

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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. 2020-000967

Adele J. Pope,Appellant,

v.

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

MOTION TO DISMISS APPEAL AS INTERLOCUTORY

The Estate of James Brown and The James Brown 2000 Irrevocable Trust (individually, the “Estate” and the “Trust”; collectively, “Respondents”), pursuant to Rule 240, SCACR, and S.C. Code Ann. § 14-3-330, move to dismiss this appeal.

Appellant Adele Pope is challenging an order of the circuit court granting Respondents’ motion for leave to deposit into court the amount of the award granted to Ms. Pope for her services as special administrator of the Estate (“SA fees”). The SA fees are subject to setoff in the event Respondents obtain a judgment against Ms. Pope in an action for breach of fiduciary duty currently pending in the Richland County Court of Common Pleas, *Bauknight, et al. v. Pope*, C/A No. 2010-CP-40-04900 (“Richland 4900”). Depositing the SA fees (plus accrued interest) into the court

prevents any potential waste of the assets until resolution of Richland 4900.

The order is self-evidently interlocutory and unappealable. It merely allows the taking of an interim measure—the preservation of disputed funds—pending the outcome of ongoing litigation. The order does not resolve or reject any claim or defense, deny a mode of trial, or enjoin any conduct. Because the order does not fall into any of statutory grounds for appeal, this Court should dismiss the appeal.

BACKGROUND

Ms. Pope is a former Personal Representative of the Estate and Trustee of the Trust.¹ The circuit court removed her for cause on May 26, 2009, in conjunction with its approval of a settlement resolving various matters related to the estate of the entertainer James Brown. In May 2013, the South Carolina Supreme Court reversed the circuit court's approval of the settlement but affirmed the removal of Ms. Pope for cause. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). This action was filed in June 2013, after Ms. Pope's creditor's claim against the Estate was denied. Following discovery, a lengthy bench trial was conducted over several months in 2017-2018. In January 2019, the circuit court denied Ms. Pope's claim for compensation for her services as PR/Trustee based on its determination that any benefits she had brought to the Estate and Trust were outweighed by the detriment she caused. Ms. Pope's appeal of this order is currently pending before this Court.

On August 16, 2017, the circuit court granted partial summary judgment to Ms. Pope, awarding her \$47,972 in SA fees, plus interest at the prejudgment rate of 8.75 percent. As of November 14, 2019, when Respondents moved for leave to deposit the SA fees and interest into

¹ A detailed recounting of the facts concerning Ms. Pope's service as PR/Trustee, and the procedural history of the circuit court litigation, is presented in Respondents' brief in Appeal No. 2019-000362.

the court, the amount owed was approximately \$97,066.091. The amount Respondents sought to deposit was \$95,643.21, the amount of SA fees minus \$1,422.88 owed by Ms. Pope to the Estate and Trust, representing previously awarded appellate costs plus accrued interest.

Respondents explained in their written filings and at a hearing conducted on January 31, 2020, that the approximately \$100,000 at issue was far less than the millions of dollars in potential damages that may be awarded against Ms. Pope in Richland 4900. Accordingly, Respondents sought to ensure the funds would be available in the event of a judgment against Ms. Pope. The circuit court seemingly agreed with Respondents' reasoning when it commented that payment of the funds into the court would protect the assets of the Estate. See Hr'g Tr. 19:18–19 (“[I]f the funds were deposited, then wouldn't that have the effect of protecting the assets?”) (**Exhibit A**). The court also noted, correctly, that payment of the funds into the Court until the resolution of Richland 4900 would not disturb Ms. Pope's priority in the funds. See Hr'g Tr. 20:8–10 (“So when the dust settles, if there's money, you'd be the first in line to get it?” Mr. Silvernail: “Yes.”).

On February 26, 2020, the circuit court granted Respondents' motion. The court ruled, in relevant part, as follows:

1. Separate litigation against the Plaintiff exists in companion case CA No: 2010-CP-40-4900 due to her alleged breaches of fiduciary duties as PR/Trustee.
2. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.
3. Until the resolution of the companion case, the sum previously ordered due Plaintiff should be paid into the Court, and once deposited, interest will cease to accrue on the amount deposited.

Order of Feb. 26, 2020 (**Exhibit B**).

Shortly thereafter, on March 6, 2020, Ms. Pope filed a motion to alter, amend or vacate. The court received the parties' written submissions and conducted a hearing by videoconference on May 12, 2020. Thereafter, on June 18, 2020, the court denied Ms. Pope's motion but entered

an amended order providing that prejudgment interest would continue to accrue on the deposited funds. The court ruled, in relevant part, as follows:

1. This equitable matter deals with Mrs. Pope's claim for prior fiduciary services. This court has broad discretion to make findings consistent with equity and fairness.
2. Separate litigation against Plaintiff exists in companion case CA No: 2010-CP-40-4900 due to her alleged breaches of fiduciary duties as PR/Trustee.
3. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.
4. Until the resolution of the companion case, the sum previously ordered due Plaintiff should be paid into the Court, and once deposited, interest will continue to accrue on the amount deposited at the rate of 8.75%.

Order of June 18, 2020 (**Exhibit C**).

Ms. Pope filed a notice of appeal on June 30, 2020.

ARGUMENT

I. The Deposit Order² Is Not a Final Judgment

“As a general rule, only final judgments are appealable.” *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). “A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined.” *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep’t of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010). “Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final.” *Ex Parte Wilson*, 367 S.C. at 12, 625 S.E.2d at 208 (citing *Mid-State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)).

As the Supreme Court recognized in *Ex Parte Wilson*, courts may issue non-final orders

² For ease of reference, the circuit court's February 26 order and its June 18 amended order will be referred to collectively as the “Deposit Order.”

even after entry of judgment on the merits, in connection with post-judgment matters. *See id.* at 13, 625 S.E.2d at 208. The Court referred to an explanation provided by the Seventh Circuit:

The judgment entered pursuant to Fed. R. Civ. P. 58 ends the proceeding to determine liability and relief, but it begins the collection proceeding if the defendant refuses to pay. A contested collection proceeding will end in a judgment or a series of judgments granting supplementary relief to the plaintiff. The judgment that concludes the collection proceeding is the judgment from which the defendant can appeal.

Id. at 13 n.3, 625 S.E.2d at 208 n.3 (quoting *Cent. States, Se. & Sw. Areas Pension Fund v. Express Freight Lines, Inc.*, 971 F.2d 5, 6 (7th Cir. 1992)). Consistent with this reasoning, the Court in *Ex Parte Wilson* held that a post-judgment order quashing a subpoena, where collection proceedings had not even been instituted, was interlocutory and not appealable. *Id.* at 13-14, 625 S.E.2d at 208.

The Deposit Order does not meet *Ex Parte Wilson*'s test of finality because it leaves something more to be done before the rights of the parties are determined. Specifically, the Deposit Order does not determine who, as between Ms. Pope and Respondents, will ultimately be entitled to the deposited funds. Any such determination must await resolution of Richland 4900. Accordingly, the Deposit Order is not a final judgment.

II. The Deposit Order Is Not Appealable under S.C. Code Ann. § 14-3-330

Since the Deposit Order is not appealable as a final judgment, the question becomes whether it is an appealable interlocutory order. Appealability of interlocutory orders is controlled by S.C. Code Ann. § 14-3-330. *See Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005) (“The right of appeal arises from and is controlled by statutory law.”); *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (recognizing that appealability of an interlocutory order “is determined by [S.C. Code Ann.] § 14-3-330,” unless a specialized statute applies); *see also Thornton v. SCE&G*, 391 S.C. 297, 300, 705 S.E.2d 475, 477 (Ct. App. 2011)

(“An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14–3–330.”). Under § 14-3-330, an interlocutory order is immediately appealable only if it falls into one of the following categories:

- (1) Any intermediate judgment, order or decree in a law case involving the merits ... ;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

“The provisions of Section 14–3–330 have been narrowly construed and immediate appeal of various orders issued before or during trial generally has not been allowed. Piecemeal appeals should be avoided and most errors can be corrected by the remedy of a new trial.” *Hagood*, 362 S.C. at 196, 607 S.E.2d at 709; *see also* *Stone v. Thompson*, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019) (“The provisions of section 14-3-330 are narrowly construed and serve the underlying policy favoring judicial economy by avoiding ‘piecemeal appeals.’”).

The Deposit Order does not satisfy the requirements of any subsection of § 14-3-330. Therefore, this appeal is improper and should be dismissed.

A. The Deposit Order does not involve the merits

The Deposit Order is not appealable under § 14-3-330(1) because it does not involve the merits. To be appealable under subsection (1), an interlocutory order must “finally determine[] some substantial matter forming the whole or a part of some cause of action or defense.” *Jefferson by Johnson v. Gene’s Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (quoting

Henderson v. Wyatt, 8 S.C. 112 (1877)). The Deposit Order does not determine anything, much less a substantial matter forming the whole or part of some cause of action or defense. Accordingly, § 14-3-330(1) does not authorize this appeal.

B. The Deposit Order does not affect a substantial right

The Deposit Order is not appealable because it does not affect a substantial right. An order affects a substantial right and is immediately appealable when it “(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action.” S.C. Code Ann. § 14–3–330(2). “An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed.” *Hagood*, 362 S.C. at 195, 607 S.E.2d at 709.

The Deposit Order does not affect Ms. Pope’s substantial rights. It does not determine any action: it leaves intact the previous order granting Ms. Pope summary judgment as to the SA fees and has no effect at all on the merits in Richland 4900. Similarly, the Deposit Order does not grant or refuse a new trial, strike out any answer or other pleading, or deprive Ms. Pope of a mode of trial to which she is constitutionally entitled. Moreover, the Deposit Order does not hinder Ms. Pope’s current appeal of the denial of her claim for PR/Trustee fees and does not prevent or limit any future appeal, by either party, in Richland 4900. Therefore, the Deposit Order is not appealable under § 14-3-330(2).

C. The Deposit Order was not made in a special proceeding or on a summary application does not affect a substantial right under subsection (3)

Under § 14-3-330(3), an order is appealable if it is (a) a final order; (b) that affects a substantial right; and (c) is made in either a “special proceeding” or “upon a summary application after judgment.” As an initial matter, and for the reasons discussed above, the Deposit Order is not

a final order and does not affect substantial rights. Thus, subsection (3) does not authorize this appeal regardless of how Respondents' motion to deposit funds is characterized procedurally. Regardless, Ms. Pope's appeal is not authorized under subsection (3) because the Deposit Order was not made in either a special proceeding or upon a post-judgment summary application.

First, a motion to deposit funds is not a "special proceeding." As the advisory committee notes to Rule 2, SCRCF, explain, "A special proceeding is really only a civil action in which some special remedy is sought; i.e., writ of mandamus, writ of habeas corpus, etc." Mandamus and habeas corpus are forms of extraordinary relief. *See Gibson v. State*, 329 S.C. 37, 41, 495 S.E.2d 426, 428 (1998) (describing habeas corpus as a form of extraordinary relief); *Jolly v. Marion Nat'l Bank*, 267 S.C. 681, 686, 231 S.E.2d 206, 208 (1976) (recognizing that "the writ of mandamus is an extraordinary remedy" (internal quotation marks omitted)). Consistent with this, our Supreme Court has defined "special proceeding" as "as any remedy other than an action or ordinary proceeding in a Court of justice, *by which a party prosecutes another party* for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment of a public offence." *Allen v. Partlow*, 3 S.C. 417, 418 (1872) (emphasis added). In contrast, a motion to deposit funds into the court is not a proceeding for the establishment, enforcement, or protection of any right. *See Trenholm v. Gaillard*, 12 S.C. 66, 74 (1879) (holding that depositing bills with the clerk of court did not institute an action to determine the bills' validity).

Second, a motion to deposit funds into the court is not a "summary application after judgment." Although South Carolina authority is scant, the extant cases indicate that a summary application after judgment is one involving a determination of rights in connection with execution of a judgment. For example, in *Weatherly v. Jackson*, 3 S.C. 228, 229 (1872), our Supreme Court held that an order denying a judgment debtor's motion to set aside sheriff's levy of his homestead

would be appealable as a final order affecting a substantial right in a summary application after judgment. Other states with statutes employing the same language have, similarly, defined a post-judgment summary application as one involving a determination of rights. *See Ohio v. Horsley*, 2018 WL 5025395, *2 (Ohio Ct. App. Oct. 12, 2018) (holding an order on a request for garnishment or an order disbursing garnished funds are orders “upon a summary application after judgment”); *McCullough v. McCullough*, 910 N.W.2d 515, 523-24 (Neb. 2018) (holding a contempt order entered in post-judgment proceedings is appealable as an order “upon a summary application after judgment”).

Subsection (3) “was intended to apply only to collateral proceedings arising after judgment.” *Kennedy v. City of Greenville*, 78 S.C. 124, 58 S.E. 989, 990 (1907). Even then, it applies only in certain post-judgment proceedings, *i.e.*, those that involve a determination or enforcement of rights. The Deposit Order does not determine any rights. Therefore, it is not appealable under subsection (3).

D. The Deposit Order does not involve injunctive relief.

Finally, the Deposit Order is not appealable under § 14-3-330(4) because it does not involve the “granting, continuing, modifying, or refusing [of] an injunction.”³ An injunction is directed to a party and commands the party to do, or refrain from doing, some particular act. *See Injunction*, Black's Law Dictionary (6th ed.1990) (defining “injunction” as a “prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action ... forbidding the latter from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at

³ Even more obviously, the Deposit Order does not involved the appointment of a receiver.

law”). The Deposit Order does not command or prohibit any action by Ms. Pope. Accordingly, it is not appealable under subsection (4).

CONCLUSION

“As a general rule, matters of preliminary relief are interlocutory and therefore not directly appealable unless they involve the merits or affect a substantial right and have the effect of determining or discontinuing the action.” 15 S.C. Jur. Appeal and Error § 22. The Deposit Order is a form of preliminary relief, in that it merely ensures the preservation of Estate assets pending the resolution of Richland 4900. It is not appealable as a final order, nor does it meet the requirements any subsection of S.C. Code Ann. § 14-3-330. Accordingly, the appeal should be dismissed.

Respectfully submitted,



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August 7, 2020
Columbia, South Carolina

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 A

State of South Carolina
County of Aiken

Court of Common Pleas

Adele J. Pope,)
)
) Plaintiff,) Transcript of Record
 v.) 2013-CP-02-1337
)
Estate of James Brown)
and The James Brown)
2000 Irrevocable Trust)
)
) Defendant.)

January 31. 2020
Aiken, South Carolina

B E F O R E:

The Honorable Clifton Newman, Judge.

A P P E A R A N C E S:

Adam Silvernail, Esquire
Attorney for the Plaintiff

David Black, Esquire
Creston Brown, Esquire
Attorneys for the Defendant

Bethanie K. Creppon
Circuit Court Reporter

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(No Exhibits.)

P R O C E E D I N G S

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2
3 THE COURT: And the third leg of this is the
4 FOIA case, which Judge Early ruled on because of his
5 view that discovery is ongoing on the other case
6 that Mr. Ness and Mr. Covington and all are here on.

7 MR. GENDE: That is correct, Your Honor. In
8 fact, it started as a Newberry case. The judge in
9 Newberry County ended up combining it, but not
10 consolidating that FOIA issue with Case 4900. So
11 that's how it even came into our universe.

12 You know, it's a sub case that's really kind
13 of -- and I don't mean this in a derogatory way --
14 kind of a hanger-on to the overall Case 4900.

15 THE COURT: And the motion to deposit funds
16 that is on tap here for today, when do -- do y'all
17 want to plunge right into that now or wait until
18 I -- wait until we do something else first?

19 MR. GENDE: That would be Mr. Black's and
20 Mr. Silvernail's decision --

21 THE COURT: Okay.

22 MR. GENDE: -- because that relates to some of
23 the holding -- or order relative to Case 1337, which
24 was the Aiken fee claim case of Ms. Pope.

25 THE COURT: So they were going to deposit funds

1 on a case that's on appeal?

2 MR. BLACK: Your Honor, we're prepared to argue
3 that in whichever order you would like. But, that's
4 correct, Case 1337, that is on appeal. But there is
5 an SA component of the order and --

6 THE COURT: SA, meaning what?

7 MR. BLACK: Special administrator, for fees for
8 that.

9 Ms. Pope takes the position that it is due
10 right now and interest is running. And what the
11 Estate would like to do is deposit those funds with
12 the court to stop interest from running in the
13 meantime because, at the end of the day, after we
14 hear from our appellate courts in light of Case
15 4900, which is the breach of fiduciary action
16 against Ms. Pope, and Case 1337, which is also on
17 appeal, there is a 60-page order that outlines the
18 specific problems that Ms. Pope created for the
19 Estate and how that caused damages.

20 THE COURT: 60-page order issued by?

21 MR. BLACK: Judge Early, Your Honor. And
22 that's the Case 1337 order. It goes through -- at
23 one point, to simplify the issues, the parties had
24 talked about combining 1337 and 4900. Ms. Pope
25 wouldn't consent to that. But the easiest way to

1 think about it is 4900 is the Estate and the
2 children's claims against Ms. Pope for malfeasance,
3 for breach of fiduciary duty; 1337 was Ms. Pope
4 saying, Estate of James Brown, you owe me money.
5 That's the best way to think about it.

6 THE COURT: And the money, \$47,000?

7 MR. BLACK: The money and the SA fee that Judge
8 Early did declare that was due was, yes, Your Honor,
9 roughly \$47,000, plus the statutory fees.

10 THE COURT: All right. Thank you.

11 Mr. Silvernail, what do you think about all
12 that?

13 MR. SILVERNAIL: I -- well, if we're moving
14 directly into the argument on that motion, I can --

15 THE COURT: I don't know when argument or
16 orientation --

17 MR. SILVERNAIL: Well, I -- I would add to what
18 Mr. Black said, because it is a little confusing,
19 given the status of the case. Judge Early's final
20 order, the 60-page order referred to, is on appeal.
21 We -- Ms. Pope has appealed that.

22 That also included a finding that she should be
23 paid a 47,000-odd-dollar special administrator
24 comission that she was first ordered to be paid in
25 2008, then granted summary judgment on being paid

1 within Case 1337 in 2017. And then, finally, with
2 this 2019 order, it goes through whatever else it
3 does and adds the finding that she is still owed
4 this money and it should be paid.

5 Nobody has -- we appealed the findings in that
6 order that we believed were incorrect as to Ms. Pope
7 and her service and her entitlement to commissions
8 for her fiduciary services as personal
9 representative and trustee.

10 The special administrator commission or payment
11 was awarded at the end of her and Mr. Bob Buchanan's
12 service in 2008 as special administrators when they
13 became PRs and trustees. And so it's not correct to
14 say that they're looking to pay money into the court
15 while an order is on appeal.

16 The current order says Ms. Pope gets nothing
17 except this \$47,000. And they have not appealed the
18 award of \$47,000 plus interest to her.

19 THE COURT: So you -- you basically want a
20 check for \$47,000 plus interest from 2000 and --

21 MR. SILVERNAIL: 2008.

22 THE COURT: 2008.

23 MR. SILVERNAIL: And, you know, at this point,
24 I believe that amount is somewhere within a few
25 thousand dollars of \$100,000. We've got that math

1 in the filings that are before the Court on that
2 issue.

3 THE COURT: So since that issue is not on
4 appeal, that particular issue regarding \$47,000, the
5 holdup in resolving that issue is what?

6 MR. SILVERNAIL: Well, so far that the Estate
7 and Trust have found different reasons along the way
8 why that amount could not be immediately paid. And
9 my understanding of the current one set out in their
10 motion in response that is before Your Honor is the
11 pendency of Case 4900 and the potential that, at
12 some point farther down the road, they might receive
13 a judgment against Ms. Pope entitles them to park
14 that money in the court to pay toward a -- an as-yet
15 un-rendered and unknown judgment.

16 THE COURT: Like a setoff or...

17 MR. SILVERNAIL: I suppose so, Your Honor.
18 Although I know that in 1337 itself, which Ms. Pope
19 had to file as a plaintiff when they disallowed her
20 claim to any payment from the Estate, the Estate and
21 Trust's responsive pleading there didn't seek any
22 setoff.

23 And they haven't argued in particular for a
24 setoff. I'm sorry for my cough, Your Honor. And so
25 it's our position that they're attempting to pay

1 this into the court under Rule 67, which applies to
2 amounts in controversy. But this, at this point, is
3 a final payable judgment. And it's a final payable
4 judgment that was made in a 2008 order, a 2017
5 order, and, ultimately, in a 2019 order.

6 THE COURT: All right. Mr. Black?

7 MR. BLACK: Your Honor, 1337 and 4900 -- and
8 4900, again, that -- it's both on appeal. 4900,
9 that involves those claims for the malfeasance that
10 the Estate has. The Estate's concern is, we're
11 going to stroke Ms. Pope a check, and then when it
12 comes time to return and to get the funding back for
13 the Estate, we're not going to be able to get the
14 \$100,000 back.

15 At trial, Your Honor, in 1337, she alleged that
16 she was owed \$19 million. The Court went through
17 and said, you're owed zero dollars for those
18 services. The separate order on the SA fees, Your
19 Honor, she has taken the position in the past that
20 the amount that she owes the Estate for sanction in
21 the court of appeals should be set off. And what
22 we're doing is we're asking for the same thing.

23 To the extent that the Estate owes Ms. Pope
24 something, we are willing pay that. We'd like to
25 pay that into the Court for safekeeping though,

1 because when it comes time, in terms of the Trustee
2 and the PR's duty of preservation of the estate,
3 we're not going to be able to get that back. So
4 we're going to have a judgment.

5 Right now in Case 4900, it is a damages case.
6 When you look at Judge Early's order on 1337, it
7 goes through and outlines, verbatim, everything that
8 she did wrong. So when you look at those two orders
9 in conjunction, when we go back to figure what
10 amount she owes the Estate, it's going to be a
11 damages case.

12 And so the concern the Estate has is tendering
13 a check over to Ms. Pope on the SA fee and then, at
14 the same time, when it's time for us to collect on
15 what she owes the Estate, she's going to say, sorry,
16 Charlie, I don't have those assets.

17 THE COURT: All right. Let me just read this
18 Rule 67 that's entitled Deposit in Court: In an
19 action in which any part of the relief sought is a
20 judgment for a sum of money or the disposition of a
21 sum of money or the disposition of any other thing
22 capable of delivery, a party, upon notice to every
23 other party and by leave of the Court may deposit
24 with the court all or part of such sum or thing,
25 whether or not that party claims all or part of the

1 sum or thing.

2 Money paid into the court under this rule shall
3 be deposited, as directed by the Court, to any bank
4 or institution authorized to receive public funds
5 and shall be withdrawn only upon the check of the
6 Clerk of Court in favor of party to whom the order
7 of the Court directs.

8 All righty. Now, how do you analyze that rule?
9 I just read the words, but go ahead.

10 MR. BLACK: Your Honor, the rule doesn't
11 specifically discuss the interest component. But it
12 does -- it discusses it in terms of a duty of
13 safekeeping. So, initially, when this issue was
14 brought up, Ms. Pope was taking the position that
15 this is a tier-one creditor claim and the Estate is
16 not a position to pay it. They've since, what I
17 understand, abandoned that, because the Estate has
18 said, no, not the case.

19 Now, when the estate was turned over to
20 Mr. Bauknight, it had \$13,000 in its account. The
21 Estate can pay its bills; it's doing very well under
22 Mr. Bauknight's administration. When you look at
23 depositing those funds into it, our position, Your
24 Honor, is that she already has taken a position on
25 setoff and she should be estopped from taking a

1 separate position.

2 It was in a November 2, 2016 e-mail at 2:36
3 that she said in reply that those sanctions for
4 Court of Appeals should be set off. She said: If
5 you put those funds into interest, will the Estate
6 be willing to hold it in escrow, pending the outcome
7 of Case 4900? Well, that's the very thing we're
8 trying to do here, is we're willing to pay it in,
9 pending the outcome of what she owes us. So clear
10 back in 2015, she asked for the same thing.

11 So, Your Honor, in terms of the rule, it's our
12 position that that's the discretion of Your Honor
13 and that's a balance of the duties of the PR. And
14 that duty to the PR has to protect the Estate,
15 because we also have an asset of the Estate, which
16 is our claim against Ms. Pope for that malfeasance,
17 and the Estate should be able to be made whole at
18 the appropriate time.

19 And so that funding being placed within the
20 Court's care would at least guarantee, at the time
21 period that we get our judgment, that there is
22 roughly the \$49,000 plus the interest there that the
23 Estate has that we can start from, Your Honor.

24 THE COURT: And you mentioned sanctions of
25 Court of Appeals.

1 MR. BLACK: Yes, Your Honor.

2 THE COURT: What is that?

3 MR. BLACK: That was in a 2015 order that she
4 had filed an appeal. And the Court granted us fees
5 and costs in relation to that appeal for the appeal
6 that was unnecessary, Your Honor.

7 THE COURT: And has it not been determined or
8 is that --

9 MR. BLACK: It has, Your Honor. It was \$1,000
10 and she never paid it. We made multiple demands
11 that it be paid. And she has yet to pay it for the
12 reason of saying, I'll pay you when you pay me.

13 THE COURT: Okay.

14 MR. GENDE: Your Honor --

15 THE COURT: Yes, sir?

16 MR. GENDE: -- I'm happy to continue to stand
17 here and answer any questions the Court has. But it
18 seems you've gone beyond the status conference,
19 maybe, and I just wanted to get out of the way, if
20 you're in that substantive motion.

21 THE COURT: Okay. All right. Thank you.

22 MR. SILVERNAIL: Brief response to Mr. Black,
23 Your Honor. As you read Rule 67 aloud, it says: In
24 an action where a judgment or where -- I'm not going
25 to try to quote from cold-medicine memory here.

1 But, effectively, in an action and where a
2 judgment is sought, that's the introduction to Rule
3 67. This case, as far as that judgment, as to the
4 \$47,000 plus interest, is over. That is a judgment.
5 Nobody is seeking a judgment in Case 1337. And so
6 we don't believe that Rule 67 is applicable.

7 You know, they've cited to the Russo case for
8 the Appellate Court's analysis that if you pay in
9 during your own appeal, that you can stop the
10 interest running because everybody can rest easy
11 that the judgment will ultimately be collected.

12 And, again, they have not appealed. There's no
13 potential outcome of the case on appeal as to 1337
14 that would change the \$47,000 plus interest owed.
15 And so, you know, they've not attempted to put any
16 evidence before the Court.

17 I note that the complaint in Case 4900, which
18 is actually brought for the beneficiaries of a
19 different entity that was created and to be funded
20 by a later void in settlement, as the complaint
21 itself is couched, and it's never been amended or an
22 amendment has never been sought, they assert in that
23 complaint that there were tens of millions of
24 dollars in damages caused by Ms. Pope.

25 And so this focus on this \$100,000 they owe

1 her, especially where they put forth no evidence to
2 support this idea that if they pay her this and are
3 ever entitled to recover anything against her, that
4 it will be hindered, I think, prevents this motion
5 from ever being granted; that -- you know, the final
6 outcome there, they had the option to appeal.

7 In fact, after Judge Early granted Ms. Pope
8 partial summary judgment in 2017, finding in 2017
9 that that \$47,000 plus interest was then payable,
10 they moved to alter or amend that based on a little
11 bit different theory from the one they're asserting
12 now.

13 That motion was never heard. And they did not
14 appeal that portion of the filed order; they did not
15 seek reconsideration of it and, at this point, I
16 think they've abandoned it, if there were ever an
17 argument that could have supported it anyway.

18 THE COURT: You mentioned the Russo case.

19 MR. SILVERNAIL: Yes, sir.

20 THE COURT: What's that?

21 MR. SILVERNAIL: Sutton vs. Russo, I believe is
22 the name of the case. I'd be glad to forward a copy
23 to the --

24 THE COURT: What kind of case is that?

25 MR. SILVERNAIL: Well, initially, it was an

1 alienation of affection case.

2 THE COURT: I heard that name. It sounds
3 familiar.

4 MR. SILVERNAIL: Yes. I -- and in the first --

5 THE COURT: The case on which alienation of
6 affection was done away with in South Carolina.

7 MR. SILVERNAIL: It was. But, interestingly
8 enough, in 1992, that cause of action was done away
9 with prospectively; meaning, the judgment issued in
10 that case wasn't reversed.

11 And in 1995, there was a subsequent appeal
12 between the same parties about whether the deposit
13 of funds into the court pending appeal of that
14 judgment would stop the accrual of interest. And
15 the Appellate Court found, under those
16 circumstances, where it could have been reversed but
17 if it were affirmed we all knew there was no
18 subsequent collection proceeding. That was a good
19 reason to be able to deposit --

20 THE COURT: They talk about Rule 67 in that
21 case?

22 MR. SILVERNAIL: I believe they do, Your Honor.

23 THE COURT: So you're involved in the defending
24 case as well, right, defending Ms. Pope in the other
25 cases?

1 MR. SILVERNAIL: Yes, Your Honor, I am.

2 THE COURT: So on one hand, you're collecting;
3 on the other hand, you're defending.

4 MR. SILVERNAIL: Your Honor, Case 4900, in
5 which I represent Ms. Pope defending the claims
6 brought by these various people and entities, is
7 also a case where Ms. Pope has asserted
8 counterclaims for abuse of process, tortious
9 interference of contract, statutory attorney's fees,
10 and one or two others --

11 THE COURT: When the dust settles, she -- there
12 may be a judgment against her, depending on the
13 ultimate finding in that case?

14 MR. SILVERNAIL: There could be. And there
15 still could be a judgment against all of the people
16 who brought it. Her counterclaims were dismissed on
17 summary judgment. That matter's on appeal. Those
18 could very well be restored.

19 And, you know, if an outcome of that case said
20 we're giving the plaintiffs X-number of dollars on
21 their claims and Ms. Pope Y-number of dollars on
22 hers, that's a very appropriate place to just make
23 one check go out. This case is not that case.

24 And Judge Early -- we have three orders from
25 Judge Early directing that those funds be paid.

1 And, at this point, we believe the only reason not
2 to pay them is an attempt to hinder Ms. Pope's
3 ability to litigate the cases she's got to continue
4 dealing with here.

5 THE COURT: So you have a case involving,
6 essentially, the same parties, but multiple claims
7 and multiple lawsuits involving the same parties.
8 One party has an order to be paid a sum of money;
9 the other party has a separate lawsuit against that
10 same party seeking to have that party pay some
11 money.

12 You believe that each case should be addressed
13 separately and there should be no consideration of
14 the existence of other cross-claims, counterclaims
15 involving the same parties?

16 MR. SILVERNAIL: In this instance, yes, Your
17 Honor. You know, the judgment that we're attempting
18 to collect is an Aiken County judgment although,
19 presumably, it's also going to end up before you.
20 Case 4900 is a Richland County case. I know that
21 never, since the filing of Case 4900, which is a
22 couple of months shy of ten years old, have the
23 plaintiffs in that case ever sought to track down,
24 you know, protect, secure Ms. Pope's assets in any
25 sense, nor do I think it would be appropriate for

1 them to, absent some really extraordinary
2 circumstances where they're still in the process of
3 seeking a judgment.

4 THE COURT: Well, I'm not sure of the -- I
5 don't know about the amount of money that is
6 involved in the estate in general or -- someone
7 mentioned at some point there was \$13,000 in -- is
8 that --

9 MR. BLACK: Your Honor, when the estate was
10 turned over to Mr. Bauknight on May 26th, 2009,
11 there was \$13,000 left in the estate. The Estate
12 was on the brink of bankruptcy.

13 THE COURT: All right.

14 MR. BLACK: And Mr. Bauknight worked tirelessly
15 to turn the estate around.

16 THE COURT: All right. Well, God forbid that
17 it would revert back to that situation. But, if it
18 did, if the funds were deposited, then wouldn't that
19 have the effect of protecting the assets?

20 MR. SILVERNAIL: Your Honor, in the -- in their
21 motion to pay into the court, our return and their
22 reply filed, I believe, in November, that are before
23 Your Honor today, the Estate and Trust have taken
24 the unwavering position that they absolutely can
25 afford to pay this claim.

1 We had reminded the Court and the other parties
2 that Ms. Pope's fees as special administrator being
3 an expense of the Estate Administration are a
4 first-priority claim. The Probate Code sets out a
5 prioritized list, and first is expenses of
6 administration: Fiduciary fees, attorneys' fees,
7 accountants' fees, whatever, you know, fees --

8 THE COURT: So when the dust settles, if
9 there's money, you'd be first in line to get it?

10 MR. SILVERNAIL: Yes. And, you know, when we
11 raised that issue in this particular proceeding, the
12 response from the Estate was that statute doesn't
13 apply because you only have to worry about priority
14 where the Estate is insufficient to pay all of its
15 claims. And so, at this point, they've taken a very
16 clear position in this motion's proceeding that
17 there is no chance the Estate is insufficient to pay
18 all of its claims.

19 And I would note there are accountings on file
20 in this court that show many millions of dollars
21 have come into and gone out of this estate in the
22 last ten years.

23 THE COURT: Millions?

24 MR. SILVERNAIL: Many millions.

25 THE COURT: Many millions.

1 All right. Mr. Black?

2 MR. BLACK: Your Honor, I'd just like to add
3 one more thing in terms of clarity: Ms. Pope
4 shouldn't be allowed to now say that the Estate
5 should be paying the funds, because back -- back
6 going probably five or six years ago, we made a
7 motion to combine 4900 and 1337. They objected, and
8 it was for this very reason: We didn't want to be
9 in a situation where the cases went at different
10 paces and she would say you're owed X, you're
11 owed Y.

12 And so it was this very problem that we were
13 looking out for. She has unclean hands. And it's
14 our position, Your Honor, we should be able to pay
15 that funding into the court and, at the appropriate
16 time, the Court then will determine how that's paid
17 out.

18 The Case 4900 that Mr. Silvernail has
19 referenced, he talks about it from the Legacy Trust,
20 Your Honor. If you look at that caption, the PR of
21 the Estate is a party; the children are a party.
22 And she has gone at lengths to misrepresent the
23 purpose of that case.

24 The purpose of that case -- at the time it was
25 filed, there was a global settlement agreement

1 between all the parties. This Legacy Trust that she
2 keeps talking about that's a settlement entity, when
3 it went to the Supreme Court, that settlement entity
4 was never funded because it was part of a
5 settlement. So when that was overturned and the
6 Supreme Court said go back to Judge Early for
7 further proof and try this matter in terms of Tommie
8 Rae, whether she's a spouse, the Legacy Trust was
9 never funded. And so what they've tried to say is
10 that it's a separate entity, after pursuing this
11 claim.

12 4900 is on behalf of the PR, the Trustee. And
13 they've objected to dropping the Legacy Trust and,
14 ironically, are arguing that it's still a -- they'll
15 send out documents to the Legacy Trust in hopes that
16 someone responds. And that also is on appeal.

17 And the Court has ruled that there is no Legacy
18 Trust because it was a creature from the settlement.
19 The settlement was overturned by the South Carolina
20 Supreme Court; therefore, there's not a Legacy
21 Trust. When we filed the action though, we wanted
22 to make sure that belt and suspenders, everything
23 was covered because, recall, Ms. Pope was appealing
24 her removal.

25 And so what she could have done is -- if she

1 had prevailed, she could come back in and she could
2 dismiss all the kids' causes of action against her.
3 So we made sure, in any type of capacity, not
4 knowing what was going to happen, that it was
5 covered. So that's why the caption of 4900 is that
6 way.

7 4900 and 1337, we took a position, should be
8 combined. And the Court was on its way to doing
9 that in terms of discovery. And it was Ms. Pope
10 that objected to that, Your Honor.

11 THE COURT: All right. Anything else on this
12 issue?

13 MR. SILVERNAIL: I -- just very quickly. Of
14 course the decision not to consolidate the cases, we
15 did object. Judge Early, however, found that it
16 wasn't appropriate to consolidate the cases. We
17 didn't get to do that unilaterally.

18 And, again, whatever explanation there is today
19 for the differing parties, Case 4900 has more than a
20 dozen plaintiffs that, at one point, included the
21 Attorney General, included people who had been
22 defined as family members under a settlement that
23 was long ago voided.

24 Wilson vs. Dallas, the case that reversed that
25 settlement, was issued in 2013. And Case 4900 did

1 not go up on appeal until, I believe, 2017 or -18.
2 At no point has anybody ever come forward in Case
3 4900 and said, oops, let's straighten out this
4 caption seven years later.

5 So, again, we would submit, and I rely on my
6 return that's on file and that I believe I sent a
7 copy of to Your Honor, that there's no basis to pay
8 these funds into the court and they should be
9 delivered to Ms. Pope right away.

10 THE COURT: All right. I'm going to take this
11 issue under advisement. I'd like the parties to
12 submit proposed orders no longer than three pages.

13 MR. BLACK: Your Honor, the Estate has drafted
14 a proposed order for Your Honor's review.
15 Permission to approach?

16 THE COURT: Is it more than three pages? Is it
17 longer than three pages?

18 MR. BLACK: No, Your Honor. It's three pages.

19 THE COURT: I ask for proposed orders and I get
20 briefs.

21 MR. BLACK: It's actually two, if you --

22 THE COURT: Well, good.

23 So, Mr. Silvernail, you'll have a copy. And
24 you can submit a proposed order as well.

25 MR. SILVERNAIL: Within a week okay with Your

1 Honor?

2 THE COURT: Within a week and served on the
3 other party. And the other party may comment
4 on what the other's proposed.

5 MR. SILVERNAIL: Thank you, Your Honor.

6 THE COURT: All right.

7 MR. BLACK: Thank you, Judge.

8 THE COURT: Thank you.

9 -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Aiken County, South Carolina, on the 31st of January, 2020.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

May 6, 2020

s/ *Bethanie K. Creppon*Bethanie K. Creppon
Circuit Court Reporter

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT

Case No. 2013-CP-02-1337

**ORDER GRANTING MOTION TO
DEPOSIT FUNDS AND PREVENT
ACCRUAL OF INTEREST**

This matter came before the Court on the motion of the Defendant to deposit funds and prevent accrual of interest. A hearing was held on January 31, 2020, at 10:00 AM, at Aiken County Courthouse.

After considering the arguments and other matters of record, the Court finds and orders as follows:

1. Separate litigation against the Plaintiff exists in companion case CA No: 2010-CP-40-4900 due to her alleged breaches of fiduciary duties as PR/Trustee.
2. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.
3. Until the resolution of the companion case, the sum previously ordered due Plaintiff should be paid into the Court, and once deposited, interest will cease to accrue on the amount deposited.
4. The amount to be deposited into the Aiken County Clerk of Court Trust Account totals \$98,258.65. This amount represents \$47,972.00 plus interest in the amount of 8.75% from March 8, 2008 through February 25, 2020. The number of years for interest accrued equals 11.9780822 (4,372 days divided by 365). For the purposes of this calculation, the Court will use 11.98 years.
5. The motion of Defendant should be Granted to the extent it seeks to deposit funds into the Court.
6. Due to the companion case in which Plaintiff may be ordered to pay a sum to the Defendants, the Defendants should be allowed to deposit funds into Court and have interest ceased on the sum deposited as of the date of deposit.

AND IT IS SO ORDERED.

Dated this 26th day of February, 2020
Aiken, South Carolina

Clifton Newman
Presiding Judge



Aiken Common Pleas

Case Caption: Adele Jeffords Pope VS James Estate Of Brown , defendant, et al

Case Number: 2013CP0201337

Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Adele J. Pope,

Plaintiff,

vs.

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

Defendants.

IN THE CIRCUIT COURT

Case No. 2013-CP-02-1337

**AMENDED ORDER GRANTING
DEFENDANTS' MOTION TO DEPOSIT
FUNDS INTO THE COURT**

This equitable matter came before the Court on the motion of the Defendant to deposit funds and prevent accrual of interest. A hearing was held on January 31, 2020 at 10:00 AM at the Aiken County Courthouse. On February 26, 2020 the Court issued an Order Granting Defendant's Motion To Deposit Funds and Prevent Accrual of Interest. Plaintiff subsequently filed a Motion To Alter, Amend and/or Vacate [Defendant's] Order Granting Motion To Deposit Funds and Prevent Accrual of Interest. A hearing on this Motion was held on May 12, 2020 at 10:00 AM via Zoom, and The Honorable Clifton Newman presided.

After considering the arguments, filings, and other matters of record, the Court finds and orders as follows:

1. This equitable matter deals with Mrs. Pope's claim for prior fiduciary services. This court has broad discretion to make findings consistent with equity and fairness.
2. Separate litigation against Plaintiff exists in companion case CA No: 2010-CP-40-4900 due to her alleged breaches of fiduciary duties as PR/Trustee.
3. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.

4. Until the resolution of the companion case, the sum previously ordered due Plaintiff should be paid into the Court, and once deposited, interest will continue to accrue on the amount deposited at the rate of 8.75%.
5. The amount to be deposited into the Aiken County Clerk of Court Trust Account totals \$98,258.65. This amount represents \$47,972.00 plus interest in the amount of 8.75% from March 8, 2008 through February 25, 2020. The number of years for interest accrued equals 11.9780822 (4,372 days divided by 365). For the purposes of this calculation, the Court will use 11.98 years. The Defendant deposited this amount with the Aiken County Clerk of Court on February 26, 2020.
6. The motion of Defendant should be Granted to the extent it seeks to deposit funds into the Court.
7. Due to the companion case in which Plaintiff may be ordered to pay a sum to the Defendants, the Defendants should be allowed to deposit funds into Court and interest will continue to accrue on the sum deposited into the Court at 8.75%.

AND IT IS SO ORDERED.

The Honorable Clifton Newman

June ____, 2020
Aiken, South Carolina



Aiken Common Pleas

Case Caption: Adele Jeffords Pope VS James Estate Of Brown , defendant, et al

Case Number: 2013CP0201337

Type: Order/Amend

So Ordered

s/ Clifton B. Newman, 2127

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Aug 07 2020

SC 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. 2020-000967

Adele J. Pope,Appellant,

v.

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

CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2020, I served the foregoing **Motion to Dismiss Appeal as Interlocutory** pursuant to Supreme Court Order 2020-03-20-01 § g(3) by transmitting a copy of it to the AIS email address for Appellant Adele Pope, who is self-represented, as listed below:

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Brown 2000 Irrevocable Trust*