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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

Appellate Case No. 2019-000362

RECEIVED
OCT 10 2019
SC Court of Appeals

Adele J. Pope,Appellant,

v.

Estate of James Brown and The James Brown 2000
Irrevocable Trust, Respondents

**MOTION TO STRIKE INITIAL BRIEF AND DESIGNATION OF
MATTER TO THE RECORD ON APPEAL**

Russell Bauknight, as Personal Representative and Trustee of Respondents, the Estate of James Brown and the James Brown 2000 Irrevocable Trust, moves to strike Appellant Adele J. Pope’s Initial Brief of Appellant (“Initial Brief”) and Designation of Matter To Be Included In The Record On Appeal (“Designation”). Pope’s Designations include numerous items not properly included in the Record on Appeal, either because they were not presented to the lower court or because they are irrelevant to the issues on appeal. Likewise, Pope’s Initial Brief relies extensively on these improperly designated materials and, additionally, seeks to relitigate long-decided matters. Accordingly, Respondents respectfully request entry of an order (1) striking the Designation and

directing Pope to file an amended designation that complies with Rule 210(c), SCACR; and (2) striking the Initial Brief and directing Pope to file an amended initial brief that complies with Rule 208(b), SCACR, and which does not rely on materials not properly designated to the record on appeal.

BACKGROUND

Despite the lengthy history of litigation concerning the estate of James Brown, the pending appeal concerns a single, specific matter: Whether Pope is entitled to a fee for her work as a Co-Personal Representative and Co-Trustee (“PR/Trustee”) of the Estate and Trust. Following a 13-day bench trial involving numerous witnesses and nearly 200 exhibits, the circuit court entered an order that exhaustively analyzed the evidence and concluded she was not. More specifically, the circuit court determined that “any benefits Mrs. Pope provided to the Estate and Trust are overwhelmed and surpassed by the detriments she caused.” Order (Jan. 16, 2019), at 60. Pope’s Initial Brief asserts specific challenges to the circuit court’s Order, namely, that the court: erred in admitting or excluding certain evidence (Issues I, II, and IV); made findings that conflict with the Supreme Court’s opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) (Issue III); and was biased against her (Issue V).

ARGUMENT

Notwithstanding the narrowness of the matter on appeal and the specificity of Pope’s arguments, her Designations and Initial Brief make clear that she is attempting to relitigate matters that are no longer open to reconsideration. Chief among these is her removal as PR/Trustee, which the Supreme Court affirmed in May 2013, explaining:

Appellants [Ms. Pope and Mr. Buchanan] have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, appellants sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. *These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.*

Wilson, 403 S.C. at 448–49, 743 S.E.2d at 766–67 (emphasis added). Additionally, Pope's Initial Brief references "[m]ore than thirty (30) orders" issued in various pending cases that, she claims, support her position on appeal, without providing any explanation of *how* those orders are relevant (or even where they came from).

The Supreme Court's opinion in *Wilson v. Dallas* decided – with absolute finality – that Pope's involvement in the Estate is not in its best interest. However, Pope's Designation of Record and corresponding Initial Brief demonstrate her attempt to re-litigate this and other issues which she has already lost.¹ Settled principles of *res judicata* prevent her from continuing to assert herself in the Estate and Trust litigation. See *Zurcher v. Bilton*, 379 S.C. 132, 135&36, 666 S.E.2d 224, 226 (2008) (explaining that a previously litigated issue that has been determined by a valid and final judgment is conclusive in a

¹ By order dated June 16, 2014, the Court of Appeals recognized that the circuit court had "remove[d] Pope from all James Brown Estate and Trust litigation ... noting any litigation regarding Pope's fee petition will be assigned a separate case number." *In re: Estate of James Brown*, Appellate Case No. 2014-00794 (S.C. Ct. App. June 14, 2014). After the South Carolina Supreme Court denied certiorari as to this order, Pope sought review from our nation's highest court, which denied her petition for writ of certiorari on April 27, 2015.

subsequent action on the same or difference claim).

This appeal concerns *only* the denial of Pope's claim for PR/Trustee fees pursuant to the notice of disallowance served upon Pope by Bauknight on May 29, 2013. This is a fee dispute matter involving the single question of what, if anything, Pope is owed for her brief—and disastrous—term of fiduciary service to the Estate and Trust. And, Pope has asserted specific, narrow challenges to the circuit court's resolution of that question. But the voluminous Designation and the corresponding Initial Brief demonstrate that Pope is attempting, once again, to unwind prior final orders from unrelated cases and to reassert herself into the administration of the James Brown Estate.²

The Supreme Court has spoken on this issue and specifically ruled that Pope is not to involve herself with the administration of the Estate or Trust, otherwise she will be subject to contempt charges. *See* Order, Supreme Court of South Carolina (June 10, 2015) (“Pope is hereby **prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown**, such as the above actions, in which she clearly has no standing. We caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may **result in contempt charges.**” (emphasis added)) (Exhibit 1).³

² Nearly half of Pope's Initial Brief is a 20-page “Statement of the Facts” that has far more to do with Pope's accumulated grievances regarding the Estate and Trust than it does with the issues on appeal.

³ In fact, Respondent specifically wrote to this Court nearly five years ago regarding Pope's incessant need to file Motions when she has no authority or right to do so. *See* Respondent's Return to Motion to Certify, Appellate Case No. 2014-00250 (Nov. 26, 2014) (“Since the Supreme Court issued its Opinion in *Wilson v. Dallas*, Pope has filed four separate appeals, two petitions for certiorari, and many, many motions. (See Appellate Case Nos. 2013-001649, 2013-002582, 2014-000250, 014-00794, 2014-001279, and 2014-001896).”).

The South Carolina Appellate Court Rules are intended to ensure the efficient and just resolution of appeals. Ignoring those rules, as Pope has done in her Designations and Initial Brief, delays the process and requires the Court to devote scarce resources to peripheral matters. And, Pope should know better—this Court has struck Pope’s designations and initial briefs in other appeals related to the Estate and Trust. In light of this history, Pope should be required to file amended designations that fully and properly identify all designated materials, showing that they were in fact submitted to the circuit court in case number 2013-CP-02-1337.

CONCLUSION

For the foregoing reasons, Respondents ask the Court to enter an order striking Popes Initial Brief and Designations, and directing her to file amended version that demonstrably comply with the South Carolina Appellate Court Rules. By separate motion, Respondents further request that the deadline for filing their initial brief and designation of matter to the record on appeal be held in abeyance while this Motion to Strike is pending.

Signatures on next page.

Respectfully submitted,



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October 10, 2019

*Attorneys for Russell L. Bauknight as Personal
Representative of Respondent the James Brown
Estate and as Trustee of Respondent the James
Brown 2000 Irrevocable Trust*

EXHIBIT 1

The Supreme Court of South Carolina

Ex parte: Adele J. Pope, Appellant,

In re: Estate of James Brown, a/k/a James Joseph
Brown, Respondent.

Appellate Case No. 2013-001649

and

Adele J. Pope, Appellant,

v.

Estate of James Brown, Deceased; The James Brown
2000 Irrevocable Trust; Russell L. Bauknight,
Individually, as former Executor de son tort, and in every
current and former fiduciary status claimed or held as to
the Estate of James Brown and The James Brown 2000
Irrevocable Trust, Respondents,

and

Robert L. Buchanan, Jr., Interested Party.

Appellate Case No. 2014-000250

and

Alan Wilson, in his Capacity as Attorney General of South Carolina;
and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

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

Appellate Case No: 2014-001279

and

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

v.

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

Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of The James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N. M. Paris, LaRhonda Petitt, Jeanette Mitchell and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

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

Appellate Case No. 2009-142286

ORDER

By order dated February 19, 2015, this Court stayed all proceedings in the Aiken County Circuit Court involving the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown. We hereby lift that stay.

This Court greatly appreciates the attention the Honorable Doyet A. Early, III, has paid to the management of these complicated and contentious matters and expects the actions in the circuit court to continue as expeditiously as possible as set forth in the status report and in accordance with this Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Judge Early shall order payment of any personal representative and trustee distributions that have been finally determined.

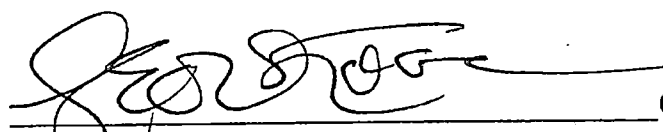
Adele J. Pope has filed a motion seeking confirmation that the stay does not affect Richland County cases in which she is involved. Because we lift the stay, we deny Pope's motion as moot.

In addition, Pope has filed a motion to reopen another case involved in the Estate and Trust. In that case, the Court of Appeals dismissed Pope's appeal because she was not an aggrieved party. This Court denied Pope's petition for a writ of certiorari, and the remittitur was sent on October 28, 2014. We deny Pope's motion to reopen the case because this Court no longer has jurisdiction over the matter. *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893) (the appellate court has no

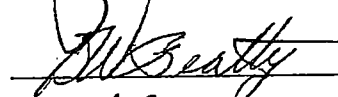
jurisdiction in a matter when the remittitur was properly sent).

By opinions filed simultaneously with this order, we affirmed Pope's appeals in Appellate Case Nos. 2013-001649 and 2014-000250. David C. Sojourner, Jr. has filed a motion to intervene in those appeals. Based on the affirmance of the circuit court's orders, we deny the motion to intervene as moot.

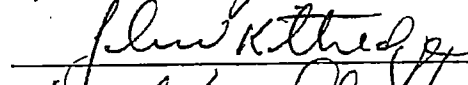
Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, such as the above actions, in which she clearly has no standing. We caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may result in contempt charges.




C.J.



J.



J.



J.

Pleicones, J., not participating

Columbia, South Carolina

June 10, 2015

cc:

Adele J. Pope, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
Albert P. Shahid, Jr., Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
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John Andrew Donsbach, Sr., Esquire

Corey Ty Landon Smith, Esquire
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T. Heyward Carter, Jr., Esquire

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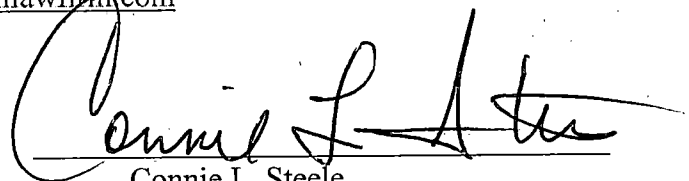
v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust.....Respondents

PROOF OF SERVICE

I certify that on October 10, 2019, I served a copy of **Respondents' Motion to Strike Initial Brief and Designation of Matter to the Record on Appeal** addressed as follows and notified opposing counsel of this service via hand-delivery and electronic mail as follows:

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