

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

DEC 06 2018

Doyet A. Early III, Circuit Court Judge

S.C. SUPREME COURT

Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)

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 Deanna Brown-Thomas, Yamma Brown, and
Venisha Brown are the Petitioners.

RETURN TO PETITIONS FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

- I. Have the Petitioners offered this Court any reason pursuant to Rule 242, SCACR, to grant their Petition for Certiorari?
- II. Is the family court decree of annulment binding in the present action?
- III. Are the decisions below consistent with the summary judgment standard?
- IV. Is the opinion of the Court of Appeals consistent with *Lukich*?
- V. Did the Court of Appeals correctly hold that Mrs. Brown met her burden of proof in this action?

COUNTER-STATEMENT OF THE CASE

The issue in this summary judgment case is whether Tommie Rae Brown (“Mrs. Brown”) is the surviving spouse of James Brown (“Mr. Brown”). The partial summary judgment issue of her status as surviving spouse arose in the context of Mrs. Brown’s claims for her elective share and omitted spouse’s share,¹ both of which are probate matters, for which she has to be the surviving spouse to qualify. The matters were removed from the probate court to the circuit court, which was therefore effectively sitting in probate.

Petitioners’ Statement of the Case² contains multiple factual errors.³ The following is based upon stipulations and holdings of both courts below.

¹ Although not mentioned in the Court of Appeals opinion, the omitted spouse’s claim arose because Mr. and Mrs. Brown married *after* he executed a will and trust in 2000.

² Petitioners Deanna Brown-Thomas, Yamma Brown, and Venisha Brown filed their joint Petition for Writ of Certiorari on November 9, 2018. Their petition is procedurally defective for failing to comply with SCACR 242(c): they failed to file “[the petition] with proof of service with the Clerk of the Court of Appeals” at all, let alone within the Rule 242 30-day time limit. Thus, their petition should be denied on that ground alone. Petitioner Michael Deon Brown’s separate Petition for Writ of Certiorari merely adopts the joint petition and should also be denied on procedural grounds.

³ For example, Petitioners assert that Mrs. Brown and Javad Ahmed were “legally” married (they were not); that Mrs. Brown rushed to annul the putative marriage to Ahmed to respond to Mr. Brown’s own annulment action (not correct: Mrs. Brown brought her annulment action before Mr. Brown brought his); that to obtain her marriage license Mrs. Brown “falsely swore” to the Aiken County Probate Court that the marriage to Mr. Brown was her first (it was, because the putative marriage to Ahmed was never valid); referring to the joint stipulation, that Mrs. Brown

Mr. and Mrs. Brown were married in a ceremonial wedding and have a valid marriage certificate issued by the Aiken County Probate Court on December 14, 2001.⁴ All parties have stipulated to the validity of the marriage license in a Joint Stipulation. (ROA Vol. I, p. 256 at ¶ 4, pp. 269-70; pp. 293-6) Mrs. Brown had a putative prior marriage with Javad Ahmed. But at that time Ahmed, a Pakistani, had multiple wives from whom he had not been divorced. In 2004, to confirm the invalidity of that putative marriage, Mrs. Brown filed an action in the Charleston County Family Court, seeking to annul it. Mr. Brown paid the attorney's fees that made that action possible and thus supported the action; he was kept aware of the action. (ROA Vol. I, p. 257 at ¶ 13.) After a trial, the family court held that any putative marriage between Mrs. Brown and Ahmed was void *ab initio* on the ground of Ahmed's bigamy. (ROA Vol. I, pp. 293-96.) After a domestic altercation, and aware of the Mrs. Brown-Ahmed family court action that he financed, Mr. Brown filed an action to annul his marriage to Mrs. Brown on the ground of Mrs. Brown's alleged bigamy. But instead of pursuing that action, he settled with Mrs. Brown, dismissed the action, and lived with Mrs. Brown as husband and wife until his death. (ROA Vol. I, pp. 349-50.)

The circuit court held that the family court judgment of annulment was binding, that there was never a valid marriage between Mrs. Brown and Ahmed, and that Mrs. Brown is therefore Mr. Brown's surviving spouse because there was no impediment to their marriage.

“admits” that her “first” marriage was never dissolved (the joint stipulation merely provides that she was aware of no order other than the annulment); and that the motions for summary judgment arose from an issue about a diary (the motions were filed years before that).

⁴ ROA Vol. I, p. 256 at ¶¶4-5, pp. 269-70. As discussed *infra*, Mr. and Mrs. Brown signed a purported prenuptial agreement. But Mrs. Brown was not given *any* financial disclosure before signing that agreement, as South Carolina law expressly requires. *See* S.C. Code Ann. § 62-2-204 (elective shares can be waived, but to be effective the waiver requires a written fair disclosure of the non-waiving party's assets). At the appropriate time, Mrs. Brown could therefore challenge the agreement, but that opportunity will be obviated because she will dismiss her spousal claims in accordance with the settlement agreement with the Estate, discussed *infra*.

During the pendency of Petitioners' appeal to the Court of Appeals, the Estate of James Brown ("Estate") entered into a settlement agreement⁵ with Mrs. Brown and, in accordance with its provisions, has withdrawn its appeal in this matter and is now supportive of Mrs. Brown's position as the legal wife of James Brown. Under that agreement, Mrs. Brown has agreed to dismiss her contests of Mr. Brown's will and charitable trust. The agreement provides a substantial financial benefit to the Estate (and charitable trust), which will receive 65 percent of any proceeds related to Mrs. Brown's federal copyright termination rights. Under federal copyright law, Mrs. Brown will receive 50 percent of these extremely valuable termination rights, but only if she is determined to be the surviving spouse of James Brown. Were it not for Mrs. Brown's agreement to transfer those proceeds from her termination rights, the Estate and charitable trust would not be entitled to any proceeds from the termination rights, which by federal law belong only to intestate heirs. Thus, the Estate and charitable trust will benefit from those termination rights proceeds only if Mrs. Brown is the surviving spouse and then only because of her settlement agreement with the Estate. Petitioners have not entered into any settlement agreement with the Estate, and consequently the Estate will not receive any benefit from Petitioners' termination rights — only from Mrs. Brown if she is the surviving spouse.⁶

⁵ This is not the settlement agreement rejected by this Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2018), which involved the Estate, Mrs. Brown, and the Brown Children ("the 2009 agreement"). The current settlement is a different settlement between only the Estate and Mrs. Brown. The settlement agreement between the Estate and Mrs. Brown was cited by the Court of Appeals in footnote 5 of its opinion that is the subject of the Petitions. *In re: The Estate of James Brown a/k/a James, Joseph Brown*, 424 S.C. 589, 596, 818 S.E.2d 770, 774 (S.C. Ct. App. 2018). That settlement agreement is also cited by Petitioners in their Petitions for Writ of Certiorari, p. 5, and in their Motions for Rehearing and Suggestions for Rehearing En Banc in the Court of Appeals, App. p. 57, as well as by Mrs. Brown in her Opposition to Motions for Rehearing in the Court of Appeals, App. pp. 99-100. That settlement agreement is attached to the Notice of Settlement Between Appellant David C. Sojourner, Jr. and Respondent Tommie Rae Brown and Withdrawal of Appeal of David C. Sojourner, Jr. filed in the Court of Appeals on August 4, 2017.

⁶ The 2009 agreement did include a contribution of the termination rights proceeds from six of the Brown Children, including three of the current Petitioners, and Mrs. Brown. The rejection of that agreement precluded the Estate and charitable trust from receiving any benefit of these valuable rights, and Petitioners wish to retain all these rights for themselves.

The settlement agreement also provides that, once the litigation over Mrs. Brown's status as surviving spouse is concluded, Mrs. Brown will then dismiss her elective share and omitted spouse's share claims against the Estate. Although not noted in the Court of Appeals opinion or in the Petitions, Petitioners, excluding Michael Deon Brown, and other Brown Children also filed separate will and trust contests. Those Brown Children, with the exception of Terry Brown, settled separately with the Estate.⁷ The Estate litigation has been the primary reason that the charitable trust has yet to be funded. Thus, the denial of the Petitions could effectively put an end to approximately 12 years of litigation among the beneficiaries of the Estate of James Brown and will provide substantial financial benefit to the Estate and charitable trusts.

The Court of Appeals affirmed the trial court's decision. *In re Estate of Brown*, 424 S.C. 589, 603, 818 S.E.2d 770, 778 (S.C. Ct. App. 2018). The Court of Appeals denied Petitioners' petitions for rehearing and suggestions for rehearing *en banc*.

ARGUMENT

I. THIS COURT SHOULD NOT GRANT THE PETITION FOR CERTIORARI AS PETITIONERS HAVE OFFERED NO IMPORTANT OR SPECIAL REASONS AS REQUIRED UNDER RULE 242, SCACR

This case involves only one issue: whether Mrs. Brown is the surviving spouse of Mr. Brown. As discussed *supra*, Mrs. Brown has already dismissed her will and trust contests, and she has agreed to dismiss her remaining spousal claims against the Estate⁸ upon the final

⁷ Despite professing to want to uphold the will and charitable trust, Terry Brown appealed that settlement to the Court of Appeals. His counsel's motion to withdraw was granted by the Court of Appeals on October 30, 2018, which gave Terry Brown 30 days to find substitute counsel. He has apparently failed to do so and will presumably act pro se, if at all.

⁸ In *Wilson v. Dallas*, *supra* note 5, this Court noted the existence of a putative prenuptial agreement, the validity of which had yet to be determined in the lower court. Petitioners also cite this prenuptial agreement in their Petitions. That issue is not before this Court. If its validity were actually tried, Respondent is confident the putative prenuptial agreement would be invalid because it lacks an essential requirement under South Carolina Probate Code Section 62-2-204 (involving the waiver of elective share rights): there was no disclosure of Mr. Brown's assets at the time

determination of her spousal status.⁹ Her status as surviving spouse affects such nonprobate matters as the termination rights (the proceeds of which pass to the charitable trust only if she is the surviving spouse), social security, insurance, and the rights of their son James Brown II, including his reputation and arguably his legitimacy status. There is no dispute that James II, now age 17, is the son of James Brown. (ROA Vol. I, p. 255 at ¶3, p. 268)

This case does involve the estate of a famous entertainer. However, that is not a reason to grant certiorari. Clearly, this case, involving a summary judgment about spousal status, does not involve a substantial constitutional issue, a Court of Appeals decision conflicting with a federal question decided by the United States Supreme Court, or a dissent in the decision of the Court of Appeals. Petitioners apparently argue that this case involves a novel question of law and/or a conflict with a prior decision of the Supreme Court. If so, neither of Petitioners' arguments is correct. Petitioners have two basic arguments:

(1) Petitioners want to retry in circuit court the final unappealed order of the family court in an annulment action that Mrs. Brown's putative marriage to Ahmed was void *ab initio* for bigamy. They cannot do so, for many well-established reasons under our law. First, only the family court has jurisdiction over an annulment case. Second, they can have no greater standing to contest that family court order than Mr. Brown did, and he had no standing to do so.¹⁰ These two points obviate their other arguments for allowing them to attack the family court order, but

the putative waiver was executed, which renders any attempted waiver ineffective. However, because her agreement with the Estate will result in her dismissal of her spousal claims, the validity of the putative prenuptial agreement will never have to be actually decided.

⁹ If the Court denies certiorari, that would be the final determination of her spousal status, serving as the trigger under her agreement with the Estate for her to dismiss her spousal claims. If the Court grants certiorari and eventually overrules the lower courts on the summary judgment issue, the issue of her spousal status would presumably return to the lower courts for a trial, and likely appeal therefrom. Thus, her dismissal of her spousal claims would be substantially delayed and the estate would remain unresolved for years to come.

¹⁰ The Court of Appeals confirmed such a lack of standing in *Lukich v. Lukich*, 368 S.C. 47, 51, 627 S.E.2d 754, 756 (S.C. Ct. App. 2006); *aff'd* 379 S.C. 589, 666 S.E.2d 906 (2008).

the remaining arguments fail for other reasons as well. Although with knowledge of Mrs. Brown's annulment action, Mr. Brown brought his own annulment action, he dismissed his action and never brought another. Petitioners seek to do what he chose not to do during his lifetime, which the law does not allow.¹¹ Petitioners argue that they are not collaterally estopped from contesting the family court annulment order. However, they admit that a family court order is binding on the world as to status, but not as to facts and conclusions of law.¹² The status of the invalidity *ab initio* of Mrs. Brown's putative marriage to Ahmed is all that matters for purposes of the summary judgment. As a matter of law, she had no impediment to her marriage to Mr. Brown. Petitioners argue that they were deprived of discovery, but the decision was based on stipulated facts. *See* Stipulation of Facts (ROA Vol. I, pp. 254-350).

Consequently, nothing in Petitioners' attempt to retry the family court case involves a novel question of law or a conflict in the Court of Appeals decision with a prior decision of this Court. Instead, Petitioners would have this Court overturn established law and create new law.

(2) Petitioners argue that the Circuit Judge, and the Court of Appeals panel misunderstood *Lukich*. They argue that *Lukich* requires a finding that Mrs. Brown had an impediment to her marriage to Mr. Brown because the family court annulment order occurred after the marriage ceremony of Mr. and Mrs. Brown. Their argument fails for many reasons. First, this Court held in *Lukich*, as it has in every other case ever decided by this Court, that a

¹¹ *Brown, supra* note 3, at 602, 818 S.E.2d at 777.

¹² Petitioners' position of the binding status of a *in rem* order has apparently evolved so that in their Petitions they now admit they are bound by the status created by an order, but now only as of the date of the order (whereas in previous pleadings they admitted they were bound by a status ruling without limitation by date). Petition, p. 9. The status of Mrs. Brown's putative marriage to Ahmed — void and never valid — is the critical matter. Petitioners' contention that an order finding a bigamous marriage is void only from the time of the order continues their erroneous theme that a bigamous marriage is valid unless and until there is an order; this position contradicts the bigamy statute and all case precedent dealing with a bigamous marriage as discussed *infra*.

bigamous marriage is void *ab initio* — that it was never valid, never a marriage.¹³ In doing so, this Court cited numerous South Carolina cases. Petitioners undertake a sleight-of-hand attempt at confusion by trying to focus on the order of the marriages, rather than whether a marriage was bigamous. However, the order of the marriages is not what matters. In *Lukich*, the second “marriage” was bigamous because the first marriage was valid until the order invalidating the first marriage was obtained.¹⁴ Importantly in *Lukich*, the first marriage was valid until the order was obtained because the annulment was based on intoxication, which is a voidable marriage. A voidable marriage — such as one based on intoxication — remains valid until it is annulled.¹⁵ However, in this case, Mrs. Brown’s putative first marriage was void, not voidable, and thus was never a marriage and never an impediment to her marriage to Mr. Brown.

Second, the decision in every South Carolina case that a bigamous marriage is never valid is required by South Carolina Code Section 20-1-80, which provides that a bigamous marriage is void. Petitioners ask this Court to not only overturn every case it has decided about bigamous marriages (that they are never valid), but also to disregard the clear mandate of the legislature. Third, Petitioners argue that this Court in *Lukich* did not recognize the distinction between a void and voidable marriage. That is simply not correct. For example, this Court in *Lukich* cites its prior decision in *Day*: “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’).”¹⁶ Fourth, Petitioners argue that, although this Court affirmed the Court of Appeals

¹³ *Lukich*, *supra* note 10, at 592-3, 666 S.E.2d at 907.

¹⁴ *Id.*

¹⁵ In other words, if neither party to the “intoxication marriage” chooses to annul it, it remains a valid marriage.

¹⁶ *Id.* at 592, 666 S.E.2d at 907. Moreover, the rationale in *Lukich* is based on the distinction between a void and

in *Lukich* and cited numerous cases that have held without exception that a bigamous marriage is never valid, somehow this Court, without mentioning it, overturned the footnote in the Court of Appeals's opinion recognizing that, if the first marriage is void *ab initio* for bigamy, there would be no impediment to the second marriage.¹⁷ Fifth, Petitioners argue that Mrs. Brown's bigamous marriage to Ahmed was valid until the family court annulment order yet the alleged bigamous marriage — according to them — between Mrs. and Mr. Brown was void *ab initio*, without the need to obtain a court order. Petitioners want this Court to apply Petitioners' erroneous rule — that a bigamous marriage is valid until a court order is obtained — to the Brown-Ahmed marriage but not to the Brown-Brown marriage, which they contend is also bigamous.

Sixth, Petitioners argue that the order of the marriage makes a difference. But this Court has already decided a case with exactly the same order of marriages, and the decision of this Court is consistent with the Court of Appeals decision in this case. In *State v. Sellars*, 140 S.C. 66, 134 S.E. 873 (1926), this Court held that a man was not guilty of the crime of bigamy because his first "marriage" was void as bigamous so that he had no impediment to his second marriage.¹⁸ There is nothing novel or contradictory as to the order of marriages in this case.

Consequently, nothing in Petitioners' "*Lukich* argument" involves a novel question of law or a conflict in the Court of Appeals decision with a prior decision of this Court.

voidable marriage.

¹⁷ Judge Short authored the Court of Appeals opinion in *Lukich* and the opinion in this case.

¹⁸ Similarly, *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906), stands for the proposition that, if the first marriage of a woman was bigamous, there would be no impediment to her valid second marriage. However, in *Hallums*, the court (in the days before there was a family court) concluded that the first marriage was not bigamous because her first husband was not already married to another.

For the reasons cited discussed *supra*, there are no “special and important reasons” under Rule 242, SCACR, to grant certiorari.¹⁹

Rather than presenting issues that are novel questions of law or that conflict with previous Supreme Court rulings, Petitioners ask this Court to grant certiorari to overturn established law. To prevail, Petitioners must have this Court: (1) overturn every case addressing bigamous marriages, all of which hold that they are never valid; (2) reject South Carolina Code Section 20-1-80 that mandates that bigamous marriages are void (not voidable); (3) grant subject matter jurisdiction over annulments to the circuit court; (4) allow standing to third parties in an annulment action; (5) allow a decedent’s heirs to have greater rights than he had and have standing that he did not have; (6) allow a decedent’s heirs to overturn a marriage he wanted; (7) hold that a family court determination about marriage status is not binding on others, so that the issue would have to be continually re-tried; and (8) find that a bigamous marriage is valid unless and until there is a court order of annulment — except in the case of the Brown-Brown marriage. Although Petitioners erroneously contend that the Brown-Brown marriage is also bigamous, they argue that it is void *ab initio* without the need of a court order, which was never obtained. They want their fanciful rule that a bigamous marriage is valid until there is a court order to apply *only* to the Brown-Ahmed marriage.

Petitioners’ petitions rehash their arguments, which were rejected by the trial court and Court of Appeals. Their rehashing of those arguments does not constitute any reason for granting certiorari. Nevertheless, Respondent will briefly address those arguments below.

¹⁹ This Court has stated that “the Court of Appeals was created to reduce the State’s appellate backlog” and that it “will grant certiorari to the Court of Appeals only where special reasons justify the exercise of that power.” *State v. Lyles*, 381 S.C. 442, 443, 673 S.E.2d 811, 812 (2009). Construing similar language, the United States Supreme Court has differentiated between principles important to the public as opposed to principles important merely to the parties — the latter not constituting a special reason to grant certiorari. *See, e.g., Layne & Bowler Corp. v. W. Well Works*, 261 U.S. 387, 393 (1923). The annulment issue in our case is very factually specific, and therefore of interest to the parties but not dealing with a principle important to the public.

II. THE FAMILY COURT DECREE OF ANNULMENT IS BINDING IN THE PRESENT ACTION

Petitioners argue that the Family Court judgment of annulment can be attacked by them in the present action. The trial court and the Court of Appeals properly held otherwise.

A. The Family Court Judgment Of Annulment Cannot Be Attacked In An Action Filed In The Court Of Common Pleas

Petitioners cannot attack a family court order in the circuit court. As the Court of Appeals recognized, the family court has *exclusive* subject matter jurisdiction over annulments. S.C. Code Ann. § 63-5-530(A)(6). "[T]he trial court had no subject matter jurisdiction to relitigate the family court order because only the family court has jurisdiction over annulments." *In re Estate of Brown*, 424 S.C. 589, 600, 818 S.E.2d 770, 776 (S.C. Ct. App. 2018).

Because the Court of Common Pleas has no subject matter jurisdiction over annulments, it could not overturn the family court's holding that no valid marriage ever existed between Mrs. Brown and Ahmed. The courts below properly held that the family court judgment of annulment was binding in its result: Mrs. Brown and Ahmed never had a valid marriage.

B. The Family Court Judgment Of Annulment Is Binding Because Petitioners Lack Standing To Question It

Even if the Court of Common Pleas somehow has subject matter jurisdiction over annulments, Petitioners lack standing to question the family court order. Mr. Brown had no standing to attack the annulment. The Court of Appeals directly so held, citing a prior case holding that a husband lacked standing to intervene in the wife's annulment proceeding. *Lukich v. Lukich*, 368 S.C. 47, 51, 627 S.E.2d 754, 756 (S.C. Ct. App. 2006).²⁰ Petitioners claim to be heirs of James Brown; their claims are through him, and they cannot assert claims that he himself

²⁰ This aspect of *Lukich* was outside the scope of the issues appealed to this Court. *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008).

could not. See *Watson v. Watson*, 172 S.C. 362, 369-70, 174 S.E. 33, 36 (1934) ("[A]s it is only the children of Mr. Watson who are contesting this question, they are completely estopped, as was their father, from disputing the validity of the divorce in question."); *Neely v. Thomasson*, 365 S.C. 345, 354, 618 S.E.2d 884, 889 (2005).

Indeed, the evidence shows clearly that, with knowledge of the family court annulment order for Mrs. Brown which he himself financed, Mr. Brown, after a domestic altercation, did for a time question the validity of his marriage to Mrs. Brown, bringing an action in the Aiken County family court to have that marriage annulled. Because he lacked standing to contest or otherwise be involved in the family court action between Mrs. Brown and Ahmed, this was the remedy available to him to contest the validity of his marriage to Mrs. Brown. But Mr. Brown then reconciled with Mrs. Brown and withdrew the claim. (ROA Vol. I, pp. 349-50.) (Aiken County family court stating in Finding 2 that "[t]he parties have resolved their differences and are currently residing together").²¹ Mr. and Mrs. Brown remained married until Mr. Brown's death. Petitioners lack standing to do what their own decedent ultimately refused to do: question the validity of his marriage to Mrs. Brown.

Petitioners make a broad series of policy arguments that heirs should have broad license to question the marriages of their decedents. To the contrary, parties to a marriage have a strong and direct interest in determining whether their marriage is valid. If the decedent accepts the validity of a marriage, as Mr. Brown clearly did here by choosing to dismiss his annulment action and live in matrimony with Mrs. Brown, the marriage should be binding upon his heirs. Petitioners disagree with Mr. Brown's decision to dismiss the annulment action and are using this

²¹ Petitioners argue that Mrs. Brown concealed her relationship to Ahmed. To the contrary, Mr. Brown was well aware of that relationship, as he paid the attorney's fees for the annulment action and even filed an annulment action of his own. Moreover, since a valid marriage never existed between Mrs. Brown and Ahmed, there was, in any event, no valid prior marriage to disclose.

action to overturn his personal judgment. Petitioners lack standing to question the validity of a marriage that Mr. Brown himself clearly chose to accept.

C. The Family Court Judgment of Annulment Is Binding Because Judgments of Annulment Are Binding On All Third Parties

1. Judgments of Annulment Are Binding Upon Third Parties

Even if the judgment of annulment can be attacked in the Court of Common Pleas, and even if Petitioners have standing to do so, the annulment judgment is still binding because judgments of annulment are binding on all third parties.

The efficient and orderly tracking of marriages within South Carolina requires that annulments be binding upon third parties. Assume that a wife enters into a bigamous marriage when her husband conceals from her a prior marriage. Within a period of months, she learns the truth, recognizes the error, and has the marriage annulled.

The position of Petitioners in this case is that the wife in this example can never rest. Her original judgment of annulment, no matter how clearly she proved her case, binds only the parties named to the annulment action. Every time the validity of her marriage becomes an issue with regard to anyone not a party to the original annulment, she must file a new annulment action against that third party. For example, if she desires to remarry, she must name her prospective husband as the defendant in an action to annul her first marriage; otherwise the husband is not bound by the annulment and the second marriage is bigamous. If her marital status becomes an issue when she purchases real property or applies for government benefits — e.g. Social Security — she must again file an annulment action. These repeated annulment actions, seeking the same relief over and over again against different defendants, would be an impossible burden upon both the wife and the court system and create chaos.²²

²² Moreover, Petitioners' proposal would unfairly and absurdly affect the rights of the only real parties to the

South Carolina law is clear. South Carolina Code Section 20-1-80 provides that a bigamous marriage is never a marriage: “All marriages contracted while either of the parties has a former wife or husband living shall be void.” This statute means just what it says — a bigamous marriage is void — which every South Carolina appellate court opinion has affirmed. Unless an annulment is binding on third parties, the statute would be rendered meaningless.

There is no question that Mrs. Brown’s putative marriage to Ahmed was void on the ground of Ahmed’s bigamy because there is a binding family court order. That final order granting the annulment is stipulated by Petitioners. (ROA Vol. I, p. 257, ¶ 11, pp. 293-6.)²³

The effect of section 20-1-80 is to make annulments binding upon all third parties. This is the strong general rule nationwide. “[A]nnulment decrees are binding upon non-parties as well as parties respecting the validity of the marriages involved.” Homer H. Clark Jr., *The Law of Domestic Relations in the United States* § 3.6 (2d ed. 1987) (emphasis added).²⁴ See, e.g., *Joye v. Yon*, 345 S.C. 264, 547 S.E.2d 888 (S.C. Ct. App. 2001) (holding that ex-husband of first marriage, who was to pay alimony to ex-wife, was bound by annulment of his ex-wife’s second marriage on grounds of her putative second husband’s bigamy even though the ex-husband of

annulment action: the putative husband and wife. If third parties are not bound by an annulment action, but are free to re-try the case every time a third party is interested in doing so, then what if a court with subject matter jurisdiction decided that a marriage previously annulled for bigamy was not bigamous and thus not void? The parties to the void marriage would have a family court order saying they were never married but there would be a different court order saying they were. The status of the parties’ marriage is their business, not someone else’s.

²³ Although it does not matter in this case because there is a family court order of annulment, the Court of Appeals opinion in this case recognizes that a bigamous marriage is void *ab initio* regardless of an order, and that Mrs. Brown’s marriage to Mr. Brown would be valid even without the annulment order. *Brown*, at 599, 776. See, e.g., Roy T. Stuckey, *Marital Litigation in South Carolina* 3.A (4th ed., 2010).

²⁴ Other states have likewise held that annulments cannot be collaterally attacked by those who are not parties to the action. “In a proceeding in rem with respect to a status the judgment is conclusive upon all persons as to the existence of the status.” RESTATEMENT (FIRST) OF JUDGMENTS § 74(1) (1942). “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.” *Presbrey v. Presbrey*. 6 A.D.2d 477, 480, 179 N.Y.S.2d 788, 792 (1958), *aff’d*, 8 N.Y.2d 797, 168 N.E.2d 135, 201 N.Y.S.2d 807 (1960).

first marriage was not a party to the annulment action.) (“Since [ex-husband] had no standing to challenge the granting of the annulment, it was not necessary for [ex-wife] to include him as a party to the action [to annul her second marriage].”)²⁵

The *Restatement (Second) of Judgments* § 31 cmt. *f* (1982) states the general rule that a status determination is ordinarily binding on non-parties. *See also Id.* § 31 cmt. *a* (“Proceedings for the determination of status include divorce and annulment actions.”).

Petitioners make a strange argument that the family court's Findings of Fact in the annulment action are inadmissible hearsay. This argument should be rejected. First, *Petitioners stipulated to the admissibility of the entire Family Court's final order, which appears as an appendix to a Joint Stipulation.* (ROA, Vol. I, pp. 293-6.) Petitioners cannot accuse the trial court of error in considering evidence to which Petitioners themselves stipulated. *See, e.g., Butler v. Sea Pines Plantation Co.*, 282 S.C. 113, 317 S.E.2d 464 (S.C. Ct. App. 1984).

Further, factual findings that are binding under the doctrines of *res judicata* and collateral estoppel are either admissible outside the rules of evidence²⁶ or do not constitute hearsay at all.²⁷

²⁵ The Supreme Court reversed the Court of Appeals on whether the void bigamous second marriage affected the ex-husband's alimony obligation, adopting a case-by-case approach on the issue. Importantly, the Supreme Court in *Joye*, while dealing with the issue of a void subsequent marriage on a pre-existing alimony obligation, held, as does every other case, that a bigamous marriage is void *ab initio*. Several other cases deal with ancillary issues, but all follow the basic holding in every bigamous marriage case: a bigamous marriage is void *ab initio* and never a marriage. 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 (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. Ct. App. 2004) (similar, citing *White v. White*, 283 S.C. 348, 323 S.E.2d 521 (1984)). Moreover, according to this Court in *Lukich*, under South Carolina's current view of bigamy, the family court has jurisdiction to decide all ancillary matters where it annuls a marriage and declares it void *ab initio*. *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (S.C. Ct. App. 2004).

²⁶ *See Mugno v. Casale*, Nos. CIV.A. 96-6228, CIV.A. 96-6229, 1997 WL 152793, at *6 (E.D. Pa. Mar. 28, 1997) (“[I]f the doctrine of collateral estoppel precludes consideration of a factual issue, that issue is not a fact to be determin[ed] at trial and, thus, the rules of evidence do not apply to that issue.”).

²⁷ *See Lincoln Beneficial Life v. Wilson*, No. 4:13CV3210, 2015 WL 4092851, at *8 (D. Neb. July 7, 2015) (“The findings are not hearsay because they are not offered to prove the truth of the matter asserted; rather, they are offered to prove what was decided in the case. *See Fed. R. Evid.* 801(c)(2). If it is determined that collateral estoppel

Otherwise, the hearsay rule would completely swallow res judicata and collateral estoppel. The case cited by Petitioners, *Nipper v. Snipes*, 7 F.3d 415 (4th Cir. 1993), involved a prior decision that was not legally binding. For reasons accepted by both the trial court and the Court of Appeals, the family court decree of annulment in this case is legally binding on all third parties.

2. Petitioners' Attempted Distinction Between Findings of Fact and Conclusions of Law Versus Status Does Not Change the Result

Petitioners argue that judgments of annulment are binding only on questions of status, and not as to findings of fact or conclusions of law. But as the Court of Appeals held, Mrs. Brown "is only asserting the family court's order as to the status of her marriage to Ahmed." *Estate of Brown*, 424 S.C. at 602, 818 S.E.2d at 777. *Status is the exact and only matter at issue and her status is that she was never married before she married Mr. Brown.*

Moreover, the conclusions of law in any judgment are necessarily based upon the findings of fact. *It is absurd to hold that the judgment is binding as to status but that the factual findings that underlie the judgment are not binding.* To hold that the factual findings are not binding is also to hold that the conclusions of law that are based on those findings are also not binding. Petitioners' real argument is that annulments do not bind any third parties — a result that has been repeatedly rejected by both courts and commentators.

The cases cited by Petitioners involve situations in which a party argued that factual findings on one action were binding in a later action involving a completely different issue.²⁸ Here, both cases involve the exact same issue. Moreover, and more importantly, the family court

applies, the result of the prior litigation will be admissible in evidence at trial.”).

²⁸ See *Gratiot County State Bank v. Johnson*, 249 U.S. 246 (1919) (first case was a bankruptcy action and the second was as an action to set aside a transfer to creditors); *Becher v. Contoure Labs.*, 279 U.S. 388 (1929) (the first case was a state court action to declare a party as trustee of a patent, and the second case was a federal court action for patent infringement).

has exclusive jurisdiction over annulments, while the Court of Common Pleas has no jurisdiction over annulments at all. The cases cited by Petitioners therefore do not apply.

Because annulment judgments are binding upon all third parties, the courts below properly held that the annulment in this case is binding upon Petitioners.

**D. The Family Court Judgment of Annulment Is Binding Because
Petitioners Are Collaterally Estopped From Attacking It**

Even if the judgment of annulment can be attacked in the Court of Common Pleas, and even if Petitioners have standing to do so, and even if annulment does not bind third parties generally, the annulment in this case is binding upon Petitioners under the doctrine of collateral estoppel. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (S.C. Ct. App. 2009) (elements of collateral estoppel).

Petitioners suggest that it is an uncontested fact that the annulment action was not actually litigated. The record clearly shows otherwise as there was a trial in the family court. The defendant in the annulment action, Ahmed, was properly served in accordance with South Carolina law.²⁹ While Ahmed did not appear, the Family Court found service was proper. ROA Vol. I, pp. 293-6. An order of publication cannot be attacked collaterally³⁰, and South Carolina law places upon the court a solemn duty to approach all annulment cases with careful skepticism and to grant an annulment only in the presence of strong supporting evidence. *See, e.g., Fogel v. McDonald*, 159 S.C. 506, 157 S.E. 830 (1931); *Davis v. Davis*, 236 S.C. 277, 284, 113 S.E.2d 819 (1960) (quoting *Holliday v. Holliday*, 235 S.C. 246, 253-54, 111 S.E.2d 205, 210 (1959)).

It is axiomatic that the state has a strong interest in preserving marriages. The effect of *Fogel* is to make the state a third party to every annulment and to charge the judge with a duty to

²⁹ The issue of proper service is briefed extensively in Final Brief of Respondent Tommie Rae Brown, pp. 55-60.

³⁰ *Howell v. Atl. Coast Line R.R.*, 79 S.C. 493, 60 S.E. 1114 (1908); *Brown v. Wilson*, 45 S.C. 519, 23 S.E. 630 (1896); *Wachovia Bank of S.C. v. Player*, 341 S.C. 424, 428-9, 535 S.E.2d 128, 130 (2000).

review the evidence carefully. An annulment case is therefore never a default judgment in the normal sense of a judgment entered automatically simply because the defendant fails to respond. The court was required to review the evidence carefully and not simply to assume that the annulment should be granted because no one opposed it. *See, Fogel*, 159 S.C. 506, 157 S.E. at 833.

In addition, counsel for Mrs. Brown expressly asked the court not to issue a default judgment but, rather, to comply with its legal duty to examine the sufficiency of the evidence. (Tr. 4-15-04 p. 4, lines 7-12, *reprinted in* ROA Vol. I, pp. 297-313.)

The annulment was, therefore, fully litigated. The court had a duty to examine the sufficiency of the evidence before ruling, and the court did that. The decree annulling the marriage between Mrs. Brown and Ahmed was a determination by the family court on the merits of the case that Mrs. Brown and Ahmed never had a valid marriage.

The judgment of annulment obviously directly determined the validity of the marriage between Mrs. Brown and Ahmed; indeed, resolving that issue was the entire purpose of the annulment action. A finding that no valid marriage ever existed was obviously necessary to support the court's judgment of annulment. All three elements of collateral estoppel are therefore met here.

Contrary to Petitioners' arguments, Mr. Brown was in privity with Mrs. Brown in the annulment action. A person is in privity with a party if the person provides essential support for an action which that party files. *See, Tillman v. Tillman*, 93 S.C. 281, 76 S.E. 559 (1912). Mr. Brown clearly provided substantial support for Mrs. Brown's annulment action; indeed, it is undisputed that he paid the fees for Mrs. Brown's attorney and that his counsel was kept informed (ROA Vol. I., p. 257 at ¶ 13.) A person who pays the attorney's fees for a party has

provided essential support for the action and is in privity with that party for purposes of collateral estoppel. *See, Piney Oil & Gas Co. v. Scott*, 258 Ky. 51, 79 S.W.2d 394, 396 (1934). Thus, Mr. Brown was in privity with Mrs. Brown.

There is no question that Petitioners are in privity with Mr. Brown, as heirs are generally in privity with their ancestors. *See, Thompson v. Hudgens*, 161 S.C. 450, 159 S.E. 807 (1931).

Mr. Brown also benefited from the annulment judgment during his lifetime, as the annulment resolved uncertainty in the validity of the marriage. Indeed, in his own annulment action, Mr. Brown expressly argued that Mrs. Brown “is collaterally and judicially estopped from denying” the holding in her own annulment action. (ROA Vol. I, pp. 332-5 at ¶ 9.) Having argued expressly that the annulment judgment was binding, and having benefited from the judgment, Mr. Brown could not have changed course 180 degrees and argued that the annulment was not binding. *See Salley v. McCoy*, 186 S.C. 1, 195 S.E. 132, 135 (1937) (citing the “elementary principle that counsel will not be permitted to take inconsistent positions at successive stages of a cause”). Nor, after dismissing his own annulment action, did Mr. Brown ever contend that the annulment was not binding. Petitioners have no greater rights than Mr. Brown.

The Court of Appeals therefore correctly held that Petitioners are estopped to attack the validity of the annulment. *Estate of Brown*, 424 S.C. at 602, 818 S.E.2d at 776.

III. THE DECISIONS BELOW ARE CONSISTENT WITH THE SUMMARY JUDGMENT STANDARD

Petitioners make much of the summary judgment standard. However, the decisions below are fully consistent with this standard.

Both the circuit court and the Court of Appeals held that Petitioners are not permitted to attack the judgment of annulment. Petitioners asked the Court of Common Pleas to effectively

overturn a family court judgment of annulment, an act outside the Court of Common Pleas' jurisdiction. Petitioners lack standing to attack the annulment, and they are collaterally estopped from doing so. In any event, under South Carolina law, annulments are binding upon third parties in general, and upon Petitioners in particular.

None of the above holdings turns upon any genuine issue of material fact. Indeed, all material facts regarding the annulment have been stipulated to by the parties. There is no question that the judgment of annulment exists. The exclusive nature of the family court's jurisdiction over annulments is clear from the face of section 63-5-530(A)(6). As the Court of Appeals recognized in *Lukich*, 368 S.C. at 51, 627 S.E.2d at 756, the fact that James Brown himself could not have attacked the annulment is clear. Petitioners are heirs of James Brown and claim through him.

While a genuine issue of material fact prevents entry of summary judgment, "it is not sufficient that one create an issue of fact that is not genuine." *Main v. Corley*, 281 S.C. 525, 527, 316 S.E.2d 406, 407 (1984). Dispute as to an immaterial fact does not preclude entry of summary judgment. *See, Id.*

The question of whether annulments bind third parties is a question of law. The prior annulment is a matter of record; the status of Petitioners as James Brown's heirs is not disputed. All *material* facts are contained within the Joint Stipulation. Where there is no material factual dispute, a question of law is properly resolved upon summary judgment. *See, Lewis v. Coleman*, 257 F. Supp. 38, 40 (S.D. W. Va. 1966); *see also Taylor v. Cardiology Clinic, Inc.*, 195 F. Supp. 3d 865, 869 (W.D. Va. 2016) ("[S]ummary judgment is appropriate '[w]here the unresolved issues are primarily legal rather than factual.'" (quoting *Koehn v. Indian Hills Cmty. Coll.*, 371 F.3d 394, 396 (8th Cir.2004))); *Doyle v. Milton*, 73 F. Supp. 281, 284 (S.D.N.Y. 1947) ("[W]here

the issue is one of law only, summary judgment is an appropriate remedy for the disposition of the issues.”).

Here, as in *Lewis*, resolution of the legal issue will not be rendered easier by trying immaterial issues of fact. The Court of Appeals properly held that the Court of Common Pleas lacks jurisdiction over annulments, that Petitioners lack standing to attack a judgment that their decedent never attacked, that Petitioners are collaterally estopped from attacking the annulment, and that annulments are binding upon all third parties. None of these points depends on any material factual dispute. Summary judgment was therefore properly granted.³¹

IV. THE OPINION OF THE COURT OF APPEALS IS CONSISTENT WITH *LUKICH*

Petitioners argue that the Court of Appeals misconstrued this Court's decision in *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008). On the contrary, the Court of Appeals' construction of *Lukich* is entirely correct. To begin with, *Lukich* involved an appeal from family court, not an appeal from the Court of Common Pleas. The limited jurisdiction of the Court of Common Pleas over annulment actions was therefore not involved in *Lukich*. Here, unlike *Lukich*, the court below lacked jurisdiction to question the annulment decision.

In addition, *Lukich* holds that when a voidable marriage is annulled, the annulment takes effect only prospectively from the date of the annulment decree forward. That holding 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. One marriage in *Lukich* was annulled for intoxication, which is a ground for a voidable marriage. The other

³¹ Any of Petitioners' concerns about summary judgment being an inappropriate remedy is countered by the fact that they too filed a motion for summary judgment on the same record, which was denied.

marriage in *Lukich* was held to be void *ab initio* based on bigamy, which requires that a marriage be treated as never valid.

But a void marriage is fundamentally different. A void marriage is never a valid marriage. The parties are not permitted to waive the defect; the marriage is automatically invalid. *See Johns v. Johns*, 309 S.C. 199, 201, 420 S.E.2d 856, 858 (S.C. Ct. App. 1992) (bigamous marriage “was void from its inception, not merely voidable, and, therefore, cannot be ratified or confirmed and thereby made valid”). The annulment in this case was granted on the ground of bigamy, which is the most serious and substantial of all grounds for rendering a marriage void. Every South Carolina case dealing with a bigamous marriage has held that a bigamous marriage is never a marriage at all. *See, e.g., Day v. Day*, 216 S.C. 334, 338, 58 S.E.2d 83, 85 (1950)³²; *Splawn v. Splawn*, 311 S.C. 423, 429 S.E.2d 805 (1993); *Ex parte Blizzard*, 185 S.C. 131, 193 S.E. 633; *Callen v. Callen*, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005).

By asking the Court to hold that the bigamous marriage between Mrs. Brown and Ahmed was valid until the order of annulment, Petitioners invite this Court to become the first appellate court in the long history of South Carolina to give any legal effect to a bigamous marriage. The Court should decline that invitation. South Carolina law prohibits giving any effect whatsoever to a bigamous marriage, either presently, prospectively, or retrospectively. There was never, at any point in time, a valid marriage between Mrs. Brown and Ahmed.

The Court of Appeals’ opinion in *Lukich* expressly notes that the result would have been different if the first marriage in that case had been void *ab initio* for bigamy rather than being merely voidable for intoxication:

³² Cited by this Court in *Lukich*: (“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”).

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, . . . ; (2) same sex marriages, . . . ; and (3) marriages of minors under the age of 16[.]*

368 S.C. at 55 n.2, 627 S.E.2d at 758 n.2 (emphasis added).

There is nothing in this Court's opinion inconsistent with this footnote. On the contrary, the result of this Court's opinion confirms that bigamous marriages are void from their inception. In *Lukich*, a woman sought alimony during a divorce from her second husband (Marriage 2). During the divorce, 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. She quickly obtained an annulment in another venue, without her husband's knowledge, for Marriage 1, on the grounds of intoxication. Both appellate courts concluded that the annulment of Marriage 1 was voidable.

Lukich also dealt with the validity of Marriage 2, and both appellate courts concluded that Marriage 2 was void *ab initio* because it was bigamous. Consequently, Marriage 2 was never a marriage, so the divorce was unnecessary and the second husband could not owe alimony. *Lukich* does not change, but is, instead, consistent with Section 20-1-80 and all South Carolina case precedent. A bigamous marriage (Marriage 2 in *Lukich*) is void from its inception and never a valid marriage at any point in time. *Lukich* therefore held only that a voidable marriage is invalid prospectively. When a marriage is void *ab initio*, it is invalid from its inception. It *never* existed.

Moreover, even if Petitioners' construction of *Lukich* is correct, that does not help their position. If *Lukich* holds that bigamous marriages are valid until they are annulled, then Mrs.

Brown's marriage to Ahmed was valid at the time she married Mr. Brown, and her marriage to Mr. Brown was bigamous. But Mr. Brown's marriage to Mrs. Brown was not annulled for bigamy during Mr. Brown's lifetime, and it cannot be annulled after his death. If Mrs. Brown's marriage to Ahmed is retrospectively valid even if bigamous, then by the exact same reasoning, Mrs. Brown's marriage to Mr. Brown is valid even if bigamous, and Mrs. Brown is still Mr. Brown's surviving spouse. (See Tr. Ct. Op. p. 16 (expressly accepting this argument)) Petitioners prevail only if their construction of *Lukich* applies to one marriage (between Mrs. Brown and Ahmed) but not to another marriage (between Mrs. Brown and Mr. Brown). There is no reason to apply different constructions of *Lukich* to different marriages.

South Carolina law on this issue is simple: A bigamous marriage does not exist for any purpose, at any time, either presently, prospectively, or retrospectively. Mrs. Brown therefore never had a marriage to Ahmed. Because Mrs. Brown never had a marriage to Ahmed, her marriage to Mr. Brown was simply not bigamous. She is therefore Mr. Brown's surviving spouse. This is the exact result reached in the *Lukich* case with regard to Marriage 2.

V. THE COURT OF APPEALS CORRECTLY HELD THAT MRS. BROWN MET HER BURDEN OF PROOF IN THIS ACTION

Petitioners persist in arguing that Mrs. Brown had a burden to prove that her marriage to James Brown was not bigamous. This point is not directly relevant because both the circuit court and the Court of Appeals properly held that the Court of Common Pleas lacks jurisdiction to question the family court's decree of annulment, that the Petitioners lack standing to question that decree, that the Petitioners are estopped from attacking the decree, and that, in any event, the decree binds all third parties.

Mrs. Brown bears one burden of proof in this action: the burden of proving a prima facie marriage to Mr. Brown. She met this burden by producing a valid certificate of marriage between

herself and Mr. Brown, which all parties stipulate is authentic. (ROA Vol. I, p. 256 at ¶ 4, pp. 269-70.) “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). The Court of Appeals held that “the parties all agreed to the Stipulation of Facts in this case, which resolves the material factual issues in the action.” *In Re Estate of Brown*, 424 S.C. at 603, 818 S.E.2d at 778.

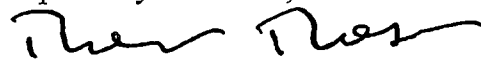
CONCLUSION

The courts below correctly held that Mrs. Brown never had a valid marriage to Ahmed because Ahmed was guilty of bigamy. This fact is established by the holding in the judgment of annulment, which the Court of Common Pleas had no jurisdiction to question. That judgment was binding upon Mr. Brown, who was in privity with Mrs. Brown, and it is binding upon these Petitioners. The *Lukich* decisions confirm what every other South Carolina case dealing with bigamous marriages, as well as the applicable bigamy statute, conclude: a bigamous marriage is never a marriage. Thus, there was no impediment to Mrs. Brown’s marriage to Mr. Brown, and she is his surviving spouse.

All of the reasons for the summary judgment holding that Mrs. Brown is the surviving spouse are based on established, uncontradicted law and provide no reason under Rule 242, SCACR, for granting certiorari.

Consequently, Mrs. Brown respectfully requests that the Petitions for Certiorari be denied.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

DEC 06 2018

Doyet A. Early, III, Circuit Court Judge

S.C. SUPREME COURT

**Trial Court Case Nos. 2013-CP-02-02849 and 2013-CP-02-02850
Appellate Case No. 2015-002417 (Court of Appeals)
Appellate Case No. 2018-001990 (Supreme Court)**

Tommie Rae Brown.....Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, Deana Brown Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown, and Daryl Brown,

of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator of the Estate of James Brown, a/k/a James Joseph Brown and Limited Special Trustee of the James Brown Irrevocable Trust, u/a/d August 1, 2000, is theAppellant.

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the **RESPONDENT'S RETURN TO PETITIONS FOR WRIT OF CERTIORARI** has been served on all counsel of record by depositing a copy of same in the United States Mail, postage prepaid on December 5th, 2018, and addressed as follows:

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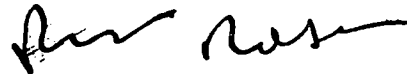
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