

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jan 26 2023**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

The Honorable Doyet A. Early, III, Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge

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Supreme Court Appellate Case No. 2022-001713

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Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Plaintiffs,

Of whom Russell L. Bauknight, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown are Respondents,

v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Petitioner.

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**RESPONDENTS' RETURN TO DECEMBER 28, 2022 PETITION FOR ORDER  
LIFTING STAY**

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**INTRODUCTION**

Petitioner's<sup>1</sup> December 28, 2022 (amended December 30, 2022) "Petition for Order Lifting Stay to Conclude Final Consideration of 2010 and Subsequent Motions Remanded by Court of Appeals in this Case"<sup>2</sup> is wholly improper. Respondents assert that the Petition to Lift Stay should be denied for three reasons. First, Petitioner is in violation of Rules 241(c)(2) and (d)(1), SCACR, as there no danger of this Court losing jurisdiction nor are there any extraordinary circumstances precluding the lower court from considering the underlying motion to lift stay. Second, if needed the lower court already has jurisdiction to address the issues complained of in the Petition to Lift Stay, and indeed the lower court essentially has completed the process of addressing the remand issues and the only obstacle standing in the way of the resolution of the remand issues is Pope's own Rule 59(e), SCRCR motion. Third, the Petition clearly is filed for an improper ulterior purpose.

**RELEVANT PROCEDURAL HISTORY**

The underlying action, *Bauknight, et al. v. Pope*, Case No. 2010-CP-40-04900 ("Case 4900") is the Estate of James Brown's (and several James Brown's children's and grandchildren's)

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<sup>1</sup> Alternatively referred to herein as "Pope" and/or "Appellant."

<sup>2</sup> Alternatively referred to herein as "the Petition" or "Petition to Lift Stay." Also at issue before this Court is Petitioner's Petition for Writ of Certiorari, which will be identified specifically when referred to herein.

suit against Pope for the substantial damages she caused due to multiple breaches of fiduciary duty while administering the Estate as co-Personal Representative. (The other co-Personal Representative reached a settlement with the Estate and has been out of the case for over 10 years.) Case 4900 was filed in 2010 and has yet to be tried due to, among other things, Pope's numerous pretrial appeals. Following is a brief procedural history relevant to Pope's Petition:

On May 19, 2010, Case 4900 was filed against Defendant Pope alleging, *inter alia*, breach of fiduciary duty by Pope against the Estate and other Plaintiffs/Respondents.

On September 12, 2017, Pope appealed five Case 4900 pretrial orders in what became Court of Appeals Appellate Case No. 2017-001899 (Supreme Court Appellate Case No. 2020-001383) (referred to herein as "Appeal 1899"). Two of the orders Pope appealed in Appeal 1899 are relevant to the instant Petition:

- Judge L. Casey Manning's October 13, 2015 Order Granting Plaintiffs' Motion to Set Aside Default as to Defendant's Counterclaims
- Judge L. Casey Manning's July 5, 2012 Order Denying Defendant's Motion to Disqualify Sweeny, Wingate & Barrow, P.A. from Representing the AG, To Enjoin Russell Bauknight from Acting as Agent for the Attorney General, and for related relief.

On December 17, 2018 Pope appealed twenty-five (25) more Case 4900 pretrial orders in what became Court of Appeals Appellate Case No. 2018-002229 (referred to herein as "Appeal 2229" or "the instant appeal") (petition for writ of certiorari currently pending in this Court and bearing the above-stated caption and case number). Pope's 2017 and 2018 appeals triggered the Rule 247, SCACR automatic stay, curtailing activity in Case 4900.

Pope and her counsel, Adam Silvernail, Esq. then made four successive (and failed) attempts to lift the Rule 247 stays that arose due to Pope's own appeals:

- Pope’s **first** attempt to lift stay: October 24, 2017. Pope unsuccessfully moves to lift the appellate stay created by Appeal 1899. (*See* attached order denying Pope’s motion at **Exhibit A.**)
- Pope’s **second** attempt to lift stay: October 30, 2018. Pope unsuccessfully moves, via “supplemental motion,” to lift the appellate stay created by Appeal 1899. (*See* attached order denying Pope’s motion at **Exhibit B.**)
- Pope’s **third** attempt to lift stay: January 22, 2019. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (*See* attached order denying Pope’s motion at Exhibit B.)
- Pope’s **fourth** attempt to lift stay: April 27, 2020. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (*See* attached order denying Pope’s motion at **Exhibit C.**)

On July 28, 2020, via written order, the circuit court not only denied Appellant’s fourth attempt to lift stay, but the court also cautioned Appellant against serial filings of the same motion. (*See* Ex. C.)

On September 16, 2020 the Court of Appeals issued an order in Appeal 1899, affirming in part and dismissing in part. The dismissals were issued because the Court of Appeals found that Appellant had filed two not-yet-ruled-upon Motions to Reconsider concerning Judge Manning’s above-referenced orders on the Motion to Set Aside Default and Motion to Disqualify. *See Bauknight, et al. v. Pope*, Op. No. 2020-UP-216, Case No. 2017-001899 (Ct. App., Sept. 16, 2020) (attached hereto as **Exhibit D**).

On April 21, 2021, this Court denied Pope’s Petition for Certiorari concerning Appeal 1899. This Court remanded the “motions currently pending [that is, Pope’s 59(e) motions on the Motion to Set Aside Default and Motion to Disqualify]” to The Honorable Clifton Newman, so that the litigation may be “promptly concluded.” *See Bauknight, et al. v. Pope*, Order, Case No. 2020-001383 (S. Ct., April 21, 2021) (attached hereto as **Exhibit E**).

On August 22, 2021, the circuit court ordered that the two Motions to Reconsider be heard by Judge Manning as soon as practicable, because he heard and ruled upon the original motions. (Order, Case No. 2010-CP-40-04900, e-filed on August 23, 2021 (attached hereto as **Exhibit F**.) Unfortunately, on September 2, 2021, Pope moved to reconsider Judge Newman’s referral to Judge Manning. (*See* Def.’s Mot. to Alt., Amend, Vacate, and/or Reconsider Order Concerning Mots. To Reconsider, Case No. 2010-CP-40-04900, filed Sept. 2, 2021.) The circuit court has yet to rule on the September 2, 2021 motion. Pope’s **fifth** attempt to lift stay occurred November 3, 2022. Pope filed a trial court petition to lift the appellate stay created by Appeal 2229 (now the above-captioned Appeal 1713), which is her fifth attempt to lift a Rule 247 appellate stay in Case 4900. The November 3, 2022 Petition filed in the circuit court, which Judge Clifton Newman has not yet ruled upon, is the subject of the instant Petition before this Court.

## **ARGUMENT**

### **I. THE INSTANT PETITION IS FILED IN VIOLATION OF RULES 241(c)(2) and (d)(1), SCACR.**

#### **Rule 241(c)(2)**

Rule 241(c)(2), SCACR contemplates lifting of appellate stays in the trial court when a lifting of the stay is “necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Neither situation is applicable here. Petitioner makes no serious contention that this Court will lose jurisdiction over the issues on appeal. (*See* Pet., at pp. 20-21.) Regarding whether any contested issue will “become moot,” Respondents assert that the two main issues raised in the Petition (i.e. the Motion to Disqualify and the Motion to Set Aside Default) are moot *already* and therefore this Petition is superfluous.<sup>3</sup> For the reasons stated in Respondents’ Return

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<sup>3</sup> Notably, and contrary to Petitioner’s allegations, these issues are moot not because of the clandestine actions of Respondents, but because Petitioner has argued them and lost.

to Petition for Writ of Certiorari, filed contemporaneously herewith, Respondents assert that Petitioner’s allegation concerning the Attorney General’s conduct at the outset of the case is the epitome of a dead issue. (*See* Ret. To Pet. for Writ of Cert., Case No. 2022-001713 filed January 26, 2023, at pp. 1-2, 21-22.) The issue regarding the propriety of the setting aside of Respondents’ default as to Petitioner’s counterclaims is also defunct, as the current Petition for Writ of Certiorari involves the Court of Appeals’ *affirming the summary dismissal of these very counterclaims*. (*See, e.g.*, Pet. for Writ of Cert., Case No. 2022-001713 filed Dec. 7, 2022, at p. 2.) As a matter of law and logic, there is no reason to consider a prior default on claims that have been dismissed for lack of merit.

Rule 241(d)(1)

Rule 241(d)(1), SCACR requires that an application to lift an appellate stay “must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.” Only in “extraordinary circumstances” can the application be made directly to the appellate court. *Id.* In light of the foregoing rules, it is clear that the Petition is filed improperly before this Court. Petitioner has made this Petition before the circuit court, and the issue belongs with the circuit court. Petitioner claims that an “unnecessary delay” by the circuit court constitutes an “extraordinary circumstance” pursuant to Rule 241(d)(1). (*See* Pet., at p. 20.) While Petitioner correctly recites the text of the rule, her application of the facts to the rule is incorrect. A busy circuit court’s inability to reach Petitioner’s trial court petition—not even three months old—is not evidence of “unnecessary delay.” Petitioner is simply being impatient, which does not constitute an “extraordinary circumstance.”

**II. IN THE ALTERNATIVE, THE CIRCUIT COURT ALREADY HAS JURISDICTION OVER THE APPEAL 1899 (APPEAL 1383) REMAND, THEREFORE POPE’S PETITION TO LIFT STAY IS COMPLETELY UNNECESSARY.**

Assuming, *arguendo*, that there are any live issues left regarding the Motion to Disqualify and/or the Motion to Set Aside Default, Pope is in error when she claims that an order lifting stay is required to effectuate the Court of Appeals' and Supreme Court's rulings in Appeal 1899/Appeal 1383. Pope is wrong. The circuit court has the jurisdiction to resolve the remand, and indeed the circuit court has already begun doing so but has been stymied by Pope's actions.

The Court of Appeals' position with respect to the two pending Motions to Reconsider was stated in its September 16, 2020 Order:

Pope argues the trial court erred in granting the Attorney General and other Respondents relief from default as to Buchanan's and Pope's counterclaims. Pope filed a motion to alter, amend and/or vacate the order granting Respondents' motion to set aside default. Respondents filed a motion in opposition. Pope's motion to alter, amend, or vacate has not yet been ruled upon by the trial court...

...

Pope argues the trial court erred in not disqualifying Respondents' counsel from representing the Attorney General and in not enjoining Bauknight from acting on behalf of the Attorney General. Pope filed a Rule 59(e) motion to reconsider the denial of her motions to disqualify the law firm and enjoin Bauknight. Pope's motion has not been ruled upon by the trial court...

(Ex. D.)

This Court's position with respect to the two pending Motions to Reconsider was stated in its April 21, 2021 Order:

Based on the vote of the Court, the petition for a writ of certiorari is denied. The motions currently pending before the Honorable Clifton B. Newman in the circuit court may now be resolved so that the extensive litigation in this matter may be promptly concluded.

(Ex. E.)

The circuit court's position with respect to the two pending Motions to Reconsider was clearly stated in its August 22, 2021 Order:

Accordingly, in the interests of seeking a prompt conclusion to this litigation, the undersigned, with due regard for and pursuant to the grant of exclusive jurisdiction over this matter, and upon consideration of the mandate of Rule 59(f), hereby orders that these two Motions [the Motion to Reconsider the Order Setting Aside Default and the Motion to Reconsider the Order refusing to Disqualify/Enjoin] be heard by Judge Manning as soon as reasonably practicable... [t]he parties are hereby directed to contact Judge Manning's office jointly, within 10 days of the date of this Order, and to work with Judge Manning's office in scheduling a hearing on these two Motions...

(Ex. F.)

It is beyond dispute that the circuit court, the Court of Appeals, and this Court have all begun the process of resolving the pending Motions to Reconsider in a straightforward fashion. All that was required of Pope to receive rulings on the Motions to Reconsider was to contact Judge Manning's office jointly with the undersigned and request disposition of them. Instead of simply following this Court's August 22, 2021 Order, Pope moved to reconsider it in a document entitled "Defendant's Motion to Alter, Amend, Vacate and/or Reconsider Order Concerning Pending Motions to Reconsider, Dated August 23, 2021." (Sept. 2, 2021 Motion, *supra.*) In essence, Petitioner now has filed a motion to reconsider an order directing the disposition of *other* motions to reconsider. Petitioner's filings have reached the level of parody, and Petitioner's argument that Plaintiffs/Respondents are somehow the problem is factually erroneous and abject hypocrisy.

The Petition to Lift Stay is not necessary to complete the 1899 remand. All that is required is for the circuit court to deny Pope's Motion to Reconsider the August 22, 2021 Order. After that is done, Judge Manning (retired but active) will be able issue "Form 4" or other orders resolving the two outstanding Motions to Reconsider. Further hearings are not necessary. *See* Rule 59(f), SCRCF ("[Rule 59(e) motions to reconsider] may in the discretion of the court be determined on briefs filed by the parties without oral argument.").

### **III. POPE CLEARLY HAS AN IMPROPER ULTERIOR PURPOSE FOR THIS PETITION.**

Though Pope does not provide a list of what else she would seek to accomplish should the stay be lifted, she clearly implies that she has much more in mind than simply finishing the 1899 remand. (*See* Pet., at Ex. A p. 1 (requesting “immediate consideration of motions pending in this case since 2010, *including* those remanded by the Court of Appeals [in the 1899 remand]”) (emphasis added); *see also id.*, at p. 17 (“[a]ll motions pending since 2010 should be heard by the circuit court judge to whom Richland 4900 is currently assigned”).)

The prosecution of *any* matters in the trial court other than (potentially) the 1899 remand would be improper. Other than the Appeal 1899 remand matters, the entirety of Case 4900 is subject to stay due to the breadth of Appeal 2229 (the instant appeal), which is pending and involves twenty-five pretrial orders to include appeals from key motions. *See* Rule 241(a), SCACR (“[a]s a general rule, the service of a notice of appeal in a civil case acts to automatically stay matters decided in the order, judgment, decree or decision on appeal...”); *see also id.* (noting that a trial court only retains jurisdiction over matters “not stayed by the appeal”). Clearly, Appellant is seeking a “blank check” to invade the appellate stay to accomplish unknown ends, which Rule 241(a), SCACR, does not allow.<sup>4</sup>

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<sup>4</sup> Though Appellant never provides a list of what she claims needs to be accomplished if the stay were to be lifted, she makes a reference to a 2012 Motion to “reinstate Buchanan as a party.” (*See* Pet., at Ex. A p. 16.) Robert Buchanan, a co-Personal Representative of the Estate of James Brown alongside Appellant during her tenure, was originally her co-defendant in Case 4900. Mr. Buchanan settled—with prejudice—all claims between him and Plaintiffs/Respondents over a *decade* ago. Since that time, Mr. Buchanan has not appeared in the trial court or sought to appeal any matter.

**CONCLUSION**

Pope's Petition for Order Lifting of Stay is procedurally improper, completely unnecessary, and interposed for an improper ulterior purpose. Respondents request that the Court deny the Petition.

Respectfully submitted,

**SWEENEY, WINGATE & BARROW, P.A.**

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