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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge
Case No. 2013-CP-02-1337

Appellate Case No. 2021-000160

Adele J. Pope, ……..…… Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

The Estate of James Brown and The James Brown 2000 Irrevocable Trust (individually, the "Estate" and the "Trust"; collectively, "Respondents"), pursuant to Rule 242(f), SCACR, respectfully submit this Return to the Petition for Writ of Certiorari ("Petition") filed by Petitioner Adele J. Pope.[1]

[1] In violation of Rule 242(e)(2), SCACR, Ms. Pope failed to file an Appendix that includes all "documents relevant to the dismissal including any motion to dismiss and any return or reply that may have been filed." For the convenience of the Court, Respondents are submitting with this Return a Supplemental Appendix comprising Respondents' motion to dismiss, Ms. Pope's return, and Respondents' reply.

The Petition should be denied. The Court of Appeals properly dismissed a plainly interlocutory order that granted a form of preliminary relief, preserving the status quo and preventing any potential waste of Estate assets pending the resolution of ongoing litigation between the Estate and Ms. Pope. There are no special or important reasons for this Court to expend its limited resources to review the dismissal of Ms. Pope's premature appeal.

BACKGROUND

This matter concerns Ms. Pope's appeal of an order filed February 26, 2020, and an amended order filed June 18, 2020 (collectively, the "Deposit Order"). The Deposit Order granted Respondents' motion to deposit with the circuit court the amount awarded to Ms. Pope for her services as Special Administrator of the Estate plus accrued interest ("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"). The SA fees are subject to setoff in the event Respondents obtain a judgment against Ms. Pope in the Estate's action against her for breach of fiduciary duty currently pending in the Richland County Court of Common Pleas, *Bauknight, et al. v. Pope*, C/A No. 2010-CP-40-04900 ("Richland 4900").

A. The Deposit Order

Ms. Pope served as a Special Administrator of the Estate from March to November 2007. In November 2007, Judge Early appointed Ms. Pope as Personal Representative of

the Estate and Trustee of the Trust.[2] Judge Early removed Ms. Pope for cause on May 26, 2009, in conjunction with his approval of a settlement resolving various matters related to the estate of the entertainer James Brown. In May 2013, this Court reversed Judge Early's approval of the settlement but affirmed his for-cause removal of Ms. Pope. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Ms. Pope filed Aiken 1337 in June 2013, seeking unpaid SA fees and a fee for her service as PR/Trustee.

On August 16, 2017, Judge Early granted partial summary judgment as to the unpaid SA fees, awarding Ms. Pope $47,972 plus interest at the prejudgment rate of 8.75 percent. Following a lengthy trial, on January 16, 2019 Judge Early granted judgment to the Estate and Trust on Ms. Pope's claim for PR/Trustee fees. Judge Early found that because "any benefits Ms. Pope provided to the Estate and Trust [were] overwhelmed and surpassed by the detriment she caused," she was "not entitled to a fee."

On November 14, 2019, Respondents filed a post-judgment motion in Aiken 1337, seeking leave to deposit the SA fees with the court pending resolution of Richland 4900.[3] Respondents explained in their written filings and at a hearing on January 31, 2020 that the SA fees were subject to setoff in the event Respondents obtain a judgment against

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[2] A detailed recounting of the facts concerning Ms. Pope's service as PR/Trustee is presented in Respondents' brief in Appeal No. 2019-000362, Ms. Pope's appeal from Judge Early's order denying her claim for an award of PR/Trustee fees.

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

Ms. Pope in that case. Since the amount of the SA fees was far less than the millions of dollars in potential damages that may be awarded against Ms. Pope in Richland 4900, Respondents sought to ensure the funds would be available in the event of a judgment against Ms. Pope. The circuit court seemingly agreed with Respondents' reasoning when it commented that payment of the funds into the court would protect the assets of the Estate. Supp. App'x 30 (Hr'g Tr. 19:18–19 ("[I]f the funds were deposited, then wouldn't that have the effect of protecting the assets?")). The court also noted, correctly, that payment of the funds into the Court pending resolution of Richland 4900 would not disturb Ms. Pope's priority in the funds. Supp. App'x 31 (Hr'g Tr. 20:8–10 ("So when the dust settles, if there's money, you'd be the first in line to get it?" Mr. Silvernail: "Yes.")).

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

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

Supp. App'x 39 (Order of Feb. 26, 2020).

Shortly thereafter, on March 6, 2020, Ms. Pope filed a motion to alter, amend or vacate. The court received the parties' written submissions and conducted a hearing by

videoconference on May 12, 2020. The court subsequently denied Ms. Pope's motion but entered an amended order providing that prejudgment interest would continue to accrue on the deposited funds. The court ruled, in relevant part, as follows:

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

Supp. App'x 43-44 (Order of June 18, 2020).

B. Procedural History

Ms. Pope filed her notice of appeal on June 30, 2020. On August 10, 2020, Respondents moved to dismiss the appeal as interlocutory. Respondents explained that dismissal was required because 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.

The Court of Appeals entered an order dismissing the appeal on October 14, 2020.

Ms. Pope filed a petition for rehearing on October 26, 2020. On December 16, 2020, the Court of Appeals asked Respondents to file a return to the rehearing petition.[4] Respondents filed their return on December 29, 2020. The Court of Appeals denied rehearing on February 3, 2021. Ms. Pope filed the Petition with this Court on February 16, 2021.

ARGUMENT

The Court should deny the Petition because there are no special or important reasons warranting an exercise of the Court's discretion to grant certiorari review. The Court of Appeals correctly determined that the Deposit Order is neither a final order nor an appealable interlocutory order. It is not a final order because it leaves something more to be done: the determination of who, as between Ms. Pope and Respondents, is ultimately entitled to the deposited funds. The Deposit Order 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.

[4] *See* Rule 221(a), SCACR ("No return to a petition for rehearing may be filed unless requested by the appellate court.").

I. There Are No Circumstances Justifying an Exercise of Discretion to Grant Certiorari

Certiorari review "is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. Although certiorari is always discretionary with the Court, Rule 242(b) identifies certain circumstances that "indicate the character of the reasons" that may support a grant of certiorari:

> (1) Where there are novel questions of law.
>
> (2) Where there is a dissent in the decision of the Court of Appeals.
>
> (3) Where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court.
>
> (4) Where substantial constitutional issues are directly involved.
>
> (5) Where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court.

Id.

The Petition does not cite Rule 242 and does present any argument as to why there are "special and important reasons" to grant certiorari. Most of the indicative criteria set forth in Rule 242(b) are obviously inapplicable: the appealability of the Deposit Order does not present a novel question of law (Rule 242(b)(1)); there was no dissent from the dismissal in the Court of Appeals (Rule 242(b)(2)); the dismissal does not conflict with any prior decision of this Court (Rule 242(b)(3)); and the dismissal does not conflict with any decision of the United States Supreme Court (Rule 242(b)(5)).

Ms. Pope does contend at various points in the Petition that the Deposit Order violates her due process or equal protection rights, suggesting the possibility of an argument under Rule 242(b)(4) that there are "substantial constitutional issues." But nowhere in the Petition does Ms. Pope argue that *the dismissal by the Court of Appeals*—the decision she wants this Court to review—involves substantial constitutional issues. Her argument is that *the Deposit Order* violates her constitutional rights. Even if that were true (it is not, for the reasons discussed *infra*), it is irrelevant. The merits of the Deposit Order are not before this Court because the Court of Appeals never reached the merits, instead dismissing the appeal as interlocutory.

While the grounds set forth in Rule 242(b) are not exhaustive, they do provide guidance as to the types of questions that are sufficiently serious to warrant a discretionary grant of certiorari. The list in Rule 242(b) does not include "error by the Court of Appeals," strongly suggesting that a mere error by the Court of Appeals is not alone sufficient to support a grant of certiorari. But mere error is all the Petition argues.

II. The Court of Appeals 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 Court of Appeals correctly dismissed the appeal because the Deposit Order does not satisfy the requirements of any subsection of § 14-3-330.

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 § 14-3-330(2) 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 explicitly recognizes 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.[5] 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

[5] Ms. Pope contends that the Deposit Order "reversed" the order granting partial summary judgment on her claim for SA fees. (Pet. at 12.) To the contrary, the Deposit Order explicitly recognized that the SA fees were "previously ordered due" to Ms. Pope. Supp. App'x 39, 43-44 (Order of Feb. 26 and June 18, 2020).

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 is not final, does not affect substantial rights, and **was** not made in a special proceeding or on a summary application after judgment.*

The Deposit Order is not appealable under § 14-3-330(3) because it does not meet any of the three required elements of this subsection. For the reasons already discussed, the Deposit Order is not a final order and it does not affect substantial rights. 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." For the reasons discussed above, the Deposit Order is not a final order and does not affect substantial rights. Therefore, it is not appealable under subsection (3) regardless of whether it was made in a special proceeding or on a summary application of judgment. 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)). Consistently, this 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), this Court held that an order denying a judgment debtor's motion to set aside a 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."[6] An injunction is directed to a party and commands the party to do, or refrain from doing, some particular act. *See Injunction*, Black's Law Dictionary (6th ed.1990) (defining "injunction" as a "prohibitive, equitable remedy issued or granted by a court at the suit of a party complainant, directed to a party defendant in the action ... forbidding the latter from doing some act which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff,

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

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.[7] Accordingly, it is not appealable under subsection (4).

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

Throughout the Petition, Ms. Pope argues that the Court of Appeals should not have dismissed the appeal because the circuit court erred in entering the Deposit Order. However, whether the Deposit Order was erroneous and whether it was appealable are different questions. *See State v. Quinn*, 430 S.C. 115, 122, 843 S.E.2d 355, 359 (2020) (recognizing that appealability is distinct from the merits). The merits of the Deposit Order are not relevant to its appealability. In any event, Ms. Pope's challenges to the Deposit Order are meritless and/or have been waived.

A. The Deposit Order Does Not Violate Due Process

Ms. Pope argues throughout the Petition that the Deposit Order deprives her of due process. As an initial matter, this argument is waived because Ms. Pope failed to present it to the circuit court. *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). In any event, the Deposit Order does not deprive Ms. Pope of any property right. To the

[7] Ms. Pope contends that the Deposit Order "prohibit[s] the Clerk of Court of Aiken County from paying to Petitioner funds that are hers." This argument turns the Deposit Order, which *permits* Respondents to *deposit* funds, on its head. In any event, the argument is not properly before this Court because Ms. Pope failed to raise it in the circuit court or in the Court of Appeals.

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 real complaint appears to be that the Deposit Order denies her immediate access to funds that she will have to pay back to the Estate if she is found liable 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. at 13.) As an initial matter, this argument was raised for the first time in Ms. Pope's petition for rehearing in the Court of Appeals. 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 certiorari review. 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. 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, even with accrued interest. 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. Rule 67, SCRCP, Does Not Apply

Rule 67, SCRCP, permits funds to be deposited with the circuit court "[i]n an action in which any part of the relief sought is a judgment for a sum of money." The purpose of such a deposit "is to relieve the depositor of responsibility for a fund in dispute." 25 S.C. Jur. Rules of Civil Procedure § 67.2. Rule 67 is not relevant to the Deposit Order because (1) the motion for leave to deposit the SA fees was made in Aiken 1337, in which judgment had already been rendered, and (2) the SA fees are not in dispute.

Bizarrely, throughout the Petition Ms. Pope repeatedly complains that the Deposit Order violated Rule 67, *even as she simultaneously admits that it does not apply*. (*See, e.g.*, Pet. at 9 ("The deposit was made in violation of Rule 67. … Rule 67 was not applicable when the deposit was made."); *id.* at 11 ("Rule 67, even though dealing with disputed funds and not applicable to Respondents' deposit, must be strictly followed.").)

Because Rule 67 did not apply, the Deposit Order could not possibly have violated it. The circuit court entered the Deposit Order pursuant to its equitable authority and as a form of interim relief.

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

Ms. Pope assails the Deposit Order's description of Richland 4900 as a "companion case" to Aiken 1337. However, it is an apt description. In its ordinary sense, a companion is 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 fees, which was based on her contention that her services as PR/Trustee substantially benefited the Estate and Trust.[8] 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

[8] 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.

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 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. Certiorari is inappropriate because the Court of Appeals correctly dismissed the appeal. 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. Ms. Pope has failed to identify any special or important circumstance that might justify this Court's expenditure of its limited resources on this matter.

Respectfully submitted,

s/ J. David Black

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March 18, 2021
Columbia, South Carolina