants as personal representatives on November 7, 2008 Section 62-3-611(a) also provides that a hearing shall be had to determine whether the personal representatives should be removed and that the petitioner shall give notice to the personal representative The circuit court took up the issues related to Appellants removal as personal representatives at the hearing to consider whether it should approve the Settlement Agreement Thus, a hearing concerning the removal of Appellants was held, satisfying the hearing requirement of 62-3-611(a) [46]

Second, the circuit court's removal of Appellants as personal representatives of Mr Brown's Estate was supported by sufficient cause Section 62-3-611(b) states that "[c]ause for removal exists when removal would be in the best interests of the estate " As mentioned above, the circuit court found that Appellants' opposition to the Settlement Agreement and promise to appeal its approval created an "irreconcilable conflict " Thus, its removal of Appellants as personal representatives was in the best interest of the

[46] Section 62-3-611(a) also requires that personal representatives have notice of a hearing regarding their removal Appellants were present at the hearing in which the issue of their removal was addressed and did not object to the circuit court taking up the matter Therefore, Appellants' argument generally attacking the process by which they were removed cannot include the specific issue of notice, which was waived

Estate [47] Moreover, the petition for removal was included in the petition for the approval of the Settlement Agreement, which provided for the removal of Appellants

2 The Circuit Court Removed Appellants as Fiduciaries Pursuant to Its Implied Authority Under S C Code Ann § 62-3-1102

Alternatively, the circuit court's removal of Appellants as fiduciaries was proper pursuant to a grant of implied authority in the probate code The circuit court approved the Settlement Agreement over Appellants' objections and promise to appeal (R p 1469, lines 22-25) As part of its approval, the circuit court removed Appellants as fiduciaries and appointed Russell Bauknight in their place The circuit court had this authority pursuant to section 62-3-1102

In cases such as the one presented here, where the fiduciaries oppose the approval of a settlement agreement submitted to a court for approval, the court may order the fiduciaries to sign the agreement S C Code Ann § 62-3-1102 It necessarily follows that where such a situation arises and an irreconcilable conflict between the fiduciary and the estate is created, a court has the authority to remove the personal representative and trustee so as to allow for the effective administration of the estate

This reasoning is supported by the comment to 62-3-1102(2), which states "[s]ubsection (2) would imply that the agreement is not to be signed by the personal representative or trustees of the affected testamentary trust prior to submission of the agreement to the probate court, *but the agreement should specify the proposed effect on the personal representative and affected trusts* (emphasis added) In this case, the Settlement Agreement made clear that its effect on Appellants was their removal (R p

[47] In addition to the factual findings made by the circuit court with respect to cause for Appellants' removal, the record contains evidence of Appellants' inadequacies that also

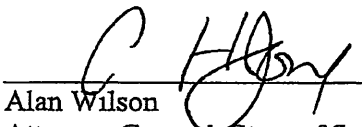
2363, ¶ 5(a)) Therefore, the circuit court did not err when it exercised its power pursuant to section 62-3-1102 and ordered the removal of Appellants from their fiduciary positions because their objection to, and promise to appeal, the Settlement Agreement created an "irreconcilable conflict" between them and the beneficiaries of Mr Brown's Estate

CONCLUSION

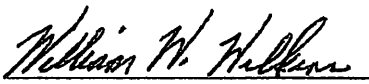
Appellants do not have standing to appeal the circuit court Order approving the Settlement Agreement at issue and removing them as personal representatives of the 2000 Will and Trust In the event this Court disagrees, it should affirm the Order because (1) the circuit court properly concluded, pursuant to S C Code Ann § 62-3-1102, that the Settlement Agreement resolved a good-faith controversy and was just and reasonable, (2) the Attorney General properly exercised his *parens patriae* and statutory authority in steering a settlement of the claims against Mr Brown's Estate, and (3) the circuit court did not err in removing Appellants from their fiduciary positions

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supports their removal for cause *See supra* pages 12-14



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May 2, 2011

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED
MAY - 2 2011
SC Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A Early, III, Circuit Court Judge
Case No 2008-CP-2-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J Brown, on behalf of his minor children, Lindsey B and Janise B , Deanna J Brown Thomas, on behalf of her minor child, Jason L , Yamma N Brown, on behalf of her minor children, Sydney L , Carrington L , and Tonya B , Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, and James B , through his Guardian ad Litem Respondents,

v

Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Adele J Pope and Robert L Buchanan, Jr , Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Paris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L Buchanan, Jr and Adele J Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown
2000 Irrevocable Trust are Appellants,

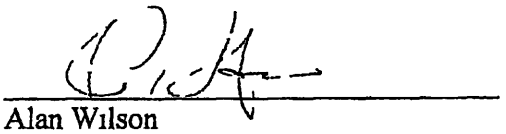
And Albert H Dallas, Alfred A Bradley, and David G Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N M Paris, LaRhonda Petitt, Jeanette Mitchell, and Russell L Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents

In re The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000

CERTIFICATE OF COUNSEL

The undersigned certifies that the Final Brief complies with Rule

211, SCAR



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May 2, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	Case Nos.: 2013-CP-02-02849-019-
)	2013-CP-02-02850 - cert copy
)	
)	
)	**PETITIONER TOMMIE RAE BROWN'S NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT**
IN RE: THE ESTATE OF)	
JAMES BROWN A/K/A)	
JAMES JOSEPH BROWN)	
)	

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that Petitioner Tommie Rae Brown will move before the Honorable Doyet A. Early, III, Resident Judge, Second Judicial Circuit, at such time and place as he may order, for summary judgment, pursuant to Rule 56, SCRCP, on the issue of Petitioner Tommie Rae Brown's ceremonial marriage to James Brown and the legality of said marriage.

This Motion is based on the grounds that there is no genuine issue of material fact as to Mrs. Brown's marriage to Mr. Brown and that she is entitled to summary judgment on the issue of the validity of her ceremonial marriage as a matter of law.

This Motion is based upon the pleadings, affidavits, Requests for Admission and Responses thereto, the undisputed records and orders previously filed in this case and filed in the Family Court, and the law and reasoning to be set forth in Petitioner Tommie Rae Brown's Memorandum of Law in Support of her Motion for Summary Judgment.

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4.28.14
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Anita Knowles 8:00
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TOMMIE RAE BROWN

April 24, 2014
Charleston, SC

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN)	Case Nos.: 2013-CP-02-02849
)	2013-CP-02-02850
IN RE: THE ESTATE OF)	
JAMES BROWN A/K/A)	
JAMES JOSEPH BROWN)	**AFFIRMATION**
)	

Counsel for Petitioner Tommie Rae Brown affirms that, prior to filing this motion, he has communicated with opposing counsel and has attempted in good faith to resolve the matters contained in the motion, or that consultation would serve no useful purpose, or could not be timely held, or there was no duty of consultation pursuant to Rule 11, SCRCP.

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Charleston, SC
April 24, 2014

FILED 4.28.14
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle 880
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: 2013-CP-02-02849
	)	2013-CP-02-02850
IN RE: THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	**CERTIFICATE OF SERVICE**
	)	

The undersigned hereby certifies that on April 26, 2014 a true and accurate copy of Petitioner Tommie Rae Brown's Notice of Motion and Motion for Summary Judgment and the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment were placed in an envelope with first class postage thereon through the United States Postal Service and mailed to the offices of the attorneys of record in this case at the addresses below:

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TOMMIE RAE BROWN

Charleston, SC
April 25, 2014

STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN.	)	IN THE COURT OF COMMON PLEAS SECOND JUDICIAL CIRCUIT Case Nos.: 2013-CP-02-02849 2013-CP-02-02850 **AFFIDAVIT OF TOMMIE RAE BROWN IN SUPPORT OF HER MOTION FOR SUMMARY JUDGMENT**

PERSONALLY APPEARED before me Tommie Rae Brown who, first being duly sworn, states as follows:

1. I am a Petitioner in this case and ask the Court to recognize my ceremonial marriage to James Brown and declare that I was legally married to James Brown and that I am his widow.

2. James Brown and I were married on December 14, 2001 in Aiken County, South Carolina by Reverend Larry Fryer. Attached hereto as Exhibit "A," is a copy of my marriage license and marriage certificate to James.

3. In 2003, David Cannon told Mr. Brown that I was married to someone else, namely Javed Ahmed and had never been divorced. James gave me the money to pay the legal fees for the action to confirm that putative marriage was never valid. The Personal Representatives have admitted this fact. See Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, attached herein as Exhibit "B," Response to Request to Admit No. 9.

4. I retained the services of Robert N. Rosen at Rosen, Rosen and Hagood in Charleston, South Carolina. Mr. Rosen brought an action on December 15, 2003 to declare the purported marriage to Mr. Ahmed invalid.

5. I testified in the Family Court in Charleston on April 15, 2004. The Final Order filed on April 15, 2004 is attached hereto as Exhibit "C" and finds that I was never married to Ahmed.

FILED 4:28 14
Liz Godard
C.C.C.P.&G.S.
Anita Knoepfle SC
Deputy Clerk

6. After the Final Order was issued, my attorney sent it to James' attorney, Mr. Huff. Exhibit B, Response to Request to Admit No. 10.

7. I am asking the Court to recognize my ceremonial marriage to James Brown and the legality and finality of the Order of the Family Court finding that I was never married to Javed Ahmed and therefore am legally married to James Brown.

8. I am over the age of twenty-one (21) years and am competent to testify to the matters stated herein. I have read the foregoing paragraphs, and all matters stated therein are correct and true and are based on my own personal knowledge and belief, except those alleged on information and belief and as to those, I believe them to be true and accurate.

FURTHER DEPONENT SAYETH NOT.

TOMMIE RAE BROWN

Sworn and subscribed to me on this
23 day of APRIL, 2014

Notary Public for the State of NEVADA
Comm. Exp. DEC 2 2017

LEIGHA STEEN
Notary Public - State of Nevada
County of Clark
APPT. NO. 10-1240-1
My App. Expires Dec. 2, 2017

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

207020 — LICENSE NUMBER

AIKEN — COUNTY

GROOM-NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(1)	JAMES	BROWN	(2a)	1933	(2b) 68
BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)			
(3) SOUTH CAROLINA	(4) BLACK	(5a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION	COUNTY	STATE	NO OF THIS MARRIAGE (1st, 2nd, etc.)		
(5b) BEECH ISLAND	(5c) AIKEN	(5d) SOUTH CAROLINA	(6)	4	
BRIDE-NAME (FIRST) (MIDDLE) (LAST)			BIRTHDATE (MONTH, DAY, YEAR)		AGE
(7)	TOMMIE RAE	HYNIE	(8a)	1969	(8b) 32
BIRTHPLACE (State or foreign country)	RACE	RESIDENCE (Street and Number)			
(9) NEVADA	(10) WHITE	(11a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION	COUNTY	STATE	NO. OF THIS MARRIAGE (1st, 2nd, etc.)		
(11b) BEECH ISLAND	(11c) AIKEN	(11d) SOUTH CAROLINA	(12)	1	

MAIDEN NAME OF BRIDE (If Different From Above)

(13)

Application for a license was filed with this court at 3:15p M., on the 10 day of DECEMBER, 2001. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 3:20 P.M., this the 11th day of December, A.D. 2001.

Sue H Rae — Signature of Issuing Officer

JUDGE OF PROBATE — Title of Issuing Officer

GROOM-Signature (14) [signature]

BRIDE-Signature (15) [signature]

I certify that the above named persons were married on (16) December 14 (MONTH) (DAY) (YEAR) 2001

Place of Marriage (17) Beech Island (CITY) Aiken (COUNTY) SOUTH CAROLINA

OFFICIANT-Signature (18a) Rev. Larry Fryer

OFFICIANT-Title (18b) Rev. Larry Fryer

OFFICIANT-Mailing Address (18c) 1115 - 6th Avenue, Augusta, Georgia 30901

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

DHEC 0681 (12/1998)

PROBATE JUDGE

MAR 16 2007

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.
Rosie Lowman
Deputy Clerk

FILED
AIKEN COUNTY
MAY 06 2004
4:55p
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT WITNESS MY HAND AND SEAL OF THE COURT THIS THE 14th DAY OF March A.D. 20 04

Sue H Rae
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.
BY Martha Bentley
CLERK

4-28-14

[redacted]

8C

Marriage Certificate

LICENSE NO. 207020

STATE OF SOUTH CAROLINA,
AIKEN COUNTY

PROBATE COURT

To Whom It May Concern:

THIS IS TO CERTIFY, That on the 14th day of DECEMBER, 2001

at BEECH ISLAND in Aiken County, State of South Carolina,

JAMES BROWN	BEECH ISLAND, SC	68	and
MAN'S NAME	ADDRESS	AGE	

TOMMIE RAE HYNIE	BEECH ISLAND, SC	32
WOMAN'S NAME	ADDRESS	AGE

were united in the Bonds of Matrimony by LARRY FRYER

MINISTER
OFFICIAL TITLE
in accordance with the law of South Carolina,

in such cases made and provided, and as shown by the records of this Court that the information given is that their race is BLACK/WHITE and their Nationality is American.

Witness my Hand and Seal of said Court, this the 8th day of JANUARY, 2003

A TRUE COPY

Attest: Sue H. Rye

JUDGE OF PROBATE

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	**IN THE COURT OF COMMON PLEAS** **CASE NUMBER: 2007-CP-02-0122**
IN RE: THE ESTATE OF JAMES BROWN a/k/a JAMES JOSEPH BROWN	)	**PERSONAL REPRESENTATIVES' RESPONSES TO PETITIONER TOMMIE RAE BROWN'S SECOND REQUEST FOR ADMISSION**

Personal Representatives for the Estate of James Brown responds to Petitioner Tommie Rae Brown's First Requests for Admission dated December 10, 2007, as follows:

Request No. 1

were married in a

ceremonial marriage on December 14, 2001, by the Reverend Larry Fryer.

Response No. 1

The Personal Representatives admit upon information and belief that Tommie Rae Brown, a/k/a Tommie Rae Hynie, and James Brown entered into a ceremonial marriage on December 14, 2001 by the Reverend Larry Fryer.

Request No. 2

The License and Certificate for Marriage attached hereto as Exhibit A is genuine and authentic.

Response No. 2

The Personal Representatives admit upon information and belief that the License and Certificate for Marriage attached as Exhibit A appears to be a copy of the genuine and authentic document.

Request No. 3

The marriage certificate attached hereto as Exhibit B is genuine and authentic.

Response No. 3

4.28.14

[redacted]

The Personal Representatives admit upon information and belief that the License and Certificate for Marriage attached as Exhibit B appears to be a copy of the genuine and authentic document.

Request No. 4

In 2004, Tommie Rae Brown, a/k/a Tommie Rae Hynie, brought a proceeding in the Family Court to annul her purported marriage to Javed Ahmed.

Response No. 4

The Personal Representatives admit upon information and belief that the April 15, 2004 Family Court Order alludes to an action brought by Ms. Tommie Rae Brown, a/k/a Tommie Rae Hynie to annul her marriage to Javed Ahmed.

Request No. 5

On April 15, 2004, the Family Court entered a Final Judgment in "Tommie Rae Hynie, a/k/a Tommie Rae Brown v. Javed Ahmed," Case Number 2003-DR-10-4609.

Response No. 5

The Personal Representatives admit upon information and belief that the April 15, 2004 Family Court entered a final judgment in the case captioned matter as reflected on the copy of the Family Court Order in Case No. 03-DR-10-4609.

Request No. 6

The Judgment and Order attached hereto as Exhibit C are genuine and authentic.

Response No. 6

The Personal Representatives admit upon information and belief that the Judgment and Order, dated April 15, 2004 as Exhibit C appears to be a copy of the genuine and authentic Order.

Request No. 7

The Final Order of the Family Court found as a fact that Javed Ahmed was married at the time he entered into his marriage with Tommie Rae Brown and therefore he lacked the capacity to marry Tommie Rae Brown.

Response No. 7

The Personal Representatives admit upon information and belief that the Family Court Order made the finding as set forth in the final order; however, as Personal Representatives were not parties to the action such finding is not binding upon them.

Request No. 8

The Final Order of the Family Court is binding on the estate of James Brown, any and all trusts and parties hereto and all third parties.

Response No. 8

Denied; the estate of James Brown, Jr. any and all trusts and parties hereto and all third parties were not parties to the original Family Court action.

Request No. 9

James Brown gave Tommie Rae Brown the funds to pay the legal fees for the annulment litigation.

Response No. 9

Admit upon information and belief.

Request No. 10

James Brown was aware of the annulment proceeding as his attorney received a copy of the Summons and Complaint in February 2004 and the Final Order of annulment in April 2004, as can be seen in exhibits to the Affidavit of Tommie Rae Brown notarized on November 15,

2007.

Response No. 10

Admit upon information and belief.

LAW OFFICE OF JAMES D. BAILEY, PC

By: _____

James D. Bailey, Esquire
Law Office of James D. Bailey, PC
100 Park Avenue SW
PO Box 2376
Aiken, South Carolina 29802
803/648-9529

Attorney for Defendants Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust

January 11, 2008

\\Server\docs\BROWN ADMINISTRATION\ELECTIVE SHARE\RESPONSE.REQUEST.ADMIT.SECOND.wpd

CERTIFICATE OF SERVICE – C/A 2007-CP-02-0122

I hereby certify that on this 11th day of January, 2008, a copy of the Personal Representatives' Responses to Petitioner Tommie Rae Brown's First Request for Admission and Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, have been mailed to counsel of record, postage prepaid and properly addressed to the address shown below:

Robert Rosen
Attorney at Law
P. O. Box 1840
Charleston, SC 29401

And

Louis Levenson
Attorney at Law
125 Broad St., SW
Atlanta, GA 30303

January 11, 2008

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FINAL ORDER

HEARING DATE: April 15, 2004
JUDGE: Honorable F. P. Segars-Andrews
ATTORNEY FOR PLAINTIFF: Robert N. Rosen, Esquire
Donald B. Clark, Esquire
ATTORNEY FOR DEFENDANT: N/A
COURT REPORTER:

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

cc/RNR(P) 4-15-04

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action.

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was in Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as , Houston, Texas.

This Court issued an Order of Publication on February 3, 2004. This Court found that the Plaintiff made a diligent effort to locate the Defendant, and it appeared to the satisfaction of the

[redacted]
Deputy Clerk

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has beer properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

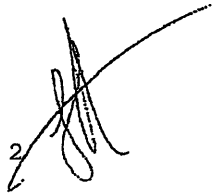
1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.



6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

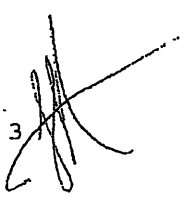
3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,



ORDERED, ADJUDGED AND DECREED that the Plaintiff is entitled to an order and judgment annulling the marriage between the Plaintiff and the Defendant solemnized on February 17, 1997. It is further

ORDERED, ADJUDGED AND DECREED that the marriage between Tommy Rae Hynie a/k/a Tommie Rae Brown and Javed Anmed is annulled. It is further,

ORDERED, ADJUDGED AND DECREED that the marriage between Plaintiff and Defendant be, and is hereby, declared to be wholly null and void ab initio, and the parties are, and each of them is, freed from the obligations of such marriage.

AND IT IS SO ORDERED!

F. P. SEGARS-ANDREWS
JUDGE OF THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
April 15, 2004

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
BY: _____
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
IN RE: THE ESTATE OF JAMES BROWN)
A/K/A JAMES JOSEPH BROWN)
Plaintiff,)
vs.)
)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

CASE NOs.: 2013 -CP-02-02849-009
2013 -CP-02-02850-corr copy

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:Attorney for Tommie Rae Brown	Defendant's Attorney:
Robert N. Rosen, Bar No. 4918	John F. Beach, Bar No. 595
Address:	Address:
18 Broad Street, Suite 201	1501 Main St. 5th Fl.
Charleston, SC 29401	Columbia, SC 29201
Phone: (843) 377-1700 Fax: (843) 377-1709	Phone: (803) 343-1269 Fax: (803) 799-8479
E-mail: rnrosen@rosen-lawfirm.com Other: ____	E-mail: john.beach@arlaw.com Other: ____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment
Estimated Time Needed: 1 Hour Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff /☐ Defendant — 4/25/2014 Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: ____
☐ Other: ____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE ____
☐ Other:	Date: ____

CLERK'S VERIFICATION 4.28.14

Collected by: ____ Date Filed: ____
☐ MOTION FEE COLLECTED: $ ____ CK # 3861
☐ CONTESTED – AMOUNT DUE: $ ____ 190

Deputy Clerk

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT
Tommie Rae Brown, Petitioner, 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, IN RE: **THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN**	C/A No. 2013-CP-02-02849 C/A No. 2013-CP-02-02850 **LIMITED SPECIAL ADMINISTRATOR'S MOTION FOR SUMMARY JUDGMENT**

TO: ROBERT N. ROSEN, ESQ., AND S. ALAN MEDLIN, ESQ., ATTORNEYS FOR PETITIONER TOMMIE RAE BROWN; LOUIS LEVENSON, ESQ., ATTORNEY FOR DEANNA BROWN THOMAS, YAMMA BROWN, AND VENISHA BROWN; AND DAVID B. BELL, ESQ., AND MATTHEW D. BODMAN, ESQ., ATTORNEYS FOR LARRY BROWN, TERRY BROWN, AND DARYL BROWN:

David C. Sojourner, Jr., (the "LSA"), as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown (the "Estate") and as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust"), moves for summary judgment pursuant to Rule 56 of the *South Carolina Rules of Civil Procedure*. This Motion is based upon any memoranda of law, stipulated facts, and/or affidavits that may be submitted in support of this motion, along with all applicable common and statutory law, and such other evidence and authority as this Court may consider. This motion is based upon the sole assertion that Tommie Rae Brown ("Petitioner") was not James Brown's ("Decedent's") "surviving spouse" at the time of Decedent's death on December 25, 2006.

In order to succeed on Petitioner's omitted spouse (C/A No. 2013-CP-02-02849) and elective share (C/A No. 2013-CP-02-02850) claims, Petitioner bears the burden of proving she is

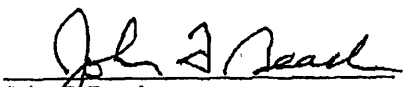
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FILED
CC C.P &G.S.
Deputy Clerk

Decedent's "surviving spouse." *See* S.C. Code Ann. § 62-2-301 and S.C. Code Ann. § 62-3-614, respectively. Petitioner cannot establish she was Decedent's "surviving spouse" because she was legally married to Javed Ahmed at the time she participated in the December 14, 2001 marriage ceremony with Decedent. As a consequence, Petitioner's purported December 14, 2001 marriage to Decedent was legally void *ab initio* because that marriage was legally impossible under South Carolina law. *See* S.C. Code Ann. § 20-1-80 (codifying the overriding public policy of South Carolina against bigamous marriages).

Petitioner is unable to succeed on the merits of her omitted spouse and elective share claims because, based upon the undisputed facts and applicable law, Petitioner cannot prove she was legally married to Decedent at the time of Decedent's death. Because there are no genuine issues of material fact on this issue, the LSA is entitled to summary judgment against Petitioner on both of the above-captioned cases. The LSA therefore respectfully requests that this Court grant the LSA's Motion for Summary Judgment.

Respectfully submitted,

ADAMS AND REESE LLP



John F. Beach
Lyndey Ritz Zwing
1501 Main Street, Fifth Floor
Post Office Box 2285 (29202)
Columbia, South Carolina 29201
Telephone: (803) 343-1269
Facsimile: (803) 799-8479
Email: john.beach@arlaw.com

Attorneys for David C. Sojourner, Jr., as Limited Special Representative of the Estate of James Brown and Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement

May 29, 2014.

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Tommie Rae Brown, ☐ Plaintiff 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, ☒ Defendant.	)	IN THE COURT OF COMMON PLEAS CASE NO. 2013-CP-02-02849, 02850 MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Robert N. Rosen, Bar No. 4918 Address: 18 Broad St., Suite 201, Charleston, SC 29401 phone: 843-377-1700 fax: 843-377-1709 e-mail: rnrosen@rosen-lawfirm.com other:	John F. Beach, Bar No. 595 Address: 1501 Main St., 5th Floor, Columbia, SC 29201 phone: 803-343-1269 fax: 803-799-8479 e-mail: john.beach@arlaw.com other:

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Limited Special Administrator's Motion for Summary Judgment
Estimated Time Needed:30 Minutes Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

John F Beach — May 29, 2014
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:

CLERK'S VERIFICATION

Collected by: Sharon Jones ck# 400436 — Date Filed: 6-2-2014
for C.P.&G.S.
Deputy Clerk

SCCA/233 (11-03)

☑ MOTION FEE COLLECTED: 25.00

☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA COUNTY OF AIKEN Tommie Rae Brown, Petitioner, 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, IN RE: **THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN**	IN THE COURT OF COMMON PLEAS FOR THE SECOND JUDICIAL CIRCUIT C/A Nos. 2013-CP-02-02849, 2013-CP-02-02850 **JOINT STIPULATION OF FACTS**

Copy 9.5 14
C.C.P.&G.S.
Anita Knoepfle 10
Deputy Clerk

Petitioner Tommie Rae Brown ("Petitioner"), Respondent David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee ("LSA"), and Respondents Deanna Brown Thomas, Yamma N. Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown hereby jointly stipulate to the facts set forth herein.

The Parties entered into this Joint Stipulation while preserving their respective arguments that any or all of the matters contained herein are inadmissible, irrelevant, and/or immaterial to whether the Petitioner is Decedent's surviving spouse and/or any other issue in this or related litigation.

On November 27, 2001 Petitioner and James Joseph Brown ("Decedent") purportedly executed a purported Prenuptial Agreement. All Parties retain their right and ability to assert

Petitioner, through the Prenuptial Agreement, waived her right to claim as Decedent's surviving spouse under S.C. Code Ann. §§62-2-301 (omitted spouse) and 62-2-201 (elective share) or otherwise, and Petitioner retains her right to deny the enforcement, validity and authenticity of the same.

The Parties therefore stipulate as follows:

1. On February 12, 1997, Petitioner and Javed Ahmed obtained a marriage license in the State of Texas, a true copy of which is attached as **Exhibit 1.**

2. On February 17, 1997 Petitioner participated in a marriage ceremony with Javed Ahmed in Harris County Texas.

3. On 2001 Petitioner's son, J B , was born in Las Vegas, Nevada, and a true copy of his birth certificate is attached as **Exhibit 2.** The LSA filed a Motion to Acquire DNA Samples from James Brown, II on March 10, 2014 in the pretermitted child action, Case No. 2013-CP-02-02851. All parties agreed that the child should submit to a DNA test to help determine if he is in fact the child of Decedent. All parties approved a consent order to that effect, and said consent order was filed on May 14, 2014. On June 11, 2014, J J B accordance with this order, submitted to a DNA test at the LabCorp office located at 7751 West Flamingo Road, Suite B 102, Las Vegas, Nevada 89147. The results of the DNA test show that "the probability of paternity is 99.99%." See LabCorp DNA Test Results, attached herein as **Exhibit 3.** The parties stipulate that **Exhibit 3** is a true and authentic copy of the test and is admitted into evidence without objection. Respondents reserve the right to move the court for another DNA test should additional evidence become available that challenges the validity of the LabCorp DNA Test Results.

4. On December 10, 2001, Petitioner and Decedent obtained a marriage license in the State of South Carolina, a true copy of which is attached as **Exhibit 4.**

5. On December 14, 2001 Decedent and Petitioner participated in a marriage ceremony in Beech Island, South Carolina.

6. From the February 17, 1997 marriage ceremony between Petitioner and Javed Ahmed through the December 14, 2001 marriage ceremony between Petitioner and Decedent, no order of any court or other occurrence of which Plaintiff is aware at this time ended or caused to end any marriage that certain parties assert existed between Petitioner and Javed Ahmed.

7. On December 15, 2003, Petitioner filed a family court action in Charleston County South Carolina seeking an annulment of her marriage to Javed Ahmed (*Tommie Rae Hynie, a/k/a Tommie Rae Brown v. Javed Ahmed*, 2003-DR-10-4609) (the "Ahmed Annulment Action", attached herein). The parties agree that the following documents were filed in that case and true and correct copies of each are attached hereto as the following Exhibits:

Exhibit 5 - Tommie Rae Brown's Summons & Complaint for Annulment, filed December 15, 2003;

Exhibit 6 - Ronald Pannel's Affidavit of Attempted Service filed February 4, 2004;

Exhibit 7 - Affidavit of Tommie Rae Brown filed February 4, 2004;

Exhibit 8 - Order of Publication filed February 4, 2004;

Exhibit 9 – Affidavit of Marcia F. Jones filed April 15, 2004;

Exhibit 10 – Affidavit of Publication filed April 15, 2004;

Exhibit 11 – Order of Continuance filed March 24, 2004;

Exhibit 12 – Final Order filed April 15, 2004.

8. A true copy of the transcript of a hearing held on April 15, 2004 in the Ahmed Annulment Action is attached as **Exhibit 13** ("Ahmed Annulment Action Transcript").

9. Except as may be contained in the Ahmed Annulment Action Transcript and the Family Court documents attached herein as **Exhibits 5-13,** Petitioner at this time can identify no documents or other tangible evidence evidencing Javed Ahmed was married to another person when Petitioner and Javed Ahmed participated in the February 17, 1997 marriage ceremony.

10. Except as may be contained in the Ahmed Annulment Action Transcript, Petitioner at this time can identify no person (except Javed Ahmed and the wives to whom he was allegedly married) who can testify that Javed Ahmed was married to another person when Petitioner and Javed Ahmed participated in the February 17, 1997 marriage ceremony.

11. On April 15, 2004 the Charleston County Family Court issued the Final Order in the Ahmed Annulment Action, a true copy of which is attached as **Exhibit 12.**

12. Decedent was not a named party in the Ahmed Annulment Action.

13. James Brown gave Tommie Rae Brown the funds to pay the legal fees for the Ahmed Annulment litigation.

14. James Brown was aware of the Ahmed Annulment litigation as his attorney received a copy of the Summons and Complaint in February 2004 and the Final Order of Annulment in April 2004, a true copy of both communications attached as **Exhibits 14.**

15. Decedent did not intervene as a party in the Ahmed Annulment Action.

16. Decedent was not Robert Rosen's client in the Ahmed Annulment Action.

17. The Charleston County Family Court found that Javed Ahmed was properly served by publication and notified of the hearing. Javed Ahmed failed to appear, answer the complaint or otherwise plead within the time required, participate in or otherwise defend himself in the Ahmed Annulment Action.

18. In the Ahmed Annulment Action, Petitioner's testimony was the only evidence before the court that Javed Ahmed was married at the time Petitioner and Javed Ahmed participated in the February 17, 1997 marriage ceremony.

19. On January 29, 2004, Decedent brought an annulment action against Petitioner in Aiken County and Petitioner counterclaimed for a divorce. The following documents were filed in that case with the Aiken Count Family Court and true and correct copies of each are attached hereto as the following Exhibits:

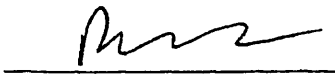
- Decedent's Summons and Complaint for Annulment filed January 29, 2004, **Exhibit 15;**
- Decedent's Amended Complaint for Annulment filed May 6, 2004, **Exhibit 16;**
- Petitioner's Answer and Counterclaim filed June 14, 2004, **Exhibit 17;**
- Decedent's Reply to Counterclaim filed July 6, 2004, **Exhibit 18;** and
- Consent Order of Dismissal filed August 16, 2004, **Exhibit 19.**

20. Decedent died on December 25, 2006.

21. The parties could not reach an agreement as to other facts but agree this Court can take judicial notice, as it deems appropriate, of the files, pleadings, transcripts of hearings, briefs and oral arguments in this Court, the Court of Appeals and the Supreme Court along with the Record on Appeal from the Court of Appeals and Supreme Court, in all cases concerning or related to Petitioner's elective share and omitted spouse claims.

On behalf of our clients, we so stipulate.

ROSEN LAW FIRM, LLC



Robert N. Rosen
18 Broad Street, Suite 201
Charleston, South Carolina 29401
Telephone: (843) 377-1700
Facsimile: (843) 377-1709
rnrosen@rosen-lawfirm.com

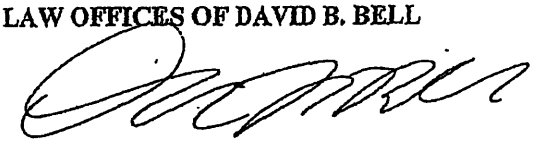
Attorneys for Petitioner Tommie Rae Brown

ADAMS AND REESE LLP

John F. Beach
1501 Main Street, Fifth Floor
Columbia, South Carolina 29201
Telephone: (803) 343-1269
Facsimile: (803) 799-8479
john.beach@arlaw.com

Attorneys for David C. Sojourner, Jr. as Limited Special Administrator for the Estate of James Brown and Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement

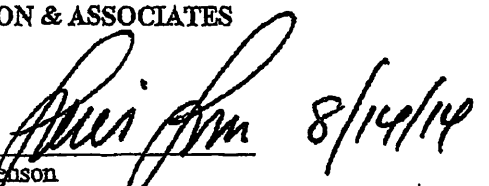
LAW OFFICES OF DAVID B. BELL



David B. Bell
619 Greene Street
Augusta, GA 30903-1011
Telephone: (706) 724-1882
Facsimile: (706) 722-2507
davidbell@davidbelllawfirm.com

Attorneys for Respondent Daryl Brown

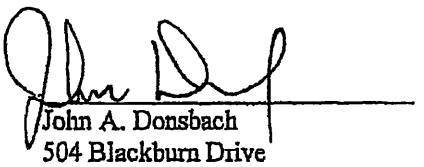
LEVENSON & ASSOCIATES



Louis Levenson
125 Broad Street, SW
Atlanta, Georgia 30303
Telephone: (404) 659-5000
Facsimile: (404) 659-1355
louis@levensonlaw.com

Attorneys for Respondents Deanna Brown Thomas, Yamma N. Brown, Verdisha Brown, and Larry Brown

DONSBACH & KING, LLC



John A. Donsbach
504 Blackburn Drive
Augusta, Georgia 30907
Telephone: (706) 650-8750
Facsimile: (706) 651-1399
Jdonsbach@donsbachking.com

Attorneys for Terry Brown

August 11, 2014.

TABLE OF CONTENTS OF EXHIBITS TO JOINT STIPULATION OF FACTS

Exhibit 1	Petitioner and Javed Ahmed' marriage license dated 2/12/97
Exhibit 2	True copy of J B 's birth certificate dated 01
Exhibit 3	True copy of LabCorp DNA Test Results for J. B lated 6/11/14
Exhibit 4	Petitioner and Decedent's marriage license dated 12/10/01
Exhibit 5	Tommie Rae Brown's Summons & Complaint for Annulment, filed 12/15/03
Exhibit 6	Ronald Pannel's Affidavit of Attempted Service filed 2/4/04
Exhibit 7	Affidavit of Tommie Rae Brown filed 2/4/04
Exhibit 8	Order of Publication filed 2/4/04
Exhibit 9	Affidavit of Marcia F. Jones filed 4/15/04
Exhibit 10	Affidavit of Publication filed 4/15/04
Exhibit 11	Order of Continuance filed 3/24/04
Exhibit 12	Final Order filed 4/15/04
Exhibit 13	Transcript of Hearing of Ahmed Annulment Action dated 4/15/04
Exhibit 14	Letters to Decedent's attorney dated 2/5/04 and 4/16/04 with Summons and Complaint and Final Order of Annulment
Exhibit 15	Decedent's Summons and Complaint for Annulment filed 1/29/04
Exhibit 16	Decedent's Amended Complaint for Annulment filed 5/6/04
Exhibit 17	Petitioner's Answer and Counterclaim filed 6/14/04
Exhibit 18	Decedent's Reply to Counterclaim filed 7/6/04
Exhibit 19	Consent Order of Dismissal filed 8/16/04

EXHIBIT 1

95-18-0466

COPY 9.5 14
Liz Godard
D.C.C.P.&G.S.
Anita Knoepfle 100
Deputy Clerk

MARRIAGE LICENSE

The State of Texas, County of Harris

To any person authorized by the laws of the State of Texas to celebrate the Rites of Matrimony in the State of Texas

Greeting:

You are hereby authorized to conduct the Rites of Matrimony between

JAVED ARMED and

TOMMIE RAE HYNIE

and make due return to the County Clerk of Harris County, Texas, within thirty days of performing the marriage, certifying your action under this license.

Witness my official signature and seal of office in Harris County, Texas at 03:30 P.M. on 12TH FEBRUARY 1997

Beverly B. Kaufman
County Clerk, Harris County, Texas

Deputy JOYCE M. ARREOLANO

Officer's Return

This certifies that I have united in marriage the parties named above on this

17TH day of FEBRUARY, 19 97

JUSTICE OF THE PEACE 1-1
Title

JUDGE DALE H. GORCZYNSKI
Printed or Typed Name

HOUSTON, HARRIS, T E X A S
City and County in which ceremony was performed

A CERTIFIED COPY
ATTEST: JAN 25 2008
BEVERLY B. KAUFMAN, County Clerk
Harris County, Texas
Chavonda A. Royer
CHAVONDA A. ROYER Deputy

95-18-0467

JAVED AHMED
Male

TOMMIE BAE HYNIE
Female

02 12 97
Date of Issuance

Name of Proxy (if any)

69
Date of Birth

69
Date of Birth

Seventy-two (72) hour exemptions:

Active Military I.D.#

Date of District Court Order

T 28734
02/12/97 1100020875 $31.00
Marriage License

ISSUED FEB 17 11:13:41

Return License To:

MR. & MRS. J.AHMED
14403 ELLA BLVD. #1314
HOUSTON TEXAS 77014

PERSONS AUTHORIZED TO CONDUCT CEREMONY

Section 1.83, Family Code. (a) The following persons are authorized to conduct marriage ceremonies: (1) licensed or ordained Christian ministers and priests; (2) Jewish rabbis; (3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and (4) justices of the supreme court, judges of the court of criminal appeals, justices of the courts of appeals, judges of the district, county, and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, retired justices and judges of such courts, justices of the peace, retired justices of the peace, and judges and magistrates of the federal courts of this state.

Section 1.81, Family Code. (a) A marriage license expires at the end of the 30-day period immediately following the date that the license was issued if the marriage ceremony has not been conducted within that period. The person who is to conduct the marriage ceremony shall determine this information from the county clerk's endorsement on the license.

This license is not valid for seventy-two (72) hours from the time of issuance.

Accompanied by TDH Material as required by Section 1.87(e) Family Code

A CERTIFIED COPY

ATTEST: JAN 25 2008
BEVERLY B. KAUFMAN, County Clerk
Harris County, Texas

Chavonda A. Royer Deputy
CHAVONDA A. ROYER

Stip Exhibits 000002

266

EXHIBIT 2

STATE OF NEVADA — DEPARTMENT OF HUMAN RESOURCES
DIVISION OF HEALTH — SECTION OF VITAL STATISTICS

LOCAL FILE NUMBER 10210 **CERTIFICATE OF LIVE BIRTH** STATE FILE NUMBER

CHILD

1. CHILD'S NAME — FIRST: J — MIDDLE: — LAST: B			2. DATE OF BIRTH (Month, Day, Year): , 2001
3. TIME OF BIRTH: 09:08 AM	4. SEX: Male	5. CITY, TOWN OR LOCATION OF BIRTH: Las Vegas	6. COUNTY OF BIRTH: Clark
7. PLACE OF BIRTH (Specify): Hospital		8. FACILITY NAME (If not institution, give street and number): Sunrise Hospital and Medical Center	
9. I Certify that this child was born alive at the place and time and on the date stated. Signature: Janet Funk	10. DATE SIGNED (Month, Day, Year): 6-25-01	11. ATTENDANT'S NAME AND TITLE (If other than certifier) (Type/Print): NAME: Garald Cases TITLE: M.D.	
12. CERTIFIER'S NAME AND TITLE (Type/Print): NAME: Janet K. Funk TITLE: Medical Record Clerk		13. ATTENDANT'S MAILING ADDRESS (Street and number or rural route number, city, or town, Zip Code): 2501 N. Green Valley Pkwy.#130 Henderson, NV 89014	
14. REGISTRAR'S SIGNATURE: Rebecca Norris, Deputy		15. DATE FILED BY REGISTRAR (Month, Day, Year): JUL 03 2001	

DEATH UNDER ONE YEAR OF AGE — Enter State File Number of death certificate for this child.

MOTHER

16a. MOTHER'S NAME — FIRST	MIDDLE	LAST	16b. MAIDEN SURNAME	17. AGE
Tommie	Rae	Hynie	Hynie	32

18. BIRTHPLACE (State or foreign country)	19a. RESIDENCE — STATE	19b. COUNTY	19c. CITY, TOWN OR LOCATION
Nevada	South Carolina	Richmond	Beech Island

19d. STREET AND NUMBER	19e. INSIDE CITY LIMITS?	20. MOTHER'S MAILING ADDRESS (If same as residence, enter Zip Code only)
	Yes	29841

FATHER

21. FATHER'S NAME — FIRST	MIDDLE	LAST	22. AGE	23. BIRTHPLACE (State or foreign country)
James	Joseph	Brown Jr.	68	South Carolina

INFORMANT

24. I certify that the personal information provided on this certificate is correct to the best of my knowledge and belief.
Signature of parent or other informant: Tommie Rae Hynie

"*CERTIFIED TO BE A TRUE AND CORRECT COPY OF THE DOCUMENT ON FILE WITH THE REGISTRAR OF VITAL STATISTICS, STATE OF NEVADA.*" This copy was issued by the Clark County Health District from State certified documents as authorized by the State Board of Health pursuant to NRS 440.175.

NOT VALID WITHOUT THE RAISED SEAL OF THE CLARK COUNTY HEALTH DISTRICT

DONALD S. KWALICK, MD, M.P.H.
Registrar of Vital Statistics

By:

Date Issued: JAN 10 2007

CLARK COUNTY HEALTH DISTRICT
625 Shadow Lane P.O. Box 3902
Las Vegas, Nevada 89127
702-383-1223
Tax ID# 88-0151573

EXHIBIT "A"

EXHIBIT 3

LabCorp
Laboratory Corporation of America
P.O. Box 2230 Burlington, NC 27216 Telephone: (336) 584-5171 Relationship Report

Account Information
Account Number: 39490005
SC Private Account
Acct Ref 1: PRIVATE
Acct Ref 2:
Acct Ref 3:
Columbia, SC 29223

9.5.14
Liz Godard
Lit. C.P.&G.S.
Anita Knoepfler
Deputy Clerk

LabCorp Case # C0S-073060

Relationship	Party		Race	Date(s) Drawn
Child	B , J.	46D-1082-0		06/11/2014
Alleged Father	BROWN, JAMES J	732-5004-0	Black	12/25/2006

Conclusion:

Combined Paternity Index: 1,087,652 to 1 Probability of Paternity: 99.99% (Prior Probability = 0.5)

The alleged father, JAMES J. BROWN, cannot be excluded as the biological father of the child, J B since they share genetic markers. Using the above systems, the probability of paternity is 99.99%, as compared to an untested, unrelated man of the Black population.

I, the undersigned Director, upon being duly sworn on oath, do depose and state that I read the foregoing report on the analysis of specimens from the above named individuals, signed by myself, and under penalties for perjury it is my belief that the facts and results therein are true and correct.

George C Maha, JD, Ph.D., D(ABMG), Director

State of North Carolina
County of Alamance

I, Oma Marquez Lopez, certify that George C Maha, JD, Ph.D., D(ABMG) personally came before me this day and acknowledged that he (or she) is an employee of Laboratory Corporation of America Holdings, a corporation, and that as an employee being authorized to do so, executed the foregoing on behalf of the corporation.

Subscribed and sworn to [or affirmed] before me this JUN 2 3 2014 at Burlington, NC.

Oma Marquez Lopez
Notary Public

OMA MARQUEZ LOPEZ
NOTARY PUBLIC
ALAMANCE COUNTY, NC
My Commission Expires Nov. 27, 2017

Laboratory Corporation of America is accredited by the AABB.

PWD1

CMN EXHIBIT 4 9.5.14

LICENSE AND CERTIFICATE FOR MARRIAGE

STATE OF SOUTH CAROLINA

Liz Godard C.C.C.P.&G.S.

Anita Knoepfle Deputy Clerk

207020 — LICENSE NUMBER

AIKEN — COUNTY

GROOM-NAME (1)	(FIRST) JAMES	(MIDDLE)	(LAST) BROWN	BIRTHDATE (MONTH, DAY, YEAR) (2a) 1933	AGE (2b) 68
BIRTHPLACE (State or foreign country) (3) SOUTH CAROLINA	RACE (4) BLACK	RESIDENCE (Street and Number) (5a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION (5b) BEECH ISLAND	COUNTY (5c) AIKEN	STATE (5d) SOUTH CAROLINA	NO OF THIS MARRIAGE (1st, 2nd, etc.) (6) 4		
BRIDE-NAME (7)	(FIRST) TOMMIE RAE	(MIDDLE)	(LAST) HYNIE	BIRTHDATE (MONTH, DAY, YEAR) (8a) 1969	AGE (8b) 32
BIRTHPLACE (State or foreign country) (9) NEVADA	RACE (10) WHITE	RESIDENCE (Street and Number) (11a) 430 DOUGLAS DRIVE			
CITY, TOWN OR LOCATION (11b) BEECH ISLAND	COUNTY (11c) AIKEN	STATE (11d) SOUTH CAROLINA	NO. OF THIS MARRIAGE (1st, 2nd, etc.) (12) 1		

MAIDEN NAME OF BRIDE (If Different From Above)

(13)

Application for a license was filed with this court at 3:15p M., on the 10 day of DECEMBER, 2001. These are, therefore, to authorize any person qualified to perform marriage ceremonies to perform the marriage ceremony for the persons above named and for the so doing this shall be sufficient warrant. Given under my hand and seal at 3:20 P.M., this the 11th day of December, A.D. 2001.

Signature of Issuing Officer

JUDGE OF PROBATE

Title of Issuing Officer

GROOM-Signature (14)

BRIDE-Signature (15)

I certify that the above named persons were married on (16) December 14 (MONTH) (DAY) (YEAR) 2001

Place of Marriage (17) Beech Island (CITY) Aiken (COUNTY) SOUTH CAROLINA

OFFICIANT-Signature (18a) Rev. Larry Fryer

OFFICIANT-Title (18b) Rev. Larry Fryer

OFFICIANT-Mailing Address (18c) 1115 - 6th Avenue, Augusta, Georgia 30901

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAR 16 2007

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.

Rosie Lowman
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT WITNESS MY HAND AND SEAL OF THE COURT THIS THE 18th DAY OF March A.D. 2004

Sue H Rae
JUDGE OF PROBATE FOR AIKEN COUNTY, S.C.

BY Martha Bartley
CLERK

EXHIBIT A

FILED
AIKEN COUNTY
MAY 06 2004
4:55p
CLERK OF COURT

PC 0681 (12/1998) PROBATE JUDGE

Marriage Certificate

LICENSE NO. 207020

STATE OF SOUTH CAROLINA,
AIKEN COUNTY

PROBATE COURT

To Whom It May Concern:

THIS IS TO CERTIFY, That on the 14th day of DECEMBER, 2001

at BEECH ISLAND in Aiken County, State of South Carolina,

JAMES BROWN	BEECH ISLAND, SC	68	and
MAN'S NAME	ADDRESS	AGE	

TOMMIE RAE HYNIE	BEECH ISLAND, SC	32
WOMAN'S NAME	ADDRESS	AGE

were united in the Bonds of Matrimony by LARRY FRYER

MINISTER in accordance with the law of South Carolina,
OFFICIAL TITLE

in such cases made and provided, and as shown by the records of this Court that the information given is that their race is BLACK/WHITE and their Nationality is American.

Witness my Hand and Seal of said Court, this the 8th day of JANUARY, 2003

A TRUE COPY

Attest: Sue H. Rice
JUDGE OF PROBATE

Stip Exhibits 000006

copy EXHIBIT 5 9.5.14
Liz Godard
C.C.P.&G.S.
Anita Knoepke 100
Deputy Clerk

STATE OF SOUTH CAROLINA) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

FILED
2003 DEC 15 PM 4:34
CLERK OF COURT

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting Street, Suite 202, Post Office Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)
) CASE NO. 03-DR-10- 4609
FILED
2003 DEC 15 PM 4:34
TOMMIE RAE HYNIE, a/k/a)
TOMMIE RAE BROWN,) JEAN STRONG
) CLERK OF COURT
Plaintiff,) BY
) COMPLAINT
-vs-)
)
JAVED AHMED,)
)
Defendant.)

TO: THE DEFENDANT NAMED ABOVE:

The Plaintiff above named would respectfully show unto this Honorable Court, as follows:

1. The Plaintiff is a citizen and resident of South Carolina, and has so resided in said state for at least one (1) year prior to the commencement of this action.
2. The Plaintiff is informed, and believes that the Defendant is a citizen and resident of Texas.
3. The Plaintiff is informed and believes that jurisdiction is proper in the Family Court pursuant to §20-7-420(6) and §20-1-530 of the South Carolina Code.
4. The Plaintiff alleges that in February 1997, the Defendant was an immigrant from Pakistan, who unbeknownst to Plaintiff, wanted to marry Plaintiff so that he could become a United States citizen.
5. On February 17, 1997, the Plaintiff and Defendant married in Harris County, Texas.
6. Thereafter, the Defendant refused to live with the Plaintiff and Plaintiff returned to her domicile. The Plaintiff alleges she never saw or heard from the Defendant again.
7. The Plaintiff alleges that the parties never lived together as husband and wife and never engaged in any sexual contact or activity whatsoever, therefore failing to consummate their marriage.
8. Plaintiff is informed and believes that prior to their marriage, the Defendant had three or more wives to whom he was lawfully married under Pakistani law when the parties married on February 17, 1997.
9. Plaintiff alleges there has been no collusion between the parties.
10. The Plaintiff now seeks to have this marriage annulled as the Defendant was already married to another woman, the Defendant perpetrated a fraud on the Plaintiff, and the parties did not consummate their purported marriage, nor did they live together as husband and wife, all of which constitute grounds for annulment pursuant to S.C. Code Ann. Section 20-1-530 (Lawyers Co-op 1976).

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order as follows:

1. Granting the Plaintiff an annulment of the marriage between the parties; and
2. For any such other relief this Court deems just and proper.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

EXHIBIT 6

STATE OF SOUTH CAROLINA } IN THE FAMILY COURT
} FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON } CASE No. 03-DR-10-4609
}
TOMMIE RAE HYNIE, a/k/a }
TOMMIE RAE BROWN }
}
-VS- }
}
JAVED AHMED }

Copy FILED 9-5-2014
Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

AFFIDAVIT OF ATTEMPTED SERVICE

"My name is Ronald Pannell. My business address is 5906 Dolores, Suite 150, Houston, Texas, 77057. I am over the age of eighteen years, competent to make this oath, have personal knowledge of the facts contained herein, and have no interest in the outcome of this suit. I am a Licensed Private Investigator, State License Number A-10656 and an Authorized Civil Process Server per TRCP Rule 103.

On 30 December 2003 I attempted to locate the defendant, **JAVED AHMED** in the above referenced cause. I conducted several searches in numerous national databases and came up with the address , Houston, Texas, . **JAVED AHMED** no longer resides at this address.

JAVED AHMED - Texas Drivers License #
The address listed is Houston, Texas,
Issued out of Harris County, Texas
This license was last renewed on 11/01/99
JAVED AHMED no longer resides at this address.

A full skip trace report from a national database was conducted for Javed Ahmed, here are currently no Texas Motor Vehicles registered to **JAVED AHMED.** The results were inconclusive. I am unable to confirm a good address for Javed Ahmed at this time.

Affiant

SWORN TO AND SUBSCRIBED on this 12th day of January, 2003.

Notary Public for the State of Texas

SHAUN C. [illegible]
Notary Public, State of Texas
My Commission Expires
March 11, 2007

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4109

FILED
2003 DEC 15 PM 4:34
JUL. ARMSTRONG
CLERK OF COURT
BY

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting Street, Suite 202, Post Office Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

TOMMIE RAE HYNIE, a/k/a)
TOMMIE RAE BROWN,)

Plaintiff,)

-vs-) COMPLAINT

JAVED AHMED,)

Defendant.)

FILED
2003 DEC 15 PM 4:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: THE DEFENDANT NAMED ABOVE:

The Plaintiff above named would respectfully show unto this Honorable Court, as follows:

1. The Plaintiff is a citizen and resident of South Carolina, and has so resided in said state for at least one (1) year prior to the commencement of this action.
2. The Plaintiff is informed, and believes that the Defendant is a citizen and resident of Texas.
3. The Plaintiff is informed and believes that jurisdiction is proper in the Family Court pursuant to §20-7-420(6) and §20-1-530 of the South Carolina Code.
4. The Plaintiff alleges that in February 1997, the Defendant was an immigrant from Pakistan, who unbeknownst to Plaintiff, wanted to marry Plaintiff so that he could become a United States citizen.
5. On February 17, 1997, the Plaintiff and Defendant married in Harris County, Texas.
6. Thereafter, the Defendant refused to live with the Plaintiff and Plaintiff returned to her domicile. The Plaintiff alleges she never saw or heard from the Defendant again.
7. The Plaintiff alleges that the parties never lived together as husband and wife and never engaged in any sexual contact or activity whatsoever, therefore failing to consummate their marriage.
8. Plaintiff is informed and believes that prior to their marriage, the Defendant had three or more wives to whom he was lawfully married under Pakistani law when the parties married on February 17, 1997.
9. Plaintiff alleges there has been no collusion between the parties.
10. The Plaintiff now seeks to have this marriage annulled as the Defendant was already married to another woman, the Defendant perpetrated a fraud on the Plaintiff, and the parties did not consummate their purported marriage, nor did they live together as husband and wife, all of which constitute grounds for annulment pursuant to S.C. Code Ann. Section 20-1-530 (Lawyers Co-op 1976).

Stip Exhibits 000013

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order as follows:

1. Granting the Plaintiff an annulment of the marriage between the parties; and
2. For any such other relief this Court deems just and proper.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

PANNELL LEGAL PROCESS SERVICES

Invoice

5906 Dolores
Suite 150
Houston, TX 77057

Date	Invoice #
1/13/2004	1404

	SERVICE ON:
The Rosen Law Firm 134 Meeting St. Suite 202 Charleston, South Carolina 29401	Javed Ahmed

Cause No.	Case Name	Terms
03dr104609	Hynie vs Ahmed	

Quantity	Item	Description	Price Each	Amount
1	*Citations	Attempted Service	75.00	75.00

Thank you for your business.

Total $75.00

Phone #	Fax #
713-975-0554	713-977-3920

Stip Exhibits 000015

EXHIBIT 7

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4609

2004 FEB -4 PM 2:24

TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN,

Plaintiff,

JAVED AHMED,

Defendant.

AFFIDAVIT OF TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN

COPY
9.5.2014
Liz Gedash
C.C.P.&G.S.
Anita Knoepke
Deputy Clerk

PERSONALLY appeared before me, Tommie Rae Hynie a/k/a Tommie Rae Brown, who being duly sworn, says as follows:

I am Tommie Rae Hynie a/k/a Tommie Rae Brown, the Plaintiff in the above case. I am unsure of the current whereabouts of Javed Ahmed, the Defendant, as I have not seen or heard from him in approximately seven years and believed our marriage had been annulled in Harris County, Texas. The last known address that I had for the Defendant was Houston, Texas, but in an effort to locate the Defendant in order to personally serve him with the Summons and Complaint in this action, I hired a licensed private investigator in the State of Texas, Ronald Pannell, who located a subsequent address, also in Houston, Texas, where the Defendant had apparently resided since the time I knew of his whereabouts. A copy of Mr. Pannell's Affidavit of Attempted Service is attached hereto and by this reference made a part hereof. These are the last known addresses of the Defendant. Mr. Pannell conducted a full skip trace report on the Defendant but was unable to locate him or confirm any further address for him. I am informed and believe that I am therefore entitled to an Order of Publication, requiring Publication of the Summons and Complaint herein in a newspaper of general circulation in Houston, Texas. I am further informed and believe that I am entitled to an Order setting a time and date for the final hearing in this matter so that notice of this hearing may simultaneously be published in order to give the Defendant notice, as required by Rule 17(a), SCRFC. I am further informed and believe that the Houston Chronicle, located at 801 Texas Avenue, Houston, Texas, 77002, is a newspaper of general circulation in Houston, Texas, and is the most likely one to give the Defendant notice of this action and of the final hearing date.

Tommie Rae Hynie, a/k/a Tommie Rae Brown

SWORN to before me this
2nd day of February, 2004

Notary Public for South Carolina
My commission expires: 10/14/04

EXHIBIT 8

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
) FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON) CASE NO. 03-DR-10-4609

TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN,

Plaintiff,

JAVED AHMED,

Defendant.

ORDER OF PUBLICATION

Having reviewed the court file and the affidavit of the Plaintiff, Tommie Rae Brown, I find that the summons and complaint were filed herein on December 15, 2003, and that the Plaintiff has made a diligent effort to locate the Defendant, Javed Ahmed, or some current address for the Defendant, and it appears to the satisfaction of this Court that the current address and whereabouts of the Defendant are unknown, although his last known address was in Houston, Texas.

Therefore, having found to the satisfaction of this Court that adequate lawful service may be had on the Defendant by publication, it is hereby

ORDERED pursuant to S.C. Code Ann. §§ 15-9-710 and 15-9-740 that the summons shall be published once a week for a total of three weeks in the Houston Chronicle, a newspaper of general circulation in the area of Houston, Texas, which the Court finds to be the newspaper most likely to give notice to the Defendant of this action, and that an affidavit of a person employed by the said newspaper that publication has been so completed shall be filed with this Court and shall act as proof of service in this matter. It is further

ORDERED that the final hearing on this matter is hereby scheduled for March 26, 2004, at 9:30 o'clock Am. in the Charleston County Family Court and that notice of this final hearing may likewise be published in the same manner as the summons in the Houston Chronicle which, upon completion, shall constitute satisfaction of the notice requirements of Rule 17(a), SCRFC.

AND IT IS SO ORDERED!

Jocelyn B. Cate
Presiding Judge
Charleston County Family Court
Ninth Judicial Circuit
* to be set by docketing clerk

February 3, 2004

Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
BY _____ DEPUTY CLERK

G:\6120.001\Order.Publication.wpd

G:\6120.001\Order.Publication.wpd

292

EXHIBIT 9 9-Sand 4

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4609

COPY Filed
C.C.P.&G.S.
Anita Kimbrell
Deputy Clerk

2004 APR 15 AM 9:15

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,
Plaintiff,

-vs-

JAVED AHMED,
Defendant.

STRONG
COURT

AFFIDAVIT OF MARCIA F. JONES

PERSONALLY appeared before me, Marcia F. Jones, who being duly sworn, deposes and says as follows:

1. She is a paralegal with the Rosen Law Firm, LLC.

2. She sent a letter and a certified copy of the court order, a copy of which is attached hereto as Exhibit A, to Defendant Javed Ahmed by regular and certified mail to his last known address. The last known address the Plaintiff, Tommie Rae Brown, had for the Defendant is Iouston, Texas,

3. The Plaintiff retained the services of a licensed private investigator, Ronald Tannell. Mr. Tannell found the Defendant's address as Houston, Texas, He also found that his Texas driver's license listed his address as Houston, Texas, Therefore, Deponent sent Defendant notice of the date of the final hearing in this matter to this address as well, as can be seen a copy of her letter dated March 31, 2004 attached hereto as Exhibit B.

4. On or about April 5, 2004, the United States Postal Service attempted to deliver the letter addressed to Javed Ahmed at , Houston, TX . The envelope was returned with a notation, "Return to Sender – No forward order on file, unable to forward – return to sender." See Exhibit C attached hereto.

5. Defendant has had notice of the hearing scheduled for April 15, 2004 at 9:30 a.m. This notice was mailed to him at his last known addresses by regular mail and by certified mail, return receipt requested.

FURTHER DEPONENT SAY NOT.

Marcia Jones

MARCIA F. JONES

Sworn to and subscribed before me
This 14th day of April, 2004

Notary ~~Public~~ for the ~~State of~~ South Carolina
My Commission Expires: 3-27-2013

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

134 MEETING STREET, SUITE 202
P.O. BOX 1510
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 377-1700
FAX (843) 377-1709
WWW.ROSEN-LAWFIRM.COM

FILED
2004 APR 15 AM 9:15
CLERK OF COURT

March 31, 2004

Via Regular Mail &
Certified/Return Receipt Requested
Javed Ahmed

Houston, TX

Via Regular Mail &
Certified/Return Receipt Requested
Javed Ahmed

Houston, TX

RE: Hynie v. Brown

Dear Mr. Ahmed:

Enclosed you will find a copy of an Order of Continuance which continues the final hearing in the above matter from March 26, 2004 at 9:30 a.m., to April 15, 2004 at 9:00 a.m.

The final hearing will take place at the Charleston County Family Court located at 100 Broad Street in Charleston, South Carolina.

Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

7001 2510 0009 2067 4819

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

OFFICIAL USE

Postage	$ .37
Certified Fee	2.30
Return Receipt Fee (Endorsement Required)	1.75
Restricted Delivery Fee (Endorsement Required)	3.50
Total Postage & Fees	$ 7.92

Postmark Here
CHARLESTON, SC
MAR 31 2004
USPS 29402

Sent To: Javed Ahmed
Street, Apt. No.; or PO Box No.: 4403 Ella Blvd #3K
City, State, ZIP+4: Houston TX 77014

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE # 03-DR-10-4609

Tommie Rae Hynie
PLAINTIFF

Javed Ahmed
DEFENDANT

ORDER OF CONTINUANCE

The above matter was set for a final hearing on March 26, 2004. This matter is being continued in that:

( ) Plaintiff/Defendant did not appear.

( ) Plaintiff/Defendant was not served.

( ) Plaintiff/Defendant was not served with Notice of Hearing.

( ) Attorney for Plaintiff/Defendant scheduled to be in another Court.

( ) Guardian ad Litem scheduled in another Court.

( ) Plaintiff/Defendant/Attorney was sick.

( ) Request of attorneys, consent order is circulating for signatures.

(x) Other: The Judge is not available.

IT IS THEREFORE ORDERED, that the above case be and the same is hereby continued until the 15th day of APRIL at 9:00 A.M.

AND, IT IS SO ORDERED.

Charleston, SC
March 22, 2004

PRESIDING JUDGE,
NINTH JUDICIAL CIRCUIT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
By _____
DEPUTY CLERK

Stip Exhibits 000021

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW
134 MEETING STREET, SUITE 202
P.O. BOX 1510
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 377-1700
FAX (843) 377-1709
WWW.ROSEN-LAWFIRM.COM

FILED
2004 APR 15 AM 9:15
CLERK OF COURT
BY

March 31, 2004

Via Regular Mail &
Certified/Return Receipt Requested
Javed Ahmed

Houston, TX

Via Regular Mail &
Certified/Return Receipt Requested
Javed Ahmed

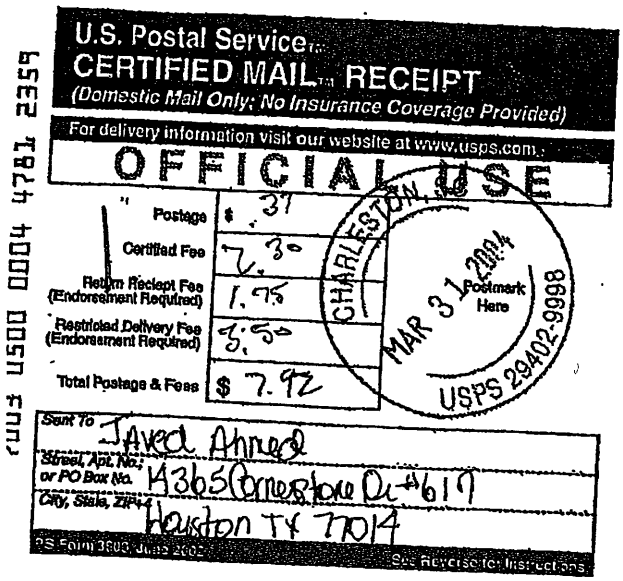
Houston, TX

RE: Hynie v. Brown

Dear Mr. Ahmed:

Enclosed you will find a copy of an Order of Continuance which continues the final hearing in the above matter from March 26, 2004 at 9:30 a.m., to April 15, 2004 at 9:00 a.m.

The final hearing will take place at the Charleston County Family Court located at 100 Broad Street in Charleston, South Carolina.



Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

EXHIBIT A

Stip Exhibits 000022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE FAMILY COURT OF THE
NINTH JUDICIAL CIRCUIT
CASE # 03-DR-10-4609

2004 MAR 24 AM 9:26

JULIE J. ARMSTRONG
CLERK OF COURT
BY

Tommie Rae Hynie
PLAINTIFF

Javed Ahmed
DEFENDANT

ORDER OF CONTINUANCE

The above matter was set for a final hearing on March 26, 2004. This matter is being continued in that:

( ) Plaintiff/Defendant did not appear.

( ) Plaintiff/Defendant was not served.

( ) Plaintiff/Defendant was not served with Notice of Hearing.

( ) Attorney for Plaintiff/Defendant scheduled to be in another Court.

( ) Guardian ad Litem scheduled in another Court.

( ) Plaintiff/Defendant/Attorney was sick.

( ) Request of attorneys, consent order is circulating for signatures.

(x) Other: The Judge is not available.

IT IS THEREFORE ORDERED, that the above case be and the same is hereby continued until the 15th day of APRIL at 9:00 A.M.

AND, IT IS SO ORDERED.

Charleston, SC
March 22, 2004

PRESIDING JUDGE,
NINTH JUDICIAL CIRCUIT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
By
DEPUTY CLERK

Stip Exhibits 000023

288

1234

Rosen Law Firm
POB 1510 (29402)
134 Meeting Street, Suite 202
Charleston, SC 29401

7001 2510 0009 2067 8819

U.S. POSTAGE PB556142 7
$07.92 0 MAR 31 2004
1233 MAILED FROM ZIP CODE 29401

EXHIBIT C

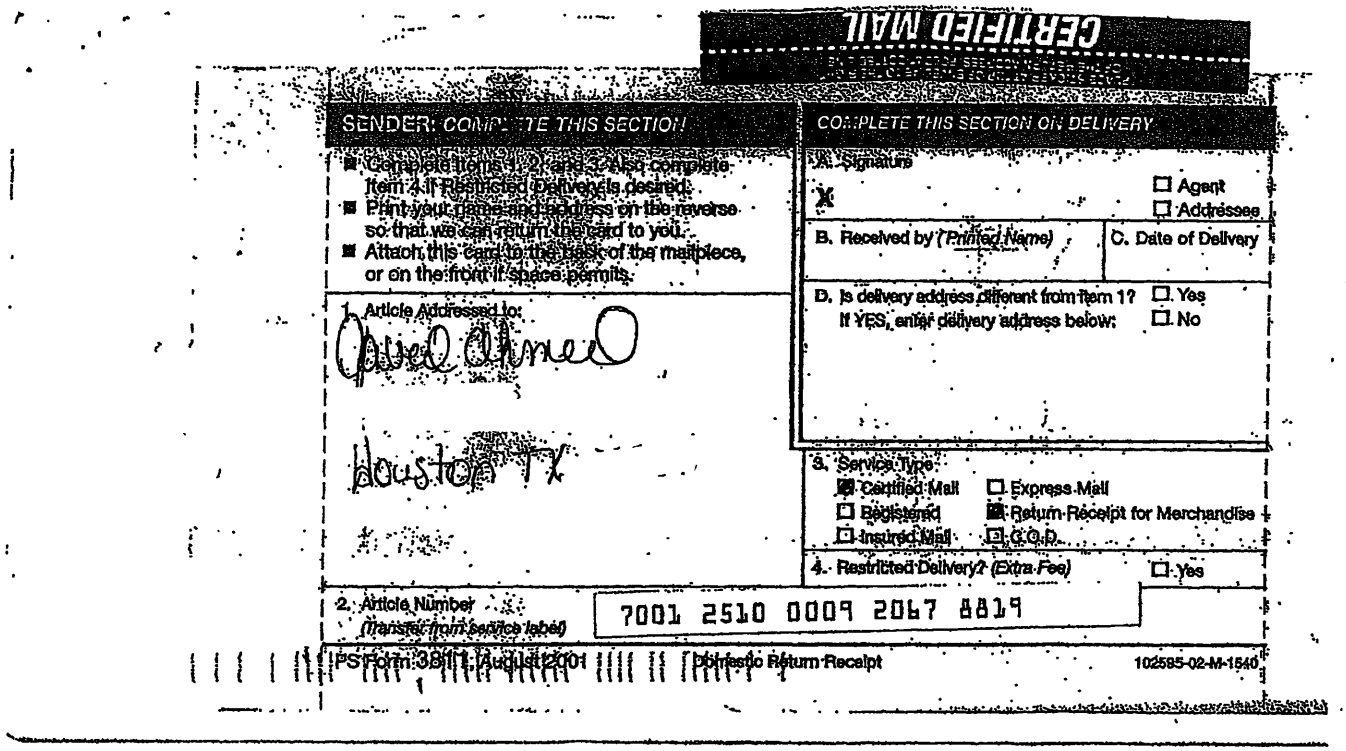
Javed Ahmed

Houston, TX

RETURN TO SENDER
NO FORWARD ORDER ON FILE
UNABLE TO FORWARD
RETURN TO SENDER

FILED
2004 APR 15 AM 9:15
CLERK OF COURT

7701442 2271



CERTIFIED MAIL

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Qwest Qtwest

Houston TX

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X ☐ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☒ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number (Transfer from service label) 7001 2510 0009 2067 8819

PS Form 3811, August 2001 Domestic Return Receipt 102595-02-M-1540

EXHIBIT 10

03-4609 9.S 14

COPY

Liz Garland
D.C.C.P.&G.S.
Anita Knoepfle 100
Deputy Clerk

AFFIDAVIT OF PUBLICATION

STATE OF TEXAS:

COUNTY OF HARRIS:

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on the day personally appeared: GAIL FEAGINS, who after being duly sworn, says that she is the SUPERVISOR-ACCOUNTS RECEIVABLE at the HOUSTON CHRONICLE, a daily newspaper published in Harris County, Texas, and that the publication, of which the annexed herein, or attached to, is a true and correct copy, was published to-wit:

ROBERT ROSEN 18075161 45692021
RAN A LEGAL NOTICE
SIZE BEING: 1 X 51 L

product	date	class	page
tw	Feb 19 2004	1245.0	P_wz10_O18
tw	Feb 26 2004	1245.0	P_wz10_O16
tw	Mar 4 2004	1245.0	P_wz10_O20

2004 APR 15 AM 9:17

COUNTY CLERK
HARRIS COUNTY, TEXAS

BY _____ DEPUTY

Gail Feagins
GAIL FEAGINS
SUPERVISOR - ACCOUNTS RECEIVABLE

Sworn and subscribed to before me, this the 9th Day of March A.D. 2004

Penny Stow
Notary Public in and for the State of Texas

PENNY STOW
NOTARY PUBLIC
STATE OF TEXAS
My Commission Expires Feb. 4, 2006

Case No. 03-DR-10-3609; Tommie Rae Hynie, a/k/a Tommie Rae Brown, Plaintiff, vs. Javed Ahmed, Defendant Summons to the Defendant: You are hereby summoned and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting St., #202, P.O.Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint. The Rosen Law Firm, LLC, Robert N. Rosen, 134 Meeting St., #202, Charleston, SC 29402 (843)377-1700 office; (843)377-1709 Fax Attorney for the Plaintiff Charleston, SC December 15, 2003. Notice of Hearing: Please note that a final hearing to annul the marriage is scheduled to be heard on March 26, 2004 at 9:30 A.M. in the Charleston County Family Court located at 100 Broad Street in Charleston, SC 29401.

EXHIBIT 11

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT OF THE
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) CASE # 03-DR-10-4609

2004 MAR 24 AM 9:26

JULIE J. ARMSTRONG
CLERK OF COURT

BY

Tommie Rae Hynie)
PLAINTIFF)
)
Javed Ahmed)
DEFENDANT)

ORDER OF CONTINUANCE

The above matter was set for a final hearing on March 26, 2004. This matter is being continued in that:

( ) Plaintiff/Defendant did not appear.

( ) Plaintiff/Defendant was not served.

( ) Plaintiff/Defendant was not served with Notice of Hearing.

( ) Attorney for Plaintiff/Defendant scheduled to be in another Court.

( ) Guardian ad Litem scheduled in another Court.

( ) Plaintiff/Defendant/Attorney was sick.

( ) Request of attorneys, consent order is circulating for signatures.

(x) Other: The Judge is not available.

IT IS THEREFORE ORDERED, that the above case be and the same is hereby continued until the 15th day of APRIL at 9:00 A.M.

AND, IT IS SO ORDERED.

Charleston, SC
March 22, 2004

PRESIDING JUDGE,
NINTH JUDICIAL CIRCUIT

9.5 2004 14
D.C.C.P.&G.S.
Anita Knepple
Deputy Clerk

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
By
DEPUTY CLERK

EXHIBIT 12

STATE OF SOUTH CAROLINA)
FILED
COUNTY OF CHARLESTON) 2004 APR 15 AM 9:34
IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 03-DR-10-4609

COPY FILED 9.5.2014
Liz Godard
C.C.C.P.&G.S.
Anita Knoepke
Deputy Clerk

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FINAL ORDER

HEARING DATE:	**April 15, 2004**
JUDGE:	**Honorable F. P. Segars-Andrews**
ATTORNEY FOR PLAINTIFF:	**Robert N. Rosen, Esquire**
	Donald B. Clark, Esquire
ATTORNEY FOR DEFENDANT:	**N/A**
COURT REPORTER:	

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action.

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as Houston, Texas.

This Court issued an Order of Publication on February 3, 2004. This Court found that the Plaintiff made a diligent effort to locate the Defendant, and it appeared to the satisfaction of the

JPSA 10/4

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has been properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.

6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

ORDERED, ADJUDGED AND DECREED that the Plaintiff is entitled to an order and judgment annulling the marriage between the Plaintiff and the Defendant solemnized on February 17, 1997. It is further

ORDERED, ADJUDGED AND DECREED that the marriage between Tommy Rae Hynie a/k/a Tommie Rae Brown and Javed Ahmed is annulled. It is further,

ORDERED, ADJUDGED AND DECREED that the marriage between Plaintiff and Defendant be, and is hereby, declared to be wholly null and void ab initio, and the parties are, and each of them is, freed from the obligations of such marriage.

AND IT IS SO ORDERED!

F. P. Segars-Andrews

F. P. SEGARS-ANDREWS
JUDGE OF THE FAMILY COURT
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina
April 15, 2004

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, FAMILY COURT
By J. Huck
DEPUTY CLERK

1296

EXHIBIT 13 and 14

Copy mailed

Liz Godard C.C.P.&G.S.

Anita Knoepke Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE FAMILY COURT
03-DR-10-4609

ORIGINAL

TOMMIE RAE HYNIE A/K/A BROWN)
PLAINTIFF)
vs.)
)
JAVED AHMED)
DEFENDANT)
)

TRANSCRIPT OF RECORD

APRIL 15, 2004
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE F.P. SEGARS-ANDREWS

A P P E A R A N C E S:

ROBERT N. ROSEN, ESQ.
ATTORNEY FOR PLAINTIFF

SHARON D. JONES,
FAMILY COURT REPORTER

INDEX

TOMMIE RAE BROWN
By Mr. Rosen 4

Stip Exhibits 000034

* * * APRIL 15, 2004 * * *

THE COURT: You may proceed.

MR. ROSEN: This is the matter of Tommie Rae Hynie A/K/A Brown, Plaintiff vs. Javed Ahmed. Case number 03-DR-10-4609. I represent the Plaintiff.

The Defendant has been served by publication. And I have an order -- we have an Order of Publication. And we have an affidavit, which I believe my paralegal has taken to be filed. But in any event, when she returns, we will get the affidavit straight.

The court previously issued an Order of Publication, which is in the file, because the Defendant could not be located. And that Order was signed by Judge Cate on February 3, 2004, ordering that the Defendant be given notice of this proceeding by publishing the Summons once a week for three weeks in the Houston Chronicle because he last lived -- the last known address was in Houston.

We filed an affidavit showing his last known address. And then the court -- this matter actually was supposed to come before the court on March 26th, but for some reason the court continued it on its own motion. I don't know, maybe a judge wasn't available. So, it was continued until April 15th, which is today. And this

notice was sent to the Defendant by certified mail, return receipt requested. And that will appear by affidavit when Ms. Jones -- it might be that she is in the clerk's office filing that. But I will present that to the court before this proceeding is over.

We're here today. The Defendant has not appeared. The Defendant, I guess, arguably, is in default but we're not moving to put him in default. He has notice of this -- he has been served by publication as will appear by affidavit. He was given notice of this hearing personal to Rule 17, proper notice, as will appear by affidavit. So, we're here to proceed. Since he's not here, I am ready to proceed. I have one witness.

THE COURT: Okay. Call your witness.

MR. ROSEN: And I will call her right now. I call Tommie Rae Brown to the stand.

TOMMIE RAE BROWN, having been first duly sworn, testified as follows:

THE COURT: Be seated.

DIRECT EXAMINATION BY MR. ROSEN:

Q Would you state your name, please?

A Tommie Rae Brown.

Q Brown. Now, Ms. Brown, how old are you?

A I am 33 years old.

Q And where do you reside?

A I reside in Augusta, Georgia, Beach Island, South Carolina.

Q You are a South Carolina resident?

A Yes, I am.

Q And where in South Carolina do you reside?

A In Beach Island.

Q All right. Is that in the State of South Carolina?

A Yes, it is.

Q Okay. And you have resided in that -- in what county is that?

A Beach Island is in Aiken County.

Q Aiken County. And you have resided there for how many years?

A Actually about seven -- about six years.

Q Six years. And you pay South Carolina -- you file a South Carolina tax return?

A Yes, sir, I do.

Q You have a South Carolina driver's license?

A Yes, I do.

Q You are a resident and citizen of South Carolina?

A Yes, I am.

Q And you have been for more than one year prior to your bringing this action in this court?

A Yes, I am.

Q Now, are you married to Mr. James Brown?

A Yes, I am.

Q And do y'all have a child?

A Yes, we do.

Q What is his name?

A J B

Q Okay. And how long have you been married to him?

A For three years, coming on December, it will be three years.

Q All right. Now, at some point in the last few years, Mr. Brown or one of his friends or associates told you that they thought you were married to somebody else, is that right?

A Right.

Q And it turned out that you were previously married to a Mr. Javed Ahmed, J-a-v-e-d A-h-m-e-d, correct?

A Correct.

Q And would you tell the court when you met Mr. Ahmed?

A I met him about seven or eight years ago, maybe, in Texas -- Houston, Texas at a coffee shop that I worked at called --

COURT REPORTER: Called what?

A Coffee Shop --

COURT REPORTER: No, what's the name.

A Dietrichs -- D-i-e-t-r-i-c-h-s, Dietrichs Coffee House. And I used to sing and serve coffee there and that's where I met Mr. Ahmed.

Q Okay. And he was an immigrant from Pakistan, is that correct?

A Yes.

Q Now, he asked you to marry him and you agreed to marry him, is that correct?

A Yes, I did.

Q And that was on February 17, 1997?

A Yes.

Q Y'all were married in Harris County, Texas, which is the county that Houston is in?

A Right.

Q Okay. Now, when you married him, did you know anything much about him?

A I knew that he was very religious. I knew that he didn't want to have sex before marriage and I thought that was very nice. I knew that he liked my music. And he -- he seemed to like me.

Q So, you entered into the marriage in good faith?

A Yes, I did.

Q Believing that you were going to be married and live with him, is that correct?

A Uh-huh.

Q All right. You went to a -- you got a marriage license?

A Yes.

Q And you were married to him, is that correct?

A Yes, I was.

Q And then what happened next?

A Then I went to go get my things. I lived in the Westmoreland district at the time, so I had to drive and go get my things. He dropped me off at my house. And so I told him I was going to get my things together. I packed them. At that time -- the guitar player I was playing with at the time, helped me drive my things. I had no car. I had to move. Helped me drive my things to his house. I showed up at his house with my things in the back of the truck and he told me I could not come in his house. That he had already wives in Pakistan and that he just needed to stay in the country.

At that point I was very upset. And I went directly to -- after three days, I went to the same person that we went to in the first place, this -- I guess he was an immigration lawyer. I didn't know what kind of lawyer he was when I met him. I just knew he was a lawyer that

Stip Exhibits 000040

Mr. Ahmed had gotten for me. I told him I was very upset. I told him I was going to sue him and I was going to raise all kind of cain if you don't get this -- I could go to jail. This guy just wanted to get in the country. And you have to do something about this. So, he made me give him $350 and he made me sign this piece of paper. And he said, you're fine. You don't have to worry about it and you can just go now. Okay. Great. And I moved. I went straight back to Las Vegas from there. And we stopped at my mother's on the way home.

Q And this is your mother in the courtroom with you today?

A Yes.

Q Now, let's go back over this. You got a marriage license in Houston?

A Uh-huh.

Q And you were married by -- by somebody?

A Just -- there was just a guy standing there.

Q Okay.

A And then he had a -- that was it.

Q All right. But when you went to move in with Mr. Ahmed, he refused to live with you?

A Oh, he wouldn't even let me in his house.

Q Okay.

A He said I wasn't Muslin, no, no. You don't

understand, no. He wouldn't even let me in his house.

Q So, you never spent one night with him?

A Not one night. I never stepped foot on his --

Q You never had sexual relations with him --

A Never did.

Q You never had sexual intercourse?

A Never did.

Q You never had sexual activity or relationships with him of any kind?

A Absolutely not.

Q And he told you that he already had, what, two or three or four wives?

A He said he had three wives in Pakistan. I could not come in his house because I was not a Muslim. And he just wanted to get in the country.

Q All right. So, after you married him, you learned that he wanted to marry you, essentially, so he could become a U.S. citizen?

A Yeah, yeah. And then I found out that -- my friend said that was illegal. I can go to jail for this.

Q Right. So, you went to see the -- his immigration lawyer?

A Whoever. I didn't know --

Q Or some lawyer?

A He was the only guy I knew to go to.

Q And you demanded that this be undone?
A Yes. Yes.
Q And this lawyer assured you that the marriage would be annulled or voided in some way?
A Yes, sir.
Q And did you believe that that had happened?
A Yes, I did. Nobody told me I had to go to court to get a divorce that's for sure. I didn't even think it was a real marriage, so I just thought -- that's what I paid $350 for.
Q All right. And this lawyer has since disappeared?
A Yes.
Q We tried to locate him and we could not locate him?
A Find him anywhere, yes.
Q So, essentially, this lawyer and/or Mr. Ahmed perpetrated a fraud on you by entering into what appeared to be a marriage in order for him to become a United States citizen?
A Apparently.
Q That's what you believe happened?
A I think so.
Q All right. But you did not participate in that -- you entered into this in good faith?

Stip Exhibits 000043

A No. I entered in it in good faith. And I'm really --

Q Okay.

A I'm embarrassed about it.

Q All right. And you never lived with this man, you never cohabitated?

A No.

Q And you never consummated the marriage?

A No, sir.

Q And have you seen him since?

A No, not since the very day I left his door step with my stuff in the back of the truck.

Q So, the last time you saw Mr. Ahmed would have been the day of the wedding or the day after?

A Three days after --

Q Three days after --

A No. No. It was the day of the wedding was the last time I saw him when he dropped me off at the house. And then I dropped off my stuff. Three days after, I went to the -- to the lawyer -- to the lawyer guy. And that was it.

Q Okay. So, you have not seen Mr. Ahmed since February 17 --

A Yeah. Since I packed my stuff after we got married. That was it.

Stip Exhibits 000044

Q You have not seen him since February 17th of 1997?

A That's right.

Q And you're not involved in some type of conspiracy or collusion with Mr. Ahmed to tell this court something that is not true?

A No, absolutely not.

Q You haven't spoken to him since then?

A No.

Q Now, with regard to Mr. Brown, when you married Mr. Brown you believed yourself to be unmarried?

A Yes, I did.

Q Is that correct?

A Absolutely.

Q And with regard to this proceeding, Mr. Brown is aware of this proceeding?

A Absolutely. He paid for this proceeding.

Q He paid the retainer that you brought to me, is that right?

A Yes, he did.

Q And I have sent a copy of these pleadings to his attorney in Aiken, South Carolina?

A Absolutely.

Q So, you're not bringing this proceeding to defraud him or to do anything to him?

Stip Exhibits 000045

A No.
Q You simply want to get your life straight?
A Yes, very much.
Q Right. You would like to have this sham marriage declared to be void?
A Yes.
Q With Mr. Ahmed, is that right?
A Yes.
Q And then you would like to see where you are going to go with Mr. Brown. Hopefully you will remain married and you have a child together and you will be able to work things out?
A I hope so.
Q That's your intent today anyway?
A Yes, it is.
Q So, you're asking the court to annul this marriage to the Defendant, is that right?
A Please.
Q Because he was married to another woman or women, correct?
A Correct.
Q That's what he said?
A Yeah.
Q That he perpetrated a fraud on you?
A Uh-huh.

Stip Exhibits 000046

Q That you never consummated your marriage, never consummated your marriage --

A Never.

Q You never cohabitated?

A Never.

Q You never had sexual relations?

A No.

MR. ROSEN: Your Honor, bear with me one second.

BY MR. ROSEN:

Q Just one last question. Mr. Ahmed's last known address to your recollection was?

A Ella Boulevard.

Q

Houston, Texas, is that correct?

A Yes. That's the place I wasn't allowed in.

Q Okay. But that's the last place you knew that he lived?

A That's the only place I knew he lived.

Q Okay. And then you hired an investigator for this case, and he found another address on

which is where his Texas driver's license had him listed, correct?

A I really don't know anything about that.

Q But you hired the investigator?

A Yes.

Stip Exhibits 000047

MR. ROSEN: Okay. Your Honor, I don't have any further questions of this witness.

THE COURT: You may step down. Anything further?

MR. ROSEN: Your Honor, at this time, I want to hand up to the court the Affidavit of Publication -- was the original in the Clerks's office? I'm sorry. The original is right here. This is the original Affidavit of Publication showing that the properly served person to the order -- published person to the Order of Publication. This is the Affidavit of Marcia Jones, showing that Mr. Ahmed, that we wrote to him in accordance with Rule 17, certified notice of this hearing. April 15th at 9:00, certified mail, return receipt requested.

And, Your Honor, that's all we have. I have prepared a proposed final order for Your Honor's review. And that is all we have.

THE COURT: Okay. The court finds that this marriage is void ab initio. Good luck to you, ma'am.

MR. ROSEN: Your Honor, thank you very much.

(Whereupon, the hearing adjourned.)

Stip Exhibits 000048

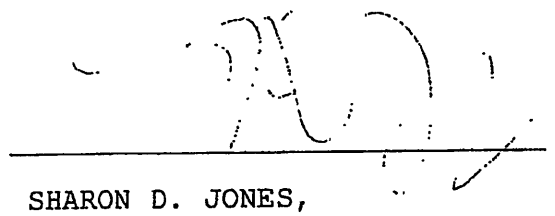
CERTIFICATE OF REPORTER

I, SHARON D. JONES, OFFICIAL COURT REPORTER FOR THE 9TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE FAMILY COURT FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 15TH DAY OF APRIL, 2004.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

ORIGINAL

JANUARY 22, 2008



SHARON D. JONES,
FAMILY COURT REPORTER
COMMISSION EXPIRES: 3/20/12

Stip Exhibits 000049

ROSEN LAW FIRM, LLC
ATTORNEYS AND COUNSELORS AT LAW

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P.O. BOX 1510
CHARLESTON, SOUTH CAROLINA 29401
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COPY
FILED 9:53 AM 14
Liz Godard
C.C.P.&G.S.
Anita Knoepfle 100
Deputy Clerk

February 5, 2004

Via Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
03-DR-10-4609

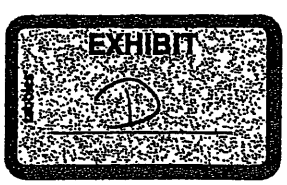
Dear Mr. Huff:

Enclosed you will find a copy of the Summons and Complaint with regard to the above-referenced matter.

Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

:mfj
xc: Tommie Brown



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY

IN THE FAMILY COURT
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 03-DR-10-4609

SUMMONS

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to said Complaint on the subscribers at their offices, The Rosen Law Firm, 134 Meeting Street, Suite 202, Post Office Box 1510, Charleston, South Carolina 29402, or to otherwise appear and defend, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint, or otherwise to appear and defend, within the time aforesaid, the Plaintiff in this action will obtain a judgment by default against you for the relief demanded in the Complaint.

THE ROSEN LAW FIRM, LLC

By:_____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

STATE OF SOUTH CAROLINA)
) IN THE FAMILY COURT
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 03-DR-10-4609

FILED
2003 DEC 15 PM 4:34
JULIE ARMSTRONG
CLERK OF COURT
BY D

TOMMIE RAE HYNIE, a/k/a
TOMMIE RAE BROWN,

Plaintiff,

-vs-

JAVED AHMED,

Defendant.

COMPLAINT

TO: THE DEFENDANT NAMED ABOVE:

The Plaintiff above named would respectfully show unto this Honorable Court, as follows:

1. The Plaintiff is a citizen and resident of South Carolina, and has so resided in said state for at least one (1) year prior to the commencement of this action.
2. The Plaintiff is informed, and believes that the Defendant is a citizen and resident of Texas.
3. The Plaintiff is informed and believes that jurisdiction is proper in the Family Court pursuant to §20-7-420(6) and §20-1-530 of the South Carolina Code.
4. The Plaintiff alleges that in February 1997, the Defendant was an immigrant from Pakistan, who unbeknownst to Plaintiff, wanted to marry Plaintiff so that he could become a United States citizen.
5. On February 17, 1997, the Plaintiff and Defendant married in Harris County, Texas.
6. Thereafter, the Defendant refused to live with the Plaintiff and Plaintiff returned to her domicile. The Plaintiff alleges she never saw or heard from the Defendant again.
7. The Plaintiff alleges that the parties never lived together as husband and wife and never engaged in any sexual contact or activity whatsoever, therefore failing to consummate their marriage.
8. Plaintiff is informed and believes that prior to their marriage, the Defendant had three or more wives to whom he was lawfully married under Pakistani law when the parties married on February 17, 1997.
9. Plaintiff alleges there has been no collusion between the parties.
10. The Plaintiff now seeks to have this marriage annulled as the Defendant was already married to another woman, the Defendant perpetrated a fraud on the Plaintiff, and the parties did not consummate their purported marriage, nor did they live together as husband and wife, all of which constitute grounds for annulment pursuant to S.C. Code Ann. Section 20-1-530 (Lawyers Co-op 1976).

Stip Exhibits 000052

WHEREFORE, Plaintiff prays that this Honorable Court issue its Order as follows:

1. Granting the Plaintiff an annulment of the marriage between the parties; and
2. For any such other relief this Court deems just and proper.

THE ROSEN LAW FIRM, LLC

By: _____
ROBERT N. ROSEN
134 Meeting Street, Suite 200
Charleston, SC 29402
(843) 377-1700- Office
(843) 377-1707-Facsimile
ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
December 15, 2003

****
*** TX REPORT ***
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WWW.ROSEN-LAWFIRM.COM

February 5, 2004

Via Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
03-DR-10-4609

Dear Mr. Huff:

Enclosed you will find a copy of the Summons and Complaint with regard to the above-referenced matter.

Sincerely,

Marcia F. Jones
Paralegal to Robert N. Rosen

:mfj
xc: Tommie Brown

ROSEN LAW FIRM, LLC

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WWW.ROSEN-LAWFIRM.COM

April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

Now that this issue is resolved, I am hopeful this couple can reconcile their differences. If not, I would suggest mediation with Mark Andrews in Mr. Pleasant, South Carolina. I am sure that if you investigate Mr. Andrews, you will find that he is the leading domestic mediator in South Carolina.

Please advise if this suits your client.

Sincerely,

Robert N. Rosen

:mfj
xc: Mrs. James Brown

Stip Exhibits 000055

FILED
2004 APR 15 AM 9:34
JULIE J. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 03-DR-10-4609
TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN,)	
Plaintiff,)	
-vs-)	FINAL ORDER
JAVED AHMED,)	
Defendant.)	

HEARING DATE:	**April 15, 2004**
JUDGE:	**Honorable F. P. Segars-Andrews**
ATTORNEY FOR PLAINTIFF:	**Robert N. Rosen, Esquire** **Donald B. Clark, Esquire**
ATTORNEY FOR DEFENDANT:	**N/A**
COURT REPORTER:	

This matter comes before the Court for a final hearing on April 15, 2004.

Present before the Court were the Plaintiff, Tommie Rae Brown, and her counsel Robert N. Rosen, Esquire, of the Rosen Law Firm, and Donald B. Clark, Esquire, of the Donald B. Clark Law Firm.

This matter was commenced by the filing of a Summons and Complaint by the Plaintiff to annul her marriage to the Defendant, Javed Ahmed.

The Plaintiff is a citizen and resident of the State of South Carolina and has resided in South Carolina for more than one year prior to the commencement of this action..

The Defendant, at the time of the marriage of the parties, was a resident of the State of Texas, and his last known address was in Houston, Texas. After the filing of the Summons and Complaint, the Defendant could not be located. The Plaintiff retained the services of a private investigator who attempted to locate the Defendant at his last known address. The Plaintiff testified that the last known address she had for the Defendant was Houston, Texas. The private investigator found that the Defendant's Texas driver's license listed his address as Houston, Texas.

This Court issued an Order of Publication on February 3, 2004. This Court found that the Plaintiff made a diligent effort to locate the Defendant, and it appeared to the satisfaction of the

JSA 104

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has been properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.

6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

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*** TX REPORT ***
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April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

Now that this issue is resolved, I am hopeful this couple can reconcile their differences. If not, I would suggest mediation with Mark Andrews in Mr. Pleasant, South Carolina. I am sure that if you investigate Mr. Andrews, you will find that he is the leading domestic mediator in South Carolina.

Please advise if this suits your client.

Sincerely,

Robert N. Rosen

Stip Exhibits 000059

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April 14, 2004

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P. O. Box 6488
N. Augusta, SC 29841

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Case No.: 03-DR-10-4609

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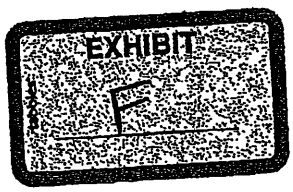
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Sincerely,

Robert N. Rosen

:mfj
xc: Mrs. James Brown



FILED
2004 APR 15 AM 9:34
JEAN H. ARMSTRONG
CLERK OF COURT
BY

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)	CASE NO. 03-DR-10-4609
TOMMIE RAE HYNIE, a/k/a TOMMIE RAE BROWN,)	
Plaintiff,)	
-vs-)	FINAL ORDER
JAVED AHMED,)	
Defendant.)	

HEARING DATE:	April 15, 2004
JUDGE:	Honorable F. P. Segars-Andrews
ATTORNEY FOR PLAINTIFF:	Robert N. Rosen, Esquire Donald B. Clark, Esquire
ATTORNEY FOR DEFENDANT:	N/A
COURT REPORTER:	

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JPSA 104

Court that the current address or whereabouts of the Defendant were unknown although his last known address was in Houston, Texas. The Court therefore ordered service could be had by publication pursuant to §15-9-710 and §15-9-740, SC Code Ann., and that the Summons would be published once a week for a total of three weeks in the *Houston Chronicle*, a newspaper of general circulation in the area of Houston, Texas.

An Affidavit of Publication signed by the Supervisor/Accounts Receivable of the *Houston Chronicle* was filed with this Court. The Court finds that the Defendant has been properly served by publication pursuant to South Carolina law.

This matter was originally set to be heard on March 26, 2004, but the case was continued by Order of the Court. The Defendant was given written notice of the hearing by regular mail and by certified mail, return receipt requested as appears from the affidavit of Marcia F. Jones. The Defendant was therefore properly notified of the final hearing pursuant to Rule 17 of the South Carolina Rules of Family Court.

FINDINGS OF FACT

The Court finds as follows:

1. Plaintiff is a citizen and resident of the State of South Carolina and has resided in the State of South Carolina for a period in excess of one year prior to the commencement of this action.

2. Plaintiff married Defendant, Javed Ahmed, on February 17, 1997 in Harris County, Texas. Thereafter Defendant refused to live with Plaintiff. Plaintiff never saw nor heard from Defendant again. Plaintiff never lived with the Defendant. The parties never lived together as husband and wife. The parties never engaged in sexual intercourse, sexual conduct or sexual activity of any kind and, therefore, failed to consummate their marriage.

3. No children were born of this marriage between the parties.

4. Plaintiff testified that she later learned that Defendant, a Pakistani immigrant, wanted to marry Plaintiff so that he could become a United States citizen. Plaintiff also later learned that Defendant had three or more wives to whom he was married under Pakistani law when the parties married on February 17, 1997.

5. The Court finds there has been no contact between the parties since shortly after February 17, 1997, and therefore there is no collusion between these parties.

6. The marriage between the Plaintiff and the Defendant was contracted by Plaintiff in good faith and without any knowledge of the Defendant's previous marriages or fraudulent intentions.

7. The Court finds that the Plaintiff is entitled to an annulment for the following reasons: (1) Defendant was already married to another woman or other women and therefore did not have the capacity to marry the Plaintiff; (2) Defendant perpetrated a fraud upon the Plaintiff in that she intended in good faith to marry Defendant but Defendant had no intention of marrying her and consummating a marriage; and (3) the parties did not consummate their marriage nor did they live together as husband and wife.

8. This Court finds that the Plaintiff is therefore entitled to an annulment of her marriage to Defendant, Javed Ahmed.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear and determine actions to determine the validity of marriages and to hear and determine actions for the annulment of marriage. §20-7-420(5) and (6), SC Code Ann.

2. This Court has jurisdiction to grant an annulment to the Plaintiff as she is domiciled in this state. Foster v. Nordman, 137 S.E.2d 600 (1964).

3. The Court concludes that the uncontradicted testimony shows that Plaintiff never cohabitated with the Defendant and never engaged in sexual intercourse with him and therefore, the marriage can be annulled as it was never consummated.

4. The Court concludes that Defendant was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff.

5. The Court concludes that Defendant represented to Plaintiff that he wished to marry her, but in fact he married her for a fraudulent purpose in an effort to obtain United States citizenship. A marriage which is procured by fraudulent means may be annulled in this state. Jaker v. Jaker, 102 S.E. 337 (1919).

6. The Court concludes that it has jurisdiction of the subject matter and of the parties.

7. The Court concludes that it has jurisdiction of the Defendant for the purposes of this proceeding and that the Defendant had been properly served and notified of this hearing. It is therefore,

****
*** TX REPORT ***
****

TRANSMISSION OK

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RECIPIENT ADDRESS	18034424422
DESTINATION ID	
ST. TIME	04/16 14:57
TIME USE	01'27
PAGES SENT	5
RESULT	OK

ROSEN LAW FIRM, LLC

ATTORNEYS AND COUNSELORS AT LAW

154 MEETING STREET, SUITE 202
P.O. BOX 1510 (29402)
CHARLESTON, SOUTH CAROLINA 29401
PHONE (843) 577-1700
FAX (843) 577-1709
WWW.ROSEN-LAWFIRM.COM

April 16, 2004

Via Regular Mail & Facsimile 803-442-4422
James B. Huff, Esquire
P. O. Box 6488
N. Augusta, SC 29841

RE: Brown v. Ahmed
Case No.: 03-DR-10-4609

Dear Jim:

I now enclose a certified copy of the Final Order in the above-captioned case. As you can see, the Family Court has granted the annulment, which ought to come as good news to Mr. Brown.

Now that this issue is resolved, I am hopeful this couple can reconcile their differences. If not, I would suggest mediation with Mark Andrews in Mr. Pleasant, South Carolina. I am sure that if you investigate Mr. Andrews, you will find that he is the leading domestic mediator in South Carolina.

Please advise if this suits your client.

Sincerely,

Robert N. R

EXHIBIT 15

Copy 9.5.14
Liz Godard C.C.C.P.&G.S.
Anita Knoepfle DC Deputy Clerk

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
)	
JAMES JOE BROWN, JR.,)	CASE NUMBER: 04-DR-02-157
Plaintiff)	
vs.)	SUMMONS
)	
TOMMIE RAE HYNE AHMED BROWN,)	
Defendant.)	

TO: THE DEFENDANT NAMED HEREINABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 1417 Georgia Avenue, North Augusta, South Carolina within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

James B. Huff
Attorney for Plaintiff
P.O. Box 6488
North Augusta, SC 29841
(803) 278-2889 (Office)
(803) 442-4422 (Fax)
SC Bar # 2769

ALBERT H. DALLAS
Attorney for Plaintiff
P. O. Box 1150
Thompson, GA 30824
(706) 722-2331
GA Bar # 203500

North Augusta, South Carolina
January 29, 2004

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

JAN 2 9 2004

Liz Godard
C.C.C.P. & G.S., Aiken County, S.C.
Melony S. Bruckner MB
Deputy Clerk

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
JAMES JOE BROWN, JR., Plaintiff	)	CASE NUMBER: 04-DR-02-157
vs.	)	**COMPLAINT FOR ANNULMENT**
	)	
TOMMIE RAE HYNE AHMED BROWN, Defendant.	)	

Plaintiff alleges that:

1. Plaintiff and Defendant are both citizens and residents of the State of South Carolina, County of Aiken and have so been for more than three (3) months next preceding the commencement of this action.

2. The parties entered into a marital contract on December 14, 2001, in Aiken County, South Carolina.

3. The Plaintiff is informed and believes that he is entitled to an annulment of the marital contract in that the Defendant was never legally divorced from her previous husband prior to entering into the marital contract with the Plaintiff. As such, this marriage is void *ab initio*.

4. That the parties separated on or about January 28, 2004 The Plaintiff is informed and believes that the Defendant should be required to permanently vacate the marital residence which was owned by the Plaintiff prior to the parties' marital contract.

5. That prior to entering into the marital contract the parties entered into a pre nuptial agreement dated November 19, 2001 wherein all matters of equitable division, attorney fees and alimony were resolved.

6. Plaintiff is informed and believes that both parties should be entitled to discovery in

this matter in order to limit the issues to be litigated before the Court.

WHEREFORE, Plaintiff prays that this Court issue its Judgment granting to Plaintiff the relief requested in the Complaint and granting such other and further relief as to the Court may deem just and proper.

JAMES B. HUFF
Attorney for Plaintiff
P. O. Box 6488
1417 Georgia Avenue
North Augusta, SC 29841-6488
(803) 278-2889
SC Bar # 2769

ALBERT H. DALLAS
Attorney for Plaintiff
P. O. Box 1150
Thompson, GA 30824
(706) 722-2331
GA Bar # 203500

North Augusta, South Carolina.
January 29, 2004

EXHIBIT 16

COPY 9.5.14

Liz Godard
C.C.C.P.&G.S.
Anita Knoepke
Deputy Clerk

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)
JAMES JOE BROWN, JR.,)
Plaintiff)
)
vs.)
)
TOMMIE RAE HYNE AHMED BROWN,)
Defendant.)

IN THE FAMILY COURT

SECOND JUDICIAL CIRCUIT

CASE NUMBER: 04-DR-02-57

AMENDED SUMMONS

STATE OF SOUTH CAROLINA, County of Aiken
I, Liz Godard, Clerk of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original document which has been filed in my office this 1st day of MAR 16 2007
C.C.C.P. & G.S. Aiken County, S.C.
Deputy Clerk

TO: THE DEFENDANT NAMED HEREINABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscriber at 1417 Georgia Avenue, North Augusta, South Carolina within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

James B. Huff
Attorney for Plaintiff
P.O. Box 6488
North Augusta, SC 29841
(803) 278-2889 (Office)
(803) 442-4422 (Fax)
SC Bar # 2769

North Augusta, South Carolina
May 5, 2004

FILED
AIKEN COUNTY
MAY - 6 2004
1:55pm
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE FAMILY COURT
	)	
COUNTY OF AIKEN	)	SECOND JUDICIAL CIRCUIT
	)	
JAMES JOE BROWN, JR., Plaintiff	)	CASE NUMBER: 04-DR-02
vs.	)	AMENDED COMPLAINT FOR ANNULMENT
	)	
TOMMIE RAE HYNE AHMED BROWN, Defendant.	)	

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, the undersigned, Clerk of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original document which have been filed in my office this
MAR 16 2007
Deputy Clerk

FILED
AIKEN COUNTY
MAR 0 6 2004
4:55p
CLERK OF COURT

Plaintiff alleges that:

1. Plaintiff and Defendant are both citizens and residents of the State of South Carolina, County of Aiken and have so been for more than three (3) months next preceding the commencement of this action.

2. The parties obtained a marriage license in Aiken County on December 10, 2001. In obtaining this license the Defendant informed the Probate Court and the Plaintiff that this was her first marriage.(A copy of this marriage license is attached hereto and incorporated by reference thereto).

3. Prior to obtaining this marriage license the Defendant did not inform the Plaintiff that she had been married before or that she was still married to Mr. Javed Ahmed.

4. The parties conducted a marriage ceremony on December 14, 2001, in Aiken County, South Carolina.

5. At the time of the marriage ceremony on December 14, 2001 in Aiken County, South Carolina, Defendant was still legally married to Mr. Javed Ahmed and by way of such legal impediment was legally barred from entering into a marriage to the Plaintiff pursuant to §20-1-80, South Carolina Code of Laws, as amended.

6. Subsequent to their marriage ceremony, Plaintiff learned that Defendant had been married and was still married to Mr. Javed Ahmed.

7.On December 15, 2003 the Defendant filed an annulment action against Mr. Ahmed in Charleston County, South Carolina in case number 03-DR-10-4609.(A copy of which is attached hereto and incorporated by reference).

8. The Charleston County Family Court made Findings of Facts and Conclusions of Law that the Defendant was in fact married to Mr. Ahmed on February 17,1997.

9. The Charleston Family Court granted the Defendant an annulment on April 15, 2004.(A copy of this Order is attached hereto and incorporated by reference).

10. Defendant, in that action, has not filed any appeal from the Family Court Order and as such, the Findings of Facts of the Charleston Family Courts are binding on this Court.

11. Pursuant to the Order from the Charleston Family Court, Defendant is collaterally and judicially estopped from denying the allegations in this action.

12. Plaintiff is entitled to an annulment from the Defendant.

13. Plaintiff is informed and believes the Defendant should be responsible for any reasonable and necessary attorneys fees and costs in the bringing of this action. However, should Defendant not contest Plaintiff's request for an annulment, Plaintiff would withdraw his request for attorney fees and costs.

WHEREFORE, Plaintiff prays that this Court issue its Judgment granting to Plaintiff the relief requested in the Complaint and granting such other and further relief as to the Court may deem just and proper.

JAMES B. HUFF
Attorney for Plaintiff
P. O. Box 6488
1477 Georgia Avenue
North Augusta, SC 29841-6488
(803) 278-2889
SC Bar # 2769

North Augusta, South Carolina
May 5, 2004

EXHIBIT 17

Copy 9.S 14

Liz Godard
C.C.C.P.&G.S.

Anita Knoepfel 00
Deputy Clerk

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF AIKEN)
) CASE NO.: 04-DR-02-157
JAMES JOE BROWN, JR.,)
)
Plaintiff,)
)
vs.) ANSWER AND COUNTERCLAIM
)
TOMMIE RAY HYNE AHMED BROWN,)
)
Defendant.)

STATE OF SOUTH CAROLINA, County of Aiken, I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for said County and State, do hereby certify that the foregoing document is a true and correct copy of the original document which have been filed in my office this 1st day of MAR 16 2007

Liz Godard C.C.C.P.&G.S.
Deputy Clerk

FILED
AIKEN COUNTY
JUN 14 2004
8:30am
CLERK OF COURT

Defendant Tommie Rae Hynie Brown, incorrectly identified in the caption herein as Tommie Ray Hyne Ahmed Brown, answering the Plaintiff's Amended Complaint For Annulment, alleges and states as follows:

1. Defendant denies each and every allegation of the Amended Complaint not specifically admitted, modified or explained herein and demands strict proof thereof.

2. Defendant admits the allegations of paragraphs 1 and 2.

3. Defendant admits the allegations of paragraph 3 to the extent that she did not inform the Plaintiff that she had previously been married, but states affirmatively that she believed her previous marriage to Javed Ahmed had been annulled.

4. Defendant admits the allegations of paragraph 4.

5. Defendant denies the allegations of paragraph 5 and states affirmatively that the marriage to Javed Ahmed has been judicially declared to be void *ab initio* and consequently never existed and that such determination is *res judicata* and cannot be challenged by the Plaintiff in the present proceeding.

6. Defendant admits that the Plaintiff may have concluded that Defendant was and is married to Javed Ahmed but the Plaintiff's legal conclusions are in error and are denied.

7. Defendant admits the allegations of paragraph 7.

8. Defendant denies the allegations of paragraph 8 and states affirmatively that the Family Court Order referenced in fact declared that the aforesaid marriage to Javed Ahmed was void *ab initio* and consequently never existed in the eyes of the law.

9. Defendant admits the allegations of paragraphs 9 and 10.

10. Defendant denies the allegations of paragraphs 11, 12, and 13.

FURTHER ANSWERING AND BY WAY OF COUNTERCLAIM, THE DEFENDANT ALLEGES:

11. The parties are citizens and residents of Aiken County, South Carolina, and have been so for a period in excess of one (1) year prior to the commencement of this action.

12. The parties are husband and wife, having been married on December 14, 2001 in Aiken, County, South Carolina. One child has been born of this marriage, to wit: J. J. B born on 2001.

13. Although prior to Defendant's marriage to the Plaintiff she had previously gone through a marriage ceremony with one Javed Ahmed, that marriage was procured by a fraud upon Defendant by said Javed Ahmed, the marriage was never consummated, and the marriage was subsequently annulled and declared to be wholly null and void *ab initio* by this Court on April 15, 2004.

14. The parties hereto separated on or about January 28, 2004, due to the Plaintiff's assault on and physical abuse of Defendant. On that date, the Plaintiff physically assaulted Defendant during an altercation in which he picked up a chair and slammed it on Defendant's head, causing her to crash to the floor. Defendant was frightened of the Plaintiff and dialed "911." Law enforcement came to the scene to ensure the safety of Defendant and the parties' minor child. As a result of this incident, the Plaintiff was immediately arrested for Criminal Domestic Violence. While incarcerated, the Plaintiff had certain personal items

belonging to Defendant removed from the marital residence and requested that Defendant and the minor child leave the marital residence.

15. Defendant alleges that the Plaintiff has a violent temper and has assaulted her on numerous occasions in which he has broken and dislocated bones in her body, has caused severe bruising and scrapes, and has caused damage to their marital home and Defendant's personal belongings.

16. The Plaintiff has been both emotionally and verbally abusive to Defendant. Defendant alleges that the Plaintiff has committed acts of violence upon Defendant and also yells, threatens, demeans, and disparages Defendant and calls Defendant and Defendant's mother vulgar names in the presence of their minor child and the Plaintiff's employees. Defendant alleges that the Plaintiff also engages in acts of violence and verbal abuse by yelling and demeaning the parties' minor child.

17. Defendant alleges that the Plaintiff has created an environment which has made it extremely difficult for Defendant to continue to live with the Plaintiff and that he has caused her great emotional upset.

18. Despite the oppressive and abusive atmosphere created by the Plaintiff, Defendant has successfully raised the parties' child and has been the primary parent to their minor son. Defendant states she has taken excellent care of the minor child. Defendant alleges that she is entitled to an order granting her sole custody of the minor child, *pendente lite* and permanently, with reasonable and/or supervised day time visitation to the Plaintiff.

19. The parties are both entertainers and at times travel extensively for business. During the times the parties are working and traveling, the minor child's maternal grandmother, Cleo Douglas, is the nanny and the caretaker of the minor child. Defendant alleges that the Plaintiff has consistently paid Ms. Douglas $1000 per week for the caretaking of the minor

child and an additional $400 per month for clothing and personal needs of the minor child. Defendant alleges that the Plaintiff has not been consistent with these payments since January 2004. Defendant further alleges that the financial needs of the minor child are not being met on a monthly basis.

20. Defendant alleges that until the Spring 2004 tour, she was employed by James Brown Entertainment as the Plaintiff's back up singer. Defendant alleges that during the Spring 2004 tour, the Plaintiff continued to humiliate, harass and verbally abuse Defendant while she was working. Defendant further alleges that the Plaintiff worked himself into a fit of rage, threatened Defendant, and fired her as his back up singer. The Plaintiff abandoned Defendant in Las Vegas without adequate arrangements to return to South Carolina. Defendant's income has drastically been affected by the Plaintiff's volatile and unwarranted behavior.

21. Since the separation of the parties, Defendant and the minor child have resided in Defendant's separate dwelling at Graniteville, South Carolina. Defendant alleges that she is entitled to an Order allowing her the sole use, possession and control of her non-marital residence and contents therein, *pendente lite* and permanently, and that she be granted the right to change the locks and/or install a security system.

22. Defendant is informed and believes that she is entitled to an Order requiring the Plaintiff to be solely responsible for all costs associated with her residence including the note, mortgage, reasonable and necessary maintenance, telephone, cable, gas, electric, security service, internet service, water, pool and yard maintenance, insurances and taxes, retroactively and in the future, *pendente lite* and permanently.

23. Defendant is informed and believes that she is entitled to an award of alimony and/or spousal support, including retroactive alimony and rehabilitative alimony/support from Defendant *pendente lite* and permanently.

24. Defendant is informed and believes that she is entitled to an Order awarding her the sole, exclusive possession, and control of the personal property in her possession, *pendente lite* and permanently.

25. Defendant alleges that the Plaintiff has several items of valuable non-marital items of personal property which are situated at the marital residence. Defendant is informed and believes that she is entitled to an Order requiring the Plaintiff to immediately deliver these and any other items belonging to Defendant and their minor child.

26. Defendant is informed and believes that she is entitled to an Order awarding her the exclusive use and possession of her non-martial Lincoln Mark VIII, which was purchased prior to the parties' marriage, and the 2004 Lincoln Navigator, 2003 BMW Z4, 98 Jaguar and Mercedes SL Convertible, which are four of approximately twelve of the automobiles which were purchased by the parties during their marriage. Defendant alleges she is entitled to an Order requiring the Plaintiff to be solely responsible for the loan payments, notes, insurances, taxes, maintenance, and any other expenses associated with these automobiles, *pendente lite* and permanently.

27. Defendant alleges she is entitled to an Order requiring the Plaintiff to maintain all life insurance policy(ies) on his life for the benefit of the Defendant and the parties' minor child which were in force prior to the parties' separation, and requiring Plaintiff to timely pay all premiums and name Defendant as the beneficiary of said policy(ies) in the amount he was insured prior to the separation; or, in the alternative, to provide $2,000,000 in life insurance on his life for the benefit of the Defendant and the minor child.

28. Defendant alleges that over the course of the parties' marriage, in a fit of rage, the Plaintiff has canceled the health insurance coverage of Defendant and the parties' minor child. Defendant is informed and believes that she is entitled to an Order requiring the Plaintiff to maintain health, medical, and dental insurance on her and the minor child; to timely make all payments and to be solely responsible for any reasonable and necessary medical, health, dental and counseling costs and any other expenses of the parties and/or the minor child which are not covered by insurance. In the event the Plaintiff has canceled any of the policies, the Plaintiff should be required to obtain insurance coverage equivalent to or better than that which existed prior to the parties' separation, and should be responsible for any bills incurred as a result of the Plaintiff's unwarranted cancellation of said policies.

29. Defendant is informed and believes that the Plaintiff has committed acts of adultery with one or more individuals.

30. Defendant is informed and believes that she entitled to a divorce, a *vinculo matrimonii*, on the grounds of physical cruelty and adultery.

31. Defendant is informed and believes that she is entitled to an equitable apportionment of marital property pursuant to the statutory factors set forth in the Equitable Apportionment Act, (retroactively and progressively), *pendente lite* and permanently.

32. Defendant alleges that the Plaintiff's income is over the standard guidelines for child support and therefore, is informed and believes that she is entitled to an award of substantial child support to be paid by the Plaintiff pursuant to the needs of the minor child, including retroactive child support, *pendente lite* and permanently.

33. In addition to child support, Defendant alleges that she is entitled to an Order requiring the Plaintiff to be solely responsible for any and all costs and expenses associated with the minor child including, but not limited to, nanny fees and costs, school tuition, fees,

costs, books, supplies, clothes, school expenses, extra-curricular expenses, allowances, camps and the like, *pendente lite* and permanently.

34. Defendant alleges that the Plaintiff owns several businesses and entities such as James Brown Entertainment and Seventh Decade Entertainment. Defendant alleges that she assisted in the continued success of her husband's businesses and that she contributed to the increase in value of his non-marital assets. In addition, Defendant alleges she was the Plaintiff's makeup artist and hairdresser and acted as his caretaker whenever he became ill. Defendant jointly pledged their personal assets to assist in certain purchases and in the continued success of the Plaintiff's businesses, with the understanding that they would also share in the profitability of the businesses. While Defendant believes the Plaintiff is extremely wealthy, Defendant believes that the Plaintiff may hide or fail to disclose his true income, profits of the Plaintiff and the Plaintiff's businesses and entities, as well as their contractual rights and advantages arising from these businesses and ventures. In particular, Defendant is informed and believes that the Plaintiff will conspire to exclude her from certain profits, including but not limited to such marital property as management fee contracts and other contractual and/or equitable rights arising out of his many businesses and entities.

35. Defendant alleges that on numerous occasions, the Plaintiff has threatened to sell, transfer, deplete or secret the businesses and entities and their assets. Defendant believes that the Plaintiff may deplete, transfer or otherwise dispose of the businesses and entities and/or the parties interest in the business.

36. Defendant is informed and believes that the Plaintiff may be involved in a number of contracts involving and relating to marital property and/or assets, and that there are significant issues involving the apportionment, control and contractual rights concerning the

marital assets and the construction and enforcement of these contracts which relate to and involve marital property and/or assets.

37. Defendant is informed and believes that she is entitled to an Order restraining and enjoining the Plaintiff from encumbering, disposing, conveying, damaging, transferring, moving, altering, secreting, selling, disposing of, exercising contractual options, liquidating, depleting or otherwise reducing the value of the parties' marital assets, or in any way causing the value of James Brown Entertainment, Seventh Decade Entertainment, or his other businesses or any entities, and any assets of the parties to decrease, except for in the normal course of business.

38. Defendant is informed and believes that she is entitled to an Order restraining and enjoining the Plaintiff from exercising any contractual options or enforcing any contractual agreements involving James Brown Entertainment, Seventh Decade Entertainment, or his other businesses or other entities, and any assets of the parties.

39. Defendant is informed and believes that she is entitled to an Order restraining the Plaintiff from interrupting or interfering with Defendant's custodial periods for any reason whatsoever, *pendente lite* and permanently.

40. Defendant is informed and believes that she is entitled to an Order restraining the Plaintiff from denigrating her; embroiling the minor child in the parties' differences; from discussing this litigation with the minor child, or in the earshot of the minor child; from communicating to Defendant through the minor child; from alienating the minor child's affections from his mother; from disparaging or criticizing Defendant to the minor child, in the presence of the minor child, or within an earshot of the minor child; from disparaging, criticizing, denigrating, yelling or saying anything derogatory to the minor child, and from

allowing other persons from doing any of these acts in the presence of or within earshot of the minor child *pendente lite* and permanently.

41. Defendant is informed and believes that she is entitled to an Order restraining the Plaintiff from harassing, abusing, threatening, molesting or interfering with Defendant, her family, friends or witnesses in any way, and from disrupting, entering or attempting to enter her residence, property or place of business *pendente lite* and permanently.

42. Defendant is without any funds to pay her attorneys, accountants, expert witnesses, and costs of this litigation. Defendant is informed and believes that the Court should order the Plaintiff to pay Defendant a significant amount of attorney's fees, costs, expert's fees, investigator's fees and costs of this litigation, *pendente lite* and permanently.

43. Defendant is informed and believes that she is entitled to discovery under the South Carolina Rules of Civil Procedure.

WHEREFORE, Defendant respectfully prays that this Court to dismiss the Complaint herein and to enter an Order granting the following relief:

1. Granting the Defendant a divorce a vinculo matrimonii, on the grounds of physical cruelty and adultery.

2. Granting the Defendant a decree of separate maintenance and support.

3. Granting the Defendant sole custody of the minor child, with visitation granted to the Plaintiff, *pendente lite* and permanently.

4. Granting the Defendant the sole use, possession and control of her home, *pendente lite* and permanently, and that she be granted the right to change the locks and/or install a security system.

5. Requiring Plaintiff to be solely responsible for all costs associated with her residence including the note, mortgage, reasonable and necessary maintenance, telephone, cable, gas, electric, security service, internet service, water, pool and yard maintenance, insurances and taxes, retroactively and in the future, *pendente lite* and permanently.

6. Requiring Plaintiff to pay to Defendant an award of alimony and/or spousal support, including retroactive, permanent, periodic, lump sum reimbursement and rehabilitative alimony and support from Plaintiff *pendente lite* and permanently.

7. Awarding the Defendant the sole, exclusive possession, and control of the personal property in her possession, *pendente lite* and permanently.

8. Requiring the Plaintiff to immediately return any and all items belonging to the Defendant and minor child which are in his possession.

9. Awarding Defendant the exclusive use and possession of the Awarding Defendant the exclusive use and possession of the Mark VIII automobile which she obtained prior to the marriage as well as the Lincoln Navigator, 2003 BMW Z4, 98 Jaguar and Mercedes SL-Convertible; and for the Plaintiff to be solely responsible for any and all loans, reasonable and necessary maintenance, taxes, and insurance on these automobiles, *pendente lite* and permanently.

10. Requiring the Plaintiff to maintain all life insurance policy(ies) on his life for the benefit of the Defendant and the parties' minor child which were in force prior to the parties' separation, and requiring Plaintiff to timely pay all premiums and name Defendant as the beneficiary of said policy(ies) in the amount he was insured prior to the separation; or, in the alternative, to provide $2,000,000 in life insurance on his life for the benefit of the Defendant and the minor child, *pendente lite* and permanently.

11. Requiring Plaintiff to maintain health, medical, and dental insurance on the parties and minor child; to timely make all payments and to be solely responsible for any reasonable and necessary medical, health, dental and counseling costs and/or expenses of the parties and/or the minor child which are not covered by insurance, *pendente lite* and permanently.

12. In the event Plaintiff cancelled said coverage, for an Order Requiring Plaintiff to obtain insurance coverage shall be the same, or better, than it was prior to the separation.

13. Awarding the Defendant child support to be paid by the Plaintiff pursuant to the child support guidelines, including retroactive child support, *pendente lite* and permanently.

14. Requiring the Plaintiff to be solely responsible for any and all costs and expenses associated with the minor child including, but not limited to, school tuition, fees, costs, books, supplies, clothes, school expenses, extra-curricular expenses, allowances, camps and the like, *pendente lite* and permanently.

15. Restraining and enjoining the Plaintiff from encumbering, disposing, conveying, damaging, transferring, moving, altering, secreting, selling, disposing of, exercising contractual options, liquidating, depleting or otherwise reducing the value of the

parties' marital assets, or in any way causing the value of James Brown Entertainment, Seventh Decade Entertainment, or his other businesses or any entities, and any assets of the parties to decrease, except for in the normal course of business, *pendente lite* and permanently.

16. Restraining and enjoining Plaintiff from exercising any contractual options or enforcing any contractual agreements involving James Brown Entertainment, Seventh Decade Entertainment, or his other businesses or any entities, and any assets of the parties, *pendente lite* and permanently.

17. Restraining and enjoining Plaintiff from interrupting or interfering with the Defendant's custodial periods for any reason whatsoever, *pendente lite* and permanently.

18. Restraining and enjoining Plaintiff from denigrating Plaintiff; embroiling the minor child and the child's friends in the parties' differences; from discussing this litigation with the child, or in the earshot of the child; from communicating to the Defendant through the child; from alienating the child's affections from his mother; from disparaging or criticizing the Defendant to the child, in the presence of the child, or within earshot of the child; and from allowing other persons from doing any of these acts in the presence of or within earshot of the child *pendente lite* and permanently.

19. Restraining and enjoining the Plaintiff from harassing, abusing, threatening, molesting or interfering with the Defendant, her family, friends or witnesses in any way, and from disrupting, entering, or attempting to enter her residence, property or place of business, *pendente lite* and permanently.

20. Awarding Defendant attorney's fees, costs, expert's fees, investigator's fees and costs from Plaintiff in the amount of $100,000.

21. For an Order of discovery pursuant to the South Carolina Rules of Civil Procedure.

DONALD B. CLARK, LLC

Donald B. Clark

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ROSEN LAW FIRM , LLC
Robert N. Rosen
134 Meeting Street, Suite 202
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June ____, 2004
Charleston, South Carolina

COPY 9.5 14 EXHIBIT 18

Liz Godard
C.C.P.&G.S.
Anita Knoepfle
Deputy Clerk

STATE OF SOUTH CAROLINA)	IN THE FAMILY COURT
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
)	
JAMES JOE BROWN, JR.,)	CASE NUMBER: 04-DR-02-[illegible]
Plaintiff)	
vs.)	
)	
)	REPLY TO COUNTERCLAIM
TOMMIE RAE HYNE AHMED BROWN,)	
Defendant.)	

STATE OF SOUTH CAROLINA, COUNTY OF AIKEN, I, Liz Godard, Clerk of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing is a true and correct copy of the original document, which have been filed in my office this 16 MAR 2007
Clerk of Common Pleas & G.S.C.
Deputy Clerk

The Plaintiff, in replying to the Counterclaim of the Defendant, would show as follows:

1. Plaintiff denies each and every allegation as set forth in Defendant's Counterclaim unless hereinafter specifically admitted or explained and realleges the allegations of the Complaint as set out herein verbatim.

2. Plaintiff admits paragraph 11 and 21 of the Counterclaim.

3. Plaintiff denies paragraph 12 of the Counterclaim and re-alleges paragraphs 2 through 6 of Plaintiff's Amended Complaint as if set forth herein. Plaintiff is informed and believes that due the fact that Defendant was still married to another person at the time the parties obtained a marriage license that the court should determine the parties parentage by providing that the parties conduct genetic testing in this matter.

4. Plaintiff has insufficient information to admit all of paragraph 13 of Defendant's counterclaim but admits so much as states the Defendant was married to Javed Ahmed prior to the marriage ceremony to Plaintiff. Also, that Defendant remained legally married to this man at the time she entered into a marriage ceremony with Plaintiff. Further, that after Plaintiff commenced his present [illegible] action from

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AIKEN COUNTY
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12:15pm
CLERK OF COURT

Stip Exhibits 000083

from the Charleston County Family Court.

5. Plaintiff admits so much of paragraph 14 of the Counterclaim that states Defendant dialed "911" on January 28, 2004 and that Plaintiff was arrested on that day. Plaintiff denies the remainder of the paragraph.

6. Plaintiff denies paragraphs 15,16,17,18,20,22 through 40 and 42 of the Counterclaim.

7. Plaintiff admits so much of paragraph 19 of the Counterclaim that states Plaintiff has paid monies to Cleo Douglas in the past.

8. Plaintiff admits so much of paragraph 41 of the Counterclaim that states a restraining order should be issued but alleges that if issued that the court should provide that it be mutually binding on both parties.

9. Plaintiff admits so much of paragraph 43 of the Counterclaim that the parties would be allowed discovery which the court would deem appropriate and un-abusive.

WHEREFORE, after fully setting forth his Reply, the Plaintiff requests that the Defendant's Counterclaim be dismissed with costs and fees awarded to the Plaintiff.

Respectfully Submitted,

JAMES B. HUFF
Attorney for Plaintiff
P. O. Box 6488
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North Augusta, South Carolina
July 3, 2004

STATE OF SOUTH CAROLINA	IN THE FAMILY COURT
COUNTY OF AIKEN	SECOND JUDICIAL CIRCUIT
JAMES JOE BROWN, JR., Plaintiff	CASE NUMBER: 04-DR-02-157
vs.	CONSENT ORDER OF DISMISSAL
TOMMIE RAE HYNE AHMED BROWN, Defendant.	

Copy mailed 9-2 by Liz Godard, C.C.C.P.&G.S. Anita Knowles, Deputy Clerk

FILED
AIKEN COUNTY
AUG 16 2004
8:30 am
CLERK OF COURT

HEARING DATE:	July 22, 2004
PRESIDING JUDGE:	Peter R. Nuessle
ATTORNEY FOR PLAINTIFF:	James B. Huff
ATTORNEY FOR DEFENDANT:	Robert N. Rosen
COURT REPORTER:	Lisa Hicklin

This matter was scheduled to come before the Court for a Temporary Hearing on the above listed date. Prior to the hearing the parties informed the Court that they had reached an Agreement in this matter. The Agreement is as follows:

1. The parties hereby dismiss their respective pleadings without prejudice to either party.

2. Plaintiff will pay the sum of $12,000.00 to Defendant for her attorney fees and costs in this matter. This will be paid within 10 days of the filing of this order.

3. Defendant agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff, both now and in the future.

4. The parties agree to seal the courts file in this matter.

Based upon the review of the court's file I make the following Findings of Fact:

1. The Agreement is fair and reasonable to both parties and should be approved by the Court.

2. The Court has considered the factors enunciated in SCRCP 41. I find that sealing the Courts file in this matter is proper. Both parties are represented. The parties have mutually consented to having the case dismissed without being litigated. The parties have resolved their differences and

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, the Clerk of the Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the [illegible]
AUG 16 2004
C.C.C.P. & G.S., Aiken County, S.C.
Deputy Clerk

are currently residing together. As such, the parties are entitled to retain their privacy as to the documents that have been filed with the Court. The parties mutual request and consent to seal the Courts file is in the best interest of both parties, will avoid disclosure of the parties private financial matters, avoid harm to any minor child involved with this case and causes no prejudice to either party or to any public interest with this case.

Based upon these Findings of Fact, I make the following Conclusions of Law:

1. That the parties and subject matter are properly before and subject to the jurisdiction of this Court.

Based upon the Findings of Fact and Conclusions of Law, it is hereby ORDERED:

a. That the agreement of the parties is approved by this Court.

b. The Courts' file shall be sealed and not opened to anyone without further court order of this court allowing such disclosure.

AND IT IS SO ORDERED;

PKH2

Honorable Peter R. Nuessle
Family Court Judge.
Second Judicial Circuit

Aiken, South Carolina

This 14 day of ~~July~~ June, 2004

I SO CONSENT:

James B. Huff, Esq.
Attorney for Plaintiff

I SO CONSENT:

Robert N. Rosen, Esq.
Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: 2013-CP-02-02849
	)	2013-CP-02-02850
	)	
	)	
	)	
	)	
IN RE: THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	
	)	

9 24 14
CCC C.P.&G.S
Deputy Clerk

MEMORANDUM IN SUPPORT OF TOMMIE RAE BROWN'S MOTION FOR PARTIAL SUMMARY JUDGMENT

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Petitioner Tommie Rae Brown submits this memorandum of law in support of her motion for partial summary judgment that she is the surviving spouse of James Brown.

STATEMENT OF FACTS

Tommie Rae Brown ("Mrs. Brown") and James Brown ("Mr. Brown") were married by ceremonial marriage, as evidenced by a license and certificate issued in the Aiken County Probate Court, on December 14, 2001, at Beech Island, in Aiken County, South Carolina.[1] Prior to their marriage, Mrs. Brown gave birth to Mr. Brown's biological son, J B . . on , 2001.[2] (The DNA test has now confirmed that J B :s, in fact, Mrs. Brown's son). Following their marriage, Mr. Brown learned that, in February of 1997, Mrs. Brown had participated in a putative marriage ceremony in Texas with another man, Javed Ahmed ("Ahmed"). In December of 2003, at Mr. Brown's insistence and with Mr. Brown paying her attorneys' fees and expenses,[3] Mrs. Brown, with support from Mr. Brown, filed an action against Ahmed in the Family Court of South Carolina, seeking to invalidate the putative marriage to Ahmed on the ground of bigamy, among other grounds.[4] Mrs. Brown testified that Ahmed told

[1] See License and Certificate for Marriage, attached as Exhibit 4 to the Joint Stipulation of Facts.

[2] See Joint Stipulation of Facts, p. 2, ¶ 3 along with Exhibit 2 (birth certificate) and Exhibit 3 (LabCorp DNA Test Results) attached thereto.

[3] James Brown paid for Mrs. Brown's annulment, and Mrs. Brown's attorney kept Mr. Brown's attorney informed of the proceedings. See Id. at 4, ¶¶ 13-14; Order Approving Settlement Agreement filed May 26, 2009, p. 29, attached herein as Exhibit "A"; Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, dated January 11, 2008, pp. 3-4, Request and Response Nos. 9 and 10, attached herein as Exhibit "B"; These are critical and undisputed facts. Obviously, by paying for the family court action, Mr. Brown was aware of the putative marriage to Ahmed and supported Mrs. Brown's action to confirm that putative marriage was invalid.

[4] See Joint Stipulation of Facts, p. 4, ¶ 13 and Exhibit 5 attached thereto; Affidavit of Tommie Rae Brown filed November 26, 2007, p. 1 ¶ 4 and Exhibit B attached thereto. Ahmed was properly served by publication as provided for by South Carolina law, as evidenced by Exhibits 6-10 of the Joint Stipulation of Facts. Further, the Attorney General's Office represented to this Court that it engaged in a due diligence effort to locate Ahmed and was unsuccessful. Mr. Jones said:

> So, I am sitting there. I've got witnesses falling out left and right. I got us going and getting law enforcement to chase down Ahmed with five social security numbers, me calling places in St.

her he was married to several other women at the time of their purported marriage and that none of those marriages had been dissolved.[5]

A final judgment in that proceeding was entered on April 15, 2004. See Exhibit 12 to Joint Stipulation of Facts. That judgment expressly found that Ahmed had three or more wives to whom he was married under Pakistani law at the time of his putative marriage ceremony with Mrs. Brown. Id. at 2. Based on that finding, the family court concluded that Ahmed "was married at the time he entered into his marriage with Plaintiff and therefore he lacked the capacity to marry Plaintiff." Id. at 3. The family court concluded that the purported marriage between Mrs. Brown and Ahmed was "wholly null and void *ab initio*." Id. at 4.[6] That judgment has never been appealed, nor was it subject to any action to vacate or amend.

As a result of a physical altercation on January 28, 2004, in which Mr. Brown assaulted Mrs. Brown, Mr. Brown filed a Summons and Complaint for Annulment on January 29, 2004.[7] On May 5, 2004, just weeks after entry of the final judgment invalidating Mrs. Brown's marriage to Ahmed, Mr. Brown filed an Amended Complaint for Annulment alleging that Mrs. Brown was married to Ahmed at the time of her marriage to him, that the Charleston County Family

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> Louis – apartments – looking for Ahmed. The next day they call me back and say, Mr. Attorney General, is there a terrorist action here because you called my neighbor and you called me about Mr. Ahmed and we're concerned is there some kind of terrorist operation? I said, no, we just -- I called everybody in the apartment complex...So, we looked at all of those factors, and we couldn't find Ahmed.

Transcript of Record, March 25-26, 2009 Hearing, pp. 352, lines 13-22; 354, lines 12-13.

[5] See Exhibit 13 to Joint Stipulation of Facts, p. 8, lines 16-20; p. 10, lines 13-15.

[6] Not only did the court hold that the putative marriage was never valid—that it was void ab initio because of bigamy—but the court also separately cited two additional grounds for annulment: that the alleged marriage between Ahmed and Mrs. Brown had never been consummated, and that it had been brought about for a fraudulent purpose (Ahmed was Pakistani and wanted to become a U.S. citizen by marrying Mrs. Brown).

[7] See Decedent's Summons and Complaint for Annulment filed January 29, 2004, attached as Exhibit 15 to the Joint Stipulation of Facts; Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment, filed November 26, 2007, p. 2, ¶ 11; Petitioner's Answer and Counterclaim, filed June 14, 2004, p. 2, ¶14, attached as Exhibit 17 to the Joint Stipulation of Facts.

Court's Findings of Fact were binding upon the Aiken County Family Court, and that because of the family court order Mrs. Brown was "collaterally and judicially estopped."[8] Mrs. Brown answered, asserting that her marriage to Mr. Brown was valid and sought a divorce and related relief. See Exhibit 17 to Joint Stipulation of Facts, p. 2 ¶¶ 12-13, p. 9-11.[9]

Mr. and Mrs. Brown reconciled in July of 2004, and on August 16, 2004, they signed a Consent Order of Dismissal, dismissing without prejudice both Mr. Brown's annulment action and Mrs. Brown's counterclaim for divorce.[10] Both before and following their reconciliation and entry of the Consent Order, Mr. and Mrs. Brown lived together as husband and wife until Mr. Brown's death.[11] It is undisputed that Mr. Brown continued to hold Mrs. Brown out to be his wife until his death.[12] Mr. Brown died on December 25, 2006, and his will, dated August 1,

---

[8] See Amended Complaint for Annulment, p. 1 ¶ 5, p. 2, ¶¶ 10-11, attached to Joint Stipulation of Facts as Exhibit 16. Mr. Brown was represented by James B. Huff and Albert H. Dallas in his original complaint, but by only James B. Huff in the amended complaint.

[9] The South Carolina Supreme Court in Wilson v. Dallas, 403 S.C. 411, 2013 S.C. LEXIS 240 (2013) was apparently mistaken about the order of commencement of the family court actions. In footnote 16 of its opinion, 403 S.C. at 434, 743 LEXIS 240, *35, the Supreme Court, apparently relying on the misstatement of facts by former Personal Representative/Trustee Adele Pope, stated that the Brown-Ahmed annulment was granted *during* the Brown-Brown action with an insinuation that the Brown-Ahmed action was commenced *during* the Brown-Brown action. Perhaps this explains the Supreme Court's mistaken comment (in dicta) that the order invalidating the putative marriage of Mrs. Brown to Ahmed was "hastily obtained," when no such evidence (in the record or outside the record) supports such a comment. Rather, it is undisputed that Mr. Brown was apprised of the annulment action and indeed paid the fees. The family court order was in fact obtained in due course with Mr. Brown's knowledge and consent. See Affidavit of Tommie Rae Brown in Support of her Motion for Summary Judgment, filed April 28, 2014. Mr. Brown filed an amended complaint in family court on May 5, 2004, just weeks *after* entry of the final judgment invalidating Mrs. Brown's marriage to Ahmed.

[10] See Exhibit 19 to Joint Stipulation of Facts. The Consent Order also contained a provision purporting to waive Mrs. Brown's right ever to claim that she and Mr. Brown had a common-law marriage. Id. at 1 ¶ 3. The issue of a common-law marriage is not before this Court on this Motion for Summary Judgment.

[11] See Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment, filed November 26, 2007, p. 2, ¶ 11-12.

[12] The record before this Court shows uncontradicted evidence that Mr. Brown publicly held Mrs. Brown out as his wife on numerous occasions. In the Order dated May 26, 2009, this Court stated that Mr. Brown recognized Mrs. Brown as his wife in his autobiography copyrighted and published in the calendar year following the family court actions. See Affidavit of Tommie Rae Brown filed November 26, 2007, p. 2, ¶ 10 and Exhibit G attached thereto.

2000, was filed with the Aiken County Probate Court on January 18, 2007. The 2000 will left Mr. Brown's household effects and personal property to six named devisees ("Devisees")[13], with the remainder of the estate passing to a 2000 trust ("Trust").[14]

THESE PROCEEDINGS

On February 1, 2007, Mrs. Brown filed a Petition for Elective Share or Omitted Spouse's Share pursuant to the South Carolina Probate Code, asserting that she is the surviving spouse of Brown. Despite the presence of a final judgment invalidating ab initio Mrs. Brown's marriage to Ahmed because Ahmed was a bigamist, so that there was no impediment to her marriage to Mr. Brown, some prior personal representatives have argued that her marriage to Mr. Brown was bigamous and therefore not recognized under South Carolina law. Contestants now make that same argument.

On December 20, 2007, Mrs. Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six Devisees (all but Terry Brown) filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

Before the Petitions to Set Aside the Will and Trust were heard, in August of 2008 and subsequently, Mrs. Brown and other parties to the estate litigation participated in mediation, which resulted in a private settlement agreement.[15] In that agreement, Mrs. Brown was

[13] The named devisees are: "Deanna J. Brown Thomas; Yamma N. Brown; Vanisha Brown; Daryl J. Brown; Larry Brown; and Terry Brown."

[14] Although Mrs. Brown currently has a pending action contesting the validity of the 2000 will and trust, this memorandum assumes arguendo their validity.

[15] The parties to the private settlement agreement included Tommie Rae Brown and all Devisees. Thus, all of the parties now contesting the validity of Mrs. Brown's marriage to Mr. Brown were signatory parties to the settlement agreement, with the exception of Mr. Bauknight, who instead of signing accepted the terms of the private settlement agreement by operating as a fiduciary thereunder. In this action, LSA Sojourner acts on behalf of Mr. Bauknight.

recognized by all parties thereto as Mr. Brown's surviving spouse. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law.[16] The settlement agreement expressly provided that the provision recognizing Mrs. Brown as the surviving spouse survived regardless of whether the agreement was approved by a court.[17]

On September 12, 2008, Adele J. Pope and Robert L. Buchanan, then acting as Special Administrators of Brown's probate estate, filed a Motion for Partial Summary Judgment and a Supplemental Motion to Dismiss All "Spousal" Claims of Mrs. Brown. Those motions were based on two grounds: (1) that Petitioner's marriage to Brown was void under Lukich v. Lukich, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), *aff'd* Lukich v. Lukich, 379 S.C. 589, 666 S.E.2d 906 (2008); and (2) that "[o]n or about August 16, 2004, Plaintiff, the Defendant in an action commenced by [Mr.] Brown, asserted that she 'agrees to and does hereby forever waive any claim of a common law marriage to the Plaintiff [James Brown], both now and in the future.'"[18]

The parties sought this Court's approval of the settlement, which required this Court to make findings pursuant to S.C. Code Ann. § 62-3-1102(3) that 1) the contest or controversy was in good faith and 2) the effect of the agreement on interested parties was just and reasonable. On

[16] SCPC § 62-3-912 allows successors to enter into a binding private settlement agreement that binds the parties thereto, as well as personal representatives (except to the extent a non-party's interest could be affected), even without court approval.

[17] See Original Settlement Agreement of August 10, 2008, ¶¶ 1 and 6, and Addendum thereto, incorporating Original Settlement Agreement, ¶¶ 23 and 26. The settlement agreement includes a severability provision that continues the binding effect on those provisions not found invalid. Although the South Carolina Supreme Court ruled that this Court's approval of the settlement agreement needed additional evidence that the settlement was just and reasonable, that opinion did not address the binding private settlement agreement issue, nor did it address the issue of the parties' recognition of the validity of family status, including Mrs. Brown's status as surviving spouse. Consequently, under both the binding private settlement agreement analysis and the severability clause, the provision confirming Mrs. Brown's status as Mr. Brown's surviving spouse remains binding.

[18] See Pope and Buchanan's Motion for Partial Summary Judgment dated September 12, 2008, p. 2 ¶ 1, p. 3 ¶ 5; Pope and Buchanan's Supplemental Motion to Dismiss all "Spousal" Claims of Tommie Rae Hynie Brown (Hynie Brown Formal Testacy) dated September 12, 2008, p. 1 ¶ 1, p. 2 ¶ 5.

May 26, 2009, this Court issued an order that, inter alia, approved the settlement agreement which stated that Mrs. Brown was Mr. Brown's surviving spouse.[19] In its Findings of Fact and Conclusions of Law, this Court ruled that Mrs. Brown's marriage to Mr. Brown was valid.[20] While the then personal representatives and trustees argued that Mrs. Brown's putative marriage to Ahmed constituted an impediment to her marriage to Mr. Brown, this Court ruled that the family court order which invalidated the putative marriage between Mrs. Brown and Ahmed had determined as a finding of fact and conclusion of law that "Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to the purported marriage: he was already married at the time."[21]

In determining whether the first element of the S.C. Code Ann. § 62-3-1102(3) test was satisfied (that there was a good faith controversy), this Court rejected the arguments raised by Pope and Buchanan that Petitioner's marriage to Brown was void under Lukich, finding that Lukich supports Petitioner's claim and that the issue of common law marriage was immaterial.[22] This Court cited Mr. Buchanan's testimony, as personal representative and trustee, in holding "that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage."[23] This Court also cited Mr. Buchanan's testimonial admission in holding

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[19] See Exhibit A at 28-30.

[20] Id.

[21] Id. at 28.

[22] Id. at 27-30.

[23] Id. at 28.

"that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action."[24] In its Order, this Court ruled that neither Mr. Brown nor any third party had the right to contest the family court order invalidating the putative marriage between Mrs. Brown and Ahmed and, that if Mr. Brown did not have that right, neither did his fiduciaries.[25] This holding was not appealed.

This Court also stated that Mr. Brown commenced the annulment action against Mrs. Brown *after* Mr. Brown paid for Mrs. Brown to bring her action to invalidate her putative marriage to Ahmed.[26] Mrs. Brown counterclaimed for a divorce, but that action was mutually dismissed, after which Mr. Brown never contested their marriage again. Although in the consent order of dismissal Mrs. Brown waived any right to claim a status as a common-law wife, this Court's Order held that this waiver was "immaterial to the matter *sub judice*."[27] The Order recognizes that "Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate."[28]

Importantly, this Court's Order held as a finding of Fact and Conclusion of Law that, "as to the estate and any trust, that family court order [invalidating the putative marriage of Mrs.

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[24] Id. at 28-29.

[25] Id. at 29.

[26] Id. Unlike the Supreme Court, this Court correctly stated the order of commencement of the family court actions.

[27] Id.

[28] Id. This Court's Order also stated that Mr. Brown recognized Mrs. Brown as his wife in his autobiography, which was copyrighted and published in 2005 after the family court matters were concluded in 2004. Id.

Brown to Ahmed], as well as the marriage license, constitute the law of the case as to that issue."[29]

Former personal representatives Pope and Buchanan appealed the order approving the settlement agreement, as well as another order which removed them from their fiduciary positions, to the Court of Appeals, and at the request of the Court of Appeals the consolidated appeals were certified to the Supreme Court pursuant to Rule 204(b), SCACR. In reviewing this Court's finding that there was a good faith controversy under S.C. Code Ann. § 62-3-1102, the Supreme Court determined that the Petitioners' claims were "tenuous" but did not rule on the issue. Wilson v. Dallas, 403 S.C. 411, 442, 2013 S.C. LEXIS 240, *53 (2013). Instead, the Supreme Court determined that the settlement failed the second element of the S.C. Code Ann. § 62-3-1102 test, *i.e.*, the effect of the agreement on interested parties is just and reasonable. Id. at 447, 2013 S.C. LEXIS 240, *64. The Supreme Court reviewed this Court's analysis of Lukich but expressed no opinion on this Court's interpretation. Instead, in concluding that this Court lacked evidence to determine that the settlement agreement was just and reasonable, the Supreme Court suggested that there were two principal obstacles in the way of Petitioner's spousal claims, neither of them being that she was not in fact the surviving spouse of Mr. Brown.

First, as to Petitioner's surviving spouse claim under S.C. Code Ann. § 62-2-201(a), the Supreme Court noted that Petitioner executed a prenuptial agreement waiving all rights to Mr. Brown's property or any statutory claims against his estate, and observed that "[a] valid prenuptial agreement would normally preclude any right to an elective share. See S.C. Code Ann. § 62-2-204 (2009) ('The right of election of a surviving spouse . . . may be waived . . . by a

[29] Id.

written contract . . . signed by the party waiving after fair disclosure.')." Id. at 440, 2013 S.C. LEXIS 240, *50[30]

Second, as to Petitioner's omitted spouse claim under S.C. Code Ann. § 62-2-301(a), the Supreme Court noted that

> Brown's testamentary documents state that he was specifically omitting any other beneficiaries or potential beneficiaries, including a future spouse or heirs, based on his desire to leave most of his estate to charity after providing for the education of his grandchildren. *See* S.C. Code Ann. § 62-2-301(a) (2009) (providing an omitted spouse is not entitled to a statutory share where '(1) it appears from the will that the omission was intentional; or (2) the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence').

Id. at 441.[31]

The part of this Court's May 26, 2009 Order approving the settlement agreement was reversed on appeal by the South Carolina Supreme Court for lack of sufficient evidence that the settlement agreement was just and reasonable, and the case was remanded to this Court for further proceedings. Id. at 450-451, 2013 S.C. LEXIS 240, *69-71. The Supreme Court upheld the removal of the prior fiduciaries, finding that they had irreconcilable differences with the estate and trust beneficiaries, but reversed and remanded the approval of the settlement because of a lack of evidence showing a fair and reasonable settlement of a good faith controversy. That opinion noted the language in this Court's order that the Lukich case supported the validity of Mrs. Brown's marriage to Mr. Brown and did not reverse that conclusion.[32] Had the Supreme

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[30] Despite the lack of any evidence in the record on appeal dealing with whether the "prenuptial agreement" was valid, the Supreme Court appeared to presume the validity of the "prenuptial agreement", which is not an issue for this Summary Judgment motion. However, this "agreement" is invalid for numerous reasons.

[31] Once again, the Supreme Court made this observation despite the lack of any evidence in the record about Mr. Brown's intent as to the omitted spouse's share, which is not an issue for this Summary Judgment motion.

[32] The opinion expressly declined to comment on the Lukich issue:

Court believed Mrs. Brown was not Mr. Brown's wife under Lukich, it could easily have said so. If the effect of Lukich was that Mrs. Brown was not Mr. Brown's wife, this would have been the most compelling point that the Supreme Court could have made to invalidate the settlement agreement. Apparently the Supreme Court understood that, not only does Lukich not invalidate the marriage of Mrs. Brown and Mr. Brown, it confirms the validity of that marriage, as this Court has so ruled.

The May 26, 2009, Order also appointed Russell Bauknight as Personal Representative and Trustee.[33] Mr. Bauknight agreed to serve under the settlement agreement and represented Mrs. Brown and the Devisees pursuant to that agreement throughout the appeal to the South Carolina Supreme Court of that agreement by his predecessor fiduciaries. Throughout the appellate process, Mr. Bauknight administered the Estate in accordance with the provisions of the settlement agreement, as approved by this Court. In full compliance with his fiduciary duties, Mr. Bauknight retained counsel to uphold the validity of the settlement agreement.

On his behalf, Mr. Bauknight's counsel signed the Respondents' brief to the Supreme Court. On behalf of the other parties to the settlement agreement, including Devisees, their counsel signed the Respondents' brief to the Supreme Court.[34] The Respondents' brief asserted

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The circuit court noted the decision of the Court of Appeals in *Lukich v. Lukich*, 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006), in which the Court of Appeals held that an annulment declaring a spouse's first marriage void could not retroactively validate the spouse's second marriage. The circuit court distinguished Brown's situation, opining that the rule in *Lukich* did not apply where the first marriage was never valid because one of the parties was already married. This Court has since affirmed *Lukich*, in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008). We express no opinion, however, on the circuit court's interpretation here.

403 S.C. at 434, 2013 S.C. LEXIS 240, *35, n. 16. The opinion, however, did inquire without ruling whether an alleged prenuptial agreement waived Mrs. Brown's right to an elective share. Id. at 440, 2013 S.C. LEXIS 240, *50-51. The issue of the waiver of the elective share is not a matter for this summary judgment, which addresses only the validity of the marriage.

[33] See Exhibit A at 45, ¶ 3.

[34] The Attorney General's Office also signed the Respondents' brief.

that this Court's order which approved the settlement agreement was correct. Both the Respondents' brief and this Court's order that approved the settlement agreement stated that Mrs. Brown was the surviving spouse and that the Lukich case, discussed below, supported that conclusion.[35] At oral argument before the Supreme Court, counsel retained by Mr. Bauknight presented on their behalf the settling parties' position to uphold this Court's order which approved the settlement agreement, and the argument by Mr. Bauknight's counsel included the correct assertion that Lukich supports the validity of Mrs. Brown's marriage to Mr. Brown.[36] Thus, the settling parties, including Mr. Bauknight and the Devisees, correctly contended in the Supreme Court that the Lukich case, discussed below, supported and asserted the position that Mrs. Brown had *no* impediment to her marriage to Mr. Brown.[37]

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[35] See Respondent's Final Reply Brief, pp. 30-31, n.31.

[36] See Supreme Court Oral Argument Transcript for Wilson v. Dallas, beginning at the 42:40 mark where Mr. Wilkins argued that

> As far as Mrs. Brown is concerned, she certainly had a serious claim as an omitted spouse, and certainly a slam dunk claim as an elective share...In Lukich, marriage number one, there was no impediment to that marriage, so when marriage number two came along, she had to reach back to have that marriage number one, that was a good marriage, annulled..Had...[Mrs. Brown's marriage to Ahmed] not been annulled, the second marriage [to Mr. Brown] still would have been a good marriage, because the first marriage, by itself standing alone, was invalid because [Ahmed] had been married at least twice...You can't get married to someone who's already married, and that's what happened with Mrs. Brown. So that first marriage in Texas was null from the very beginning...[T]he [Family Court] recognized that the [marriage to Ahmed] was invalid, from the beginning.

Further, acting on behalf of the charitable beneficiaries, the Attorney General's office also made a presentation at oral argument before the Supreme Court to uphold this Court's order that, inter alia, approved the settlement agreement.

[37] Having accepted through his conduct the terms of the settlement agreement, including the provision recognizing the validity of the Browns' marriage regardless of court approval of the validity of the settlement agreement, and having asserted the validity of Mrs. Brown's marriage to Mr. Brown to the Supreme Court, Mr. Bauknight cannot now disavow that provision and contest the validity of the marriage. Nor can Mr. Sojourner, who is acting for Mr. Bauknight in these litigated matters. Moreover, as allowed by South Carolina law (S.C. Code Ann. § 62-3-912), the binding private settlement agreement provides that its provisions are binding on personal representatives and trustees.

In her motion for partial summary judgment Mrs. Brown does not ask this Court to rule on whether the prenuptial agreement constituted a waiver of her elective share under S.C. Code Ann. § 62-2-204, or to rule on whether Mrs. Brown is barred from an omitted spouse's share under S.C. Code Ann. § 62-2-301(a) because of language in the 2000 will, executed before their marriage. Obviously neither of these two issues is even relevant unless Mrs. Brown is first determined to be Mr. Brown's surviving spouse. Mrs. Brown has a valid ceremonial marriage to Mr. Brown, which is not invalid for bigamy. However, the purported marriage to Ahmed was itself held bigamous in a final, unappealed judgment of the Family Court of the State of South Carolina.[38] This judgment is binding upon third parties and specifically upon all persons representing Mr. Brown's interests. Mrs. Brown therefore moves the Court to make a determination based only on the applicable law and uncontested facts that she is the surviving spouse of Mr. Brown.

ARGUMENT

I. SUMMARY OF ARGUMENT.

Mrs. Brown's position is the same as it has been from the beginning: she is the surviving spouse of Mr. Brown. She had a valid ceremonial marriage to Mr. Brown, evidenced by a marriage license and certificate validly issued by the Aiken County Probate Court and filed in the public records.[39] Her putative prior marriage to Ahmed was properly held bigamous in a final unappealed judgment by a South Carolina Family Court, so that she had no impediment to her marriage to Mr. Brown.[40] That final judgment is binding upon Mr. Brown. South Carolina law did not allow him to be a party to that action or to attack it. Moreover, he himself later

[38] See Exhibit 12 to the Joint Stipulation of Facts.

[39] See Exhibit 4 to the Joint Stipulation of Facts.

[40] See Exhibit 12 to the Joint Stipulation of Facts.

asserted the binding nature of that order in a family court action, which he eventually dismissed.[41] Third parties, including Contestants, are therefore bound by that family court order and cannot attack it: they are in privity with Mr. Brown, and South Carolina law precludes such an attack by them. Nor, according to South Carolina law, can this Court, sitting as a probate court, overrule the decision of the family court.

Contestants cannot even attack the Brown-Brown marriage. They now take the opposite position they asserted before the South Carolina Supreme Court and in the settlement agreement. They are estopped, and lack standing. They further lack standing to attack the Brown-Brown marriage because, recognizing the finality and binding effect of that family court order and citing the Lukich case as support, this Court held, inter alia, in its May 26, 2009 Order, that Mrs. Brown's marriage to Mr. Brown was valid.[42] The rulings of this Court and the family court are the law of the case. That ruling was not reversed by the Supreme Court.

But even if Contestants had standing to attack the Brown-Brown marriage, they quite simply lose. Because the Brown-Ahmed family court order is final and binding, Contestants could therefore argue only the *effect* of that family court order, and all South Carolina precedent, including the Lukich case, supports the validity of Mr. Brown's marriage to Mrs. Brown.

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[41] See Exhibit 16 to the Joint Stipulation of Facts, p. 2, ¶ 10.

[42] See Exhibit A at 28-30. The Supreme Court did not reverse this Court's conclusion that the marriage was valid as supported by the Lukich case. Nowhere in the opinion does the Wilson v. Dallas Court overturn this Court's finding of facts and conclusions of law about the validity of Mrs. Brown's marriage to Mr. Brown. Although Contestants may argue that the Supreme Court overturned all of this Court's order approving the settlement, that would be an inappropriate reading on the opinion. If the Supreme Court thought that it had overturned the entire Order of this Court, then it would have been unnecessary to specifically and separately remove Mr. Bauknight (in its original opinion). If the entire Order of this Court was overturned, then so would Mr. Bauknight's appointment under the Order, so it would have been superfluous and redundant for the Supreme Court to specifically address Mr. Bauknight's removal.

II. SUMMARY JUDGMENT STANDARD.

The standard for granting summary judgment is clear:

> Rule 56(c) of the South Carolina Rules of Civil Procedure provides a motion for summary judgment shall be granted 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn therefrom in the light most favorable to the party opposing summary judgment. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 534 S.E.2d 688 (2000).

Progressive Max Ins. Co. v. Floating Caps, Inc., 405 S.C. 35, 42, 747 S.E.2d 178, 181-82 (2013).

III. BURDEN OF PROOF IS ON CONTESTANTS.

A. Mrs. Brown's Marriage To Mr. Brown Is Valid And The Burden Of Proof Is On Contestants.

Mrs. Brown has produced a valid certificate of marriage, showing that she and Mr. Brown were married on December 14, 2001, at Beech Island, in Aiken County, South Carolina.[43] There is no contention by any party that Mr. Brown had a valid marriage to any other woman after he married Mrs. Brown.[44]

"The party attacking the validity of a marriage bears the burden of proof." E.D.M. v. T.A.M., 307 S.C. 471, 475, 415 S.E.2d 812, 815 (1992). Moreover, "[w]here the evidence shows that the same person entered into a conflicting marriage, a presumption arises that the former marriage was dissolved by death or divorce." Yarbrough v. Yarbrough, 280 S.C. 546, 550, 314 S.E.2d 16, 18 (Ct. App. 1984).[45]

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[43] See Exhibit 4 to Joint Stipulation of Facts.

[44] Nor is there any contention that Mr. Brown sought to invalidate their marriage after the dismissal of his annulment action.

[45] *Corpus Juris Secundum* states the general rule as follows:

The presumption in favor of the validity of the most recent marriage is extremely strong, and it can be rebutted only with strong evidence.[46] The Supreme Court said "[t]his is especially true in a case involving legitimacy. The law presumes morality, and not immorality; marriage, and not concubinage; legitimacy, and not bastardy. When there is enough to create a foundation for the presumption of marriage, it can be repelled by only the most cogent and satisfactory evidence." Jeanes v. Jeanes, 255 S.C. 161, 166-67, 177 S.E.2d 537, 539 (1970) (quoting In re Estate of Foels, 146 Misc. 428, 430, 263 N.Y.S. 327, 329 (N.Y. Sur. Ct. 1933)).[47] This

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> In case of conflicting marriages of the same spouse, [1] the presumption of validity operates in favor of the second marriage, and the party attacking the second marriage has the burden of proving its invalidity and of showing a valid prior marriage; and [2] where a valid prior marriage is shown, it is presumed to have been dissolved by divorce or death so that the attacking party has the burden of adducing evidence to the contrary.

55 C.J.S. *Marriage* § 55 (Westlaw database updated Sept. 2013).

[46] "The presumption in favor of the validity of a marriage which, as in this case, has been duly shown to have been contracted is one of the strongest, if, indeed, not the strongest, known to law. 'The presumption is, in itself, evidence, and may even outweigh positive evidence to the contrary. The strength of the presumption increases with the lapse of time, acknowledgments by the parties to the marriage, and the birth of children; and the fact that the legitimacy of a child may be involved is a factor in sustaining the validity of the marriage.' 55 C.J.S., Marriage, § 43, pages 892-893. It is well that the presumption should be so regarded, for it is grounded upon a sound public policy which favors morality, innocence, marriage, and legitimacy rather than immorality, guilt, concubinage, and bastardy. Nixon v. Wichita Land & Cattle Co., 84 Tex. 408, 19 S.W. 560; Holman v. Holman, Tex.Com.App., 288 S.W. 413; Carter v. Green, Tex.Civ.App., 64 S.W.2d 1069, *error refused*; Hudspeth v. Hudspeth, Tex.Civ.App., 198 S.W.2d 768, error refused, n. r. e.; 35 Amer.Jur., Marriage, § 191 et seq. Many cases from various jurisdictions supporting the rule that marriage, once being shown, is presumed to be valid are collated in annotations in 34 A.L.R. 464, 77 A.L.R. 729, and 14 A.L.R.2d 7."

Tex. Employers' Ins. Ass'n v. Elder, 155 Tex. 27, 30, 282 S.W.2d 371, 373 (1955) (emphasis added).

[47] In Smith v. Goldsmith, 223 Ala. 155, 162, 134 So. 651, 657 (1931), the Supreme Court of Alabama recognized the validity of a marriage contracted in Tennessee which otherwise would have been declared invalid if contracted within Alabama. The Court said:

> [W]e think much greater harm is likely to arise by declaring such marriages invalid than by adhering to the construction generally given to such statutes. As was said in the Estate of Wood, [*137 Cal. 129, 60 P. 900*]: 'An opposite conclusion to that declared by the court would nullify hundreds of marriages, place the stamp of illegitimacy upon scores of children, and change the source of title to great property interests. Unless the law plainly points to that end, such a conclusion should not be declared, and as the court views the law, it is not plainly to that end, but plainly to the contrary.'

Id. (emphasis added). See also Newburgh v. Arrigo, 88 N.J. 529, 536, 443 A.2d 1031, 1034 (1982):

presumption can only be overcome "by disproving every reasonable possibility." Jeanes, 255 S.C. at 167, 177 S.E.2d at 540 (quoting In Re Estate of Foels, 146 Misc. at 430, 263 N.Y.S. at 329).[48]

It is undisputed that Mr. and Mrs. Brown are the biological parents of James B f.[49] Thus, there is a strong presumption that their marriage is valid. To declare their marriage invalid would cause J B) be an illegitimate child, which the law disfavors to such a strong degree. In any event, Contestants cannot disprove every reasonable probability that Mrs. Brown is the surviving spouse of Mr. Brown.

B. Contestants Have The Burden Of Proof To Show That Mrs. Brown Was Married At The Time Of Her Marriage To Mr. Brown.

The estate and other parties hereto (occasionally hereinafter, for simplicity, "the estate") allege that Mrs. Brown entered into successive conflicting marriages. As discussed above, the most recent of these marriages, the marriage to Mr. Brown, is presumed valid, and the estate bears the burden of proving otherwise.

> Where marital partners have engaged in prior marriages, a strong presumption supports the validity of their prior divorces and the last marriage. *Kazin v. Kazin*, 81 N.J. 85, 96 (1979). Reasons for the presumption are readily apparent. The presumption reflects a belief that parties would not willingly commit bigamy or illegitimize their children. *Sparks v. Ross*, 72 N.J. Eq. 762, 765 (Ch. 1907), aff'd, 75 N.J. Eq. 550 (E. & A. 1909). The presumptive validity of the latest of multiple ceremonial marriages comports with the expectation of marital partners and lends stability to human affairs.

(emphasis added).

[48] See also Newburgh, 88 N.J. at 538, 443 A.2d at 1035 ("One attacking the validity of the most recent of multiple marriages is under a heavy burden to establish its invalidity by clear and convincing evidence...The challenger must disprove every reasonable possibility that could vitiate the prior marriage...") (internal citations omitted); Wood v. Paulus, 524 S.W.2d 749, 757-58, 1975 Tex. App. LEXIS 2721, *14-16 (Tex. Civ. App. Corpus Christi 1975) ("It is well settled that where two or more marriages of a person are alleged, the most recent marriage is presumed to be valid as against each marriage which precedes it until one who asserts the validity of a prior marriage proves the continuing validity of the prior marriage.") (citations omitted).

[49] J B ook a DNA test early on in the litigation, proving that he was the biological son of James Brown. Upon the insistence of the LSA, J recently had to undergo a second DNA test, which confirmed – again – that he is the biological son of James Brown. See Joint Stipulation of Facts, p. 2 ¶ 3 and Exhibit 3 attached thereto.

To prove otherwise, the estate would have to do two things. First, it would have to prove "a valid prior marriage." 55 C.J.S., *supra*, § 55. As applied to these facts, the estate bears the burden of proving a valid prior marriage between Mrs. Brown and Javed Ahmed.[50]

IV. THE FAMILY COURT ORDER INVALIDATING THE ATTEMPTED MARRIAGE OF MRS. BROWN TO AHMED IS FINAL AND BINDING AND CANNOT BE ATTACKED BY MR. BROWN OR THOSE REPRESENTING HIM.

A. Mr. Brown Lacked Standing To Contest The Family Court Order.

In its May 26, 2009 Order, citing Lukich, this Court recognized that, during his lifetime, Mr. Brown could not contest or attack the validity of that Family Court order. Citing Mr. Buchanan's testimonial admission as personal representative and trustee, this Court said:

> *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.[51]

This Court ruled that neither Mr. Brown nor any third party had the right to contest the family court order invalidating the putative marriage between Mrs. Brown and Ahmed and, that if Mr. Brown did not have that right, neither did his fiduciaries.[52]

As this Court observed, Lukich confirmed that Mr. Brown was prohibited from contesting or attacking the family court order. Other South Carolina law confirms this as well.

Consistent with Texas law, South Carolina law provides: [53]

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[50] As discussed in Section IV, problematically for the estate, it does not have standing to even attempt to do so.

[51] Exhibit A at 28-29.

[52] Id. at 29.

[53] South Carolina law and Texas law are the same for purposes of determining the effect of a bigamous marriage. The conclusion that the attempted marriage between Mrs. Brown and Ahmed was void ab initio would arise from a proper application of either South Carolina or Texas law.

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, not [sic] to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

S.C. Code Ann. § 20-1-80.

The validity of the attempted marriage between Mrs. Brown and Ahmed has already been addressed by the South Carolina court with jurisdiction. That court issued a final judgment invalidating ab initio the attempted marriage between Mrs. Brown and Ahmed, on the ground of bigamy by Ahmed.

This final judgment is legally binding on all persons, even those not parties to the action. To begin with, under section 20-1-80, a bigamous marriage is void. But there is an express exception: "[T]his section shall not extend to...any person...whose first marriage shall be declared void by the sentence of a competent court." S.C. Code Ann. § 20-1-80. The estate's argument is that Mrs. Brown's marriage to Mr. Brown was bigamous, but the estate's argument is wrong because Mrs. Brown's attempted prior marriage was "declared void by the sentence of a competent court."

In addition to Lukich, other South Carolina case law confirms this position. In Joye v. Yon, 345 S.C. 264, 547 S.E.2d 888 (Ct. App. 2001), a husband and wife were divorced, and the husband was ordered to pay alimony. Some years later, the wife remarried. Six months later, her remarriage was annulled for bigamy, as the second husband had never divorced his prior wife. The first husband refused to resume paying alimony after the annulment, and the wife filed a contempt action to enforce the original decree. The husband then argued that the wife's remarriage, bigamous though it may have been, still terminated his ability to pay support.

The court of appeals resolved the main issue in the case by holding that a bigamous remarriage, which is void ab initio, does not terminate a prior spousal support obligation. The husband then argued in the alternative that the wife's remarriage could not be treated as bigamous *against him*, as he was not a party to the annulment action in which the remarriage was declared void. This is the same argument that Contestants make in the present case. But the court of appeals rejected this argument. It held directly that the annulment was binding upon the first husband even though he was not a party to the action:

> Yon also argues the court erred in reinstating his alimony obligation because he was not a party to Joye's annulment action. He asserts that he should have been made a party to the annulment action because its outcome directly affected him. We disagree.
>
> Generally, a person must be joined as a party to an action if his absence precludes complete relief among those already parties or his interest in the subject matter is so intertwined that he would not receive complete relief or resolution without his participation. Rule 19(a), SCRCP; see *First Citizens Bank & Trust Co. v. Strable*, 292 S.C. 146, 148, 355 S.E.2d 278, 279 (Ct. App.1987).
>
> Since Yon had no standing to challenge the granting of the annulment, it was not necessary for Joye to include him as a party to the action. Moreover, Yon suffered no prejudice by not being made a party to the action. Under South Carolina law, Joye's marriage to Vance was void ab initio and Yon's presence as a party to the action could not have altered the decision to grant the annulment.

Id. at 276, 547 S.E.2d at 894 (emphasis added). For exactly the same reasons, Contestants have no standing to question the invalidation of Mrs. Brown's previous attempted marriage to Ahmed because of Ahmed's bigamy.[54] That order can be questioned only in a direct attack by those who

[54] A leading authority on family law supports this South Carolina rule. "[A]nnulment decrees are binding upon non-parties as well as parties respecting the validity of the marriages involved." 1 Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987). Professor Clark recognizes that this issue highlights the tension between the opportunity to be heard, on the one side, and the need for finality on the other. Although he recognizes that the rights of third persons may be affected by whether or not a marriage exists, he concludes: "No matter how clearly these [third-party] rights may depend on the existence of a marriage, they are not of the same degree of importance, seriousness or consequence as the interests of the spouses themselves in the marriage. It is perhaps this factor that has led to the well-established rule that a decree of divorce is conclusive on third parties with respect to the termination of the marriage. It is the writer's view that a decree of annulment should have the same effect."

were party to it, and only if that direct attack was timely and properly brought. Just as the first husband in Joye was bound by the annulment of the marriage between the wife and her second husband, so is the estate of Mr. Brown bound by the order invalidating ab initio the attempted marriage between Mrs. Brown and Ahmed.

In Joye v. Yon, 355 S.C. 452, 586 S.E.2d 131 (2003), the Supreme Court necessarily agreed with the court of appeals regarding the husband's standing to attack the annulment. The court of appeals was reversed as to the *effect* of the annulment upon the prior support obligation, and not as to the *existence* or *validity* of the annulment.[55]

The result reached in Joye is further consistent with S.C. Code § 20-1-520, which provides that third parties were generally bound by a court's determination that a marriage is valid:

> When the validity of a marriage shall be denied or doubted by either of the parties, the other may institute a suit for affirming the marriage and, upon due proof of the validity thereof, it shall be decreed to be valid and *such decree shall be conclusive upon all persons concerned.*

S.C. Code Ann. § 20-1-520 (emphasis added).[56]

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[55] The effect of the final and binding Family Court order invalidating the attempted marriage between Mrs. Brown and Ahmed is that the Brown-Brown marriage is valid, per the Lukich case, as discussed below.

[56] If third parties were able to contest family court orders, the order would never be final and chaos in family relations would ensue. See Neely v. Thomasson, 365 S.C. 345, 618 S.E.2d 884 (2005). To show precedent regarding finality, the Court of Appeals opinion in Neely cited as follows:

> Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884) (alteration and emphasis added) (quoting Freeman Judgments § 12), cited with approval in Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). A decree of divorce is generally a final judgment of the court. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); cf. Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) ("The final written order contains the binding instructions which are to be followed by the parties.")...See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (*holding an unappealed ruling is the law of the case and cannot be later challenged*).

Neely v. Thomasson, 355 S.C. 521, 536, 586 S.E.2d 141, 144 (Ct. App. 2003) (emphasis added.)

Because "all persons concerned" are bound by a court determination that a marriage is valid, "all persons concerned" are likewise bound by a court's finding that a marriage is invalid. If third parties were able to contest final family court orders, the order would never be final and chaos in family relations would ensue.

B. Mr. Brown Is Estopped From Contesting Or Attacking The Family Court Order.

1. The Family Court Order Is Binding Upon James Brown And The Contestants Because He Argued The Order's Findings Of Facts Are Binding And He Had Control Over The Action.

Not only does Mr. Brown, and those in privity with him, lack standing for the reasons discussed above, he would also be estopped from contesting or attacking the family court order. In his amended complaint in the Family Court for an annulment, Mr. Brown alleged that "the Findings of Facts (sic) of the Charleston Family Courts are binding..." and that Mrs. Brown was "judicially estopped" from denying the Family Court's Findings of Fact. See Exhibit 16 to the Joint Stipulation of Facts, p. 2, ¶¶ 10-11. Mr. Brown took the position during his lifetime that the facts as found by Judge Segars-Andrews were true and correct. Those facts include Ahmed being married before his ceremonial marriage to Mrs. Brown, and Mr. Brown and his estate cannot have it both ways.

The Family Court found that Ahmed "was married to another woman or other women and therefore did not have the capacity to marry the Plaintiff..." See Exhibit 12 to the Joint Stipulation of Facts, p. 2. Mr. Brown did not contest the validity of the family court order holding that Mrs. Brown was never married to Ahmed, and thus had no impediment to marrying Mr. Brown. In his amended complaint, in his own family court action, Mr. Brown asserted that the unappealed order of the family court invalidating the putative marriage between Mrs. Brown

and Ahmed was final and binding.[57] This finding was binding on Mr. Brown during his lifetime, and it is binding on the contestants in this action. Therefore, Contestants are estopped from challenging this and all other Findings of Fact that Mr. Brown asserted to the Family Court in 2004.

In the present case, Mr. Brown essentially had control over the family court action to invalidate the attempted Brown-Ahmed marriage: He paid the attorney's fees that made the action possible (as the personal representatives admitted in a response to a request to admit, Mr. Brown paid Mrs. Brown's attorneys' fees for that action).[58] Indeed, the driving force behind the annulment action was Mr. Brown. Mr. Brown supported Mrs. Brown's action to invalidate her putative marriage to Ahmed. In its May 26, 2009 Order, this Court agreed. Mr. Brown would not have been allowed to attack the validity of the family court order determining that the putative marriage between Mrs. Brown and Ahmed was invalid and void ab initio.[59] Also, as discussed above, that unappealed family court order was final and binding. Mr. Brown himself recognized this. In his amended complaint to annul his marriage with Mrs. Brown — brought after the final family court order invalidating the putative marriage between Mrs. Brown and

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[57] See Exhibit 16 to Joint Stipulation of Facts, p. 2, ¶ 10.

[58] See Exhibit B at 3, Request and Response No. 9; Joint Stipulation of Facts, p. 4 ¶ 13.

[59] See Neely v. Thomasson, 365 S.C. 345, 618 S.E.2d 884 (S.C. 2005). To show precedent regarding finality, the Court of Appeals opinion in Neely cited as follows:

> Adickes v. Allison & Bratton, 21 S.C. 245, 259 (1884) (alteration and emphasis added) (quoting Freeman Judgments § 12), cited with approval in Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). A decree of divorce is generally a final judgment of the court. Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996); cf. Corbin v. Kohler Co., 351 S.C. 613, 621, 571 S.E.2d 92, 97 (Ct. App. 2002) ("The final written order contains the binding instructions which are to be followed by the parties.")...See ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) (*holding an unappealed ruling is the law of the case and cannot be later challenged*).

Neely v. Thomasson, 355 S.C. 521, 536, 586 S.E.2d 141, 144 (Ct. App. 2003) (emphasis added.)

Ahmed—*Mr. Brown asserted that the unappealed order of the family court invalidating the putative marriage between Mrs. Brown and Ahmed was* final and binding.[60] But even if the law did not preclude him outright from attacking the validity of that family court order, he would have been estopped from doing so as he controlled and paid for the action to begin with.

2. Mr. Brown Accepted The Benefits Of Mrs. Brown's Annulment Judgment And Therefore He And Those In Privity With Him Are Estopped To Contest Its Validity.

Mr. Brown was aware at all times of Mrs. Brown's action to secure the annulment. In fact, he paid Mrs. Brown's attorney's fees in securing the order, and he thereafter accepted the benefits of the order.[61] It has long been settled that a person who accepts the benefits of even a void order is estopped to question its validity. Edwards v. Edwards, 254 S.C. 466, 176 S.E.2d 123 (1970) ("Since [husband] proposed the transfer of the property and has accepted the benefits accruing to him therefrom, he is now estopped to assert the invalidity of the judgment."); Scheper v. Scheper, 125 S.C. 89, 118 S.E. 178 (1923) ("Even where one who did not procure it accepts the benefits of a void judgment, he is estopped to assert its invalidity.").

The effect of a final judgment in one action upon the result of a later action is determined under the doctrines of res judicata and collateral estoppel. Res judicata applies only when the relief sought in the two actions is the same, and therefore does not apply here.

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[60] See Exhibit 16 to Joint Stipulation of Facts. In his amended complaint, Mr. Brown said:

> The Charleston County Family Court granted the Defendant an annulment on April 15, 2004. (A copy of this Order is attached hereto and incorporated by reference)...Defendant, in that action, has not filed any appeal from the Family Court Order and as such, the Findings of Facts of the Charleston Family Courts are binding on this Court.

Id. at 2, ¶¶ 9-10.

[61] Examples of the many benefits that Mr. Brown received from that order include: Mrs. Brown dismissed her claims for divorce and related relief, the ability to legitimize his biological son J , and the ability to continue with and to affirm a valid marriage to Mrs. Brown, as he stated in his subsequently-published autobiography.

When the same issue arises in two actions seeking different relief, the effect of the former judgment is determined under the doctrine of collateral estoppel. Under that doctrine, the result in the former action sometimes controls the result in the latter action:

> 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. *Judy v. Judy,* 383 S.C. 1, 7, 677 S.E.2d 213, 217 (Ct. App. 2009). The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment.

Carolina Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). There is no question here that the validity of the marriage between Mrs. Brown and Ahmed was actually litigated and necessarily determined in the family court action. Determining the validity of the marriage was the entire purpose of that action. A finding that the marriage was invalid was obviously necessary to support a judgment invalidating the marriage.[62]

A party who has accepted the benefits, or a substantial part of the benefits, of a judgment is estopped from later contesting the validity of the judgment. The equitable justification for this long established and widely recognized rule has been stated in various ways. For instance, a "litigant cannot treat a judgment as both right and wrong . . ." Dorai v. Dorai, 2013 Tex. App. Lexis 4812 (Tex. App. 2013). "It is the settled rule that the voluntary acceptance of the benefit of a judgment or order is a bar to the prosecution of an appeal therefrom. The rule is based on the principle that 'the right to accept the fruits of the judgment and the right to appeal therefrom are wholly inconsistent, and an election to take one is a renunciation of the other.'" Satchmed Plaza Owners Ass'n v. UWMC Hosp. Corp., 167 Cal. App. 4th 1034, 1041, 84 Cal. Rptr. 3d 585, 590 (2008). "The acceptance of the benefits of the judgment is inconsistent with a claim that the

[62] As has already been noted, South Carolina precedent, as well as leading authority, hold that such an order, like a divorce decree, is binding on all third parties. See discussion at pp. 17-21 above.

judgment is erroneous. More importantly, in the circumstances here present, it is inequitable and unjust to permit plaintiff to accept the benefits and attack the judgment on appeal." Tassie v. Tassie, 140 N.J. Super. 517, 525-526, 357 A.2d 10, 15 (N.J. Super. 1976). "The general rule is that when a litigant voluntarily accepts the benefits of an order or judgment, [the litigant] cannot take an appeal to reverse the judgment. This is because the right to proceed on a judgment and enjoy its fruits, and to attack it on appeal, are totally inconsistent positions." George v. George, 991 S.W.2d 679, 680-81, 1999 Mo. App. LEXIS 370, *2-3 (Mo. App. 1999).

The acceptance of the benefits doctrine has been in effect in South Carolina for well over a century at least, as evidenced by Whaley v. Lawton, 57 S.C. 256, 35 S.E. 558 (1900). In that case the trial court issued an order granting the plaintiff leave to amend his complaint after it had initially sustained the defendant's demurrer, and granted the defendant leave to answer the amended complaint. The defendant answered the amended complaint but then appealed the order allowing the amendment. At oral argument before the Supreme Court, the plaintiff asserted for the first time that the defendant had waived his right to appeal by accepting the benefit of the appealed order, namely, the leave to file an answer to the amended complaint. The Supreme Court agreed that "it is quite true that a party, by accepting the benefit of an order, waives his right to appeal from such order," but held the rule had no application in the case because the defendant had received no "benefit" from the order.[63]

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[63] "We proceed next to consider the second general question stated above, viz: whether there was error in allowing the plaintiff leave to amend the allegations of his complaint, setting out the second and third causes of action, after sustaining the demurrer to those two causes of action. But before proceeding to consider the merits of this question, it may, perhaps, be necessary to consider a preliminary question raised, for the first time, in the argument of the respondent before this Court. That question is whether the defendant has not waived his right to appeal. Waiving, without deciding the point whether it is now too late to raise this question, as there was no motion to dismiss this appeal, and no mention is made of it in the "Case" as prepared for argument here, which was agreed to by both parties, we may say that the point made cannot be sustained. The contention on the part of respondent is that the defendant, by serving his answer to the complaint as amended under the leave granted by the order of Judge Klugh, has waived his right to appeal from such order. We do not think so. While it is quite true that a party, by accepting the benefit of an order, waives his right to appeal from such order, yet it certainly cannot be said that the defendant,

The rule was still in effect 70 years later when the Supreme Court decided Edwards v. Edwards, 254 S.C. 466, 176 S.E.2d 123 (1970). In fact, in that case the Supreme Court held that a party who accepts the benefits of even a void judgment is estopped from attacking it. There the husband had appealed an order finding him in contempt for refusing to convey certain real estate to the wife as required by their divorce decree. The husband's defense was that the divorce decree was void, arguing that "while the Juvenile and Domestic Relations Court of Spartanburg had jurisdiction to grant divorces and alimony, it had no authority to order the transfer of his property to his wife as an incident to such jurisdiction." Id. at 469, 176 S.E.2d at 124. It appears there may have been some merit in the husband's argument but the Supreme Court stated that it need not reach that issue and in fact "may assume the correctness of the appellant's position." Id. at 469, 176 S.E.2d at 124. It held that because the husband had accepted benefits granted to him by the divorce decree he was estopped to challenge its validity, even if the court that issued it lacked subject matter jurisdiction: "Since he proposed the transfer of the property and has accepted the benefits accruing to him therefrom, he is now estopped to assert the invalidity of the judgment." Id. at 470, 176 S.E.2d at 125. Although the Court observed that the husband had proposed the transfer as well as accepting the benefits of the decree, it made clear that husband's acceptance of the benefits alone was the decisive fact. Citing Scheper v. Scheper, 125 S.C. 89, 118 S.E. 178 (1923), the Court explained that "Even where one who did not procure it accepts the benefits of a void judgment, he is estopped to assert its invalidity." Id. at 471, 176 S.E.2d at 125.

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by answering the amended complaint, which he was bound to do under pain of being found in default, has accepted the benefit of Judge Klugh's order, for that order was no benefit to him--rather the contrary."

Id. at 264-65, 35 S.E.2d at 561-62 (emphasis by the Court).

As in Whaley v. Lawton, application of the doctrine was proposed only belatedly during oral argument in Schleicher v. Schleicher, 310 S.C. 275, 423 S.E.2d 147 (Ct. App. 1992). The Court of Appeals did not reach the issue, not only because of the wife's lateness in raising it but also because it was unnecessary, as it ruled in the wife's favor on a different ground. The Court of Appeals did, however, recognize the doctrine as the general rule and indicated how it could have applied to the facts of the case.[64]

The evidence is uncontested that Mr. Brown was aware at all times of Mrs. Brown's action to secure the annulment judgment, that he paid Mrs. Brown's attorney's fees in securing the judgment, and that he thereafter accepted the benefits of the order. Mr. Brown sent Mrs. Brown's attorney a cashier's check dated September 22, 2003 to pay for her annulment action, and Mrs. Brown's attorney kept Mr. Brown's attorney informed of the proceedings.[65] Therefore, as an initial matter, Mr. Brown benefited from the Order of Annulment because the Order made it clear that his marriage to Mrs. Brown was in fact valid. However, he went one step further.

Mrs. Brown's Summons and Complaint against Ahmed were filed on December 15, 2003. Mr. Brown was later arrested on a domestic violence charge involving Mrs. Brown on January 28, 2004, and the very next day Mr. Brown's attorney brought an annulment action

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[64] "As the record discloses, Mr. Schleicher took possession of the items awarded him by the family court's decree, including, among other things, two trailers, a motorcycle, and some antiques. See 4 C.J.S. Appeal & Error § 215, at 644 (1957) ("It is a well settled general rule . . . that, where a party, knowing the facts, voluntarily accepts the benefits, or a substantial part thereof, accruing to him under a . . . decree, such acceptance . . . estops him from afterward maintaining an appeal . . . to review the . . . decree or deny the authority which granted it . . ."); see also 4 Am. Jur. 2d Appeal and Error § 259, at 754 (1962) ("The general rule that a party who voluntarily accepts a benefit under a judgment or decree waives his right to have it reviewed applies in divorce cases."); E.T. Tsai, Annotation, Spouse's Acceptance of Payments Under Alimony or Property Settlement or Child Support Provisions of Divorce Judgment As Precluding Appeal Therefrom, 29 A.L.R.3d 1184 (1970)."

Id. at 275, 423 S.E.2d at 148, n.1.

[65] See Exhibit B at 3-4, Request and Response Nos. 9 and 10; Joint Stipulation of Facts, p. 4 ¶¶ 13-14; Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment, filed November 26, 2007, ¶¶ 4 and 6 and Exhibits "B", "D" and "F" attached thereto.

against Mrs. Brown in Aiken County.[66] Over three months later (and three weeks after the Charleston County Family Court filed its Final Order), Mr. Brown amended his complaint. In his Amended Complaint for Annulment, Mr. Brown said "[t]he Charleston Family Court granted the Defendant an annulment on April 15, 2004 (a copy of which is attached hereto and incorporated by reference)."[67] He argued that "[t]he Charleston County Family Court made Findings of Facts," that "the Findings of Facts of the Charleston Family Courts are binding on [the Aiken County Family] Court," and that "[Mrs. Brown] is collaterally and judicially estopped from denying the allegations in this action"[68] Mr. Brown clearly accepted the benefits of the Charleston County Family Court Order when he utilized the Order to advance his own position in the Aiken County action. Mrs. Brown counterclaimed for a divorce,[69] and the parties ultimately entered into a Consent Order of Dismissal in which Mr. Brown agreed to pay Mrs. Brown's attorney fees in return for Mrs. Brown agreeing not to bring a claim for common law marriage.[70]

Having accepted the benefits of the Charleston Family Court Order, Mr. Brown was estopped from contesting the Order during his lifetime. As Mr. Brown was estopped from contesting the Order (and in fact voluntarily dismissed his own contest of the annulment judgment during his lifetime), so too are his Personal Representatives and the Devisees of his Estate.

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[66] See Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment, filed November 26, 2007, p. 2, ¶ 11.

[67] See Exhibit 16 to Joint Stipulation of Facts, p. 2, ¶ 9.

[68] Id. ¶¶ 8 and 10.

[69] See Exhibit 17 to Joint Stipulation of Facts, p. 9 ¶ 1.

[70] See Exhibit 19 to Joint Stipulation of Facts, p. 1, ¶¶ 2-3.

C. Because Mr. Brown Lacked Standing And Was Also Estopped From Contesting Or Attacking The Family Court Order, Contestants Also Lack Standing And Are Estopped From Contesting Or Attacking The Family Court Order.

Heirs are generally in privity with their ancestors. Thompson v. Hudgens, 161 S.C. 450, 463, 159 S.E. 807, 812 (1931). Consequently, heirs are barred from asserting claims that their ancestors would have been barred from asserting. Watson v. Watson, 172 S.C. 362, 369-71, 174 S.E. 33, 36 (1934). In Watson, the decedent was barred from attacking a divorce; the Court held that those in privity with him, such as his children, were likewise barred. These rulings are obvious because heirs and devisees of a decedent cannot acquire any greater rights through the decedent than the decedent had himself.

Similarly, a personal representative's relationship with the decedent exemplifies the classic case of privity with the decedent; it would be illogical for a personal representative, representing the decedent, to have greater rights through the decedent than the decedent had himself.[71]

More generally, "[t]he term 'privity' when applied to a judgment or decree, means one so identified in interest with another that he represents the same legal right." H.G. Hall Constr. Co. v. J.E.P. Enters., 283 S.C. 196, 204, 321 S.E.2d 267, 271 (Ct. App. 1984). Carolina Baking Co. v. Geilfuss, 169 S.C. 348, 168 S.E. 849, 852 (1933), held that a judgment is binding upon nonparties who "sought, consented to, or acquiesced in" the judgment. Id. To similar effect is Tillman v. Tillman, 93 S.C. 281, 76 S.E. 559 (1912). There, a father executed a deed giving custody of his children to his parents. A custody action then followed between the father's parents and the mother, in which the mother prevailed. The court held that the father was bound by the judgment:

[71] See Lukich, discussed below; Exhibit A at 29.

> It is true that [the father] was not a formal party to that proceeding, but he submitted an affidavit therein making no claim on his own behalf, but insisting on the claim of his father and mother, to whom he had solemnly conveyed all his rights of custody. *It is clear that by this action he became bound by the decree rendered in the former proceeding.*

Id. (emphasis added). By supporting his parents in the custody case, therefore, the father became bound by the result.

The court so held in Neely v. Thomasson, 365 S.C. 345, 618 S.E.2d 884 (2005). The decedent in that case was divorced from his wife during his lifetime, and the divorce decree held that a daughter was born during the marriage. After the decedent's death, the decedent's heirs argued that they were not parties to the divorce case, that they were not bound by the court's decision, and that the daughter was actually not the child of the decedent. The South Carolina Supreme Court held that the decedent was bound by the judgment, and that the heirs were likewise bound:

> Because the issue of paternity was raised and ruled upon in a prior action, Decedent, if alive, would have been barred from challenging paternity at a later date. *See Eichman,* 285 S.C. at 380, 329 S.E.2d at 766. As a result, Decedent's heirs are likewise barred from asserting claims that Decedent himself would have been barred from asserting. *See Watson,* 172 S.C. at 370-71, 174 S.E. at 36. Moreover, we find that it would be unjust to allow Decedent's siblings to assert a claim that Decedent himself never chose to assert during his lifetime. In fact, there is no evidence in the record that Decedent took any steps whatsoever during his lifetime to disclaim Nancy as his daughter. To the contrary, Decedent acknowledged, on more than one occasion, that Nancy was his child. Therefore, we hold that Decedent's siblings should not have been permitted to challenge the prior paternity determination.

Id. at 354-55, 618 S.E.2d at 889 (emphasis added).

In this case, Mr. Brown's active support of the family court annulment action shows that he was bound by the result during his lifetime. Mr. Brown obviously agreed, as he himself asserted in his subsequent family court complaint. Even after he dismissed that action, he took no steps whatsoever to attack the invalidation of Mrs. Brown's first marriage during his lifetime,

and in fact repeatedly referred to Mrs. Brown as his wife, such as in his subsequent autobiography.[72] After Mr. Brown's death, his estate and heirs cannot raise a claim that Mr. Brown himself was barred from asserting. The final judgment in the prior family court action establishes that Mrs. Brown never had a valid marriage with Ahmed, and that her marriage to Mr. Brown was therefore not void for bigamy.

Thus, the Personal Representative and the Devisees lack standing to assert claims that Mr. Brown could not assert during his lifetime. None of the parties to the elective share and omitted spouse actions has standing to contest the family court order invalidating the attempted Mrs. Brown-Ahmed marriage; therefore the contestants have no legitimate basis to argue that the Browns' marriage was invalid.

D. The Family Court Order Is The Law Of The Case.

This Court has already ruled that the Lukich decisions support Mrs. Brown's status as Mr. Brown's wife.[73] This Court cited Mr. Buchanan's testimony, as personal representative and trustee, and ruled

> [T]hat the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage.[74]

This Court also ruled that Mrs. Brown's marriage to Mr. Brown was valid.[75] This Court rejected the argument by the former personal representatives and trustees that, under Lukich, Mrs. Brown did not qualify as a surviving spouse because her putative marriage to Ahmed

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[72] See Exhibit A at 29.

[73] See Exhibit A at 28.

[74] Id.

[75] Id. at 28-30.

constituted an impediment to her marriage to Mr. Brown.[76] This Court instead held that the family court order invalidating the putative marriage of Mrs. Brown to Ahmed had determined as a finding of fact and a conclusion of law that "Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to the purported marriage: he was already married at the time."[77]

In addition, this Court cited Mr. Buchanan's testimonial admission as personal representative and trustee and said:

> *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.[78]

This Court ruled that the family court order was the law of the case, that neither Mr. Brown nor any third party had the right to contest the family court order invalidating the putative marriage between Mrs. Brown and Ahmed and, that if Mr. Brown did not have that right, neither did his fiduciaries.[79]

V. THE PERSONAL REPRESENTATIVE AND DEVISEES ARE ESTOPPED FROM ATTACKING THE VALIDITY OF THE BROWNS' MARRIAGE BECAUSE THEY CONSENTED TO A SETTLEMENT AGREEMENT WITH A PROVISION RECOGNIZING THE VALIDITY OF THE MARRIAGE REGARDLESS OF THE DETERMINATION OF ANY COURT AND BECAUSE THEY HAVE ASSERTED THE MARRIAGE IS VALID BEFORE THE SUPREME COURT.

The Personal Representative and Devisees agreed to and accepted a settlement agreement that expressly provided that Mrs. Brown is the surviving spouse regardless of whether the

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[76] Id. at 28.

[77] Id.

[78] Id. at 28-29.

[79] Id. at 29.

agreement was approved by a court. The settlement agreement provided that it was a binding private agreement, regardless of court approval, and provided that it bound personal representatives and trustees, as allowed by law.[80] The settlement agreement expressly provided that the provision recognizing Mrs. Brown as the surviving spouse survived regardless of whether the agreement was approved by a court.[81] The Personal Representative and Devisees cannot now take a contrary position. Having accepted through his conduct the terms of the settlement agreement, including the provision recognizing the validity of the Browns' marriage regardless of court approval of the validity of the settlement agreement, Mr. Bauknight cannot now disavow that provision and contest the validity of the marriage.[82] Nor can Mr. Sojourner, who is acting for Mr. Bauknight in these litigated matters. Moreover, as allowed by South Carolina law, the binding private settlement agreement provides that its provisions are binding on personal representatives and trustees.

Throughout the appellate process, Mr. Bauknight administered the Estate in accordance with the provisions of the settlement agreement, as approved by this Court. In full compliance with his fiduciary duties, Mr. Bauknight retained counsel to uphold the validity of the settlement agreement.

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[80] SCPC § 62-3-912 allows successors to enter into a binding private settlement agreement that binds the parties thereto, as well as personal representatives (except to the extent a non-party's interest could be affected), even without court approval.

[81] See Original Settlement Agreement of August 10, 2008, ¶¶ 1, 6, and Addendum thereto, incorporating Original Settlement Agreement, ¶¶ 23 and 26. The settlement agreement includes a severability provision that continues the binding effect on those provisions not found invalid. Although the South Carolina Supreme Court ruled that this Court's approval of the settlement agreement needed additional evidence that the settlement was just and reasonable, that opinion did not address the binding private settlement agreement issue, nor did it address the issue of the parties' recognition of the validity of family status, including Mrs. Brown's status as surviving spouse. Consequently, under both the binding private settlement agreement analysis and the severability clause, the provision confirming Mrs. Brown's status as Mr. Brown's surviving spouse remains binding.

[82] See discussion on acceptance of benefits above at pp. 23-28.

Moreover, on his behalf, Mr. Bauknight's counsel signed the Respondents' brief to the Supreme Court. On behalf of the other parties to the settlement agreement, including Devisees, their counsel signed the Respondents' brief to the Supreme Court.[83] The Respondents' brief asserted that this Court's order which approved the settlement agreement was correct. Both the Respondents' brief and this Court's order that approved the settlement agreement stated that Mrs. Brown was the surviving spouse and that the Lukich case, discussed below, supported that conclusion.[84] At oral argument before the Supreme Court, counsel retained by Mr. Bauknight presented on their behalf the settling parties' position to uphold this Court's order which approved the settlement agreement, and the argument by Mr. Bauknight's counsel included the correct assertion that Lukich supports the validity of Mrs. Brown's marriage to Mr. Brown.[85] Thus, the settling parties, including Mr. Bauknight and the Devisees, correctly contended in the

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[83] The Attorney General's Office also signed the Respondents' brief.

[84] See Respondent's Final Reply Brief, pp. 30-31, n.31.

[85] See Supreme Court Oral Argument Transcript for Wilson v. Dallas, beginning at the 42:40 mark where Mr. Wilkins argued that

> As far as Mrs. Brown is concerned, she certainly had a serious claim as an omitted spouse, and certainly a slam dunk claim as an elective share...In Lukich, marriage number one, there was no impediment to that marriage, so when marriage number two came along, she had to reach back to have that marriage number one, that was a good marriage, annulled..Had...[Mrs. Brown's marriage to Ahmed] not been annulled, the second marriage [to Mr. Brown] still would have been a good marriage, because the first marriage, by itself standing alone, was invalid because [Ahmed] had been married at least twice...You can't get married to someone who's already married, and that's what happened with Mrs. Brown. So that first marriage in Texas was null from the very beginning...[T]he [Family Court] recognized that the [marriage to Ahmed] was invalid, from the beginning.

Further, acting on behalf of the charitable beneficiaries, the Attorney General's office also made a presentation at oral argument before the Supreme Court to uphold this Court's order that, inter alia, approved the settlement agreement.

Supreme Court that the Lukich case, discussed below, supported and asserted the position that Mrs. Brown had *no* impediment to her marriage to Mr. Brown.[86]

VI. LUKICH V. LUKICH CONFIRMS THE VALIDITY OF THE BROWN-BROWN MARRIAGE.

A. Under Lukich v. Lukich Mrs. Brown Had No Impediment To Her Marriage To Mr. Brown.

As discussed above in section IV, Contestants cannot attack the Brown-Ahmed family court order, nor can this Court overturn it. As discussed above in sections IV and V, Contestants also lack standing to attack the Brown-Brown marriage and are estopped from doing so. Even if Contestants could attack the Brown-Brown marriage, Contestants' attack would be limited to asking this Court to determine the *effect* of the Brown-Ahmed family court order on the Brown-Brown marriage. In that event, this Court has already correctly determined that "rather than supporting the position of the personal representatives and trustees, Lukich supports the position of Mrs. Brown as Mr. Brown's surviving spouse." Exhibit A at 28.

In both the Lukich case and this case, the validity of Mrs. Lukich's marriage to Mr. Lukich and the validity of Mrs. Brown's marriage to Mr. Brown are governed by S.C. Code Ann. § 20-1-80. That statute is titled "Bigamous marriage shall be void: exceptions," and provides:

> All marriages contracted while either of the parties has a former wife or husband living shall be void. But this section shall not extend to a person whose husband or wife shall be absent for the space of five years, the one not knowing the other to be living during that time, nor to any person who shall be divorced or whose first marriage shall be declared void by the sentence of a competent court.

[86] Having accepted through his conduct the terms of the settlement agreement, including the provision recognizing the validity of the Browns' marriage regardless of court approval of the validity of the settlement agreement, and having asserted the validity of Mrs. Brown's marriage to Mr. Brown to the Supreme Court, Mr. Bauknight cannot now disavow that provision and contest the validity of the marriage. Nor can Mr. Sojourner, who is acting for Mr. Bauknight in these litigated matters. Moreover, as allowed by South Carolina law (S.C. Code Ann. § 62-3-912), the binding private settlement agreement provides that its provisions are binding on personal representatives and trustees.

The statute states a general rule in the first sentence and then three exceptions to the general rule in the second sentence. The general rule governs Mrs. Brown's attempted *first* marriage to Ahmed, who was already married when he participated in a marriage ceremony with Petitioner. Petitioner's attempted marriage to Ahmed was void because Ahmed's "existing marriage . . . incapacitated him . . . to contract another marriage . . ." Howell v. Littlefield, 211 S.C. 462, 466, 46 S.E.2d 47, 48 (1947). The marriage ceremony did nothing to change that fact. "A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable." Day v. Day, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950). Accordingly, there never was an impediment to Mrs. Brown's marriage to Mr. Brown, and this was true whether or not Mrs. Brown obtained an order invalidating the attempted marriage to Ahmed before or after her marriage to Mr. Brown, or indeed whether or not she obtained an order invalidating the attempted marriage to Ahmed at all.[87]

In contrast, Mrs. Lukich's *first* husband was *not* already married when he married Mrs. Lukich, and consequently there was no impediment under the bigamy statute for this first husband to enter a marriage with Mrs. Lukich. Therefore it was Mrs. Lukich's *second* marriage, to Mr. Lukich, that was void unless this second marriage fit under one of the three exceptions in the bigamy statute. As the Supreme Court explained in Lukich v. Lukich, 379 S.C. 589, 666 S.E.2d 906 (2008), none of the three exceptions applied:

> We agree with the Court of Appeals that this statute is dispositive of Wife's claim:
>
> Under the statute, since Wife's Husband # 1 was still living in 1985, her purported marriage to Husband # 2 was void unless one of the three statutory exceptions is met. The first exception, the five year abandonment clause is not

[87] See State v. Sellers, 140 S.C. 66, 98-99; 134 S.E. 873, 884 (1926) (citing the predecessor to S.C. Code Ann. § 20-1-80, recognizing the void-voidable distinction, and stating that where the law declares a marriage to be void ab initio, it is unnecessary to obtain an annulment to legitimize a subsequent marriage).

> implicated here, nor is the second, since Wife was not divorced from Husband # 1. Wife relies upon the third exception, which excepts from the bigamy definition an individual "whose first marriage shall be declared void by the sentence of a competent court."
>
> The question is whether the October 2003 annulment order declaring Wife's first marriage void ab initio relates back so as to validate her purported 1985 marriage. In construing a statute, we need not resort to rules of construction where the statute's language is plain. *Tilley v. Pacesetter Corp.*, 355 S.C. 361, 585 S.E.2d 292 (2003). Under the statute's terms, Wife's 'marriage' to Husband # 2 was 'void' from the inception since at the time of that marriage she had a living spouse and that marriage had not been 'declared void.' § 20-1-80.
>
> *While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second 'marriage.'* Since there was no marriage under the plain terms of the statute when the ceremony between Wife and Husband # 2 was performed in 1985, there was nothing to be 'revived' by the annulment order in 2003. *See e.g., Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) ("A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable"); *Howell v. Littlefield*, 211 S.C. 462, 46 S.E.2d 47 (1947) ("[Husband's] existing marriage...incapacitated him...to contract another marriage...."). The statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective. Any other construction of § 20-1-80 would lead to uncertainty and chaos.

Id. at 592-93, 666 S.E.2d at 907. (Emphasis added)

The Court of Appeals in its Lukich decision in fact expressly stated that its holding was limited to the facts of the case and would not apply to cases such as this very case, where *Mrs. Brown's first marriage was void and not merely voidable*:

> We note that our holding is limited to the facts of the case at bar, e.g., the situation where the annulled marriage would be valid but for an annulment decree declaring the marriage ab initio. Our holding is not meant to affect a party who enters into one of the three types of marriages that never have legal validity in South Carolina, namely marriages that are void ab initio by operation of statute:
>
> (1) bigamous marriages, S.C. Code Ann. § 20-1-80 (Supp. 2004); (2) same sex marriages, S.C. Code Ann. § 20-1-15 (Supp. 2004); and (3) marriages of minors under the age of 16, S.C. Code Ann. § 20-1-100 (Supp. 2004).

Lukich v. Lukich, 368 S.C. 47, 55, 627 S.E.2d 754, 758 n. 2 (Ct. App. 2006).

The Supreme Court in its Lukich opinion did not address and overturn the obvious rule recognized by the Court of Appeals in its Lukich opinion. In fact, the Supreme Court opinion confirms that bigamous marriages are void ab initio and are never a marriage at all: *"The [bigamy] statute speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or retroactive perspective. Any other question of § 20-1-80 would lead to uncertainty and chaos."* 379 S.C. at 593; 666 S.E.2d at 907 (emphasis added). The Supreme Court opinion also cites precedential authority for the same principle:

> Day v. Day, 216 S.C. 334, 58 S.E.2d 83 (1950) ('A mere marriage ceremony between a man and a woman, where one of them has a living wife or husband, is not a marriage at all. Such a marriage is absolutely void, and not merely voidable.'); Howell v. Littlefield, 211 S.C. 462, 46 S.E.2d 47 (1947) ('[Husband's] existing marriage. . .incapacitated him. . .to contract another marriage. . . .').

Id. at 592-93, 666 S.E.2d at 907.

If Lukich were applied as Contestants would have it, the result would be chaos. Their position is that a bigamous marriage has legal effect unless and until it has been annulled. If Contestants prevail on their theory, the bottom line would be that the *bigamy statute would not prevent a person from being married to more than one person at a time unless someone contested a marriage in court and got a court order.* According to Contestants, a person can be polygamous as long as no one goes to court. All bigamous marriages, they say, are legal and valid, unless and until a court decides otherwise. And, according to Contestants' absurd position about the application of the bigamy statute, even if Mrs. Brown was married at the time she married Mr. Brown—which she was not—Mr. Brown was legally married to Mrs. Brown because no one successfully obtained a court order invalidating his marriage to Mrs. Brown.[88] This is, of course, a ludicrous position and absolutely contrary to the public policy of South

[88] As discussed above, Mr. Brown did bring an action contesting their marriage, but dismissed it.

Carolina which supports monogamy and condemns polygamy. In fact, "any person who is married who shall marry another person shall...on conviction, be punished by imprisonment in the Penitentiary for not more than five years..." S.C. Code Ann. § 16-15-10. Participating in a bigamous marriage is a criminal act in South Carolina and is never considered legally valid. If the Contestants had their way, a husband could have thirty legitimate marriages to wives at one time unless someone went to court and got a judge to rule otherwise. Assuming the twenty-nine wives marrying husband after he marries his first wife do not wish to assert the bigamy statute, then they are all married to husband. Are they all entitled to social security? Are they all entitled to an intestate share? These are just two examples that the resulting chaos would manifest itself in numerous situations. The bottom line is a bigamous marriage has no legal effect whatsoever and a bigamous marriage is in no way an impediment to a subsequent marriage.

Thus, problematically for Contestants' theory, if it were correct (which it is not), then the bigamy statute did not prevent Mrs. Brown (already married according to their theory) from entering into a marriage with Mr. Brown. Under Contestants' theory, the Browns' marriage was valid until some family court order declared it bigamous. Of course, that had never happened. So, using a consistent treatment of Contestants' misapprehension of Lukich, at the time of Mr. Brown's death, Mrs. Brown was married to Mr. Brown and was his surviving spouse according to the South Carolina Probate Code.

B. Unlike Mr. Lukich, Mr. Brown Was Well Aware Of And Paid For Mrs. Brown's Annulment Proceeding.

Mr. Lukich did not know about Mrs. Lukich's annulment action. Unlike Mr. Lukich, Mr. Brown not only knew about Mrs. Brown's annulment action, he paid Mrs. Brown's legal fees.[89]

[89] See Exhibit B at 3, Request and Response No. 9; Joint Stipulation of Facts, p. 4 ¶ 13.

Further, Mrs. Brown's attorney kept Mr. Brown's attorney informed about the litigation.[90] Mr. Brown encouraged Mrs. Brown to obtain the annulment and was the driving force behind it.[91] Also, Mrs. Brown maintains the same position she asserted in her original annulment action, unlike Mrs. Lukich's conflicting arguments.

CONCLUSION

The Contestants lack standing to contest the Browns' marriage. Because they are in privity with Mr. Brown, they cannot assert claims that he could not assert during his lifetime. Mr. Brown could not attack the validity of the family court order invalidating as void ab initio the putative marriage between Mrs. Brown and Ahmed because Ahmed was already married and thus precluded by the bigamy statute from marrying Mrs. Brown. Therefore, Contestants cannot do what Mr. Brown could not do and cannot attack that order. With that order being final and binding, Contestants have no argument that Mrs. Brown had an impediment to her marriage to Mr. Brown, and they have no other argument against that marriage.

Moreover, Contestants are estopped from contesting Mrs. Brown's marital status, (1) having agreed to a settlement agreement with a term recognizing the marriage as valid, regardless of whether a court approved that settlement agreement, (2) having asserted the validity of that marriage to the Supreme Court, and (3) Mr. Brown having sought affirmative relief in his own family court action asking the Aiken Family Court to adopt the findings of the Charleston Family Court.

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[90] See Exhibit B at 3-4, Request and Response No. 10; Joint Stipulation of Facts, p. 4 ¶ 14 and Exhibit 14 attached thereto.

[91] Also unlike Mrs. Lukich, Mrs. Brown's annulled marriage to Ahmed was void ab initio (not voidable) for bigamy and never had legal effect. There was no marriage to void. Where a prior marriage is a legal nullity, the "status quo" at the time of a second marriage is such that there is no valid prior marriage; therefore no impediment to marriage exists. Such was the case with Mr. and Mrs. Brown.

Even if Contestants do have standing and are not estopped, the order of the family court finding the putative marriage of Mrs. Brown and Ahmed void ab initio because of Ahmed's bigamy is final and the law of the case. A probate court cannot override that family court order. Thus, it is the law of the case that Mrs. Brown had no impediment to her marriage to Mr. Brown, which is proved by validly issued and filed documents of the Aiken County Probate Court. [92] The burden of proof is on Contestants of that marriage, and they have no ability to overcome that burden.

All relevant precedent supports the indisputable conclusion that Mrs. and Mr. Brown's marriage was valid. The Lukich case is especially instructive. Lukich provides that the family court order is final and the law of the case. Lukich, as well as the precedent cited in the opinion, provides that a bigamous marriage is void ab initio. Lukich clearly lists the Browns' fact pattern as an exception to its ruling refusing to retroactively apply an annulment based on the particular facts of the Lukich case, which did not involve a bigamous prior marriage attempt.

Even if Contestants were correct in their mistaken reading of Lukich, the "logic" of their attempt to apply it to the Browns' situation is horribly flawed. They want to argue that a bigamous marriage is valid, despite the statute, unless and until a court rules that it is bigamous and that such a ruling does not apply from the date of the putative marriage but rather only prospectively from the date of the family court order. Thus, under their theory, even though the family court order held the putative marriage between Mrs. Brown and Ahmed void ab initio because of his bigamy, they contend she was married at the time of her marriage to Mr. Brown. Fatal to their argument, however, is the next step that would follow from their analysis: Even if Mrs. Brown was married to Ahmed at the time of her marriage to Mr. Brown, so that she was committing bigamy, the Brown marriage is not void ab initio but rather void only from the date

[92] This is also the law of the case because this Court has already so ruled.

that a court finds the Brown marriage to be bigamous. No court has found that marriage was bigamous, so even under the "logic" of Contestants, Mrs. Brown is the surviving spouse of Mr. Brown. Even if a court could now find that the Brown marriage was invalid because of Mrs. Brown's purported bigamy, as asserted by Contestants, it would not apply retroactively to his death, under the mistaken and distorted view of Lukich asserted by Contestants.

For Contestants to prevail, this Court would have to conclude all of the following:

1. That Contestants have standing to attack the Brown-Ahmed final family court order, even though Mr. Brown did not have standing under applicable law and even though Mr. Brown himself in his amended complaint, in his own action, asserted that the order was final and binding;

2. That Contestants are not bound by their own agreement that Mrs. Brown is the surviving spouse of Mr. Brown;

3. That Contestants are not bound by their own assertion to the Supreme Court that Mrs. Brown is the surviving spouse of Mr. Brown;

4. That a probate court has authority to overturn a final binding family court order, despite the chaos such a precedent would create, and despite all South Carolina precedent to the contrary, and even though Mr. Brown himself in his complaint asserted that the family court order was final and binding;

5. That Lukich and all other relevant South Carolina precedent about bigamous marriages being void ab initio hold for the opposite result that these cases actually hold;

6. That a bigamous marriage is valid unless and until a court finds that the marriage is bigamous — i.e., that the policy of this state, despite its bigamy statute, is to allow valid bigamous marriages unless and until someone complains in court and gets a court order;

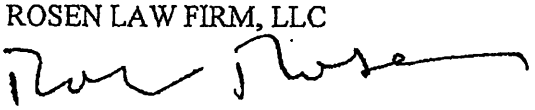
7. That the incorrect view of the Lukich holding held by Contestants applies only when they want it to — i.e., they want their mistaken view to apply to the putative Brown-Ahmed marriage but not to the Browns' marriage; and

8. That this Court's finding of fact and conclusion of law that Mrs. Brown is the surviving spouse is not the law of the case.

Mrs. Brown asserts that none of these eight conclusions asserted by Contestants is correct under the law, let alone all eight that would have to apply for Contestants to prevail. And, of course, all of this discussion falls within the context of the burden of proof being on Contestants.

These are all issues of law and not subject to factual dispute. Mrs. Brown is entitled to summary judgment that she is the surviving spouse of Mr. Brown, as this Court has already concluded.

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ATTORNEYS FOR PETITIONER
TOMMIE RAE BROWN

September 12, 2014
Charleston, SC

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SECOND JUDICIAL CIRCUIT
COUNTY OF AIKEN	)	Case Nos.: 2013-CP-02-02849
	)	2013-CP-02-02850
IN RE: THE ESTATE OF	)	
JAMES BROWN A/K/A	)	
JAMES JOSEPH BROWN	)	**CERTIFICATE OF SERVICE**
	)	

924 14
FILED
SEP 12 2014
Deputy Clerk

The undersigned hereby certifies that on September 12th, 2014 a true and accurate copy of the Memorandum in Support of Tommie Rae Brown's Motion for Partial Summary Judgment, the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment filed November 26, 2007, and the Affidavit of Tommie Rae Brown in Support of Her Motion for Summary Judgment filed April 28, 2014 were placed in an envelope with first class postage thereon through the United States Postal Service and mailed to the offices of the attorneys of record in this case at the addresses below:

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ATTORNEYS FOR PETITIONER
TOMMIE RAE BROWN

Charleston, SC
September 12, 2014

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF AIKEN)	SECOND JUDICIAL CIRCUIT
)	

FILED 9-24-14
Liz Godard
C.C.P.&G.S.
Deputy Clerk

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; DARYL J. BROWN, on behalf of his minor children, L D B and J V. A B ; DEANNA J. BROWN THOMAS, on behalf of her minor children, J B L YAMMA N. BROWN, on behalf of her minor children, S L C. L , and T B. VANISHA BROWN; and LARRY BROWN; TOMMIE RAE HYNIE BROWN	Case No.: 08-CP-02-1647 - original (Case No.: 07-CP-02-0122) - cert. copy. (Estate of James Brown) (Case No.: 08-CP-02-00872) - cert. copy (Wills/Trust/Heirs Matter)
Petitioners,	**ORDER APPROVING SETTLEMENT AGREEMENT**
- vs-	FILED 5-26-2009 Liz Godard C.C.P.&G.S. Anita Knoepke Deputy Clerk
RUSSELL L. BAUKNIGHT, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, TERRY BROWN, ROMUNZO BROWN; FORLANDO BROWN; CINNAMON N.M. PARIS; LARHONDA PETITT; and JEANNETTE MITCHELL	
Respondents.	
In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000	

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

MAY 26 2009

Liz Godard
C.C.C.P. & G. S., Aiken County, S.C.
Anita Knoepke
Deputy Clerk

This matter comes before the Court on a Motion for Approval of Settlement Agreement.

The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing

DAE #1

[redacted]

on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. The following counsel appeared at the hearing related to the Motion for Settlement Approval: (1) Louis Levenson, counsel for Deanna J. Brown, Larry Brown, Yamma N. Brown, individually and on behalf of her minor children S Y I and C L . Vanisha Brown, Daryl J. Brown, individually and on behalf of his minor children child J V A B , L D B J B L , and T B 2) Robert N. Rosen, S. Alan Medlin, T. Heyward Carter, David L. Michel, M. Jean Lee, Andrew W. Chandler, and F. Patricia Scarborough, counsel for Tommie Rae Hynie Brown; (3) Tressa Hayes and James D. Bailey, counsel for Adele J. Pope and Robert L. Buchanan, Jr., (4) A. Peter Shahid, Jr., counsel for Guardian ad Litem Stephen M. Slotchiver; (5) Stephen M. Slotchiver, Guardian ad Litem for J B , (6) David B. Bell and Matt Bodman, counsel for Terry Brown, Forlando Brown, and Romunzo Brown; (7) C. Havird Jones, Jr., J.C. Nicholson, III, and Mary Frances Jowers, on behalf of the South Carolina Attorney General; (8) R. Wayne Byrd, counsel for Albert Dallas and Alfred Bradley; (9) James M. Griffin, counsel for LaRhonda Petitt and Cinnamon Paris; (10) Fred L. Kingsmore, Jr., counsel for Russell Bauknight; (11) Jan L. Warner and Max Pickelsimer, counsel for David Cannon; (12) William Barr, counsel for Jeanette Mitchell; (13) Sonja R. Tate, counsel for Albert Dallas; and (14) Kaymani D. West, counsel for Greenberg Traurig and Joel Katz.

I. Statement and History of the Case

A. Facts and Procedural History

This matter arises out of the Estate of James Joseph Brown, Jr. Mr. Brown died on December 25, 2006, a resident of Aiken County, South Carolina. Mr. Brown's will, dated August 1, 2000, was filed with the Aiken County Probate Court on January 18, 2007. His will

DAE #2

nominated three individuals as Personal Representatives, and they were appointed by the Probate Court by Order dated January 18, 2007: Albert H. Dallas, David G. Cannon, and Alfred A. Bradley. These same individuals were appointed Trustees of the Trust by the express terms of the Trust.

Mr. Brown's will named six children: Deanna J. Brown Thomas, Yamma N. Brown, Vanisha Brown, Daryl J. Brown, Larry Brown, and Terry Brown (collectively "named children"). Mr. Brown left "all [his] personal and household effects of every kind . . ." to these named children in equal shares per stirpes. All of the named children were alive at the time of Mr. Brown's death. Mr. Brown left the remainder of his Estate to the Trust created under his Irrevocable Trust Agreement dated August 1, 2000. The will provided that the remainder of his Estate would go to the Trust as a pour-over devise.

Mr. Brown's Irrevocable Trust Agreement created two trusts: the Brown Family Educational Trust and the James Brown "I Feel Good" Trust. The Brown Family Educational Trust provides for income to be paid for the benefit of each then-living grandchild who has not reached the age of thirty-five (35) for his education and related expenses. Upon termination of the Family Trust, the balance would be added to the "I Feel Good" Trust. The "I Feel Good" Trust is for the "tuition, educational expenses, and financial assistance of and for poor and financially needy children, youth, or young adults (Who are both qualified and deserving) who seek and have need of such assistance to obtain and further their education at the many educational entities and/or institutions in the State of South Carolina and Georgia." In addition to the three appointed Trustees, the Trust created an Advisory Board of three initial members. The Trust describes the powers of the Trustees, including the power to allocate up to 50% of the gross income from the Trust for the payment of administrative and managerial expenses. The

CASE #3

Trust provides for Trustee Succession. If the Trustee resigns, the Trust provides that he appoint a successor, or upon failure of that, the successor shall be determined by unanimous vote of the advisory board then existing.. Failing this, the Court having jurisdiction shall select the successor Trustee. The Trust included a Schedule A listing initial funding of the following: (1) Fifty Dollars ($50.00); (2) all ownership in James Brown Enterprises, Inc.; and (3) ownership of Mr. Brown's primary residence at 430 Douglas Drive, Beech Island, South Carolina.

Mr. Brown's will was admitted to informal probate on January 18, 2007. On January 26, 2007, the Aiken County Probate Court removed the matter to the Court of Common Pleas. From this time forward, the Aiken County Probate Court continued to remove all matters filed in this Estate to the Court of Common Pleas.

On February 1, 2007, Tommie Rae Hynie Brown filed a Petition for Elective Share or Omitted Spouse's Share, asserting she is the widow of Mr. Brown. She and Mr. Brown were married on December 14, 2001, in Beech Island. She had previously been involved in a putative marriage ceremony with Javed Ahmed on February 17, 1997, in Texas. Mrs. Brown subsequently brought an action to annul her marriage to Ahmed, and the Charleston County Family Court found her marriage to Ahmed void *ab initio* by Order dated April 15, 2004. Among other conclusions, the Court found that Mr. Ahmed was married at the time he entered into his marriage with Mrs. Brown, and therefore he lacked capacity to marry her.

The six named children filed an Emergency Petition for Termination of Appointment of and Removal of Personal Representatives on January 24, 2007. On February 1, 2007, Tommie Ray Hynie Brown filed an Emergency Petition for Appointment of Special Administrator. The Court held a hearing on these Petitions on February 9, 2007. By Order dated February 20, 2007, the Court denied the Petition for Removal of the Personal Representatives and granted the

CAE #4

Petition for Special Administrator. By Order filed March 12, 2007, the Court appointed Adele J. Pope and Robert L. Buchanan, Jr., as Special Administrators. At that time, the Special Administrators' duties were limited and included the power to "monitor, investigate, and oversee the performance by the general Personal Representatives of their duties, and present to the Court any appropriate issues regarding same." By Order filed June 25, 2007, the Court granted the Special Administrators "complete, direct and continuing access to all information, documents and records, in any form, related to James Brown, the Estate of James Brown, the James Brown 2000 Irrevocable Trust and all trusts created thereunder, and all Brown Entities or Interest, however titled."

In addition to the six named children, several other individuals have appeared and claimed rights as children of Mr. Brown: (1) J: B ; (2) Cinnamon Nicole Parris; (3) LaRhonda Petit; and (4) Jeannette Mitchell. J: B I seeks his rights as a pretermitted child, having been born on June 11, 2001, after Mr. Brown wrote his will. Steven Slotchiver was appointed Guardian ad Litem for J: B by Order filed June 13, 2007. J: filed a Petition for Adjudication of Paternity on August 24, 2007. LaRhonda Petitt filed an action on August 23, 2007. Cinnamon Nicole Parris filed an action on September 21, 2007. Jeannette Mitchell filed a motion on April 21, 2008.

On July 27, 2007, the Special Administrators filed a Motion and Recommendation of Special Administrators requesting the Court to remove one or more of the Personal Representatives and one or more of the Trustees. A hearing was held on this Motion on August 10, 2007. At the hearing, David G. Cannon resigned as Personal Representative of the Estate, Trustee of the Brown Trusts, and as director, officer, agent, and/or fiduciary of any kind as to

DAE #5

Mr. Brown, the Estate, the Brown Trusts, and all Brown Entities (except Seventh Decade Productions). Dallas and Bradley remained Personal Representatives and Trustees.

The Court held a hearing on September 24, 2007. At the hearing, the Court heard issues related to David Cannon's obligation to account to the Court. The Court found Cannon in contempt by Order filed October 2, 2007. A hearing to address whether Cannon's contempt was willful was held on November 15, 2007 and continued on November 20, 2007. By Order dated December 18, 2007, the Court found Cannon in willful contempt for failing to pay $373,00.00 as ordered, and for amending tax returns on behalf of Brown entities after being ordered to give up authority in regard to the Brown entities and for deliberately disobeying the order of this Court. The Court ordered him to confinement with the South Carolina Department of Corrections for six months, though he could purge himself of the confinement by payment of the $373,000.00, payment to the court of $50,000.00 to be applied towards various parties' attorney fees, and a fine of $10,000.00. Cannon appealed this Order, and as of the date of the present Order, the appeal is still pending.

The South Carolina Attorney General appeared at the hearing on September 24, 2007, and requested to intervene to enforce and protect the funds given or appropriated to any charitable trust created by the will or Trust of Mr. Brown, or any other assets of the Estate which may be impressed with a charitable trust. The Georgia Attorney General also appeared and requested to intervene. By Order filed October 11, 2007, the Court granted the Motions to Intervene. The South Carolina Attorney General continues to remain involved in the case. The Georgia Attorney General is no longer participating in the action, as discussed below.

At the hearing on November 20, 2007, Alfred Bradley and Albert Dallas submitted their resignation as Personal Representatives of the Estate and Trustees. By Order dated November

DAE
#16

20, 2007, the Court accepted their resignations, and immediately appointed Buchanan and Pope to serve as Personal Representatives and Trustees. The Court did not consult the Advisory Board regarding their appointment. By Motion dated November 30, 2007, Dallas and Bradley moved the Court to vacate its Order accepting their resignations, arguing the Court did not have authority to accept the resignations or authority to appoint Pope and Buchanan as Trustees. The Court heard this matter on February 20, 2008, and denied Dallas and Bradley's Motion by Order filed March 7, 2008. Dallas and Bradley appealed, and as of the date of the present Order, the appeal is still pending.

On December 20, 2007, Tommie Rae Brown filed Petitions to Set Aside the Will and Trust, alleging causes of action for undue influence, fraud, lack of intent, and illusory trust. On December 26, 2007, five of the six named children (all but Terry Brown)[1] filed Petitions to Set Aside the Will and Trust, alleging the same four causes of action.

On January 4, 2008, the Court held a hearing on the Motion for Recusal filed by Dallas and Bradley. By Order filed February 20, 2008, the Court denied this Motion.

The Court held a hearing on February 7, 2008. At that hearing, the Court granted the motion of the Levenson clients to revoke the pro hac vice admission of the Georgia Attorney General, though no written Order has been issued on this matter. The Georgia Attorney General became involved in this matter based on an understanding of the Trust that only students in South Carolina and Georgia qualify for benefits under the "I Feel Good" Trust. However, a careful reading revealed that students can be from anywhere; the only limitation is that they desire to attend a school in South Carolina or Georgia. The Court found that the South Carolina

[1] The six named children, and their children who are Mr. Brown's grandchildren, were all originally represented by Louis Levenson. David Bell was substituted as counsel for Terry Brown, Forlando Brown, and Romunzo Brown.

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Attorney General was the appropriate party to adequately protect the interests of the charitable beneficiaries because the trust situs is in South Carolina.

Also arising out of the hearing on February 7, 2008, the Court issued an Order filed February 25, 2008, allowing the PR/Trustees to sell Mr. Brown's tangible personal property and his home in Beech Island. The PR/Trustees desired to sell the personal property through an auction, and hired Christie's Auction House to conduct the sale. Over objection by other counsel, the Court allowed the sale of personal property.

The Court held a hearing on March 7, 2008. At the hearing, the Court heard arguments on the Attorney General's Objection to the Appointment of Pope and Buchanan as Personal Representatives and Trustees, filed December 14, 2007. The Court heard testimony from Pope, Dallas, and Bradley in connection with the Objection. The Court overruled the objection by Order filed April 10, 2008. The Attorney General filed a Motion to Alter or Amend this Order on April 24, 2008, and subsequently, by Motion dated June 18, 2008, asked the Court to hold the Motion to Alter or Amend in abeyance. This request was based on the fact that the Motion relates to the appointment of successor Trustees, and the pending appeal of Dallas and Bradley also relates to the appointment of Trustees and its outcome may make the Motion moot. Because of the request to hold the matter in abeyance, the Court has not ruled on the Motion to Reconsider.

By Order filed March 10, 2008, the Court required service by publication of the Summons and Order in the case caption 07-CP-02-1222. The Notice was published in the Aiken Standard on April 19 and 26, 2008, and May 3, 2008. The published notice stated that it was "to determine all lawful heirs of James Brown, including lawful heirs at law who may be entitled to

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rights under state and federal laws." No additional parties have appeared as a result of the publication.

On August 10, 2008, the following parties participated in an informal mediation: Tommie Raye Hynie Brown; the named children and grandchildren represented by Louis Levenson; and the South Carolina Attorney General. The parties reached a settlement which was reduced to writing and signed by all of the participating parties.

At the hearing on August 19, 2008, the parties reported the partial settlement to the Court during an in-chambers conference. The parties also reported in open court that they had reached a resolution among themselves. At that time, the parties did not disclose their signed settlement document.

On September 29, 2008, the South Carolina Attorney General filed a Petition for Removal and Restraint of Trustees, asking that Dallas and Bradley be removed as Trustees, in the event they are Trustees. On November 7, 2008, the Attorney General and the other settling parties filed an Amended Petition for Removal and Restraint of Trustees Dallas, Bradley, and Cannon, and PR/Trustees Pope and Buchanan. The Court has not heard this matter pending the settlement approval. Also on November 7, 2008, the settling parties filed an Emergency Petition for Appointment of Special Administrator and Special Trustee.

During the pending settlement, Pope and Buchanan have filed numerous pleadings in the matter, including the following which were filed in addition to their Responses and Returns to other matters: (1) Motion for Partial Summary Judgment, dated September 12, 2008; (2) Supplemental Motion to Dismiss All "Spousal" Claims of Tommie Rae Hynie Brown, dated September 12, 2008; (3) Motion to Dismiss all Causes of Action to Set Aside the James Brown 2000 Irrevocable Trust, dated September 15, 2008; (4) Motion to Dismiss, dated October 9,

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2008; (5) Motion to Intervene and Dismiss, dated October 24, 2008; (6) Motion to Dismiss Robert L. Buchanan, Jr. and Adele J. Pope as Individual Parties, dated November 14, 2008; (7) Motion to Disqualify C. Havird Jones, Jr. and Mary Frances Jowers as Counsel and Related Relief, dated November 14, 2008; (8) Emergency Motion to Quash Subpoena and Protect Evidence, dated November 14, 2008; (9) Motion to Realign, for Partial Summary Judgment and for Mediation after Proper Joinder of Parties and Discovery, dated January 9, 2009; (10) Motion to Alter or Amend Judgment, dated January 14, 2009; (11) Motion for Partial Summary Judgment, dated January 20, 2009; (12) Motion and Memorandum of PR/Trustees for Partial Summary Judgment that the AG and PR/Trustees have a Duty to Defend and Uphold the James Brown 2000 Irrevocable Trust; the Trust and Transfer to the Irrevocable Trust of Beech Island are Valid; and all Challenges to the Irrevocable Trust and the Deed of Beech Island to the Trust are Barred by Statutes of Limitation and Estoppel; and Petition for Mandatory Guidance under section 62-7-932(D), dated February 23, 2009; (13) Emergency Motion for Appointment of Special Administrator and Special Trustee, dated February 27, 2009; (14) Motion to Reconsider, Vacate, Set Aside, Alter and/or Amend and/or Clarify Orders, dated March 12, 2009; and (15) Supplemental Motion of PR/Trustees to Dismiss (where applicable), and for Partial Summary Judgment, dated March 17, 2009.

In addition, they also filed numerous affidavits after the settlement was announced to the Court, including the following; (1) Joint Affidavit of Robert L. Buchanan, Jr., and Adele J. Pope Supporting Demand for Due Process Hearing and Related Relief, dated November 24, 2008; (2) Joint Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope, dated January 20, 2009; (3) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope in Support of Injunction and Damages for Intentional Interference, dated February 17, 2009; (4) Joint Affidavit of Robert L. Buchanan, Jr.

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and Adele J. Pope, dated February 19, 2009; (5) Affidavit of Adele J. Pope Opposing Removal of PR/Trustees Buchanan & Pope; Denying Emergency; Supporting Stay and Proper Joinder Supporting Proper Notice of Hearings; Supporting Order Compelling parties to Appeal with records to Testify; and Seeking Ruling Under S.C. Trust Code section 62-7-932(D) Related to Principal and Income Charges Under Will/Trust *In Terrorem* Clauses, dated February 23, 2009; and (6) Affidavit of Robert L. Buchanan, Jr. and Adele J. Pope as PR/Trustees Supporting Emergency Motion for Appointment of Special Administrator and Special Trustee with Full Authority to Manage, Preserve and Protect Assets of the Estate of James Brown, the James Brown 2000 Trust, James Brown Enterprises, Inc. and other Brown Entities pending final resolution of all formal testacy/resignation/removal/appointment matters and challenges to the validity of the James Brown 2000 Trust.

The Court held a hearing on November 25, 2008, and at that time the settling parties disclosed the terms of the settlement on the record and reported they were ready to move forward with a hearing to approve the settlement. The Court scheduled a hearing for settlement approval on January 30, 2009. The Court continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009.

By Order filed January 7, 2009, the Court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the "sole limited and exclusive purpose of reviewing and providing input and recommendations to the Court as to the proposed Settlement Agreement among the Petitioners in this case." Ms. Pope and Messrs. Buchanan, Dallas, and Bradley appealed the Court's January 7, 2009 order to the Court of Appeals. The appeals were dismissed.

At the hearing on January 30, 2009, the settling parties reported that Terry Brown had joined the settlement. Thus, all beneficiaries of the Brown Estate/Trust were part of the

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settlement agreement. The settlement agreement does not include Cinnamon Parris, LaRhonda Petitt, or Jeannette Mitchell. However, those parties each stated they have no objection to the settlement, pursuant to a stipulation with the settling parties that the settling parties do not intend for the settlement to in any way impact or affect their rights.

B. Related Litigation

While the above actions have been pending, there are numerous collateral matters pending in other jurisdictions. Forlando Brown sued Pope and Buchanan in South Carolina District Court on January 2, 2008. As a grandchild and beneficiary of the Family Educational Trust, Forlando Brown contends in the action that he has not received the scholarship money he is entitled to. His allegations against Pope and Buchanan include the following: (1) that they have irreconcilable conflicts of interest; (2) that they have breached their fiduciary duties; and (3) that they have disregarded the terms of the Trust. He seeks removal of Pope and Buchanan and injunctive relief. This action remains pending in the district court.

The CORBIS litigation is pending in Illinois. This action involves claims brought by Mr. Brown during his life for violation of rights of publicity, violation of the Illinois Consumer Fraud and Deceptive Business Practices Act, and a claim for profiteering on the name and likeliness of Mr. Brown without his consent based on CORBIS' sale and offering for sale over the internet of Mr. Brown's photographs for commercial purposes. There is a pending settlement in the CORBIS litigation, and on March 24, 2008, Buchanan and Pope brought an action against the South Carolina Attorney General in Aiken County, asking the Court to approve the terms of the CORBIS settlement agreement.

The Pullman litigation is pending in New York. During his life, Mr. Brown sued the Pullman Group when he was unable to secure a loan from the Royal Bank of Scotland using

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future song royalties as collateral because Pullman Group claimed it had exclusive authority to broker the transaction. The Pullman Group filed a counterclaim, and this action remains pending against the Estate.

On April 6, 2009, Jacqueline Hollander filed an action in the Northern District of Illinois against Pope, Buchanan, and the State of South Carolina. She seeks a finding that she and Mr. Brown were partners and the "I Feel Good" Trust was an extension of the partnership, which she owns as the surviving partner.

C. Synopsis of Settlement Agreement

The settlement agreement dated August 10, 2008, and amended and restated on March 3, 2009, was entered into by and among Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, J B , Larry Brown, individually and on behalf of his minor child J V B , L y D B Venisha Brown, Deanna J. Brown, J L , Yamma N. Brown, individually and on behalf of her minor children, S , L and C n L , Daryl J. Brown, and Tonya Brown, and Terry Brown (the "Settling Parties"). The salient points of the settlement agreement are as follows:

1. The purpose of the agreement was to settle any and all differences among the settling parties concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and of substantial significance, to come together as a family to honor the legacy of Mr. Brown.

2. The settling parties intend for the agreement to be a binding private settlement agreement but also are seeking court approval of the settlement.

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3. Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse.

4. The children and grandchildren who are parties to the agreement were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life and at the time of his death, and qualify as his surviving issue. No DNA testing will be required of any child or grandchild who is a party to the agreement.

5. A professional fiduciary will replace Robert Buchanan and Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown.

6. A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable. The South Carolina Attorney General will have sole authority to select, remove, and replace the Trustee who will manage the Charitable Trust. The children and Tommie Rae shall each be empowered to select a trustee from whom the managing trustee will seek input and advice.

7. The settling parties will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination

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rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to royalty, persona, image, likeness, royalties etc. (collectively, the "James Brown Assets"). The parties will divide any and all such assets and/or proceeds, and maintain beneficial ownership interests in the settlement entity, in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) a net 47.5% to the Charitable Trust; (2) a net 23.75% to Tommie Rae, which includes any share attributable to James Joseph Brown, II (by agreement between Tommie Rae and the Guardian ad Litem for James Joseph Brown, II, he will receive a 4.79% interest in the settlement entity to be held in trust and the remainder interest in another 4.79% interest in the settlement entity to be held in trust); and (3) a net 4.79% interest in the settlement entity to each of the children who are settling parties (with the exception of J. B , who is provided for as discussed above). The Charitable Trust retains a 50% voting and control interest in the Settlement Entity, and the named children and Tommie Rae Brown (including any share attributable to J. B I) shall each retain a 25% voting and control interest. Tommie Rae waives any spousal right she may have to such assets to the extent that they might otherwise exceed her interest in the settlement entity. The children waive any rights to the Brown Assets to the extent that they might otherwise exceed their interests in the settlement entity.

8. All settling parties waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were in good faith and with probable cause.

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9. The promissory note and security deed currently due from the parties represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

10. Terry Brown will receive an exclusive due diligence period of six months during which he can market the assets of the Estate and a Right of First Refusal that terminates in 10 years. However, the settling parties do not have to agree to sell any or all of the assets and a 2/3 majority is required to do so.

11. A trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the Charitable Trust.

12. Any and all will and trust contests will be dismissed.

13. The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from the date of the agreement, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying expenses of relocation. The settling parties shall all have reasonable opportunities to visit privately the

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gravesite upon reasonable notice. The parties waived any right to otherwise direct the location of the gravesite as a result of their status under law.

II. Findings of Fact and Conclusions of Law

A. Parties, Notice, and Jurisdiction

For several reasons, I find that the interested parties have been properly notified, given an opportunity to be heard, afforded all appropriate due process rights, and thus appropriately represented at the hearing to approve the settlement. Ms. Pope and Mr. Buchanan claim a lack of notice. The notice for the hearing commenced on January 30, 2009, was provided on December 5, 2008, in advance of the time required under any applicable rule. The Court commenced the hearing on January 30, 2009, and continued to conduct that hearing on March 4, 5, 6, 25, and 26, 2009, and concluded the hearing on April 6, 2009. Because these dates involved the conduct of the same hearing commenced on January 30, 2009, notice was proper.

1. The settling parties' agreement does not impact rights other than their own. Thus, assuming arguendo that there were interested persons in the Estate of James Brown who were not properly notified and given an opportunity to be heard (although there are none), their lack of participation in the hearing, assumed for the sake of argument, would not affect the ability of this Court to approve the settlement.

South Carolina Probate Code (SCPC) section 62-3-912 recognizes that parties may enter into a private settlement agreement without court approval. The agreement may be among fewer than all persons interested in an estate. Moreover, that section requires personal representatives to honor the terms of the private settlement and to continue the administration of the estate for the benefit of those who are not parties to the settlement. By requiring the personal representatives to both honor the settlement and to continue administering the estate for those

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successors who are not parties to the agreement, section 62-3-912 evidences the legislative intent to recognize as valid settlements among some but not all of the successors to an estate. Moreover, the parties to the settlement agreement are all successors to the Estate. SCPC section 62-1-201(42) broadly defines "successors" to include "those persons, other than creditors, who are entitled to property of a decedent under his will or this Code." The charitable successors are properly represented by the Attorney General of South Carolina, as discussed below.

SCPC sections 62-3-1101 and 62-3-1102, authorizing a court to approve a settlement agreement, also recognize the validity of a settlement by fewer than all parties. Section 62-3-1102 requires that the settlement be signed by all competent persons whose beneficial interests or claims will or may be affected by the settlement. As with section 62-3-912 discussed above, section 62-3-1102 thus recognizes that a settlement agreement may be effectuated by fewer than all the interested persons in an estate; only those whose interests will or may be affected by the settlement must be signatories.

Section 62-3-1102 also provides that fiduciaries have an opportunity to be heard at a settlement approval hearing but do not have the authority to veto a settlement presented to the court for approval. Although section 62-3-1102 recognizes that a fiduciary may be a party to a settlement and even propose its approval to the court,[2] it provides that a fiduciary who is not a

[2] The ability of a fiduciary to agree to be a party to a settlement is recognized in *University of Southern California v. Moran*, 365 S.C. 270, 617 S.E.2d 135, (Ct. App. 2005), providing that when a trustee joins in the execution of a settlement agreement, a trust beneficiary, although given the opportunity to notice and to be heard, cannot veto the settlement. *Moran* does not apply to the matter *sub judice*, which deals with a different situation: the fiduciary did not join in the execution of this settlement agreement. In the case *sub judice*, section 62-3-1102 clearly provides that, because the fiduciaries did not join in the settlement agreement, this Court can nevertheless approve the settlement and direct the fiduciaries to join in the execution of the approved agreement.

party to the settlement can be directed by the court to execute the agreement after it is approved by the court.

2. Even though fewer than all interested persons can enter into a private settlement agreement and a court can approve such an agreement, all necessary parties are represented in this matter.

The SCPC provides that personal representatives and trustees represent and bind their beneficiaries for purpose of notice and hearing. See SCPC sections 62-1-403, 62-7-301, and 62-7-303.

Ms. Pope and Mr. Buchanan, the personal representatives of the Estate, were appointed to represent any successor of the Estate, whether by any valid will of Mr. Brown or by intestate distribution. Thus, any successor who would take from the probate estate of Mr. Brown would be properly represented by Ms. Pope and Mr. Buchanan, who do not have a conflict of interest with any of the successors.

Similarly, any beneficiaries of the 2000 Irrevocable Trust, if valid, would be represented by Ms. Pope and Mr. Buchanan as trustees of that trust. Any beneficiaries of the 1999 Revocable Trust, if valid, would be represented by Messrs. Bradley, Cannon, and Dallas as trustees of that trust who participated in the settlement hearing.

There can be no other successor or beneficiary with an interest in the Estate of James Brown or in the 2000 Irrevocable Trust or the 1999 Revocable Trust. Any successor or beneficiary of the Estate or those trusts were represented by the appropriate fiduciaries. Moreover, minor children of the settling parties were also properly represented by their parents

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who executed the agreement, and any charitable beneficiaries of the Estate and trusts were also properly represented by the South Carolina Attorney General.[3]

3. In addition to the notice and opportunity to be heard afforded by the representation discussed above, I find that any interested person also received notice and an opportunity to be heard pursuant to the publication of notice directed by order of this Court filed on March 10, 2008, as discussed above.

4. It is clear that the Attorney General in his *parens patriae* capacity has the authority to protect the public interest and to enforce the due application of those funds given or appropriated to any charitable trust, and the Attorney General is the proper party to protect the interests of the public at large in the matter of administering or enforcing charitable trusts. See *South Carolina Dep't of Mental Health v. McMaster, et al.*, 372 S.C. 175, 642 S.E.2d 52 (2007) (Attorney General is charged with the protection of public charities and is required to enforce the due application of fund given or appropriated to such charities); *Epworth Children's Home v. W. F. Beasley, et al.*, 365 S.C. 157, 616 S.E.2d 710 (2005); and *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961); also see S.C. Code Ann. §1-7-130 and S.C. Code Ann. § 62-7-405(c).

[3] Ms. Pope and Mr. Buchanan contend that notice and hearing opportunities should have been afforded Salkehatchie, Voorhees, and USC Aiken as beneficiaries of the 1999 Revocable Trust and to the members of the advisory board they attempted to appoint in their capacities as trustees. If these parties were interested, they were represented as discussed above. However, none of these three institutions of higher learning nor the advisory board members are interested persons. The colleges are not the beneficiaries of any trust; as noted by Mr. Buchanan in his testimony, it is the students who would attend those schools who are the beneficiaries, and they are already represented as discussed above. (If those three colleges would have to be parties to any action involving the 1999 trust, then by extension every educational institution in South Carolina and Georgia would have to be parties to any action involving the 2000 trust.) The advisory board members have no beneficial interest in the trust.

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It is noted that section 62-7-405(c) also allows the settlor, trustee, and among others [i.e. parties with "special interests"] to enforce a charitable trust. The general law is that the purpose for providing authority pursuant to statute to allow other parties to bring an action to enforce charitable trusts was to provide assistance to the Attorney General because of that Office's lack of resources to be in all charitable trust cases. See Bogert *Trusts and Trustees* § 411 - "The attorney general as the protector, supervisor and enforcer of charitable trusts." However, when the Attorney General does appear in litigation involving a charitable trust either by motion for intervention or being brought in by an amendment to the pleadings, he has the right to take charge and control that portion of the litigation which relates to the charitable trust. *Kolin, et al. v. Leitch, et al.*, 99 N.E.2d 685, 687 (Ill. 1951). As previously stated, the South Carolina Attorney General's Motion to Intervene in this matter was granted by Order filed October 11, 2007.

This authority that allows the Attorney General to control the litigation also provides that the Attorney General has exclusive authority, in order to protect the public interest, to settle or compromise litigation.[4] See *Sarkeys v. Independent School Dist.*, 592 P.2d 529 (Okla. 1979).

In *Sarkeys*, the Court approved a settlement involving a charitable trust entered into by the parties and the Attorney General. Settlor's descendants appealed. The Court found that they did not have standing to appeal in the absence of an appeal by the Attorney General because the Attorney General was in control of the case. Similarly in *Application of Schlussel*, 89 N.Y.S.2d

[4] See 81 A.L.R. 124 (with updates, originally published in 1932), citing *Cooley v. South Carolina Tax Comm'n*, 204 S.C. 10, 28 S.E.2d 445 (1943) and *State v. Southern R. Co.*, 82 S.C. 12, 62 S.E.2d 116 (1908), at page 7: The general authority of the attorney general, at common law under the various constitutional and statutory provisions, to compromise or settle disputes in litigation in which the state is an interested party, and to direct dismissal of the proceedings, so far at least as the public interest is concerned, provided there is doubt and an honest dispute as to the state's rights and the compromise or settlement is a bona fide one, is well settled.

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47 (1949), the Court stated as follows in regards to the Attorney General's authority to enter a settlement agreement: "Under the authorities, it is, therefore, within the competence of the Attorney General to bind the uncertain charitable beneficiaries by [a compromise]." Also see *In Re Estate of Smith*, 349 N.Y.S.2d 281 (N.Y. Surr. Ct. 1973), appeal dismissed, 355 N.Y.S.2d 994 (N.Y. App. Div. 1974), appeal denied, 321 N.E.2d 555 (N.Y.) (allowing Attorney General to enter into settlement agreement on behalf of charitable beneficiaries and over executor's objection; rejecting executor's contention that Attorney General did not have authority to compromise on behalf of charitable beneficiaries; observing that to delve too deeply into Attorney General's reasons to compromise could jeopardize charitable beneficiaries' ultimate case if not settled; nevertheless finding that the Attorney General had sufficient reason to enter settlement and was not making "gift"; noting that failure to settle risked charities ending up with nothing; observing that settlement of cases is desirable; holding that the Attorney General has the right and the power to enter into compromise on behalf of charitable beneficiaries, subject only to an abuse of discretion standard, which was not abused in this case.).

Therefore it is for the Attorney General, as the officer charged with the duty of protecting charitable beneficiaries, to exercise his discretion as to the appropriateness of a settlement. It is the responsibility of this Court in reviewing the record to determine if the Attorney General acted in good faith entering into this compromise agreement. Factors to be considered by the Court include whether the Attorney General has given careful consideration to his decision with relation to the compromise and whether the Attorney General's decision is based upon solid legal judgment and a full consideration of all the facts and circumstances available. It would be appropriate for the Attorney General to include in his review whether there was a possibility that the final outcome of this litigation was in doubt and the continued expense to the charitable trust

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by additional litigation. See *In Re Estate of Smith*, supra at 283-4. These factors for my consideration are subsumed in the requirements of section 62-3-1102 that the settlement be in good faith and that it is just and reasonable. Therefore I find that the Attorney General has the power pursuant to his common law and statutory authority to protect the charitable beneficiaries, to control such litigation as to the charitable interests when he is a party, and to compromise and settle such interests where appropriate.

B. Standard for Approving Settlement

South Carolina Probate Code section 62-3-1102 provides that the Court shall approve the settlement and direct the fiduciaries to execute the agreement if it: (1) finds the contest or controversy is in good faith, and (2) the effect of the agreement on interested persons is just and reasonable.

1. Good faith controversy

Based on the history of matters involving the Estate and other issues related to James Brown, I find that it is incontrovertible that a good faith controversy exists. Any of the factors discussed hereinafter could constitute grounds for finding that a good faith controversy exists. The cumulation of these issues creates an overwhelming set of grounds for finding that a good faith controversy exists. Some of the more salient issues are as follows:

a. The Levenson clients and Tommie Rae Brown brought actions to contest the 2000 Will and the 2000 Irrevocable Trust. Although the contestants raised other reasons for the contest, a compelling argument was that Cannon, Dallas, and Bradley unduly influenced Mr. Brown into executing those documents. Without deciding whether the undue influence argument has merit, I find that argument certainly has a foundation in good faith. The 2000 Trust names Cannon, Dallas, and Bradley as trustees. The 2000 trust authorizes the trustees to expend up to

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50% of gross income for management expenses.[5] Based on testimony from Ms. Pope and Mr. Ruff, the estate planning expert presented by Ms. Pope and Mr. Buchanan, such a provision is unprecedented, especially in a charitable trust. On behalf of the estate and trust, Ms. Pope and Mr. Buchanan have brought an action against Messrs. Cannon, Dallas, and Bradley, alleging inter alia that Messrs. Cannon, Dallas, and Bradley practiced undue influence on Mr. Brown and used various entities controlled by them to syphon off his assets, effectively under the guise of management expenses. Ms. Pope testified that Mr. Cannon told her he could get half of Mr. Brown's estate, if he wanted.

Moreover, the voluminous file of the drafter of the 2000 will and trust (and of the 1999 will and trust), Mr. Herring, is in evidence. That file contains a blank deed apparently signed by Mr. Brown and witnessed. There is no valid reason to create such a document, and its existence certainly adds additional credence to the argument against the validity of any document prepared for Mr. Brown by Mr. Herring. Upon questioning, Mr. Buchanan could testify to the existence of only one document that may be in that voluminous file that possibly represents direct correspondence between Mr. Herring and Mr. Brown. There is evidence in the file that Mr. Herring and Mr. Cannon are good friends.

Furthermore, the credibility of four principal witnesses to the validity of the 2000 will and trust is questionable. Mr. Herring is in jail for murder. The accuracy and veracity of the testimony in this matter by Messrs. Cannon, Dallas, and Bradley is suspect and at times

[5] Whether the 50% provision would be valid, in light of the charitable savings clause language in the trust, is irrelevant to the issue of undue influence. The issue is whether the alleged practitioners of undue influence believed at the time of preparation and execution of the 2000 will and trust that the 50% provision would be enforceable. Assuming they did, otherwise why would a known invalid provision be included, that could be evidence of undue influence.

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contradictory. For example, Mr. Dallas testified that he signed a stipulation presented to this Court knowing it to be false because he did not want to lose his position as fiduciary. This is an astonishing admission that he did and would lie to this Court to protect his position as a fiduciary. The questionable credibility of the four witnesses most involved with the preparation and execution of the 2000 will and trust certainly supports the good faith basis of the contestants' claims.

If the 2000 will and trust were found to be invalid for undue influence, and the issue of whether the 1999 will and trust were valid was then raised, the same arguments as above could be asserted against the validity of the 1999 will and trust, and that controversy would also be in good faith.

In her testimony, Ms. Pope asserted that the case of *Russell v. Wachovia Bank, N.A.*,[6] was controlling. That case is not controlling. The issue before this Court is whether the proposed settlement agreement is the result of a good faith controversy and whether the agreement is just and reasonable. There was no settlement agreement in *Russell*. The gist of the *Russell* case was whether a federal appellate court judge still sitting on cases until a few weeks before his death was the victim of undue influence practiced by family members. The circumstances of Mr. Brown's execution of the 2000 will and trust documents are not the same as in the *Russell* case.

b. In addition to the controversy over the validity of any will and trust executed by Mr. Brown, a good faith controversy exists over what property if any was funded into the 2000 trust and what property if any would pass through the probate estate pursuant to the 2000 will.

[6] 370 S.C. 5, 633 S.E.2d 722 (2006); 353 S.C. 208, 578 S.E.2d 329 (2003).

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Testimony demonstrates that records that would adequately prove the provenance of any trust or probate assets are either non-existent or too scanty to provide adequate proof. Moreover, testimony from the three original trustees is contradictory. They executed a stipulation representing that the only assets of the 2000 trust were the Beech Island real estate and 50 dollars. Subsequently, Mr. Dallas testified that the stipulation was incorrect and that he had joined in the stipulation to avoid losing his position as fiduciary. The fiduciaries ultimately sought to withdraw the stipulation.

More specifically, questions remain as to whether James Brown Enterprises, Inc. ("JBE, Inc.") was transferred to the trust during Mr. Brown's lifetime. Available documentation shows that any attempted transfer was incomplete. Furthermore, income tax returns filed on behalf of JBE, Inc. showed Mr. Brown, not the 2000 trust, as the owner. Nevertheless, the ownership of JBE., Inc is uncertain. Even if the ownership of JBE., Inc. could be confirmed, determining what assets if any JBE, Inc. owns is also problematic due to a dearth of documentation.

The ownership of the relevant assets as between the estate and the trust could affect the assets subject to the spousal share claims of Tommie Rae Brown, as discussed below, as well as the omitted child share claim of J. B. s discussed below.

Any assets that would pass pursuant to the 2000 will would be subject to spousal share claims and omitted child claims. Also, a good faith argument exists for subjecting any assets of the 2000 trust to the elective share, pursuant to the *Seifert* and *Dreher* decisions,[7] and by analogy, to the omitted spouse and omitted child shares. Because testimony demonstrated that Mr. Brown retained control of the 2000 trust, it could be deemed a revocable trust, which would

[7] *Seifert v. Southern Nat. Bank of South Carolina*, 305 S.C. 353, 409 S.E.2d 337 (1991); *Dreher v. Dreher*, 370 S.C. 75, 634 S.E.2d 646 (2006).

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be subject to the elective share and, by extension, to the omitted spouse share and omitted child share.

Moreover, certain assets, such as the copyright termination rights would not belong to the 2000 trust or to the probate estate, instead passing by federal law to the federal statutory heirs.

Further confusing the question of ownership is the question of the validity of the 1999 revocable trust. Mr. Dallas, one of the trustees of that trust, testified that he did not know if the 1999 trust had been revoked in accordance with its provisions. Nor was any evidence produced from Mr. Herring's file that the 1999 trust had been revoked. If that trust was valid and was not revoked, then ownership issues similar to the 2000 trust arise as to the 1999 trust. If the 1999 trust was valid and not revoked, then any assets owned by that trust might not be included in the 2000 trust or the probate estate. Furthermore, any assets owned by the 1999 revocable trust would clearly be subject to the elective share pursuant to *Seifert* and *Dreher* and, by analogy would be subject to the omitted spouse's share and the omitted child's share.

If the 1999 trust was valid, funded, and not revoked, then the trustees of the 2000 trust had no power or control over those assets.

c. A compelling factor in finding that a good faith controversy existed is the assertion of Tommie Rae Brown (Mrs. Brown) of elective share and omitted spouse's share claims. If Mrs. Brown qualifies as a surviving spouse, then she would clearly be entitled to an elective share and may well qualify for an omitted spouse's share. The elective share would be one-third of the probate assets plus any assets held by a revocable trust, pursuant to *Seifert* and *Dreher*. The omitted spouse's share would be one-half of the probate assets plus, by analogy to *Seifert* and *Dreher*, any assets held by a revocable trust. In addition, Mrs. Brown would have a

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claim as a surviving spouse under federal copyright law to receive one-half of the copyright termination rights.

Asserting the *Lukich* decisions,[8] the personal representatives and trustees have argued vigorously that Mrs. Brown does not qualify as a surviving spouse. They contended that she had an impediment to her marriage to Mr. Brown because she was already married at the time to Javed Ahmed. However, the evidence demonstrated that the Charleston County Family Court held as a finding of fact and a conclusion of law that Mrs. Brown had no impediment to her marriage to Mr. Brown because she was never previously married to Javed Ahmed as he had an impediment to that purported marriage: he was already married at the time. The family court order shows that Javed Ahmed was properly served by publication.

The *Lukich* decisions effectively held that an annulled marriage could not relate back to the time of the creation of the annulled marriage for purposes of removing an impediment to a subsequently attempted marriage. However, Mr. Buchanan admitted in his testimony that the *Lukich* decisions provided that its holding could not apply to a marriage that never had validity, as is the case with Mrs. Brown's putative marriage to Javed Ahmed, which according to the family court order was never valid because Javed Ahmed himself had an impediment to that putative marriage. Thus, rather than supporting the position of the personal representatives and trustees, *Lukich* supports the position of Mrs. Brown as Mr. Brown's surviving spouse.

Moreover, Mr. Buchanan also admitted in his testimony that *Lukich* held that a third party has no right to intervene in a marriage proceeding, such that Mr. Brown had no right to intervene in the proceeding brought by Mrs. Brown to determine that there was an impediment to her

[8] 379 S.C. 589, 666 S.E.2d 906 (2008); 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).

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marriage to Javed Ahmed. Rather, the evidence demonstrates that Mr. Brown paid Mrs. Brown's legal fees to bring that action.

The personal representatives and trustees assert that Mr. Brown brought his own annulment action against Mrs. Brown. The record shows that action was commenced after the commencement of the Javed Ahmed action. Mr. Brown and Mrs. Brown mutually consented to a dismissal of the annulment action brought by Mr. Brown. Although the personal representatives and trustees assert that the consent order of dismissal includes a waiver by Mrs. Brown to ever claim any status as a common-law spouse, that waiver, even if valid under the law, is immaterial to the matter *sub judice*. Mrs. Brown is not asserting her claim as a common-law spouse but rather as a surviving spouse based on her ceremonial marriage to Mr. Brown and their South Carolina marriage license and certificate.

The evidence also demonstrates that, in his authorized autobiography, Mr. Brown represented that he was married to Tommie Rae Brown. Significantly, his autobiography was copyrighted and first published in 2005, after the conclusion of both family court matters discussed above.

Thus, based on *Lukich*, Mr. Brown (or any third party) did not have the right to intervene or contest the family court order holding that there was an impediment to the purported marriage between Mrs. Brown and Javed Ahmed. If he did not have that right, neither do his fiduciaries. Thus, as to the estate and any trust, that family court order, as well as the marriage license, constitute the law of the case as to that issue.

In the settlement agreement, the settling parties agree that Mrs. Brown is the surviving spouse of Mr. Brown, presumably spurred on by the compelling factors discussed above. Treating Mrs. Brown as the surviving spouse provides substantial benefit to the settling parties,

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including the charitable beneficiaries. Her status as surviving spouse allows the estate to claim a marital deduction for those assets passing to her, which increases the net amount passing to the settlement entity, in which the charitable beneficiaries have a share and thereby benefit from that tax savings.

d. Another factor evidencing the existence of a good faith controversy is the omitted child's claim submitted on behalf of J B by his guardian ad litem. Pursuant to SCPC section 62-2-302, a child born after the execution of the testator's will is entitled to receive his intestate share if omitted from the will. The 2000 will was executed before the birth of J B , II. Although the personal representatives contested that J B was the biological child of Mr. Brown, substantial evidence would demonstrate that J B is indeed the biological child of Mr. Brown. Mr. Brown's describes J B as his son in his autobiography. Mr. Brown is listed as the father on the birth certificate. Mr. Brown obtained health insurance and social security benefits for J B by representing that he was his son;[9] he named him as his son in his medical directive. The guardian ad litem procured a DNA test demonstrating that there was a greater than 99 percent probability that they were father and biological son. J B I is presumed to be the child of the marriage of Mr. Brown and Mrs. Brown because that marriage was valid, as discussed above. Even though J B is born before that marriage, the subsequent marriage of Mr. Brown and Mrs. Brown would legitimize J B pursuant to SCPC section 62-2-109.[10] Although J B would not

[9] Thus, to find that J B was not the son of Mr. Brown opens the door for a claim that Mr. Brown defrauded the health insurance carrier and social security.

[10] This would be true even if the marriage was not valid. SCPC section 62-109 legitimizes a child if his parents

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need to be legitimate to qualify under section 62-2-302 for his intestate share, it is an additional factor to consider.

J B I is not automatically entitled to an omitted child's share merely because he is found to be Mr. Brown's son. One operative exception to the granting of the omitted child's share is if the testator specifically provides for overriding the statutory share. One might argue that language in Mr. Brown's 2000 will does specifically provide for such an override, but there is compelling authority to the contrary.[11] Ultimately, that issue would be decided by determining Mr. Brown's intent.

The settling parties agree that J B is the biological child of Mr. Brown. Treating him as a child provides substantial benefit to the settling parties, including the charitable beneficiaries. His status as a child allows him to claim, for the benefit of the settlement entity, a federal copyright termination rights share. Moreover, treating Ja B s the child of Mr. Brown does not detrimentally impact the settlement entity, including the charitable beneficiaries, because according to the settlement agreement his share is paid from Mrs. Brown's share.

e. Another factor indicating the existence of a good faith controversy involves the applicable time to contest the 2000 trust. Section 62-7-5 provides that a trust is voidable if it resulted from fraud, coercion, or undue influence — the gravaman of the contestant's actions to contest the trust. The fiduciaries contend that the statute of limitations to contest the 2000 trust

subsequently attempt to marry even in the attempted marriage is not valid.

[11] See, e.g., *Estate of Robbins*, 756 A.2d 602 (N.H. 2000); *Estate of Torregano*, 352 P.2d 505 (Cal. 1960). The estate would bear the burden of proof. *In re Estate of Hoigaard*, 360 N.W.2d 360 (Minn.App.1984).

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has run. However, for the reasons discussed below, the contestants would have viable arguments that no statute of limitations would bar their contest.

i. As to fraud

Assuming arguendo that the 2000 trust is irrevocable, South Carolina follows the discovery rule for fraud, which commences the running of the statute of limitations from discovery of the fraud itself or of such facts as would have led to the knowledge thereof, if pursued with reasonable diligence. *Burgess v. American Cancer Soc., South Carolina Div., Inc.*, 300 S.C. 182, 386 S.E.2d 798 (Ct. App. 1989). A suspicion alone is not sufficient to place a party on inquiry. *Beattie v. Pool*, 13 S.C. 379 (1880); *Hunt v. Smith*, 202 S.C. 129, 24 S.E.2d 164 (1943). The burden would be on the fiduciaries to show that the contestants had knowledge of the fraud or of such facts as would have led to knowledge if pursued with reasonable diligence. *Grayson v. Fidelity Life Ins. Co.*, 114 S.C. 130, 103 S.E. 477 (1920); *Means v. Feaster*, 4 S.C. 249 (1873); *Richardson v. Mounce*, 19 S.C. 477 (1883). The contestants would also assert that the fraud was continuing, so that any applicable statute of limitations did not commence any sooner than Mr. Brown's death.

The original trustees would be the alleged perpetrators of the fraud. The commission of a fraud or an intentional misrepresentation therefore estops the trustees from asserting any statute of limitations. *See R WE NUKEM Corp. v. ENSR Corp.*, 644 S.E.2d 730 (2007); *Hunter v. American General Life and Acc. Ins. Co.*, slip copy (D.S.C. 2004) (2004 WL 5231631); *Holmberg v. Armbrecht*, 327 U.S. 392 (1946). Moreover, even if the trustees did not engage in fraud or make intentional misrepresentations, they are estopped from asserting any statute of limitations because the settling parties reasonably relied on the words and conduct of the trustees in allowing any limitations period to expire. *See Regions Bank v. Schmauch*, 582 S.E.2d 432 (Ct.

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App. 2003); *Hedgepath v. American Telephone and Telegraph Co.* ,559 S.E.2d 327 (Ct. App. 2001); *Kleckley v. Northwestern Nat. Cas. Co.*, 526 S.E.2d 218 (2000); *Harvey v. South Carolina Dept of Corrections*, 527 S.E.2d 765 (Ct. App. 2000); *Brown v. Pearson*, 483 S.E.2d 477 (Ct. App. 1997).

The fiduciaries assert that the recordation of the certificate of trust commenced the running of the statute of limitations. However, recordation of a deed will not, by itself, be sufficient notice to put a party on inquiry as to the existence of a fraudulent conveyance. *Tucker v. Weathersbee*, 98 S.C. 402, 82 S.E. 638 (1914); *Means v. Feaster*, 4 S.C. 249 (1873).

ii. As to undue influence

Statute of limitations for fraud would not apply to the contestants' claims for undue influence because undue influence is an action in equity. *Dixon v. Dixon*, 362 S.C. 388, S.E.2d 849 (2005).

iii. Tolling as to minors

To the extent that any statute of limitations would apply to the trust contests, the contestants would assert that the statute of limitations would be tolled for a minor, such as J:

B

iv. If the trust is deemed revocable, then SCPC section 62-7-604 provides that the trust contests were timely commenced.

f. One additional salient factor demonstrating the existence of a good faith controversy involves the issue of the ownership of federal copyright termination rights. Federal copyright law provides a termination right to a songwriter who has assigned some or all of his

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copyright rights to a third party, such as a publisher.[12] Testimony revealed, Mr. Brown assigned at least a substantial number of his copyrights to one or more publishers and he assigned to one or more third party entities the remaining rights to a substantial number of his copyrights. Federal copyright law allows a songwriter who is alive after a certain number of years pass from any assignment of some or all of his copyrights to terminate, or revoke, that assignment, thereby regaining control of the assigned right with the freedom to negotiate a new assignment.[13] However, if the applicable time period for that song has not expired before the songwriter dies, that termination right passes by federal law to the statutory heirs (the surviving spouse and children) regardless of the songwriter's attempt to otherwise transfer the termination right. See 17 U.S.C.A. §§ 203, 304; Ann Bartow, *Intellectual Property and Domestic Relations: Issues to Consider When There Is an Artist, Author, Inventor, or Celebrity in the Family*, 35 Fam. L.Q. 383.

Under the settlement agreement, those settling parties who would qualify as statutory heirs for federal copyright law termination rights purposes have contributed their termination rights, and any proceeds therefrom, to the settlement entity, which includes the charitable beneficiaries. If it were not for this contribution to the settlement entity, there is no way that the charitable beneficiaries could receive any benefits from the federal copyright termination rights.

[12] Typically, the publisher's share of any royalties is 50 percent of the total and the songwriter's share is 50 percent.

[13] For songs copyrighted before the 1976 copyright act, the time period before the termination rights can be asserted is 56 years from the date copyright was secured. For songs copyrighted after the 1976 copyright act, that time period is 35 years from the assignment.

2. Just and Reasonable

Including those discussed above, there are many reasons supporting the conclusion that the proposed settlement is just and reasonable. The key issue is how the charitable beneficiaries fare under the proposed settlement. I find that the settlement is just and reasonable and provides a just and reasonable result for the charitable beneficiaries.

From the perspective of the charitable beneficiaries, the risks of not approving the settlement agreement are substantial. As discussed above, significant arguments can be made that the 2000 will and trust are not valid. If the 2000 will and trust are overturned, essentially the same arguments can be made that the 1999 will and trust are invalid. If the contestants would prevail in these contests, an intestacy would result and the charitable beneficiaries would get nothing — a substantial risk.[14]

Even if the 2000 will and trust (or the 1999 will and trust) are upheld, significant arguments can be made to recognize Mrs. Brown's spousal share claims, as discussed above. No matter Mr. Brown's intent, she would be entitled to one-third of the probate assets plus one-third of the assets in any revocable trust. And unless Mr. Brown demonstrated an intent to override SCPC section 62-2-301 (the omitted spouse's share), which is questionable, Mrs. Brown would be entitled to one-half of the probate estate[15] and likely one-half of the assets of any revocable trust. If Mrs. Brown would prevail in her claims, the charitable beneficiaries' share of the

[14] The risk for the charitable beneficiaries would be enhanced by the burden of proof. Because Messrs. Cannon, Dallas, and Bradley, the original personal representatives and trustees, are the alleged perpetrators of the fraud and undue influence resulting in Mr. Brown's execution of the 2000 will and trust documents, the burden of proof would fall on the proponents of the will and trust because Messrs. Cannon, Dallas, and Bradley were in a confidential relationship with Mr. Brown. Dixon v. Dixon , 362 S.C. 388, S.E.2d 849 (2005).

[15] As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

probate estate and any revocable trust would be reduced by either one-half or one-third — a substantial risk.

Even if the 2000 will and trust (or the 1999 will and trust) are upheld (and even if Mrs. Brown is not entitled to any spousal share), significant arguments can be made to recognize J B s omitted child claim, as discussed above. Unless Mr. Brown demonstrated an intent to override SCPC section 62-2-302 (the omitted child's share), which is questionable, J B I would be entitled to his intestate share of the probate estate[16] and likely the same share of the assets of any revocable trust. If J B would prevail in his claims, the charitable beneficiaries' share of the probate estate and any revocable trust would be reduced by his intestate share — a substantial risk.

Even if the 2000 will and trust are upheld and the spousal and omitted child's claims are unsuccessful, the time and expense to litigate through appeal all of these and other issues would be extraordinary. The cost to the estate and trust for fees and costs and related expenses are substantive. It has taken more than two years of estate administration and millions of dollars of fees and costs just to get to the point of considering a settlement. The time and expense necessary to carry out all litigation to completion and appeal boggles the mind.

The Court has been apprised as to the distribution of the settling parties' interest as more fully set forth in the settlement agreement, and the settlement agreement has been made a part of the record. The percentages assigned to each settling party are fair and reasonable. The Attorney General's Office has ensured a substantial portion of the Estate will be dedicated to the specific intent of James Brown, that is providing an educational trust. The Court has also considered and

[16] As discussed above, determining the proper ownership of probate and nonprobate assets will be difficult if not impossible.

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is satisfied that the minor child, J B will receive his share of the estate assets as distributed through his Mother's share and that he will receive another equal portion from his Mother in the form of a second trust.

The protection of a public trust is of paramount concern to the Court and the Court is satisfied that through the diligent efforts of the Attorney General's Office, the assets to fund the public trust will now be available. Furthermore, any issues as to the protection of the minor child's interest have been preserved through this agreement.

Consideration of these factors demonstrates that the allocation of the proposed settlement is just and reasonable. However, an additional, and perhaps substantial additional benefit to the charitable beneficiaries is the contribution by the other settling parties of their federal copyright termination rights. As discussed above, these rights may have considerable value and, without the settlement, the charitable beneficiaries could derive no benefit from these rights.

Replacement of the currently serving fiduciaries is also just and reasonable. The propriety of their appointment as trustees is currently on appeal, and their replacement should moot that issue. Moreover, both fiduciaries testified that they intended to appeal the approval of the settlement; that action would place them in the position of an irreconcilable conflict of interest.

The settling parties propose that Mr. Russell Bauknight be appointed as the replacement personal representative and trustee. I find that he is qualified and willing to serve and suffers from no conflict of interest because the settling parties have all consented to his appointment and, because the settlement agreement places all possible probate estate and trust assets into the same settlement entity, he has no conflict of interest by serving as both personal representative

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and trustee. Pursuant to Mr. Bauknight's testimony, I find that no transition period is necessary before the appointment of Mr. Bauknight to replace Ms. Pope and Mr. Buchanan.

C. Tax Issues

1. Charitable Exemption Concerns

I find that the Settling Parties have carefully considered the impact of the Settlement Agreement and participation in the Settlement Entity and the James Brown Legacy Trust on the tax exempt status of the 2000 "I Feel Good" Trust.

As the Trustee of the 2000 "I Feel Good" Trust will be selected by, and can be removed for any reason by, the South Carolina Attorney General, the Settling Parties believe there is no private inurement problem. Additionally, all transactions between the Brown family members, the 2000 "I Feel Good" Trust, and the James Brown Legacy Trust are at fair market value. The provisions of the James Brown Legacy Trust effectively grant the 2000 "I Feel Good" Trust a veto over major decisions, allowing the 2000 "I Feel Good" Trust sufficient control over the settlement entity to prevent the Settling Parties from conducting the business of the James Brown Legacy Trust in such a manner as to allow them to use the assets or income of the "I Feel Good" Trust for their own private benefit.

Marital Deduction – In order to receive the marital deduction, Tommie Rae Brown must have been the spouse of James Brown. The Attorneys for Mrs. Brown strongly believe that they have sufficient evidence to prevail in a trial on the merits as to whether Tommie Rae Brown was the spouse of James Brown. The other Settling Parties agree that Mrs. Brown has a material chance of success, as they are willing to settle with Mrs. Brown and recognize her status as surviving spouse.

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Charitable Deduction – The Settling Parties recognize that the charitable deduction will be limited to the amount that the 2000 "I Feel Good" Trust actually receives, per Regulation §20.2055-2(d) and Reed v. U.S., 26 AFTR 2d 70-6042 (DC Ill. 1970), and that the amount of the charitable deduction cannot exceed the amount the 2000 "I Feel Good" Trust otherwise would be entitled to under the terms of the Will, per Terre Haut First National Bank v. U.S., 67 AFTR 2d 91-1217 (DC Ind. 1991).

I find that the Settling Parties took the issues discussed above into account in drafting the Settlement Agreement, and, other than the loss of the charitable deduction for assets passing to heirs/devisees other than the 2000 "I Feel Good" Trust, the Settling Parties have planned to preserve the Estate's right to a charitable deduction for the value of the assets passing to the 2000 "I Feel Good" Trust.

The specific concerns of the Personal Representatives/Trustees, as expressed by their expert witness, Harley Ruff, Esquire, are addressed below.

Attorneys' Fees – According to the settlement agreement, each party is ultimately responsible for his or her own attorneys' fees. These fees are therefore not additional costs to the charitable beneficiaries. These attorneys' fees may be deductible for estate tax purposes. Treasury Regulation §20.2053-3(c)(3) provides "[a]ttorneys' fees incurred by beneficiaries incident to litigation as to their respective interests are not deductible if the litigation is not essential to the proper settlement of the estate within the meaning of paragraph (a) of this section. An attorney's fee not meeting this test is not deductible as an administration expense under section 2053 and this section, even if it is approved by a probate court as an expense payable or reimbursable by the estate." This regulation allows attorneys fees incurred by beneficiaries to be deductible for estate tax purposes if they were incurred in litigation that was

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essential to the proper settlement of the estate. The Settling Partics plan to contend that the majority of their legal fees have been incurred in litigation essential to the proper settlement of the Estate and, thus, are deductible by the Estate. By providing a pro-rata reduction of the elements of the Estate which are subject to estate taxes, the net amount to be received by the Settling Parties, including the charitable beneficiaries, would be increased.

The Settling Parties plan to assert that the payment of the Settling Parties' legal fees are deductible as an estate administration expense under §2053. The Settling Parties' legal fees were necessary in determining the proper distribution of the estate due to (i) the alleged undue influence asserted against Mr. Brown, and (ii) establishing Tommie Rae Brown as the spouse of James Brown, and her entitlement to either the elective share or the omitted spouse share. Additionally, the efforts of the Settling Parties, Pope and Buchanan, and their counsel uncovered the mismanagement and misappropriation by the initial fiduciaries and led to their resignation. Pending the outcome of additional litigation, these efforts may lead to the Estate's recovering substantial sums.

Due Diligence – The Settling Parties are aware that it is in the best interest of all beneficiaries of the Estate of Mr. Brown, whether Settling Parties or not, that the Estate minimize any potential estate tax due by Mr. Brown's estate. For that reason, the Settling Parties assert that they have carefully examined the potential estate tax consequences of the Settlement Agreement and are confident that they have drafted the Agreement in such a way as to preserve the charitable and marital deduction to the greatest extent possible in line with the provisions of the settlement.

Effect of Settlement on Charitable Deduction – Mr. Ruff expressed concerns that the structure of the Settlement Agreement and the James Brown Legacy Trust would jeopardize the

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charitable deduction because it results in a non-qualified split interest trust under §2055(e)(2). The Settling Parties disagree that a non-qualified split interest trust is created, and, even if it was, assert that the form of the James Brown Legacy Trust can be revised to satisfy the split interest trust rules of §2055(e)(2).

The Settlement Agreement provides that each Settling Party will receive a specified percentage of the Estate assets. These assets are first distributed to and/or are owned by the Settling Parties outright. The Settling Parties have contractually obligated themselves to then contribute these assets to the James Brown Legacy Trust for consolidated management and marketing of the "James Brown assets." The assets do not pass directly from Mr. Brown's estate to the James Brown Legacy Trust. The assets pass directly to the Settling Parties, who in turn contribute these assets to a co-investment entity, the James Brown Legacy Trust. Such co-investment between charitable and non-charitable beneficiaries is specifically permitted by Section 4943 of the Internal Revenue Code.

Even if the IRS or a federal court were to disregard the distribution of assets to the Settling Parties and their subsequent contribution to the James Brown Legacy Trust, and treat the assets of the Estate of James Brown as passing directly to the James Brown Legacy Trust, the Settling Parties could amend the structure of the James Brown Legacy Trust (as they are required under the settlement agreement to do if necessary to preserve the charitable deduction) to allow the contribution to qualify for the charitable deduction. In *Galloway v. U.S.*, 99 AFTR2d 2007-3412, the case cited by Mr. Ruff in support of his opinion that the charitable deduction would not be allowed if the Settlement Agreement were approved, the Court emphasized that there was a single Trust that did not divide until distributions were to be made some years in the future. The Settling Parties believe that amending the James Brown Legacy Trust to provide for a charitable

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share, to which the 2000 "I Feel Good" Trust assets would be contributed, and a non-charitable share, to which all other "James Brown assets" would be contributed, is one option that would resolve the issue of the non-qualified split interest trust, if necessary.

2. Self Dealing

Mr. Ruff alleged that the right of first refusal granted to Terry Brown in the Settlement Agreement would constitute self-dealing and would generate an excise tax and/or a loss of charitable exemption for the 2000 "I Feel Good" Trust.

The Settling Parties opine that the granting of the right of first refusal and the exercise of the right of first refusal (presuming such exercise is done while the estate is still open for federal income tax purposes) fall within the "estate administration" exception to self-dealing found in Regulation §53.4941(d)-1(b)(3). If the right of first refusal does not fall within the "estate administration" exception to self-dealing, the Settling Parties could propose that the 2000 "I Feel Good" Trust become a public charity (such as a Supporting Organization supervised and controlled by the South Carolina Attorney General's Office), which is not subject to the self-dealing prohibition.

If the right of first refusal does not meet the "estate administration" exception, and the 2000 "I Feel Good" Trust cannot be converted to a public charity, the Settlement Agreement provides that "[i]f any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust." This type of curative language is used by planners as the ultimate safeguard to prevent charitable exemption problems.

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3. Marital Deduction

Mr. Ruff addressed the case of *Commissioner of Internal Revenue v. Estate of Bosch, 387 U.S. 456, 87 S.Ct. 1776, 18 L.Ed.2d 886 (1967)*, and its impact on the marital deduction. In *Bosch*, the issue of whether the estate was due a marital deduction was dependent on the interpretation of state law (i.e. whether the widow's purported release of a power of appointment was valid). The Supreme Court of the United States ruled that only an opinion of the state's highest court as to a state law issue is binding on federal authorities when applying federal law.

Bosch does not directly affect whether or not the Estate of James Brown will be entitled to a marital deduction for assets that pass to his wife, Tommie Rae Brown. *Bosch* simply states that the IRS and the federal courts are not required to accept a South Carolina court's ruling that Tommie Rae Brown is the spouse unless that ruling comes from the South Carolina Supreme Court. As is the case with any surviving spouse, nothing in *Bosch* prevents the Estate of James Brown from arguing the merits of Tommie Rae Brown's claim that she was the wife of James Brown. If the Estate prevails on the merits of that claim, it will be entitled to a marital deduction for assets that pass to Mrs. Brown, despite the lack of a Supreme Court ruling that she is the wife of Mr. Brown.

4. Private Letter Ruling

The Settling Parties have not yet sought a Private Letter Ruling ("PLR"). *Revenue Procedure 2009-1* states that a PLR is issued only to a "taxpayer" and must be signed by the taxpayer or an "authorized representative." In this case, the Settling Parties have no authority to act on behalf of either the estate or the 2000 "I Feel Good" Trust.

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The Settling Parties anticipate that an independent professional fiduciary appointed by this Court will carefully consider whether or not to apply for a PLR on one or more issues, after consulting with the Settling Parties, especially the Attorney General.

Thus, after conducting substantial due diligence with the advice of highly-regarded tax lawyers, including a number of certified tax specialists, the Settling Parties assert that the Settlement Agreement does not disqualify the charitable exemption, cause excise tax problems, or prevent the Estate from receiving a charitable deduction for property passing to the 2000 "I Feel Good" Trust. However, to the extent that there may be a problem, the Settling Parties have a number of options. They can pursue the estate administration exception. They can pursue the conversion of the private foundation to a public charity (which they may choose to do for nontax reasons as well). If such options fail to protect the charitable exemption, the Settling Parties are required by the Settlement Agreement to take whatever curative action is necessary to protect the charitable exemption, which would be enforced by the Attorney General.

IV. Conclusion

Based on the foregoing, I find as follows:

1. All necessary parties are properly joined;
2. Notice has been provided to all necessary parties;
3. The settlement agreement has been executed by all persons having beneficial interests which are affected by the compromise;
4. The controversy is in good faith; and
5. The settlement is fair, equitable, and reasonable.

I therefore Order as follows:

1. The settlement is approved;

DAE
7-4-1

2. Adele J. Pope and Robert L. Buchanan, Jr., are directed to execute the agreement; and

3. Russell L. Bauknight is immediately appointed as Personal Representative of the Estate and Trustee of the James Brown 2000 Irrevocable Trust in replacement of Ms. Pope and Mr. Buchanan.

AND IT IS SO ORDERED.

The Honorable Doyet A. Early, III

May 26, 2009

Aiken, South Carolina

CERTIFICATE OF SERVICE – C/A 2007-CP-02-0122

I hereby certify that on this 11th day of January, 2008, a copy of the Personal Representatives' Responses to Petitioner Tommie Rae Brown's First Request for Admission and Personal Representatives' Responses to Petitioner Tommie Rae Brown's Second Request for Admission, have been mailed to counsel of record, postage prepaid and properly addressed to the address shown below:

Robert Rosen
Attorney at Law
P. O. Box 1840
Charleston, SC 29401

And

Louis Levenson
Attorney at Law
125 Broad St., SW
Atlanta, GA 30303

January 11, 2008