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

RETURN TO PETITION FOR REHEARING

The Estate of James Brown and The James Brown 2000 Irrevocable Trust (individually, the "Estate" and the "Trust"; collectively, "Respondents"), in response to the Court's letter of December 16, 2020, respectfully submit this Return to the Petition for Rehearing ("Petition") filed by Appellant Adele J. Pope.

INTRODUCTION

The Petition should be denied. This Court correctly dismissed this appeal as interlocutory. Nothing in the Petition undermines the validity of the Court's ruling. As Respondents explained

in detail in their Motion to Dismiss this appeal, the Deposit Order[1] permitted Respondents to deposit with the court the $47,972 awarded to Ms. Pope for her services as Special Administrator of the Estate, plus accrued interest (together, the "SA fees"). It is neither a final order nor an appealable interlocutory order. It is not a final order because it leaves something more to be done, namely, a determination of who (as between Ms. Pope and Respondents) is ultimately entitled to receive the deposited funds. It is not an appealable interlocutory order because it does not involve the merits, does not affect substantial rights, was not entered in a special proceeding or on a summary application, and does not involve a grant, denial, or modification of injunctive relief. *See* S.C. Code Ann. § 14-3-330.

Rather than attempting to identify any fact or principle of law the Court may have overlooked in dismissing the appeal as interlocutory, the Petition is primarily focused on Ms. Pope's continuing vitriol against Tommie Rae Hynie,[2] whom Ms. Pope claims is the puppet-master controlling the conduct of *Bauknight v. Pope*, C/A No. 2010-CP-40-04900 ("Richland 4900"). Ms. Pope's inflammatory accusations against Ms. Hynie—including the oddly specific claim that Ms. Hynie will receive "about 46%" of the "benefit" of Richland 4900 (Pet'n, at 2)—are unsourced. More importantly, they are irrelevant. The only question presented by the Petition is whether this Court correctly determined that the Deposit Order is not appealable, *i.e.*, it is neither a final order nor an interlocutory order for which immediate appeal is authorized by S.C. Code Ann. § 14-3-330. Whatever machinations Ms. Pope imagines Ms. Hynie has engaged in have no bearing on the appealability of the Deposit Order, and this Court can and should ignore them.

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

[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 Return.

BACKGROUND

On June 30, 2020, Ms. Pope filed a notice of appeal related to the Deposit Order, which was filed on February 26, 2020 and amended on June 18, 2020 and which granted Respondents' motion to deposit the SA fees. The Deposit Order was entered in the Aiken County Court of Common Pleas case in which the SA fees were awarded, *Pope v. The Estate of James Brown, et al.*, C/A No. 2013-CP-02-1337 ("Aiken 1337"). In entering the Deposit Order, the circuit court agreed with Respondents that the SA fees are subject to setoff in the likely event that Respondents obtain a judgment against Ms. Pope in Richland 4900, which the Deposit Order describes as a "companion case" to Aiken 1337.

On August 10, 2020, Respondents moved to dismiss the appeal as interlocutory. Respondents explained that the Deposit Order merely granted a form of preliminary relief, preventing any potential waste of Estate assets pending the resolution of Richland 4900. As such, it was not appealable as a final order, nor did it fall into any category of appealable interlocutory order under S.C. Code Ann. § 14-3-330.

This Court entered an order dismissing the appeal on October 14, 2020. Ms. Pope filed the Petition on October 26, 2020. On December 16, 2020, the Court requested that Respondents file this Return.

ARGUMENT

Rehearing is appropriate only when a "material fact or principle of law has been either overlooked or disregarded." *State v. Haygood*, 413 S.C. 239, 240, 776 S.E.2d 262, 263 (2015); *see Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 643 (2011); *see also Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001) ("In order to prevail on a petition for rehearing, appellants must demonstrate the Court overlooked or misapprehended their

argument."). Substantively, a petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. A petition for rehearing is not a vehicle for asserting new arguments or factual contentions that could have been presented previously. *See Kennedy*, 349 S.C. at 532, 564 S.C. at 322.

The Petition does not come close to meeting this standard. Far from than specifically identifying points the Court may have overlooked, the Petition contains little more than a passing reference to the issue on which Ms. Pope seeks rehearing—the appealability of the Deposit Order. Most of the Petition is occupied with Ms. Pope's continuing stream of invective against Ms. Hynie, to which Ms. Pope has now added equally baseless and irrelevant claims regarding materials disclosed by the Attorney General's office pursuant to the South Carolina Freedom of Information Act. As to these materials, Respondents refer the Court to their Return to Ms. Pope's Motion to Supplement the Record on Appeal, filed on October 26, 2020.

Nothing in the Petition suggests any relevant fact or principle of law that this Court may have overlooked in dismissing the appeal. To the contrary, the dismissal was plainly correct. Accordingly, the Court should deny the Petition.

I. The Court Correctly Dismissed the Appeal.

A. The Deposit Order Is Not a Final Judgment

"As a general rule, only final judgments are appealable." *Ex parte Wilson*, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005). "A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010). "Any judgment or decree, leaving some further act to be done by the court before the rights of the parties are determined, is

interlocutory and not final." *Ex Parte Wilson*, 367 S.C. at 12, 625 S.E.2d at 208 (citing *Mid–State Distribs., Inc. v. Century Importers, Inc.*, 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993)).

As the Supreme Court recognized in *Ex Parte Wilson*, courts may issue non-final orders even after entry of judgment on the merits, in connection with post-judgment matters. *See id.* at 13, 625 S.E.2d at 208. The Court referred to an explanation provided by the Seventh Circuit:

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

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

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

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

Since the Deposit Order is not appealable as a final judgment, the question becomes whether it is an appealable interlocutory order. Appealability of interlocutory orders is controlled by S.C. Code Ann. § 14-3-330. *See Hagood v. Sommerville*, 362 S.C. 191, 194, 607 S.E.2d 707,

708 (2005) ("The right of appeal arises from and is controlled by statutory law."); *Neeltec Enters., Inc. v. Long*, 397 S.C. 563, 566, 725 S.E.2d 926, 928 (2012) (recognizing that appealability of an interlocutory order "is determined by [S.C. Code Ann.] § 14-3-330," unless a specialized statute applies); *see also Thornton v. SCE&G*, 391 S.C. 297, 300, 705 S.E.2d 475, 477 (Ct. App. 2011) ("An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14–3–330."). Under § 14-3-330, an interlocutory order is immediately appealable only if it falls into one of the following categories:

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

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

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

1. The Deposit Order does not involve the merits

The Deposit Order is not appealable under § 14-3-330(1) because it does not involve the merits. To be appealable under subsection (1), an interlocutory order must "finally determine[] some substantial matter forming the whole or a part of some cause of action or defense." *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988) (quoting *Henderson v. Wyatt*, 8 S.C. 112 (1877)). The Deposit Order does not determine anything, much less a substantial matter forming the whole or part of some cause of action or defense. Accordingly, § 14-3-330(1) does not authorize this appeal.

2. The Deposit Order does not affect a substantial right

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

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

under § 14-3-330(2).

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

Under § 14-3-330(3), an order is appealable if it is (a) a final order; (b) that affects a substantial right; and (c) is made in either a "special proceeding" or "upon a summary application after judgment." As an initial matter, and for the reasons discussed above, the Deposit Order is not a final order and does not affect substantial rights. Thus, subsection (3) does not authorize this appeal regardless of how Respondents' motion to deposit funds is characterized procedurally. Regardless, Ms. Pope's appeal is not authorized under subsection (3) because the Deposit Order was not made in either a special proceeding or upon a post-judgment summary application.

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

Second, a motion to deposit funds into the court is not a "summary application after judgment." Although South Carolina authority is scant, the extant cases indicate that a summary application after judgment is one involving a determination of rights in connection with execution of a judgment. For example, in *Weatherly v. Jackson*, 3 S.C. 228, 229 (1872), our Supreme Court held that an order denying a judgment debtor's motion to set aside sheriff's levy of his homestead would be appealable as a final order affecting a substantial right in a summary application after judgment. Other states with statutes employing the same language have, similarly, defined a post-judgment summary application as one involving a determination of rights. *See Ohio v. Horsley*, 2018 WL 5025395, *2 (Ohio Ct. App. Oct. 12, 2018) (holding an order on a request for garnishment or an order disbursing garnished funds are orders "upon a summary application after judgment"); *McCullough v. McCullough*, 910 N.W.2d 515, 523-24 (Neb. 2018) (holding a contempt order entered in post-judgment proceedings is appealable as an order "upon a summary application after judgment").

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

4. The Deposit Order does not involve injunctive relief

Finally, the Deposit Order is not appealable under § 14-3-330(4) because it does not involve the "granting, continuing, modifying, or refusing [of] an injunction."[3] An injunction is directed to a party and commands the party to do, or refrain from doing, some particular act. *See*

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

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

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

At various points in the Petition, Ms. Pope contends that the Deposit Order is final because it violates her due process rights, including by misapplying Rule 67, SCRCP. (Pet'n, at 8-11.) 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, Ms. Pope 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).

A. The Deposit Order Does Not Violate Due Process

The Deposit Order does not deprive Ms. Pope of any property right. To the contrary, as amended it protects Ms. Pope by mandating the continued accrual of interest at the prejudgment rate of 8.75 percent. Ms. Pope's complaint is that the Deposit Order denies her immediate access to funds that she will have to pay back to the Estate if there is a judgment against her in Richland 4900. The Deposit Order is clearly an appropriate exercise of the circuit court's discretion to act

equitably to preserve the status quo so that Estate assets—assets James Brown intended to fund a charitable trust providing scholarships to needy students attending schools in South Carolina and Georgia—are not wasted pending resolution of Richland 4900.

Nor was Ms. Pope denied any procedural due process rights. Ms. Pope received notice through service of Respondents' motion for leave to deposit the SA fees, with the Court, and she opposed the motion in written filings and through argument at a hearing. "Procedural Due Process contemplates a fair hearing before a legally constituted impartial tribunal." *State v. Legg*, 416 S.C. 9, 13, 785 S.E.2d 369, 371 (2016). This is exactly what Ms. Pope received, and she has never contended otherwise.

B. The Denial of a Previous Motion to Deposit the SA Fees Does Not Undermine the Deposit Order

The Petition asserts that Judge Early denied a previous request by Respondents, in 2018, for leave to deposit the SA fees with the circuit court. (Pet'n, at 8.) As an initial matter, this argument was not raised in the circuit court or in the Return to Respondents' Motion to Dismiss this appeal. Consequently, it has been waived. *See Kennedy*, 349 S.C. at 532, 564 S.E.2d at 322 ("The purpose of a petition for rehearing is not to present points which lawyers for the losing parties have overlooked or misapprehended, nor is it the purpose of the petition for rehearing to have the case tried in the appellate court a second time." (quoting Jean H. Toal, Appellate Practice in South Carolina 309 (1999)).

Regardless, the 2018 ruling does not support rehearing. First, the 2018 ruling is relevant, *at most*, to the merits of the Deposit Order. But the Petition concerns only the appealability of the Deposit Order, not its merits. Moreover, even if the 2018 ruling were relevant to appealability, it would not help Ms. Pope because the circumstances when the circuit court entered the Deposit Order in 2020 are very different from the circumstances when the circuit court denied such relief

in 2018. At the time of the 2018 ruling, the trial of Ms. Pope's claim for PR/Trustee fees was ongoing.[4] In contrast, the Deposit Order was entered after the circuit court had denied Ms. Pope's fee claim in an order laying out—in painstaking detail—the progression of Ms. Pope's deeds and actions to enrich herself at the expense of the Estate. Based on his comprehensive factual findings, Judge Early concluded that Ms. Pope had breached her fiduciary duty to the Estate and Trust in *exactly* the ways asserted by the Estate and Trust in Richland 4900.

Thus, the 2018 ruling occurred at a time when Ms. Pope's fee claim remained undecided. When the Deposit Order was entered in 2020, however, the circuit court had emphatically denied Ms. Pope's fee claim on the basis of findings that she had actually caused monetary harm to the Estate and Trust. In light of this history, it was entirely reasonable for the circuit court to conclude that the outcome of Richland 4900 is likely to be a monetary judgment against Ms. Pope in an amount that dwarfs the amount owed to her for the SA fees. In that event, the Estate and Trust will be entitled to set off the amount owed to Ms. Pope for the SA fees against the judgment in Richland 4900. The Deposit Order merely preserves the status quo, ensuring that these funds will still be available when such a judgment is entered. At the same time, Ms. Pope's rights are protected by the Deposit Order's provision for the continued accrual of interest.

C. Richland 4900 and Aiken 1337 are Properly Described as "Companion Cases"

Richland 4900 is clearly a "companion" to Aiken 1337 in the ordinary sense of a companion as a thing "that accompanies another" or "that is closely connected with something similar." *See* https://www.merriam-webster.com/dictionary/companion (last visited Oct. 25, 2020). Aiken 1337 primarily concerned Ms. Pope's creditor's claim for more than $2.8 million in PR/Trustee

[4] Ms. Pope's claim was tried to the circuit court in several sessions of approximately one week each beginning in September 2017 and concluding in July 2018.

fees, which was based on her contention that her services as PR/Trustee substantially benefited the Estate and Trust.[5] Judge Early denied her claim based on his determination that, to put it bluntly, Ms. Pope did more harm than good. In Richland 4900, the Estate and Trust are seeking to recover damages from Ms. Pope for the same harms that persuaded Judge Early to deny her claim in Aiken 1337. Thus, the two cases are "companions" in the highly relevant sense that they are both concerned with Ms. Pope's performance of her duties as PR/Trustee.

In any event, no part of the appealability analysis depends on whether the circuit court correctly described Richland 4900 is a "companion case" to Aiken 1337. Excising the reference to Richland 4900 as a companion case from the Deposit Order would not transform it from an interlocutory order into a final one, nor would it change the Deposit Order from one that does not fall into a category of appealable interlocutory orders under § 14-3-330 into one that does.

Whether Richland 4900 is correctly described as a "companion case" to Aiken 1337 is equally irrelevant to the merits of the Deposit Order. Respondents sought to deposit the SA fees with the court, rather than paying them to Ms. Pope, because of the substantial likelihood that Richland 4900 will result in a large monetary judgment against her. In that event, Respondents would be entitled to a setoff of the unpaid SA fees. Respondents argued, and the circuit court agreed, that depositing the SA fees with the court was a commonsense, interim measure to preserve disputed funds pending the outcome of ongoing litigation. Fundamentally, the Deposit Order is based upon the relationship between the parties in the two cases: in Aiken 1337, Ms. Pope is the plaintiff and Respondents are the defendants, while in Richland 4900 the roles are reversed. How this relationship is described—whether as a "companion case" or something else—has no bearing

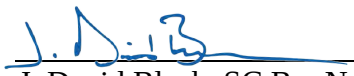
[5] The evidence presented at trial on Ms. Pope's creditor's claim for PR/Trustee fees included her September 2017 offer to settle Aiken 1337 *and* Richland 4900 for a combined total of $19 million—further showing the close relationship of the two cases.

on the reality that Respondents may ultimately be awarded more in damages than they owe Ms. Pope in SA fees.

CONCLUSION

The Court should deny the Petition. Rehearing is inappropriate because Ms. Pope has failed to identify any relevant fact or applicable principle of law that the Court may have overlooked. To the contrary, the Deposit Order is clearly a non-appealable, interim measure to preserve the status quo and avoid the potential waste of Estate assets pending resolution of Richland 4900.

Respectfully submitted,



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December 28, 2020
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
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CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2020, I served the foregoing **Return to Petition for Rehearing** pursuant to Supreme Court Order 2020-05-29-02 § 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

J. David Black, SC Bar No. 68499