THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2020-000967

Adele J. Pope, ……..……Appellant,

v.

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

REPLY IN SUPPORT OF
MOTION TO DISMISS APPEAL AS INTERLOCUTORY

The Estate of James Brown and The James Brown 2000 Irrevocable Trust (individually, the "Estate" and the "Trust"; collectively, "Respondents"), pursuant to Rule 240(f), SCACR, and S.C. Code Ann. § 14-3-330, respectfully submit this reply in support of Respondents' motion to dismiss this appeal as interlocutory ("Motion") and the return in opposition ("Return") filed by Appellant Adele J. Pope.

Respondents filed a 10-page Motion arguing that this appeal should be dismissed on the grounds that the Deposit Order[1] is not a final judgment and does not fall into any category of

[1] "Deposit Order" refers collectively to the circuit court's order of February 26, 2020, and its amended order of June 18, 2020.

appealable interlocutory orders under S.C. Code Ann. § 14-3-330. Appellant's 36-page Return does not even *cite* § 14-3-330 until page 34 and *never* argues which subsection of the statute authorizes this appeal. Effectively, Appellant concedes that this appeal should be dismissed as interlocutory.

Instead of attempting to counter Respondents' arguments for dismissal, Appellant uses the Return as a vehicle for a rambling, counter-factual screed against Tommie Rae Hynie[2] and, to a lesser extent, the breach of fiduciary duty case pending against Appellant in Richland County ("Richland 4900"). While Respondents cannot rule out the possibility that some of Appellant's rantings may be relevant to the merits of this appeal, it is clear that none of them is relevant to the threshold issue of appealability, which is the only issue currently before the Court.

ARGUMENT

I. The Deposit Order Is Interlocutory and Not Appealable

A. The Deposit Order Is Not a Final Judgment

Appellant contends that the Deposit Order is final and appealable because it "seek[s] to overturn the final judgment in the January 2019 Payment Order."[3] The Deposit Order does nothing of the sort. In fact, the Deposit Order assumes the validity of the order granting partial summary judgment on Appellant's claim for SA fees, which Respondents did not appeal.

Even if the Deposit Order were aptly characterized as "seek[ing] to overturn" a previous

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[2] In light of the Supreme Court's recent ruling that Ms. Hynie was not James Brown's spouse at the time of his death, and its subsequent denial of her petition for rehearing, Respondents will refer to her as "Ms. Hynie" in this Reply.

[3] What Appellant refers to as the "Payment Order" is actually Judge Early's order of January 16, 2019, denying Appellant's claim for compensation for her disastrous service as PR/Trustee. In fact, Appellant's claim to the funds subject to the Deposit Order is based on Judge Early's order of August 16, 2017, granting partial summary judgment and awarding Appellant $47,972 in unpaid fees for her service as Special Administrator, plus interest. (Motion, at 2-3.)

final order, it (the Deposit Order) would still not be a final, appealable judgment. "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is interlocutory and not final." *Ex Parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005) (citing *Mid–State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)). As Respondents' Motion explained, the Deposit Order merely seeks to ensure that the funds deposited are available in the event that there is a damages award against Appellant in Richland 4900. (Motion, at 3.) Respondents argued, and the circuit court agreed, that the Deposit Order was an appropriate interim measure. However, the Deposit Order is not final because it does not decide who, as between Appellant and Respondent, will ultimately be entitled to the deposited funds. Therefore, there is a further act to be done, and under *Ex Parte Wilson*, the Deposit Order is not final.

B. The Merits of the Deposit Order Are Irrelevant to Its Appealability

At various points in her Return, Appellant contends that the Deposit Order is final because it violates her due process rights. This argument goes to the merits of the Deposit Order, not to its appealability. *See State v. Quinn*, 430 S.C. 115, 122, 843 S.E.2d 355, 359 (2020) (recognizing that appealability is distinct from the merits). Moreover, Appellant did not raise any due process argument before the circuit court. Thus, even if a constitutional challenge could be relevant to appealability in *some* case, it is not relevant to appealability in *this* case, because the argument has been waived. *See State v. Massey*, 430 S.C. 349, 359, 844 S.E.2d 667, 672 (2020) (failure to assert argument in the lower court results in waiver on appeal).

The same is true of Appellant's contention that the Deposit Order violates Rule 67, SCRCP, by somehow depriving her of a "level playing field." (Return, at 7.) It is hard to imagine how an order that merely preserves the status quo deprives Appellant of anything. Regardless, this is a claim regarding the merits of the appeal, not the appealability of the Deposit Order. And, like

Appellant's due process arguments, it was not raised below and therefore is waived on appeal.

C. The Deposit Order Is Not Appealable Under § 14-3-330

Respondents devoted five pages of their ten-page Motion to a detailed explanation, supported by numerous citations, of why the Deposit Order does not fall into any of the categories of appealable interlocutory orders established by § 14-3-330. (Motion, at 5-9.) Respondent allocates a mere two pages of her 36-page Return to argument under the heading, "The Nonpayment Orders are Final and Immediately Appealable Under §14-3-330." (Return, at 34-35.) The content of these two pages, however, has nothing at all to do with the text of § 14-3-330 or its application. They simply continue Appellant's assertions regarding the nature of the claims in Richland 4900 and her baseless claim that Richland 4900 generally, and the Deposit Order specifically, are intended "[t]o damage Appellant, and aid Hynie and James [Brown II]." (Return, at 35.)

Although she never cites § 14-3-330(4), various statements in the Return suggest that Appellant may be arguing that the Deposit Order is appealable as an order "granting, continuing, modifying, or refusing an injunction." S.C. Code Ann. § 14-3-330(4). To the extent Appellant is making this argument, she is wrong. The Deposit Order is not an injunction because it does not *command* or *prohibit* any act; it merely *permits* Respondents to deposit funds into the court. *See* Injunction, Black's Law Dictionary (6th ed.1990) (defining "injunction" as a "prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action ... forbidding the latter from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action at

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

II. The Court Should Disregard Appellant's Baseless Accusations

The vast majority of Appellant's Return has nothing at all to do with the appealability of the Deposit Order but instead consists of a long-winded string of claims regarding a supposed conspiracy against Appellant that is either orchestrated by, or is being pursued for the benefit of, Ms. Hynie. Appellant's wild accusations have nothing to do with the appealability of the Deposit Order and, accordingly, need not be addressed by Respondents. Suffice it to say that Appellant's allegations are, at best, unsupported by any verifiable facts and many are affirmatively contradicted by the factual record. *All* such accusations are completely irrelevant to the question of whether the Deposit Order is immediately appealable. This Court should, therefore, disregard them.

CONCLUSION

This appeal should be dismissed. The Deposit Order self-evidently interlocutory and unappealable. It merely allows the taking of an interim measure—the preservation of disputed funds—pending the outcome of ongoing litigation. The Deposit Order is not final, nor does it resolve or reject any claim or defense, deny a mode of trial, or enjoin any conduct. The Deposit Order is a form of preliminary relief, in that it merely ensures the preservation of Estate assets pending the resolution of Richland 4900. It is not appealable as a final order, nor does it meet the requirements any subsection of S.C. Code Ann. § 14-3-330. Accordingly, the appeal should be dismissed.

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[4] Appellant's contention that the Deposit Order "threaten[s] to enjoin future payments to Appellant[] in Aiken 1337" is unfounded. The Deposit Order, in both its original and amended forms, addresses *only* the SA fee and accrued interest. It says nothing at all about any future monetary award which, in any event, is only possible if the Court reverses Judge Early's exhaustive order denying Appellant's claim for PR/Trustee fees.

Respectfully submitted,

s/J. David Black

J. David Black, SC Bar No. 68499
Kirsten E. Small, SC Bar No. 75681
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
ksmall@nexsenpruet.com

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

September 9, 2020
Columbia, South Carolina

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CERTIFICATE OF SERVICE

I hereby certify that on September 9, 2020, I served the foregoing **Reply in Support of Motion to Dismiss Appeal as Interlocutory** pursuant to Supreme Court Order 2020-03-20-01 § g(3) by transmitting a copy of it to the AIS email address for Appellant Adele Pope, who is self-represented, as listed below:

Adele Pope
Adele@popelawfirm.com

s/J. David Black

J. David Black, SC Bar No. 68499
Kirsten E. Small, SC Bar No. 75681
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
ksmall@nexsenpruet.com

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