

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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

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.

PETITONERS' REPLY BRIEF

Robert C. Byrd, SC Bar #1069
bobbybyrd@parkerpoe.com
A. Smith Podris, SC Bar #78051
smithpodris@parkerpoe.com
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301 (29401)
Post Office Box 160
Charleston, SC 29402
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
Attorneys for Petitioners
Deanna Brown-Thomas, Dr. Yamma Brown,
and Venisha Brown

OF COUNSEL

Pro Hac Vice

Marc Toberoff

mtoberoff@toberoffandassociates.com

Toberoff & Associates, P.C.

23823 Malibu Rd., Suite 50-363

Malibu, CA 90265

Telephone: (310) 246-3333

Facsimile: (310) 246-3101

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ARGUMENT	1
I. RESPONDENT ERRONEOUSLY CLAIMS THAT THE CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION AND THAT PETITIONERS LACK STANDING AS TO RESPONDENT’S SPOUSAL RIGHTS UNDER THE PROBATE CODE.....	4
II. RESPONDENT ERRONEOUSLY CLAIMS PETITIONERS ARE BOUND BY ALL FINDINGS CONTAINED IN A DEFAULT, IN REM, JUDGMENT ENTERED IN A CASE TO WHICH THEY WERE NOT PARTIES	5
A. Petitioners are not bound to the factual findings contained in the <i>in rem</i> Annulment Order	5
B. The doctrine of collateral estoppel does not bind Petitioners to the factual findings contained in the Annulment Order.....	9
1. Neither Appellants nor Brown were parties or privies to the Annulment Action.....	9
2. Collateral estoppel only applies to “actually litigated” issues	11
III. SUMMARY JUDGMENT WAS INAPPROPRIATE BECAUSE PETITIONERS CLEARLY DID NOT STIPULATE TO HUSBAND 1’S BIGAMY	14
IV. RESPONDENT BEARS THE ULTIMATE BURDEN OF PROOF AS THE INDIVIDUAL CLAIMING SPOUSAL PRIVILEGES	14
V. RESPONDENT ASKS THIS COURT TO ENFORCE A SETTLEMENT AGREEMENT ALREADY STRUCK DOWN BY THIS COURT AS ILLEGAL.....	17
VI. RESPONDENT PROPOSES A TWISTED READING OF LUKICH THAT WOULD LEAD TO UNNECESSARY CHAOS AND INSTABILITY IN FAMILY AND PROBATE LAW DETERMINATIONS	19
CONCLUSION.....	24

TABLE OF AUTHORITIES

Cases

<i>Auto-Owners Ins. Co. v. Rhodes</i> , 405 S.C. 584, 748 S.E.2d 781 (2013)	18
<i>Bailey v. Lyman Printing & Finishing Co.</i> , 245 S.C. 13, 138 S.E.2d 410 (1964)	19
<i>Becher v. Contoure Labs.</i> , 279 U.S. 388, 49 S. Ct. 356, (1929).....	6, 7, 8
<i>Blue Cross and Blue Shield v. Philip Morris, Inc.</i> , 141 F.Supp.2d 320 (E.D.N.Y.2001)	16
<i>Byrd v. Byrd</i> , 279 S.C. 425, 308 S.E.2d. 788 (1983)	15
<i>Calhoun v. Calhoun</i> , 277 S.C. 527, 290 S.E.2d 415 (1982)	15
<i>Callen v. Callen</i> , 365 S.C. 618, 620 S.E.2d 59 (2005)	23
<i>Carnie v. Carnie</i> , 252 S.C. 471, 167 S.E.2d 297 (1969)	6
<i>Carolina Renewal, Inc. v. S.C. Dep’t of Transp.</i> , 385 S.C. 550 684 S.E.2d 779 (Ct. App. 2009).....	9
<i>Carrigg v. Cannon</i> , 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001).....	9
<i>Day v. Day</i> , 216 S.C. 334, 58 S.E.2d 83 (1950)	4, 22
<i>E.D.M. v. T.A.M.</i> , 307 S.C. 471, 415 S.E.2d 812 (1992)	16
<i>Ex parte Blizzard</i> , 185 S.C. 131, 193 S.E. 133 (1937)	4
<i>Ex parte GEICO</i> , 373 S.C. 132, 644 S.E.2d 699 (2007)	9
<i>Fairfield County Sch. Dist. Bd. of Trs. v. State</i> , 409 S.C. 119, 761 S.E.2d 241 (2014)	17
<i>Gratiot County State Bank v. Johnson</i> , 249 U.S. 246, 39 S. Ct. 263, (1919).....	6, 7, 8, 12
<i>Hallums v. Hallums</i> , 74 S.C. 407, 54 S.E. 613 (1906)	4, 16
<i>In re Estate of Riley</i> , 228 Ariz. 382, 266 P.3d 1078 (Ariz. Ct.App. 2011).....	18
<i>Johns v. Johns</i> , 309 S.C. 199, 420 S.E.2d 856 (Ct. App. 1992).....	8, 22, 23
<i>Kunst v. Loree</i> , 404 S.C. 649, 746 S.E.2d 360 (Ct. App. 2013).....	passim
<i>Lewis v. Coleman</i> , 257 F. Supp. 38 (S.D. W. Va. 1966).....	14

<i>Lukich v. Lukich</i> , 368 S.C. 47, 627 S.E.2d 754 (Ct. App. 2006).....	21, 22
<i>Lukich v. Lukich</i> , 379 S.C. 589, 666 S.E.2d 906 (2008)	passim
<i>Mackey v. Kerr-McGee Chem. Co.</i> , 280 S.C. 265, 312 S.E.2d 565 (Ct. App. 1984).....	18
<i>Mizell v. Glover</i> , 351 S.C. 392, 570 S.E.2d 176 (2002)	16
<i>Nipper v. Snipes</i> , 7 F.3d 415 (4th Cir. 1993)	16, 17
<i>Palm v. Gen. Painting Co.</i> , 302 S.C. 372, 396 S.E.2d 361 (1990)	2, 4, 12, 13
<i>Prevatte v. Prevatte</i> , 297 S.C. 345, 377 S.E.2d 114 (Ct. App. 1989).....	23
<i>Ray Charles Found. v. Robinson</i> , 919 F. Supp. 2d 1054 (C.D. Cal. 2013), <i>rev'd on other grounds</i> , 795 F.3d 1109 (9 th Cir. 2015)	13, 14
<i>Rodarte v. Univ. of S.C.</i> , 419 S.C. 592, 799 S.E.2d 912 (2017)	19
<i>Rodman v. Rodman</i> , 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004).....	23
<i>RRR, Inc. v. Toggas</i> , 378 S.C. 174, 662 S.E.2d 438 (Ct. App. 2008).....	12
<i>Scarboro v. Morgan</i> , 233 N.C. 449 64 S.E.2d 422 (1951).....	22
<i>Splawn v. Splawn</i> , 311 S.C. 423, 429 S.E.2d 805 (1993)	22
<i>State v. Bacote</i> , 331 S.C. 328, 330 S.E.2d 161 (1998)	12, 14
<i>State v. Sellers</i> , 140 S.C. 66, 134 S.E. 873 (1926)	8, 22
<i>Strickland v. Strickland</i> , 375 S.C. 76, 650 S.E.2d 465 (2007)	19
<i>Thomas v. McGriff</i> , 368 S.C. 485, 629 S.E.2d 359 (2006)	4
<i>Tillman v. Tillman</i> , 93 S.C. 281, 76 S.E. 559 (1912)	11
<i>U.S. v. Jones</i> , 29 F.3d 1549 (11th Cir.1994)	16
<i>Virginia Hosp. Ass'n v. Baliles</i> , 830 F.2d 1308 (4th Cir. 1987)	11
<i>Wade v. Berkeley County</i> , 330 S.C. 311, 498 S.E.2d 684 (Ct. App. 1998).....	9, 10
<i>Wilson v. Dallas</i> , 403 S.C. 411, 743 S.E.2d 746 (2013)	3, 11, 18
<i>Yarbrough v. Yarbrough</i> , 280 S.C. 546, 314 S.E.2d 16 (Ct. App. 1984).....	16, 23

Statutes

17 U.S.C.A. § 203(a), 304(c)(d) (West) 13
S.C. Code Ann. § 20-1-80..... passim
S.C. Code Ann. § 62-1-201(2)..... 4
S.C. Code Ann. § 62-1-302 (a)(1)..... 4
S.C. Code Ann. § 62-1-303..... 4
S.C. Code Ann. § 62-1-403..... 4
S.C. Code Ann. § 62-3-105..... 4
S.C. Code Ann. § 62-3-1102..... 18

Rules

S.C. App. Ct. R. 407 RPC 1.7..... 11

Other Authorities

52 Am. Jur. 2d *Marriage* § 57 21
52 Am. Jur. 2d *Marriage* § 130 (1970)..... 16
Restatement (First) of Judgments § 73 (1942)..... 6, 8
Restatement (Second) of Judgments § 39..... 11

ARGUMENT

Respondent's entire case and brief reduces to two false constructs: (i) that her Marriage 1 was in fact bigamous, when she has never presented any admissible evidence of this and has stipulated that she has none, and (ii) the straw man that Appellants seek to re-litigate her belated 2004 annulment of Marriage 1. Respondent muddies the waters on the simple question presented: Should Respondent be allowed to retroactively apply her 2004 *in rem* annulment order to revive her facially bigamous Marriage 2 and claim spousal status as to the estate of Husband 2. The answer, under settled law, must be "no".

Petitioners Deanna Brown-Thomas, Yamma Brown and Venisha Brown (collectively "Petitioners") respectfully submit this Reply Brief to clarify the issues before this Court:

First, Respondent has no answer to the controlling rule that underlying factual findings and conclusions of law in the 2004 *in rem* order annulling her Marriage 1 (the "Annulment Order") are not binding on third-parties, including Brown and Petitioners. The Annulment Order binds the world only as to the dissolution of Marriage 1 on the date of the Order, such that Petitioners must be allowed to litigate the subsidiary question of whether Respondent's Marriage 1 was in fact bigamous, if this remains relevant under *Lukich v. Lukich*, 379 S.C. 589, 666 S.E.2d 906 (2008). Unable to confront the legal authority reflecting this long-established rule of *in rem* judgments, disregarded entirely by the Court of Appeals' opinion (the "Opinion"), Respondent vaguely attacks it as "absurd."¹

Second, Respondents do not even begin to satisfy the elemental requirements of collateral estoppel misapplied in the Opinion because: (a) neither Petitioners nor Brown was a party or in privity with a party to the 2004 annulment action (the "Annulment Action"); and (b) Husband 1's alleged bigamy was never "actually litigated", since he defaulted, and the family court just

¹ Resp. Br. p. 25.

adopted Respondent's unopposed hearsay. Collateral estoppel does *not* apply to such a situation under clear South Carolina law. See *Palm v. Gen. Painting Co.*, 302 S.C. 372, 396 S.E.2d 361 (1990); *Kunst v. Loree*, 404 S.C. 649, 654, 746 S.E.2d 360, 362 (Ct. App. 2013) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation.").

Third, under *Lukich*'s strict reading of the temporal requirement of South Carolina's bigamy statute, Respondent lacked the legal capacity to enter into Marriage 2 until her Marriage 1 had been "declared void by the sentence of a competent court," regardless of the alleged grounds. S.C. Code Ann. § 20-1-80. Respondent, like the Opinion, persistently misreads *Lukich* as offering a giant loophole for alleged "void" marriages, permitting opportunistic annulments of a first marriage years after a facially bigamous second marriage to revive it retroactively. This is precisely the chaotic marital see-saw that *Lukich*'s pragmatic bright-line rule was meant to avoid.

Instead of forthrightly addressing these fundamental legal rules, Respondent mischaracterizes Petitioners' arguments, pretends this fight is over whether actually bigamous marriages are void *ab initio*, erects one straw man after another, and poses outlandish hypotheticals with no basis in Appellant's true arguments.² These nonsensical straw-men evince a troubling misunderstanding of the issues at hand and attempt to blind this Court to two fundamental truths: *First*, there is no result in this case that would undo Respondent's 2004 annulment of Marriage 1 or, for that matter, any annulment that has ever been or will ever be entered in this state. *Second*, Respondent's overblown concerns could have been easily avoided had she simply resolved her first marriage, instead of willfully concealing it from Brown and the State of South Carolina, before attempting a second marriage.

² Resp. Br. at p. 21.

Respondent also egregiously misrepresents her “settlement” with the Estate.³ Although she curries favor by portraying it as charitable (after a decade of financially motivated litigation against the Estate) the truth appears to be quite different. Petitioners subsequently learned that while Respondent and the Estate represented a sanitized version of her settlement as “the Settlement Agreement”, she and the Estate had apparently entered into a concealed side-agreement that they steadfastly refuse to produce, strongly indicating that Respondent’s actual settlement is less than charitable and enables her to divert substantial proceeds to herself.⁴ Significantly, these are the same parties who entered into the 2008 settlement agreement (transferring 1/3 of Brown’s Estate to Respondent) that this Court sharply rejected, noting, *inter alia*, (i) the “major impediment to [Respondent’s] spousal claim;” (ii) the lack of any “reasonable basis for” her challenge to Brown’s will; and (iii) the fact that her *post-hoc* 2004 annulment was “hastily granted”. *Wilson*, 403 S.C. at 434 n.16, 439, 442, 743 S.E.2d at 759 n.16, 761, 763.

Respondent’s transparent attempts to persuade this Court to affirm just to end Respondent’s lengthy litigation must fail in favor of upholding South Carolina law and policy. Indeed, this Court has direct precedent for refusing to deny due process simply to promote settlement: *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). A more fitting resolution of this entire case as a matter of law is readily found in *Lukich* and § 20-1-80.

Respondent’s myriad legal and factual distortions in this high-profile case fail to deflect

³ Respondent continues to falsely assert that Petitioners refused to engage in settlement negotiations. (Resp. Br. p.4 n.5.) In reality, Petitioners were not even aware of settlement negotiations between Respondent and the Estate until their purported settlement was announced, but only selectively revealed. Even more outrageously, Respondent asserts that Petitioners dispute her spousal status “contrary to their father’s intentions” with no supporting evidence. Indeed, the evidence suggests that Brown never intended Respondent to participate in his estate, given that he did not include her in his will and that their 2004 Consent Order required her to even “forever waive any claim of a common law marriage to [Brown], both now and in the future.” Such a promise is without meaning if Respondent were Brown’s statutory wife.

⁴ Appendix pp. 57, 190-91, Petition for Rehearing at 5 and Reply in Support of Petition for Rehearing at 10-11. Respondent’s concealment and refusal to disclose the full terms of her settlement with the estate is also central to a pending federal court case: *Deanna Brown-Thomas, et al v. Tommie Rae Hynie, et al*, federal court case number 1:18-cv-02191-JMC.

or overcome the well-settled law that compels reversal of the trial court and Court of Appeals.

I. RESPONDENT ERRONEOUSLY CLAIMS THAT THE CIRCUIT COURT LACKS SUBJECT MATTER JURISDICTION AND THAT PETITIONERS LACK STANDING AS TO RESPONDENT'S SPOUSAL RIGHTS UNDER THE PROBATE CODE.

Respondent persists in arguing both that the circuit court lacks jurisdiction to determine spousal status in a probate matter and that Petitioners lack standing, without any legal basis for either assertion. The circuit court properly has subject matter jurisdiction over this matter and Petitioners have standing because this matter arises under the South Carolina Probate Code, not in family court. The Probate Court has exclusive jurisdiction to determine the heirs of an estate, including purported spouses. *See* S.C. Code Ann. § 62-1-302 (a)(1); *Thomas v. McGriff*, 368 S.C. 485, 488, 629 S.E.2d 359, 360 (2006) (stating the determination that a party is an heir of a decedent is within the probate court's exclusive jurisdiction); *see also* S.C. Code Ann. § 62-3-105; *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950) (determining spousal status in the circuit court in connection with determining eligibility for post-death benefits); *Ex parte Blizzard*, 185 S.C. 131, 193 S.E. 133 (1937) (determining competing surviving spouse claims in context of probate proceedings); *Hallums v. Hallums*, 74 S.C. 407, 54 S.E. 613 (1906) (same). Respondent's resistance to this legal reality is impossible to reconcile with, *e.g.*, *Palm v. Gen. Painting Co.*, 302 S.C. 372, 374, 396 S.E.2d 361 (1990), where this Court ordered the circuit court to allow the plaintiff in a death-benefits case to litigate issues already covered by the findings of fact and conclusion of law in two *in rem* family-court orders.

The trial court conclusively determined that Petitioners are "interested persons" under Section 62-1-201(2) of the South Carolina Probate Code in multiple ways: heirs, devisees, children, and beneficiaries.⁵ Respondent chose not to appeal that ruling, making it law of the

⁵ Order Determining Parties to Severed Omitted Spouse Claim, etc., Case No. 2008-CP-02-1647 (Feb. 7, 2014). As an additional ground for its decision, the trial court also explained that Sections 62-1-303 and 403 provide that the personal representative would only be able to bind the Decedent's children if there was no conflict of interest

case. Ironically, it is Respondent who argues that the outcome of this proceeding will have important ramifications in areas as far-reaching and undeniably personal to Petitioners as federal copyright termination rights, all while arguing that Petitioners have no standing.

As Petitioners have noted before, Respondent's arguments regarding subject matter jurisdiction and standing are based upon the repeated mischaracterization that Petitioners are somehow seeking to re-litigate the annulment of Marriage 1. But as Petitioners have clearly stated, they have no interest in undoing the 2004 annulment of Marriage 1. It is well established, however, that Petitioners are not bound by the factual findings in that *in rem* proceeding in which they and/or their father could not have intervened and were not joined as parties. Respondent's unsupported arguments regarding subject matter jurisdiction and standing reflect nothing more than an attempt to pivot away from the unbending truth that her *post-hoc* annulment of Marriage 1 cannot be used to retroactively validate her facially bigamous Marriage 2. No amount of jurisprudential contortionism by Respondents can or should change this result.

II. RESPONDENT ERRONEOUSLY CLAIMS PETITIONERS ARE BOUND BY ALL FINDINGS CONTAINED IN A DEFAULT, *IN REM*, JUDGMENT ENTERED IN A CASE TO WHICH THEY WERE NOT PARTIES.

Here, again, Respondent completely mischaracterizes Petitioners' arguments regarding the Annulment Order to distract this Court from the simple truth that the preclusion doctrines do not allow Respondent to bind Petitioners to the factual findings in a proceeding to which Petitioners and their father were not parties.

A. Petitioners are not bound to the factual findings contained in the *in rem* Annulment Order.

As to the preclusive effect of the *in rem* Annulment Order, Respondent purposefully conflates the binding effect of the annulment itself (*i.e.*, that Marriage 1 was forever dissolved in

between them. Given that the Personal Representative and Limited Special Administrator have both steadfastly refused to disclose to Petitioners (to whom they owe a fiduciary duty), the concealed side-deal they struck with Respondent this case continues to present an obvious conflict of interest. *See* p. 3, *supra*.

2004) with the non-preclusive effect of the Order's findings of fact, including Husband 1's wholly unproven bigamy, amongst a laundry-list of multiple annulment grounds.⁶

It is settled law that annulment orders are *in rem* orders. *Carnie v. Carnie*, 252 S.C. 471, 167 S.E.2d 297 (1969). Thus, the Annulment Order, as a judgment *in rem*, binds the entire world as to its dissolution of Marriage 1 on April 15, 2004. *See id.* Petitioners have no interest in “revivifying” Marriage 1, and none of the relief requested by Petitioners would have that effect.

Respondent's straw-man “re-litigation” argument keeps reappearing because her spousal claim hinges on improperly binding Petitioners to the Order's purported fact findings, even though Petitioners (like Brown) were not and could not have been parties to her Annulment Action.⁷ Respondent's do-or-die position on the preclusive effect of the *in rem* Order's “findings” is absolutely contrary to law. The United States Supreme Court has held that “[e]stablishing a fact and giving a specific effect to it by judgment are quite distinct. A judgment *in rem* binds all the world, but the facts on which it necessarily proceeds are not established against all the world” *Becher v. Contoure Labs.*, 279 U.S. 388, 391, 49 S. Ct. 356, 357, (1929) (citation omitted); *see also Gratiot County State Bank v. Johnson*, 249 U.S. 246, 39 S. Ct. 263, (1919) (“judgments *in rem* [are] not *res judicata* as to the facts or as to the subsidiary questions of law on which it is based, except as between parties to the proceeding or privies thereto”) (citations omitted). As a judgment *in rem*, the Annulment Order is “not conclusive as to a fact upon which the judgment is based in any subsequent action . . . except as to persons who have appeared and actually litigated the question of the existence of the fact.” Restatement (First) of Judgments § 73 (1942), cmt. c.⁸ This explicit rule makes perfect sense

⁶ R. pp. 293-296, Joint Stipulation, Exhibit 12.

⁷ Indeed, Respondent admits that Brown “had no standing” to participate in the Annulment Action. Resp. Br. p.7.

⁸ The Restatement is “consistently followed” in South Carolina. *Kunst v. Loree*, 404 S.C. 649, 656, 746 S.E.2d 360, 363 (Ct. App. 2013).

given that family court proceedings often involve provocative and highly prejudicial allegations by spouses in a proceeding where no one else may appear.⁹

Thus, the Opinion's conclusion that Petitioners are bound by the Annulment Order's findings (a "kitchen sink" list drafted by Respondent's counsel in a default setting) directly contradicts the dispositive rule governing *in rem* judgments. Notably, Respondent barely addresses this settled law and instead mocks it as "absurd".¹⁰ She further pretends without any authority that the rule cannot apply if Appellants' claim involves the "same issue" as an *in rem* Order's finding.¹¹ That notion is nowhere in the case law or the Restatement and would vitiate the rule that non-parties must be entitled to litigate such underlying issues. Moreover, in the two U.S. Supreme Court cases cited by Appellants, which Respondent strains to distinguish on this fictional basis, the factual issue was the same in the *in rem* order and subsequent third-party claim, and the Supreme Court clearly held the *in rem* findings were not binding.¹²

Respondent weakly tries to erase the distinction between an *in rem* change in marital status (which is binding on the world), and a finding of fact or law in an *in rem* order (which is not), by redefining "status" to include the unproven factual finding of Husband 1's supposed bigamy.¹³ This is the real "semantical feint"¹⁴ that must be rejected. Respondent confusingly asserts, "to hold that the factual findings are not binding is also to hold that the conclusions of law that are based upon those findings are also not binding," but of course this rejects the very

⁹ As noted in the Initial Brief, Respondent's desire to bind third-parties to the factual findings contained in an *in rem* order is not only wholly unprecedented but dangerous, particularly as to the reputations and interests of third-parties who are unable to intervene in the subject proceeding to protect themselves.

¹⁰ Resp. Br. p. 25.

¹¹ *Id.*

¹² *Gratiot*, 249 U.S. at 247-48, 39 S.Ct. at 263 (debtor's insolvency was same issue in *in rem* action and civil action); *Becher*, 279 U.S. at 391, 49 S.Ct. at 357 (same issue of whether named inventor was inventor of patented device).

¹³ Resp. Br. p. 25; Resp. Ret. p. 18.

¹⁴ Resp. Br. p. 8.

foundations of our country's *in rem* jurisprudence.¹⁵

Under South Carolina law, a “status” determination in an *in rem* divorce decree or annulment order includes only the determination of whether the marriage is dissolved as of the order’s date – not any other issue. *Johns v. Johns*, 309 S.C. 199, 204, 420 S.E.2d 856,860 (Ct. App. 1992) *State v. Sellers*, 140 S.C. 66, 134 S.E. 873, 877 (1926). According to the Restatement, the existence of a status determined by an *in rem* judgment excludes any “fact upon which the judgment is based.” Restatement (First) of Judgments §73 (1942), note a, cmt. c. Likewise, the U.S. Supreme Court holds that the status determination in an *in rem* order excludes any “subsidiary questions of law on which it is based[.]” *Gratiot*, 249 U.S. at 248, 39 S.Ct. at 263.¹⁶ By conflating a “status” determination (*i.e.*, dissolution) with the “subsidiary questions” underlying the annulment (*e.g.*, Husband 1’s alleged bigamy), Respondent and the Opinion reverse settled law and undo the obvious distinction between an *in rem* status determination and a subsidiary finding of fact or law. *Id.* No authority supports this radical departure.

Applying *Becher* and its progeny here, Respondent’s Marriage 1 is annulled, and the *in rem* judgment is binding upon third parties as to its termination of Marriage 1 on April 15, 2004. But to the extent that the truth or falsity of the Annulment Order’s factual findings are relevant to Petitioners’ legal rights, Petitioners are not bound by such factual findings, because Petitioners were not parties to the annulment action. *See Becher*, 279 U.S. at 391, 49 S.Ct. at 357 (“Establishing a fact and giving a specific effect to it by judgment are quite distinct. A judgment *in rem* binds all the world, but the facts on which it necessarily proceeds are not established against all the world...”). Petitioners are guaranteed constitutional due process to litigate factual questions that impact their own legal rights – not to “undo” the 2004 annulment, but to determine

¹⁵ Resp. Br. at p. 25.

¹⁶ Cited by Resp. at Br. p. 26.

Petitioners' own legal rights.

B. The doctrine of collateral estoppel does not bind Petitioners to the factual findings contained in the Annulment Order.

There is likewise no merit to Respondent's argument that the doctrine of collateral estoppel binds Petitioners to the purported factual findings in the Annulment Order. Collateral estoppel or issue preclusion prevents only a party or one in privity to a party in a prior action from re-litigating an issue that was "actually litigated" in that action. *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554 684 S.E.2d 779, 782 (Ct. App. 2009).¹⁷

1. Neither Appellants nor Brown were parties or privies to the Annulment Action.

First, no Appellant and/or Brown were a party or in privity with a party to the 2004 Annulment Action, nor could they have intervened. *Ex parte GEICO*, 373 S.C. 132, 138–139, 644 S.E.2d 699, 702 (2007) (holding that a third party does not have standing to intervene in a family court action despite an interest in the validity of the marriage in question); *see also Carrigg v. Cannon*, 347 S.C. 75, 80, 552 S.E.2d 767, 770 (Ct. App. 2001) ("Only a party to a prior action or one in privity with a party to a prior action can be precluded from relitigating an issue on the basis of offensive collateral estoppel.").

"To be in privity a party's legal interests must have been litigated in the prior proceeding." *Wade v. Berkeley County*, 330 S.C. 311, 317, 498 S.E.2d 684, 687 (Ct. App. 1998). It is undisputed that neither Petitioners' nor Brown's legal interests were determined in the Marriage 1 annulment proceedings. Nor was any finding regarding Brown's marriage to

¹⁷ Previously, Respondent attempted to evade the clear binding precedent cited herein by distinguishing between factual findings essential and nonessential to a judgment. This distinction has been explicitly rejected in *Kunst v. Loree*, 404 S.C. 649, 746 S.E.2d 360 (Ct. App. 2013), where, in reversing the trial court, the Court of Appeals held that South Carolina stood with the majority of states in refusing to treat factual findings differently based upon their classification as "essential" or "non-essential." *Id.* at 655–56, 746 S.E.2d at 363–64 (citations omitted).

Respondent included in the Annulment Order. Brown did not attend any hearings, nor is there any assertion that he exerted any control over the legal strategies or theories advanced in the Annulment Action. Brown and Respondent's interests were not even aligned, but were adverse.

In fact, after Respondent filed her annulment action on December 15, 2003, Brown filed his divorce/annulment action against Respondent on January 29, 2004.¹⁸ Moreover, Brown maintained his divorce/annulment action even after the Annulment Order was entered in April 2004, consistently taking the position that his marriage to Respondent was a nullity.¹⁹ Respondent tries to alter this reality by claiming that Brown's reference to the Annulment Order in his own divorce/annulment action somehow binds him and Petitioners to the purported findings in Respondent's Annulment Action but this mischaracterizes Brown's reference to the Annulment Order. *First*, Brown referenced the Annulment Order to show that Respondent, as a party to the Annulment Action, was bound by it, specifically that she had entered into Marriage 1 which she only belatedly sought to annul.²⁰ Brown never claimed that the Annulment Order's purported findings were true or binding on him. *Second*, Brown did not "accept" any "benefits" from the Annulment Order, as argued by Respondent, because there was no ruling in his favor based upon that order. Instead, Brown and Respondent simply reached a settlement in which Respondent promised to never even claim to be his "common law" wife.²¹

Due to the severe legal consequences that flow from collateral estoppel, privity is strictly construed. *Wade*, 330 S.C. at 317, 498 S.E.2d at 687. "Due process prohibits estopping litigants who never had a chance to present their evidence and arguments on a claim, despite other adjudications of the same issue that stand squarely against their position." *Id.* at 317-18, 498

¹⁸ R. pp. 271-273, 349-350, Joint Stipulation, Exhibits 5, 19.

¹⁹ *Id.* at pp. 329-335, Exhibits 15-16.

²⁰ *Id.*

²¹ *Id.* at p. 349-350, Exhibit 19.

S.E.2d at 687. The only evidence cited by Respondent in support of her unpersuasive “privity” theory is that Brown ended up paying her legal fees after settling his own action against her. The law is clear, however, that the payment of another party’s legal fees does not render one in privity with that party. *See* Restatement (Second) of Judgments § 39, cmt. c, at 384 (1982).

Respondent cites but one 1934 Kentucky case, decided before publication of the Restatement (Second), to support her tenuous argument that payment of legal fees may result in privity. That isolated case will not overcome our strongly worded Fourth Circuit precedent, which, in turn, cites the Restatement of Judgments on this point: “It is not sufficient [for privity], however, that the person merely contributed funds or advice in support of the party, [or] supplied counsel to the party...”. *Virginia Hosp. Ass’n v. Baliles*, 830 F.2d 1308, 1313 (4th Cir. 1987) (citing Restatement (Second) of Judgments § 39 comment c, at 384 (1982)); *see also Kunst*, 404 S.C. at 656, 746 S.E.2d at 363 (“South Carolina courts have consistently followed the Restatement (Second) of Judgments with regard to the issue of collateral estoppel.”).²²

Moreover, the idea that payment of some legal fees automatically results in the level of involvement and control required for privity directly contradicts the admonishment in S.C. App. Ct. R. 407 RPC 1.7, which expressly provides that the payment of legal fees cannot in itself confer any right of control over the legal proceedings in question.

2. Collateral estoppel only applies to “actually litigated” issues.

Second, whether Husband 1 was in fact married to another when he and Respondent married was never “actually litigated” in the Charleston County family court annulment, which the Supreme Court described *sua sponte* as “hastily granted.” *Wilson v. Dallas*, 403 S.C. at 434 n.16, 743 S.E.2d at 759 n.16 (2013), n. 16 (“Tommie Rae’s request for an annulment from

²² Respondent’s citation to *Tillman v. Tillman*, 93 S.C. 281, 76 S.E. 559 (1912), is misplaced. *Tillman* in no way supports Respondent’s theory that reimbursement of fees establishes privity. In *Tillman*, a father’s earlier affidavit in a child custody case was held binding on him – a holding totally unrelated to the payment of legal fees. *Id.*

Ahmed was hastily granted by the family court in Charleston County during the pendency of Brown's separate annulment action against her."). It is undisputed that Respondent ran to the Charleston County family court on December 15, 2003 to obtain a quickie annulment of Marriage 1²³ upon news that Brown would shortly file his annulment/divorce action (filed by Brown on January 29, 2004).²⁴ Respondent's uncontested one-sided hearing was held on April 15, 2004, and the proposed order her counsel submitted annulling Marriage 1 on numerous unproven grounds based solely on Respondent's self-serving hearsay was signed the same day.²⁵

No matter the label that Respondent now seeks to give the resulting one-sided Annulment Order, the facts remain that Husband 1 never appeared, never answered the complaint or otherwise pled, and never participated in any hearing or otherwise defend himself against Respondent's sudden and convenient accusations.²⁶ In addition, there was zero evidence presented at the perfunctory annulment hearing other than Respondent's own self-serving and wholly uncorroborated testimony.²⁷ These circumstances constitute the very essence of a default judgment (*see RRR, Inc. v. Toggas*, 378 S.C. 174, 662 S.E.2d 438 (Ct. App. 2008)) to which the doctrine of collateral estoppel simply does not apply. *State v. Bacote*, 331 S.C. 328, 331, 330 S.E.2d 161, 163 (1998); *Kunst*, 404 S.C. at 654, 746 S.E.2d at 362.²⁸

Tellingly, Respondent offers no response to *Palm*, where this Court *refused* to bind a

²³ R. pp. 271-273, Joint Stipulation, Exhibit 5.

²⁴ *Id.* at pp. 349-350, Exhibit 19.

²⁵ *Id.* at pp. 293-313, Exhibits 12, 13.

²⁶ *Id.* at p. 257, ¶ 17.

²⁷ In addition to Respondent's unsupported bigamy claim, she also claimed and now trumpets without any corroboration (Resp. Br. p. 27-28.) that Husband 1 perpetrated a fraud on her to obtain U.S. citizenship, and to her surprise refused to have sex with her or allow her to move in, all of which is dubious indeed given that such "green card marriages" nearly always involve substantial payments to a very witting American spouse.

²⁸ Respondent's loophole logic that the uncontested annulment proceeding in which Husband 1 never appeared did not effectively result in a default judgment because the annulment of a marriage is important, or Respondent's counsel did not move for a default judgment (while stating "[t]he Defendant, I guess, arguably is in default") is nonsensical. Resp. Br. p. 28.

daughter to a paternity finding contained in two family court orders (a divorce and a name-change order), because the paternity issue had been stipulated to in the divorce action (where the daughter was not a party), and “merely relied upon” in the name-change action (where she was a party). 302 S.C. at 374, 396 S.E.2d at 362. Under *Palm*, the issue was never “actually litigated,” a holding that applies even more forcefully here, where neither Husband 1, Brown, nor any Petitioner participated in the 2004 Annulment Action.

Even today, Respondent still has presented no admissible evidence whatsoever that Husband 1 engaged in bigamy; she “cannot identify a single person who can testify that [he] was married to another person when [she] and [Husband 1] participated in the 1997 marriage ceremony”²⁹ and she is aware of “no order or other occurrence [that] . . . ended or caused to end any marriage . . . between [Respondent] and [Husband 1]” prior to her attempted Marriage 2.³⁰

To the extent that this Court finds Respondent’s *post-hoc* bigamy allegations regarding Marriage 1 to be relevant under *Lukich*, Petitioners have never been afforded the full and fair opportunity to litigate this highly disputed issue of fact. Critically, Respondent asserts that the ruling of this Court on the ultimate question of whether Respondent qualifies as James Brown’s surviving spouse under South Carolina law will have effects as far-reaching as federal copyright law. *See* 17 U.S.C.A. § 203(a), 304(c)(d) (West). If that is true, then Respondent ultimately seeks to have Petitioners bound by the Annulment Order’s unsupported factual findings, which were never “actually litigated” and which they have never had any opportunity to litigate, with respect to wholly separate rights under federal copyright law as to which Petitioners unquestionably have independent standing that is in no way confined to the testamentary shoes of the Decedent. *See Ray Charles Found. v. Robinson*, 919 F. Supp. 2d 1054, 1066 n.9 (C.D. Cal. 2013), *rev’d on*

²⁹ R. p. 256, Joint Stipulation ¶ 6.

³⁰ *Id.* at p. 257, ¶¶ 9-10.

other grounds, 795 F.3d 1109 (9th Cir. 2015) (holding that the plaintiff’s “invocation of Ray Charles’s testamentary intent is unpersuasive because the intent of the author is irrelevant under the termination provisions of the Copyright Act.”). The doctrine of collateral estoppel is “grounded upon concepts of fairness”, *Bacote*, 331 S.C. at 331; 503 S.E.2d at 163; its unsupported application below is highly inequitable and thwarts the truth-seeking mission of every court. The stakes are far too high for the truth to be hidden behind the hasty Annulment Order based on nothing more than Respondent’s self-serving hearsay.

The trial court and Court of Appeals committed reversible error in concluding that the findings and conclusions in the Annulment Order were preclusive and binding upon Petitioners and in preventing Petitioners from taking any discovery as to Respondent’s uncorroborated claim, to the extent this Court holds that her belated assertion is even material under *Lukich*.

III. SUMMARY JUDGMENT WAS INAPPROPRIATE BECAUSE PETITIONERS CLEARLY DID NOT STIPULATE TO HUSBAND 1’S BIGAMY.

Respondent battles against the basic summary judgment standard by pretending that this case presents no issue of material fact.³¹ That stance ignores the key factual issue – *i.e.*, whether Husband 1 was already married when he entered into Marriage 1 – underlying Respondent’s circular claim that despite all appearances Marriage 2 was not bigamous because Marriage 1 was supposedly bigamous. Unless *Lukich* disposes of Respondent’s house of cards as a matter of law, her claim presents an obvious issue of fact precluding summary judgment, particularly as Petitioners were deprived of any discovery. Respondent’s odd labeling of that critical factual issue as “immaterial” is based solely on her erroneous legal position regarding collateral estoppel and the preclusive effect of *in rem* orders.

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

³¹ Resp. Br. p.31. Contrary to Respondent’s citation to *Lewis v. Coleman*, 257 F. Supp. 38, 40 (S.D. W. Va. 1966) that case simply states the standard that summary judgment is appropriate absent a genuine issue of material fact.

SPOUSAL PRIVILEGES.

It is clear that Respondent has the burden of proving she is the decedent's "surviving spouse" in each of her will and trust challenges. *See Byrd v. Byrd*, 279 S.C. 425, 426–27, 308 S.E.2d. 788, 789 (1983) (the contestant to a will bears the burden of proof to invalidate the will); *Calhoun v. Calhoun*, 277 S.C. 527, 531, 290 S.E.2d 415, 417 (1982)(same). As demonstrated in their opening brief, Petitioners have met their burdens of proof.³² Respondent's production of a marriage certificate, showing that she and Brown engaged in a marriage ceremony on December 14, 2001, is insufficient to carry her ultimate burden of proof because Respondent's own stipulations rebut the validity of Marriage 2 by admitting (i) her 1997 marriage license; (ii) her participation in a 1997 marriage ceremony, and (iii) that this Marriage 1 had not been annulled when she falsely procured her Marriage 2 certificate.³³

Respondent now essentially argues that she unwittingly participated in not one facially bigamous marriage to Brown, but in two bigamous marriages, and that Petitioners are estopped from challenging her self-serving, wholly uncorroborated hearsay assertions, or have the burden of proof, after convincing the trial court to erroneously prevent Petitioners from taking any discovery on this factual issue.³⁴

Even more ironically, Respondent ignores this Court's pointed admonition in *Lukich* regarding the "chaos" that would result if subsequent annulment orders were retroactively applied to revivify bigamous marriages, but tries to sway the Court with vague policy arguments about "chaos in the law of marriage" and highfalutin hypotheticals. She erroneously charges Petitioners with shifting the burden of proving a marriage's validity onto those who are married to distract the Court from the simple fact that Respondent was secretly married at the time she

³² Pet. Br., pp. 23-25.

³³ R. p. 256, Joint Stipulation ¶ 6.

³⁴ Pet. Br., pp. 28-35.

tried to marry Brown. Petitioners do not suggest that every married person “be prepared to prove, at a moment’s notice, to every third party who seeks to contest the issue, the validity of [a] second marriage.”³⁵ But surely, it is not too much to ask that a party seeking spousal benefits in a probate proceeding involving significant assets to be prepared to prove that her first marriage was legally terminated prior to her attempted second marriage to the decedent.

Because the factual stipulations, exhibits and affidavits of record overcome any presumption that Marriage 1 was dissolved by death or divorce, a presumption arose in favor of the validity of that marriage. *See Hallums v. Hallums*, 74 S.C. 407, 54 S.E.2d 613, 614 (1906), *relied upon in Yarbrough v. Yarbrough*, 280 S.C. 546, 550, 314 S.E.2d 16, 18 (Ct. App. 1984). As Respondent challenges Marriage 1 on grounds of alleged bigamy, and has totally failed to meet her burden of presenting *admissible* evidence that Husband 1 was married to another at the time Respondent married him, her marriage to Brown was void as bigamous. S.C. Code Ann. § 20-1-80; *E.D.M. v. T.A.M.*, 307 S.C. 471, 475, 415 S.E.2d 812, 815 (1992); *Yarbrough*, 280 S.C. at 550, 314 S.E.2d at 18 (citing 52 Am. Jur. 2d *Marriages*, § 130 (1970)).

The Annulment Order itself cannot serve as evidence of Husband 1’s alleged bigamy because this Court has adopted the holding of *Nipper v. Snipes*, 7 F.3d 415, 416–17 (4th Cir. 1993), and other federal courts, that “judicial findings of fact from one trial constitute hearsay when offered for admission in the context of another trial.” *Mizell v. Glover*, 351 S.C. 392, 402, 570 S.E.2d 176, 181 (2002); *see also U.S. v. Jones*, 29 F.3d 1549 (11th Cir.1994) (holding a prior judicial order was inadmissible hearsay in a subsequent case); *Blue Cross and Blue Shield v. Philip Morris, Inc.*, 141 F.Supp.2d 320 (E.D.N.Y.2001) (“Judicial findings in other cases

³⁵ Resp. Br. p. 71 (brief to the Court of Appeals).

proffered as evidence are generally characterized as inadmissible hearsay.”).³⁶ Respondent refers to this as “strange” but does not and cannot provide any contrary legal authority.³⁷ Respondent’s claim that Petitioners stipulated to the admissibility of these factual findings is very misleading,³⁸ as Petitioners stipulated only that the copy of the Order is authentic, not admissible.³⁹

The lower court therefore made a fundamental error of law in mis-assigning the burdens of proof.⁴⁰ Because Respondent had the burden of proof, and the Annulment Order is incompetent as evidence of Husband 1’s bigamy, but was the *only* thing presented by Respondent to support her bigamy allegation, the trial court should have granted summary judgment to Petitioners. *See Fairfield County Sch. Dist. Bd. of Trs. v. State*, 409 S.C. 119, 126, 761 S.E.2d 241, 245 (2014) (“It is well settled that the non-moving party may not rely on mere allegations to resist summary judgment but must present some evidence in the form of affidavits or otherwise in support of its proposition.”). This is even more true as the sole admissible evidence before the trial court as to Husband 1’s marital status was his own sworn statement that he was not married, in his and Respondent’s marriage license application.⁴¹

V. RESPONDENT ASKS THIS COURT TO ENFORCE A SETTLEMENT AGREEMENT ALREADY STRUCK DOWN BY THIS COURT AS ILLEGAL.

In a last ditch effort, Respondent points to the putative 2009 Settlement Agreement, wherein Petitioners compromised their objections to Respondent’s surviving spouse claim. Any reliance upon the 2009 Settlement Agreement, however, is wholly unavailing, as this Court held

³⁶ Respondent’s disingenuous argument (Resp. Br. pp. 24-25) that Petitioners refute the collateral estoppel effect of the Annulment Order based on *Nipper* is yet another straw-man mischaracterization with no basis in Petitioners’ opening brief (*see* Pet. Br. pp. 25-27).

³⁷ Resp. Br. at p. 24.

³⁸ *Id.*

³⁹ R. pp. 256, 293-96, Joint Stipulation, ¶ 7 & Exhibit 12.

⁴⁰ R. p. 96, MSJ Order, at 44.

⁴¹ R. p. 648, Application for Marriage License attached as Exhibit 3 to LSA Memorandum in Support.

the Agreement to be void for lack of consideration and failing to comply with mandatory approval procedures. *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). In doing so, this Court stated that “[a] compromise agreement is void unless executed in compliance with the governing statute” and held that the 2009 Settlement Agreement did not comply with the mandatory court approval process in S.C. Code Ann. § 62-3-1102, rendering it void and of no effect. *Id.* (quoting *In re Estate of Riley*, 228 Ariz. 382, 266 P.3d 1078, 1080 (Ariz. Ct.App. 2011)). *See also Mackey v. Kerr-McGee Chem. Co.*, 280 S.C. 265, 271, 312 S.E.2d 565, 569 (Ct. App. 1984) (holding settlement agreement pursuant to workers’ compensation statute was not binding because the Industrial Commission approval required by statute had not been obtained).

Respondent vaguely claims that Petitioners “cannot now take a contrary position” to the 2009 Settlement Agreement, but she fails to specify any legal theory to support her argument. South Carolina generally recognizes two forms of estoppel, judicial estoppel and equitable estoppel, but neither are applicable here.

First, judicial estoppel requires a showing that, among other things, the “party taking the [allegedly inconsistent] position must have been successful in maintaining that position and have received some benefit”. *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598, 748 S.E.2d 781, 788 (2013). Here, the 2009 Settlement Agreement contained a bargained-for compromise exchange, only a portion of which was that Respondent could be treated as Brown’s spouse. The 2009 Settlement Agreement was determined to be contrary to South Carolina law, however, and Petitioners received no benefit from it. *Second*, judicial estoppel requires that “the inconsistency must be part of an intentional effort to mislead the court”, but a term in a Settlement Agreement bargained for by Respondent does not qualify. Moreover, there is not, nor can there be, any claim that Petitioners have tried to mislead the court as to the facts or their positions regarding what is essentially a question of law. *Id.* Petitioners have consistently maintained that Respondent does

not qualify as Brown's surviving spouse because her attempted marriage to Brown was contrary to South Carolina law. Respondent simply cannot satisfy the elements of judicial estoppel.

Likewise, equitable estoppel requires proof of the following elements: (1) conduct which amounts to a false representation; (2) intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. *Rodarte v. Univ. of S.C.*, 419 S.C. 592, 601, 799 S.E.2d 912, 916 (2017) (quoting *Strickland v. Strickland*, 375 S.C. 76, 84–85, 650 S.E.2d 465,470 (2007)). As above, Respondent cannot meet her burden as to any of these elements. The contents of the 2009 Settlement Agreement were negotiated in good faith, but the South Carolina Supreme Court's ruling that the Agreement was void and wholly unenforceable as contrary to South Carolina law gutted the Agreement's consideration and purpose.

Importantly, equitable estoppel also requires Respondent to demonstrate that she has relied upon Petitioners' representation to her detriment, but she cannot. *Bailey v. Lyman Printing & Finishing Co.*, 245 S.C. 13, 23, 138 S.E.2d 410, 414 (1964) (holding that essential elements of equitable estoppel are "reliance upon [the party's] conduct, representations or silence; and [] resulting action, to his detriment, by the party claiming the estoppel"). Respondent points to no action taken or omission made in reliance upon the 2009 Settlement Agreement, nor would that be credible as the Agreement was struck down. Because Respondent cannot satisfy the elements of either judicial estoppel or equitable estoppel, her vague estoppel references regarding the ill-fated 2009 Settlement Agreement are unavailing.

VI. RESPONDENT PROPOSES A TWISTED READING OF *LUKICH* THAT WOULD LEAD TO UNNECESSARY CHAOS AND INSTABILITY IN FAMILY AND PROBATE LAW DETERMINATIONS.

Under *Lukich's* common-sense, bright-line rule Respondent is not James Brown's surviving spouse. The rule in South Carolina, as set forth in S.C. Code Ann. § 20-1-80 and as pragmatically interpreted by this Court, is that a spouse's annulment of her first marriage after

her attempted second marriage does not relate back so as to validate her bigamous second marriage. *Lukich*, 379 S.C. at 592, 666 S.E.2d at 907. This Court rightly concluded that “[a]ny other construction of S.C. Code Ann. § 20-1-80 would lead to uncertainty and chaos”, exemplified here by Respondent’s tortured arguments to arrive at a polar-opposite result.

It is undisputed that when Respondent attempted Marriage 2 in 2001, she well knew that she had previously obtained a marriage license and participated in a marriage ceremony with Husband 1. It is also undisputed that before Respondent attempted Marriage 2, the critical moment in time under *Lukich*, she had neither sought a divorce nor any annulment of Marriage 1, but instead she chose to willfully conceal Marriage 1 from Brown and the State of South Carolina. Those undisputed facts alone compel one result under *Lukich*: Marriage 2 was void under the bigamy statute, because Marriage 1 had not been “declared void by the sentence of a competent court” prior to Marriage 2. S.C. Code Ann. § 20-1-80.

Respondent’s theory that she did not need to have Marriage 1 “declared void” prior to marrying again directly contradicts the statute. By circularly arguing that her 1997 Marriage need not be annulled before her 2001 Marriage due solely to the 2004 Annulment Order, Respondent and the Opinion openly contradict *Lukich*’s central holding. Under *Lukich*, the *post-hoc* annulment of a first marriage after a second marriage cannot be used to retroactively validate the second marriage, as the bigamy statute “speaks to the status quo at the time the marriage was contracted, and does not contemplate either a prospective or a retroactive perspective.” *Lukich*, 379 S.C. at 592, 666 S.E.2d at 907 (emphasis added). It could not be any clearer.

It is willful distortion for Respondent to say that, under Petitioners’ reading of *Lukich*, bigamous marriages would be “effective” until voided by a court.⁴² Instead, under *Lukich*, a party to a marriage cannot remarry until that marriage is first “declared void by the sentence of a

⁴² Resp. Br. at 36.

competent court.” *Id.*, 379 S.C. at 592, 666 S.E.2d at 907, *quoting* S.C. Code Ann. § 20-1-80. The plain language of the statute compels this result. Nor are Petitioners applying *Lukich* any differently to Marriage 2 than to Marriage 1, as the issue here is not whether Brown could remarry, but whether Marriage 2 is bigamous due to Respondent’s concerted failure to first terminate Marriage 1 by the sentence of a court.

The bigamy statute provides: “All marriages contracted while either of the parties has a former wife or husband living shall be void,” except as to “any person . . . whose marriage shall be declared void by the sentence of a competent court,” among other exceptions not relevant here. S.C. Code Ann. § 20-1-80 (emphasis added). The statute clearly says “shall be declared void,” not “is void,” reflecting that one who obtains a marriage license and engages in a marriage ceremony cannot unilaterally deem that marriage “void” without a judgment to that effect.

Lukich strictly construed the statute, holding that a first marriage must be “declared void” before entering into a second marriage. 379 S.C. at 592, 666 S.E.2d at 907. This is a bright-line timing requirement: “The statute speaks to the status quo at the time the [second] marriage was contracted and does not contemplate either a prospective or retroactive perspective. Any other construction of § 20-1-80 would lead to uncertainty and chaos.” *Id.* at 593, 666 S.E.2d at 907 (emphasis added). *Lukich*’s holding not only adheres faithfully to § 20-1-80, it also reflects the rule in 52 Am. Jur. 2d *Marriage* § 57, cited in the Court of Appeals *Lukich* decision,⁴³ that a *post-hoc* annulment of a first marriage for any reason “does not relate back so as to validate the second marriage. In order for the subsequent marriage to be valid . . . there must be a new ceremony following the termination of the earlier marriage.”

The policy behind the statute and *Lukich*’s timing requirement is obvious: once a person like Respondent actively obtains a marriage license and participates in a marriage ceremony, her

⁴³ *Lukich v. Lukich*, 368 S.C. 47, 55, 627 S.E.2d 754,758 (Ct. App. 2006).

marital status in the eyes of the law is too important to be left to her “subjective[]” beliefs or self-serving allegations that such marriage was void. *Johns*, 309 S.C. at 203, 420 S.E.2d at 858. Instead, the bigamy statute requires that such first marriage must be declared void by a competent court, S.C. Code Ann. § 20-1-80, and *Lukich* rationally construed the statute as requiring this prior to attempting a second marriage.

Respondent continues to argue that this unequivocal rule, set forth in *Lukich* without any exceptions, applies only to “voidable” marriages, when *Lukich* and the bigamy statute say no such thing.⁴⁴ This is even clearer, as the Court of Appeals opinion in *Lukich*, 368 S.C. 47, 55 n.2, 627 S.E.2d 754, 758 n.2 (Ct. App. 2006), expressly invited a “void” vs. “voidable” distinction⁴⁵ which this Court declined to adopt. Respondent’s circular mantra that bigamous marriages are void *ab initio* is legally unpersuasive, as all annulled marriages are declared “void ab initio.” *Splawn v. Splawn*, 311 S.C. 423, 425, 429 S.E.2d 805, 806 (1993) (holding that there is “no legal distinction between a marriage which is annulled and one terminated by reason of bigamy. Legally, they are both void *ab initio*.”).

It is thus no surprise that this Court did *not* distinguish between void and voidable marriages, particularly given the practical policy considerations driving the timing requirement central to its construction of the bigamy statute. *Lukich*, 379 S.C. at 593, 666 S.E.2d at 907 (“[a]ny other construction of [] § 20-1-80 would lead to uncertainty and chaos”). Instead, this

⁴⁴ *State v. Sellars*, 140 S.C. 66, 134 S.E. 87, does not aid Respondent. There, Marriage 1 was not void, and if voidable, was never annulled, so Wife 1’s attempted marriage to Husband 2 was invalid, leaving Husband 2 not criminally liable for bigamy. Thus, any discussion in *Sellars* as to a void/voidable distinction cited by Respondent is pure *dicta*. Nor does *Day v. Day*, 216 S.C. 334, 58 S.E.2d 83 (1950), which merely denied a putative spouse death-benefits due to bigamy. *Day* has nothing to say about when and how someone in a bigamous marriage can lawfully marry again.

⁴⁵ As noted in Petitioners’ initial brief, the Court of Appeals cited *Scarboro v. Morgan*, 233 N.C. 449, 452 64 S.E.2d 422, 424 (1951) for this, but in *Scarboro*, where a “void” marriage to a minor was annulled after a bigamous second marriage, the North Carolina Supreme Court held, as this Court did in *Lukich*, that the subsequent annulment order “would be effective only from [its] date [] and would not . . . give retroactive validity to [even] a bigamous marriage.” 233 N.C. at 452, 64 S.E.2d at 424 (1951)(emphasis added). Pet. Br. p. 41

Court reaffirmed that a void/voidable distinction would foster a “legal fiction” and lead to “inconsistent” results. *Lukich*, 379 S.C. at 592–93, 666 S.E.2d at 907 (citing *Rodman v. Rodman*, 361 S.C. 291, 604 S.E.2d 399 (Ct. App. 2004)).⁴⁶

Respondent’s disingenuous plea that she should not be asked to prove her self-serving assertion regarding Marriage 1 describes a mess of her own making and does not trump settled South Carolina law. Respondent is not specially exempted from the bigamy statute. Respondent actively obtained a marriage license and engaged in her Marriage 1 ceremony in 1997.⁴⁷ In the five years before Marriage 2, Respondent could have annulled Marriage 1, but instead, she opted to conceal Marriage 1 from both Brown and the State of South Carolina.⁴⁸

Moreover, under South Carolina law, “after the impediment [of Marriage 1] is removed . . . there must be a new mutual agreement” to enter into Marriage 2, such as “by way of civil ceremony.” *Callen v. Callen*, 365 S.C. 618, 624, 620 S.E.2d 59, 62 (2005); *accord Prevatte v. Prevatte*, 297 S.C. 345, 349, 377 S.E.2d 114, 117 (Ct. App. 1989) (same); *Yarbrough*, 280 S.C. at 551, 314 S.E.2d at 16 (same). It is undisputed that Brown and Respondent did not marry after the 2004 Annulment Order and that instead, Respondent covenanted never to claim to be even Brown’s “common law” wife.⁴⁹

South Carolina law does not condone or reward Respondent’s unsavory conduct. A person desiring the benefits of legal marriage has both a legal and moral obligation to resolve their prior marriage before re-marrying. *See Johns*, 309 S.C. at 202-03, 420 S.E.2d at 858-59 (noting that even “good faith” will not change this basic requirement). In the eyes of the law, what matters is that Respondent’s “first marriage shall have been declared void by the sentence

⁴⁶ Pet. Br. pp. 40-44.

⁴⁷ R. p. 256, Joint Stipulation, ¶ 6.

⁴⁸ R. pp. 329-335, Joint Stipulation, Exhibits 15-16.

⁴⁹ R. pp. 258, 349, Joint Stipulation, ¶¶ 19-20 & Exhibit 19 at 1.

of a competent court” before she attempted to remarry. § 20-1-80. A long line of cases forbids exactly what Respondent tried here, and *Lukich* reaffirms that annulment orders can never be used, as in the panel’s Opinion, to retroactively validate a facially bigamous second marriage.

CONCLUSION

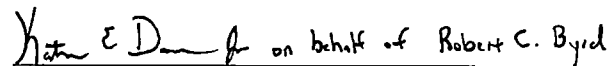
Respondent stacks absurdity upon absurdity in an attempt to distract this Court, but her hall of mirrors cannot deflect the bedrock legal principles that dispose of her spousal claim. *First*, the 2004 Annulment Order’s finding that Marriage 1 was supposedly bigamous is not binding on non-parties to that action, including Brown and Petitioners, under our longstanding rules governing collateral estoppel and the limited preclusive effect of *in rem* judgments. *Second*, Respondent’s attempted 2001 marriage to Brown was bigamous on its face due to her 1997 marriage, and it cannot be retroactively revived by her belated 2004 annulment of her prior marriage. Under the unequivocal rule emphasized by *Lukich* and inherent in the bigamy statute, Respondent’s *post-hoc* annulment of her first marriage (on multiple alleged grounds) cannot resuscitate her facially bigamous second marriage as a matter of law.

The issue is not whether a bigamous marriage is void *ab initio*, which of course it is. The issue is one of orderly procedure and proof driven by pragmatic public policy concerns given the importance of marriage in our laws and civil society. In other words a bigamous marriage may be void but just saying or believing one’s prior marriage is bigamous is obviously insufficient. After Respondent actively obtained her Marriage 1 license and actively participated in her Marriage 1 ceremony, she was required by § 20-1-80 and *Lukich* to demonstrate legal grounds for annulling Marriage 1 before attempting to remarry.

In the event that *Lukich* does not swiftly resolve this entire case, Petitioners, who were not and could not have been parties to the 2004 Annulment Action, are fully entitled to litigate whether Marriage 1 was in fact bigamous, an issue that was never “actually litigated” and for

which, to this day, Respondent has no admissible evidence whatsoever. Fundamental due process requirements cannot abide Respondent's extreme position that no party or court can ever challenge her unsupported allegations regarding her first marriage that self-servingly attempt to course-correct her facially bigamous second marriage. The bottom line is clear: Whether or not *Lukich* affirmatively required Respondent to annul her first marriage before attempting her second, *Lukich* and a century of South Carolina's and our nation's preclusion jurisprudence synergize to loudly prohibit Respondent from retroactively using the purported factual findings in her *post-hoc in rem* annulment order to appoint herself James Brown's surviving spouse.

Respectfully submitted,

 on behalf of Robert C. Byrd

Robert C. Byrd, SC Bar #1069

bobbybyrd@parkerpoe.com

A. Smith Podris, SC Bar #78051

smithpodris@parkerpoe.com

Parker Poe Adams & Bernstein LLP

200 Meeting Street, Suite 301 (29401)

Post Office Box 160

Charleston, SC 29402

Telephone: (843) 727-2650

Facsimile: (843) 727-2680

Of Counsel (*Pro Hac Vice*):

Marc Toberoff

mtoberoff@toberoffandassociates.com

Toberoff & Associates, P.C.

23823 Malibu Rd., Suite 50-363

Malibu, CA 90265

Telephone: (310) 246-3333

Facsimile: (310) 246-3101

April 8, 2019

Attorneys for Petitioners

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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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

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.

PROOF OF SERVICE

The undersigned hereby certifies that on April 8, 2019, s/he has caused a copy of
the **PETITIONERS' REPLY BRIEF** to be served upon all parties of record by mailing a copy
of the same addressed as follows:

Robert N. Rosen, Esq.
Erin Casey, Esq.
Rosen Law Firm, LLC
18 Broad Street, Suite 201
Charleston, SC 29401

S. Alan Medlin, Esq.
USC School of Law
1713 Phelps Street
Columbia, SC 29205

T. Heyward Carter, Jr., Esq.
Andrew Chandler, Esq.
M. Jean Lee, Esq.
Evans, Carter, Kumes & Bennett, PA
115 Church Street (29401)
PO Box 369
Charleston, SC 29402-0369

Sen. Arnold S. Goodstein
Goodstein Law Firm, LLC
PO Box 2350
Summerville, SC 29484-2350

Davis C. Sojourner, Jr.,
Limited Special Trustee
Sojourner Caughman & Thomas
PO Box 12127
Columbia, SC 29211

Michael Deon Brown
4141 Palm Avenue
#289
Sacramento, CA 95842

Scott Keniley, Esq.
Keniley Kumar LLC
2 Ravinia Drive NE
#500
Atlanta, GA 30346

A. Peter Shahid, Jr., Esq.
Shahid Law Office, LLC
89 Broad Street
Charleston, SC 29401

J. David Black, Esq.
Fred L. Kingsmore, Jr., Esq.
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
PO Drawer 2426
Columbia, SC 29202-2426

David L. Michel, Esq.
Michel Law Firm, LLC
751 Johnnie Dodds Blvd., Suite 200
Mt. Pleasant, SC 29464

Sen. Arnold S. Goodstein
208 Sumter Avenue
Summerville, SC 29484

John F. Beach, Esq.
Lyndey R. Z. Bryant, Esq.
Adams and Reese LLP
1501 Main Street, 5th Floor (29201)
PO Box 2285
Columbia, SC 29202

Louis Levenson, Esq.
Levenson & Associates
125 Broad Street, SW
Atlanta, GA 30303

Steven M. Slotchiver, Esq.
Slotchiver & Slotchiver, LLP
751 Johnnie Dodds, Suite 100
Mount Pleasant, SC 29464

William Joseph Barr, Esq.
Barr Law LLC
108 N. Academy Street
Kingstree, SC 29556-3422

Russell L. Bauknight, Estate Trustee
and Personal Representative
Bauknight Pietras & Stormer, P.A.
1517 Gervais Street (29201)
PO Box 1330
Columbia, SC 29202

C. Havird Jones, Jr., Esq.
Office of the SC Attorney General
PO Box 11549
Columbia, SC 29211-1549

Ittriss J. Jenkins
652 Rutledge Ave Suite A
Charleston, SC 29403

Vera Gilford, Esq.
PO Box 12553
Miami, FL 33101

Daryl Brown
2223 Birnam Place
Augusta, GA 30904

Terry Brown
3929 Liberty Hill Rd.
Eastanollee, GA 30538

Robert C. Byrd 4-8-19

Robert C. Byrd, SC Bar #1069
bobbybyrd@parkerpoe.com
A. Smith Podris, SC Bar #78051
smithpodris@parkerpoe.com
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301 (29401)
Post Office Box 160
Charleston, SC 29402
Telephone: (843) 727-2650
Facsimile: (843) 727-2680
Attorneys for Petitioners
Deanna Brown-Thomas, Dr. Yamma
Brown, and Venisha Brown

Charleston, South Carolina