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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

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Appellate Case No. 2019-000362

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Adele J. Pope, ………………………………………………………..……Appellant,

v.

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

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**REPLY TO APPELLANT'S RETURN TO SUPPLEMENT TO RESPONDENTS' MOTION TO STRIKE RECORD ON APPEAL**

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Russell Bauknight, as Personal Representative and Trustee of Respondents, the Estate of James Brown and the James Brown 2000 Irrevocable Trust, respectfully submits this reply in response to Appellant Adele Pope's return ("Return") to Respondents' supplemental brief ("Supplement") in support of their motion to strike the Record on Appeal ("ROA").

## ARGUMENT

Although the Supplement is barely three pages long, Ms. Pope has filed a 17-page Return plus an additional 59 pages of exhibits. Much of the Return, and all of its exhibits,

focus on Appellants' insistence that on May 29, 2013, in open court, a nefarious plan to reinstate the just-vacated 2008 settlement was announced and/or acquiesced in by numerous attorneys and their clients—essentially, everyone in the room except Ms. Pope and Robert Buchanan, her co-PR/Trustee. Respondents will not tread on the Court's patience by setting forth yet another detailed refutation of Ms. Pope's contentions. Ultimately, what was (or was not) said on May 29, 2013, or what happened (or did not happen) thereafter cannot change the undeniable reality that ***the vacated 2008 settlement was not reinstated*** and that Judge Early, in his May 2015 status report to the Supreme Court, confirmed that no settlement—much less a secret settlement or re-imposition of the 2008 settlement—was discussed or presented. (Supp. Ex. 2.)

Respondents do, however, wish to comment on the April 30, 2020 affidavit of Susan Summer, Exhibit A to the Return. Although Ms. Pope contends her version of events finds support in the excerpts of Ms. Summer's notes from the May 29, 2013 status conference, the notes themselves paint quite a different picture. In fact, Ms. Summer's notes expose a monumental gap between Ms. Pope's claims about what the participants said during the status conference and what Ms. Summer recorded them as saying:

- Mr. Medlin clearly did not seek reinstatement of the vacated 2008 settlement, but rather asked Judge Early about the "[p]ossibility of ***another*** settlement." (Summer Aff. Ex. A, at 1 (emphasis added).) Mr. Medlin notes that the "[m]ain concern" is the "charity," *i.e.*, the "I Feel Good" charitable trust established under the 2000 Trust. (*Id.*)
- The primary focus of the colloquy between Judge Early and Mr. Medlin was the need for adequate factual development before any future settlement might be entertained. Judge Early stated he expected "thorough discovery of this case ***before I will consider a settlement***" and made clear that he was "not in a position to think about" settlement until the parties had "develop[ed] claims

on undue influence, etc." (*Id.* (emphasis added).)

- Judge Early stated that he "respect[ed]" the Supreme Court's decision and acknowledged that the 2008 settlement might have been premature based on the state of the record. (*Id.* at 2.) He then declared that he "[w]ill take the hurdles much higher now. ***Must develop facts***." (*Id.* (emphasis added).)

- Mr. Medlin, likewise, recognized that "[w]e didn't show enough evidence to support the [2008] settlement as just and reasonable." (*Id.*) Echoing this comment, Mr. Levenson stated that "the fault of the failure of the settlement is mine, not your honor's … I know what the evidence is." (*Id.* at 3; *see id.* at 4 (Mr. Levenson: "We could have presented evidence, witnesses.").)

- Mr. Medlin and Mr. Levenson both expressed hope that the failure of the 2008 settlement would not altogether close the door to a future settlement. (*Id.* at 2 (Mr. Medlin: "I don't want to foreclose that option."); *id.* at 3 (Mr. Levenson: "I do think it's in everyone's interest to reconsider pursuing a settlement.").)

- For his part, Judge Early expressed skepticism about the possibility of another settlement: "My goal is to make sure the estate is administered in an orderly fashion in the best interest, beneficial of the trust. ***If that happens to include a new settlement, it won't keep me from listening***, but I have a different road map now. … My goal is to move in an efficient manner with the end in sight, ***decided by a jury***." (*Id.* at 3-4 (emphasis added).)

Nothing in Ms. Summer's notes supports Ms. Pope's claim that Messrs. Medlin and Levenson "announced" during the May 29, 2013 status conference "their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement." (Return, at 5.) To the contrary, and consistent with Judge Early's May 2015 status report, there was no discussion of *any* potential settlement, much less a reinstatement of the 2008 settlement.

**CONCLUSION**

Respondents and their counsel—and this Court—have better things to do than debate issues that are quite irrelevant to this appeal. Ms. Pope's Return demonstrates why Respondents must continue to do so. Much of Ms. Pope's "evidence" of the supposed plan to reinstate the 2008 settlement are her own, repeated statements, which

she contends are probative because they were "never challenged." (Return, at 12.) But that doesn't make those statements true. Ms. Summer's contemporaneous notes are irreconcilably at odds with Ms. Pope's recollection of the hearing. Nor can Ms. Pope's claims be squared with the irrefutable fact that the 2008 settlement has not been re-imposed.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, I served the foregoing **Reply to Appellant's Return to Supplement to Respondents' Motion to Strike Record on Appeal** pursuant to Supreme Court Order 2020-03-20-01 § g(3) by transmitting a copy of it to the AIS email address for Appellant's counsel, as listed below:

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