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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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S.C. SUPREME COURT

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown ..... Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Larry Brown, Terry Brown and Daryl Brown ..... Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as Limited Special Administrator and Limited Special Trustee, Deanna Brown-Thomas, Yamma Brown, Venisha Brown, Terry Brown, Michael Deon Brown and Daryl Brown are the ..... Appellants.

RECORD ON APPEAL – VOLUME VII

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MR. BAILEY: YOUR HONOR, IF THE WILL AND TRUST WERE UPHELD, THE ESTATE TRUST HAD THE RIGHTS TO PREVENT TERMINATION BY HEIRS AND IT MAY HAVE TO BE LITIGATED, BUT THEY DO HAVE THAT RIGHT.

THE COURT: I THOUGHT THEY -- I MAY BE COMPLETELY WRONG. I THOUGHT THEY TERMINATED AFTER THE PASSAGE OF TIME ON THEIR OWN -- OF THEIR OWN WILL -- NOT OWN WILL, BUT THEY EXPIRE AND THEY HAVE THE RIGHT TO RENEW THEM. IS THAT NOT CORRECT?

MR. MEDLIN: YOUR HONOR, IF I MAY, COPYRIGHTS DO EXPIRE EVENTUALLY AND GO INTO THE PUBLIC DOMAIN, BUT COPYRIGHTS ESSENTIALLY NOW LAST 95 YEARS.

THE COURT: WHAT HAPPENS IN 35 YEARS?

MR. MEDLIN: FIFTY-SIX YEARS FOR PRE-1978 COPYRIGHTS AND 36 YEARS FOR POST-1978 COPYRIGHTS. THE WRITER, IF ALIVE AT THAT DATE, HAS THE RIGHT TO TERMINATE ANY ASSIGNMENT OF COPYRIGHTS EITHER TO A PUBLISHER OR TO ANY OTHER ENTITY. IN OTHER WORDS, TAKE IT BACK AND RESELL IT. IF THE WRITER DIES BEFORE THAT TERMINATION RIGHT ARISES --

THE COURT: WHICH WE HAVE HERE.

MR. MEDLIN: YES, SIR. BECAUSE THE FIRST BIG HIT WOULD BE, "PLEASE, PLEASE, PLEASE," 2012. THAT UNQUESTIONABLY PASSES TO THE SURVIVING HEIRS. THERE IS NOTHING IN THE LAW THAT SUGGESTS OTHERWISE AND THAT'S A QUESTION OF LAW.

THE COURT: ALL RIGHT. MR. BAILEY, YOU MAY RESPOND TO THAT.

MR. BAILEY: WELL, THE ONLY INFORMATION I CAN PROVIDE THE COURT IS THAT MR. BROWN HAS ENTERED INTO SOME AGREEMENTS IN 1993, IN 1994, AND THEY HAVE NOT BEEN ANALYZED.

THE COURT: ALL RIGHT. THANK Y'ALL ALL VERY MUCH.

MR. MEDLIN: YOUR HONOR, COULD WE ASK FOR ONE MORE DISCUSSION JUST BRIEFLY? I BELIEVE AT THE MARCH 6 HEARING YOU SAID THAT THE PERSONAL REPRESENTATIVES AND TRUSTEES WOULDN'T DISPOSE OF ASSETS WITHOUT COURT APPROVAL AND WE WOULD JUST ASK FOR THAT TO BE CONTINUING UNTIL YOU ISSUE YOUR ORDER.

THE COURT: ALL RIGHT. THANK Y'ALL.

(END OF TRANSCRIPT OF RECORD.)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

I, LISA H. DAVENPORT, OFFICIAL COURT REPORTER FOR THE SECOND JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF COMMON PLEAS FOR AIKEN COUNTY, SOUTH CAROLINA, ON THE 6TH DAY OF APRIL, 2009.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

FEBRUARY 4, 2010

_____

LISA H. DAVENPORT, COURT REPORTER

State of South Carolina

Court of Common Pleas

County of Aiken

IN RE: The Estate of)
James Brown, A/K/A)
James Joseph Brown)
)
_____)

Transcript of Record
2013-CP-02-02849
2013-CP-02-02850
2013-CP-02-02851
2013-CP-02-1647

March 31, 2014
Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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Attorney for Stephen Slotchiver

John F. Beach, Esquire
Attorney for David C. Sojourner, Jr.

Robert N. Rosen, Esquire
Attorney for Tommie Rae Brown

William Barr, Esquire
Attorney for Janette Mitchell

Louis Levenson, Esquire
Attorney for Brown Heirs

Bethanie K. Patterson
Circuit Court Reporter

know, there's no reason for this to even come into this case.

And let me go further. There are motions pending to limit the discovery in this case. You know, seven years ago I filed a motion for summary judgment. And my position then and my position now is the same; she's either married to James Brown or she is isn't. And that's a decision for you to make and maybe ultimately for the Supreme Court to make. Whether she's married or not really depends on the law and not the facts. It doesn't really matter what anybody says.

In the first instance, either the ceremonial marriage and the annulment of the Javed Ahmed marriage together, the court order of the family court means, under whatever authority you want to take, that the marriage is legal. And if the marriage is legal, we don't need any discovery at all. In fact, I've already got a motion to limit discovery. You already issued an order, actually, limiting discovery in view of the fact that our motion for summary judgment was going to be heard seven years ago. So they don't need the diary; they don't need it because it's not relevant. And the reason it's not relevant is -- and it can't be

relevant because either Tommie Rae Brown, when she married James Brown, either was married to Javed Ahmed or she was not married to Javed Ahmed. And there's nothing that anybody can say that can change that because the annulment says she wasn't married, and that order is binding on this Court in my view, not binding on this Court in others'. That's a legal issue. And what I'm trying to say today is --

THE COURT: Well, is that motion still viable for summary judgment?

MR. ROSEN: Well, I don't know. It was filed, it was never ruled on. But to --

THE COURT: A lot of things happened after that.

MR. ROSEN: A lot of things happened after that. So probably what I'm going to is file an amended and supplemental motion for summary judgment. I'm going to file a motion for protective order. They've sent me 30 pages of interrogatories and requests to produce, which that's their job, and I'm going to move for a protective order that the discovery not be had at least until the summary judgment motion is heard, because we can take depositions from now till Doomsday, spend $250,000, fly all over the country, and there's really

nothing -- there's no point in it, because either the annulment is a valid annulment and the marriage to James Brown is a valid marriage or it isn't. And I think that's a legal matter for the Court, ultimately.

THE COURT: Then why don't you file your motion for summary judgment?

MR. ROSEN: That's what I think we ought to do. I don't want to argue it today but, I mean, I would like to argue it.

And so --

THE COURT: What is your position to let him file that and then depending on how you rule, then it may be needed in discovery? But we don't need the diary for your motion for summary judgment.

MR. ROSEN: That's what I'm saying, we don't need the diary.

THE COURT: Because it's a legal argument on annulment, and if it was annuled, and if not, could be married to two people at once.

MR. ROSEN: Right. The family court issued a final order that's binding on the world, according to us -- is not binding on the --

THE COURT: Let me hear from Mr. Beach. It is a -- the diary and the whole surrounding of how the

diary was acquired, it's not the most tasteful thing in the world. But on the other side of the coin, if this thing has factual issues that preclude summary judgment, then there may be a lot of stuff in there that could be -- some stuff that may be, I don't know, relevant to the issues at hand. And some of the stuff obviously is not, but it may require in-camera review. I certainly don't want to take on that.

MR. BARR: Your Honor, before Mr. Beach starts, I'd like to bring to the Court's attention that I filed a special appearance notice for this motion and the protective order because we were never served on that either.

THE COURT: Thank you. When did you file it?

MR. BARR: I handed it to the Court this morning.

THE COURT: Thank you.

MR. BARR: Thank you. I just wanted to get that on the record.

THE COURT: Thank you. You're on the record.

So if it's truly a legal argument -- and you may not gree with that, Mr. Beach -- but seems to me that if we could hear the motion for summary judgment, depending on how I go with that, then we

could hear the diary. If I say, fellows, there's factual issues that's got to be developed, then I think the diary probably should be discoverable after somebody maybe does an in-camera review to determine, obviously, what she's alleging to her 12 step people or her religious beliefs probably don't have a thing to do with it if she's in there talking about -- if she is or she isn't, I don't know what she -- I've never seen them, never even looked at them. There may be some things in there that are relevant to this particular litigation and those things may be discoverable. Everything in the diary, I don't know that that's discoverable, so we may need to work around that.

But I guess my question is, Mr. Rosen is saying his case rises or falls on a legal argument, seems like to me you'd give him that shot to file it quickly and let's move on it. And then if I rule with it, y'all go Columbia and if I rule against it, y'all go to Columbia. Let's see where we are.

MR. BEACH: Well, Judge, we do agree that his case could fall on the question of whether Tommie Rae Brown is the surviving spouse. We think he could lose the case based --

THE COURT: Surviving spouse. But to be a

surviving spouse, she's got to be a spouse.

MR. BEACH: Correct.

THE COURT: And to be a spouse, she has to have a valid marriage.

MR. BEACH: Exactly. And we think --

THE COURT: Is the question --

MR. BEACH: I'm sorry.

THE COURT: I didn't mean to cut you off.

MR. BEACH: No, no.

THE COURT: Is the question of the validity of the marriage, is that a legal question or does -- or do you have to develop facts to protect your client on that matter? And you may not want to answer that right now, you may want to think about it. But it seems to me if it's strictly a legal question, then maybe we get around all this discovery and save some money and just hear that motion and then go from there. That's just me thinking out loud a little bit.

MR. BEACH: Your Honor, I think the question of whether the decision that was made in the Charleston family court in 2004 -- I think it was April 15th of 2004 -- that annulled Tommie Rae Brown's marriage to -- 1997 marriage to Javed Ahmed, the question of whether that under the Lucas decision legally can

be -- can relate back, if you will, to the marriage so that it would make her subsequent marriage to James Brown in 2001 valid, that question is, in fact, a legal question, and we agree that that is a legal question.

THE COURT: Well, Mr. Rosen, is that sort of where your summary judgment is headed to?

MR. ROSEN: Yes, sir. Yeah. Yeah. We have the argument that the annulment is binding and that she's there for the spouse.

THE COURT: Well --

MR. BEACH: Now, Judge, there are -- that simple question could be a legal question. On the other hand, if Mr. Rosen asserts that the -- if Mr. Rosen asserts that James Brown is estopped by that order, then Mr. Rosen is probably going to have to assert some facts to support that estoppel argument because Mr. Brown --

THE COURT: Well, if he does -- if he does that, then I think the summary judgment goes out the window.

MR. BEACH: I think so, because Mr. Brown was not a party -- a named party to that case. So the only thing that we can assume Mr. Rosen might argue on that is that Mr. Brown was a de facto party to

the case and therefore should be estopped from that. And those are factual questions. So even the question of whether the annulment order is -- bars her claim, could end up turning on some factual decision.

THE COURT: Well, here's what I may do, Mr. Beach, in trying to be efficient and not sending you all over the world and spending a quarter of a million dollars, as Mr. Rosen said: I may hold this motion in abeyance for 30 days, giving Mr. Rosen an opportunity, if he chooses to do so, to file a motion for summary judgment, and depending on how that goes, if it's strictly a legal question, that may be dispositive. If it involves factual issues, obviously I would not rule on it; I will say you have to have an opportunity to complete discovery before I rule to determine whether or not there were genuine issues of material fact in dispute.

MR. BEACH: Okay.

THE COURT: And then depending on how I rule on that, if need be, we'll come back and revisit the production of the Tommie Rae Brown's diary. But my thoughts on that would probably be if there's factual issues involved, that it would be something that would be discoverable, it would be subject to a

very strict protective order, and probably would want some type of in-camera review. And since I'm going to be listening to a lot of stuff in this case, I probably might appoint a special person to have the in-camera review so I will not have read all of that other stuff that may not be germane to this. That's sort of going through my mind.

MR. BEACH: Well, that is sort of going through our mind too, Your Honor. So we're thinking along the same lines.

MR. ROSEN: That sounds very reasonable, Judge.

THE COURT: All right. Let's do this: Mr. Rosen, I'll give you 30 days -- I'll give Mr. Rosen 30 days to file a motion for summary judgment, if he intends to do so. If he does not, then I will reconvene this or either issue an order. Mr. Rosen, I think we've made a record of --

MR. ROSEN: Thank you.

THE COURT: Are we okay with that? I'm sorry.

MR. BEACH: Your Honor, I'm sorry, my client was trying to give me some thoughts and --

THE COURT: I know you've got a -- I won't comment.

I said that I'm going to give Mr. Rosen 30 days to file a motion for summary judgment, and if he

State of South Carolina

Court of Common Pleas

County of Aiken

IN RE: The Estate of James Brown, A/K/A James Joseph Brown

Transcript of Record
2013-CP-02-02849
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2013-CP-02-02851
2013-CP-02-1647

November 24, 2014
Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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Robert N. Rosen, Esquire
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William Barr, Esquire
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Louis Levenson, Esquire
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Bethanie K. Patterson
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

(The following proceedings were held November 24, 2014.)

THE COURT: Mr. Rosen.

MR. ROSEN: Good morning, Your Honor. May it please the Court.

This matter is before the Court on several motions for summary judgment, as you know, request to admit stipulation. The standard, I'm not -- you know, the Court has handled summary judgment motions --

THE COURT: I don't --

MR. ROSEN: You don't need to hear all that.

THE COURT: We're moving forward this morning, as I understand, based on the stipulation of facts that every concerned party has signed.

MR. ROSEN: Yes, sir.

THE COURT: So we do not have any issues of fact in dispute on those stipulations.

MR. ROSEN: That's correct.

THE COURT: And if I decide this case based solely on the stipulations, then we won't have the argument before the Supreme Court or the Court of Appeals that there were issues of fact in dispute or we didn't have time to do discovery. We have stipulated the number of stipulations you have given

to me, along with exhibits, and I'm to make my ruling therefrom. Is that correct?

MR. ROSEN: That's correct, Your Honor.

THE COURT: Mr. Bell?

MR. BELL: No, Your Honor, that is not correct.

THE COURT: Can I make my rulings from those stipulations?

MR. BELL: Your Honor, that is a critical issue of procedure as to whether or not we have got a stipulated fact that we do agree on.

THE COURT: You do, don't you? You signed it.

MR. BELL: That's correct. But what we have not agreed that -- that there are not additional facts or that discovery is not needed.

THE COURT: Well, then you can defeat my summary judgment in a minute by simply going to the Court of Appeals and saying the Judge ruled prematurely.

MR. BELL: That is correct, Your Honor.

THE COURT: I'm so glad you told me before now.

MR. BELL: That is a major position from this side, and everyone on this side would agree with that, Your Honor.

THE COURT: Well, y'all have delayed it and delayed it and delayed it and you continue to try to

delay it. I'm going to hear the motions for summary judgment. If I feel like I can rule based on the stipulated facts, I will rule; if I feel like there are additional facts that need to be developed, I'll find that they're issues of fact.

MR. ROSEN: Thank you, Your Honor.

Your Honor, I -- it probably isn't necessary to point out, but they have filed affidavits that I just didn't want to point out that those affidavits, the Court doesn't need to consider them. Anyways, it's a moot point because they don't follow the rule. In other words --

THE COURT: Well, I --

MR. ROSEN: -- you know, they have to be your own personal knowledge. You know --

THE COURT: Let me just ask you this: There's no question that Tomi Rae Hynie was married to Ahmed; right?

MR. ROSEN: Well, she -- no question she --

THE COURT: She went through a marriage ceremony?

MR. ROSEN: Yes, sir. That's correct.

THE COURT: She went through a marriage ceremony with Mr. Brown.

MR. ROSEN: That's correct.

THE COURT: She had her marriage to Ahmed thereafter annulled.

MR. ROSEN: Correct.

THE COURT: If we look at the Lukich case, can we not make the decision strictly on Lukich and strictly on those three sets of fact?

MR. ROSEN: I do not -- let me tell you this: I don't disagree with that, but I would add to that. That's what I want to argue to you for a few minutes. I mean, as a matter of law, I think you could; I think I have some additional points that I think would help with that decision.

THE COURT: Well, what is your position on Lukich? I mean, I think I know.

MR. ROSEN: Well, professor --

THE COURT: You're going to say that there was no impediment to Mr. Brown's marriage because her marriage to Ahmed was void from the inception, therefore she was a single lady and could marry Mr. Brown.

MR. ROSEN: Well, that's right, that is our position.

THE COURT: Pretty simple.

MR. ROSEN: I think it is. I think it is. This -- I have -- what I was going to do, Your

Honor, is to argue a point to you that I think is very important. I was telling my associate on the way up, sometimes lawyers argue points that the Court is not the least bit interested in and we walked in there. So I may be arguing a point to you that you may not be interested in, but I think it's an important point.

Mr. Medlin and I were going to divide our argument. I wanted to address what I think is the benefit-of-the-bargain rule, which I think is very, very important, and Mr. Medlin was going to argue Lukich and some jurisdictional --

THE COURT: I'll let you argue it however you want to.

MR. ROSEN: I'm not going to take a long time, Your Honor, because I agree -- first of all, let me say this: I think summary judgment can be granted when the Court finds there's no genuine issue of material fact. It doesn't matter what position anybody takes. In other words, if the Court is so well-aware of summary judgment, you don't need to hear it from me. So if you feel there's no genuine issue of any material fact, then you can grant summary judgment; it doesn't matter what anybody says, but it can't defeat summary judgment by coming

in and saying there's a factual issue when that's up to you.

The stipulated facts, Your Honor, are that -- are that she was married to Mr. Brown, it was stipulated that there was a marriage certificate, stipulated that he paid the fees for her annulment. That's a stipulated fact. Now, I agree some of the briefs get overheated and a lot of rederick that people are making jury arguments, outside included, but the fact of the matter is, they stipulate that he did pay for it and I think that's an important consideration. They stipulated that he knew about it, which is an important consideration; they stipulated they had a child together, which is an important consideration.

There was a -- there was a -- she filed a -- an action on December 15th, 2003, while they were married in our view and living together. That's an important point. It's not unlike the Lukich case, I might add. There was no divorce or separation action pending, which the Supreme Court got wrong in its opinion inadvertently because they were told certain things that weren't true; there was no separation action pending at that time -- this is stipulated, this is all in the stipulations, I'm

going strictly by the stipulations -- and they reconciled in an order dated August 14th, 2004, which is also stipulated, resolved their differences in residing together.

Now --

(Brief interruption.)

THE COURT: Hold on a second.

Go ahead.

MR. ROSEN: I don't know that you need to even hear from me on this service of -- this whole service by publication issue. I mean, I think it's a bunch of baloney. But I didn't want to not address it because, obviously, it's important. You know, Mrs. Brown come to me, we get the case -- the only thing I can say, Your Honor, is this: That when we got the case, we handled it in a, I think, workmanlike manner; we located the man, we got the last address. But there's a lot of stuff in the record about that, which I think is all of no consequence. But I will point this out, which is not in the brief, and that is, our investigator, just so that the record is clear, found, and we reverified it, that his driver's license that's in the -- this is in the record --

THE COURT: You're getting into facts now,

Mr. Rosen. If I'm going to decide this on summary judgment, it's going to be on the narrow issue that she had a marriage ceremony with Ahmed, she married Mr. Brown. How does that -- how does Lukich affect that? And it's going to be very narrow.

MR. ROSEN: My only point is, Your Honor, they've attacked the service of the annulment. And I just didn't want to leave it -- if Your Honor doesn't need to hear from me, I don't need to go into it.

THE COURT: Thank you.

MR. ROSEN: Now --

THE COURT: But I do want to hear the Lukich argument.

MR. ROSEN: Well, then maybe what I'll do is sit down and let Mr. Medlin address that. Thank you, Your Honor.

THE COURT: That's where we're going.

MR. MEDLIN: Your Honor, if I may --

THE COURT: Do you take the position that her first marriage or her first ceremony or whatever the relationship with Ahmed, is void and of no consequence and she had no impediments and she could marry Mr. Brown? Is that your position?

MR. MEDLIN: Yes, Your Honor. But I can

preface that position in a number of ways under the law, which I would like to do this morning. And, in fact, Your Honor, as I will explain --

THE COURT: Well, I'm reading from Lukich, and it says -- this is the Supreme Court ruling: Under the statute's terms, Wife's marriage Husband No. 2 was void from the inception -- that was because she was married before -- at the time of the marriage because she had a living spouse and that marriage had not been declared void.

Well, when she married Mr. Brown, the marriage to Ahmed had not been declared void, had it?

MR. MEDLIN: Your Honor, in Lukich --

THE COURT: You're not answering me.

MR. MEDLIN: Well, Your Honor, I'm trying to answer.

THE COURT: All right.

MR. MEDLIN: In Lukich there were two marriages that were invalidated; the first marriage, which was not based on bigamy, was annuled on the grounds of intoxication.

THE COURT: That's correct.

MR. MEDLIN: It wasn't annulled until after he attempted marriage to her second husband.

THE COURT: That's correct.

MR. MEDLIN: Because the Court found that the first marriage which was annuled not for bigamy, but for intoxication, did not relate back, then she had an impediment when she attempted to marry the second husband because that would have been a bigamous marriage.

What hasn't gotten a lot of play in the memos, Your Honor, is that Lukich followed the line of the statute and every single case that has dealt with a bigamous marriage in South Carolina. And that is defined -- for status purposes, it is void ab initio. The difference --

THE COURT: What case do you recite on that? Is that the Day case?

MR. MEDLIN: Well, the Day case, the Blizzard case, Howard, I mean, all the cases that the Lukich Court cites that some would argue on the contestant side that Lukich somehow magically overrules, in fact, they cite as part of their invalidation of the second marriage. Your Honor, the difference in the two is the difference that they don't want to talk about. A bigamous marriage, which is what Tomi Rae had, is always void ab initio.

The Court has no choice; the statute says is it's void. It doesn't say void or voidable, it

doesn't say maybe it's void, it says it's void. And that's exactly what Lukich found as to the marriage. On the other marriage, there is no bigamy statute because it's being annuled for purposes of intoxication. That could be voidable and, in fact, the Court said that because it's voidable, we treat that differently.

And of course that's the basic distinction between something that's void under the law and something that's voidable under the law. Something that's void under the law is never valid. If you read the cases, it says: If it's with respect to a marriage that was bigamous and void, it was never a marriage. By contrast, a voidable action is one that is valid unless and until a Court decides that it's not.

THE COURT: Well, Lukich says: A mere marriage ceremony between a man and a woman where one of them has a living wife or husband is not a marriage at all.

MR. MEDLIN: That's correct.

THE COURT: A marriage is absolutely void and not merely voidable. So, therein, you hang your hat that when she married Ahmed, if he in fact did have other wives, that was a bigamous marriage and void

and no marriage at all.

MR. MEDLIN: Lukich supports the whole line of cases which supports the statute that says exactly that. The marriages in Lukich are reversed from our situation and our situation --

THE COURT: Assume that you're correct, then we get to the point of whether or not it becomes a factual issue as to whether or not Ahmed had additional wives. Then you got Judge Segars-Andrews' order found that -- and annulled the marriage and she made certain findings of fact, i.e., that he did have additional wives which voided or made that marriage void thereby removing any impediment to her marriage to Mr. Brown, does that not become a factual issue? I assume you're going to argue that's the law of the case.

Mr. Rosen, that becomes the law of the case and you can't go behind that.

MR. MEDLIN: Well, Your Honor, we agree with that. And if I may, once I start fleshing out our argument --

THE COURT: I won't interrupt you again. Go ahead.

MR. MEDLIN: Well, I'll -- but I'd like to address your question because, obviously, Your

Honor, you've gotten to the two points that we think are the important points.

For several reasons, we can't go behind that order in this action. It is the law of the case. One reason is because, as I'll explain in more detail in just a minute, the probate code says that the only way that you're not a surviving spouse is if you have been divorced or had your marriage annuled by the time of the decedent's death. The only way that Mr. Brown could have attacked that family court order --

THE COURT: That order. Which family court order?

MR. MEDLIN: The only family court order about the annulment, which is the Ahmed annulment order. The only way he could have attacked that, if he could, and we don't think he could anyway for other reasons, but even if he could, the only way he could do it is collateral. He couldn't be involved in the action; in fact, he wasn't. So he can't make a direct attack on it, he can't appeal it; he can only collaterally attack it, at best.

The only way to collaterally attack that is to bring an annulment action for his own marriage to Tomi Rae which, in fact, he did briefly --

THE COURT: He did.

MR. MEDLIN: -- and did not attack that order, Your Honor. In fact, he did the opposite; he asked the Court to hold her to the facts that were found in that case, in that order. The problem he has is that he's no longer with us and, under the probate code, as I will explain in more detail, Your Honor, if you'll grant me that leeway, it's too late and the contestants are standing in Mr. Brown's shoes, they don't have independent rights to collaterally attack that judgment. Standing in his shoes, it's too late, probate code, case law, is clear on that. So that's one reason that it's law of the case.

The second reason, Your Honor, is that, as I'm sure the Court knows having been a family law practitioner to some degree, only the family court has jurisdiction over annulments and divorces. So this Court, even if it weren't too late, and it is, to let the contestants bring this surrogate annulment action against Tomi Rae, this Court doesn't have the subject matter jurisdiction, only the family court does. That's just another argument. The main argument is under the probate code, it's too late.

So, Your Honor, if I can just briefly address

those two points, I do have more arguments to make about those, if I may.

THE COURT: Well, aside from attacking family court annulment order, your position is that the marriage to Ahmed was void from the very beginning, therefore there was no marriage, therefore there was no impediment to her marriage to Mr. Brown, therefore she was married when Mr. Brown dies, therefore she's the surviving spouse.

MR. MEDLIN: Correct.

Their argument is that the annulment order was what was necessary to terminate the marriage to Ahmed and it's effect was prospective only. That's their argument. That's not what any of the cases say. But, Your Honor, there's another problem with their argument that I will get into, if I may, in more detail. If that, in fact, is the law now, and it's not, but if that's the law now that an annulment based on bigamy isn't void ab initio, doesn't make that attempted marriage never a marriage, but that it becomes effective only when the Court issues the annulment order. They have exactly that same problem trying to overturn the marriage between Tomi Rae and James Brown.

Under their argument, the marriage of Tomi Rae

and James Brown is bigamous. Under their own theory, that bigamous marriage is valid and effective until a Court annuls it. That never happened, it cannot happen, it's too late. On the date of Mr. Brown's death, even under their theory, they lose. That's our argument.

THE COURT: She has no impediment, she marries Mr. Brown, it's never annuled, therefore it's good.

MR. MEDLIN: That's the right answer. Their argument is that she did have an impediment because she didn't have a Court order annulling it yet. Their argument is, until a Court annuls a marriage, even if it's bigamous and despite what the statute and all the cases say, that marriage is valid until you get a Court order annulling it. So, they argue, Mrs. Brown was married when she married Mr. Brown, so that the Brown-Brown marriage was bigamous. What's problematic about their argument, Your Honor, if, in fact, they're right about the effect of that annulment order, and they're not, but even if they are, they lose. Because by their own argument, the only way you can have an effective order terminating a bigamous marriage is through an annulment order. It's too late for that.

Now, what they want is to have it both ways:

They want to argue that with respect to the Ahmed-Tomi Rae marriage, that's voidable, even though it's bigamous; they want to argue that with respect to the Brown-Tomi Rae marriage, that's void, even though it's bigamous. Their argument is completely inconsistent. They're picking fruit that they want to pick from a tree. They're wrong about the effect of the annulment order. But even if they're right, they lose --

THE COURT: Well, let's leave the annulment order out of it for a second. Of course that's where the findings of fact were that she -- Ahmed had a number of wives. But if, in fact, he did have a number of wives or more than one wife, that would be a bigamous marriage, and under the statute shall be void, no effect from the very beginning, from the get-go.

MR. MEDLIN: That's our position and that is the right answer, according to the statute and to every case, including Lukich.

THE COURT: Therefore, it had no impediment when it came time to marry Mr. Brown.

MR. MEDLIN: Correct.

THE COURT: Well, you go back to the *Tilley vs. Pacesetter*, which was cited in Lukich. Under the

statute's terms, Wife's marriage to Husband No. 2 was void at the inception since at the time of that marriage, she had a living spouse and that marriage did not declared void.

Does it take that second step to declare it void before it becomes ordered or is it just void right out of the chute?

MR. MEDLIN: No, Your Honor, it doesn't take that second step to declare it void.

THE COURT: Then why do they say that in Lukich?

MR. MEDLIN: They don't say that in Lukich.

THE COURT: I'm reading it. Unless I can't read right, under headnote 2 it says: The question is whether the October 2003 annulment order declaring Wife's first marriage is void ab initio or relates back so as to validate her purported 1985 marriage. In construing a statute, we need not to resort to rules of construction where the statute's language is plain. Under the statute's terms, marriage -- Wife's marriage to Husband No. 2 was void from the inception of that marriage since she had a living spouse and that marriage had not been declared void.

MR. MEDLIN: That's exactly consistent with the

argument, Your Honor. They're talking about two different marriages in Lukich; the first marriage is voidable because it's not based on bigamy, it's based on intoxication; the second marriage is void ab initio, which is what the Lukich court recognizes and cites the cases that recognize exactly that. If it's never a marriage -- if it's never a marriage, then you don't even need a court order to invalidate it. Now, you do need a court order, of course, in this case to show that one existed. But under the law, if you had a bigamous marriage, it's never valid.

Your Honor, if -- again, you also require a court order in addition to the marriage being bigamous. First of all, that's counterintuitive to the marriage never being a marriage. But even if that's the case, they failed, because they don't have a court order declaring the Tomi Rae Brown marriage bigamous. So if you need both, they still don't have both. But, Your Honor, I will tell you, that's not the right answer.

THE COURT: So your argument is very simple: Ahmed had different wives, therefore that marriage is void; there's no impediment, she marries Mr. Brown, she's his spouse when he died.

MR. MEDLIN: That's the right answer, we think, Your Honor, but our argument also looks at the other side. And the other side says that you have to have an order to determine that the marriage is invalid for purposes of bigamy and, according to them, that order is prospective only. If that, in fact, is the case, and if, in fact, one can have a bigamous marriage until a Court orders it not to be bigamous, and that order is prospective only, they don't have such an order for Mr. Brown and Tomi Rae, and they can't get one because he's no longer with us. He can't bring an annulment action now. It's too late, the Probate Code is -- I'll give you some cites on it in just a minute -- and case law says you can't for elective shares, surviving spouse purposes. I don't think that's the law anyway, but that's domestic law and that's certainly outside my realm. But I don't think you can bring an annulment.

But under their theory, even if you have a bigamous marriage, which the statute said is void from the beginning and the cases say is void from the beginning and Professor Stuckey and the treatise in marital litigation in South Carolina says you don't even need an order because it's void from the beginning. Even if all of that is not correct, then

under their theory, they don't have an order and under their theory, Your Honor, you can marry -- not you specifically, Your Honor, but you generically, a South Carolina citizen, can marry as many people as you want and those marriages are all valid until one of them at least is terminated with an annulment order.

If an order is required to terminate a marriage that is void, then you can commit bigamy in South Carolina as long as somebody doesn't go to Court and get an order. That, Your Honor, would open the floodgates of litigation, among other reasons that it would open the floodgates of litigation.

All right. May I?

THE COURT: (Nods head).

MR. MEDLIN: Thank you, Your Honor.

Your Honor, let me stress from my part of the argument that we don't think any of the facts matter other than, of course, the facts that you've stated, all of which we all understand and I don't think anybody is arguing about: The punitive marriage to Ahmed, the ceremonial marriage to Mr. Brown, and the order of the family court annulling, as bigamous and void ab initio, the marriage of Ahmed and Tomi Rae.

We think we went on the law, Your Honor, and

again, in very broad terms, I've just explained to you what our argument is. But let me clarify, Your Honor, what we're here today to do. It's a probate case, it's an elective-share, omitted-share claim. The Probate Code governs such claims. And we're here for just one issue, which are mirror images: Does Tomi Rae qualify as the surviving spouse, because she has to qualify for the surviving spouse status to be able to collect an elective share or an omitted spouse's share.

Now -- by the way, one of the memos suggest that if she's not the surviving spouse, she can't also have standing to bring an undue influence claim. We disagree with that. That's beyond the scope of this argument, but just for the record, we disagree with that. When you look at the Probate Code -- and the Legislature says that the Probate Code, when it's specific, covers these issues. Section 62-2-802, Your Honor, which I think maybe somehow got left out of the memos, but I think may be in the motions -- but in any event, it's the outcome of the statute that defines the surviving spouse. Your Honor, I have copies of that section if the Court would like one. I have extra copies for opposing counsel.

THE COURT: All right. Pass that up, please.

MR. MEDLIN: 62-802 (a) says that, in effect, to be a surviving spouse, you cannot have been divorced from the decedent and you cannot have that marriage annuled from the decedent. She's presented a marriage license, we all know she had a ceremonial marriage. So the issue under 2-802 is whether she got divorced or whether she had her marriage annuled.

If you look at paragraph C of that section, Your Honor, it adds an additional requirement: One has to get that annulment order or the divorce decree signed by the judge and filed the Clerk of Court before the decedent dies. That's clear under the statute. And, in fact, we have a case, Hatchell Freeman, which is exactly on point because they were in the middle of a divorce proceeding, the divorce decree didn't get filed before death, so the surviving spouse wasn't disqualified under the clear terms, the expressed terms of the statute.

So Tomi Rae's presented a marriage license. Unless somehow there's a question about the validity of that marriage license, then the only way to defeat her claim as the surviving spouse under the probate code is to find that Mr. Brown divorced her

or Mr. Brown annulled that marriage. That didn't happen and it's too late, clearly under a probate case, but I think also generally under the law, for a decedent to annul his marriage to somebody.

Again, Your Honor, they're standing in Mr. Brown's shoes. They don't have independent rights. We're here today because Mr. Brown died and certain people are claiming, through him or, in the LSA's case, for him today. They have his rights. And so under Section 62-2-802 (c), as explained by the Hatchell Freeman case, we can't even get there. There is no annulment by Mr. Brown of his marriage to Tomi Rae.

Now, we know he tried at one time to get an annulment. And again, as I mentioned, Your Honor, we all know that in those proceedings, which are part of the stipulated facts as I understand it, he didn't try to attack the annulment order that came down in the Tomi Rae Ahmed case. So obviously he knew how to annul a marriage, because he brought an annulment action; he brought it a few months later when he changed his mind.

Your Honor, I'd ask that this Court take judicial notice that from the time that that action was dismissed by consent order, Mr. Brown never

filed another action in any court in South Carolina to annul the marriage or divorce Tomi Rae. Even if he did, under 2-802 (c), if he didn't get a signed order filed with the Clerk of Court, it's too late anyway, even if that were a pending action. So we don't get there under 2-802 (c) because he couldn't bring an annulment, it's too late; his representatives can't bring an annulment, it's too late, and so we have to accept that underlying order as the law of the case, as you've explained it.

With that in mind, Your Honor, that takes us back to my point about the fallacy of their argument. Their argument is that despite what all the cases say as to status and despite what the statute says, expressly, no mincing of words, a bigamous marriage is void ab initio. Tomi Rae, as you noted at the outside of this, never had a marriage to Ahmed because it was bigamous, and so she had no impediment when she married James. But even if she did -- because under their theory, that annulment was prospective in effect only; in other words, treated that marriage as voidable rather than void -- in that case, under their own argument, they would have to have that same order annulling the marriage between Mr. Brown and Tomi Rae, because

under their theory, it's okay to have a bigamous marriage in South Carolina as long as the Court doesn't declare it invalid. And once the Court does declared it invalid, they say, then the invalidity is prospective only; in other words, treating it as voidable.

With that same argument, therefore, would be true for the, as they put it, bigamous marriage between Tomi Rae and James. They would need an order terminating that because under their theory, it's valid until some Court orders that it's not, and under their theory, that order, even though it's bigamous, it's prospective only. So on the date of Mr. Brown's death, no such order having been given, he was married to Tomi Rae, under 62-2-802. That's when we determine who qualifies as the surviving spouse.

THE COURT: Well, Mr. Medlin, it sounds like it boils down to this -- I mean, I have read and reread all of these briefs and, if I may add, the briefs are excellent. I think everybody put a lot of time and effort into them and I commend every party. I sat at my beach house Saturday and it rained from sun up to sun down when I was there. My wife, she's in the other room, and I read these things backwards

and forwards til I was blue in the face with them.

But when you boil it all down, I have to make a decision on whether or not that marriage to Ahmed, if it were void and never was a marriage to begin with, then she had the right to marry Mr. Brown; she had no impediment. If we have to wait until it's annuled, what effect does the annulment have on for the marriage that took place to Mr. Brown before the annulment? And that's where I'm --

MR. MEDLIN: That's the fallacy of their argument, Your Honor.

THE COURT: Well, there's some validity to it though, I think.

MR. MEDLIN: Well, Your Honor, I disagree.

THE COURT: I know you're going to disagree.

MR. MEDLIN: Well, I disagree with their very logic. If in fact -- if an order finding a marriage invalid for purposes of bigamy and annulling the marriage for that, if that doesn't treat the marriage as void, which it does, under their argument, such an order in this particular case as to the Ahmed annulment is prospective only.

THE COURT: Well, do me a favor. Leave out their argument; give me your argument on just succinctly how you claim she is the wife with Lukich

being your sort of flagship to go by.

MR. MEDLIN: Your Honor, you've expressed it perfectly. Every marriage that's bigamous is void ab initio; otherwise, there would be chaos. Her marriage was found to be bigamous. As long as that order cannot be attacked, and we don't think it can be, then they lose --

THE COURT: What if it can be attacked?

MR. MEDLIN: Well, then they're going to have to go and reopen all the underlying facts in a case where the party who was -- the other party who was most directly affected by it hasn't bothered in at least six years to attack it. That would be a direct attack. Thanks to Mr. Bell and Mr. Allezai's [phonetic] affidavits, we know that at least six years ago, Mr. Ahmed knew his marriage had been terminated with Tomi Rae.

THE COURT: Is that not the law of the case?

MR. MEDLIN: It's the law of the case, Your Honor, because --

THE COURT: Does the law of the --

MR. MEDLIN: -- he's --

THE COURT: -- case include the findings that she made to rely on in making her ruling?

MR. MEDLIN: Absolutely, because Mr. Brown

cannot collaterally attack it. Maybe he could have if he weren't estopped and all the reasons that we talked about. If it weren't for that, maybe he could have while he was alive. But the probate code clearly says that that annulment, which is the only way I know that he could attack that order is collaterally by trying to get an annulment from Tomi Rae, it's too late. The statute is clear and the case law is clear.

That order annulling the marriage, if there were one between -- an order, if there were one between Tomi Rae and James Brown, would have had to have been signed by a family court judge. No other judge because no other judge has jurisdiction of annulments. It would have had to have been signed by a family court judge and it would have to be filed with the clerk of court before Mr. Brown died. That didn't happen. They want to do something that Mr. Brown can't do and the probate code doesn't allow; they want to relitigate that case. They want to relitigate it standing in his shoes, make a collateral attack, because he wasn't a party to it. It can't be done. So you can't attack the order. It's the law of the case. The probate code makes that clear.

And Lukich, in fact, points out the difference between those two types of marriages. Lukich has those two different types of marriages in it. It's got a voidable marriage, which is the first marriage, which was voidable because it was based on intoxication, not bigamy. It has a second marriage which was bigamous because when she didn't get her order until after that attempted second marriage, the Court said that because we can, the statute says if it's not bigamous -- or the statute that says if it's bigamous it must be void doesn't apply --

THE COURT: Well, it says it shall be void.

MR. MEDLIN: Shall be void, right. The statute requires that determination. But this Court said that because it's a marriage annulment based on intoxication, the first marriage can be treated as voidable, not void. And again, there's a big difference under the law, Your Honor. In fact, if I may, the Legislature understands that difference. In the probate code they have a provision, for example, that deals with fiduciaries who are self-dealing, Section 62-3-713.

But it says, expressly, that if fiduciary self-deals, that act is voidable unless and until a beneficiary successfully contests that in court.

That's a voidable act. A voidable act is valid until somebody rules that it's not.

THE COURT: I understand that.

MR. MEDLIN: And a void act -- well, Your Honor, I just want to make sure I get my argument out so that I understand it. The void act is never an act. The Legislature knows the difference between those two words clearly; they use voidable in the probate code, they use void in the bigamy statute. And Lukich noted that difference. Lukich talked about the void part being the second marriage because since it didn't relate the voidable marriage back, she did have an impediment; consequently. The second marriage was never a marriage.

THE COURT: Thank you.

Mr. Beach.

MR. BEACH: Judge --

THE COURT: Judge Segars-Andrews' order is valid, final order, a finding that Ahmed had multiple wives, i.e., a bigamous marriage, why is that marriage not void as set out in the Lukich case which says a mere marriage ceremony between a man and a woman where one of them has a living wife or husband is not a marriage at all? Such a marriage is absolutely void and not merely voidable. So if

it was void, she had the right to marry Mr. Brown and, hence, is his spouse.

MR. BEACH: Judge, let me first correct one thing that has been said, and it relates to the question you've just asked. The Ahmed annulment order is not the law of this case.

THE COURT: I didn't ask you that.

MR. BEACH: Well --

THE COURT: I said if it is the law of this -- if that is the law of this case -- you're not giving up any position, you're just answering my question -- if it's the law of the case, does not -- the marriage between Tomi Rae and Ahmed, is it not void and not a marriage at all and is she not free to marry Mr. Brown, if Judge Segars-Andrews' order is the law of the case? You're not conceding anything, I'm just asking you that question.

MR. BEACH: Judge, I don't think so.

THE COURT: Why?

MR. BEACH: Well --

MR. BELL: Can I answer that?

THE COURT: Hold on now. You'll get to talk, Mr. Bell.

Mr. Beach, how do I get around the statute that says all marriages contracted while either of the

parties has a former wife or husband shall be void? And that order of Judge Segars-Andrews is the order -- is the law of the case. Hypothetically, as a question to you, how is that marriage of any validity at all? It's void, it's no marriage at all and she's free to marry Mr. Brown.

MR. BEACH: Well, Judge --

THE COURT: You disagree with that?

MR. BEACH: First of all, that order, the judgment in that case was the judgment -- was that the marriage was annuled. The order had some findings that underlay that judgment.

THE COURT: You're not answering my question.

MR. BEACH: Well, I'm trying to, Your Honor.

THE COURT: No, you're equivocating.

If the whole order is valid and I go with that order, how is her marriage to Ahmed not void? How is it a marriage under the statute if Ahmed, in fact, had additional wives?

MR. BEACH: Well --

THE COURT: If.

MR. BEACH: -- setting aside for a moment the fact that in South Carolina it's impossible to have additional wives because you can't be married to more than one person at a time, which is -- I mean,

the order said that, Your Honor, so it's a very -- I think it's a valid --

THE COURT: Maybe I --

MR. BEACH: -- observation --

THE COURT: You're right; you can't have additional because they're all void. But what if he were married to different women at the same time?

MR. BEACH: Well, Judge, honestly, it's --

THE COURT: You see where I'm coming from.

MR. BEACH: I see exactly where you're coming from, Judge.

THE COURT: All right. Then get me around it.

MR. BEACH: Well, let me -- I can get you around it by reading you this one point that explains the law of the case, Judge.

It says: The doctrine of the law of the case that when a Court decides upon a rule of law -- and rule of law, Judge, not a finding of fact -- that decision -- and we're not talking about a rule of law here, we're talking about a finding -- that decision should continue to govern the same issues at subsequent stages of the same case.

Now, Judge, this case is clearly not the same case and, in fact, as pointed out over and over again by the petitioners' attorneys, Mr. Brown could

not have been part of that -- couldn't have been part of that case. But it's clearly not the same case, Judge, so the notion that it is the law of the case is a nonstarter. The question of whether the order applies retroactively under Lukich is a different question.

THE COURT: I understand that.

MR. BEACH: And we're prepared to go through --

THE COURT: Well, I want you to tell me why Judge Segars-Andrews' order is not something that I should rely on in making my ruling as to whether or not the marriage between Tomi Rae and Ahmed was no marriage at all.

MR. BEACH: Well, I can do that, Judge. I would like Your Honor -- Judge, this case has been, up until this point, a little bit like a boxing match. And it's been --

THE COURT: Well, I don't know about a boxing match.

MR. BEACH: In terms of this particular issue, we've got 500 pages of briefs that have been passed back and forth on the question that we're here today to discuss. And as a -- I mean, there's piecemeal discussions about particular points that are all important. But, Judge, there's a case that tells

the Court -- a Supreme Court case that tells the Court the exact analysis that needs to occur here to make this decision.

And if I could, Judge --

THE COURT: Sure. I'm not stopping you.

MR. BEACH: -- I'd love to go into how the Court says -- and I'll try to get through it as quickly as I can.

THE COURT: I'm not pushing anybody.

MR. BEACH: Well, Judge, if you give me just a minute, I can set up my tripod here.

THE COURT: You may.

MR. BEACH: All right. Judge, I hope you'll excuse this old-school approach that I've taken here, but it's the one that I'm comfortable with and I think it will serve the purpose very well.

Judge, the case that lays out the framework for the Court's decision here, not just -- and not, as they have suggested, to jump in and try to find a quick fix, because there's really no quick fix to this question that's before us. It has to be addressed methodically and there's a case that tells us exactly where we stand right now in regards to burden of proof. And I would argue to you that burden of proof is the absolute crucial fulcrum over

what we're arguing about right now, because this case will show you, and I'll show you in a minute, that the burden of proof is on the petitioner to show that the marriage between Ahmed and the petitioner was invalid and bigamous. That's the burden, and I want to go through that if I could, Judge. This case --

THE COURT: The burden of proof is on the petition to show that the marriage to Ahmed was bigamous; is that what you're saying?

MR. BEACH: That's correct. Yes. And the case here --

THE COURT: Well, they can't say they've met the burden of proof. They've shown Judge Segars-Andrews' order.

MR. BEACH: Well, we'll talk about that, Judge, because I think they haven't.

Judge, I'll have to tell you, I almost fell out of my chair when Ms. Zwing brought this case to me about a month and a half ago because I didn't think it was possible for there to be another case that had the exact same facts that we're dealing where here. It's *Hallums vs. Hallums*. But this case has identical facts, Judge. And also, even though it was decided in 1906, it's still good law. It was

cited by *Yarbrough vs. Yarbrough*, which is one of the cases that's at play here in these rulings in a fairly recent decision.

And what that case was, Judge, is -- it was just like this case; it started with the decedent's death and the purported wife making a claim against the Estate as the surviving spouse. And just like this case, Judge, there was a marriage ceremony between the purported wife and the decedent, and also just like this case, it was five years earlier. And also just like this case, Judge, the wife in Hallums had been married to another man about four years prior to that. Well, Judge, also just like this case, the Estate said, because of this prior marriage, we believe that you were not married to the decedent; you couldn't have married him because you were already married, your marriage is bigamous and, therefore, you haven't met the first requirement of showing surviving spouse which is that you were the decedent's wife at some point.

So the -- the trial court looked at this and in sort of a simplistic way said, well, the only evidence in the record or the only thing in the record to show the husband had already been married was the wife's hearsay testimony. And so we're

going to agree with the Estate that she was married to Husband No. 1 when she participated in that marriage ceremony, not the surviving spouse.

Judge, when the case went up on appeal, that's when things got even more interesting and even more like our case, because the argument that was made by the wife -- purported wife in there was that the primacy of the most recent marriage, the inclination to give it tremendous deference, is enough to say that unless you have proven that -- well, their argument was that the primacy covers everything, which is the argument the petitioners made here, and she should be recognized as the surviving spouse.

Well, what the Supreme Court said is, we're going to go only so far with you on that. We agree that we should give some weight to the most recent marriage, but only to show -- we're only going to put the burden on the Estate to show that there was no divorce between the first marriage and the second marriage ceremony, and there was no death.

Now, Judge -- and they said, if that is proven -- the wife says, well, wait a minute, you've also got to presume that this marriage was bigamous because, remember, you've got to give great deference to the most recent marriage. The Court

said no. The Court said -- and it's interesting why -- why the Court would say no now. It's a crime to -- bigamy is a crime. And so since in South Carolina and the United States people are presumed to be innocent and not guilty, we are going to say that the presumption of this marriage is that it is valid and that the burden is therefore on the wife to show this -- her burden to show that this marriage was invalid.

THE COURT: Okay.

MR. BEACH: Now, the wife only had the hearsay testimony that she knew that her husband -- she had heard that her husband was already married. The Court said, that's not enough to meet your burden because it's really no evidence. And so as a result, we're going to find that this marriage still existed -- they showed no divorce, no death -- and that your marriage to the decedent is invalid and as a result, we're going to turn down your claim as surviving spouse. It tracks perfectly with our case.

THE COURT: Well, not really because Ms. Hynie Brown has an annulment order where the judge said that it's otherwise.

MR. BEACH: Well, Judge, that's this annulment

order right here. And that doesn't change the presumption here and the burden. What it is, Judge, in this case, it is a way -- it is a potential way that they could argue that they meet this burden. They could -- and they've argued it in two ways.

The first way they've argued it is that the Estate is collaterally estopped by the underlying findings. And, Judge, let's just be real clear: We're only talking about one underlying finding in the Ahmed annulment order, and that is the finding that Ahmed was married at the time of the 1997 marriage and he lacked the capacity to marry the petitioner. That's what we're talking about.

THE COURT: I know that's what we're talking about.

MR. BEACH: And their first argument is, we meet our burden here, even though we know we don't have any evidence other than the affidavits that Ms. Brown has filed, we meet this burden because the Estate is collaterally estopped to -- on that finding, the underlying finding in the order. Well, Judge, and then the second argument --

THE COURT: Well, Mr. Bell says you're not collaterally estopped.

MR. BEACH: Well -- and we're not. And I can

explain that, Judge. The second argument that they're making is --

THE COURT: Not Mr. Bell; somebody did.

MR. BELL: Yes, Your Honor.

MR. BEACH: In addition to the saying, we're collaterally estopped, they're also saying that this order should be given retroactive effect back to 1997 to make it legally perceived so that this marriage never occurred. So that's their second argument. And I can explain -- well, the -- the collateral estoppel argument doesn't work, Judge; it fails because James Brown was not a party to the Ahmed annulment action, couldn't have been. And collateral estoppel, like it or not, only works in South Carolina against parties or their privies. And, Judge, they've admitted in their reply that James Brown was obviously not a party, they've said he couldn't have been a party, we stipulated that he was not a party.

He also wasn't a privy to the petitioner back then. And the reason he wasn't a privy, Judge, is because to be a privy, the legal interests and the goal in the action, the Ahmed annulment action, the privy's interest and goal has to be identical to the parties' interests.

Now, they're arguing that James Brown was Tomi Rae Brown's privy because they'd engaged in a marriage ceremony or they would argue that they were married. That's not the test for privy. The test for privy, Judge, is whether parties -- whether the person you're arguing was a privy has the exact same legal goal. Well, we can very clearly see that James Brown did not have that legal goal in the Ahmed annulment action because he had filed a complaint seeking an annulment from the petitioner in Aiken County during this same time in which he argued that the marriage to Ahmed was valid and that it made their marriage annulity [sic]. And then after Mr. Rosen faxed a copy of the order that was issued on April 15th, 2004 from Judge Segars-Andrews to James Brown's lawyer in the annulment action going on in Aiken, he filed an amended complaint. And in the amended complaint, he said the same thing; he said, the marriage was valid, you were not married to someone previously, Ahmed did have the capacity to marry you at that time and, therefore, the marriage between you and me was annulity. So he's not a privy. That's, I would say, beyond dispute here.

So then they -- the next argument that they

make, Judge, is, well, in South Carolina there's a line of cases that -- or a case that they cited that says that even a nonparty can be bound by the underlying findings of an order if they acquiesced to and join in the action that occurred. And, Judge, that case is Carolina Baking vs. Gallfus [phonetic]. They've cited it for the proposition that a nonparty is bound if they acquiesced to and participated in the proceeding.

Now, putting aside for a moment the fact that James Brown didn't participate or promote the proceeding, that's not what Carolina Baking says; in fact, it's the exact opposite of what Carolina Baking says. Judge, Carolina Baking decision dealt with parties who had not appealed a circuit court order. And the circuit court said that the parties to the underlying action were estopped or bound by those findings because they acquiesced to and participated in it. It didn't say that the nonparties were bound; in fact, Judge, you can look at the case, we've cited it in the brief, there's absolutely no nonparties involved in that case. So the notion that Carolina Baking supports -- says, okay, well, if he's not a party, South Carolina still recognizes collateral estoppel against

nonparties, it doesn't. It doesn't, Judge.

In the other case that they cited for that proposition -- and it's Tillman, I believe -- deals with the privy. It deals with a father and grandparents who both have the identical same goal of getting custody of the children. Their goal was identical. He was a privy, that's why Tillman says what it does. So those two cases absolutely do not support the position that the underlying findings in the Ahmed annulment order -- that underlying finding can be applied to prove what we're talking about here.

So then they go out to other outside-of-South-Carolina cases and they say, well, outside of South Carolina there's some cases that say that if you control the proceeding, then even if you're not a party, you're bound by it. Well, Judge, the only evidence -- and as you point out, we're bound by the stipulation. The only evidence that shows control here -- and it doesn't show control -- is that at some point in time, and it doesn't say when, James Brown paid the petitioner for the cost of the Ahmed annulment action. Doesn't say it was before, doesn't say it was after; we're bound by the stipulation. And --

THE COURT: So the bottom line of your argument is this: You're saying, Judge, we need to be able to go behind that order and explore, through discovery, et cetera, et cetera, whether, in fact, he did have multiple marriages or wives or whatever you call it.

MR. BEACH: That may be the result of my argument, Judge. But what I'm saying is, they can't use the finding in that order to meet their burden that it's on them right now. And so there's no control here and that's outside of South Carolina, and I don't really want to talk about that anymore.

What I'd like to talk about now, Judge -- and if we have to -- if their inferences -- for instance, they're arguing that their inferences from what James Brown did -- well, Judge, when you're ruling on their motion, inferences have to be in LSA's favor, not in their favor. But if there are inferences that we're dealing with here, Judge, we got to go do some discovery because there are only three people that know what control, if any, James Brown exercised over that proceeding; it's the petitioner, it is the petitioner's attorney Jim Huff, and it's Mr. Rosen. Well, we're not going to be able to know anything about that until we conduct

some discovery, Judge. So -- but hopefully we're not going to even have to go there because the idea that they would somehow be bound -- the LSA would somehow be bound by that underlying finding, even though they're not a party, is, again, something that they cannot sustain.

So the second way that they try to meet their burden, Judge, is by arguing that the Ahmed annulment order applies retroactively back to 1997 to make it so that legally this marriage between the petitioner and Ahmed is perceived as never having existed.

THE COURT: Are they trying --

MR. BEACH: And that's --

THE COURT: Are they trying to do that or are they simply using the annulment order as proof that he did have multiple wives and, therefore, that marriage was void at inception?

MR. BEACH: Well, the only way they could do the first one is by -- through collateral estoppel, Judge. And we've talked about that. They can only use it as proof if they are able to collaterally estop us now and use it as proof, which they can't. So they're making more of the same technical argument that the wife in Lukich made, which is that

the mere existence of this order relates back and makes it so that it basically erases this marriage from -- the Ahmed-petitioner marriage from existence. And that's the Lukich question that you've asked us about, which I'd like to address now.

The petitioners have either argued that Lukich is not controlling or it is controlling and it causes them to win. But we don't even have to get to Lukich to know how South Carolina courts rule on the question of whether a family court order that annuls a bigamous marriage relates back.

The first case that addresses that directly, Judge, and we would say is controlling here is a case that was cited by the petitioner in support of their position in their initial brief. It's *Joye vs. Yon*. And, Judge, if you'll bear with me -- because, again, this case is controlling. *Joye vs. Yon*, there was a couple that was married for a long time and they got a divorce, and the family court ordered that the husband had to pay alimony. So in March of 1993, a few years after the divorce -- he'd been paying monthly alimony -- the wife remarried. And, Judge, I'm going to use this chart, if you don't mind, for these next two cases that I'm going

to discuss because it really helps us. It's all the same; we've got a marriage here, we've got a family court order annulling the marriage as bigamous here, and the question is whether that annulment order goes back and changes something that happened here in the middle. That's what the petitioner is arguing and it's also what was decided by *Joye vs. Yon* and also this line of cases dealing with the family court's jurisdiction to equitably apportion the couple's property. So I'm going to use this chart.

So in March of 1999, the wife remarried. And in South Carolina, if your ex-wife remarries or your ex-spouse, you can stop paying alimony because that terminates the alimony obligation, obviously. So the husband stopped paying alimony. Shortly thereafter, the wife figured out that her husband that she had just married was already married to another woman and had not gotten a divorce. So she went in to the family court and filed for an annulment. The family court gave her an annulment six months after their marriage in September of 1999, and the Court ruled that the marriage was bigamous and therefore void ab initio and it annulled the marriage on the notion that her husband

didn't have the capacity to marry her at that time.

So the wife then went in the family court and said, I'm going to get an order requiring my husband to pay my alimony -- this was after this -- from this point forward and also back to the date of the marriage and -- because I've gotten this annulment and it's as if the marriage never existed.

Now, the family court actually agreed with the wife. And there doesn't seem to be much analysis, but the family court said, yeah, we're going to reinstate the obligation to pay you alimony prospectively and we're also going to tell you that you've got to pay it back to the day of the marriage which has now been annuled. The husband said, that doesn't seem fair to me, and he appealed to the Court of Appeals.

Now, that Court of Appeals decision is the decision that the petitioners have cited in support of their position here, Judge. And what the Court of Appeals said was the family court is right. The Court of Appeals said, when you get an annulment of a bigamous marriage, the bigamous marriage is void from its inception and the annulment makes it legally so that -- and the words they use say that the marriage is perceived to have never existed.

That's what the Court of Appeals said.

And so the Court of Appeals said, Husband, you've got to pay alimony prospectively from the annulment order forward and because this annulment makes this marriage so that it never existed, you've also got to go back and you've got to pay alimony all the way back until the date of that marriage, retroactively. The husband then -- and that's the petitioner's position here. The husband appealed that to the Supreme Court and the Supreme Court reversed the Court of Appeals.

Now, in the ruling, it did two things; one, is the one that's mentioned in the petitioner's reply brief or initial brief -- I'm beginning to lose track -- and that is that we're not going to make it automatic so that when you've got a marriage that's annuled, that it automatically reinstates the husband's alimony obligation from the date of the annulment order forward, we're going to let the family courts consider some different factors and make that decision.

But here's what the order said that literally kills the petitioner's case and it controls our position. And, Judge, it's so important that I'm going to read it -- I'm going to read the Court's

ruling just so that we're all clear on this. They said this, Judge. Now understand -- and I'm going to read the Court of Appeals' ruling first.

Wife's remarriage is void from its inception and is perceived as never having existed. Consequently, the husband's alimony obligation never ceased.

In other words, the change that this occurred -- you know, this is going back and wiping the slate clean. That's the Court of Appeals. The Supreme Court said: We also hold that regardless of whether the family court determines to reinstate periodic alimony payments or not -- and that means going forward -- Husband has -- and this is the keywords -- no obligation to pay retroactive alimony to the wife for the time period that the wife was married to her bigamous husband. In other words, the Court held that the annulment order declaring the marriage bigamous could not be applied retroactively to make it as if the marriage never existed. That's the *Joye vs. Yon* holding, Judge, and it directly controls the way the Court should decide this case.

So -- and the Court -- I would argue that this order requires the same ruling here which is that

the Ahmed annulment order cannot be given retroactive effect to make it so that the Ahmed-petitioner marriage in 1997 is legally perceived to have never existed. That was reversed by the Supreme Court.

The second area that -- and again, we're not quite at Lukich yet, but we're almost there. The second area deals, Judge, with the family court -- when a family courts annuls a marriage as bigamous, Judge, it then has the jurisdiction to distribute the couple's marital property. Now, this may seem like a pretty mundane topic for us to be talking about here and, Judge, I'll have to admit, it does seem a little boring in its -- you know, just to throw it out there. But, Judge, this point was so important to the Supreme Court in the Lukich case that in an opinion that was less than one page long, they devoted an entire paragraph to mentioning this concept. It was that important to them.

Now, it's a little enigmatic as to why they have it in there, but it was that important. And again, it's the notion that the marriage -- when a family court annuls a marriage as bigamous, then all the property that was accumulated by the couple is treated as marital property and the -- and then the

family court has the jurisdiction to distribute that marital property.

Now, Judge, as you know, the family court is a court of limited jurisdiction. It's a court whose jurisdiction is circumscribed by the Legislature through statute. So what they can and cannot do is laid out in our laws. So the family court has jurisdiction over marital property; that is, property accumulated by married couples. And there's actually a statute that says -- and it is 20-3-630 (b) that says that the family court does not have jurisdiction over nonmarital property. Okay?

Now, if you'll bear with me for just a minute, I'm going to bring this point all the way home. And I'm dwelling on it because it controls where we have to go here and it was also important enough for the Lukich Supreme Court to mention it.

Judge, there's a case called *Hallums vs. Bowens*. This was a case that was decided in the '90s. As far as I know, not the same Hallums as the 1906 case. But in this case, Judge, the couple was together and they filed at the family court to get a -- they filed to -- I guess to get a divorce. And the allegation of the wife is that they had a

common-law marriage and that during the time that -- that she wanted to have the family court disburse their property through equitable distribution.

The family court ruled -- and this was because the couple actually agreed to this during the proceeding -- that there was no common-law marriage, so the family Court said, all right, I've looked at this and I've seen your stipulation, you've both decided there was no common-law marriage, but I'm going to go ahead and distribute your property as you've asked. And so the family Court distributed the property of the couple. The husband obviously didn't like the distribution, because he appealed that decision. And on appeal, the Court said the family Court didn't have the jurisdiction to distribute that property because while it was being accumulated, even though the couple lived together, they were not married. The family Court found that there was no common-law marriage. They hadn't had a marriage ceremony. So the Court said because the family Court has no jurisdiction to distribute nonmarital property, we are going to overturn that and erase the slates of that ruling.

And, Judge, the reason I mention that is because the notion that the family court, when it

issues an order annulling a marriage that's bigamous, has the jurisdiction to then equitably distribute the martial property that was accumulated while they were together establishes the fact that that order does not apply retroactively to make the marriage legally perceived as if it never existed. Because if it were legally perceived as if it never existed, then during this whole time -- and remember, the question is what effect does this order now have on what happened in here. During this whole time, that couple would have been just like the couple in Hallums vs. Bowens; they wouldn't be married. So if the petitioner's position is correct, then the family court couldn't have jurisdiction to equitably distribute this marital property because it wouldn't be marital property. And we think the fact that Lukich took the time to mention that is very important.

Now, Judge, that brings us to Lukich. And I believe the Court has very clearly stated our position there. While the Court of Appeals had some language in their order that might suggest that there would be a different conclusion if the order voiding the marriage had voided it as bigamous, the Supreme Court's ruling had no such language. What

it said is, all you got to do is look at the statute to answer this. And it said, as you pointed out, Judge, that the order declaring the marriage annuled has to have been issued before the next marriage or else the next marriage is void as bigamous under 20-1-80. That case is really that simple and they have --

THE COURT: Say that again.

MR. BEACH: Well, they -- let me make sure that I -- 20-1-80 says: All marriages contracted while either of the parties has a former wife or husband living shall be void.

THE COURT: Okay.

MR. BEACH: And that's -- we're all onboard with that.

But this section shall not extend to a person whose first marriage shall be declared void by a sentence of a competent Court. And so here's an order declaring the marriage void, one can or cannot argue that it was by a competent Court. But what the petitioner argued in Lukich was that that order is the order that's mentioned in 20-1-80 and, therefore, the marriage took place in the intervening time is not bigamous and not void; it's the exception that they've argued. And the

petitioner has made the exact same argument.

When the Court ruled -- and, Judge, we've already gone through this, but I think it's worthy of reading what the Supreme Court says. We agree with the Court of Appeals that this statute is dispositive of the wife's claim. Under the statute's terms, the wife's, quote, marriage, closed quote, to Husband No. 2 was void from the inception since at the time of that marriage, she had a living spouse and that marriage had not been declared void. So the Lukich decision is very clear; it reads the exception in 20-1-80 to require the order declaring it void not to be issued four years later or three years later or even six months later. It has to have existed before this marriage occurred or else the fact that there was a marriage, the fact that there's no divorce and no death, means that the second marriage is void because it's bigamous, and 20-1-80 says that. And 20-1-80 controls, as far as Lukich is concerned.

And they don't say, and we're going to be treating this a little bit differently if we ever look at something where the order voids it as bigamous. They don't say that. What they do is in the very last paragraph of the ruling, they

reference the family Court's ongoing jurisdiction to equitably apportion the property after they've declared a marriage void as bigamous. And they've said that if we ruled any other way, then we would throw that situation into a state of chaos. So that's where we are.

Joye vs. Yon absolutely controls. The cases that hold that the family Court has the jurisdiction to apportion marital property when they annul a marriage as bigamous absolutely controls. They both say that you can't apply that order, it doesn't apply retroactively to make it as if legally perceived that the marriage never existed. They both say that. And Lukich is completely consistent with it and cites the second of those two.

So, Judge, where we really believe this all is, is here. *Hallums vs. Hallums* very clearly says that the petitioner has the burden now to show that her marriage was invalid, the one -- and to show that her marriage to Ahmed was bigamous. That's her burden, and *Hallums vs. Hallums* very clearly states that on exactly the same facts. She can't use the underlying findings of the annulment order to prove that because the only way she could do that is if James Brown or the Estate were a party to that

action and collateral estoppel. And collateral estoppel doesn't work here, Judge, and we know that. So then the only other way that she might do it is by arguing that the Ahmed annulment order applies retroactively to make it so that this marriage to Ahmed and Petitioner is perceived to never having existed. And she can't do that either because of *Joye vs. Yon* and the other two items that I mentioned, the Lukich decision and the family Court's jurisdiction over the marital property. So she can't carry her burden.

And, Judge, if there's some question -- again -- let me back up. That all deals with the petitioner's motion for summary judgment. And as you know, the LSA has filed a motion for summary judgment on the issue of surviving spouse as well. Now, the standard of review for those two motions is slightly different. All of the legal issues, they're all the same. The question of who has the presumption, it's the same in both motions, Judge. If we move forward, the presumption is going to be that this marriage is valid and the burden is going to be on the petitioner to disprove it or to show that Ahmed was previously married. There's no difference there between those two motions.

But if you're deciding those motions, if deciding the petitioner's motion, you have to consider all the facts in the light most favorable to the nonmoving party and you also have to consider all reasonable inferences in our favor. Now, the LSA's motion against the petitioner, that changes so that you've got to consider the facts in the light most favorable to the petitioner, and you've also got to consider all reasonable inferences in favor of the petitioner.

So given that difference, Judge, it's possible for the Court to deny both motions and allow the case to go forward, allow the parties to conduct discovery, and allow the question of surviving spouse to be decided based on testimony here. If you do that, Judge, I do think it would be crucial to make sure that this is a very pointed trial, to rule that the Ahmed annulment order is out of play. It is out of play for the reasons that we've just discussed. The only way that the petitioner could win is to be able to come forward with evidence here now that Ahmed was married to other wives and that that marriage that she had to Ahmed in 1997 was bigamous and void.

But, Judge, in order to do that, the Court

would have to determine that the petitioner has created a genuine issue of material fact here that Ahmed was already married at the time they married. And they can only do that through some evidence and they've -- there's no evidence to that effect; there's an affidavit, but it's hearsay. So -- and so we haven't seen a single particle of evidence to that effect, Judge. And so I would say in light of the petitioner's, I will call it relentless insistence, that there's no need for additional discovery here. They got an order from the Judge back on March 31st that stayed all discovery because they said it was unnecessary for the Court to rule on this question.

The Court could take them on their word there, find that there's no material issue of fact with relationship to the validity of this marriage, and the Court could not only rule against the petitioner's motion, but could rule, and we would argue should rule, in favor of the limited special administrator finding that the petitioner is not the decedent's surviving spouse and granting summary judgment to the limited special administrator based upon that.

THE COURT: Thank you. Anything else?

MR. BEACH: No, Your Honor.

THE COURT: Thank you.

Mr. Bell.

MR. BELL: Thank you, Your Honor. And I will be brief.

I second everything that Mr. Beach has set out. Your Honor, I'll touch on Judge Andrews' order briefly. Although Mr. Beach and I have talked, he has totally addressed the substantive issues. I'm going to be more -- my focus is going to be more on the procedural aspects of the case.

The interesting thing, Your Honor, about Judge Andrews' order is it was not issued for the main purpose of the annulment. It was not issued to prove that he had annuled the prior marriage because if it was, then the Lukich case would control and it would be given prospective application. It was only offered to prove facts and those of the collateral issues contained in there. The statement of Tomi Rae Hynie that she gave to Judge Andrews saying, oh, early on, my then-husband, the man that I married, told me that he had prior unrelated marriages. That's hearsay. And the interesting thing is Judge Andrews' order is being offered to the Court to prove and establish a set of facts that could not

have been established or proven by Tomi Rae Hynie otherwise because if she came into Court, Your Honor, to say, he told me this, that would be clear hearsay and a self-serving declaration that the Court would not accept.

So we submitted in our brief two cases that are set out; one -- both of them are domestic cases and they're both divorce cases. In one case, in the decree, it stated that the -- one of the parties' father owed a debt. So the person to whom the father allegedly owed the debt said this establishes that your father owed me this money. And the subsequent Court said, oh, no, that's a collateral issue. The dissolution of the marriage is obviously binding on the whole world but --

THE COURT: But the marriage was dissolved because the Court found that she had -- he had additional wives.

MR. BELL: That's correct. But the cases are very clear that those collateral findings are only binding -- the factual findings are only binding on those who are a party to that action, but that the main argument that it is a bigamous marriage is binding on the world. The marriage was ending. But the factual findings under case law are not -- are

only binding on the people that were a party, because otherwise, Your Honor, she has, through the back door, gotten in facts and evidence that she could not have directly argued to the Court.

THE COURT: So what is your solution; to deny summary judgment and open up discovery so she can attempt to prove that he was in fact --

MR. BELL: And, Your Honor, that was the -- as I said a moment ago, Mr. Beach addressed the substantive issues and I'm going to talk about the procedural. The Court's goal is certainly twofold; one is to move the case along properly --

THE COURT: Well, that is a goal, but not nearly as important as getting it right.

MR. BELL: That is absolutely. And that is -- getting it right would mean that Columbia would affirm what is done. And I think Your Honor appreciates that if summary judgment is granted for either side, it will go up.

THE COURT: Sure it will.

MR. BELL: And, Your Honor, over the weekend, as we all read a lot and we all read a lot of briefs, I reread *Dallas vs. Wilson*. And the interesting thing, when I reread it, I was looking for substantive answers, you know, a substantive

statement as to why the will could be set aside or affirmed as being obtained through undue influence; substantive issues as to whether or not the marriage to Tomi Rae Hynie, what's the standard. And what was interesting to me, Your Honor, there were no substantive holdings in that decision, but rather what it criticized the settlement for is short-circuiting the process. And it criticized the settlement for not developing the facts.

And, Your Honor, it would be nice to be able to eliminate discovery in some cases. The truth be known, the Supreme Court wanted this case developed. And the only way to fully develop it is to open the door and do discovery. And that's what the Supreme Court said in *Dallas v. Wilson*, the shortcuts don't work. And as hard as everybody worked on --

THE COURT: Well, I don't know if I agree with the shortcuts don't work. We made a -- everybody in this room made a -- I thought made an honest effort to resolve the whole thing. We took six days to do a settlement. So I don't think it was a shortcut. I do agree with you about it coming back to me, you can rest assured it will be developed fully, unless I can dispose of it simply on these stipulated facts.

But from the arguments this morning, you're going more and more into a factual quagmire that may preclude summary judgment, I'll let y'all do discovery. But we aren't going to take forever to do it, if I rule that way.

MR. BELL: Yes, sir. But I think --

THE COURT: That may be the prudent way to do it. I don't know.

MR. BELL: I think that the safe way at this point is to open discovery. This debate began when there was a motion before Your Honor as to whether the diary would be discoverable. And Your Honor did not want to get into that quagmire and I believe you told us at that time, if you were going to allow it, you might appoint a special master to review it and hear it just so that you wouldn't get stuck in the quagmire. And that was when Mr. Rosen said, well, we need more facts --

THE COURT: And that's when I said if y'all can stipulate the facts, then we could maybe decide it on summary judgment on the stipulated facts.

MR. BELL: But the interesting thing, Your Honor, we agreed on certain facts, but I don't think anybody thinks it's all. Right after the stipulated facts were signed, the petitioner, Mr. Rosen, file

the affidavit of Tomi Rae Hynie adding additional facts. You know, they want to get in their facts, which is fine, but we should be permitted and allowed to conduct discovery. And I think --

THE COURT: Discovery to do what, Mr. Bell; to explore what particular aspect? And I think I know the answer, but you tell me what it is.

MR. BELL: I think the question becomes the marital status.

THE COURT: And whether or not she can prove that Ahmed had different wives and additional marriages or whatever.

MR. BELL: She has stipulated that she had no evidence or facts other than what he told her; that she doesn't know any witnesses and that she has no documents. Interestingly enough, Your Honor, on the other hand, Ahmed signed an affidavit with the court in Texas where he obtained the marriage license and the affidavit said I have no prior unresolved marriages.

THE COURT: Well, obviously he's going to say that because if he said he had other marriages, they wouldn't issue the marriage license.

MR. BELL: Well, that's right. But, you know, evidence -- you know --

THE COURT: I understand.

MR. BELL: We're bound by -- that would be an admissible document, Your Honor.

THE COURT: Well, that's true.

MR. BELL: But her unsubstantiated statement saying, he told me this, that's not --

THE COURT: Well, here's where we stand: We've got her telling the judge in a family court proceeding, my husband told me he had wives when he married me --

MR. BELL: That's right.

THE COURT: Judge found that as a matter of fact and she concluded as a matter of law that that marriage was bigamous and she was entitled to an annulment. Now, years later, she's using that annulment order, simply that finding of fact and really nothing else, to try to say that that marriage was void based on that assertion or that representation and you should hold that as the law in the case because Judge Andrews signed it, therefore my marriage to Mr. Brown did not have any impediments and I should be the wife.

Now, maybe that begs for discovery to develop whether or not that was a true representation on one side or, on the other side, because Judge Andrews

has conducted that hearing and that's the law of that particular case, does it bind me in this case? That's where we are. You agree?

MR. BELL: I think that's where we are, Your Honor, and --

THE COURT: And then you go into all the issues where you're collaterally estopped from attacking this order, but really and truly that was never litigated before Judge Andrews other than that representation. And there's some excellent language in one of the briefs yesterday -- I forgot whose brief it was. I've read so many. The -- Mr. Donsbach. Where is he?

MR. BELL: Right there, Your Honor.

MR. DONSBACH: Yes, Your Honor.

THE COURT: Talking about on page 18 of his brief the fact is I must consider whether the defense of collateral estoppel exists and whether or not these issues were actually litigated in the first suit. It goes on to a number of things. But he then cites in his brief the restatement of judgments, the second, which our courts have cited in the Pye case. And number 5, which strikes me as pretty compelling, is: There is a clear and convincing need for a new determination of the issue

because of the potential adverse impact of the determination on the public interest or the interests of the persons not themselves party to an initial action -- i.e., all the heirs, all the children, everybody else, the needy children who need to be educated -- and because it was not sufficiently foreseeable at the time of the initial action that issue would arise in the context of this subsequent action.

So it is a huge issue in the James Brown Estate's litigation as to whether or not she was the wife of someone who had multiple wives or whether that finding by Judge Segars-Andrews is the law in the case or whether or not discovery should be had or everybody can develop that so there won't be anybody saying, well, we don't know what would have been out there if we had a chance to look at it. That's where I am.

MR. BELL: Yes, sir. And I think -- you asked a moment ago a very important question, what would discovery consist of? And I think there are two things: First off, Your Honor, Mr. Ahmed is a citizen of Pakistan.

THE COURT: We assume he's still over there. I mean --

MR. BELL: I spoke to him.

THE COURT: I understand that. He may be gone now.

MR. BELL: But that was a number of years ago. I don't know whether the numbers would still be good or not.

But, Your Honor, I remember from watching the Broadway play Miss Saigon, there were questions in the Vietnamese culture as to whether marriage occurred that might not be recognized as a marriage in our country. And I don't know the legal standard of a marriage in Pakistan, whether that's an official act that our Courts would recognize or whether when he said I have multiple marriages, that meant multiple girlfriends. There are different standards. That's something to be answered.

There's a second thing, Your Honor: Tomi Rae Hynie has said, I believe, at some point that this was a marriage just to help him get through immigration. Well, I talked -- I did talk to a man in St. Lewis who told me that he had roomed with Ahmed and that he was at the marriage and that they lived together for some period of time. Now, whether he could still be found or whether he would say that under oath for a deposition to be taken for

use at trial, I don't know. But those are the facts that would need to be developed and discovered and undertaken if Your Honor sees fit to open discovery. So --

THE COURT: Well, as I understand it, the way we got here and, obviously, the way I've been handling this case is being criticized in some other areas of the country -- I'll leave that at that -- but when we had the status conference on where we stood, it was represented to me that we could resolve it on a stipulation of facts.

It seems to me that it has evolved into a factual dispute of some sort if I allow the parties to go behind Judge Segars-Andrews' annulment order. If that's the case, if that's not going to be the law of the case, so to speak, her representation -- her being Ms. Hynie Brown -- then I think we do have to have discovery. If we can decide it based on the legality of that annulment order, maybe we can decide it on this summary judgment.

MR. BELL: And that's a legal issue that I think Your Honor has to decide.

THE COURT: So that's your position, you think we need to --

MR. BELL: I think that's a legal issue that

you have to decide whether or not that is binding on all of the parties or whether the factual findings in Judge Andrews' order are collateral issues. The fact that he -- that the Judge annuled the marriage, that's binding on the world. The factual findings, we would argue, are collateral issues that are not binding.

THE COURT: Well, that factual issue is so important in this litigation and a naked representation that he was married to somebody else when it has the effect of what it could have in this case -- and it may be the truth. I mean --

MR. BELL: It might be.

THE COURT: It might be. But that's what I'm dealing with. And then, of course, not only the factual situations in the effects of Lukich and all the other arguments that both counsel have made.

MR. BELL: If it's a legal matter that is binding on all of us, it might end there. But that's a legal decision you have to make. But then if it's not binding on all of us, then it opens the door for discovery.

THE COURT: Thank you.

MR. BELL: Thank you, Your Honor.

THE COURT: Mr. Levenson --

MR. LEVENSON: Yes, sir.

THE COURT: I liked your brief. It was the easiest one to read.

MR. LEVENSON: Well, thank you, Judge. On behalf of my clients, Danisha Brown, Deanna Brown Thomas, Yama Brown and Larry Brown, I rise to urge Your Honor to follow what I thought was the plan that we discussed in Aiken on the 10th, which was to get this case in a -- with an adjudication on a summary basis so that it could be concluded one way or the other by -- your Honor said, rather parenthetically -- Columbia, when we were in Your Honor's court a couple weeks ago.

THE COURT: Well, that was the plan. But, you know, every plan, sometimes facts develop and you can't follow the plan. And people are saying now we have factual issues that need to be resolved, obviously I got to give you a little bit of time to do discovery to come back in probably the same situation.

MR. LEVENSON: Well, I rise to urge that you not do that. I understand there's been requests here for some discovery.

The Supreme Court has told this Court and the litigants in its decision that there are, quote,

major impediments to Tomi Rae's spousal claim, quote, unquote. The Supreme Court has told this court on page 27 that the Circuit Court did not acknowledge the sizable bar posed by a prenuptial agreement, unquote. I would think --

THE COURT: Well, we're not here on the prenup because that doesn't even come into play unless she was, in fact, his wife.

MR. LEVENSON: I'm simply observing -- the Supreme Court seemed to have made -- it wasn't called upon to rule on those issues at the time the settlement agreement was before the Supreme Court. But it seemed prepared to address some of the issues, and if Your Honor were to summarily adjudicate the claims that I've asked that you -- well, frankly, either way, at this point, if there was a summary adjudication, I believe the direction from the Supreme Court could be very prompt and would avoid the, what's likely to be, lengthy delay in this case, returning in a summary fashion to this Court following the discovery.

I know that Mr. Bell says discovery -- or Your Honor was asking what the scope of the discovery would be. But my problem is that -- exactly; it's like hurting the proverbial cats. We will be back

here in 2015 without a summary adjudication of this case, while in the interim we could get Supreme Court to decide this case.

And the worst that could happen would be the Supreme Court would say that this Court erred in failing to allow facts to be considered to collaterally attack the Charleston Court decision.

THE COURT: Thank you, Mr. Levenson.

MR. LEVENSON: Thank you, Judge.

MR. DONSBACH: Your Honor, if I may. John Donsbach. I agree with Mr. Bell in this matter that this Court cannot grant Mr. Rosen and company summary judgment because additional discovery would be necessary.

THE COURT: Why can I grant your side's summary judgment?

MR. LEVENSON: That's what I'm about to explain, Your Honor. In this case -- I want to take this Court back to Lukich, which is what the Court astutely --

THE COURT: Hold on one second, if you don't mind.

Mr. Bell, where is the stipulation that you referred to a while ago that Tomi Rae Hynie Brown could not provide any additional facts other than

her representation that was made in Judge Segars-Andrews' court? Number 18? Nope, that's not it.

MR. BELL: Give me just one moment.

MR. ROSEN: Number 18, Judge. It says: Petitioner's testimony was the only evidence for the Court. That's all it says.

MR. BEACH: No, there's another one.

At number 10, Your Honor, I think may be what we're talking about. It says here -- well, 9 and 10, actually, Judge. You see it?

THE COURT: I do.

All right. Go ahead, sir.

MR. LEVENSON: As this Court astutely noted when it began today, Ahmed's prior relationships don't matter, Your Honor. In the analysis of Lukich, this Court is absolutely correct; it doesn't matter if you're going to grant the LSA's summary judgment motion because there are three facts that have been stipulated to in this matter that make Lukich apply across the continuum. And I think Mr. Medlin has created the chaos that Lukich is trying to avoid. He's confused people a little bit by throwing out the ab initio and the continuum of how the analysis works.

I think what's important to recognize is the only three facts that matter in this case for the application of Lukich: Ahmed and Ms. Hynie were married, Mr. Brown and Ms. Hynie entered into a ceremonial marriage.

THE COURT: Correct.

MR. DONSBACH: And number 3, Ms. Hynie didn't get an annulment action until 2004.

THE COURT: Correct.

MR. DONSBACH: Those three facts, every person in this room have stipulated to.

THE COURT: Agreed.

MR. LEVENSON: There is no dispute. And what Lukich then does, it takes those facts and the Supreme Court takes the construction and says when we have that situation, the marriage as between the parties involved in the marital relationship -- and I think that's where the confusion comes in in Mr. Medlin's analysis -- is void ab initio. It absolutely --

THE COURT: Say that again.

MR. DONSBACH: It's void ab initio.

THE COURT: No. Say the first part of what you just said.

MR. DONSBACH: I said that Mr. Medlin's

analysis is --

THE COURT: No. What did you say the Supreme Court said about Lukich?

MR. DONSBACH: I said the Supreme Court's analysis and everything that they adopt through it in what they're saying is that when you apply those facts and their analysis, that the relationship is void ab initio. They're quoting the statute when they do it. And you have to take the three points that we pointed out in our brief and put together where they take the statute, the quotes from the statement, and the law that they put forward in Lukich.

And when you take their analytical framework that they put together, what happens is that you analyze every relationship for purposes of annulment under Lukich on a one-time-point continuum. You don't do it retrospectively, you don't do it prospectively; you take the point in time that you're trying to analyze, whether it's valid, and analyze it. That's what Lukich says in layman's terms, getting it down where the goats can get at it, which I like to try to do, explain it in straightforward terms. So in this case, that date is December 14th, 2001.

THE COURT: Marriage to James Brown.

MR. DONSBACH: Yes, Your Honor, that's correct. And that's the point in time on the continuum that the Lukich analysis applies. All we need to know at that point in time, Ms. Hynie was still legally in a relationship with Mr. Ahmed, she had not had it declared void as of yet, and so as a result, her relationship to Mr. Brown was void ab initio.

Now, this Court asked a question earlier, doesn't that make the Ahmed -- if their facts are correct -- and we would contend that they are not. It's our contention that that was a default judgment, there were services issues, there were all sorts of problems with the Charleston order. But even if their contention is correct and Ahmed did have other wives, it doesn't matter.

THE COURT: Why?

MR. DONSBACH: It doesn't matter for this reason: Yeah, their relationship is void ab initio under the Lukich analysis, absolutely correct, I agree with that point. But the issue is, that relationship, as to Ms. Hynie's ability to then go out and marry a third party, a person who is not a not party to the Ahmed-Hynie relationship, has to be declared void as to the world.

As to Hynie and Ahmed, that relationship would be void ab initio, from the beginning, as the statute says. But in order for her to get her capacity back to remarry, it has to be declared void by a court order of competent jurisdiction. That's what the statute says.

THE COURT: So you're citing right here from Lukich, what I asked about earlier, under the statute's terms: Wife's marriage to Husband No. 2 was void from the inception since at the time of that marriage, she had a living spouse and that marriage had not been declared void.

MR. DONSBACH: That is correct. There's an and there, Your Honor. And that's absolutely correct, it requires both. It means the relationship as to the parties. And in this case, it works perfectly on this continuum. I disagree completely with Mr. Medlin because both relationships, if the facts as they want to present them to this Court, would be void ab initio.

But Ms. Hynie did not have the capacity to get remarried in accordance with the plain construction of the statute, as the Supreme Court points out, until her marriage was annuled in 2004. And it's clear by the facts of this case and what's been

argued and put forth for this case, Mr. Brown and Ms. Hynie did not ever enter into a marriage ceremony after 2004.

THE COURT: Well, that's stipulated.

MR. DONSBACH: That's correct. So neither -- if their facts are correct and Mr. Ahmed had other wives, then, yeah, their relationship was void ab initio, but so was the Brown-Hynie relationship, because she had not retained or gained her capacity back --

THE COURT: She had not removed the impediment to the marriage to Mr. Brown --

MR. DONSBACH: That is correct.

THE COURT: -- i.e., the marriage to Ahmed.

MR. DONSBACH: That's exactly correct. And that is what Lukich says.

THE COURT: And that can be decided on summary judgment.

MR. DONSBACH: Yes, Your Honor, absolutely can. And that's why the LSA's motion is the only motion that can be granted today on summary judgment. There are a couple others, but that point is the biggest one because as a matter of law, there's no other fact or scintilla of evidence or anything that can be presented to this Court that would make it

so, because the three facts that matter have been stipulated to.

And so there is no doubt in my mind that this Court must grant summary judgment to the LSA Andrews based on Lukich and the analysis underneath it.

THE COURT: Thank you.

MR. DONSBACH: Thank you, Your Honor.

THE COURT: All right.

MR. SHAHID: Your Honor.

THE COURT: Yes, sir.

MR. SHAHID: It's interesting that folks standing in this courtroom, on the stipulation of facts, admit one of the most important facts in this case; that is a birth of J B , and his status regarding the legitimacy as a child of Tomi Rae Brown and James Brown. If this Court has a compelling reason to uphold that Tomi Rae Brown is the surviving spouse because that one issue alone as to his legitimacy -- let me go beyond that for a few seconds, Judge. It has been stated --

THE COURT: So I ignore her marriage to Ahmed?

MR. SHAHID: Your Honor, you're bound by the Charleston County family court order. The only person who can attack that order is the other party.

THE COURT: Who; Mr. Ahmed?

MR. SHAHID: There are two type of jurisdiction -- yes, sir, Mr. Ahmed -- in persona jurisdiction and in rem jurisdiction.

THE COURT: I'm aware.

MR. SHAHID: In persona jurisdiction the Court found attached to Mr. Ahmed. They have cited in their brief about in re jurisdiction, which I think is correct. They are bound by Mrs. Brown's status, and her status is her marriage has been annuled. If her marriage is annuled, that applies to the whole world. Now, they can't have it both ways in this thing.

And they talked about the point in time. If there's a point in time, the point in time happened, that Court found her marriage never existed. The factual issues behind it applied as the law in the case. If you say we're going to need to have discovery on this thing, what are we going to discover, because a statement against interest is credible evidence.

If a person makes a statement to a third party that's against their interest, that's admissible evidence. Now, what are we going to do? We're going to do discovery and go beyond Judge Segars-Andrews' order? Think of the chaos that

creates against public policy by undoing annulments or undoing divorces. What if Mr. Rosen decided not to do an annulment of that particular day --

THE COURT: Well, what if we didn't have Judge Andrews' order? What if simply Ms. Brown just says he was married to someone else? Is that enough to void that marriage right out the chute?

MR. SHAHID: Well, Judge, let's just take that point for a few seconds. If Mr. Rosen did not go and file that action in Charleston County and we came forward with competent evidence that he was married to other people, her marriage to him was void ab initio because that's what Professor Medlin said. It never happened. And the word that we should be using at that particular point in time is not that she married him; she attempted marriage, because it never was, it never happened, because he had the incapacity to marry her. It never existed.

Now, if -- you have to do something extra at the point in time. If you've got to do something extra at the point in time, the one thing that we have ignored in here is the second order, the consent order that Mr. Brown signed and filed ending his annulment case. And we're stuck with that order as well. He's stopped. Now, nobody in this

courtroom can go beyond what he did or he didn't do. And we know for a fact, which is stipulated as fact, the two orders were issued; one by Judge Segars-Andrews in Charleston annulling Tomi Rae Brown's marriage, and the second order in which Mr. Brown, during his lifetime, took Judge Segars' orders, adopted it, accepted it, urged the Court to approve it and to incorporate it, and then he took a step back and said, I'm ending the case.

The point in time is that consent order ending everything. The point in time is that during his lifetime, Mr. Brown did not file an action for divorce, did not file an action for annulment a second time. He adopted his status, which is then the status of the world to accept, and has to adopt; his status was, he's married to Tomi Rae Brown. So if you started going into discovery, what are we going to discover beyond these two orders? These two orders bind this Court, binds everybody in this courtroom.

If we start going back and undoing orders, we're going to be here forever. And the public policy that that violates, that creates a precedent of undoing what a family court judge has done, creates chaos, because orders, by their nature, have

got to be final.

Now, there is a procedure to come back and attack an order, under rule 59 and rule 60. Nobody has done that. They want to go back and have discovery to do what? They can't, they're prohibited from doing that.

THE COURT: Well, as I understand, the latest argument is to accept Judge Segars-Andrews' orders as a valid order. Even with that, it's still as an impediment to Tomi Rae's marriage to Mr. Brown because it had not been annuled before that marriage.

MR. SHAHID: Let's assume that's correct. Let's just assume that there's no retroactive application to Judge Segars-Andrews' order. What did Mr. Brown do when he was fully aware of that annulment order? What did he do? He asked the Court to adopt it and accept the findings of fact. He asked the Court to do that. He said, I want the Court to take that order in Aiken County family court and make it a finding of fact. That's his complaint. Then he punted and said, wait a minute, I'm not doing anything else.

Now, the LSA cannot take a position contrary to what Mr. Brown did. He has a fiduciary obligation

to follow what Mr. Brown did and did not do. He can't go beyond that. That's what Mr. Brown did. That's a stipulation of fact. What is discovery going to do to create anything different along those lines? Are we going to find a magical annulment order that Mr. Brown did? Are we going to find an imaginary divorce order that Mr. Brown did? It doesn't exist. And they can't come in and now seek to annul the marriage between Mr. Brown and Mrs. Brown that took place; they don't have the capacity to do that, it's too late. We don't need any more discovery, we don't need to engage beyond the stipulated facts because this Court is bound by those two orders. The status of Mrs. Brown from that annulment order is binding on everybody.

THE COURT: Thank you.

All right. Let's take a ten-minute break.

MR. MEDLIN: Your Honor --

THE COURT: Sir?

MR. MEDLIN: I'm going to be a while. They've raised a bunch of issues that I think I have to address for the record. So I don't know if that affects your timing for the lunch break or whatever.

THE COURT: No, sir. We'll keep moving along.

MR. MEDLIN: Very good. Thank you, Your Honor.

(Brief recess.)

THE COURT: All right. It's 12:30. I think I'll complete the last argument and then we'll see how much time we need for reply.

You've got one, don't you, ma'am?

MS. GILFORD: Yes, Your Honor.

THE COURT: Okay. And then if we all want to take a lunch break, we'll take a lunch break; if you don't, we won't. We'll just see where we stand.

MR. MEDLIN: Your Honor, I apologize. I didn't realize that Ms. Gilford wanted to speak, so when I made that comment before the break, I thought I was next up.

THE COURT: Oh, I thought you said you were mixed up.

MR. MEDLIN: Your Honor, I think everybody else in here thinks that.

THE COURT: Ms. GILFORD, what would suit you? What's easiest for you?

MS. GILFORD: This is fine here.

THE COURT: That's fine. Just don't act like some of these guys in here, speak up loud for me.

MS. GILFORD: Okay, Your Honor.

THE COURT: Yes, ma'am.

MS. GILFORD: Well, first I'd like to say that

I'm totally supporting the position of Mr. Donsbach because the case in Lukich does talk about a point in time. And that point in time is the point in time when the marriage took place on December 14th, 2001, between Tomi Rae and James Brown. At that moment, she was already engaged in a marriage with someone.

Now, Mr. Medlin talked earlier about having to file a court -- file with the clerk in order to terminate the prior annulment. In that case, Tomi Rae's annulment was not filed until -- well, it was entered on April 14th, 2004, so, therefore, the time that James Brown and Tomi Rae were married on December 14th of 2001, that order had not been entered yet. So under the Lukich case, at that point in time --

THE COURT: Not only that it hadn't been entered, it hadn't even been had. It wasn't in existence, was it?

MS. GILFORD: That's right, Your Honor. So under the statute that says -- and this is the -- when you marry someone and you're already married, the marriage is void. So at the time when Mr. Brown -- James Brown -- and Tomi Rae married, at that moment in time, she was already married to

Hynie Rae [sic]. That marriage had not been terminated by a decree by the Court so, therefore, at that moment in time, the Court would look and say, at that moment in time, that marriage would have been a bigamous marriage under the statute.

Now I'd like to go back for a moment and point out -- and the bigamous statute I'm referring to is 20-1-80, of course. I'd like to reference a case that John Beach passed out. And it's interesting because --

THE COURT: Which one is that, ma'am?

MS. GILFORD: This is the case Hallums vs. Hallums. When Tomi Rae did get her annulment before the Court in Charleston, she was the only witness that testified.

THE COURT: That's correct.

MS. GILFORD: And I will go into now some of the inconsistencies and -- and I'll bring up the prenuptial, not for the purpose of what Your Honor discussed earlier, but for the purpose of showing inconsistencies, because the South Carolina Rules of Evidence 804 and 807 and 808 require that there be competent testimony by the witnesses. And competent means you can consider bias of the witness, any type of -- the character of the witness should be

considered.

And the case -- this is on to the right about midway down. It talks about when a marriage -- and this is the Hallums case, which was passed over by John Beach. It says: When a marriage, in fact, has been established and is sought to be impeached and to be made void by proof of a prior marriage, the testimony should be clear and convincing, the presumption of law being in favor of innocence and marriage and against bigamy.

In this particular case, the Court said the testimony in relation to an alleged prior marriage between Bill Williams and another woman was insufficient. So the Court found the testimony was insufficient to annul and to make void the actual marriage to the plaintiff.

In this particular case -- and I would like to apply this to the actual proceeding -- the annulment proceeding which took on April the 15th of 2004. She was the only witness that testified, and there were inconsistencies in her testimony, which I think the Court should consider the character, the inconsistencies, the bias of the witness to determine -- or to make a consideration -- take into consideration, because if the order of the Court is

based upon testimony that -- and Mr. Bell also reiterated upon this, that the Court should have testimony that is competent under the rules. So that would be -- I'm just making a point there that the Court should consider that.

But even in light of that, I have, I believe, a stronger testimony -- or stronger argument with regard to why that order, the final order, which was the April 15th, 2004 order of annulment, is void because there was no service upon Ahmed. The -- and I go to the service of process, the affidavit, and the statute that allows service by publication, which is -- South Carolina Code Section 15-9-710 requires that the -- after due diligence is made, that the defendant cannot be found within the state -- and that would be within the state of South Carolina -- and that fact has to appear in an affidavit. That fact does not appear in the affidavit which is the affidavit of Mr. -- that is the joint stipulation of facts, and that is the affidavit of -- that's Exhibit 6 of the joint stipulation of fact.

The fact that -- and South Carolina law requires strict compliance with the requirements to service of -- for service of process. The fact that

that statement was not in there, Courts in South Carolina have found that affidavits are defective where they do not strictly comply with the requirements of the statute. And the statute says: When the person on whom service of summons is to be made cannot, after due diligence, be found within the state... and that fact had to appear within the affidavit. And the affidavit does not say that he could not be found within the state. As a matter of fact, Mr. Medlin, I think, was from Texas -- yeah, he had an address in Texas.

In addition to that, the affidavit of Hynie Rae, which -- well, before the Court, she testified in the proceeding on April the 15th, 2004, that Ahmed's last-known address was , however -- and that testimony is the transcript which is Exhibit 13, joint stipulation of fact. However, in the certified marriage license between Ahmed and Tomi Rae, it showed that the address was , not . So her testimony in the transcript that his last-known address was was inaccurate. And nowhere in the transcript does it discuss or say that after due diligence, Ahmed, the defendant, could not be found within the state.

So, one, the statement of his last-known

address was incorrect; two, the required language that the statute requires or the code requires is not there. It's not in the final order, it's not in the affidavit of service. In addition, there is inconsistency as to what was his last-known address. Tomi Rae's affidavit that's dated February 2nd, 2004 states that his last-known address was Apartment 1314, which is consistent with the certified copy of the marriage license which is on file here and it's also attached as Mitchell's Exhibit 32. That shows that the marriage license was mailed to Tomi Rae and Ahmed at , not .

So the affidavit -- in addition, the affidavit of Mr. Ronald -- and this is a minor point, but it's important when you put all of minor points together. I mean, if the code requires strict compliance, then it's important, it becomes important because, as I think Mr. Bell pointed out, the case Dallas -- I'm sorry, *Wilson v. Dallas* didn't know how quickly the annulment took place. There was a comment about that. And this annulment proceeded to the courts very rapidly.

And so if you look at all of the errors, the affidavit of Mr. Bodelli [phonetic], it is -- it says that on -- it's dated January of 2003, but it

says on December -- in December of 2003, I took the action of attempting to locate the defendant, Ahmed. Well, that's impossible because you can't sign something on January of 2003 saying that you did something in January of 2003 -- I'm sorry, I'm sorry, December. You can't sign something in January of 2003 saying that you did something in December of 2003.

So there again, that's a -- and it may have been just a typographical error; however, that error, in addition to the lack of the correct address, the failure to include that strict language that the statute requires after due diligence, cannot be found in the state, that amounts to a defective affidavit. And that affidavit was used for service by publication. The statute for service by publication requires strict requirements, and so if the affidavit that it was based upon, the order allowing publication, if the affidavit upon which it was based was defective, then that would make the order of publication defective.

In addition, the notice requirements are also -- they require strict compliance because if -- if Ahmed was never properly served, that would mean that the Court didn't have personal jurisdiction

over him. If the Court didn't have personal jurisdiction over him, then anything that the Court entered would be void.

And lack of personal jurisdiction can come several ways. It can be -- they got failure to properly serve or it can also be by failure to give notice of a proceeding. And in this case, the notice requirements also were not properly met because if the notice of the hearing which -- actually, the publication that was published three weeks in the -- I think it was the Houston Chronicle saying that the hearing would be on March the 29th. I believe it's the 26th. But the hearing actually took place on April the 15th, not on March as the date that was published. So even if he had seen it in the paper, there's a discrepancy there. So, again, strict compliance because we're talking about due process of a person being able to have his day in court and to be heard.

So lack of personal jurisdiction for both reasons that the -- there was no proper service upon him personally and that the Court -- that there was no proper notice of the hearing that took place. And so for that reason, I would argue that the Court didn't have jurisdiction to enter the order. Now,

if the Court didn't have jurisdiction to enter the order, then the order that was entered saying that the annulment of -- the order annulling the marriage of Tomi Rae and Ahmed on April the 15th of 2004, if that order is void, then that would mean that they'd still be married.

So -- and then -- and now, that's a separate argument in addition to the fact that Tomi Rae and James Brown had already entered into a contractual marriage which was void at the time that they entered into it because Tomi Rae was already married December the 14th, 2001 when James Brown married Tomi Rae.

So for two different reasons, actually -- and I don't want to confuse the two. But, one, when Tomi Rae -- under the Lukich case, when Tomi Rae married James Brown, she was already married and no court order had been entered terminating that -- or terminated by annulment, so she was still married, therefore her marriage to James Brown would have been void for that reason. But at the time that she did go to court to get an order terminating her marriage to Ahmed, then if -- the Court did not have jurisdiction at that time; then for a second reason, that order would have been void and she still

would've have been married to Ahmed; and then for a third reason, her testimony was, I will say, not the most credible and that the Court -- and that's not a reason to overturn an order. But I would argue that -- and this Court, I believe, has jurisdiction, although the Courts have said that -- the statute says that the family Court has jurisdiction with regard to annulment. And the Lukich case even talks about the reasoning for that, especially if the annulment order states void ab initio, is because it would create conflict or chaos where different Courts are ruling upon property, child support, and all these different things.

However, with regard to the issue of jurisdiction, I argue that that's not the ancillary proceeding that the Lukich case was referring to when it says the family Court has jurisdiction over matters relating to annulment, because it would be a matter relating to whether the Court had jurisdiction to enter an order of annulment because before the Court can enter on the merits, the Court has to have jurisdiction over the person or the subject matter of the case.

And so for that reason, I would argue that the Court, based on the case of Foster, that the Court

of Common Pleas has jurisdiction to enter or to hear matters involving marriage contracts. So it would be more of a jurisdiction of the Court for that reason. And...

THE COURT: Anything else?

MS. GILFORD: Just one second, Your Honor.

THE COURT: Yes, ma'am.

MS. GILFORD: Oh, yes. I'd like to -- the Court in the case of -- bear with me just a second, Your Honor.

In the case of *Prevatte vs. Prevatte*, 297 SC 345, the Court said that a relationship illicit at its inception does not ripen into a common law marriage once the impediment to marriages is removed. Instead, the Court said, the law in South Carolina presumes that the relationship retains its illicit character after removal of impediment. And in order for a common law marriage to rise in a second marriage after the first marriage is annuled, the parties must agree to enter into a common law marriage after the impediment is removed.

So in this case -- and this on a completely separate argument without waiving any arguments I've already made -- when Tomi Rae received the annulment on April the 15th, 2004, that would have -- under

this particular case, that -- annulling her marriage to Ahmed on that date would have removed an impediment to her relationship to James Brown and after that point in time -- prior to that point in time, she did not have a relationship or contractual marriage with James Brown. However, under this case, and I think South Carolina case law, after that point in time, if they chose, the parties could then agree that they would like to continue in a common law relationship. And I'd like to -- just for --

THE COURT: Or either get married.

MS. GILFORD: Right, get married or show to the world that they are still involved in a common law marriage. But in this particular case -- and I think it's important to make sure it's on the record because I see some inconsistencies here, that James Brown made sure -- he made sure that his intention was put out there. He filed an amended complaint to his annulment action after the Court entered this annulment for Tomi Rae and Hynie [sic]. So after the impediment was removed, Tomi Rae and Hynie's [sic] marriage was annuled, then James Brown took the action of amending his complaint to say, I want an annulment from Tomi Rae. Now, that was showing

that he was not of the intent to enter or remain in a common law marriage.

And not only that, when the parties signed the consent order -- I think it was dated August the 14th of 2004 -- the consent order said -- and he agreed to pay her attorney's fees. But she in turn agreed that she would not claim -- not then or ever in the future claim a common law marriage. And I think that the reason it only referred to common law marriage is because if you look at the statute and you understand the statute that says the initial ceremonial marriage in December of 2001 was void, then he would have had no reason to mention that marriage, because it didn't exist. So under that line of reasoning, then it would have been sense for him to say that she's only -- she's not claiming any type of common law marriage at that point in time.

Now, that -- and this Court can take judicial notice or -- or can estop Tomi Rae from changing her position and now claiming common law marriage with James Brown. In addition -- now, there's several things that -- I mean, I've seen -- for instance, the affidavit which was recently filed by Tomi Rae and filed on September the 24th had attached to it some pictures of James Brown and Tomi Rae together.

Now, that's one of the things that can be used. It says your conduct can show that you intend to maintain a common law marriage.

Now, this picture -- and I look at the bottom of the picture and there's a date on here and this date is December of 2003. That date would have been before the impediment was removed so, therefore, this picture could not be used to show that James Brown intended to enter into a common law marriage after the impediment was removed. So I would just like to make that point on the record.

And also, there was a mention about a book. James Brown's book said that he was married to Tomi Rae. Now, as an author I know that when you first edit a book and when the book comes to print or publication, there are many facts in there that could have changed and you may wish you had not said certain things or done certain things, but it doesn't change what's printed. So the fact that there's a book out there that says -- where James Brown says that he was married to Tomi Rae does not mean that that book was not initially started prior to the impediment or prior to him learning that there was another husband because when he -- husband of Tomi Rae. I mean, when he entered into a

prenuptial, she never told him that she had another husband that -- from which she had not had an annulment or divorce. When he married her December the 14th, 2001, she did not disclose that she had another husband from which she had not received an annulment or divorce.

And even though -- and this goes to credibility again. Even though the prenuptial agreement said that the parties had disclosed and considered all the facts that were pertinent to them entering into the agreement, he could not have considered everything if he did not know that she was married to someone else at the time that she signed the prenuptial agreement on November the 27th, 2001, and at the time that he married her on December the 14th, 2004, then he could not have had all the facts. But as soon as she did learn that she had another husband from which she had not received an annulment or divorce, he went straight to the court and he filed for an annulment. So in January -- I think it was January 27th, 2004 -- he immediately filed for an annulment. Of course her annulment was filed before that time. But again, he expressed his intent that he -- when he did learn the truth, that he wanted out of the contractual relationship and he

also made clear that he did not want to maintain a common law relationship with her.

THE COURT: Thank you.

Mr. Barr, aren't y'all together?

MR. BARR: Yes. I just want to make sure we're on the record. We weren't here when we first started.

THE COURT: Sir?

MR. BARR: We weren't here when the Court first started.

THE COURT: That's right. You were late.

MR. BARR: Yeah. William Barr and Vera Gilford.

THE COURT: Mr. Donsbach, did you tell me that if we assume that the Segars-Andrews order is legally binding and correct, it still makes no difference under your analysis?

MR. DONSBACH: Yes, Your Honor, that's correct.

THE COURT: And why is that?

MR. DONSBACH: Because even if the Ahmed-Hynie relationship is void ab initio, as they contend, as a result of those facts being correct -- now, we of course --

THE COURT: I understand that.

MR. DONSBACH: It doesn't matter because it was

never declared void by a competent Court of jurisdiction, as the statute and construction of the statute requires, until 2004. And so as to the parties involved in that relationship, Ms. Hynie and Mr. Ahmed, it was void from the beginning, if their facts are correct. But what that means is that Mr. Ahmed and Ms. Hynie could not pursue a marriage or the obligations or the restrictions or the alimony or whatever you want against each other because there was no marriage.

Now, as to the rest of the world, that marriage certificate was not invalidated until 2004. So the rest of the world, i.e., third parties or, in this case, Mr. Brown, would have no way to know that that impediment is removed until 2004. This is the idea of the chaos that Lukich is trying to avoid. It's drawing clear lines by saying, as to the parties, it's void ab initio; as to the rest of the world, until it's declared void, there's an impediment to marriage to a third party.

And that analysis works in all of the relationships in this case. They want to argue that Mr. Brown didn't go get an annulment or didn't finalize his own marital situation because he entered into this relationship with Ms. Hynie. The

Court could even determine -- now, we're not agreeing that that's correct, but the Court could agree that's correct. Had Mr. Brown wanted to go enter another relationship, he might have needed to clear up that consent order a little bit more to get that relationship annuled. But as to the relationship with Ms. Hynie, it was void ab initio. And neither one of them could enforce rights against the other because it was void ab initio, as the statute says. But as to the world, they had to have it declared void by a Court of competent jurisdiction which means that, sure, they could make the argument that Mr. Brown needed to have that consent order cleaned up, but it didn't matter because we're not here to argue that. We're not here to argue the third party that came after Mr. Brown and Ms. Hynie, we're here to argue the party, Mr. Brown, that came after Ahmed and Hynie.

And that's why Lukich analysis works on a continuum in every relationship, and it applies and gives you the same result every time, regardless of why the marriage was annuled too. That's the sublime beauty of the Supreme Court decision. We don't have to get into the void, voidable; they've taken that out of play. They've basically said,

look, it's a timeline, it's a point in time, that's it, and that's what we're going to make it be. And that's what they said. And they effectively picked up through the statement second of marriage when they said if the Court of Appeals pointed to -- which laid this out in as crystal clear of fashion as possible when it said that just because the marriage was void ab initio, it does not validate the second relationship until that second relationship goes through an either common law or ceremonial marriage after the impediment is removed. And that's Lukich. And that's why this Court can make that decision today.

THE COURT: Thank you.

All right. Who's in favor of some lunch and who's not? Who wants to do what?

MR. ROSEN: We'd like to move on.

THE COURT: All right. Anybody else? Who wants to break for lunch? Raise your hand.

MR. MEDLIN: Your Honor, I'm going to be quite a while.

THE COURT: Does that mean you want to break for lunch? What does quite a while mean; 30 minutes?

MR. MEDLIN: Forty-five minutes, an hour maybe.

I got a lot to cover.

THE COURT: Well, I understand that.

All right. We'll take a lunch break and start back up at 2:00.

(A luncheon recess transpired.)

THE COURT: Okay. I think where we are now is, Professor Medlin, your rebuttal or whatever you want to call it.

MR. MEDLIN: Thank you, Your Honor.

We've talked a lot about some factual issues, affidavits, issues about prenups and the focus about the diary. But again, we argue that none of that matters today; we think we can get a ruling on the law. And I would like to explain a little better the status of this case at this point.

Our competing summary judgments are simply to determine whether Mrs. Brown is a surviving spouse for the elective share and omitted share purposes; again, a probate issue.

To make it clear to the Court, of course, even if she is a surviving spouse, she still has to overcome the question of whether she waived any spousal rights because of an alleged prenup. We don't think she did, but certainly --

THE COURT: That's still there.

MR. MEDLIN: That's an issue to go to. And also, the Supreme Court mentioned the fact that in the 2000 will and trust, Mr. Brown may have had some -- they even ruled this, but may have had some language that overrode the omitted spouse statute, which a testator can do. You cannot override the elective share statute, but you can do that. So all we're doing today is really affecting nonprobate property. We will affect nonprobate property today by your ruling.

If, in fact, Mrs. Brown is the surviving spouse, it legitimizes J B . Now, he's legitimized by their attempt to marry for the purposes of intestates. But this would legitimize him for other purposes. And certainly, I think, that we've got enough evidence in the record that Mr. Brown was saying that it was his son and, in fact, we now have two DNA tests. And it would be a shame not to get that established. It will get Mrs. Brown some social security and health insurance, perhaps some termination rights. From the Estate's prospective, it will confirm what was on the tax return with the IRS and which the IRS accepted, in fact, that Mrs. Brown was the surviving spouse of James Brown.

So to clean up a whole lot of issues that won't affect the probate assets -- because even if she's a surviving spouse, those issues get resolved, but not necessarily the probate estate. There will be another date to take a bite at that.

THE COURT: And how is she a surviving spouse?

MR. BELL: She's a surviving spouse, Your Honor, because under Section 62-2-802, which is the section that I handed out earlier, it says that one is not a surviving spouse if she has been divorced or her marriage has been annuled. And she has presented all the evidence she needs to present for purposes of 62-2-802; she's got a marriage license, she's got a ceremonial marriage and, in fact, it is now too late for Mr. Brown or those standing in his shoes to annul that marriage. Certainly he didn't try to do that. He, as we know and it's part of the stipulation of facts, withdrew his annulment complaint and consented, without prejudice, of course, that the annulment complaint was withdrawn.

Now, again I ask the Court to take judicial notice of the fact that there's no filing anywhere in a court -- I think this is correct -- showing that he obtained an annulment or a divorce from Mrs. Brown before death. So everybody here is

standing in Mr. Brown's shoes; the LSA is representing Mr. Brown's estate, all the other parties are claiming through Mr. Brown and, in fact, that's the privity that we're talking about.

Now I know Mr. Beach brought up privy with respect to collateral estoppel issues and so forth, but we're really talking about the privity that stems from everybody in here claiming through Mr. Brown. So what affects Mr. Brown affects all of them in the same way.

Now, there were several arguments made this morning that we'd like to disagree with. First of all, Your Honor, with respect to the two different marriages in Lukich, this quote that came up several times this morning -- and, in fact, Your Honor, I believe you raised it -- which says that under the statute's terms, Wife's marriage to Husband 2 was void from the inception, since at the time of the marriage she had a living spouse and that marriage had not been declared void. All right. So we're focusing on the first marriage in Lukich, which makes it different from our case.

In Lukich, the first marriage was, in fact, voidable because it was based on intoxication. And when you have a voidable order, the order takes

effect going forward only; otherwise, it's valid until someone issues an order finding that it's not. But the statute in every case, including Lukich, as to the second marriage says that a void marriage is never a marriage. It's never a marriage under the statute, it's never a marriage under the cases, with some exceptions about the difference between status and ancillary issues that I'm going to talk about that doesn't affect our argument, and it follows the public policy that people should never enter into a bigamous marriage in South Carolina. So the status is what's the issue here. And Tomi Rae's status was that she was never married to Ahmed ab initio. Every case says that with respect to the status of the case. Now --

THE COURT: And that's based on the fact that he had wives or other marriages?

MR. BELL: Correct. And, Your Honor, if I may, I'll get to the issue of whether we can look underneath that existing order, which, of course, we don't think we can. But it depends on the fact that, in fact, it was bigamous. In fact, Professor Stuckey, in his treatise on marital litigation in South Carolina, which I understand is the only treatise dealing with marital litigation in South

Carolina, says that clearly. It says that bigamous marriage is void ab initio under the statute. One doesn't even need to get an order to invalidate it because it never has validity.

So Tomi Rae's status assuming, again, the validity of the bigamy of Mr. Ahmed, which we think we have to assume, is that she was never married. She never personally carried an impediment into a marriage with anyone else. And there's no case that we could find in South Carolina that says anything to the contrary. The treatise says the same thing and, in fact, Lukich says the same thing. Once you get the right marriage in perspective, it's the second marriage that was void ab initio. Didn't even need to get an order as to the second marriage, it was void ab initio.

THE COURT: Because the first marriage was not void, it was voidable --

MR. MEDLIN: Voidable.

THE COURT: -- and had not been voided.

MR. MEDLIN: Correct, Your Honor. That's our position.

Now, there was some discussion about the order itself and that somehow the order is separate and apart from the findings of fact and conclusions of

law. Well, again, Mr. Brown affirmed the findings of fact in the pleading, he wanted those facts to apply. And again, Mr. Brown didn't attack the Ahmed-Tomi Rae order. And, in fact, Mr. Brown withdrew his annulment and he never tried to terminate his marriage to Tomi Rae in any way. And as we've seen in evidence in the court, he's held himself out to be married up until the time of his death.

Ms. Gilford raises the issue of the picture and the book. Well, the book is both copyrighted and published in 2005, which is after all of the family court shenanigans. So even though the picture may have been a 2003 three picture, and just one of the pictures in the book, the autobiography, now that she's raised it, says, this is my wife. And by the way, Your Honor, if the other side who wants so much discovery cares about what James Brown wanted, which they should -- it really doesn't matter for purposes of the summary adjustment argument -- but if they cared about it, they don't need to -- if they want to know what he thought, they don't need to ask somebody else, they can Google any number of videos and so forth. They'll see all that and --

THE COURT: Well, I'm not into Googling videos

and --

MR. MEDLIN: And I understand that.

THE COURT: I want to know --

MR. MEDLIN: All right. So, Your Honor, the --

THE COURT: -- about the two marriages.

MR. MEDLIN: So they say the order doesn't preserve the findings of fact and conclusions of law. Well, that's like saying two plus two equals four, but we can go back and dispute whether two plus two is there. If that order is going to be affected, then it can't be subject to attack later on. And again, if it's going to be collaterally attacked by Mr. Brown, again, we think he's estopped from that and we think he's taken positions to the contrary, accepted benefits, et cetera, of all that, things you've seen in the brief. If he's going to do that, it's too late. The only way he can try to annul his marriage or attack collaterally the validity of that order is to bring his own annulment action -- how else can he do it -- and, under the Probate Code, for purposes of this, it's too late. Hatchell-Freeman case and others and Professor Stuckey all say, clearly, you can't bring an annulment after the fact. So it's too late to attack that order.

And it wouldn't make sense to be able to separate the orders, so what are we going to do? We're going to find that the family Court made an error? Only the family Court has jurisdiction over annulments. The probate Court and the circuit Court -- and we're sitting in probate for this -- clearly don't have jurisdiction over annulments, so we're going to question the validity of the basis of the order that the Judge with exclusive jurisdiction in South Carolina determined after hearing the case --

THE COURT: They're not --

MR. MEDLIN: -- in realtime.

THE COURT: They're not contesting the order, they're contesting the facts from which the order was --

MR. MEDLIN: Well, so what if it turns out, Your Honor, that, in fact, the facts and conclusions of law are incorrect as you see it? Are you going to overturn that order? Because that order says that it was an annulment. So if the facts aren't right, then how is that going to happen? And that means that we would never have finality with annulment orders.

If third parties can go back, particularly

after the decedent dies, and attack orders, divorce or annulment, the orders would be never final, it would go on forever. And the next time somebody walked up and decided to adapt the order, we'd have to go through the same thing. It seems to me, clearly, the Court with the jurisdiction to determine the annulment is the only Court to consider that. And it considered that and it could have been appealed, but it wasn't. And so the jurisdictional issue, I think, is a real problem for this Court to dig underneath that order.

Now, I read this morning about how former Coach Lou Holtz -- in fact, I saw him a couple of times give speeches where he would tear up a newspaper and turn it into a newspaper. Well, he was a magician, so part of what he would do in his talks is perform magic. So I sort of felt like that was happening today as I was listening to those burden of proof arguments.

Again, I really don't think we need to worry about the burden of proof as a matter of law. If Tomi Rae has the burden of proof, she's given a marriage license and unless somebody can show that there's been a divorce or an annulment, as the statute requires, before his death, then that's the

end of the story; she's satisfied the burden of proof, if any. But they're acting as if --

THE COURT: Unless that marriage to Ahmed was still in effect when she married Mr. Brown.

MR. MEDLIN: Well, again, she satisfied the burden of proof. They've got to figure out how to do that, Your Honor, and that would be to overturn the standing family court order by a Court that doesn't have jurisdiction over that.

THE COURT: So your argument is very simple.

MR. MEDLIN: Well, it's more complicated than that, Your Honor, but that part is very simple.

We're not contesting the Ahmed marriage, that's not the subject of this action. They're contesting the Tomi Rae marriage. They've got the burden of proof. All this stuff about who has the burden of proof and whether we satisfied that, we've already done that, that happened, it's a binding family court order and, in fact, happened while Mr. Brown was alive as opposed to doing it after the fact and maybe undoing his intent. So I think we've got the burden of proof argument upside down.

Now, that chart, I am impressed. The problems with the Hallums vs. Hallums case, as I read it, is it isn't exactly on point because in Hallums case,

they were deciding the validity of both marriages in the same case. They didn't have, unless I'm wrong, a preexisting order like we do in this case. So the Court could take all that into account and, in fact, made the determination that the first marriage was bigamous. So she was married and then her second marriage was, therefore, bigamous.

The result would have been the opposite, by the way, if it had found to the contrary. If, in fact, it had found, issued an order like we have that the first marriage isn't bigamous, then we'd have a different result and it would have been void ab initio, but because this order wasn't sought until after the second husband died. So if the order isn't void ab initio against the decedent, then why did we have the Hallums case? The difference is Hallums decided both marriage issues in the same case, and in our case we already have an existing order that was obtained while the decedent, the second husband in this situation, was alive. It was pre-probate code, so we didn't get into those jurisdictional issues.

So it's not the same case by any stretch of the imagination because we're missing that first order, but it does show that if the Court had found that

the first marriage was bigamous, then this idea of point in time is consistent with what I'm saying. The marriage is void ab initio and would not have been an impediment, therefore, to her second marriage, even though the order wasn't sought to be obtained until later.

Now, we don't know if you want to get into these issues or not. And if you do, Your Honor, then Mr. Rosen will be happy to address it. But the focus of our estoppel argument was more of an equitable estoppel acceptance of the benefits arguments. I don't understand estoppel or res judicata or any of that. But I do know that Mr. Brown accepted the benefits of his marriage to Mrs. Brown, including --

THE COURT: Once we start getting into estoppel and all those issues, we may be getting into some real factual issues that would need --

MR. MEDLIN: So then --

THE COURT: -- some discovery.

MR. MEDLIN: And again, I mean, I think that was a nice newspaper. But I think if we don't have enough facts to justify our summary judgment, then certainly the reverse is going to be true. But I do think we have enough facts because I think the law

is on our side and I don't think we need discovery. And I'll address that in just a little bit, although I don't think I can address it as eloquently as Mr. Shahid did.

If we go back into the order, it raises all kinds of concerns, not just from a subject matter jurisdiction standpoint but, for example, what if Ahmed, who now has known, thanks to Mr. Bell's affidavit, for at least six years that his marriage was terminated, what if he relied on that and got married to someone else? Are we going to undo that family court order with the impact that it would have on him and maybe his children if he has any? So to go back in and dig up these family court orders, jurisdiction aside, raises all kinds of possible chaos. Again, Mr. Brown apparently went to his grave thinking he was married, so we're going to switch that as well? If we had him here, he might say, well, of course not, I don't want that to happen. So we're not just impacting this case when we start digging back into that order and trying to figure out what happened. And again, I'll discuss more of that because it came up in a different setting as well.

Mr. Beach raised the Joye case, and there are

other cases that are similar in what they say; the Rodman case and the Splawn case. In fact, Professor Stuckey notes this as well: In the Joye case, the Court never said that a bigamous marriage is not void ab initio; in fact, it said the opposite, just as I read every case to say.

THE COURT: Well, nobody contests that, do they? A bigamous marriage is void.

MR. MEDLIN: Well, they are contesting it.

THE COURT: And is no marriage at all.

MR. MEDLIN: Well, they're saying that under Lukich, we wouldn't prevail even if she weren't ever married to Ahmed because we didn't get the order in time. I think that's a pretty important argument that a bigamous marriage is never valid, and that's what every case has said.

Joye was dealing with an entirely different situation. You've got a man who's the first husband who's required to pay alimony, he moves off, she then marries a second husband, and then the argument is whether that second marriage is bigamous and invalid. And the Court said, sure, you're still married to the first husband. So then the question became, should the first husband continue paying alimony because she'd attempted to enter into a

bigamous marriage that was never valid? And the Court of Appeals said, no, we're going to go with the void and voidable distinction and, in fact, you need to keep paying alimony. Seems rather inequitable, but that's what they did. And that Supreme Court didn't do anything other than make a nice recitation of the different theories of a difficult problem.

Because a marriage is void ab initio, it created this ancillary problem of what do we do with the existing husband's obligations for alimony. And it said, we've looked at the different views that other Courts have taken around the country, and what we've decided is for that issue, that ancillary issue, we're going to go on a case-by-case basis; in other words, they're going to look at the equities of that. It had nothing to do with the marriage that was declared bigamous as void ab initio; in fact, that's what triggered that whole concern. There's a difference between status and ancillary issues, there's a difference between status and equitable disruption and division of property, because if you found that a marriage was, in fact, invalid and had to be annuled -- and that could be either voidable if it's not bigamous or void if

so -- you've still got to figure out how to undo the property. And, in fact, the statute in the family code says that the family Court has jurisdiction to deal with those kinds of equitable distribution issues. So it's the status that matters. That's how you reconcile all these in rem cases and so forth.

Tomi Rae's status was that she had no impediment to marrying James Brown. That's what every case has said and that's what Lukich says. When it talks about that court order before the second marriage, it's only because it was talking about a voidable marriage, not a void marriage.

If Joye says something other than that, then Joye is overlooking the statute. And I'm no kind of law scholar, among many other things I'm not, but I don't think that that Court could have overturned a statute unless it found it unconstitutional. The statute says what it says, as we discussed this morning. It says void and the Court didn't say, oh, we're changing what the statute says as to status; no, the Court just said the status is what it is, we've got to deal with an ancillary issue. And again, there are no ancillary issues with Mrs. Brown. The sole question is this: Was her

status married to Mr. Ahmed when she married Mr. Brown or not? And the status is, by statute, by every case, including Lukich, as to the second marriage, she wasn't married.

THE COURT: Married who?

MR. MEDLIN: Ahmed.

THE COURT: Why? Because --

MR. MEDLIN: Because a bigamous marriage is void ab initio and, again, according to Professor Stuckey, you don't even need a court order for that. But we do have a court order that proves that. And that's stipulated too, but we wouldn't even need that, according to Professor Stuckey.

So when they talk about the Lukich quote and add the and a court order requirement, they're trying to stick that into the second marriage, the bigamous marriage. But, clearly, the Lukich Court was talking about the voidable marriage. That's what's consistent in all this, it's the status; otherwise, it seems rather foolish to say that a marriage is void ab initio and that you don't even need an order to prove it so that someone who finds out that she's been in a bigamous marriage can't marry someone else even though her status says she's single, not married. Again, it just seems to makes

no sense to me.

And the other Hallums case, they never married, and Mr. Beach wanted to talk about the property issues and somehow that we're here not dealing with marital property because we don't know whether they were married. Well, that seems a circular argument. We get there only if, in fact, there wasn't a marriage. Again, we've got the marriage license, we've got the certificate, we've got a binding court order, we've got the statute, we've got all the case law that says she had no impediment to marrying James Brown and the only way that James Brown could have attacked that order and could have terminated his marriage to Tomi Rae was either through annulment or divorce, and under the probate code it's too late. It's the date of death point in time that's so crucial here.

I'm sorry, Your Honor. I'm trying to be as brief as possible, so I apologize.

THE COURT: You don't have to.

MR. MEDLIN: Again, this is so far out of my league. And just to address another issue -- but I understand Mr. Rosen whispering to me earlier, the testimony by Tomi Rae wasn't hearsay because it was based on the parties' admission, so that's not

hearsay. But that really doesn't matter because, like I've said, we can't attack that anyway.

The Wilson v. Dallas case, with respect to Lukich, Your Honor, if Lukich said what they wanted it to say, we wouldn't be here today, because all of that had been teed up for the Supreme Court. And, in fact, I would ask that it be permissible for you to take judicial notice of that, and that would be the transcript of the oral argument and even the tape of the oral argument which involved a rather contentious debate between the Chief Justice of the Supreme Court and the former Chief Judge of 4th Circuit Court of Appeals. Made me uncomfortable, but it was contentious.

Chief Justice said that Lukich killed Tomi Rae's marriage to James Brown. And Mr. Wilkins -- more on that in just a second -- said, absolutely not, that's not what your case says. And they argued back and forth about that. And when the opinion comes out, the Court doesn't say, as it could have so easily said, if the Chief Justice left was convinced that she was right, convinced her colleagues that she was right about that, they could have just said Tomi Rae's not married because of Lukich. But the Court didn't say that. Of course

we're just going to leave Lukich alone, we're not going to deal with that.

What worries us about the alleged rights of Tomi Rae are the prenup and the 2000 will and trust which, of course, was executed before he ever married Tomi Rae and before he ever had Little Man. So that's what they sent the spousal issues back on, those two things. If you take judicial notice of that argument, one has to come to the -- inference if not the conclusion that if Lukich killed Tomi Rae, we wouldn't be here today; the Supreme Court would have killed her based on that colloquy between the two.

Now, Your Honor, just to address some of the issues in the brief, which I think are legal arguments, this goes to standing and estoppel: Mr. Bauknight, we think, represented the Estate during the appeal and the trust. We understood that you terminated the previous fiduciaries, which is the May 26, 2009 order, we understood that Mr. Bauknight rightly was operating in those roles for the long period of time that it took to process the appeal and, by the way, process other appeals that had already started, like the Cannon matter where Ms. Pope particularly didn't want to step

aside even though she'd been removed and so Mr. Bauknight had to go to considerable trouble and expense for the Estate to get her replaced so that he could argue on behalf of the Estate.

Now, our argument there is that Mr. Bauknight, who did not sign the settlement agreement, operated under the settlement agreement. He acquiesced to it, he argued for the validity of the settlement agreement before the Supreme Court. Billy Wilkins was his lawyer. Billy Wilkins signed the briefs on his behalf. The only other person who argued at that oral argument was Sonny Jones from the Attorney General's Office. So everybody involved -- and, by the way, every party here except for those who have just had their illegitimate status determined, Michael maybe being the only one that I can think of who's had it determined yet, signed on to the settlement agreement. And the settlement agreement says a couple of important things. But the LSA has taken the position in the first brief that, well, no, Bauknight didn't really represent the Estate, Pope did, and we don't like that, we think that causes all kinds of problems. How do fees get paid, how it contracts with the Estate binding entered into in the meantime, we just think that's a

remarkable argument.

And then the response after we made that argument and our reply brief was, well, no, actually, Pope and Bauknight both represented the Estate, which creates all kinds of other problems. So they all argued at that time through Mr. Wilkins, through the brief, that -- and I can't recall if Sonny Jones had to bring this up, but certainly he was onboard with this -- that Lukich didn't apply to invalidate the marriage between Tomi Rae and James. So they all agreed to it. The Supreme Court didn't take the easy answer, which would have been, well, if Lukich says what the contestants say, we'll just say that now. They didn't do that.

So we think that our understanding of Lukich is on all fours with the statute in every other case, but also inferentially with the Supreme Court's order in that situation. Now, importantly, that settlement agreement with respect to binding the parties here would bind the LSA because Mr. Bauknight went along with it, and we're happy he did -- listen, we think Mr. Bauknight is entitled to being knighted. So he did a marvelous job for the Estate and he continues to do so. That's not us saying those things, that was the LSA saying that

Pope represented the Estate during the appeal.

But we think Mr. Bauknight binds the Estate, which I argued to you before unsuccessfully, should be the only party to the elective share omitted spouse's share. But that aside, everything other party to this case that has been allowed to intervene, other than those illegitimate children, one or more who have just been recently added, were also signatory parties to the settlement agreement.

And here's what the settlement agreement said: That the agreement is a binding private settlement agreement under section 62-3-912 of the Probate Code. You've heard this before, Your Honor, but it's been a few years since you've had to deal with this. 62-3-912 allows the parties to an estate, those who have claims against the Estate including Mrs. Brown as a claimant under the elective share, to agree. Now, the statute clearly says that that binding private settlement agreement is binding among the parties. Now, of course it can't affect those who aren't parties -- creditors, other claimants, parties who haven't joined in -- and, of course, because of that, we've stipulated with the three potentially illegitimate children at the time that we wouldn't let that settlement agreement

affect their rights. And that's still the case. They're here because they're worried about the termination rights. They would take, at best, utter intestacy. And they're not arguing for an intestacy.

So we're good to our word. We're not doing anything in the world to have that settlement agreement take away any rights that they have. But the settlement agreement said it's a binding private settlement agreement, which is allowed by law without Court approval, even if we don't get Court approval. Well, one Court, in my opinion, got it right, but we didn't get Court approval, ultimately. Settlement agreement still stands among the parties.

THE COURT: Does it?

MR. MEDLIN: Yes, Your Honor, it does. It says so. It says it's a binding private settlement agreement --

THE COURT: I know what it says. But didn't the Supreme Court throw it out? Didn't they --

MR. MEDLIN: Your Honor, we also sought Court approval. That's separate, separate sections, 62-3-1101 and -1102. You can do either or you can do both. And that language clearly says we were going to do both. We knew we were going to get a

settlement, mostly because the Attorney General wanted to shine some sunshine on it, which I appreciate. That's what the Court overturned, your approval under 62-3-1101 and -1102. It didn't even address the binding private settlement agreement issue. I don't even think that was appealed. But it wasn't addressed. Among the parties, that still stands, that's still a binding agreement.

Now Ms. Gilford, in her proposed brief, argues, well, Tomi Rae is going to make this next argument and she shouldn't because she's not abiding by the settlement agreement. She's not abiding by the settlement agreement because nobody will abide by it with her. If everybody here wants to say the settlement agreement is binding, we can move on, we're happy. That settlement agreement also has a severability clause and it also says that for every purpose, Tomi Rae Brown is the surviving spouse of James Brown, for every purpose. It's a binding private settlement agreement, the parties are still bound by it, including the LSA, the Estate, because of Mr. Bauknight's excellent execution of that settlement agreement.

And so there's an estoppel issue there too, but that's really sort of subsidiary to me. The major

issue is, we still have a binding agreement and that binding agreement with the severability provision provides that everybody to that settlement agreement agrees that Tomi Rae was the surviving spouse. It also agrees that Little Man's the child of James Brown, which would legitimate him. It also agrees, by the way, that others to the agreement are also legitimate children of James Brown which, if the settlement is not binding, could also become an issue down the road. So when Mr. Beach talked about peeling onions a couple weeks ago, we're going to be peeling a whole lot of onions if all of that sort of falls apart.

So again, the issue of Lukich is that it focused on the first marriage, which was voidable; it also, without having a lot of fanfare about it, said the second marriage was void ab initio. It cites cases that say the same thing. The status is what's important. Those other cases, Joye, Splawn, Rodman, all deal with ancillary issues, but they don't mess with the status which the statute requires, void ab initio. And the Supreme Court, I would argue, if it disagreed with it, had it teed up perfectly in Wilson v. Dallas and didn't take a swing.

Now, all these other issues, therefore, become unnecessary. It doesn't matter what Tomi Rae thought about the marriage, whether her diary which was in fact a diary somehow affects the validity of the marriage to me is beside the point. It doesn't matter what Mr. Brown said, actually, although again, as I mentioned this morning, it seems to me the contestants, who are claiming through him or acting on his behalf, ought to care about what he said he wanted and what he did. But all those facts are going to get dredged up. So what happens if we dredge all that up? What happens if we engage in discovery? What are we going to do? What if Tomi Rae gets in front of Your Honor and sort of in a Perry Mason moment -- remember Perry Mason, Your Honor? You're probably too young. But there was always --

THE COURT: I'm too young.

MR. MEDLIN: I took professorial notice of that, Your Honor. That somebody always stood up in the back and confessed at the end.

Well, so Tomi Rae stands up to you and confesses to say, I lied. What are you going to do then? You're going to undo the annulment order? You're going to impact Ahmed's rights if he doesn't

show up when, apparently, he's known about it six years and hasn't bothered to attempt a direct attack on it himself? You're going assume that James Brown didn't know all those things and yet it suited him to be married at the time of his death? What if Ahmed shows up and says, no, I wasn't married? We're going to have a weighing of credible evidence to see who's believable? Again, if you believe Ahmed, then that affects James Brown's rights and the status that he wanted, and it affects Little Man's rights. Talk about affecting the rest of the world, it's going to affect Little Man's rights. He's the one true innocent in all this because even though he's been vilified and had to suffer the ignominy of having not one, but two DNA tests proving what we've known all along, that he is the biological child of James Brown. He had to do that at a young age. He has to wonder why that's happening to him. And so now we're going to undo that order and somehow say that Little Man is not the child. But what if Tomi Rae cannot provide additional facts? Does she lose now? She based her testimony, which a judge sat and listened to and determined in realtime, just as you do every day, Your Honor, in trials, whether her testimony was

credible, and decided that it was. A judge decided that in realtime.

So what if she doesn't have any additional evidence? What if we go through all this discovery and we delay things for however long it's going to take to delay and it turns out that we don't have anything more than what we already have as to this particular issue? So are you going to say, well, even though the family court judge believed you, I don't, so I'm going to overturn the order and affect Ahmed's life if he's not here and is remarried and has children and affect James Brown's intent because the way she testifies today is different and she can't give me any additional facts? We're not going to go anywhere with discovery except create a big, old wormhole that I think we're going to go down for a very long time with no avail.

As far as fleshing this out and getting it right, that's sort of a charged implication, I think, that got mentioned before. But if they're worried about what the Supreme Court is going to do, it seems to me that we can worry just as much that we'll spend a lot more of this estate's resources going through discovery. And by the way, Your Honor, the Estate has spent a lot of resources in

litigation.

We continue to go through discovery and you come to a different conclusion and the Supreme Court says, you didn't have jurisdiction to do that, you're not a family Court, you're sitting in probate; you're not an appellate Court from the family court, what in the world are you doing? And again, Mr. Rosen said, don't you dare sit up in front of Judge Early and say that he doesn't have jurisdiction. And I'm not saying this to you personally, you know, Judge Early; I'm talking about the Circuit Court or, in this case, the Probate Court not having the jurisdiction. So we're going to spend all that time and then have the Supreme Court send it back and say, you didn't have the authority to do any of that, all you had to do was look at 63-3-350 and know that only a family Court has jurisdiction over an annulment. And, by the way, what kind of chaos are we creating if we can open up those orders? Anybody who wants to attack that order can now come in and attack it and, most problematically, decedents who went to their grave thinking they're married, if it doesn't suit the heirs who have other motives, they can go back in and undo that marriage? The consequences of that

are mind-numbing about doing that and getting into the discovery, Your Honor.

So again, we think that that order is unassailable. And in any event, the discovery is absolutely unnecessary, problematic, and perhaps even would have sinister results with respect to the Estate because it's going to cost a lot of money and it's going to -- we're going to spend a lot more time. I mean, Mr. Levinson, as he always does, said it eloquently, if we're going to go to Columbia anyway, let's just do it, and if it needs to be done on this issue, let's do it on this issue, and then we can continue to deal with other issues.

So Lukich doesn't say anything different than the statute. That quote is not another requirement for a bigamous marriage that you have to have the order first before it's void ab initio. That makes no sense. That's contrary to the definition of void ab initio. That says that that first marriage, which was voidable, was still valid because she hadn't yet invalidated it. If she had, then the second marriage would not have been bigamous. So those arguments confuse those two marriages. And again, we'd be creating new law in South Carolina and changing legislative intent if we looked at 2180

and say, oh, it says bigamous marriages are void, period, and every case that's looked at that as to status says it was never a marriage, and then we add a footnote and say, well, until we get a court order. That changes it. That means that that is a marriage until you get a court order. It would be the first case in history, as Mr. Rosen reminds me.

So it's the status that matters. The statute is clear, the cases are clear, Lukich is clear on the bigamous marriage, that you're never married. So Tomi Rae's status, which is the only issue as to an impediment to her marriage to James Brown -- that's the only issue. Any of these ancillary issues in the Splawn and the Joye and the Rodman case, et cetera, those issues have nothing to do with her status. She's married or not, and the statute indicates she's not. So, therefore, she doesn't have an impediment or we're going to create some new law if we go down some other road. Thank you, Your Honor.

MR. ROSEN: Your Honor, would you allow me a few minutes?

THE COURT: Sure.

MR. ROSEN: I was going to begin my argument at 10:00 with discussing this business about service.

I don't need to go into it if you don't need to hear from me.

THE COURT: No, sir.

MR. ROSEN: All right. Because, you know, Ms. Gilford went into it kind of late --

THE COURT: I understand that.

MR. ROSEN: I didn't want my silence to indicate that --

THE COURT: I understand that.

MR. ROSEN: I'm prepared to argue --

THE COURT: I'm going to decide this case based solely on the marriage to Ahmed and marriage to Mr. Brown, the annulment order, and Lukich.

MR. ROSEN: Right.

THE COURT: Everybody is arguing today.

MR. ROSEN: Your Honor, I just want to make one point, and I want to make it if you'll allow me to. I realize that estoppel, in your view of it, somehow creates a factual issue. But I heard for two hours about collateral estoppel from the other side, so if you'd allow me, I'd like to address that issue.

THE COURT: Briefly.

MR. ROSEN: Well, Your Honor, let me just say this. In our brief, what we say is this: James Brown went into court in Aiken County and he brought

an action. All right. That's a matter of record; it's not in dispute and it's not a factual question, it's a fact, it's in this record. And when he went into court in Beaufort County, he --

THE COURT: In Beaufort County?

MR. ROSEN: Excuse me. When he went into court in Aiken County -- I don't know where I got Beaufort County from. I want you to look at, if you'd do me the favor, page 16 of the LSA briefs. I don't mean right now, but when you consider this. It says that we have misconstrued the decedent's use of the Ahmed annulment order and that we -- it actually says that we've misrepresented things to the Court. Well, I'm not that sensitive. Everybody has said a lot of things about everything I've done. But the fact of the matter is, this is what Mr. Brown did: He waited for the annulment order to come down, all right, and he waited for that order to come down that he paid for, which is stipulated to, and when that order came down, he filed a suit in Aiken County.

And this is what he said -- I think this is determinative of the case. He said the defendant in that action, meaning Tomi Rae Brown, has not filed any appeal from the family court order and as such,

the findings of fact of the Charleston Family Court are binding on this Court. That's what he said. That's at page 70 of the agreed stipulations.

THE COURT: He's not the Supreme Court and he's not the -- I mean, he's just a litigant.

MR. ROSEN: Mr. Brown asked Aiken County Court to find that the findings of fact of the order he helped procure, the annulment order, should be binding on the Court. Well, those findings of fact, Your Honor, are that Mrs. Brown married a man who was already married to somebody else. That's what's in the findings of fact. And I -- there's a body of law that allows you to grant summary judgment on the doctrine of equitable estoppel. Now, I happen to know a lot about equitable estoppel because the leading case is Smoak vs. Smoak, which I'm sure you know all about, about our friend Gerald Smoak. And my daddy happened to be the lawyer in the case and, actually, he lost the case.

THE COURT: That's the Haitian divorce.

MR. ROSEN: That's exactly right. And when you ask the Court to enforce even a void order -- and let's say they're right. When you ask a Court, which he did, there's no dispute about it, to invoice a void order, you're stuck with that.

Now, when Mr. Brown himself said, adopt these findings of fact, under Smoak, he cannot now be heard to complaint about the findings of fact. What's before you today is this: There's a finding of fact in the family court. We've talked now for four hours about it. There was a finding of fact. They don't like the findings of fact, they say we're not bound by the findings of fact. They cite 15 cases saying the findings of fact are not binding on you. They are binding on you because Mr. Brown is estopped from coming in and making this entire argument, none of these people can make this argument, because he went into another court and a -- with a lawyer, with his eyes open, and said to that Court, adopt the finding of fact that my wife was married to a man that had three wives. He said adopt it, he did that. Now he cannot be heard in this court today under Smoak, under Tillman, and under Edwards. By the way, none of them have addressed our argument in their briefs. I had a word search done last night. They've ignored the argument; you know why? Because it's irrefutable. It's irrefutable.

The Tillman case, which I don't know if anyone in this room realizes it, involved Pitchfork Ben

Tillman and his son. It's a very interesting case. Senator Tillman was, by that time, already in Washington, and his son, apparently, was an alcoholic. And the son deeded the children to the old man and to the wife, and they figured they could get the Supreme Court to give them custody, which they didn't because by then he was already on his way out, he was in Washington by then. The Court said he was bound by that because he participated in the litigation. He didn't pay for it, he wasn't a party, but he was identified with it. That's the Tillman case. That's a very important case.

The Edwards case, equitable estoppel, even a void order, which you want to take advantage of, you cannot be heard to say now that it's void as to you. And James Brown, during his lifetime, went into the Aiken court to take advantage of that order. And under the doctrine of equitable estoppel -- and I think you can grant judgment solely based on that.

We're here for the last few hours arguing about findings of fact. That's what we've been arguing about. They say that, oh, findings of fact shouldn't be given any weight. But that's not true. There's a whole body of law and it -- search in vain -- search in vain for the LSA's argument

against Smoak and Edwards and Tillman. Thank you.

THE COURT: All right. Normally I allow argument and then reply, but I'll open up the floor. I don't want anybody accusing me of cutting them off.

MR. BEACH: Well, Judge --

THE COURT: Sir?

MR. BEACH: -- Mr. Rosen has asked to search in vain, and I need to go ahead and address the Smoak case right now because --

THE COURT: You're ready to search now or have you already searched?

MR. BEACH: I don't need to search anywhere, Judge. The Smoak case is completely distinguishable from this case. And the reason it is --

MR. ROSEN: I rest my case.

THE COURT: Well, give me the facts of Smoak.

MR. BEACH: Well, I'm not sure that I can give you all of them, but I do know this --

THE COURT: But didn't he go somewhere, the Islands, Haiti or somewhere, and obtain a divorce -- a foreign divorce?

MR. BEACH: Right. He tried to use that order in the case, as I understand it.

THE COURT: Well, it suited him to get the

divorce, but it didn't suit him to have to do something else.

MR. BEACH: I'm sorry. I --

MR. ROSEN: Right. He didn't like it later and he got a Haitian divorce, which is a void order, void, absolutely void. And the Supreme Court said, it's not void as to you, you --

THE COURT: Because you got it.

MR. ROSEN: Yes, sir.

THE COURT: Go ahead.

MR. BEACH: And the Court said that he was equitably estopped from making that order, Judge. The difference is it's the husband who got the order who's equitably estopped against it. Here the petitioner got the order and they're trying to equitably estop someone who didn't get the order. And that's the crucial difference between this case and Smoak, Your Honor. They're completely distinguishable because the effort is being made in Smoak by the husband to use an order that -- I'm sorry.

The husband got an order. The wife is using the order that the husband got. The husband participated -- obtained -- he participated in whatever and the Court was trying --

THE COURT: Who went and got the divorce.

MR. MEDLIN: Right. Well, that's -- and so it's a completely different situation here. If we were trying to equitably estop the petitioner from something that was in Ahmed annulment order, then that would be Smoak, but not the other way around. And, Judge, that is precisely what James Brown was trying to do when he filed the amended complaint that Mr. Rosen just mentioned.

He -- Mr. Rosen read paragraph 10, which says the defendant in that action does not appeal from the family court order and, as such, the findings of fact and conclusions are binding on this Court. But he didn't read the next paragraph, Judge, which is paragraph 11, and it says: Pursuant to the order from the Charleston Family Court, Defendant -- that's the petitioner here -- is collaterally and judicially estopped from denying the allegations in that action. So it's quite clear, Judge, that what James Brown was trying to do when he -- after the Ahmed annulment order came out and he filed his amended complaint, he says it: I'm trying to apply Smoak against her, I'm trying to apply collateral estoppel against her. And the reason he can do that and she can't provide it back against him is because

he wasn't a party to the Ahmed annulment litigation. And that's the precise difference with what he was trying to do there and it is the precise difference with what they're trying to do here, Judge.

Judge, the other thing that I want to mention is that we do believe, Judge, that if Mr. Medlin -- Professor Medlin tries to argue that this Court doesn't have the jurisdiction to find whether the petitioner was married to James -- Mr. Medlin just argued that this Court does not have the jurisdiction to determine whether the petitioner was married to James Brown when he died; in other words, doesn't have the jurisdiction to determine whether her marriage to James Brown December 14th of 2001 was valid. Mr. Medlin has made that argument, says you don't have the jurisdiction, only a family Court can do that. Well, Judge, that's the essence of why we're here right now. If you're going to determine whether she's the surviving spouse, you have to be able to have the jurisdiction to determine whether that marriage was valid. It's a professorial argument that is theoretical, Judge, but it really doesn't -- it doesn't fly because, otherwise, what in the world are we here for? Of course you have jurisdiction to determine whether she was the

surviving spouse.

THE COURT: That's why Mr. Rosen told him not to stand up and argue I didn't have jurisdiction.

MR. ROSEN: I didn't say not to say he didn't have authority.

THE COURT: Well, I'm going to rule on a very narrow issue. If it gets any further than that, I think we got factual issues involved.

MR. BEACH: Okay. And, Judge, the only thing that I will finally say is this --

THE COURT: Well, tell me how you're taking a different position now than you took in the argument before the Supreme Court.

MR. BEACH: Well, I can explain that, Judge. The -- they're talking about judicial estoppel there. That's the legal theory that they're trying to apply against us. They say that by judicial estoppel, you made an argument before the Supreme Court through Mr. Bauknight's attorney, and now the Estate can't make the opposite argument in this Court. Argument before the Supreme Court, Tomi Rae Brown, there -- and we can argue about what the argument was, but for the purposes of this discussion, let's assume that he argued that Tomi Rae Brown was the surviving spouse and that Tomi Rae

Brown -- and that Lukich doesn't control.

I don't know that's what he argued. I think he said there was a valid -- a good-faith controversy that was created by all of those facts that you found to exist. I don't think he was arguing she's the surviving spouse. But for a moment, let's assume that that's -- I do think he said Lukich doesn't control. And I read the transcript and I saw him say that.

Judicial estoppel, Judge, first of all, it's an equitable doctrine, so it's completely up to you whether to apply it or not. But the cases say that -- and this is really the -- it kills their argument, Judge. You've got to show that the person making that argument actually won on that argument when they were making it. In other words, you would have to show that the Supreme Court agreed that she was the surviving spouse and also agreed that --

THE COURT: Well, that question never was answered by the Supreme Court one way or the other.

MR. BEACH: Right. But they didn't win on it. And you've got to have -- that's one of the requirements; you've got to win on the argument, Judge, in order to --

THE COURT: Is it just a red herring?

MR. BEACH: It's a complete red herring, Judge. Thank you very much. I appreciate you making that point for me.

THE COURT: I didn't say it was, I said is it.

MR. BEACH: It is a red herring, Your Honor. And, Judge, the other thing -- and I think I need to just sort of say this because the road that Mr. Medlin and Mr. Rosen want this Court to go down here, Judge, wow. It's clear that after the decision in Wilson v. Dallas, the Estate had its marching orders from the Court, and that was, you've got to go back and you've got to defend against the will and trust challenges. So from that point forward, it was clear what the Estate's fiduciary obligations were. And, arguably, they may be different. Those obligations are probably different, completely different from what Mr. Bauknight's obligations were during the appeal.

THE COURT: I.e., to uphold the agreement.

MR. BEACH: And so, Judge --

THE COURT: Well, we all got different marching orders. You know --

MR. BEACH: Right.

THE COURT: -- we went for a long time trying to resolve the case by way of settlement. We didn't

conclude that or we didn't succeed at that, and now we've got marching orders to move forward with the undo influence, the surviving spouse issues, and Little Man's issues.

MR. BEACH: Right. Right.

THE COURT: Those are three main things.

MR. BEACH: That's right.

THE COURT: I think we've done it as efficiently as we can, although some people don't agree with that, and we're trying to do this in an efficient manner.

MR. BEACH: I think so too.

THE COURT: And y'all have done briefs that go -- and I'm not being critical, but y'all have covered every issue known to man.

MR. BEACH: I agree with you, Judge, we have covered every issue known to man.

THE COURT: But when you boil it all down -- have you ever made gravy and try to boil it down --

MR. BEACH: Absolutely.

THE COURT: -- get it down just to the rue --

MR. BEACH: Yes, sir.

THE COURT: -- put a little bit of water in it? Well, that's what we're doing; boiling it down. She married Ahmed, she married James Brown; she got an

annulment, the annulment says that Ahmed had other wives. Is that a bigamous marriage? And if so, is it void right from the beginning, which gives her the freedom to marry Mr. Brown? And what effect does Judge Segars-Andrews' order, if any, have on the whole --

MR. BEACH: Okay. And I can answer that, Judge. The judgment was the annulment of the marriage. Now, underlying that judgment, there were three findings, Judge --

THE COURT: That's correct.

MR. BEACH: -- one was that it was procured by fraud.

THE COURT: Correct.

MR. BEACH: The second one was that --

THE COURT: They didn't sleep together.

MR. BEACH: -- it wasn't consummated, failure to consummate the marriage. The third one was that he lacked the capacity to marry her because he was already married to someone else.

THE COURT: Correct.

MR. BEACH: Now, if you were to, for instance, say -- and again, we don't think that those findings -- those findings are not applicable to James Brown's estate because he wasn't a party. But

if -- and so if the Court did find that -- as you have the jurisdiction to find, that the marriage to -- between Ahmed and the petitioner was valid or that the petitioner hasn't -- more importantly that the petitioner hasn't carried her burden to prove it invalid, which is really where we are right now. If you were to find that, the Ahmed annulment order would still stand, Judge. First of all, it's an in rem order, so if -- it is as to the world from the point of April 15th, 2004 forward, it establishes Ahmed's and petitioner's relationship as to each other as to the entire world. So there's no apocalypse that's going to occur where people have to relitigate and all that. That is done, it's established, it's an in rem order. So we're good on that. But --

THE COURT: What you're not good on is that he had additional wives.

MR. BEACH: Correct. And, Judge --

THE COURT: Then how do you get around Segars-Andrews' order?

MR. BEACH: Well, because those underlying findings are only applicable against the parties to that order, Judge. And so we get around that by saying that those don't apply to us because we

weren't a party or privy, and that's pretty simple.

But the other thing is, Judge, we've got this argument that the order somehow applies retroactively and then makes it as if that marriage never existed. I understand that Professor Medlin and Professor Stuckey can spend time theorizing on what this means and the metaphysical aspects of it, but here's the truth: We've got only --

THE COURT: Hold on. Before you tell me what the truth is, what does this mean? I'm reading from Lukich. Tell me what this means or is it way over my head: A mere marriage ceremony between a man and a woman where one of them has a living wife or husband is not a marriage at all. So if it wasn't a marriage at all, there's no impediment for her to marry Mr. Brown.

MR. BEACH: And she can come in here now, Judge, and prove that before this Court. What she can't do is use the Ahmed annulment order to establish that, and that's the difference.

THE COURT: And that's your position.

MR. MEDLIN: It is, Judge. And there have only been two other areas of the law where the Court has been asked the question of whether an annulment order by a family Court ruling that a marriage is

bigamous applies retroactively. There are only two that I can find, Judge, and both of them say, no, it cannot be applied retroactively. Joye vs. Yon reversed the Court of Appeals on that point, and the Splawn case that's in the other that deals with marital property very clearly say that.

The one thing that I have not seen other than theory and metaphysical discussion from Mr. Medlin is a single case where he finds in South Carolina that a Court has said that this order of annulment of a family Court finding is bigamous does not apply retroactively. He's found a Court of Appeals case, Joye vs. Yon, but that point was reversed by the Supreme Court.

THE COURT: So your position is, to make it void, she has to take some positive action, i.e., the annulment, to make it void?

MR. BEACH: With regard to Mr. Ahmed, I think that she could do the annulment because they're both parties to that. But to make it void here in this lawsuit, Judge, she's got to come in and present testimony. And that's what Hallums basically says. And she can't do it through the Ahmed annulment ord er.

THE COURT: Okay. I don't know how we can

argue it anymore. I've just got to make a call on it.

Anything else?

MR. ROSEN: Your Honor, thank you for your patience.

MR. BEACH: Judge, my client has asked me to mention one other thing because he's a probate attorney and he sees the importance of this. And I apologize for not --

THE COURT: Go ahead.

MR. BEACH: -- seeing the importance of it. I mean, I do see the importance of it. Judge, Mr. Medlin has raised today, I think for the first time, 62-2-802 which he argues -- he has passed it up to everyone and he argues that this basically decides it because he says that the annulment order has to be issued prior to the death of the decedent in order for it to apply here.

And Judge, two points: We don't disagree with this point here which says that an individual who is divorced from the decedent or whose marriage to the decedent has been annuled is not a surviving spouse. We don't disagree with that and we also don't disagree that Item No. C says that the divorce or annulment is not final until signed by the Court and

filed in the office of Clerk of Court.

What we do point out is number 1, the decedent whose marriage -- I'm sorry -- yeah. The decedent who's -- an individual who's divorced from the decedent or whose marriage to the decedent has been annuled -- first of all --

THE COURT: Where are you reading that?

MR. BEACH: That's in the very first part of that. A, an individual who is divorced from the decedent or whose marriage to the decedent has been annuled is not a surviving spouse. Item No. 1, this doesn't mention every situation, and we're arguing that there was no marriage to the decedent. We're not talking about an annulment here, Judge, we're talking about the fact that the petitioner lacked the capacity to marry --

THE COURT: Because she was married to Ahmed.

MR. BEACH: -- the decedent. That's correct. And --

THE COURT: But if Ahmed -- their marriage is void from inception, she wasn't married to him.

MR. BEACH: That's correct, Judge, but she can only prove that by coming in here to court and giving evidence. Now --

THE COURT: She can't prove that by

Segars-Andrews' decree?

MR. BEACH: She cannot.

Now, here's the point that I think is very important. And, Judge, it's the -- if you look at the third page up at the top, it's part of the reporter's comments on here.

THE COURT: Tell me where to start.

MR. BEACH: We start at the word perhaps, Judge. Do you see that?

THE COURT: I do.

MR. BEACH: Perhaps -- whoever the reporter here was, Judge, felt it was very important to say this: Perhaps other marital conditions not valid as divorces or annulments and not detailed in section 62-802 (b) will continue by common law to estop a punitive spouse from claiming as a surviving spouse. In other words, there can be other conditions, one of which is there's no marriage.

So, clearly, what they're saying here is, this is not everything. This comment makes -- opens the door to exactly where we are right now.

THE COURT: So we're really not too far apart. I mean, you say I can't rely on Segars-Andrews' decree.

MR. BEACH: Correct.

THE COURT: Professor Medlin and Mr. Rosen says I can, I have to. So if I have to and I do, that marriage is void and she has no impediment to marry Mr. Brown. If you're right and I can't rely on -- I can only rely on the annulment itself but not the findings of fact, they haven't proven, at this point in time, that Ahmed had different wives.

MR. MEDLIN: That is correct.

THE COURT: In fact, they say there's no evidence to that effect other than my annulment.

MR. MEDLIN: Right.

THE COURT: Is that where we are?

MR. BEACH: I think it is, Judge.

THE COURT: We got consents all over the place, not that that matters. I mean, seriously, that's where we are.

MR. BEACH: It is, Judge.

THE COURT: After all this. Listen, this has been the most challenging case of my judicial career, obviously. And I can't thank all of you -- I mean, you cannot have represented your clients any better than you have, cannot be more prepared than you have in your briefs, and your arguments have been just as adversarial as they can be.

But I think it boils down to what effect, if

any, I give Judge -- the former Judge Charlie Segars-Andrews, who is a female -- what effect, if any, do I give that order. If it's an order that I can't rely on the factual findings, then we've got one way we're going to go; if it's an order that I'm bound to adopt, I got to go another way. And I don't know if we have to get into all this other -- all the other collateral issues -- and I hate to use the word collateral -- all the other side issues. But I thank you and -- Mr. Levenson?

MR. LEVENSON: Just because, number one, on the Supreme Court, I'm going to relay that to the Court. I do want to make it clear to the Court what I intended by that.

We do say that there is some estoppel there. I don't understand estoppel, so whatever that is, that is. My point is that it's a binding settlement agreement and the Estate is bound by it because Mr. Bauknight argued that. And I know Mr. Beach and Mr. Sojourner weren't there. And I think the Court may know that I could not have greater respect for two people than I have for Mr. Beach and Mr. Sojourner, but they weren't there --

THE COURT: Well, I know, but --

MR. LEVENSON: Mr. Wilkins said to the Chief

Justice, it's a slam-dunk on the issue.

THE COURT: I read that.

MR. LEVENSON: Okay. So it wasn't that it was some wishy-washy thing. We took Mr. Bauknight, through his lawyer, Mr. Wilkins, the position that Lukich slam-dunk said that Tomi Rae was married to James Brown. There wasn't any wishy-washiness about that whatsoever.

THE COURT: Well, it wasn't any wishy-washiness to his argument and his position.

MR. LEVENSON: Well, that's my point. So, I mean, I heard it. I may have misheard Mr. Beach say that he wasn't sure that that was raised directly. It was in the argument. Slam dunk is about as direct as one can raise it --

THE COURT: I understand that. But --

MR. LEVENSON: -- to a chief justice.

THE COURT: -- they didn't go along with his slam-dunk argument.

MR. LEVENSON: They did not -- well, we don't know because they found on other grounds, Your Honor. They found on the possible prenup and the possible overriding in the will of the omitted spouse's statute. So we don't know that they didn't agree and, in fact, I think the inference is they

must have agreed.

We're not saying that if we open the door to this that maybe there will be other people who want to argue underneath the Judge Segars-Andrews, we're saying that if we open this door, all divorces and all annulments will be subject to collateral attack by third parties, even after someone has died. That's a Pandora's Box I think you don't want to open. And, in fact, if Mr. Ahmed shows up, if we start doing that --

THE COURT: You're repeating yourself.

MR. LEVENSON: No, Your Honor, this is different. If he shows up, we'll be allowing him to, in effect, collaterally attack what he cannot now do with a direct attack because it's too late.

Now, let me get to the real reason why I had to stand up, because I got to offend Professor Stuckey, which I understand is an impossible position. And Professor Stuckey, who taught clinics and is a real lawyer, wrote this book. But I guess the professors and the General Assembly and all the Supreme Court Justices who have always said a marriage is bigamous is void ab initio, I guess we can dispel that too. They're not professors. They were applying real facts to real law. And that Splawn case and the

Joye case -- again, there's a difference between status, and status is always void ab initio as opposed to alimony and equitable distribution --

THE COURT: They're not arguing that's not the law. They agree with me that if Ahmed had wives, that marriage was void from the get-go. What they're disagreeing with you on is can I rely on the family court order where they made those findings that he did. And they say, no, you can't do that; you say, yes, I can.

MR. LEVENSON: If that's what Mr. Beach said, then I'll --

THE COURT: I hope.

MR. LEVENSON: The reporter's comment, I will have to say I didn't draft that sentence, but I'm responsible for reporter's comments.

THE COURT: All right.

MR. LEVENSON: But that doesn't change anything before us today.

THE COURT: No.

MR. LEVENSON: It was just a point I wanted to make.

THE COURT: All right.

We've been moving along, trying to get this thing resolved. I want proposed orders dealing with

just the issue that I just defined. When do you think would be appropriate to have them by, Professor Medlin, Mr. Beach et al, Mr. Donsbach?

MR. ROSEN: With Thanksgiving coming up, Your Honor --

THE COURT: I understand.

MR. ROSEN: I propose two weeks. But if that's too long, we can do it sooner.

MR. BEACH: I was thinking about 30 days, Judge.

THE COURT: Well, you know, I'm being criticized in some national newspapers and they're being critical of me taking so much time to do things.

MR. BEACH: I don't want to prolong that, Judge. I just hope that we can get it done in two weeks.

MR. ROSEN: Are you be criticized by any credible paper?

MR. BEACH: I think we can do it in two weeks if you need it in two weeks, Judge.

THE COURT: No. Thirty days?

MR. ROSEN: That's fine with me. Whatever you decide, Your Honor.

MR. BEACH: Why don't we -- Judge, 30 days is

the 24th. Let's back it up a little closer and say whatever -- a week before Christmas maybe instead of the day before might be a better one. I don't know where that puts us.

THE COURT: Or January 1.

MR. BEACH: Three weeks instead of four, basically, is, I guess, the suggestion.

MR. ROSEN: And I'll waive any interest in Hanukkah, Your Honor.

MR. BEACH: Friday the 19th is what date Sojourner has suggested.

THE COURT: All right. By Friday, December the 19th. Thank you all.

*** END OF TRANSCRIPT OF RECORD ***

C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie Patterson, Circuit Court Reporter for the Second 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 captioned cause, relative to appeal in the Common Pleas Court for Aiken County, South Carolina, on the 24th of November, 2014.

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

February 2, 2015

/s/Bethanie K. Creppon
Circuit Court Reporter

State of South Carolina

Court of Common Pleas

County of Aiken

IN RE:)
The Estate of James Brown)
a/k/a James Joseph Brown)
)
)
)

Transcript of Record
2008-CP-02-01647
2013-CP-02-02849
2013-CP-02-02850
2013-CP-02-02851

June 30, 2015
Bamberg, South Carolina

B E F O R E:

The Honorable Doyet A. Early, III, Judge.

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

Robert N. Rosen, Esquire
Attorney for Tommie Rae Brown

Ittriss Jenkins, Esquire
Attorney for CIara and Laronda Pettit

A. Peter Shahid, Jr., Esquire
Attorney for Stephen Slotchiver

John F. Beech, Esquire
Lyndey Zwing, Esquire
Attorney for David C. Sojourner, Jr.

William Barr, Esquire
Attorney for Janette Mitchell

John Donsbach, Esquire
Attorney for Terry Brown

Bethanie K. Creppon
Circuit Court Reporter

I N D E X

WITNESS	PAGE

(No Witnesses.)

E X H I B I T S

NO.	DESCRIPTION	ID.	EVD.

(No Exhibits.)

(The following proceedings were held June 30, 2015.)

THE COURT: All right. We'll do the motion to reconsider the summary judgment last. So I have motion to determine an heir, Ciara Pettit and -- strike that. Laronda Pettit as an heir. Do we have that motion.

MR. JENKINS: Yes, sir, Your Honor. That's my motion.

THE COURT: Come forward.

MR. JENKINS: I'm sorry, Your Honor, I'm unfamiliar with the protocol. Would you like me to stand here?

THE COURT: Wherever suits you. Where do you feel most comfortable?

MR. JENKINS: I think I'm good here, Your Honor.

THE COURT: Can everybody hear him?

MR. JENKINS: I like to stand like this, Your Honor, that way everyone can hear me. Thank you.

THE COURT: Have you got a copy of your motion?

MR. JENKINS: I have this one, Your Honor. I'm sorry. I thought one was already filed with the Court.

THE COURT: It may be, but we're in Bamberg.

You name for the record, please.

MR. JENKINS: Ittriss Jenkins.

THE COURT: Spell that for me, please.

MR. JENKINS: I-T-T-R-I-S-S Jenkins.

THE COURT: Where do you practice, Mr. Jenkins?

MR. JENKINS: In Charleston, Your Honor.

THE COURT: Welcome.

MR. JENKINS: Thank you, Your Honor.

THE COURT: I'll be glad to hear from you.

MR. JENKINS: Thank you.

Your Honor, we filed this motion based on the fact that Ms. Laronda Pettit filed an exhibit in 2007, which was basically done in August of 2007, August 23rd, 2007, which was within the eight-month statutory period. And from that time, Your Honor, she was considered part of this case.

So it wasn't until, I guess, in 2013 that she received notice that she would not be part of this case. When she died in 2013, she was all the sudden excluded. And, in fact, there was an attempted consent agreement that came, and her name was included in that. So we believe, Your Honor, since she was timely filed and she was already part of this suit, she had a LabCorps DNA test done that showed she was 99.99 percent a match or probability

with James Brown.

And we feel with that, Your Honor, she should be appointed as an heir of this case.

THE COURT: But she has since died?

MR. JENKINS: Yes, Your Honor, she has since died. And that's why we're asking her daughter Ciara Pettit to be named a limited administrator over her estate.

THE COURT: Well, I don't think I can do that now. I don't think I have jurisdiction to appoint an administrator for an estate. I think that's a probate matter.

MR. JENKINS: Yes, Your Honor. We'll be more than happy to file her as PR once her mom's actually appointed as an heir to the -- or an heir to James Brown.

THE COURT: So to make sure I'm understanding, before she died, she had filed with this Court a document showing that she was 99.99 probability that she was the daughter of Mr. Brown, and you're asking she be declared as an heir?

MR. JENKINS: Yes, sir.

THE COURT: Pretty simple thing.

MR. JENKINS: Yes, sir.

THE COURT: All right. Anybody oppose that?

MR. ROSEN: We do, Your Honor.

THE COURT: Mr. Rosen on behalf Tommie Rae Hiney Brown.

MR. ROSEN: Your Honor, we oppose it because the probate code allows a determination of heirs only as part of a formal testacy petition, which requires a summons and a complaint and service on all relevant parties, which she has not done. This is required under Section 62-3-401. She's filed a creditors claim, so she hasn't complied with the statute. The probate code defines an heir as someone entitled to take under intestacy.

THE COURT: So you've got a procedural objection, basically. As I understand -- what was the lady's name?

MR. JENKINS: Ms. Laronda Pettit.

THE COURT: Ms. Laronda Pettit had filed a creditors claim, but never anything more than that.

MR. ROSEN: Correct. So she hasn't done that. And then for an illegitimate to be an heir, there has to be an adjudication of paternity within the later of eight months after the death or six months after initial appointment of PR. She did not timely commence that and has not filed the proper pleadings. So I think she's just out of court.

That's our position, Your Honor.

THE COURT: Anyone else oppose it?

Mr. Jenkins, your response to that?

MR. JENKINS: Your Honor, there's a Parker vs. Parker case that also says -- I have a copy for Your Honor -- also says that she was supposed to be challenged within the eight months, and that wasn't done also. So considering that up until this point she was considered an heir and that they treated her as an heir, now would be a point that they'd be past the statute that they can actually challenge her as far as being heir of the estate.

THE COURT: All right. I'll take it under advisement. Mr. Jenkins, send me a proposed order.

And, Mr. Rosen, send me a proposed order within 15 days.

MR. ROSEN: Thank you.

MR. JENKINS: Thank you, Your Honor.

THE COURT: Mr. Rosen, going back to that, haven't we had other heirs that we've used that Parker case? There's been some orders signed that --

MR. ROSEN: Well, I think you've held in some previous matters that there was a collateral estoppel in regard to some other -- but those are

people who, I think, were named in the will. I might be wrong about that.

THE COURT: I don't think that's correct.

MR. ROSEN: Yeah, I might be wrong. But I don't --

THE COURT: Who were those heirs? Mr. Beech, do you know?

MS. ZWING: Your Honor, Lyndey Zwing --

THE COURT: Name, please.

MS. ZWING: Lyndey Zwing on behalf of the LSA. I believe that the other two heirs were Janette Mitchell and Sara Latonya Brown Fegan.

THE COURT: Fagin, F-A-G-I-N?

MS. ZWING: F-E-G-A-N, I believe.

The LSA is pretty sure that they used the Parker case for Janette Mitchell; we're not 100 percent sure about Tonya but --

THE COURT: Mr. Jenkins, send me a copy of my two orders on Mitchell and Fegan, please.

MR. JENKINS: Yes, sir, I will.

THE COURT: Mr. Beech, do we have a motion to correct an error in two orders today?

MR. BEECH: Yes, Your Honor.

THE COURT: And identify yourself for my court reporter, please.

MR. BEECH: Okay. My name is John Beech and I'm representing the Limited Special Administrator in this case.

THE COURT: And at the last status conference, we mentioned that there -- you claimed that there was scriveners errors or either we'd put one thing in one order, it was sent, and one order was sent back, and we needed to clear that up.

MR. BEECH: Yes, Your Honor.

THE COURT: Well, how about just read into the record those two for me, please.

MR. BEECH: Let's go with the first one first, Your Honor, which is the one -- order granting Sara Latonya Brown Fegan's motion to be declared an heir of James Brown. The other one is Ms. Mitchell's, but let's -- if we could, Your Honor, the motion with regard to Janette Mitchell will make more sense if we can deal with this one first.

THE COURT: Fegan first?

MR. BEECH: Yes, Your Honor.

THE COURT: All right. Hand me my order, please.

MR. BEECH: Okay, Judge.

There were two orders issued in this matter; one was issued in December and another one was

issued, I believe, in January, Judge. And the --

THE COURT: And in the first one, I had scratched out that last sentence and apparently re-signed it again in January and did not scratch out the last sentence.

MR. BEECH: Yes, Your Honor, that's correct. And I believe that that -- this order was submitted to the Court by Ms. Fegan's attorneys, and the Court, I think, correctly struck out the part where it had stated that this order finds that she's entitled to receive a share of the Estate equal in value to that which she would have received if Decedent had died intestate.

And I don't think anyone, Judge, is entitled to receive a share of the estate at this point. I don't think there's been any judicial findings. So the first order, we believe, correctly states the Court's intention; we think the second order was issued in error and, as a result, under Rule 60, we ask that the Court clarify that the first order, which was signed, I believe, on December 18th of 2014, is the order of the Court with regard to Sara Latonya Brown Fegan.

THE COURT: All right. Anyone have any opposition to that?

MR. BARR: Yes, Your Honor. This is William Barr on behalf of --

THE COURT: Well, Mr. Barr, I signed the same order twice. And the first time I signed it, I did what I was supposed to do. Apparently, when it came across my desk again, I, in error, signed it again without scratching out that last sentence.

Tell me why that should not be corrected.

MR. BARR: Well, we don't think it is an error, Your Honor; we think it is a --

THE COURT: Well, I'm telling you it was an error.

MR. BARR: It was a correct citation of the law in terms of what an intestate heir would be entitled to. And the keywords are: If the Estate is determined to be an intestate one --

THE COURT: Well, that's if.

MR. BARR: Right. And that's what's there. So there's nothing with it. It says: If...

THE COURT: Anyone else have anything else you want to put on the record?

MR. BEECH: Judge, I don't see the word if in there, Judge, is the only thing I'd like to put on the record.

MR. BARR: If Decedent had died intestate, she

would have received -- if Decedent had died intestate, then she would receive whatever intestate heir would be entitled to under the statute --

THE COURT: Well, that's not what it says.

MR. BARR: The one I'm looking at.

THE COURT: All right. Anything else?

MR. BARR: Your Honor, what I'm looking at --

THE COURT: I'm looking at it too.

MR. BARR: The one that you signed on the -- I think that's --

THE COURT: January --

MR. BARR: -- January 22nd, uh-huh, 2014.

THE COURT: Well, why in the world would I have signed the same order twice, other than I just made a mistake?

MR. BARR: That's what the Court signed.

THE COURT: I know it. But do you ever make a mistake?

MR. BARR: Oh, golly, I might be a mistake.

THE COURT: All right. I'm going to clarify this. Obviously, when I signed it in December, I struck that out intentionally because of the effects that it may have. Obviously, by striking that out, it does not prejudice Ms. Fegan in any way whatsoever; it just depends on how it ultimately

turns out after all the litigation has been resolved.

I stand by my order of December 18, 2014, as modified by striking out the last sentence, and I hereby void the order of January 21 and ask that it be stricken from the record.

Mr. Beech, please prepare me an order stating that.

MR. BEECH: I'll do that, Your Honor.

THE COURT: Then we had one also with Janette Mitchell.

MR. BEECH: Yes, Your Honor. Now, Janette Mitchell, this order was signed the day after you signed the second order for Ms. Fegan. It was signed on January 22nd. Your Honor, it says 2014, Judge, but what I think the Court intended to do was to strike out not just -- was to say 2015, because as you can see on the first page, it was filed on January 26 of 2015. So we believe this order was signed the next day after the incorrect order on Ms. Fegan.

It contains the same problem with regard to the last sentence, Judge, that Ms. Fegan's second order did. And if we read it, it states that she's entitled to receive a share of the Estate equal in

value to that which she would have received if the decedent died intestate. And we don't think -- again, just like Ms. Fagan, we don't think the Court intended to issue an order that gives Ms. Mitchell some portion of the estate, because we don't think anyone has made such a showing at this time. And so we ask the Court to clarify and correct this typographical error in the order by strickening the same language that the Court strickened in --

THE COURT: I haven't stricken anything; I'm striking.

MR. BEECH: Thank you, Your Honor.

THE COURT: Mr. Barr?

MR. BARR: Your Honor, we would -- and we would pose the argument, and we stand by what we originally said for Ms. Fegan. It's the exact same language and we don't -- we just don't see the error. I mean, if -- if the Court, by its own admission, says that the Estate is determined to be intestate, then she would share what any intestate heir would share. So we don't see where the error is.

THE COURT: She's not being prejudiced by striking it. I'm going to strike it and, once again, find that the -- an error in including that.

I tried to make it -- was attempting to make it consistent with my December 18, 2014 order. So the motion is granted. Mr. Beech, please prepare an order similar to the one I just stated in the Fegan case, please.

MR. BEECH: I will, Your Honor. Thank you so much.

THE COURT: All right. I think next would be a motion to intervene by two people; is that correct? Mr. Bodman, you have one and, Mr. Barr, you have the other one?

MR. BODMAN: Your Honor, if I could clarify one thing -- and I don't represent her. But Your Honor signed an order January 26th of this year granting Janette Mitchell's motion to intervene. She's already been made a party. But -- and I have a copy of that order, if needed. So --

THE COURT: Well, I was just doing what --

MR. BODMAN: Yes, Your Honor. But I do represent Michael Deon Brown and we have the exact same motion that was heard back in November. I'd be happy to review it again. But our position would be that they're the exact same issues heard with Janette Mitchell back in Bamberg right before Thanksgiving, I believe, here in this court.

I've prepared a simple order that's exactly the same order that Your Honor signed regarding Janette Mitchell granting the motion to intervene, and we'd ask the same for Michael Deon Brown.

THE COURT: When did he hear those?

MR. BODMAN: Your Honor, if I could just put something down. We heard the --

THE COURT: Let me see the Mitchell order, please.

MR. BODMAN: Yes, sir. We heard those motions, if my memory serves -- we've had a lot of hearings, but I believe it was right here --

THE COURT: Your memory is right about that.

MR. BODMAN: -- in this courtroom a couple days before Thanksgiving.

THE COURT: It was a very complex order, wasn't it?

MR. BODMAN: Yes, sir. They're identically situated people, Michael Deon Brown and --

THE COURT: Did you argue it back in --

MR. BODMAN: We did.

THE COURT: -- when you argued Ms. Mitchell's case?

MR. BODMAN: We did. And we submitted a proposed order towards the end of January, beginning

of February to Your Honor and sent it to all parties, the identical order as this, then the Court -- the Supreme Court stayed everything, so Your Honor never ruled on it. So we're just asking that you simply sign that order today. I'll be happy to give copies to everybody today so he can be allowed to participate.

THE COURT: Anybody have any objection to that?

MR. ROSEN: We object to Michael Deon Brown being allowed to intervene, if that's the question.

THE COURT: Well, I've heard it, they sent me a proposed order; I was going to rule on it, but then I got stayed. That's the reason it didn't get signed, I suspect.

When did you send it to me, Mr. Bodman?

MR. BODMAN: February 6th, I believe, Your Honor. And I've got --

THE COURT: When were we put on hold? Anybody remember that date?

MR. BODMAN: Maybe a week after that.

MR. ROSEN: Seemed pretty quickly --

THE COURT: February 29?

MR. BODMAN: Okay. Three weeks, I'm sorry.

This is -- if I may approach, this is the letter that we had sent -- I gave a copy to

Mr. Rosen -- and the proposed order is exactly the same order Your Honor has already signed from Ms. Mitchell. This hearing was fully aired, they opposed, we moved to intervene, both sides had submitted proposed orders, and we were just waiting for Your Honor to make a ruling.

At the time of the hearing, you seemed inclined to grant the motion, but then things got stayed. And here we are back going again.

THE COURT: Is that your recollection, Mr. Rosen, that y'all had already argued it?

MR. ROSEN: I don't have a recollection, Your Honor, about that. But let me see. I've been thinking about it. But in any event, Your Honor, let me tell you my problem with it. Okay?

I understand you've heard -- we opposed the intervention at the time. I know that --

THE COURT: I know you did.

MR. ROSEN: We did. And I'm not going to re-argue that, just like I don't think people should be re-arguing a lot of things. But what I was going to say today is, this is my dilemma -- and not a dilemma. This is something I would like the Court to address: There's been a lot of people who have shown up, you know, after we entered into a

stipulation who are now taking the position they are not bound by stipulations, they are not bound by -- and, you know, the Court has been very liberal in granting intervention. And, you know, I'm not quarreling with Your Honor's rulings; I don't think they're correct, but I understand Your Honor's ruling.

But the practical effect of it is, is that a lot of people get to come in and say a lot of things, which is fine if that's what Your Honor, you know, is intending to for them to do. But the problem that I foresee is we've got something, you know, ruining by weekend because I had to spend a lot of time on this, objection to hearing on motion to reconsider because, you know, we didn't agree to stipulation and we --

THE COURT: We aren't there yet. We're talking about --

MR. BODMAN: And, Your Honor, let me briefly answer that with first of all, that wasn't Michael Deon Brown's motion.

MR. ROSEN: Oh, I know.

MR. BODMAN: Your Honor, I have no problem agreeing to the joint stipulation of facts with regard to Michael Deon Brown, if Your Honor wants to

write another sentence in that order. It does not -- it does not --

MR. ROSEN: I just don't want to be going backwards.

THE COURT: I'm going to address the stipulations fully in just a few minutes.

MR. ROSEN: Yes, sir. All right. Well, that's our main concern. We don't think they should be allowed to intervene, but Your Honor has ruled against us on that. We accept that without any quarreling.

But as to the stipulation, we don't want anybody to jump in at this late date and then start arguing about things that have already been decided. Thank you.

THE COURT: All right. I don't think that's going to preclude anyone from arguing, but there was a purpose for the stipulation.

MR. ROSEN: Thank you.

THE COURT: All right. What else do we have on the agenda? Mr. Beech, help me. I'm looking at this --

MR. BEECH: Your Honor, the other.

THE COURT: -- administrative order of Michael Deon Brown, motion to intervene. We've taken care

of that.

MR. BEECH: I think we only have two other things, Your Honor; one would be J B 's motion for protective order on our discovery request, and the other is the motion to reconsider the summary judgment order on the spousal status. That's what I have on my list, Judge. There may be --

THE COURT: Also have the diary of Tommie Rae Brown.

MR. ROSEN: Mr. Beech agreed that he would ask the Court to continue that. I need to file some more things with regard to that, if the Court would allow us to.

MR. BEECH: I agreed that Mr. Rosen could ask the Court to continue that, Your Honor, and we would not object to his request, which we don't.

THE COURT: Okay. Let's talk about that without having to argue everything. How long do you need, Mr. Rosen, because, obviously, we're going to be having these hearings every couple weeks.

MR. ROSEN: Not long. I mean --

THE COURT: What's not long?

MR. ROSEN: -- if the Court gave us -- well, two weeks, ten days.

MR. BEECH: Judge, just so we'll know, I'll be out of town until the 26th of July. We --

THE COURT: So am I. I've got two weeks of vacation starting next -- not next week, but the -- whatever weeks in July, the two in the middle.

MR. BEECH: Me too. We're pretty much in sync, Your Honor.

THE COURT: So let's look at August. The first hearing we have in August we'll do Tommie Rae Brown diaries. Fair enough?

MR. ROSEN: Thank you very much, Your Honor.

THE COURT: And that will probably -- I'm going to be in Lexington the week of the 10th and then chambers the week of the 17th. We'll probably do it late the week of the 10th, 13 or 14, or early the 17th, 17 or 18. I'll get something out on that and that will be the next scheduled date to consider everything.

Mr. Beech, you'll be back. Anybody else got problems? Vacations or anything? That's an idea; we may do it the 19th or 20th in Columbia. I'll see how that goes.

MR. SHAHID: Your Honor, whenever --

THE COURT: You have a protected order request?

MR. SHAHID: No, no. You're talking about the

last week in July. I've got depositions scheduled in Birmingham, Alabama and --

THE COURT: I didn't talk about the last week in July --

MR. SHAHID: I though that was a consideration.

THE COURT: No, sir. The week of August 10th or 17th.

MR. SHAHID: Which is fine. The other thing I was going to suggest is that in addition to the motion I filed for protective order, I also filed a motion for fees; Monday I mailed out a motion for partial summary judgment. So I don't know if you want to consider those motions at that time as well. I may have another motion coming down -- Mr. Sojourner and I will talk about that later, but another motion you may want to hear during that same timeframe.

THE COURT: All right. And we know for sure we're going to do the diary motions on that date. Now, are you ready to do the motion for protective order today?

MR. SHAHID: Yeah.

THE COURT: So then between now and the first or second week of August, you'll be filing other motions dealing with--

THE WITNESS: Well, we've already filed a motion for fees and we filed a motion yesterday for -- or put in the mail yesterday a motion for summary judgment. I'm not sure about the third motion; I need to talk to Mr. Sojourner a little bit more about that. So I may have three motions to be heard at that time.

THE COURT: But you know fees and summary judgment. There may be one more coming down; right?

MR. SHAHID: Yes, sir.

THE COURT: All right. I'm trying to kill a few minutes waiting on Professor Medlin. Any other business that we need to do on the --

(Mr. Medlin enters the courtroom.)

THE COURT: Just got out of my mouth: I'm trying to kill time waiting for Professor Medlin.

MR. MEDLIN: Thank you, Your Honor.

THE COURT: Let's go around the table. Mr. Shahid, you've already mentioned yours. Mr. Rosen, do you think y'all are going to have anything else by August?

MR. ROSEN: I don't believe so, Your Honor. If we don't move on the summary judgment on the prenuptial agreement, maybe we'll be ready with that.

THE COURT: That's not here yet.

Mr. Bodman, can you think of anything that's outstanding right now? Mr. Beech?

MR. BEECH: Your Honor, I mean, I don't mean to do someone else's work here, but I do think there may have been a motion by Terry Brown to intervene in the spousal cases that may not have been decided. And then -- but maybe I'm missing that. Well, maybe I've got that wrong, Your Honor. And there was also -- I believe that Mr. Shahid's client may have moved to intervene in the spousal case, and I'm not sure that was ever ruled upon --

MR. SHAHID: That was ruled upon. I don't think I -- I thought I had submitted an order, and I think it got lost in the shuffle. But I'll resubmit a prepared order on that. That was heard at the same time Mr. Bodman's motion was heard.

THE COURT: Mr. Barr, have you got anything outstanding?

MR. BARR: Nothing -- maybe some collateral matters that could be addressed subsequently. What I'm talking about is that we've already been granted the right to intervene heirship and so forth, but the order granting Tommie Rae summary judgment treated us as only friends of the Court. So I don't

know if that's something we'll deal with later on or -- because we've already intervened. But --

THE COURT: That's fine. I can modify that.

Mr. J, do you have anything else?

MR. JENKINS: No, Your Honor. We just have the motion that I thought was going to be heard today, the Rule 60 motion for Ms. Tanya Brown. We wanted to withdraw the Rule 60 motion. We hear it in August, if you want.

THE COURT: What was that one about?

MR. JENKINS: It was -- Tanya Brown is trying to withdraw the rule -- we filed the Rule 60(b) motion; Ms. Tanya Brown withdrew her withdrawal from the contesting the will and the trust.

MR. BEECH: Your Honor, as I understand it, the chronology was this: Tanya Brown filed -- under David Bell's representation, filed a withdrawal of her claim that the will and trust were invalid. She was originally Mr. Levenson's client and was onboard with the undue influence claims that he was asserting on their behalf. She withdrew that.

I believe what Mr. Jenkins and Mr. Barr and Ms. Gilford have now asked is for the Court to allow her to withdraw her withdrawal, if you will, Your Honor. And even though I know that is pending, we

didn't understand that it would be heard today.

THE COURT: What's her name?

THE WITNESS: Her name is Tanya Brown, sir.

THE COURT: All right. 60(b), Tanya Brown?

MR. JENKINS: Yes, sir.

THE COURT: We'll do that in August. Fair enough?

MR. JENKINS: Yes, sir.

MR. BARR: Your Honor, so that's moot now in terms of how we're treated the summary judgment, because it was --

THE COURT: What's moot?

MR. BARR: Well, the summary judgment motion granting Tommie Rae summary judgment --

THE COURT: Tommie Rae Hiney Brown.

MR. BARR: That's correct. We weren't included as attorneys, but I guess that would be moot now in light of the intervention order and the heirship order of Janette Mitchell and the others.

THE COURT: I don't know. We'll address that in just a few minutes. I'm not sure where you're going with that.

MR. BARR: Okay, Your Honor.

THE COURT: Mr. Black?

MR. BLACK: Nothing, Your Honor.

THE COURT: So it looks like in August we'll be doing the diary, two or three motions with J B , the 60(b) on Tanya Brown and, obviously, anything else that will come up between now and then.

So that brings us to the motion to reconsider the summary judgment order. Is that where we are?

MR. BEECH: Yes, Your Honor.

THE COURT: Now, I sent out a note to everybody that each side would have 15 minutes.

Mr. Beech, how long do you need?

MR. BEECH: Judge, there are different parties --

THE COURT: I understand. I'm just asking --

MR. BEECH: -- to these different positions.

THE COURT: -- how long do you need?

MR. BEECH: So I personally believe that I can make my argument in about four or five minutes, Your Honor. But I understand Mr. Donsbach may have a little more expansive argument that he would like to give to the Court.

THE COURT: I'll give you ten minutes.

How long do you need, Mr. Donsbach?

MR. DONSBACH: About 15 or 20 minutes, Your Honor.

THE COURT: I'll give you 15. And if you get to 15 and you see you need a few more, just go ahead.

Who else is arguing? Anybody else? How long do you need; ten? five?

MR. BARR: I'd say 15, Your Honor.

THE COURT: All right.

Anyone else? Y'all need how long; five?

MR. MEDLIN: Your Honor, it depends on what they say and their expanded time. I would assume 15 at most.

THE COURT: All right.

MR. BEECH: Judge, will we end the hearing today with the motion for protective order on the discovery for J. B ?

THE COURT: I can either do that now or do it after the -- whichever suits y'all.

MR. BEECH: I think maybe if we did it afterwards might be -- but either way is fine with us, Your Honor.

THE COURT: Does that make any difference to anybody?

MR. SHAHID: Doing it afterwards is fine, Judge.

THE COURT: Okay. Mr. Beech, you want to lead

off?

MR. BEECH: Well, I was --

THE COURT: Or would you rather somebody else?

MR. BEECH: I think Mr. Donsbach may do the honors, Judge, if that's acceptable to the Court.

THE COURT: All right.

MR. DONSBACH: Yes, Your Honor. I understand this is kind of like the minister putting his watch on to lecture at the beginning of church.

THE COURT: No, it's sort of like the Supreme Court when those little lights go off. But don't compare me to --

MR. DONSBACH: I will keep that in mind.

Your Honor, obviously, we adopt all of our briefs and previous motions and other issues that we presented with this Court on this issue.

And we're here today because we believe that a serious injustice has happened in this matter relative to the Estate, the heirs, the needy children of South Carolina, Georgia, everybody involved on this side of the table.

THE COURT: Were you part of the stipulation?

MR. DONSBACH: Yes, Your Honor, we were.

THE COURT: Didn't I decide it based on a stipulation of facts?

MR. DONSBACH: You did, Your Honor. But we believe that the Court misconstrued and misread some of those stipulations of facts, and that's what I'm about to go through and discuss. Because we believe that what Ms. Hiney has presented in this matter is based entirely on what we could call a fabricated marriage, which makes her a bigamist. Because the only evidence she has admitted to this courtroom or presented to this Court is her own hearsay testimony from a court order in Charleston that she presented, and that's --

THE COURT: How can I go behind the court order in Charleston?

MR. DONSBACH: Well, Your Honor, we do not believe --

THE COURT: Didn't that court order find that it was a bigamous marriage and she's --

MR. DONSBACH: Your Honor, that court order -- and this is where we believe the Court erred in this matter, is the structure of collateral estoppel as it relates to that court order.

That court order specifically determined the status of the Hiney-Ahmed marriage, not the Hiney-Brown marriage.

THE COURT: What was it supposed to do about

that? Didn't it have to determine that status in order to --

MR. DONSBACH: And we're not contending or disagreeing that that status wasn't determined at that point in time in 2004.

THE COURT: That it was?

MR. DONSBACH: That it was. That order absolutely dealt with the Ahmed-Hiney marriage. And what the restatements in collateral estoppel say on that issue are this, Your Honor: Is that the status of the Hiney-Ahmed marriage were determined by the facts and circumstances, but those facts can't be binding on a third party outside of that relationship or outside of that order or that courtroom. And so those facts went to determine that status relationship. And that's what happened in that particular order.

Now, Ms. Hiney wants to then twist, threw her statements, and twist collateral estoppel and say that those facts now apply to the James Brown and Hiney relationship.

THE COURT: Well, let's make -- let's be sure that everybody understands my order. I encouraged, I suggested, and y'all did agree to a stipulation of facts so there would be no facts in dispute for a

reviewing court to look at. One of those facts was that the family court in Charleston found and annuled her marriage, and I'm not going to go behind that. If you find that that was wrong of them, y'all can file after-discovered evidence in the family court and try to undo it down there and we can look at it again, or if you find it now that that was a wrong and you're moved to have a motion on the after-discovered evidence, maybe so. But I don't know how I can go behind that order.

MR. DONSBACH: Understand. We're not asking this Court to do that.

THE COURT: All right.

MR. DONSBACH: That's not what we're saying. Is -- what happened is, we agreed -- we agreed to the stipulation of facts that that order happened and exists; no doubt of that.

What we're disagreeing with is that the facts that were used or applied in that order -- all it did was annul the Ahmed-Hiney marriage in 2004. And I think, as we're going to get to, the Lukich decision makes it very clear that that's the point in time that the annulment occurred and put the world on notice that their relationship was annuled, which means as to third parties, i.e., the James

Brown or any other party, that that's the point in time in which Mr. Brown would have understood that the Ahmed-Hiney relationship had ended. They had entered into a relationship prior to that point in time.

THE COURT: But isn't that marriage void, as it never existed?

MR. DONSBACH: Your Honor, under the Lukich decision, it is void, the marriages are void, and the statute as well under 20-1-80. Marriages are void ab initio as to the parties; but as to the rest of the world, they can't be voided until they decree is entered. There is no way you or I -- and a perfect example would be an employer who has a married couple that they have employed, and they're providing spousal health insurance coverage. And they've got a marriage certificate that says that they're married, and they're required under their plan to provide that spousal coverage. Well, until that annulment order shows up, that employer has to provide that coverage. There's no change in that. But as soon as that annulment order shows up, it stops as to the third party, who is the employer.

Well, in this case -- and I don't want the Court to get confused here. The third party in this

case is very clearly James Brown. He was not a party to that annulment action. No matter how much they want to argue that and say he was in privity or he paid for it or whatever else, he was not a party to that. In fact, in their brief they specifically stated that. And collateral estoppel very clearly says and res judicata very clearly says, for them to apply, they have to be a party, and it has to be dealing with the same issue. This was not the same issue.

The Charleston family court decided the Hiney-Ahmed marriage relationship, not the James Brown-Hiney relationship.

THE COURT: And they found it to be void.

MR. DONSBACH: They found the Hiney-Ahmed relationship to be void, that's correct. In 2000- --

THE COURT: Which eliminated any impediment to her getting married to Mr Brown.

MR. DONSBACH: In 2004, which was after she had already entered into a marital relationship with Mr. Brown.

THE COURT: Well, I --

MR. DONSBACH: And Lukich very clearly says that. In fact --

THE COURT: I don't think so.

MR. DONSBACH: -- the Supreme Court noted that in Footnote 16 in Wilson v. Dallas. They spoke to this Court's ruling on Lukich in the similar analysis that this Court put forward on this. And in that footnote they very clearly said they didn't necessarily -- and weren't going to comment on this Court's analysis of Lukich. Had they agreed with it, they could have simply said, we agree, the analysis is correct. But they didn't say that. They went through the trouble to say, we aren't going to make an opinion on it.

Just like in the most recent order the Supreme Court issued where they complimented Your Honor's handling on this, they also reminded this Court about Wilson v. Dallas. If they weren't sure that that needed to apply, they would have just simply said, you're doing a great job; they wouldn't have reminded this Court about the dictates and dictum that they put in Wilson v. Dallas in deciding it and their discussion of Lukich.

So, Your Honor, in this particular instance, collateral estoppel doesn't apply. Because if it did -- let's take it to the next step. Let's say Your Honor's decision on this was correct. Well,

what this Court would have ruled by ruling that that order keeps this Estate from arguing an annulment, this Court is basically saying that James Brown couldn't have filed his own annulment and argued that his relationship or marriage should have been annuled. Because if, in fact, that Charleston order was so binding, as this Court has stated, James Brown couldn't have annuled his own marriage, couldn't have presented facts before this Court and said, she was previously married.

Well, we know that's ludicrous. We know that is not possible. We know Mr. Brown was not bound by that order and, hence, his estate and heirs can't be. Collateral estoppel does not apply here. The whole foundation of this Court's ruling on this is an error based on that. It just can't, based on the Pie vs. Adcock and all of the discussions that we've laid out in our briefs and motions for reconsideration on that. It very clearly involves party, requires similar issues, it requires justice to be served. And, specifically, even if those things are the same, collateral estoppel exceptions can imply if an injustice is going to work or some fallacy or problem is going to happen, this Court could still -- we don't even need to get that far.

In this case, none of the first factors exist, so they can't be estopped from arguing. The petitioner, Ms. Hiney, has presented no evidence to this Court about the relationship.

THE COURT: I disagree. She presented --

MR. DONSBACH: Not -- not about the relationship as it relates to the Ahmed-Hiney relationship. All she presented was an order that was based purely upon her fabricated testimony.

THE COURT: How do you know it's fabricated? That judge found it to be credible. She based her ruling on it.

MR. DONSBACH: Your Honor, just because she said it was so doesn't make it a fact. Just because she used hearsay testimony doesn't make it a fact that it happened. And it doesn't make it a fact as far as James Brown's status of his relationship to Ms. Hiney is concerned. And that's the problem here; that order cannot bind James Brown. And that's the other aspect of this that's so troubling is that we've had our hands tied on discovery on this.

And there re other aspects of this that we believe could be presented from a discovery standpoint; obviously the marriage license, which

has been presented of the Ahmed-Hiney relationship, obviously the certificate wherein Mr. Ahmed, under oath, stated he had not been previously married. Those facts balance out against her testimony.

We have additional facts -- and, Your Honor, I'm certain we have very good lawyers on the other side here. I am certain if there were other facts that proved the existence of other wives or that Mr. Ahmed was previously married --

THE COURT: Well, if you had those facts --

MR. DONSBACH: -- they'd be waving it from a flagpole.

THE COURT: -- you'd give me an affidavit.

MR. DONSBACH: They'd be waving it from a flagpole, if they had it.

THE COURT: You'd be coming in and saying, Judge, we've got after-discovered evidence and your -- your ruling on the summary judgment, here's where we went out and found this, that, and the other. The rules clearly provide for that if you discover after-discovered evidence that you --

MR. DONSBACH: We don't even have to go to after-discovered evidence. We have evidence that we've submitted in the form of a marriage certificate, in the form of a --

THE COURT: You submitted a stipulation of facts that I issued my order on. And my order was based on the validity of the family court judge's rulings in Charleston.

MR. DONSBACH: Which we believe to be in error, because we believe that under collateral estoppel, that should not have applied to this situation. We believe that the Estate was not collaterally estopped and the heirs were not collaterally estopped by that order from seeking proof through discovery and other evidence that they could prove that Ahmed was not married prior to.

THE COURT: I understand your position.

MR. DONSBACH: But here's the interesting point, Your Honor: All of that being said, I don't think it matters. I don't think it matters about discovery. I don't think it matters about the consent orders that we've all talked about who -- interestingly enough, that's the only order that actually exists between Ms. Hiney and Mr. Brown, which is the consent order dealing with their annulment and divorce actions.

A lot has been said about that and I would argue that that could be construed a bunch of different ways, which is why discovery would

absolutely be necessary to determine what the parties really knew or didn't, why the diaries would be important for state of mind, why all those issues would come into play.

But I think the most important fact before this Court is very simple; none of that matters because we the Lukich case. None of that matters. And I agree with Your Honor wholeheartedly that this case could be decided as a matter of law. We just believe it should be decided in favor of the Estate and the heirs based on Lukich, because Lukich, we believe, is very clear when it interprets 20-1-80. It very clearly states that --

THE COURT: So what you're telling me, if I had taken your position on Lukich, you wouldn't be in here arguing that you need additional discovery and you need to do this and you need to do that.

MR. DONSBACH: This part of this case would --

THE COURT: Because you'd be relying on --

MR. DONSBACH: This --

THE COURT: -- the family court's order.

MR. DONSBACH: This -- no, Your Honor. I'm not relying on the family court's order at all. I'm relying on three stipulated facts. I'm relying on the fact that Mr. Ahmed and Ms. Hiney entered into a

marital relationship February 17th of 1997. I'm relying on the fact that Mr. Brown and Ms. Hiney entered into a purported marriage ceremony on December 14th, 2001, and I'm relying on the fact that on April 14th, 2004, is when Ms. Hiney obtained her annulment order.

The Supreme Court opinion makes it clear that you cannot retrospectively or prospectively move an annulment order back and forth; that it's that date and time forward that it determines the status of the parties.

THE COURT: Then why would when a marriage is annuled is a marriage -- is annuled and a marriage becomes void as it was -- never even happed, is the language that was used?

MR. DONSBACH: It becomes void ab initio as to those two parties. It becomes void ab initio as to the two individuals that were in the relationship, because those two individuals are the people who have, A, the most rights that they can enforce against one another. And the courts, in their infinite wisdom, have determined that they can't step in and go, hey, I was married so I can get this child support or alimony or something else from you during this period of time and said, no, it goes all

the way back to the beginning as to you two. But the rest of the world can't know. Third parties, which in this case Mr. Brown was, cannot know until that decree is entered by a competent court, as 20-1-80 says, that they are annuled. So from that point forward, the person now has the ability -- yes, the initial relationship is voided ab initio, but that person's --

THE COURT: Does that not remove the impediment for her?

MR. DONSBACH: It does, Your Honor, but it doesn't, as the Court said, and I would quote -- and this is the important part of this that is critically important here --

THE COURT: You're quoting from what?

MR. DONSBACH: I'm quoting from Lukich, Your Honor. And I'm quoting from the Lukich case and restatement on that which they very clearly said in -- in the South Carolina Court of Appeals in their Lukich case, which was affirmed by the Supreme Court, this is what they said -- and they cited 56 Am. Jur. (2d), Marriage, 57. And it applies to our case on point.

Even where the annulment decree expressly declares the first marriage void ab initio, it does

not relate back so as to validate the second marriage. In order for the subsequent marriage to be valid, it has been held that there must be a new ceremony following the termination of the earlier marriage. That's exactly what's happened here, Your Honor.

An annulment decree was issued in 2004, it voided the Ahmed marriage, no marriage existed between Hiney and Brown because the -- in order for them to be declared married, they had to re-enter a marriage ceremony. That hasn't happened. The parties have stipulated that hasn't happened. And so I would tell this Court that, yes, we have stipulated to the facts that this Court could decide under Lukich as a matter of law. And it -- it -- that is why in Footnote 16 of Wilson v. Dallas, the Supreme Court said, hey, we just decided Lukich, we know at the time we made this decision we hadn't decided Lukich; we have now, take a look back at this, Court, because we believe this is going to help you out. And that's our contention here, Your Honor.

THE COURT: So your argument is that we can decide this on the stipulated facts, we don't need any additional discover y, my interpretation of

Lukich does not -- is not correct, and if I correctly interpreted it and reverse my motion for summary judgment, then everything is okay?

MR. DONSBACH: Yes, Your Honor. And I'm not -- it's an odd case because it's a matter of law. The parties did do their job --

THE COURT: Well, that's why I got everybody to stipulate; it's a matter of law --

MR. DONSBACH: And that's correct.

THE COURT: -- and you're dissatisfied with my interpretation of Lukich.

MR. DONSBACH: I believe the Court has erred.

THE COURT: I respect that. And I'm going to go back and reread and reread and reread it. I thought I had read it enough til I'm blue in the face, but I will certainly revisit it.

MR. DONSBACH: And I'd ask that the Court read both the Court of Appeals' decision and the Supreme Court decision.

THE COURT: I certainly will. And I'm familiar with the comments made at oral argument about the application of Lukich and I'm -- but I'll certainly revisit it.

MR. DONSBACH: Well, as Mr. Rosen has so graciously pointed out, Your Honor, I'm beyond my

time but --

MR. ROSEN: He's at 18 minutes, Your Honor. But to be honest --

THE COURT: He's at 18:56, but I didn't have my --

MR. ROSEN: I have it.

MR. DONSBACH: I believe I stand by our motion for consideration and I believe I stand by all the points. And there are several other points which I believe there are certain facts that this Court adopted in the order that the parties actually did not stipulate to and that I believe shouldn't be part of the actual order because they weren't part of the stipulation and they've been included in the final order --

THE COURT: But you're being -- you've been very candid with me in saying, Judge, you know, the stipulations, they can be used to decide this case, we just think you applied the crucial case on those facts wrong.

MR. DONSBACH: Yes, Your Honor. And I --

THE COURT: And if I applied it the way you read it, everything would be fine on your side, but they'd be screaming on that side. But I promise you I'm going to go back and re-read and re-read look at

it. And if y'all want to re-brief Lukich, I'll be glad to look at anything y'all send me.

MR. DONSBACH: We would just point the Court to our briefs and our motions because we believe those adequately and very strongly brief the issue.

THE COURT: Thank you very much.

MR. DONSBACH: Thank you, Your Honor.

THE COURT: Mr. Beech?

MR. BEECH: Thank you, Your Honor. Judge, Mr. Donsbach --

THE COURT: Are you in agreement on stipulated facts and I just read it wrong or decided it wrong?

MR. BEECH: Judge, I may be able to shed a bit of light on this question that you've just discussed on the stipulated facts because I was directly involved in the negotiation of those and kind of started that process moving forward based on the Court's suggestion, which was a good one.

Unfortunately, Judge, there were a number of items that the parties were trying to include in the stipulated facts that we just couldn't come to an agreement on. And so in the end, Judge, what we decided was, these stipulated facts are as good as we can get and there are going to be other facts upon which the parties are simply going to have to

have a dispute.

So no one agreed when we finished the stipulated facts that they covered everything and that no other material facts were in dispute. And, in fact, we all agreed that we were not at that point, unfortunately.

THE COURT: That's not my question though. My question is, based on the stipulations that y'all worked so hard and agreed on, aren't those facts sufficient for me to make my decision?

MR. BEECH: Judge, we believe that they're sufficient for your to grant the motion for summary judgment in favor of -- or that Ms. Brown was not the spouse of the decedent --

THE COURT: Well, is your argument the same as just presented to me by the interpretation of Lukich?

MR. BEECH: We don't believe that the Court can grant the petitioner's motion for summary judgment based on the stipulated facts. We think that the Court had to include other facts --

THE COURT: Such as?

MR. BEECH: -- in its finding.

THE COURT: Such as?

MR. BEECH: Well, Judge, there were -- the

Court made some assumptions that, based on documents that were stipulated -- and I do want to be very clear, Judge, we did stipulate that on April 15th of 2004 the family court in Charleston issued an order that we attached as an exhibit to the stipulation. We admit --

THE COURT: There's no question she issued the order.

MR. BEECH: It's no question about that, Judge. What we didn't stipulate is that that annulment order applies to this case or these parties. Again, I agree completely with Mr. Donsbach; I think the whole fundamental problem here is a misinterpretation of the application of collateral estoppel, judicial estoppel, and equitable estoppel.

THE COURT: Well, he says disregard all of that; all you had to do, Judge, is correctly interpret Lukich and the facts that we stipulated would take us to the Promised Land.

MR. BEECH: Well, I think that Mr. Donsbach is correct. All you need to know to grant the -- our motion for summary judgment is, there was a marriage between Tommie Rae Hiney and Mr. Ahmed in 1997. That marriage was not ended by divorce or death prior to her marriage ceremony with Mr. Brown in

2001, and that the annulment order that she got was issued after that, three years later. I think that based on those three things, Mr. Donsbach has stated it very correctly, which is Lukich says that annulment order cannot be used now in this proceeding, either through collateral estoppel or the concepts in Lukich, to go back and invalidate the marriage and then validate the bigamous marriage between Tommie Rae Brown and James Brown. In other words --

THE COURT: So was it bigamous if the first marriage was annuled and made void ab initio, void as it never existed? Doesn't that --

MR. BEECH: Judge, I --

THE COURT: -- eliminate the impediment?

MR. BEECH: -- think the crucial point is that void ab initio is only between the two parties to that annulment action; in other words, Tommie Rae Hiney and Ahmed.

THE COURT: What case are y'all relying on to say it only affects those two people?

MR. BEECH: Well, Judge, there are a number of cases that we cite in our briefs that we submitted or memos in the motions for -- the motions that we argued back in November, Judge.

And what they talk about, the line of cases is the cases that say that that type of order is an in rem order. And in rem, Judge, means that from the point of the order forward as to the entire world, their marriage is annuled. From April 15th of 2004 forward, their marriage is annuled. But from the date of the marriage until 2004, it only has governing force against Mr. Ahmed and Ms. Hiney because -- and that's what an in rem order is, Judge.

We're not saying that the April 15th, 2004 order was not valid; what we're saying is that because it's in rem, that the status of the two parties that it determined as to the rest of the world is only established as of April 15th, 2004, and it can't go back and then validate what was an invalid bigamous marriage between --

THE COURT: You take the position --

MR. BEECH: -- Hiney --

THE COURT: -- it cannot eliminate the impediment that she had, had that marriage been valid?

MR. BEECH: Correct, Your Honor. We believe that's consistent with the concepts of collateral estoppel and we also feel very confident it's

consistent with the ruling in Lukich. We think that's what Lukich was saying. We think --

THE COURT: But you're on the same argument Mr. Donsbach just had that, I mean, if I apply Lukich correct, we're okay with the stipulated facts? You don't want to go that far?

MR. BEECH: Judge, I think if you -- if want to grant -- if you want to determine that she was not the surviving spouse, then I think you can go with the stipulated fact and that application of Lukich.

If you want to determine that she is the surviving spouse, the only way that you can do that is by either misapplying the collateral estoppel rules or by including other facts that were mentioned throughout the order, Judge. The order is 46 pages long. It has a lot of things in there that are outside of the stipulated facts.

For instance, it says things like the parties are bound by the stipulation that was entered in 2008 that Tommie Rae Brown was the surviving spouse, even though that stipulation was reversed on appeal. The order says that that stipulation is binding on all of us, and that's their argument.

And the order says that because that was what the arguments they made before the Court said,

Judge. They drafted an order that --

THE COURT: Maybe I ought to issue a new order, if I'm going to stick with my new order, as to just simply narrow it down to a couple pages and apply Lukich to the stipulated facts, and that will be it.

MR. BEECH: Judge, if you applied it in our favor, we'd be thrilled with that.

THE COURT: I know you would.

MR. BEECH: So, Judge, I guess to --

THE COURT: But if I applied it in their favor and just narrowed it down to two or three pages dealing with Lukich, then that eliminates all this other stuff.

MR. BEECH: Well, that would eliminate all that other stuff, Your Honor. And I think that you can't reach the same conclusion that you did in this order if you correctly applied Lukich, Judge.

THE COURT: Well, they're going to get up and say that I have correctly applied Lukich and, Judge, Early, your application was exactly right, you can rely on Lukich and that's the end of it because when she got the annulment, that did away with the impediment and the marriage to Mr. Brown is good.

MR. BEECH: Of course they will say that.

THE COURT: Sure. And who's right; you? them?

somewhere in between?

MR. BEECH: We're right, Your Honor.

THE COURT: I know. I ask that -- I didn't mean --

MR. BEECH: So I can be clear on that, Judge, I know you're asking a rhetorical question, but --

THE COURT: But that's where we are, Mr. Beech. And I think that's the reason I try to encourage the stipulation. And I cannot thank y'all enough for doing it. And I had hoped -- and maybe I'm wrong on my application of Lukich. I'm certainly going to look at it. But if I am wrong and I want to redo it, I'm going to limit it just to that little narrow issue and disregard all this other stuff. And when I say other stuff, I mean issues involved.

MR. BEECH: Yes, sir. Well -- and we think those three factors that we mentioned that are in the stipulation, you could rely on those defined under Lukich that the marriage between Tommie Rae Brown and James Brown, the purported marriage, was bigamous and that the Ahmed annulment order did not retroactively change that. We think that's what Lukich says and what --

THE COURT: Well, what you're saying is that even though it's void ab initio, they still have to

remarry Mr. Brown in order to revive the relationship they had or to start a relationship, and the fact that the initial marriage to Ahmed was void as if no marriage ever happened, there's still an impediment that had to be resurrected, so to speak, to have her as the surviving spouse.

MR. DONSBACH: Yes, Your Honor. That's what Lukich says. That's what they --

THE COURT: And I appreciate it. And I'm going to definitely re-look at that.

MR. DONSBACH: Okay.

MR. BEECH: So, Judge, we just incorporate all of our arguments we made in our motion and also in our briefs we've submitted in the initial motion, Judge, and just ask for you to change your decision, rule in favor of our position on this. Thank you, Your Honor.

THE COURT: Mr. Barr?

MR. BARR: Yes, Your Honor. I might have been a little bit premature when I first stood up. I'm glad the Court understood better than I did.

What I was trying to say is that we take the position that although were not referred to as a party, just a friend of the Court -- we're glad we were that, but we should have been a party because

we filed a claim back since 2007.

THE COURT: Well, I don't think anybody would object to making you a party as opposed to a friend of the Court.

MR. ROSEN: As long as they accept the stipulation.

MR. BARR: Here's the problem: Because we weren't a party, I guess, technically, I mean, in terms of order --

THE COURT: You got to be -- either you want to be or you don't want to be.

MR. BARR: That's the quagmire. We didn't have the opportunity to challenge anything. You know, we weren't -- we didn't sign off on the stipulation of fact because we couldn't. So we really couldn't participate in any kind of discovery at that time. And of course --

THE COURT: Well, I asked about two weeks ago when we had our first reconvening of everyone, the first question out of my mouth on the motion to reconsider the summary judgment was, does anything else need to be done before we meet to decide it or hear it, and everybody said, no, Judge, we'll stand on our briefs. And I didn't hear anything different from you. Now you're coming in here and saying you

want to do something else.

MR. BARR: Well, Judge, we just never had an opportunity to do anything. And even if we had agreed at that time, we'd still be in the position that we are now because we didn't take part in all the stuff that was going on. The stipulation of facts had already been, you know, signed off on by everybody. We couldn't --

THE COURT: Well, do you disagree with the stipulation of facts?

MR. BARR: Well, we never had an opportunity to really, you know, dig further into some of the issues that was raised.

THE COURT: How much longer do you need?

MR. BARR: And we would have done that.

THE COURT: We've been doing this stuff for years.

MR. BARR: And, Judge, that's what we think. Maybe everything kind of needs to be held in abeyance until such time we could have our chance to dig.

THE COURT: You've had all the chance you --

MR. BARR: But we couldn't, Judge. We couldn't agree with the -- and I don't mean to repetitious, but we couldn't do anything, our hands were tied,

because as was said, you're not in this fight. So we had to stand on the sidelines and look.

THE COURT: But you didn't ask to be intervened until when?

MR. BARR: Well, we thought we were already there until, of course, Mr. Beech made the motion that said we shouldn't -- that we weren't an heir or we shouldn't be participating in --

THE COURT: When you thought you were already there, what did you do?

MR. BARR: Sir?

THE COURT: When you thought you were already there, what did you do? I mean, don't come in here and tell me you didn't have time to do what you were supposed to do. This case has been going on since his death.

MR. BARR: Well, I understand, Your Honor. We just -- I mean, that's --

MR. ROSEN: Your Honor --

THE COURT: Hold on a second.

MR. BARR: -- our position.

MR. ROSEN: -- there's a transcript of November 10th where you asked these lawyers whether they agreed to the facts, and they said they did. In other words, Your Honor was very careful before we

went down this road that whoever was going to participate was going to be bound by the facts. And so I --

THE COURT: Let me see that transcript.

MR. ROSEN: The stipulated facts. Yeah.

There's so much paper in this case, it's hard to keep track of everything. Ms. Gilford at least represented to the Court --

THE COURT: What were we here on that for? What was that?

MR. ROSEN: That was November 10th. And I guess we were here about --

THE COURT: Ms. Mitchell's motion to intervene.

Mr. Barr, is that correct?

Correct.

MR. BARR: I'm sorry. Repeat that again, please, Your Honor.

THE COURT: November 10 of 2014, before the Court was this:

I said, all right, ladies and gentlemen. As I understand, I've got about six or seven matters before me this afternoon. Let's everybody listen to make sure we're all on the same page. Janette Mitchell's motion to intervene. Mr. Barr, is that correct?

That's correct.

And then when we get to it, I was going through about the stipulation of facts and I said, Ms. Gilford.

Ms. Gilford said, Your Honor, I did not -- well, to some extent I did participate. But we -- we did participate, but we did not sign it the day and -- but were not objecting to the facts as stipulated.

So you're now objecting to them?

MR. BARR: To the -- to the extent that what -- and I -- and Mr. Beech has indicated, in that regard, we would take their position as well. But we never signed it. I think you had to sign it.

THE COURT: Well, I know you didn't sign it, but you agreed to it. Can't I take y'all's word?

The point is, I was trying to get -- and I did, I thought -- a stipulation that everybody from here on out who had a dog in the fight, so to speak, would agree to the stipulations of facts so that when it got to the Supreme Court or the Court of Appeals would at least have an agreed-upon set of facts to apply it to Lukich or whatever else they want to apply it to.

So I'm asking you today, do you still agree to

the stipulation of facts as set forth or as represented to me by Ms. Gilford back in November of 2014, November 10?

MR. BARR: Your Honor, to be quite honest, I was not intricately involved myself. Ms. Gilford was basically handling it, so I cannot --

THE COURT: Well, she hasn't shown up today or the last -- two weeks ago. So I've got to depend on you, Mr. Barr. You're right here in my neighborhood in Kingstree, so I can get to you; I can't get to Ms. Gilford.

MR. BARR: Well, I'd be kind of doing myself a disservice if I said I agreed with it and I haven't had a chance to really comb through it. I just can't --

THE COURT: Well, other than you maybe not agreeing to the stipulations, what else do you want to tell me?

MR. BARR: All right, sir. Well, that kind of bleeds over to everything else, Your Honor, that she, you know, had a right to, you know, engage in the discovery. You know, the diary issue and all of that, we didn't get the chance to do that.

And, basically, you know, she has been denied her right to, you know, due process in terms of

determining whether or not she got any property in the James Brown estate.

THE COURT: In all due respect, if Ms. Gilford had sat there and told me in November of 2014 that she adamantly opposed the stipulation, she needed to do additional work, I probably would have stopped it right there. She agreed to it, so we moved forward. That's all I can do. Thank you.

All right. Professor?

MR. ROSEN: I want the Court to take judicial notice that I'm also timing Professor Medlin.

THE COURT: He's got seven minutes.

MR. MEDLIN: Your Honor, I left class early today to get here, and I appreciate your indulgence.

THE COURT: You don't need to be using up all your time --

MR. MEDLIN: Not one student was upset that I left early. So you are now their hero.

THE COURT: I bet they're all out doing what I used to do when I got out early, which was go home and study. Right, Mr. Lewis?

MR. BEECH: They still do that, Your Honor.

THE COURT: Mr. Beech, I know you and Mr. Sojourner and Mr. Barr. Mr. Jenkins, how about you? The teacher let you out early, you'd go back

and study; right?

MR. JENKINS: Absolutely.

THE COURT: All right. I appreciate y'all for a little levity.

MR. MEDLIN: Your Honor, here's what the stipulated facts in the order tell us: Mr. Brown, who had knowledge of the Ahmed-Tommie Rae annulment action that he paid for, dismissed his own annulment action brought after the commencement of the Ahmed-Tommie Rae action, he dismissed it. He never again tried to terminate his marriage, even by annulment or divorce. We don't need any of the facts to know that at the time he died, he thought he was married to Tommie Rae, he intended to do be married to Tommie Rae.

The LSA and the children don't want to do what their daddy wanted to do or what the person in whose shoes they're standing wanted to do. He wanted to be married. And there's lots of evidence you'll have under stipulations to look to other matters in the record as I read the stipulation, but we don't need that. But there's plenty of evidence that shows that that's what he thought.

There's an argument in one of their memos that the -- that the autobiography might have been

printed or created before the family court matters were over. Well, all you have to do is look at the copyright. The copyright is a year after the family court matters involved concluded.

So Mr. Brown, clearly, just on the record of the Aiken and Charleston County family courts, chose to be married to Ms. Brown at the time of his death. They --

THE COURT: But could he be married if the other side says that he had to go through another marriage regarding Lukich?

MR. MEDLIN: Well, first of all, at that time, there was no Lukich. And they, as I will get to in a few minutes, Your Honor --

THE COURT: But there is one now.

MR. MEDLIN: Yeah, there is one now, which they purport overturns every other case in South Carolina without saying that they're overturning it. In fact, quoting that for the fact that a bigamous marriage is void ab initio, never a marriage, they want never a marriage to mean, oh, well, never sometimes and never other times, and overturning the bigamy statute, which says a bigamous marriage is void ab initio, it's never a marriage. It doesn't say

that at all.

THE COURT: Well, that's how I ruled. I ruled that once Judge Segars-Andrews ruled that that marriage was annuled, it was bigamous and she was never married, she had no impediment, that marriage to Mr. Brown was --

MR. MEDLIN: And, Your Honor --

THE COURT: Is that wrong?

MR. MEDLIN: -- we think your order was impeccable and, of course, it was correct. And, no, because otherwise, you'd be overturning every other case the Supreme Court ruled that a marriage was void ab initio, not what Terry Brown or the LSA want to add. If they want to run for the Supreme Court or run for legislature, they can change that. But that's not what the law says.

THE COURT: What does the law say, Mr. Medlin?

MR. MEDLIN: The law says that a bigamous marriage is void ab initio. And Lukich says the same thing. And if --

THE COURT: What does void ab initio mean?

MR. MEDLIN: It means never. And in fact --

THE COURT: As if it never happened.

MR. MEDLIN: As if it never happened. And in fact, we argued before, Your Honor, that the

Legislature clearly knows the difference between void and voidable. There's a statute in the Probate Code that talks about self-dealing. It talks about voidable. And that means that it doesn't have to be invalid from the start, only if the parties want it to be. They know the difference in the terms.

Void means never. And they don't want to believe that in this particular case, but not in the case of Mr. Brown's marriage to Mrs. Brown, which I'd like to get to in a minute. But we don't need anything but those Charleston County and Aiken County family court orders to come to the conclusion. We agree with that too. We don't think that you've made other errors.

THE COURT: Well, they -- once they're oppressed, they agree that I can decide it on the stipulated facts, they just take issue with my application of Lukich to the stipulated facts. And that's where you differ from them and I differ from them in my ruling. And my ruling was based on long, long, long line of cases that say a bigamous marriage, as if it never happened, it's void. If it never happened, then she had no impediment and she was free to marry Mr. Brown, and she did.

That's pretty elementary, but that's the manner

they perked my interest about maybe Lukich changes all that and maybe I didn't read Lukich correctly. But you can bet your bottom dollar I'm going to go back and read Lukich again until I fall asleep.

MR. MEDLIN: Well, I'd like to un-perk that interest, Your Honor. You were absolutely correct --

THE COURT: Well, you're not going to un-perk it because --

MR. MEDLIN: Failing that, I wanted to tell you that you were correct. Because remember in Lukich, we had two marriages that were invalidated; one was based on bigamy. And the bigamy statute says a bigamous marriage is never a marriage. There's a reason for that. Bigamy is against public policy. It's so much against public policy, it's a crime.

So the legislature and the courts can't be saying that a bigamous marriage is void sometimes, but not other times or to some people and not to other people. It's against public policy. It's just void from the beginning. And Lukich treats that second marriage, which was the bigamous marriage, exactly like that; it was never a marriage from the beginning. Remember in Lukich, the order of the marriages are reversed from our particular

case here.

Marriage based on intoxication was the other marriage. That's the order that came after the bigamous marriage in Lukich. That was not given retroactive effect because the Court does have discretion as to an intoxication-based annulment, that is a voidable marriage. There's no public policy and no statute prohibiting an intoxication marriage. I suspect many marriages would not be valid from the beginning if that, in fact, were the case, Your Honor. Nobody in this room, but it could be there are some people out there who would have that problem.

Their theory leads to absurd results. Somebody could be married to two people unless and until there was a court order saying that it's not valid. And other parties would be caught up in the same sort of issue having to deal with two spouses, for example. Again, that's not what the law has ever said and is not what Lukich says. Lukich treats the bigamous marriage as void from the beginning, never a marriage; otherwise --

THE COURT: Which has been the law in this state for a long time.

MR. MEDLIN: Since the Hallums case which rules

in the same way; in fact, it sets up exactly that same argument.

Now, in Lukich, the Court said, you don't have to pay alimony because you were never married. That proves the retroactive effect, the never part of the void treatment that the courts have always treated. And in Lukich, the Court cited case after case after case saying that a void marriage is never a marriage and a bigamous marriage is a void marriage.

Now, there's some cases they cite that deal with collateral issues. How do we divide property when people thought they had a marriage but it turns out they didn't? Or one case, the Joy case, where you had the divorce, fellow is paying alimony to the ex-wife, she thinks she marries her second husband, ex-husband is happy alimony is over, and then it turns out the second husband was already married, so that was bigamous and void ab initio. And so the Court said that even though the status -- and here's the difference: The status of that bigamous marriage is void ab initio. We'd have some collateral issues and, in fact, the Supreme Court ultimately ruled that the alimony could stop because of that bigamous marriage. But that didn't affect the status at all.

But here's the biggest problem with their theory, if they think it through: Let's assume that your marriage is bigamous until you get an order and that order is effective prospectively only. Well, Mr. Brown, therefore, according to them, entered into a bigamous marriage with Mrs. Brown. We don't have an order and it's too late to get an order. You can't get an annulment, which is the only way to find that a marriage was invalid from the start. You can't get that after death. And the Probate Code, which defines a surviving spouse, and related case law says, of course, that you can't get an annulment after death.

So even if they were right about the theory of a bigamous marriage not being void from the outset -- and they're not -- Mr. Brown doesn't have an order he can't get one. So they get a real problem that, again, they want to dance around by saying, well, in some cases -- in other words, Tommie Rae's case -- the law is this way, and in everybody else's case, the law is a different way.

So how do they get around that problem? Well, they attack the family court order and they say that it's fabricated -- interestingly, I don't think Terry Brown was there -- that the Charleston County

judge wasn't competent to make a decision about the evidence presented to her in the court. Again, they just want to try to retry this case so badly --

THE COURT: They finally came around after I questioned them enough to say that if I interpreted Lukich correctly, they were satisfied with the family court judge's order in Charleston.

MR. MEDLIN: Well, I hope that's correct, Your Honor. And we would say that that would be the right understanding, because there are any number of reasons that we can't go behind that order. Number one, even though Mr. Rosen told me not to tell you this last time, you don't have jurisdiction; only a family court has jurisdiction over annulments. So this is not an appeal to you because family courts don't appeal to you, there's no way you could be deciding an annulment anyway.

Now, if they want to figure out how to go back to family court and get that undone, which I don't think can happen at this stage, as you pointed out earlier, that's something else. But not here, not in this court.

This Court can't decide whether the Mr. Brown-Mrs. Brown marriage was bigamous because that requires an annulment. Mr. Brown knew that, he

brought an annulment action, which he dismissed with consent. Mrs. Brown counterclaimed to divorce and they mutually consented to dismiss that. But more about what they think about that in just a second, Your Honor.

The only parties who have standing to attack an annulment are the parties to the annulment. We agree Mr. Brown was not a party to that annulment. Of course he wasn't; he could not be. Lukich tells us that too: You can't be a party to someone else's annulment. His only recourse would be to try to annul his own marriage, which he did try to do for a brief while, and then he dismissed the action, never to bring it again.

The children and the LSA, at best, stand in his shoes. They want us to think they have some rights -- due process rights or some rights created somewhere else. Their rights are Mr. Brown's rights. He could not contest that annulment, he could only bring his own annulment action. He knew it, he did it, he dropped it. He was happy to be married when he died.

And here's where they really get interesting: I think I hear them say, at least Mr. Beech say on behalf of the LSA, that an action in rem is binding

as to status as to the entire world. Well, of course, it has to be. And if you can go behind the facts and destroy the determination of status, then there really is no binding determination of status. The Court based its determination of status on the facts that it found to be the case. And the status that's important here is that at the time she married Mr. Brown, Mrs. Brown had no impediment to her marriage. The order that she got in 2004 said that she was never married. That's the status. That order doesn't say she's married up until this time and not forward. It says nothing like that, under Lukich or any of the other cases. It says it was never a marriage. That's the status determination that's binding on the rest of the world, including Mr. Brown.

If you could attack an order, which is what they want to do -- and why would we stop at this? Why not annulments obtained before another marriage, why not divorces obtained before another marriage? If third parties aren't bound by that, then no family, no family status, no child's legitimacy, no tax returns, no jointly owned property, none of that is going to be determined if people can keep coming back and attacking an in rem status judgment. It

would lead to chaos. There would be no finality in the family court, there would be no finality to status at all. We can't have that chaos, Your Honor.

So, for example, what if Terry Brown married his first wife and they got divorced, and he married a rich second wife, and then she wanted to divorce him and he wanted alimony. Is she now going to be allowed to come back and attack the validity of the first marriage because the status was not binding on her, argue about the underlying facts of that divorce so that she doesn't have to pay alimony? This would be never-ending.

The status has to be binding. And every case recognizes that in South Carolina, and the restatement recognizes that, as Your Honor pointed out. Now, we don't need a restatement; we've got plenty of law in South Carolina. But the restatement is simply corroborative of exactly those points.

Now, Your Honor, what else can they argue if our statute and our Supreme Court has always said a marriage that is bigamous is void ab initio, and they can't go behind and attack the order that found void ab initio? Well, in their briefs they argue

that the consent order granted an annulment.

Now, this is remarkable to me. Mr. Brown brought an annulment action, full knowledge of what was going on with Mr. Ahmed, he's paying for that annulment; he brings an annulment action for other reasons, and they reconcile. By the way, they're saying settling is not reconciling even though they are living together and everything is happy in the order. He dismisses, by consent order, his annulment action, and Mrs. Brown dismisses her counter-divorce action. It's a consent dismissal.

Now, I think it's basic pre-first-year law student knowledge that if you bring an action and dismiss it, you don't win your action; it means you gave up your action. So they can't transform that magically into an annulment. If that's the case, Your Honor, I'm going to go out and sue someone for $50 million this afternoon, dismiss my action, and then still get my $50 million because I won. Little did I know that a dismissal means you won.

So, again, their whole argument is based on a house of cards. The simplicity of it is that if a marriage is void ab initio, we don't have any of these problems. Mrs. Brown's punitive marriage to Ahmed was void ab initio and, therefore, she had no

impediment. They want to say that that doesn't apply only to Tommie Rae, but that rule does apply to Mr. Brown and his marriage to Mrs. Brown, which they claim was bigamous.

By the way, Your Honor, we have specifically refuted each of their individual allegations, claims in their briefs. They think you made a lot of mistakes, by the way, and we think you did not. But rather than get into those specifics, I, based on time, will simply deal with these general statements that I've made.

But just one example of the kind of -- well, first of all, I don't recall anywhere in the order where you said the settlement agreement was still binding on the determination of marriage. I don't remember you saying that anywhere in the order. Secondly, if I read it correctly, Mr. Terry Brown says that you should not have considered the affidavit of David Bell about Ahmed. Well, first of all, I think that was the affidavit Mr. Donsbach was just referring to. But separate and apart from all that, at the time, Mr. Bell was representing Terry Brown. He presented that affidavit on behalf of Terry Brown. These are the kinds of problems that they have that they are bringing up at this point.

But fortunately for justice, Your Honor, your order is right. Because otherwise, here's what you have to believe: Number one, it's okay for you to destroy Mr. Brown's intent about his marriage based on the very facts that he, knowing about the annulment of Tommie Rae and Ahmed, withdrew his annulment action and never brought another attempt to terminate his marriage. He went to his grave thinking he was married; and he was married, and they want you to undo that. Without subject matter jurisdiction, you can re-open and retry that Charleston County family court case; that you can, despite law and statute to the contrary, have a post-mortem annulment hearing in this court; that it's okay for you to overturn every case, including Lukich, and the bigamy statute that holds, uniformly, that a bigamous marriage is never a marriage; that they want you to believe that it's okay under South Carolina public policy for somebody to be married to two or more people at one time unless and until we get a court order terminating that; it's okay to have two wives if you're a man until somebody brings a court order saying, you can't have two wives; that an annulment order for bigamy doesn't make the marriage void ab initio, but

then they want a different rule to apply Mr. Brown and a marriage they claim that's bigamous to Mrs. Brown.

They want you to buy that a consent order of dismissal was really a victory for Mr. Brown where he got an annulment. They want to think, by the way, that it's okay to use a stolen diary in evidence. I know we're going to deal with that later, but they're so focused on what Mrs. Brown might have said in her personal diary that, just for example, just for the sake of argument, assuming that she'd been told by three fiduciaries who are now a convicted felon, an admitted liar on the stand to you, and someone who was taken away from the magistrate's bench because he was selling drugs, as I understand it, they want those three reputable citizens to go to Tommie Rae and say, you're not married to James Brown, which, of course, wasn't the law at the time anyway because Lukich wasn't the case at the critical time that Mrs. Brown married James Brown. Lukich doesn't change anything anyway, but it certainly wasn't the law when all this stuff was going on. There was no Lukich. So she might have had a couple of excerpts of despair. They don't care what Mr. Brown thought.

Now, again, what Mr. Brown thought or put in a diary or said is no more binding on you as to the legal effect of those marriages as what Mrs. Brown said. I just find it interesting that the person that they should care about, the decedent in this case, they don't care about. They don't want to pay any attention to what he though, and they know what he thought.

Your Honor, Footnote 16 of Wilson v. Dallas, you're probably familiar with that opinion. I didn't like it. One day I'm going to write about it, as I've written before about cases, because that's what I do when I don't like it. Footnote 16 no more says that Lukich is -- invalidates the Mr. Brown-Mrs. Brown marriage than that consent order of annulment granted Mr. Brown an annulment. The opposing parties want to make up things in orders that aren't there.

And since you said you're familiar with the oral argument, there was a heated exchange --

THE COURT: Well, I'm --

MR. MEDLIN: -- about the Lukich case. And, in fact, the Chief Justice said Lukich kills Tommie Rae. And, lo and behold, Footnote 16, they didn't kill Tommie Rae; they said, we'll think about this

later. The Court of Appeals opinion in previous arguments didn't apply because we had a Supreme Court opinion. I think that was in the LSA's brief a long time ago that that footnote in the Court of Appeals opinion, which wasn't adopted verbatim by Supreme Court, didn't need to, which noted the exception to bigamous marriages as not being applicable to that intoxication marriage in Lukich, that's another footnote that really shouldn't matter but that should be brought to the attention of the Court because in the Court of Appeals, they said bigamous marriages are still void ab initio. They were focusing on the intoxication marriage.

But in this footnote in Wilson v. Dallas, if the Court could have killed Tommie Rae, they could have done it. It would have been so easy. So to read into that, that Lukich says what they say it says, when it clearly doesn't, just because they say we'll decide the Lukich later, if it comes up before us, is a stretch in any case.

Let me, if I may, address a couple more points that they make. James Brown did file an annulment and he decided to dismiss it. Every bigamous marriage, as you noted at the arguments last time, Your Honor, has -- how can I say this gently -- an

inaccurate statement by one of the parties. The one who is already married of course has to swear he's not married or doesn't get a marriage license. That's not something remarkable about this case. Every bigamous marriage has that in it. And, of course, that does not make a difference.

Your Honor, unless you have questions, I think I'm done.

THE COURT: All right. Thank you.

Anything in response, briefly?

MR. DONSBACH: Briefly, Your Honor.

First of all, he twists and misconstrues what we said about the affidavits in our brief. What we were saying is, this Court told us, go put a joint stipulation together, those are the facts we're going to abide by, I don't want any others, we're going to hold discovery, you guys figure out the facts. Our dispute is they supplied affidavits which included this autobiography of Ms. Hiney with their summary judgment motion when this Court said we're going to rely solely on the stipulation of facts. So our contention is, none of those facts should have been considered, including any affidavits or other things that we submitted because the --

THE COURT: Let me make myself clear: I only consider stipulations of facts. And you know how I reached my conclusion. And you say that I can still look at those stipulations of facts and, Judge, if you will just look at Lukich, you will realize that you were wrong. And I'm going to do that, I promise you. And if I agree with you, I'm going to change it.

MR. DONSBACH: Well, Your Honor, Lukich is very short and simplistic. That's the beauty of it. I have it in my hand, it's two whole pages. And Lukich very clearly says and, it is our facts to a tee, that there's no deviation. It says: The question is whether the October 2003 -- you could insert April 14th, 2004 -- annulment order declaring wife's first marriage void ab initio relates back so as to validate her purported 1985 marriage -- you could insert 2001 marriage here. In construing a statute, we need not resort to rules of construction where the statute's language is plain. Under the statute's terms, wife's marriage to Husband No. 2 -- which you could insert James Brown -- was void from the inception since at the time of that marriage she had a living spouse -- insert Mr. Ahmed -- and that marriage had not been declared void. And they cite

in accordance with 20-1-80, which requires a Court of competent jurisdiction to declare it void. See April 14th, 2004 annulment.

The Court goes on to say: While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second marriage. Since there was no marriage under the plain terms of the statute when the ceremony between Wife and Husband No. 2 -- read, Tommie Rae Hiney, James Brown -- was performed in 1985, there was nothing to be revived by the annulment order in 2003 -- read, April 14th, 2004.

And it closes with this, which I think is just crystal clear at this point which is what they've been arguing this whole time: The statute speaks to the status quo at the time the marriage was contracted and does not contemplate either a prospective or retrospective perspective. Any other construction of 20-1-80 would lead to uncertainty and chaos, which is what, unfortunately, Mr. Medlin and company have created here.

This couldn't be clearer. I'm not asking you to rely on these defunct citizens of South Carolina, I'm asking you to rely on the Supreme Court ruling, the supreme law of South Carolina, and the Justices

who decided it and very clearly laid out in Lukich are exact fact pattern. And they didn't distinguish void, voidable, any of that. They made it very clear what the law of the land in South Carolina is as to annulment actions. This isn't a divorce, this isn't any of the other or any of the other items that Mr. Medlin brings up, this is an annulment with a bigamous relationship that Ms. Hiney entered into with Mr. Brown. It's that simple. It's really not hard.

And the three facts that we've presented in the stipulation of fact that we've stated make it very clear under Lukich. And that's as simple as it can be for this Court. Lukich applies, Ms. Hiney is a bigamist; that's it. I have nothing further, Your Honor.

THE COURT: Okay.

You want to reply to that?

MR. MEDLIN: If I could, Your Honor.

THE COURT: You may.

MR. MEDLIN: As I stated, we don't need any of those facts. But I will point out that Item 21 of stipulations, if I'm reading it correctly, says that you can take judicial notice of the files, pleadings, transcripts, briefs and oral arguments in

this court, the Court of Appeals and the Supreme Court. You can take judicial notice of anything that's been in front of you, it says in the stipulations.

More importantly, here's the one little simple problem with Terry Brown's argument: It's not exactly the same facts. They're exactly backwards. It's not the same fact pattern. In Lukich, we have a woman who has a marriage, Marriage No. 1 --

THE COURT: A valid marriage.

MR. MEDLIN: A valid marriage. She then attempts to marry and --

THE COURT: She's not married and he's not married, and they get married.

MR. MEDLIN: And they got married. They're drunk, but they get married.

THE COURT: Well, a lot of people do that, that's why we have so many marriages.

MR. MEDLIN: And probably why we have so many divorces, Your Honor.

We have a valid first marriage. Along comes the second punitive husband that tries to marry the woman who is already married. She then goes back -- I don't have enough hands to do this. She then goes and tries to get an order of annulment based on

intoxication. Mr. Donsbach is reading the case exactly backwards. What the Court is talking about is that marriage that's annuled for intoxication does not take away the impediment. It's not void ab initio --

THE COURT: Because it's voidable.

MR. MEDLIN: Because it's voidable.

THE COURT: And it's not void until you void --

MR. MEDLIN: He wants you to read this case as if the facts are exactly the same. Our facts are exactly backwards. The void marriage is the first marriage in our case. It was never a marriage, so we don't have that impediment.

In Lukich, the Court is saying -- first of all, they clearly made the distinction between void and voidable; they may not use those exact words, but that is exactly the result -- a bigamous marriage is void ab initio and a marriage by intoxication doesn't have to be, if there's an annulment. But he wants to apply the language that the Court is using for the intoxication marriage, which is not void ab initio, to Tommie Rae's marriage. And they have it exactly backwards, Your Honor.

THE COURT: Thank you. All right. I want -- I'm going to give y'all 30 days to anybody -- and I

don't say you have to. But I'm limiting this reconsideration to the arguments on Lukich on the Rosen side and Donsbach side. If y'all want to submit anything else in the next 30 days, it's strictly on the Lukich issue, recognizing the facts as stipulated, narrowing it just to that. That's where I'm going with it. And either, Mr. Donsbach, you're going to be right or, Mr. Medlin, you're going to be right.

And there is a distinction though because the marriages may be -- I'll have to look at that. I appreciate your argument and I appreciate your argument. I'm sorry I didn't recognize the Brown family. Good to see y'all again, as always. I hope you're all doing well. Haven't seen y'all for a while.

Anyone else need to say anything before we break? Thank you very much.

MR. BEECH: Your Honor, at the -- I hate to ask this --

THE COURT: Hold on. Hold on. I forgot all about it. Protective orders.

MR. BEECH: The discovery issue, Your Honor. Yes.

MR. SHAHID: You want to hear that now, Judge?

THE COURT: I thought we were going to do it after we did this.

MR. SHAHID: We did. But whatever the Court wants to do.

THE COURT: Okay. Anybody need the bathroom? Everybody okay?

MR. SHAHID: Your Honor, you should have received an amended motion that I filed on June 24th.

THE COURT: I did. I'll be glad to hear from you.

MR. SHAHID: Okay. Thank you, Your Honor.

Your Honor, the LSA has filed a first request for production and interrogatories back in May of 2014. And I'll start with the interrogatories first, if you don't mind, Judge. But he's requested 32 questions to the -- to J. B .

If I could put this all in prospective, Judge, as to this matter, we're dealing with a minor who was born in of 2011, just turned years old. He's being represented Steve Sojourner, Guardian Ad Litem. He's filed a petition to protect his rights as an admitted child. The interrogatories were prepared prior to the results of a DNA test having been returned -- submitted and returned to us.

Those DNA tests includes, in our opinion by the results of the test, he's the biological son of the decedent.

After an exchange of some telephone calls, e-mails and letters, the LSA has agreed to withdraw those interrogatories and requests to produce that deal with the DNA test. The problem is this: We're dealing with a child who is incapable of testifying, because at the time of his father's -- the will was prepared before he was born. So the testimony that we're going to present is going to be mainly document testimony and maybe some live testimony, but the questions that have been propounded to us go beyond what was contemplated under Rule 20 -- I'm sorry, Rule 33 and 34 as to standard interrogatories and requests to produce. It's well beyond those standard questions about who's your witnesses going to be, what's your expert witnesses. Some of those included, but it goes beyond the whole sequence of events requesting that.

For instance, while they have removed their request for Questions 10, 11, 12, and 13 and I think 14 as well, which deals with some of the DNA questions, they still want to know what schools you attended, describe all DNA tests or genetic tests

which you have submitted, which is Question No. 9, identify your biological mother, what is your social security number, things well beyond issues dealing with whether or not he's entitled to part of his father's estate or whether or not he is the child.

We can't get them to stipulate that he is the child; even after their DNA test comes back under the protocol they established, they won't even stipulate to that. Our issue is very --

THE COURT: Isn't that what your motion for summary judgment is?

MR. SHAHID: And we filed a motion for summary judgment on that particular issue.

So a couple points: We filed this motion for summary judgment. It is -- the question is this: He is the son of the decedent, that's a question before the Court. Our request for summary judgment is, he's the son, we've submitted as an exhibit to that motion for summary judgment the two DNA tests; the test that we did and the second test that was done in 2014. That's the issue.

Once that issue has been resolved by the Court, then it's going to be a main issue as to whether or not he was intentionally or non-intentionally omitted -- omitted as a child. So all of this

discovery, except for that particular issue, needs to be set aside because it's really irrelevant. I mean, certainly the rules allow for broad discretion and for a very --

THE COURT: Any issue that may lead to --

MR. MEDLIN: May lead to -- we've gone through all of that a million times. I know what -- we all know what those rules are. But you still have got to have germane to the issue at hand. And the issue at hand is going to be whether or not he intended to admit him or not. That's --

THE COURT: Why don't we wait until we have the summary judgment and I'll rule on that? And if I rule he's the child, then you've got the narrow issue of whether or not he was left out intentionally or not. And then we can go with discovery on that.

MR. SHAHID: Suits me just fine, Judge.

THE COURT: Mr. Beech, is that an efficient way to do it? Nobody is giving up any rights or waiving anything, I just --

MR. BEECH: Your Honor, so what you're suggesting is that we hold off on this question until after the Court rules on the summary judgment?

THE COURT: That's right. And then, obviously,

if I rule he's not the child, then that will be the end of it, probably. But if I rule that he is, then we've got that narrow issue.

MR. BEECH: Your Honor, I -- Ms. Zwing was actually going to argue this motion. So I hate to --

THE COURT: No, no. I'm sorry. I asked the wrong person.

MR. BEECH: No, no. So I'm going to let her state --

THE COURT: Is that an efficient way to do it, ma'am?

MS. ZWING: I think so, Your Honor just. I certainly, just responding to the petitioner's motion for protective order, we've certainly asked for the standard interrogatories, and the rules allow us up to 50 interrogatories.

THE COURT: Sure.

MS. ZWING: There's no limit on the request for production. So, Your Honor, we would certainly argue that we have asked a sufficient number of discovery requests in this case. A lot of them do pertain to transfers outside of the will and whether or not those transfers were intended to provide for the petitioner outside of the will --

THE COURT: Which may be very relevant if he is deemed to be the child.

MS. ZWING: Yes, Your Honor.

THE COURT: That may be why he was omitted.

MS. ZWING: Yes, Your Honor. And I do think it would be appropriate to stay this discovery issue until after the summary judgment motion is heard.

THE COURT: And that's going to be heard on whatever date I set the hearing date, which I gave y'all a while ago, the timeframe.

MS. ZWING: In August, yes, sir.

THE COURT: Thank you.

Mr. Black, you're going to do me a proposed administrative order based on what we heard today?

MR. BLACK: Yes, sir, Your Honor. I've been taking noted.

THE COURT: Anything else?

All right. I signed the scheduling order and the will contest; still have not gotten the court schedule for 2016, but it's going to be late January or early February. Keep that in mind, continue to work towards that.

MR. BEECH: Your Honor, let me just very quickly ask -- and I don't mean to open up a problem here. I'm actually trying to see if I can resolve

one. But should we be proceeding on the idea that discovery between these four cases is consolidated or should we be proceeding under the notion that it's not? And I'll just tell you, for instance, Your Honor, if we were to take the deposition of Ms. Brown, which we, of course, are going to need to do, should we ask questions relating to all of her claims, the undue influence claims and the ones contained in the under lying 1647, as well as questions about the prenuptial agreement and whatnot in the same deposition or would we take two separate depositions, one related to one issue in case and another one related to the other issues in case?

THE COURT: Seems like to me it would be efficient to do it all at once. But that's --

MR. ROSEN: We agree with that, Your Honor.

MR. BEECH: Okay. I think it would be -- if everyone agrees to that, I think the most efficient way --

THE COURT: You don't have to agree.

MR. BEECH: -- might be to say that we're consolidating for the purposes --

THE COURT: All the discovery is consolidated and have at it.

MR. BEECH: Thank you, Your Honor.

THE COURT: But I guess we need to issue the -- address the diary issue. But I'm going to do that quickly.

MR. BEECH: Yes, Your Honor.

MR. ROSEN: You were going to hear it in August, Your Honor.

THE COURT: I am.

MR. BEECH: Right. And we certainly need to know the answer on the diary issue before we can take Ms. Brown's --

THE COURT: But I assume there's other discovery that you want to --

MR. BEECH: There is, Your Honor. We're lining it up.

THE COURT: Just, please, fair warning, you know --

MR. BEECH: You've given it to us, Judge, and we're heeding your warning.

THE COURT: All right.

Thank you, everyone.

-- END OF TRANSCRIPT OF RECORD --

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 Second 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 30th of June, 2015.

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

July 24, 2015

s/Bethanie K. Creppon

Bethanie K. Creppon
Circuit Court Reporter

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB DBT DBT for UB

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J. B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

8/10/08

8/10/08

8/10/08

Tonya Brown

Delaura B. Thomas

Delaura B. Thomas Jr.

Tamisha Brown

Delaura B. Thomas Jr.

Tamisha Brown

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B . Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L . Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

Tonya Brown

Deanna Brown Thomas

Deanna Brown Thomas for

Vernita Brown

Deanna Brown Thomas for

Tamara Brown

Tom Larry Brown

8/10/08

8/10/08

8/10/08

2008-CP-02 16

ADDENDUM TO PRIVATE AGREEMENT
OF AUGUST 10, 2008
TO INCLUDE
SETTLEMENT AGREEMENT
WITH TERRY BROWN
CREATING RESTATED AND AMENDED PRIVATE AGREEMENT

WHEREAS, Henry D. McMaster, Attorney General of South Carolina (the "Attorney General"), Tommie Rae Brown, individually and on behalf of her minor child, J B , Larry Brown, individually and on behalf of his minor children, L B and J B , Venisha Brown, Deanna J. Brown Thomas, individually and on behalf of her minor child, J I , Yamma N. Brown Lumar, individually and on behalf of her minor children, S L and C L , Daryl J. Brown, and Tonya Brown (the "Settling Parties") entered into a private, binding agreement dated August 10, 2008 (the "Agreement") to settle any and all differences among them concerning the disposition, by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or non-probate means, as well as any and all benefits conferred by state and/or federal law as a result of the death of James Brown (a copy of said Agreement is attached hereto as Exhibit A);

WHEREAS, Paragraph 5(k) of the Agreement provides that "the parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares"; and

WHEREAS, the Settling Parties and Terry Brown (the "parties") have come to an agreement to settle any and all differences among them concerning the disposition, by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or non-probate means, as well as any and all benefits conferred by state and/or federal law as a result of the death of James Brown, and the parties desire to memorialize said agreement in this addendum to the Agreement dated August 10, 2008 (the "Addendum").

1. NOW, THEREFORE, for and in consideration of one dollar and the mutual promises and agreements contained herein, the undersigned parties agree as follows:The Agreement shall be amended and restated and shall be applicable to all parties, such that the provisions of the Agreement are incorporated herein, except to the extent amended by this Addendum. In settlement, the parties each shall contribute and assign to the Settlement Entity, described below, pursuant to a contribution agreement attached as Exhibit B (or in such other form as may be agreed to by all the parties), all of such respective party's rights and interest in any assets or proceeds whatsoever to be received or payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the

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parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to persona, image, likeness, royalties etc. (collectively, the "James Brown Assets"). Each of the individual parties is entering into this Addendum in his or her individual capacity, and to the extent stated herinabove, parents represent their minor children, and the Attorney General is acting on behalf of all the charitable beneficiaries of the James Brown Assets. The allocation of the net income and/or disposition proceeds of the James Brown Assets described in this Addendum is made in settlement of any and all differences among the parties concerning the disposition, by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or non-probate means, as well as any and all benefits conferred by state and/or federal law as a result of the death of James Brown.

2. The parties agree that this Addendum is the final and complete agreement of the parties and that they, individually and collectively, shall be bound by the terms, conditions, obligations, rights and benefits set forth in the Agreement and this Addendum, all as provided herein .

3. Larry Brown, Venisha Brown, Deanna J. Brown Thomas, Yamma N. Brown Lumar, Daryl Brown, and Terry Brown ("the Brown Adult Children"), The Attorney General of South Carolinaon behalf of the charitable beneficiaries of the James Brown Assets, and Tommie Rae Brown will each be separate beneficiaries of the Settlement Entity. The share of each such beneficiary in the net income and principal of the Settlement Entity shall be known as the "Distributional Interests." The Settlement Entity is provided for in Paragraph 11 B. below in this Addendum.

4. All costs and expenses of the Settlement Entity shall be shared proportionately by the parties. Thus, the net distributable proceeds of any income or disposition proceeds received by the Settlement Entity will be net of the expenses such as but not limited to the following: settlement costs of any lawsuits; reasonable fees to the manager or trustee of the settlement entity for their services; payments, if any, to former trustees in settlement of their claims; estate taxes; any other customary fees and expenses, such as legal, accounting and investment banking fees associated with the sale of Assets; any income and estate taxes applicable to the restructuring of the estate and related entities and the sale of the Assets and any other expenses directly related to the business of the Settlement Entity

5. The parties agree that Terry Brown shall have the exclusive right to conduct a due diligence review of all of the James Brown Assets owned by the Settlement Entity for a period of six (6) months from the date the James Brown Assets are received by the Settlement Entity (the "Exclusivity Period"). During this Exclusivity Period, the parties and the Settlement Entity shall: furnish to Terry Brown and his financial and professional advisors and representatives, access to all information and materials relating to such of the James Brown Assets as may be in the possession or control of the Settlement Entity; give Terry Brown the right to conduct a completely transparent process to solicit offers for the purchase of the James Brown Assets; and in furtherance thereof to employ, with the consent of and on behalf of the settlement entity, such investment bankers, accountants, and attorneys, on a contingent fee basis but not at the expense

of the Settlement Entity , as he may deem reasonably necessary to investigate, prepare and offer for sale all of the James Brown Assets owned by the Settlement Entity. Terry Brown, individually, shall not have the right to sell the James Brown Assets. Only the Settlement Entity shall have the right to decide on a sale and it shall not be under any obligation to accept any offers brought by or through the due diligence and solicitation process conducted by Terry Brown during the Exclusivity Period or by any of the parties at any time. All customary closing costs, including but not limited to any finder's fee, shall be paid by the Purchaser.

6. All the parties acknowledge and agree that any sale of all or any portion of the James Brown Assets during the Exclusivity Period or under Terry Brown's first right of refusal may contain terms that Terry Brown shall have a continuing financial interest in the after-sale appreciation of the James Brown Assets (not in the value of the James Brown Assets as of the closing of the sale and that Terry Brown may have a non financial representative role for the James Brown family in any purchase of the James Brown Assets.

7. During the Exclusivity Period, the parties other than Terry Brown shall not and the Settlement Entity shall not solicit, encourage, entertain, discuss or accept offers from any other parties with respect to the sale, transfer, license or other disposition of any of the James Brown Assets, except in furtherance of the process conducted by Terry Brown.

8. In the event that any of the parties brings an offer for the purchase of the James Brown Assets pursuant to the process during the Exclusivity Period or afterwards that culminates in a sale of all or any portion of the James Brown Assets from the Settlement Entity, then such party shall be entitled to a finder's or broker's fee of two percent (2%) of the proceeds (as customarily determined in similar transactions) to be paid by the Purchaser pursuant to any such offer. All potential buyers presented to or introduced to the Settlement Entity by Terry Brown or by his advisors or as a result of the process conducted by Terry Brown during the Exclusivity Period shall be deemed to be offers that Terry Brown brings to the Settlement Entity.

9. Each of the parties agrees for himself or herself, and his or her financial and professional advisors and representatives (the "Reviewers"):

a. To retain and not disclose any or all Confidential Information for seven (7) years after sale of the James Brown Assets. Confidential Information means any proprietary information or otherwise confidential information relating to the James Brown Assets (which does not rise to the level of a trade secret) which is or has been disclosed to a party or of which the party became aware as a consequence of this Addendum or the due diligence and sale of the James Brown Assets. The parties further agree that they shall not disclose, including in any publication, or transfer to any party, or use for its benefit or the benefit of any third party, any Confidential Information other than as authorized by the Settlement entity in writing beforehand; provided however that Terry Brown may use such Confidential Information during the Exclusivity Period in the performance of due diligence and in connection with soliciting offers for the James Brown Assets. This obligation of confidentiality shall not apply to Confidential Information that a Reviewer can demonstrate, by competent evidence, (i) was already known to Reviewer prior to disclosure or development hereunder; (ii) was in the public domain at the time of disclosure or development hereunder; or (iii) becomes generally available to the public

through no fault of Reviewer; or (iv) Reviewer receives from a third party that does not have an obligation of confidentiality to the Brown Entities and who may lawfully disclose same. To the extent required by legal process, subpoena, warrant, or court order, Reviewer may disclose Confidential Information, provided that Reviewer shall first notify the Settlement Entity as soon as reasonably possible, and permit the Settlement Entity to take steps, at the Settlement Entity's' expense, to oppose or limit the required disclosure. All trade secrets are also confidential information but shall be and remain confidential for so long as they remain a trade secret under applicable law.

b. Upon the written request of the Settlement Entity, Reviewer will return to the Settlement Entity all documents and materials that embody, set forth, incorporate or reference any Confidential Information, including without limitation all copies of any data, and other recorded, printed or reproduced material provided by the Settlement Entity.

10. a. The parties and the Settlement Entity do hereby unconditionally and irrevocably grant to Terry Brown an absolute and superior Right of First Refusal to purchase any and all of the James Brown Assets (whether on an asset or stock basis) to be sold in any Proposed Transfer (the "Offered Assets"), at the same price and on terms and conditions as those offered to or by a Prospective Transferee. This Right of First Refusal shall begin on the date hereof and continue until the tenth (10) anniversary of the date of this Addendum. In connection with this Right of First Refusal: The parties, individually or collectively as the Settlement Entity, must deliver a written Proposed Transfer Notice to Terry Brown not later than sixty (60) days prior to the consummation of any Proposed Transfer. The Proposed Transfer Notice shall contain the material terms and conditions of the Proposed Transfer and the identity of the Prospective Transferee. Terry Brown may exercise his Right of First Refusal as to the Offered Assets described in the Proposed Transfer Notice by giving written notice to the Settlement Entity c/o the South Carolina Attorney General within thirty (30) days after delivery of the Proposed Transfer Notice of the Offered Assets he wishes to purchase. Any failure of Terry Brown to deliver such written notice within such thirty (30)-day period shall be deemed an election by Terry Brown not to purchase the Offered Assets, and the Right of First Refusal hereby granted shall, with respect to the Offered Assets, thereupon terminate and be of no further validity or effect.

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b. The terms and conditions of any sale pursuant to this Paragraph 10 will be memorialized in, and governed by, a written purchase and sale agreement with customary terms and provisions for such a transaction, subject to the terms of the Proposed Transfer, unless otherwise mutually agreed by Terry Brown and the Settlement Entity. The closing of the purchase of the Offered Assets by Terry Brown shall take place by the later of (i) the date specified in the Proposed Transfer Notice as the intended date of the Proposed Transfer and (ii) ninety (90) days after delivery of the Proposed Transfer Notice to Terry Brown. All payments for the offered Rights shall be made by Terry Brown to the Settlement Entity at closing.

c. As used herein, the following definitions are applicable:

"Person" means a natural person, a corporation, a limited liability company, a general or limited partnership, a trust, an estate, a joint venture, any governmental entity or any other entity or organization.

"Proposed Transfer" means any assignment, sale, license, pledge, mortgage, hypothecation, encumbrance, or other disposition or encumbrance of any or all of the James Brown Assets (or any interest therein) proposed to a party or to the Settlement Entity by any Person and which the party or the Settlement Entity desires to accept, or has accepted subject to the terms of this Addendum.

"Proposed Transfer Notice" means written notice from a party or the Settlement Entity to Terry Brown setting forth the terms and conditions of a Proposed Transfer.

"Prospective Transferee" means any Person to whom the Settlement Entity proposes to make a Proposed Transfer.

"Right of First Refusal" means the right as specifically stated herein, but not an obligation, of Terry Brown, or his permitted transferees or assigns, to purchase some or all of the James Brown Assets with respect to a Proposed Transfer, on the terms and conditions specified in the Proposed Transfer Notice.

11. **Additional Amendments to Agreement.**

A. Paragraph 5(b.) is amended and restated to read as follows:

A charitable trust substantially similar to the charitable trust in the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created by the Attorney General with the advice and counsel of the parties. The trustee and any successor trustee of the Charitable Trust shall be chosen by the South Carolina Attorney General (the "Charitable Trust Trustee"). The trust shall also include an advisory board that shall include as many members as the Attorney General shall decide from time to time and at any time but will include one member selected by Tommie Rae Brown and one selected by each of the Brown Adult Children. The Advisory Board shall serve at the pleasure of and on such terms as the Attorney General shall decide and their governance roles shall be solely advisory. The Charitable Trust shall also have as many "Honorary Family Trustees," as the Attorney General shall decide, from time to time and at any time but will include one selected by Tommie Rae Brown and one selected by each of the Brown Adult Children. These Honorary Family Trustees will serve on the same terms and conditions as the Advisory Board and they will be representative of the family of James Brown. The Honorary Family Trustees will represent the family of James Brown and shall be properly identified as such representative for all trust functions and activities.

B. Paragraph 5(d.) is amended and restated to read as follows:

The parties, as settlors, will create a trust called the James Brown Legacy Trust, a copy of which is attached hereto as Exhibit C (or such other legal entity as the parties unanimously select and organize) to be the settlement entity (the

"Settlement Entity"). The Settlement Entity shall receive, hold, manage and be authorized to sell the James Brown Assets. The trustee and any successor trustee for the Settlement Entity shall be selected by the Attorney General. The parties hereto recognize that the result of the original Compromise and Agreement among the Settling Parties was to give the Charitable Trust a 50% interest in the James Brown Assets and the Settlement Entity, subject to the funding of the grandchildren's private educational trust and a pro-rata share of expenses and income. Treating the addition of Terry Brown to the settlement agreement as an expense creates the following result after accounting for such expense: The Distributional Interest of the parties shall now be: (1) 47.5% to the Charitable Trust; (2) 23.75% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 4.79% to each of the Brown Adult Children. Tommie Rae Brown hereby waives any spousal right she may have to such Distributional Interests to the extent that they might otherwise exceed 23.75% thereof. The Brown Adult Children waive any right he or she may have to such Distributional Interests to the extent that they might otherwise each exceed 4.79% hereof. However, for voting purposes in the Settlement Entity, except as otherwise specified, the Charitable Trust shall have a 50% share, the Brown Adult Children shall share equally in a 25% share, and Tommie Rae Brown shall have a 25% share.

C. Paragraph 5(l) is amended and restated to read as follows:

The parties agree that the Settlement Entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the Settlement Entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA. The parties hereto (other than the South Carolina Attorney General) shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this Addendum.

12. All the parties hereto agree to be responsible for payment of their own respective legal fees.

13. If any time any federal or state agency determines that any part of this Addendum shall endanger the tax-exempt status of the Charitable Trust, and that decision becomes final and non appealable, then the parties shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the charitable trust. If the curative action involves the payment of estate taxes attributable to a party other than the Charitable Trust, the estate taxes shall be allocated against that party's share.

14. Each party hereto acknowledges and agrees that any breach of this Addendum will result in substantial harm to the other parties hereto for which monetary damages alone could not adequately compensate. Therefore, the parties hereto unconditionally and irrevocably agree that any non-breaching party hereto shall be entitled to seek protective orders, injunctive relief and other remedies available at law or in equity (including seeking specific performance or the rescission of purchases, sales and other transfers of the James Brown Assets not made in strict compliance with this Addendum).

15. . If there is a conflict in the terms or conditions of this Addendum and the terms of the Agreement, the Addendum shall control.

16. Any amendments to this Addendum must be in writing executed by all of the parties (or their legal representatives) hereto.

17. The parties agree that in the event of disagreement among the parties as to the terms or the meaning of any provision of this Addendum which the parties are unable to resolve among themselves, then, upon written demand of any party hereto the parties shall enter into non-binding mediation and shall use their best efforts to resolve such conflict or disagreement.

18. This Addendum is subject to and shall be interpreted according to the law of the State of South Carolina.

19. Any term or condition of this Addendum may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Addendum, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Addendum on any future occasion. All remedies, either under this Addendum or by Law or otherwise afforded, will be cumulative and not alternative.

20. The terms and provisions of this Addendum are intended solely for the benefit of the parties hereto and their respective successors, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person.

21. Neither this Addendum nor any right, interest or obligation hereunder may be assigned by any of the parties hereto (whether by operation of Law or otherwise) without the prior written consent of the other parties, except that Tommie Rae Brown may assign all or part of her interest to or for the benefit of J B . Any assignment in violation of the preceding sentence shall be void. This Addendum is binding upon, inures to the benefit of and is enforceable by the parties hereto and their respective successors.

22. This Addendum shall be deemed to have been drafted by all of the parties, and no presumption or burden of proof shall be construed against any party as the drafter of this Addendum.

23. If any provision of this Addendum is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of any party hereto under this

Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Addendum will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof and (c) the remaining provisions of this Addendum will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance.

24. This Addendum may be executed in any number of counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

25. The parties agree to furnish upon request to each other such further information, to execute and deliver to each other such documents, and to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Addendum.

26. This Addendum is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this Addendum, this Addendum remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

27. This Addendum is binding on the heirs, successors, and assigns of the parties hereto.

IN WITNESS WHEREOF the parties or their duly authorized representatives have set their hands and seals as of this ____ day of _____, 2009.

Terry Brown

Henry D. McMaster, Attorney General of South Carolina

Tommie Rae Brown, individually and on behalf of her minor child, J B

Larry Brown

Venisha Brown by Deanna B. Thomas, Attorney in Fact 3/25/09

Venisha Brown

Deanna J. Brown Thomas, ~~individually and on behalf of her minor child, J~~ L 3/25/09

Yamma N. Brown Lumar, individually ad on behalf of her minor children, S L and C L 3/25/09

Daryl J. Brown, individually and on behalf of his minor child, J B

Tonya Brown

Jason Brown Lewis

Lindsey Delores Brown

2750

Venisha Brown

Deanna J. Brown Thomas, ~~individually and on behalf of her minor child, J~~ E -

Yamma N. Brown Lumar, individually ad on behalf of her minor children, S L and C L

Daryl J. Brown, individually and on behalf of his minor child, J B

Tonya Brown

Jason Brown Lewis

CONTRIBUTION AGREEMENT

WHEREAS, the undersigned parties, all of whom are litigants in various civil actions involving the estate of James Brown, who died on December 25, 2006, entered into a private, binding agreement dated August 10, 2008 as amended and restated by the Addendum dated _____, 2009 to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "Agreement") to settle any and all differences among them concerning the disposition, by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or non-probate means, as well as any and all benefits conferred by state and/or federal law as a result of the death of James Brown (a copy of said Agreement is attached hereto as Exhibit A and its terms incorporated herein);

WHEREAS, the parties hereto recognize the necessity of supplementing the Agreement in order to further explain the rights and obligations of the parties thereto and the procedures to be followed there under; and

WHEREAS, the parties hereto agree that it is appropriate to set forth such rights, obligations and procedures pursuant to the Agreement in this Contribution Agreement;

NOW, THEREFORE, the undersigned parties agree as follows:

1. The terms of the Agreement are hereby confirmed and are fully incorporated herein by reference thereto and capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

2. Each party hereto shall and does hereby contribute and assign to the James Brown Legacy Trust (the "Legacy Trust"), which the parties hereto agree to execute in substantially the form attached hereto as Exhibit B, , all of such respective party's rights and interest in any assets or proceeds to be received or payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust and the charitable trust created thereunder, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or sucessors to James Brown for any purpose, including, but not limited to, any rights and interests created by federal copyright statute, the Beech Island real estate, royalty, persona, image, likeness, etc. (collectively, the "James Brown Assets.

3. The parties hereto recognize that the result of the original Compromise and Agreement among the Settling Parties was to give the Charitable Trust a 50%

interest in the James Brown Assets and the Settlement Entity, subject to funding the grandchildren's private education trust and a pro-rata share of expenses and income. Treating the addition of Terry Brown to such settlement agreement as an expense creates the following result after accounting for such expense:

The parties will divide any and all such assets and or proceeds of the Settlement Entity in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto::

(a) Forty-seven and one-half percent (47.5%) to the Trustee(s) of the trusts provided for under Articles V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "James Brown Trust") (such trusts being the "I Feel Good" Trust or the "Charitable Trust" further described in Article VII of the James Brown Trust and the "Brown Family Education Trust" further described in Article VI of the James Brown Trust); provided, however that the first $2,000,000 payable pursuant to this Distributional Interest shall be payable solely to the Trustee(s) of the Brown Family Education Trust and the balance solely to the Trustee(s) of the Charitable Trust (the Charitable Trust and the Brown Family Education Trust are referred to herein as the "Brown Trusts");

(b) Twenty-three and three-fourths percent (23.75%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

(c) Four and seventy-nine hundredths percent (4.79%) to each of the Brown Adult Children, each of which interests shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina.

4. The parties hereunder recognize that it may be difficult at this time to value accurately the interests and rights being contributed hereunder to the Legacy Trust. However, the parties are reasonably informed that a large portion of the value of the assets and interests contributed hereunder resides in the rights granted to heirs under the federal copyright laws. Accordingly, the parties recognize that the beneficial interests in the Legacy Trust received pursuant to the Agreement and this Contribution Agreement by Tommie Rae Brown and/or by the Brown Adult Children may be of a lesser value than the interests they are contributing to the Legacy Trust pursuant to this Agreement.

5. Estate taxes to be paid as a result of the distribution of estate assets as agreed upon in theAgreement shall be paid as set forth in Article 5.1 of the Legacy Trust. All the parties hereto agree to be responsible for payment of their own respective legal fees.

6. Upon execution of this Contribution Agreement by the undersigned parties, said parties shall file a Petition for Approval of the entire Agreement with the Court of Common Pleas for the Second Judicial Circuit of South Carolina. The Agreement and this Contribution Agreement shall remain binding and enforceable among the parties hereto whether or not approved by any Court.

7. If any time any federal or state agency determines that any part of this Agreement shall endanger the tax-exempt status of the Charitable Trust, the parties hereto shall take such curative action as is necessary to prevent any such loss of tax-exempt status by the Charitable Trust. If the curative action involves the payment of estate taxes attributable to a party other than the Charitable Trust, the estate taxes shall be allocated against that party's share.

8. The Agreement and this Contribution Agreement are binding on the heirs, successors and assigns of the parties hereto.

9. Any amendments to the Agreement or to this Contribution Agreements must be in writing executed by each of the parties hereto or by such party's legal representative.

10. The parties agree that in the event of disagreement among the parties as to the terms or the meaning of any provision of the Agreement or of this Contribution Agreement which the parties are unable to resolve among themselves, then, upon written demand of any party hereto the parties shall enter into non-binding mediation and shall use their best efforts to resolve such conflict or disagreement.

11. The Agreement and this Contribution Agreement are subject to and shall be interpreted according to the law of the State of South Carolina.

This Agreement may be executed in multiple identical counterparts, but each shall be construed to be part of the complete Agreement.

Executed this ____ day of _____, 2009.

_____
Henry D. McMaster, Attorney General of South Carolina

_____
Tommie Rae Brown, individually and on behalf of her minor child, J. B

_____

Larry Brown

Venisha Brown

Deanna J. Brown Thomas, individually and on behalf of her minor child, J L

Yamma N. Brown Lumar, individually and on behalf of her minor children, S L and C L

Daryl J. Brown,, individually and on behalf of his minor child, J B

Tonya Brown

Terry Brown

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B . Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S Li and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir; child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

Larry Brown

Venisha Brown

Deanna J. Brown Thomas, individually and on behalf of her minor child, J
L

Yamma N. Brown Lumar, individually and on behalf of her minor children, S
L and C L

Daryl J. Brown,, individually and on behalf of his minor child, J B

Tonya Brown

Terry Brown

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB DBJ DBJ for UB

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

STATE OF SOUTH CAROLINA)
)
) THE JAMES BROWN LEGACY TRUST
)
COUNTY OF AIKEN)

THE JAMES BROWN LEGACY TRUST

This Trust Agreement is made this ___ day of _____, 2009, and is executed by the Settlors (collectively hereinafter known as the 'Settlors") (i) the Attorney General of South Carolina, (ii) Tommie Rae Brown, and (iii) Larry Brown, Venisha Brown, Deanna J. Brown Thomas, Yamma N. Brown Lamar, Daryl Brown and Terry Brown, (the "Brown Adult Children") and _____, as the Trustee. This trust shall be known as The James Brown Legacy Trust (the "Trust").

ARTICLE I
ESTABLISHMENT OF TRUST

Pursuant to the Contribution Agreement of even date herewith, the Settlors have irrevocably paid over, assigned, granted, conveyed, transferred and delivered, and by this Agreement do hereby irrevocably pay over, assign, grant, convey, transfer and deliver unto the Trustee the property described in Schedule A (also referred to herein as the "James Brown Assets"), annexed hereto and made a part hereof. This property and any other property that may be transferred to the Trustee in the future and any property that may be received or which has been received by the Trustee hereunder, as invested and reinvested (hereinafter referred to as the "Trust Estate"), shall be held, administered and distributed by the Trustee as hereinafter set forth.

ARTICLE II
ACCEPTANCE BY TRUSTEE

The Trustee herein above named has agreed to accept said Trusteeship and all interests in property which may come to the Trustee by reason of this Agreement for the benefit and use of the Beneficiaries (as defined in Section 11.2 below), all in accordance with the provisions hereinafter set forth. In keeping therewith, the Trustee is hereby vested with all right, title, and interest in and to such assets as are listed on Schedule A and is authorized and empowered to exercise and enjoy for the purposes of the Trust herein created and as absolute owner of those assets, all the options, benefits, rights and privileges that go with such assets.

ARTICLE III
STATEMENT OF INTENT

This Trust Agreement and the Trust it creates are irrevocable and this Trust is intended to comply with the Private Agreement of August 10, 2008 ("Original Agreement") as amended by the Addendum dated _____, 2009 to the Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (as amended, the "Agreement") (a copy of which is attached hereto as Exhibit A) ("Private Agreement"), and the Contribution Agreement dated _____, 2009 (a copy of which is

attached hereto as Exhibit B) ("Contribution Agreement"), as the same may be amended or modified by any addenda thereto executed by the Settlors or their duly authorized agents. Any capitalized term not defined herein shall have the meaning ascribed to it in the Agreement.

ARTICLE IV
PURPOSE

The Trustee is specifically granted the authority to accept and retain liquid and/or illiquid and/or non-income producing assets as Trust investments, specifically being those assets which may have passed to the Settlors' hereof on account of the death of James Brown. The purpose contemplated in the establishment of the Trust is that it engage in the management and holding of liquid and/or illiquid assets received by the Beneficiaries on account of the death of James Brown and contributed to this Trust, including, but not limited to, real estate, limited liability and other closely held companies, partnerships, and corporations, as well as various sorts of intangible property, including copyrights, termination and transfer rights, as well as the right to exploit the name and image of James Brown, all of which are to be managed, invested and/or sold for the benefit of the Trust and its Beneficiaries. It is contemplated that the Trustee shall have the right to buy, sell, lease, license, incorporate and in all other manner modify or exploit for profits for the benefit of the Trust all of such assets and property (tangible, intangible, intellectual or other). In establishing this Trust, the Settlors contemplate that the Trustee will engage in complex transactions and that the Trustee will expend (and are authorized to expend) trust funds on attorneys, accountants, advisors, agents and the appropriate experts in the fulfillment of its duties as Trustee.

ARTICLE V
PAYMENTS OF EXPENSES AND DISTRIBUTIONS OF PROPERTY

5.1 Beneficiaries and Distributional Interests. The Trustee shall hold all assets contributed to this Trust and shall distribute the net income and the principal of the Trust to the Beneficiaries in accordance with their beneficial ownership interests in the Trust assets (the "Distributional Interests").

The Beneficiaries recognize that the result of the Original Agreement was to give the "I Feel Good" Trust (as hereinafter defined) a 50% interest in the James Brown Assets and the Settlement Entity (as defined in the Agreement), subject to the funding of educational trust described below and a pro-rata share of expenses and income (except as expressly provided below with respect to legal expenses). Treating the addition of Terry Brown to the settlement arrangement set out in the Agreement as an expense results, after accounting for such expense, in the following Beneficiaries and their respective Distributional Interests:

(a) Forty-seven and one-half percent (47.5%) to the Trustee(s) of the trusts provided for under Articles V of the James Brown Irrevocable Trust Agreement dated August 1, 2000 (the "James Brown Trust") (such trusts being the "I Feel Good" Trust or the "Charitable Trust" further described in Article VII of the James Brown Trust and the "Brown Family Education Trust" further described in Article VI of the James Brown Trust); provided, however that the first $2,000,000 payable pursuant to this Distributional Interest shall be payable solely to the Trustee(s) of the Brown Family Education Trust

and the balance solely to the Trustee(s) of the Charitable Trust (the Charitable Trust and the Brown Family Education Trust are referred to herein as the "Brown Trusts");

(b) Twenty-three and three-fourths percent (23.75%) to Tommie Rae Brown, which interest shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina; and

(c) Four and seventy-nine hundredths percent (4.79%) to each of the Brown Adult Children, each of which interests shall be a distributional interest that is devisable and/or descendable pursuant to the laws of the State of South Carolina.

Any distributions of principal to the Trust Beneficiaries shall be in accordance with the same percentage interests.

All distributions shall be net of estate administrative expenses, taxes and legal expenses necessary to enable the estate to properly determine the respective interests of the parties, provided that netting such legal expenses shall not reduce the distributional share of the Brown Trusts below forty-seven and one-half percent (47.5%).

5.2 Income in Respect of a Decedent. Income of this trust which is income in respect of a decedent for federal or state estate and income tax purposes shall be distributed first to the trustee of the Charitable Trust (assuming the Brown Family Education Trust has been fully funded) as to all or a portion of such trust's share hereunder to the extent that such order of distribution does not cause the shares of the Brown Adult Children or Tommie Rae Brown to be funded with an amount less than the amount with which such shares would be funded if it were not for the provisions of this Article 5.2.

5.3 Sale of Assets. Upon the sale of all or substantially all of the assets of the Trust, the Trustee shall distribute the Trust assets to the Beneficiaries according to Section 5.1 and the Trust shall terminate. In addition, upon the partial liquidation of the assets of the Trust, the Trustee shall distribute the proceeds of the liquidation to the Beneficiaries according to the Distributional Interest, such that the Beneficiaries may receive, from time to time, distributions of principal as well as net income. To the extent that estate or inheritance taxes should be due as a result of the death of Tommie Rae Brown or any Brown Adult Children, or any other beneficiaries with respect to any Distributional Interest in this Trust, the Trustee and Beneficiaries agree that they shall make a good faith effort to consider mechanisms to provide liquidity for such taxes.

ARTICLE VI
LIMITATIONS ON POWERS OF TRUSTEE; VOTING

6.1 Actions of Trustee Requiring Approval of Beneficiaries. The Trustee shall have all of the powers described in Article 9, below; provided, however, the Trustee shall require approval of a two-thirds majority of the voting interests held by all the Beneficiaries in order to:

(a) sell all or substantially all of the assets of the Trust; and

(b) except as provided in section 5.3, terminate the Trust.

For purposes of voting by the Beneficiaries hereunder, the Charitable Trust shall have a 50% voting interest, Tommie Rae Brown, a 25% voting interest, and the Brown Adult Children, a 25% voting interest in the aggregate, which shall be divided equally among the six of them, and may be voted separately by each individual. Any such vote shall be made by each Beneficiary by or through its acting fiduciary in the case of entities having a fiduciary, or by or through the individual, agent under power of attorney or personal representative or other acting fiduciary in the cases of Tommie Rae Brown and the Brown Adult Children.

6.2 Notice of Vote. The Trustee or any Beneficiary may at any time request a vote of the Beneficiaries as to any such matter as may require a vote under this Agreement by giving notice and a request to all the Beneficiaries for a vote pursuant to the terms of Sections 8.3 and 8.4, below. If a noticed Beneficiary does not respond with its vote on the applicable matter in writing within 30 days after such time as the notice is deemed to have been given, such Beneficiary shall no longer have the right to vote on such matter.

ARTICLE VII
RESIGNATION, REMOVAL, APPOINTMENT AND SUCCESSION OF TRUSTEE

7.1 Resignation and Appointment Procedure. Any person or organization at any time serving as Trustee hereunder may resign at any time by providing written notice to all the Beneficiaries (or to the parents, guardians of the person, or persons having custody of a Beneficiary who is a minor or otherwise not sui juris) currently entitled to income or principal, setting forth the effective time and date of such resignation on or before such effective time, subject to and only effective upon the appointment and qualification of a successor Trustee; provided, however, that a successor trustee has been duly appointed and has accepted such appointment.

All Trustee appointments and removals permitted hereunder shall be made by an acknowledged instrument delivered to the Trustee then acting, if any, and, when applicable, to the appointee, and shall become effective on the date or upon the happening of the event specified in the instrument and may be revoked in the same manner at any time before the successor qualifies.

7.2 Right to Remove and Replace. The Trustee of the Trust shall be chosen and appointed by the South Carolina Attorney General, who has the power and right to remove and replace the Trustee.

7.3 Disability of a Trustee. The determination that a Trustee is a disabled person shall be made by a court of competent jurisdiction.

7.4 Termination of Trustee Powers. An outgoing Trustee, upon the effective date of removal, resignation, or incapacity, shall cease to have any powers or discretion hereunder. At the earliest possible date after a Trustee ceases for any reason to be a Trustee hereunder, there shall be delivered to such Trustee's successor hereunder all of the assets (Trust or otherwise) which were in the possession of such Trustee and there shall be made available to each successor Trustee a complete financial record and inventory of assets affected thereby. With respect to any

properties thus transferred by the outgoing Trustee or by such Trustee's representative, such Trustee shall be discharged of all further duties and obligations.

7.5 Successor Trustee Powers and Authority. Each successor Trustee, upon assumption of such position, shall have the same powers, rights, discretion, duties, and obligations as the predecessor Trustee. Title to the entire property (of the Trust or otherwise) shall automatically vest in any successor Trustee without the necessity of any conveyance. The assumption of authority by a successor Trustee shall not be complete until such successor executes a written acceptance of such appointment showing the authority for such succession (a copy of which shall promptly be delivered personally or sent by certified mail to the outgoing Trustee or to such Trustee's legal representative). Any corporation into which any corporate Trustee acting hereunder shall be merged or converted, or with which it shall be consolidated, or any corporation resulting from any merger, conversion, reorganization or consolidation to which all or substantially all of its trust business shall be transferred, shall be the successor of such corporate Trustee hereunder, without the execution or filing of any instrument or the performance of any further act and shall have the same powers, authorities and discretions as though originally named in this instrument.

7.6 Exoneration from Liability for Acts of Prior Trustees. Each successor Trustee shall be exempt from any liability in any way related to the prior actions or omissions of the previous Trustees, and each shall be entitled to accept as conclusive any accountings and statement of assets furnished by any predecessor Trustee.

ARTICLE VIII
TRUSTEE PROVISIONS

8.1 Trustee Compensation. For services as a Trustee, the Trustee is entitled to receive an amount which is reasonable for the services rendered at the time services are rendered, as agreed upon by the Trustee and a majority of the Beneficiaries, voting as provided for in Article VI herein. If for any reason, there are multiple Trustees serving, the Trustees, collectively, shall share such fee. If there is a corporate Trustee serving as Trustee, the corporate Trustee shall be entitled to reasonable compensation for the services rendered, but in no event shall such compensation be more than an amount which is competitively determined to be reasonable for the services rendered among organizations providing similar such services. For the purpose of determining Trustee's fees payable hereunder, any and all Trusts hereunder shall be treated as one Trust.

8.2 Inventory; Appraisals; Bond. Except as otherwise required by law, the Trustee shall not be required to file any inventory or appraisal or any annual or other returns or reports to any court or to give bond in any jurisdiction, but, upon request, shall make available a statement of receipts and disbursements and an investment review of the assets of any Trust created hereunder at least annually to each person then eligible to receive distributions from such Trust, and each then present beneficiary thereof.

8.3 Notice. Any notice or other instrument required or permitted to be given, made, executed, or delivered hereunder shall be in writing duly signed by (or, where permitted hereunder, on behalf of) the party or parties giving, making, or executing the same and shall be

physically delivered or sent by certified or express mail (or equivalent postal or private express service) to all parties, if any, entitled thereto (when so sent, such notice or communication shall be plainly addressed to such person at such person's last known address). The address for all notices to Beneficiaries shall be as set forth opposite their signatures below; provided that any Beneficiary may change such address by written notice to all parties hereto in accordance with this Section 8.3. Any such instrument required to be given or sent to the estate of any deceased or incapacitated person shall be physically delivered or sent, in like manner, to the personal representative (or one of the personal representatives) of such person at such representative's last known address or, if there be no such personal representative known to the sender, to the estate of such person at his or her last known address.

Instruments shall be considered delivered: (i) if sent by mail or express service, on the third day following the date of its receipt by the postal service (or such express service), as evidenced by a dated postal (or express) service receipt showing the addressee's name and proper address (as described above); (ii) if sent by facsimile, upon receipt by the sender of a confirmation of receipt from the addressee's facsimile machine indicating (a) the correct telephone number of the addressee's facsimile machine and (b) receipt of the correct number of pages sent as properly received; or (iii) if sent by e-mail, upon receipt by the sender of a confirmation from the addressee's e-mail address indicating that the addressee has opened the e-mail.

In all other cases, the date of actual physical delivery shall be the effective date of delivery and, except as such instrument may specifically provide for a later effective date, it shall be effective for all purposes from such date.

Copies of all instruments of amendment, revocation, exercise of power, designation, release, disclaimer, etc., as well as of trustee resignation, removal, appointment, and/or acceptance, the original of which shall be kept with the Trust records, shall, upon request, be promptly delivered or sent by mail by the Trustee receiving or initiating the same to each other then interested party (i.e., the other then Trustee or Trustees, if any, of the affected Trust or Trusts, and each then beneficiary of the affected Trust or Trusts).

8.4 Notice to Disabled Parties. If a person who is a disabled person (who is not otherwise represented by a personal representative or guardian or not otherwise entitled to notice by a procedure provided for in this Agreement) is a party to any legal proceeding relating in any manner to any trust created hereunder, service of process upon the disabled person shall not be required if another individual, who is not a disabled person, is a party to the proceeding and has the same interest as the disabled person.

ARTICLE IX
TRUSTEE POWERS

In the administration of the Trust, the Trustee shall have all of the powers granted by law, including but not limited to the powers granted to trustees by the South Carolina Trust Code (S.C. Code Section 62-7-101, et. seq.), which powers shall not be revoked or reduced if said statutes should hereafter be repealed or restrictively amended. Without limiting the foregoing,

the Trustee shall also have the following powers (which shall apply equally to any other trust created pursuant to this Agreement):

9.1 Right to Retain Assets. The Trustee is specifically granted the authority to accept and retain the James Brown Assets, whether these are liquid and/or illiquid and/or non-income producing assets, as Trust investments, subject however to the purpose contemplated in the establishment of the Trust as set out in Article IV.

9.2 Investments and Reinvestments. Subject to Articles IV and VI, to invest or reinvest in and to sell and/or to sell short such securities or other property, real or personal (whether within or without the United States) as the Trustee shall determine; to lease all or part of the real or personal property of the estate or trust, even for a term longer than the probable duration of any trust, to grant options for the renewal of leases; and to retain any property received by them for such periods as they determine (including specifically retention of, or investment in, assets which may be for the use of the beneficiary or beneficiaries of any such Trust), even though such asset or assets may not be of a character, or of such a percentage of the total Trust, as would otherwise be deemed proper Trust investments and shall have the right to convert any or all assets of any Trust held hereunder into any other form of asset, diversified or undiversified as they shall determine. The Settlors request that the Trustee honor the wishes of the Beneficiaries as to the disposition or retention of any original property of the Trust, or any Trust asset which is of a personal use nature, unless the Trustee determines that such wishes are clearly in contradiction to the purposes and terms of any the Trusts.

9.3 Conveyance of Assets. To convey an absolute fee in possession of any land, and full ownership of any personalty comprising a part of the Trust and to sell, exchange, mortgage, partition, pledge, improve or otherwise alter any real or personal property comprising a part of the Trust, at public or private sale, at such price and upon such terms as the Trustee shall deem proper and to lease the same for a term extending beyond the life of the Trust without prior application to any court for permission to do so.

9.4 Non-Traditional Investments. In addition to the powers granted under this Article, the Trustee (other than any beneficiary) is expressly authorized to acquire and retain investments not regarded as traditional for trusts. The Trustee may invest in any type of property, wherever located, including any security or option, improved or unimproved real property, and tangible or intangible personal property, and in any manner, including direct purchase, joint ventures, partnerships, limited partnerships, limited liability companies, restricted stocks, foreign debt, equity or real estate investments, corporations, mutual funds or other forms of participation or ownership and may sell or write options on assets of the Trust.

9.5 Management and Holding of Assets. To invest and reinvest all or part of the assets of the Trust created hereunder in interests formed principally for the commingling of assets for investment, such as partnerships, limited liability companies, and common trust funds, including any common trust fund of any corporate Trustee, including registered mutual funds for which any Trustee hereunder, or an affiliate of any Trustee, provides investment advisory, custodial or other services for compensation paid from such funds; to execute trades of securities by, purchase from or sell securities to the dealer portfolio of, and purchase securities from the underwriting position of any affiliate of any Trustee; to employ banks, trust companies,

securities brokerage firms and/or independent investment advisors or managers (collectively, "Agents or Advisors"), including affiliates of any Trustee, located anywhere within or without the United States (including themselves), at the discretion of the Trustee, but at the expense of the Trust, as custodian or agent; and to designate and employ such persons to give investment advice and to hold and manage discretionary investment or trading accounts; to have stock and securities registered in the name of such agent or custodian or nominee thereof without designation of fiduciary capacity; and to appoint such agent, bank, trust company, or securities brokerage firm to perform such other ministerial functions as the Trustee may direct. While such stock or securities are in the custody of any such bank, trust company, or securities brokerage firm, the Trustee shall be under no obligation to inspect or verify such stock or securities nor shall the Trustee be responsible for any loss by such bank, trust company, or securities brokerage firm. The Trustee shall not be responsible for the act, default or omission of any such Agent or Advisor except to the extent that the Trustee has been negligent or exhibited willful misconduct in the selection of such Agent or Advisor. The Trustee shall not be liable for relying absolutely on any apparently valid documents or the opinions of counsel and advisors to the Trust.

9.6 Consolidation and Division of Assets. To hold and administer the assets of the Trust created hereby in one or more consolidated funds, in whole or in part, in which any separate trusts shall have undivided interests. Generally, and subject only to the provisions of this instrument, the Trustee shall hold, manage, control, use, invest, reinvest and dispose of trust properties to the same extent as may a fee simple owner of such properties.

9.7 Borrowing. To borrow such sums, on a secured or unsecured basis, from any source (including themselves), for such period and upon such terms as they deem necessary or convenient in the administration of the Trust, and to secure any such loan by mortgage or pledge. To maintain margin account(s) and to make such pledges of and other undertakings with respect to assets as the Trustee deems advisable in connection with the establishment and maintenance of such account or accounts. No lender shall be bound to see to or be liable for the application of the proceeds, and no Trustee shall be personally liable for sums borrowed, and each such loan shall be payable only out of assets of the Trust.

9.8 Lending. To lend all or any portion of the funds of the Trust created hereunder to any beneficiary, with or without security and with or without interest, to make any Trust property available as security for a loan obligation or undertaking made or to be made by any beneficiary, or to guarantee a loan to be made to, or any obligation to be assumed by, any beneficiary (notwithstanding in each case that the beneficiary may also be a Trustee), subject to those terms and conditions as the Trustee may in Trustee's discretion impose.

9.9 Receipts, Disbursements and Allocations. To allocate receipts and disbursements between income and principal in such manner as the Trustee (other than any beneficiary) determine, even though a particular allocation may be inconsistent with otherwise applicable state law; provided, however, that this power shall not apply to permit any allocation of administration expenses to income that would require a reduction in the estate tax marital deduction (pursuant to IRC § 2056(b)(4)) or charitable deduction (pursuant to Treas. Reg. § 20.2055-3(b)), as the case may be. Upon the sale or other disposition of property which has been unproductive or underproductive of income, no part of the proceeds received shall be allocated to income, except (i) in the case of property qualifying for the marital deduction, in which case such

allocation shall follow state law, and (ii) in the discretion of the Trustee (other than any Beneficiary).

9.10 Distributions. Without the consent of any Beneficiary, the Trustee (other than any beneficiary) may make distributions (including the satisfaction of any pecuniary bequest) in cash or in specific property, real or personal, or an undivided interest, or partly in cash and partly in such property, and to do so without making pro-rata distributions of specific assets. In addition, the Trustee is authorized to select specific assets in funding fractional share distributions and is not required to select a percentage of each specific asset. The Trustee shall, however, when making distributions, take into account any appreciation and depreciation of the assets and use reasonable efforts to fairly allocate gains and losses among the Beneficiaries.

9.11 Occupancy and Use. Except as may be otherwise specified elsewhere in this instrument as to any specific property, the Trustee shall have the power to permit any person having an interest in the income of any trust created hereunder to occupy real property or to use personal property held by any such trust upon such terms as the Trustee deems proper, whether rent-free or for the payment of taxes, insurance maintenance and ordinary repairs or other expenses, or upon such other terms and conditions as the Trustee determines.

9.12 Related Party Transactions. To sell to or purchase from, at fair market value at the time of such purchase, property of any character from any trust the Settlors may have established and to retain such property so long as the Trustee hereunder may deem advisable, whether or not such property is of the class in which Trustee are authorized by law or any rule of court to invest; and to make loans to, or borrow from, the Trust upon such terms and conditions as the Trustee deems advisable.

9.13 Management of Closely Held Businesses. In connection with (a) the continuation or operation of any business or investment interests which become a part of the Trust under this instrument (whether on initial funding, by purchase by the Trustee, by bequest or otherwise), or (b) the establishment of any new business or investment, the Trustee are specifically authorized: (i) to invest sums or additional sums in any such business even to the extent that the Trust may be invested largely or entirely in that business; (ii) to hold the interest in any form, including, but not limited to, general or limited partnership interests; and (iii) to act as or to select other persons to act as directors, officers, agents, or in other capacities with respect to the business, and to be compensated for those services (and for any other services rendered by them in respect of the operation of the business) without regard to their being a Trustee under this Agreement. Such power shall include the power to organize, either alone or jointly with others, new corporations, partnerships, limited partnerships, limited liability companies or other business entities; and generally to exercise with respect to the continuance, management, sale or liquidation of any business which the Trust may own or in which it may be financially interested, or of any new business or business interest, all the powers which an outright owner of such business could have exercised.

9.14 Division or Combination of Trusts. In the event that the Trustee determines that it is more feasible or advisable to administer the Trust or any shares or interests created hereunder as separate trusts or shares (whether for tax (including a desire to enable any such trust to qualify as an eligible shareholder of an S corporation), administrative, liability, environmental, or other

reasons), the Trustee shall have the power to divide the Trust into further trusts or shares. The Trustee shall also have the power to combine any such trust created hereunder with any other trust, whether created by the Settlors or another person, if the terms of the trusts are substantially the same and the Trustee are the same.

9.15 Power to Deal With Environmental Hazards. To use and expend any Trust income and principal: (i) to conduct environmental assessments, audits, and site monitoring; (ii) to take all appropriate remedial action to contain, cleanup or remove any environmental hazard; (iii) to institute legal proceedings concerning environmental hazards or contest or settle legal proceedings; (iv) to comply with any local, state or federal agency order or court order directing an assessment, abatement or cleanup of any environmental hazards; and (v) to employ agents, consultants and legal counsel to assist or perform the above undertakings or actions. The Trustee shall also have the power: (a) to require, as a prerequisite to accepting as an addition to any Trust hereunder any property, real or personal, from any person, that the transferring party provide evidence satisfactory to the Trustee that the property is not subject to such environmental hazards as the Trustee may specify; (b) to decline to serve as a fiduciary or to resign if the potential individual liability relating to environmental problems conflicts with fiduciary duties; (c) to set aside as a separate trust, to be held and administered upon the same governing terms as any other trust or trusts for any one or more of the beneficiaries hereunder which the Settlors may have established, any interests in property, for any reason, including but not limited to a concern that such property could cause potential liability under any federal, state, or local environmental law; and (d) to disclaim any power which, in the sole discretion of such Trustee, will or may cause any such Trustee to be considered an "owner" or "operator" of property, or which shall otherwise cause such Trustee to incur liability under CERCLA or any other federal, state, or local law, rule or regulation. The Trustees shall not be personally liable to any beneficiary of the Trust created hereunder, or to any other party interested in the Trust created hereunder, for any claim against any trust for the diminution in value of trust property arising from the compliance by the Trustee with any federal, state, or local law, rule, or regulation. Any expenses incurred by the Trustee under this paragraph may be charged against income or principal as the Trustee (other than a beneficiary) shall determine.

9.16 Uneconomical Trusts. If at any time any trust created hereunder has a net asset value (adjusted for inflation by the Consumer Price Index from the date hereof), as determined by the Trustee, of Fifty Thousand ($50,000) Dollars or less, the Trustee (other than any beneficiary), in their sole and absolute discretion, if they determine that it is uneconomical to continue such Trust, may terminate such Trust and distribute the Trust Estate to the Trust's then Beneficiaries in proportion to their Distributional Interests in the Trust.

9.17 Determinations. To determine what property is covered by general descriptions in this instrument.

9.18 Limitations. Notwithstanding the foregoing, nothing in this instrument shall be construed as permitting a beneficiary who may also be a Trustee of any trust created hereunder to exercise any rights or powers which may be in excess of any limitations imposed by law or elsewhere in this instrument upon the exercise of such powers (such as, for example, those limited by ascertainable standards, or otherwise prohibited to such Trustee).

ARTICLE X
ADDITIONAL ASSIGNMENTS AND CONTRIBUTIONS

10.1 Further Assurances. The Settlors covenant and agree to make, execute and deliver to the Trustee such other and further assignments, and instruments as the Trustee may reasonably deem necessary or appropriate to effectuate the purposes of this Agreement.

10.2 Additional Contributions. The Settlors, and any other person with the Trustee's consent, shall have the right at any time and from time to time, by deed, assignment or other conveyance executed during his or her lifetime, to contribute cash, securities and/or other property to the Trust created under this Agreement.

ARTICLE XI
DEFINITIONS

11.1 Trustee, Fiduciary, Personal Representative. The words "Trustee", "fiduciary", and/or "personal representative", or any modifying or substituted pronouns therefor shall include singular and plural, as well as the masculine, feminine and neuter genders thereof, and shall apply equally to the personal representative, fiduciary, or trustee named herein and to any successor or substitute fiduciary, trustee or personal representative acting hereunder, and such successor or substitute shall possess all the rights, powers and duties and the authority and responsibility conferred upon the fiduciary, trustee and/or personal representative originally named herein.

11.2 Beneficiaries. The term "Beneficiary" shall mean the Beneficiaries named or described in Section 5.1 hereof and, where applicable, their heirs, devisees, and successors.

ARTICLE XII
TERMINATION OF TRUSTS

Notwithstanding anything to the contrary which would cause an earlier termination of the Trust or any other trusts created hereunder, the Trust and any other trusts created hereunder shall terminate one day prior to the maximum time allowed under the South Carolina Uniform Rule against Perpetuities. At that time, the Trustee shall distribute the Trust assets to the Beneficiaries of the current income and principal thereof. To the extent that the laws of any jurisdiction under which any Trust created hereunder is being administered lengthen or abolish any, or have no, otherwise applicable rule against perpetuities, then the laws of such jurisdiction shall be applied to determine any mandatory termination of such trust. Furthermore, to the extent determined by the Trustee (other than any beneficiary), the dispositions made hereunder may be modified such that such distributions are made to newly created (or amended) trusts having the same provisions as those referred to above, except that such newly created (or amended) trusts may extend beyond the period referred to in the first sentence of this paragraph if permitted under the then laws of such trust's jurisdiction. To the extent that any provision of this paragraph would cause any trust established under this instrument to fail, such provision shall be inapplicable.

ARTICLE XIII
JURISDICTION AND GOVERNING LAW

All questions pertaining to the construction, validity and effect of this instrument and any trusts created hereunder shall be determined in accordance with the laws of the State of South Carolina.

ARTICLE XIV
PROTECTION OF CHARITABLE STATUS

The Settlors intend to preserve and protect the charitable tax-exempt status of the "I Feel Good" Trust. Accordingly, this Trust at all times shall be interpreted, managed, invested, administered and in all respects governed consistent with such intent. The Trustee shall administer the Trust in a manner that does not adversely affect the current qualification and continued qualification of the "I Feel Good" Trust as a charitable trust. If necessary or desirable, the Settlors agree to modify the terms of this Agreement to the extent necessary to preserve the charitable tax-exempt status of the I Feel Good Trust to the extent allowed by law.

ARTICLE XV
HEADINGS

The article and section headings used in this instrument are for convenience only and are not to be considered as part of this instrument.

ARTICLE XVI
SPENDTHRIFT PROVISIONS

No beneficiary of any trust created herein shall have the right, power, or authority to sell, assign, pledge, mortgage, anticipate, or in any manner encumber, alienate, or impair all or any part of his or her interest in such trust or in the principal or income of such trust. The beneficial and legal interest in, and the principal and income of, any such trust and every part thereof shall be free from the interference or control of any creditor or spouse of any beneficiary of such trust and shall not be subject to the claims of any such creditor or spouse nor liable to attachment, execution, bankruptcy, or any other process of law. This paragraph is intended to cause any trust created under this instrument to be a "spendthrift trust" as that phrase may be interpreted under the applicable laws of the trust's jurisdiction.

[The remainder of this page is left blank intentionally.]

EXECUTION

IN WITNESS WHEREOF, the Settlors have executed this Agreement and affixed their seals, and the Trustee, in acceptance of this Trust, has caused this Agreement to be executed and its seal affixed.

Addresses:

Attorney General of South Carolina for the James Brown "I Feel Good" Trust, as Settlor and Beneficiary

Tommie Rae Brown, individually and on behalf of her minor child, J B , as Settlor and Beneficiary

Larry Brown, as Settlor and Beneficiary

Venisha Brown, as Settlor and Beneficiary

Deanna J. Brown Thomas, as Settlor and Beneficiary, individually and on behalf of her minor child, J L

Yamma N. Brown Lumar, as Settlor and Beneficiary, individually and on behalf of her minor children, S L and C I

Darryl Brown, as Settlor and Beneficiary, individually and on behalf of his minor child, J B

Terry Brown, as Settlor and Beneficiary

_____, as Trustee

5406756/3

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named Settlors, sign, seal and as their act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

_____

SWORN BEFORE ME THIS _____
day of _____, 2009.

_____
Notary Public for South Carolina
My Commission Expires:_____

_____
Trustee, James Brown Legacy Trust

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)

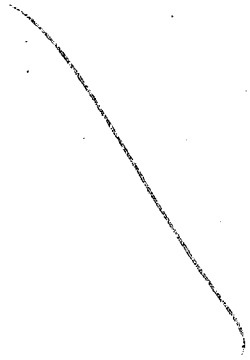
PROBATE

PERSONALLY APPEARED before me the witness named above who made oath that (s)he saw the within named _____, Trustee, sign, seal and as his/her act and deed, deliver the within named James Brown Legacy Trust and that (s)he with the other witness above named witnessed the execution hereof.

_____

SWORN BEFORE ME THIS _____
day of _____, 2009.

_____
Notary Public for South Carolina
My Commission Expires:_____



SCHEDULE A

ASSETS CONTRIBUTED TO THE JAMES BROWN LEGACY TRUST

All of Settlors' rights and interest in any assets or proceeds whatsoever to be received or payable to any of the Settlors , now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, in any probate or non-probate assets, tangible and intangible, included in the gross estate of James Brown, as well as any and all rights and interests in any assets outside of the gross estate of James Brown, and/or any rights the parties have as heirs, devisees, and/or successors to James Brown for any purpose, including, but not limited to, any royalties, trademarks, termination rights and other interests created by federal copyright statute or laws for heirs at law, the Beech Island real estate, all of the James Brown intellectual property rights to persona, image, likeness, royalties etc. (collectively, the "James Brown Assets").

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF AIKEN	)	CASE NO.: 2008-CP-02-0872
1. DARYL J. BROWN, individually and on behalf of his minor children, L B and J B , 2. VANISHA BROWN, 3. LARRY BROWN, 4. DEANNA J. BROWN THOMAS, individually and on behalf of her minor child J L , 5. YAMMA N. BROWN, individually and on behalf of her minor children S L and C. I and 6. TONYA BROWN	)	
v.	)	
ADELE POPE as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, ROBERT L. BUCHANAN, JR., as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, TOMMIE RAE BROWN, as the potential heir of James Brown, J B , as the Potential heir of James Brown, CINNAMON NICOLE MERNICKLE PARIS as the potential heir of James Brown, LARHONDA PETITT as the potential heir of James Brown, JEANETTE MITCHELL, as the potential heir of James Brown, TERRY BROWN, as a potential heir of James Brown, ROMUNZO BROWN, as the potential heir of James Brown, FORLANDO BROWN, as the potential heir of James Brown, HENRY DARGAN MCMASTER, in his capacity as ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, JANE DOE and JOHN DOE numbers I, II, III, IV, as potential heirs and/or devisee and/or Beneficiaries of James Brown and as representatives of all other persons known or unknown claiming to be an heir and/or devisee and/or beneficiary of James Brown Defendants.	)	

5409760

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN *a/k/a/* JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Terry Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.

2. I am over 21 years of age.

3. I participated in mediation and was a part of the negotiation process.

4. I have read and understand the settlement agreement dated 2008 and the addendum thereto (hereafter "the agreement").

5. I have authorized my attorneys to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

6. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

7. I have consulted with my attorneys and they have have answered all my questions concerning the proposed agreement.

8. I do not have any questions concerning the agreement.

9. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

10. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

11. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

12. I understand that the terms of the agreement are final.

13. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

14. The agreement presented to the court is just, fair, reasonable and equitable to me.

15. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement.

16. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

TERRY BROWN

Sworn to before me 23rd day of March 2009.

Cathy Sanders

Notary Public for Fulton Co Ga

My Commission Expires: Oct 30, 2012

CATHY SANDERS NOTARY PUBLIC FULTON COUNTY EXPIRES GEORGIA OCT. 30, 2012

5409760

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	CASE NO.: 2008-CP-02-0872

1. DARYL J. BROWN, individually and on behalf of his minor children, L B and J. B , 2. VANISHA BROWN, 3. LARRY BROWN, 4. DEANNA J. BROWN THOMAS, individually and on behalf of her minor child J. L , 5. YAMMA N. BROWN, individually and on behalf of her minor children S L and C L and 6. TONYA BROWN

v.

ADÈLE POPE as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, ROBERT L. BUCHANAN, JR., as Personal Representative of the Estate of James Brown and as Trustee of the purported Irrevocable Trust of James Brown dated August 1, 2000, TOMMIE RAE BROWN, as the potential heir of James Brown, J B as the Potential heir of James Brown, CINNAMON NICOLE MERNICKLE PARIS as the potential heir of James Brown, LARHONDA PETITT as the potential heir of James Brown, JEANETTE MITCHELL, as the potential heir of James Brown, TERRY BROWN, as a potential heir of James Brown, ROMUNZO BROWN, as the potential heir of James Brown, FORLANDO BROWN, as the potential heir of James Brown, HENRY DARGAN MCMASTER, in his capacity as ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA, JANE DOE and JOHN DOE numbers I, II, III, IV, as potential heirs and/or devisee and/or Beneficiaries of James Brown and as representatives of all other persons known or unknown claiming to be an heir and/or devisee and/or beneficiary of James Brown

Defendants.

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Tommie Rae Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions;

2. I am 39 years old

3. I was married to James Brown at the time of his passing on December 25, 2006.

4. I participated in mediation and was a part of the negotiation process.

5. I have read and understand the settlement agreement dated August 10, 2008 which I have signed, the addendum thereto, the Contribution Agreement, and the James Brown Legacy Trust (hereafter "the agreement").

6. I have authorized my attorneys, Robert N. Rosen, Alan S. Medlin, David Michel, and Heyward Carter to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

8. I have consulted with my attorneys and they have have answered all my questions concerning the agreement.

9. I do not have any questions concerning the agreement.

10. I am entering into the agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me and my son, J B

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

TOMMIE RAE BROWN a/k/a
TOMMIE RAE BYNIE BROWN

Sworn to before me 20th day of March 2009.

Notary Public for Nevada

My Commission Expires: June 25, 2012

JOE COLAIANNI
Notary Public State of Nevada
No. 08-7021-1
My appt. exp. June 25, 2012

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STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Jason Brown Lewis, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions and the son of Deanna Brown Thomas.
2. I am 18 years old.
3. My grandfather is James Brown who passed away on December 25, 2006
4. My mother participated in a mediation and was a part of the negotiation process. I have discussed the mediation and settlement with her as well as reviewed the filings by the parties.
5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.
6. I have authorized attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.
7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe this settlement is in my best interest.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

Jason Brown Lewis
JASON BROWN LEWIS, JR.

Sworn to before me 16th day of March 2009.

Rodney L Toole

Notary Public for S. C

My Commission Expires: MY COMMISSION EXPIRES MAY 7th 2017

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This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L Bi and Ji B , Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C. L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J. B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

further support of the agreements made herein

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB DBT DBT for JB DBT for MB L.B.

and with probable cause

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation Parties hereto represented by Levenson, Tommie Rae, and J: B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

8/10/08

8/10/08

8/10/08

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Tonya Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.

2. I am 36 years old

3. My grandfather father is James Brown who passed away on December 25, 2006

4. I participated in mediation and was a part of the negotiation process.

5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.

6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

Tonya Brown
TONYA BROWN

Sworn to before me 16 day of March 2009.

Notary Public for Columbia County, Georgia

My Commission Expires: July 21, 2012

CHARLES R DAVIS
NOTARY PUBLIC
Columbia County, Georgia
My Commission Expires July 21, 2012

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This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina. Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B . Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C I , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

DBJ for JB

DBJ for YB

J.B.

Exhibit "A"

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B , and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

8/10/08

8/10/08

ATE OF SOUTH CAROLINA) IN THE PROBATE COURT

COUNTY OF AIKEN) Probate Court No. 2008-CP-02-1647

HENRY DARGAN McMASTER,)
In his capacity As Attorney General)
of the State of South Carolina)
)
Petitioner,)
Vs.)
)
Albert H. Dallas, Alfred A. Bradley, and)
David G. Cannon, et. al.,)
Respondents.)
)
IN RE: THE JAMES BROWN)
IRREVOCABLE U/A/D AUGUST 1, 2000)
)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

) Common Pleas Case No. 2007-CP-02-0122

COUNTY OF AIKEN)
)
IN RE: ESTATE OF JAMES BROWN)
a/k/a/ JAMES JOSEPH BROWN)
_____)

Personally appeared before me, Daryl J. Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.

2. I am 48 years old

3. My father is James Brown who passed away on December 25, 2006.

4. I participated in mediation and was a part of the negotiation process.

5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.

6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me and my minor daughter and J B.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

DARYL J. BROWN

Sworn to before me 16th day of March 2009.

Notary Public for Columbia County, GA

My Commission Expires: June 24, 2011

DEMARGO D. LEWIS
NOTARY PUBLIC
Columbia County - State of Georgia
My Comm. Expires June 24, 2011

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina. Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J Bi . Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S Li and Ci Li (age 6), Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J: B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

Exhibit "A"

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J. B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

RB

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

KTOM

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

LJB DBT DBT JNUB DBT JBR JB

expenses of relocation. Parties hereto represented by Levenson. Tommie Rae. and J: B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

Tonya Brown

Delaura Brown Thomas

Deanne Brown Thomas for

Venista Brown

Deanne Brown Thomas for

Yanna Brown

Tom Larry Brown

8/10/08

8/10/08

8/10/08

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Larry Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.

2. I am 50 years old

3. I am the son of James Brown who passed away on December 25, 2006.

4. I participated in mediation and was a part of the negotiation process.

5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.

6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

Larry Brown

LARRY BROWN

Sworn to before me 16 day of March 2009.

Judy Brostrom

Notary Public for Judy Brostrom S. Carolina

My Commission Expires: My Commission Expires September 25, 2017

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This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust, or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J. B. ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

RB

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

TBM

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

LJB DBT DBT JAUB DBT JAR JB JB

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

rpb

Attorney General

Tonya Brown

Deanna Brown Thomas

Deanna Brown Thomas for

Demetria Brown

Deanna Brown Thomas for

Yvanna Brown

Tony Lacy Brown

8/10/08

8/10/08

8/10/08

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Venisha Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.
2. I am 44 years old
3. My father is James Brown who passed away on December 25, 2006.
4. I participated in mediation and was a part of the negotiation process.
5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.
6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.
7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.
8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

Deanna Brown Thomas
for Venisha Brown
VENISHA BROWN

Sworn to before me 17 day of March 2009.

Cherry V. Cordle

Notary Public for Cobb County, GA

My Commission Expires: 2/12/2010

CHERRY V CORDLE
NOTARY PUBLIC
COBB COUNTY, GEORGIA
MY COMMISSION EXPIRES FEBRUARY 12TH, 2010

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This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina. Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J. L , Yamma N Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S. L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB DBT DBT for LJB DBT for YB J. B.

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

8/10/08

8/10/08

8/10/08

STATE OF GEORGIA
COUNTY OF RICHMOND

POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENT:

1.

I, Vericha Brown, grant unto the said Deanna B. Thomas residing at 331 Silver Bluff Rd Aiken, SC 29803, as my lawful ATTORNEY-IN-FACT the full power to make savings or checking deposits, withdrawals, or other necessary banking transactions according to his discretion. I further authorize him to open or close accounts that may be necessary, to have the authority to enter my safe deposit box or boxes and to do whatever other acts might be necessary to carry on my personal affairs and business affairs in connection with any matters as I would do if I were personally present.

2.

I grant unto the said Deanna B. Thomas the full power and authority to list, sell, or contract to sell any property, real or personal, specifically including, but not limited to stocks, bonds, securities or other assets, wherever located and of whatever kind and nature, that I may own or that I may have or claim an interest in, and furthermore that this power and authority may be carried without the requirement of any bond, surety, appraisal, return, accounting, publication or Order of any Court or tribunal. I further grant unto the said Deanna B. Thomas the full power and authority to list, sell or contract to sell any business interest I may hold.

3.

If I have omitted any property or right I may have in the paragraphs above, it is my intention by this paragraph and by this entire document taken as a whole to grant unto my said attorney in fact the full power to do whatever she in her discretion determines is necessary with respect to my assets. I specifically authorize my attorney in fact to hire any attorneys, accountants, bookkeepers or others to provide assistance to my attorney in fact to manage and control my financial affairs and I further authorize my attorney in fact to pay such individuals from my funds in such amounts as my attorney in fact deems necessary and proper. My attorney in fact is authorized to hire medical, psychological and/or psychiatric specialists to evaluate and/or treat me for any

problems or conditions that my attorney in fact, in her sole discretion, believes are necessary and furthermore, my attorney in fact may pay such professionals or medical practitioners from my funds.

4.

I grant unto my said attorney in fact Deanna B. Thomas the full power to place any funds she deems necessary into his business or personal account or other account and to draw therefrom for my needs as she deems appropriate. If such account or accounts are not available or are otherwise inappropriate, then I authorize my said attorney to make whatever arrangements she deems necessary to carry out my wishes and conduct my financial, business and personal affairs.

5.

I hereby authorize my said attorney Deanna B. Thomas, to pay from my assets or from whatever source she desires all of my debts that have matured or that may mature as time goes on. Furthermore, she shall pay all lawful bills for medical expenses, room, board, upkeep and assistance, including medical and para-medical treatment, and, furthermore, shall have the authority to incur bills, charges, expenses and costs and may pay same on my behalf when she so desires. My said attorney shall have the authority to pay all taxes, liens and any other charges against me or against my estate that may already be in existence or that may come into existence.

6.

My said attorney shall have the full power to collect any amounts due to me or to my estate including, but not limited to, accounts receivable, debts from others, Social Security payments, SSI payments, if applicable, and any other amounts that may become due as time goes on.

7.

It is understood and agreed that my attorney in fact shall have the authority to retain legal counsel for me and to pay said counsel any amount that is reasonable for the services rendered.

8.

My said attorney shall have the full authority to obtain from any person or persons any documents, papers, instruments or other data in the possession of another that I own or have an interest or claim in and such person or persons having possession of same shall deliver to my said attorney the requested materials.

9.

I authorize my attorney in fact to repay to herself any amounts that she may have advanced to this point in time or any amounts that may be advanced in the future for professional, legal, medical or other services retained by my attorney in fact, though such may have been done before the execution by me of this document.

10.

I hereby grant this power of attorney to the said Deanna B. Thomas only during my lifetime; this power and authority terminating upon my death or the death of _____ _____, whichever comes first. Further, this Power of Attorney may be revoked by me at any time in writing upon my giving written notice to my attorney in fact. In the event that a guardianship of person and/or property is filed by any person as against me, then, in that event, pursuant to OCGA 29-5-2(c)(1), I hereby nominate Deanna B. Thomas to serve as such a guardian of my person and/or conservator.

11.

Generally, I do hereby grant unto my said attorney in fact the full power and authority in and about the premises; and generally to do and to perform all and every act and acts, thing and things, device and devices in the law whatsoever needful and necessary to be done in and about the premises; and for me and in my name to do, execute and perform, as largely and amply, to all intents and purposes, as I might or could do if I were personally present; and an attorney, or attorneys under me for the purposes and purposes aforesaid to make and substitute, hereby ratifying and confirming all that my said attorney in fact or substitute shall lawfully do by virtue hereof.

12.

This Power-of-Attorney shall become effective, in whole or in part only if I lack sufficient understanding or capacity to make responsible decisions concerning my person and/or my property (or I am incapable of communicating such decisions) by reason of one or more of the following infirmities:

- o Mental Illness
- o Advanced Age
- o Mental disability
- o Physical illness or disability

As declared either:

a.) by a *physician* licensed to practice under Chapter 34 of Title 43 of the Official Code of Georgia Annotated (O.C.G.A.) or a *psychologist* licensed to practice under Chapter 39 of Title 43 of the O.C.G.A.;

or

b.) A Court of competent jurisdiction.

13.

This Power-of-Attorney shall terminate and be without effect in the event that a physician or psychologist, as defined in Paragraph 12 above, or a court of competent jurisdiction determines that the disability or incapacity which activated the Power has been removed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal IN TRIPLICATE,

this ____ day of _____, 2008

Witness

Sworn to and subscribed before me this 15th day of MAY 2008

NOTARY PUBLIC (SEAL)

GRETCHEN D. GOFF NOTARY PUBLIC COLUMBIA COUNTY, GA

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	
STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Deanna J. Brown Thomas, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.
2. I am 40 years old
3. My father is James Brown who passed away on December 25, 2006.
4. I participated in mediation and was a part of the negotiation process.
5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.
6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.
7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.
8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

DEANNA J. BROWN THOMAS

Sworn to before me 27 day of March 2009.

Notary Public for Cobb County, GA

My Commission Expires: 2/12/2010

CHERRY V CORDLE NOTARY PUBLIC COBB COUNTY, GEORGIA MY COMMISSION EXPIRES FEBRUARY 12TH, 2010

C:\Users\Deanna\AppData\Local\Microsoft\Windows\Temporary Internet Files\Low\Content.IE5\I5MWTPC4\Aff_Approving_Agreement_-Deanna[1].doc

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

J.B.

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB JBT JBT for UB JBT for MB J. B.

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

RB

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

RJOM

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

LJB DBT DBT JNUB DBT JBR +B JB

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J. B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto

Attorney General

8/10/08

8/10/08

8/10/08

STATE OF SOUTH CAROLINA) IN THE PROBATE COURT
COUNTY OF AIKEN) Probate Court No. 2008-CP-02-1647

HENRY DARGAN McMASTER,)
In his capacity As Attorney General)
of the State of South Carolina)
)
Petitioner,)
Vs.)
)
Albert H. Dallas, Alfred A. Bradley, and)
David G. Cannon, et. al.,)
Respondents.)
)
IN RE: THE JAMES BROWN)
IRREVOCABLE U/A/D AUGUST 1, 2000)
)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS

) Common Pleas Case No. 2007-CP-02-0122
COUNTY OF AIKEN)
)
IN RE: ESTATE OF JAMES BROWN)
a/k/a/ JAMES JOSEPH BROWN)
_____)

Personally appeared before me, Lindsey Delores Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions and the daughter of Daryl J. Brown.

2. I am 19 years old.

3. My father is James Brown who passed away on December 25, 2006

4. My father participated in mediation and was a part of the negotiation process. I have discussed the mediation and settlement with my father as well as reviewed the filings
by the parties.

5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.

6. I have authorized attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe this settlement is in my best interest.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me.

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

Lindsey Brown

LINDSEY DELORES BROWN

Sworn to before me day of March 2009.

Notary Public for Columbia County, GA

My Commission Expires: June 24, 2011

private:stream

DEMARGO D. LEWIS
NOTARY PUBLIC
Columbia County - State of Georgia
My Comm. Expires June 24, 2011

This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B .

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means; state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement. This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4. Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

LJB

Exhibit "A"

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae. The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof.

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law.

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

RB

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006. This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust. Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed.

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

KTOM

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

LJB DBT DBT JNUB DBT JBR JB

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J. B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

6. This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto.

Attorney General

8/10/08

8/10/08

8/10/08

STATE OF SOUTH CAROLINA COUNTY OF AIKEN	)	IN THE PROBATE COURT Probate Court No. 2008-CP-02-1647
HENRY DARGAN McMASTER, In his capacity As Attorney General of the State of South Carolina Petitioner, Vs. Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, et. al., Respondents. IN RE: THE JAMES BROWN IRREVOCABLE U/A/D AUGUST 1, 2000	)	

STATE OF SOUTH CAROLINA COUNTY OF AIKEN IN RE: ESTATE OF JAMES BROWN a/k/a/ JAMES JOSEPH BROWN	)	IN THE COURT OF COMMON PLEAS Common Pleas Case No. 2007-CP-02-0122

Personally appeared before me, Yamma N. Brown, who first being duly sworn, states as follows:

1. I am a party in the above entitled actions.

2. I am 36 years old

3. My father is James Brown who passed away on December 25, 2006.

4. I participated in mediation and was a part of the negotiation process.

5. I have read and understand the settlement agreement dated August 10, 2008 and attached hereto as Exhibit A.

6. I have authorized my attorney, Louis Levenson of Levenson & Associates to present this affidavit to the court and represent to the Court that I freely and voluntary consent to the agreement.

7. I understand, if this agreement is approved by the Circuit Court, it can also be enforced by the Circuit Court.

8. I have consulted with my attorney and they have have answered all my questions concerning the proposed agreement.

9. I do not have any questions concerning the proposed agreement.

10. I am entering into this agreement freely and voluntarily. I am not being forced to enter into this agreement in any way.

11. I understand I am waiving my right to a trial on all of the issues knowing that the trial judge or a jury may reach a different result from the terms of this agreement.

12. I believe that my attorneys have done everything I have asked of them and I am satisfied with the legal services performed by my attorneys on my behalf.

13. I understand that the terms of the agreement are final and cannot be modified.

14. I am not under the influence of any type of drugs, medication, stress, alcohol, or any mind-altering substance, nor do I have any mental or physical condition which would prevent me from understanding this affidavit or the agreement and the same was true at the time the agreement was read and executed by me

15. The agreement presented to the court is just, fair, reasonable and equitable to me and my children S L and C L .

16. Considering all the facts and circumstances of my particular case, I believe it is in my best interest for the court to approve the agreement and it is also in my minor child's best interest for the court to approve the agreement.

17. I understand this affidavit will be submitted to the trial judge for the judge's consideration. I ask the Court to approve the agreement.

Affiant sayeth further naught.

YAMMA N. BROWN

Sworn to before me 17 day of March 2009.

Cherry V. Cordle

Notary Public for Cobb County

My Commission Expires: 2/12/2010

CHERRY V CORDLE NOTARY PUBLIC COBB COUNTY, GEORGIA MY COMMISSION EXPIRES FEBRUARY 12TH, 2010

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This agreement made this 10th day of August, 2008, by and among the Attorney General of South Carolina, Larry Brown (natural child of the deceased), Daryl J. Brown (natural child of the deceased), individually and on behalf of his minor children L B and J B , Venisha Brown (natural child of the deceased), Deanna J. Brown Thomas (natural child of the deceased), individually and on behalf of her minor child J L , Yamma N. Brown Lumar (natural child of the deceased), individually and on behalf of her minor children S L and C L , Tonya Brown (grandchild of James Brown) individually, and Tommie Rae Brown (hereinafter "Tommie Rae") individually and on behalf of her minor child J B

The purpose of this agreement is to settle any and all differences among the parties above whose signatures appear below concerning the disposition, whether by will or otherwise, and/or transfer of any assets owned or controlled by James Brown, whether by will, intestacy, trust , or nonprobate means, state or federal law, and based on this, the parties hereto agree as follows:

1. All parties who sign below hereby recognize and stipulate, for all purposes and matters, that Tommie Rae was the legal wife of James Brown, during his lifetime and at the time of his death, and qualifies as his surviving spouse, and agree not to contest any claim by Tommie Rae by virtue of her status as surviving spouse and to file any and all appropriate pleadings and documents recognizing and stipulating said status as spouse.

2 All parties who sign below hereby recognize and stipulate, for all purposes and matters, that the children and grandchildren who sign below were and are the lawful and/or legitimate biological issue and heirs of James Brown during his lifetime and were in life at the time of his death, and qualify as his surviving issue, and all parties agree not to contest any claim by any child or grandchild by virtue of his or her status as lawful and/or legitimate issue or as an heir of James Brown and agree to file any and all appropriate pleadings recognizing and stipulating said status of the children and grandchildren named as lawful and/or legitimate issue.

3. All parties agree to say nothing negative in public or to any representative of the media about any of the parties hereto or about the terms of any settlement reached herein, whether about their roles in this litigation or their relative positions or status as an heir, child, issue, spouse, or as a grandchild and will further speak only through counsel or in Court about any matters relative to this case affecting or pertaining to each other or to this settlement This agreement does not prevent any parties from publicly discussing events in court or Orders issued by the Court, so long as the parties are not critical of each other, nor does this agreement prevent any party from giving interviews or publishing books or articles about their lives, so long as they are not critical of each other nor commenting upon the terms of the settlement or the negotiations that lead thereto. The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement.

4 Tommie Rae, all children, and all grandchildren (if possible as to the grandchildren) agree to meet in person at a convenient time as soon as reasonably possible to reaffirm in person their mutual support and cooperation as a united group in support of the legacy of James Brown and in

further support of the agreements made herein.

5. It is noted that all parties to this agreement have filed, at separate times, pleadings objecting to the validity of the August 1, 2000 Will of James Brown and the August 1, 2000 Irrevocable Trust. Tommie Rae, the children and grandchildren and the Attorney General of South Carolina (hereinafter the parties) have additionally agreed as follows:

a) that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust pursuant to the provisions of applicable law.

b) that a charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable, including but not limited to the possibility of amendment to the August 1, 2000 Irrevocable Trust by agreement of all the parties hereto. The trustees of the trust shall include at all times one representative selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae The trust shall also include an advisory board that shall include some member(s) selected by the parties hereto who are clients of Levenson and one representative selected by Tommie Rae.

c) that there shall be no DNA testing of any children or grandchildren (or their issue) who are parties to this agreement and all such motions for same will be withdrawn or dismissed by consent of all parties hereto.

d) that the parties hereto will create an entity (the "settlement entity") that will receive any and all assets and or proceeds payable to any of the parties, now or in the future, by virtue of any rights of James Brown, any of the entities of James Brown, the Estate of James Brown, the August 1, 2000 James Brown Irrevocable Trust, the Charitable Trust, and/or any rights the parties hereto have as heirs, devisees, and/or successors to James Brown for any purpose, including not limited to copyright, royalty, persona, image, likeness, etc. The parties will divide any and all such assets and or proceeds in the following proportions for as long as such assets and proceeds are paid into said entity or any successor entity thereto: (1) 50% to Charitable Trust; (2) 25% to Tommie Rae Brown, which includes any share attributable to J B ; and (3) 25% to all parties hereto represented by Louis Levenson as they agree among themselves. Tommie Rae hereby waives any spousal right she may have to such assets to the extent that they might otherwise exceed 25% thereof. The parties hereto represented by Levenson waive any right they may have to such assets to the extent that they might otherwise exceed 25% thereof

e) All parties hereto waive any claim or right to seek forfeiture against any party pursuant to any in terrorem and/or no-contest clause under any will or trust of James Brown, and specifically agree that any and all contests that were brought were brought in good faith

LJB DBT DBT for JB DBT for MB J. B.

and with probable cause.

f) The promissory note and security deed currently due from the parties hereto represented by Levenson to the Estate of James Brown (with respect to the property known as Pops house, which is the home of the father of James Brown) will be marked satisfied and paid in full by the settlement entity for no additional payment being due.

g) In the event that any party brings to the settlement entity any offer culminating in a contract to purchase property and/or rights from the settlement entity, if such party's efforts are disclosed to the estate or trust or the settlement entity acting for said estate or trust, then such party shall be entitled to a finder's or broker's fee as shall be negotiated to the extent reasonable and appropriate under applicable law

h) In the event that the property at 430 Douglas Drive, Beech Island, SC, is sold by the settlement entity, the parties hereto who are clients of Levenson shall have the right of first refusal to purchase said property at the Aiken County Tax Assessor's appraised value therefor as of the most recent assessment before the purchase. In the event the parties hereto who are clients of Levenson shall decline to exercise such right and close the sale within 120 days of the giving of the notice of the right of first refusal, then Tommie Rae shall have a right of next refusal for the next 120 days on the same terms as set forth above after she receives notice thereof.

i) The parties agree that a trust similar to the Brown Educational Trust under the 2000 Irrevocable Trust will be established for the grandchildren of James Brown, and their issue, for as long as allowed under the applicable Rule Against Perpetuities, but in no event lasting for a period longer than 90 years from December 25, 2006 This Brown family educational trust shall be funded with a principal amount of $2 million, which shall be carved out from the share of assets and proceeds payable to the Charitable Trust Upon the termination of this Brown family educational trust, the remaining principal and any undistributed income shall be distributed to the charitable trust.

j) The parties agree that any and all will and trust contests will be dismissed

k) The parties agree to use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or successor and to the extent the termination of such interest or claim requires payment, for such payment to be made from the settlement entity, which of necessity would be allocated among the parties to the settlement entity pro-rata in aliquot shares.

l) The parties agree that the settlement entity and/or the parties will endeavor to create an appropriate and respectful museum or other memorial burial place acceptable to the settlement entity in which to maintain the remains of James Brown, preferably at 430 Douglas Drive, Beech Island, if feasible. If such is not accomplished within 7 years from date, then in that event the remains will be interred in the cemetery where the parents of James Brown currently are located in Augusta, GA, with the settlement entity paying

expenses of relocation. Parties hereto represented by Levenson, Tommie Rae, and J: B shall all have reasonable opportunities to visit privately the gravesite upon reasonable notice. The parties hereby waive any right to otherwise direct the location of the gravesite as a result of their status under law The parties consent to an Order of the Aiken County Court of Common Pleas or to any appropriate Court to require the parties to comply with the terms of this paragraph of this agreement

6 This agreement is a private binding agreement among the parties hereto. Although the parties hereto may agree to ask the Court to approve this agreement, this agreement remains binding among the parties and applies to personal representatives and trustees even if not approved by the Court.

7. This agreement is binding on the heirs, successors, and assigns of the parties hereto

rpb

Attorney General

Tonya Brown

Deanna Brown Thomas

Deanna Brown Thomas for

Venisha Brown

Deanna Brown Thomas for

Yanna Brown

Tony Lamar Brown

8/10/08

8/10/08

8/10/08

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

In Re: The Estate of James Brown a/k/a James Joseph Brown,

Tommie Rae Brown ..... Respondent,

v.

David C. Sojourner, Jr., in his capacity as Limited
Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Larry Brown, Terry Brown and Daryl Brown ..... Respondents below,

Of whom David C. Sojourner, Jr., in his capacity as
Limited Special Administrator and Limited Special Trustee,
Deanna Brown-Thomas, Yamma Brown, Venisha Brown,
Terry Brown, Michael Deon Brown and Daryl Brown are the ..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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