

RECEIVED

Jan 26 2023

S.C. SUPREME COURT

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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 Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; 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 BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

2017 DEC -8 PM 2:40
FILED
SOUTH CAROLINA
CLERK OF COURT

ORDER DENYING DEFENDANT'S
MOTION TO LIFT STAY WHILE ON
APPEAL

EXHIBIT
A

This matter is before the Court upon the Motion of the Defendant to lift the automatic stay provisions of Rule 241 of the South Carolina Rules of Appellate Procedure. For the reasons set forth herein, the Motion is DENIED.

On September 12, 2017, Defendant filed and served a Notice of Appeal in regards to five orders of this Court. These Orders are as follows:

1. Order of the Honorable Doyet A. Early, III Denying Defendant's Motion to Alter or Amend Order Dropping Attorney General as a Party, dated August 2, 2017 and received by Appellant on August 14, 2017.
2. Order of the Honorable Doyet A. Early, III Granting Attorney General's Motion to be Dropped as a Party, Dated May 31, 2017, and received by Appellant on July 10, 2017.
3. Order of the Honorable Doyet A. Early, III Granting Motion for Protective Order as to Deposition of Attorney General, dated September 21, 2016, filed October 3, 2016 and received by Appellant on September 30, 2016.
4. Order of the Honorable L. Casey Manning Concerning Defendant Adele Pope's Motion to Disqualify Sweeny, Wingate and Barrow, P.A. from Representing the Office of the Attorney General of South Carolina, Enjoining Russell Bauknight from Purporting to Speak for the Office of the Attorney General, and Other Relief, dated and filed July 5, 2015.
5. Order of the Honorable L. Casey Manning Granting Plaintiffs' Motion to Set Aside Entry of Default, dated and filed October 13, 2012.

The present Motion was filed on October 24, 2017 with a request for expedited hearing. Defendant subsequently filed an Affidavit of Adele Pope on or about November 8, 2017 and a Reply Memorandum on November 13, 2017. Plaintiffs filed a Memorandum in Opposition on November 10, 2017. A hearing was held on November 14, 2017 where attorneys for Plaintiffs and Defendant were present. Counsel for the Attorney General wrote the Court on November 13, 2017, that he did not believe that the Attorney General was required to respond to the Motion to Lift

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Stay and took no position regarding it because he had been dropped as a party by Order of this Court currently under appeal. The Attorney General was not represented by counsel at the hearing.

STATEMENT OF LAW

“As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision.” SCRAP 241(a). “After the service of the notice of appeal, any party may move for an order lifting the stay in cases which involve the general rule.” SCRAP 241(c)(1). “In determining whether an order should issue pursuant to this Rule, the lower court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” SCRAP 241(c)(2). The circuit court has discretion whether to lift a stay of a matter pending before the court. *See Carolina Water Service, Inc. v. Lexington County Joint Mun. Water and Sewer Com'n*, 367 S.C. 141, 625 S.E.2d 227 (S.C.App. 2005)(“The primary issue in this case is whether the circuit court erred in lifting the stay as to the Challenge Actions.... Accordingly, the appropriate standard of review is abuse of discretion. An abuse of discretion arises where the [circuit] court was controlled by an error of law or where its order is based on factual conclusions that are without evidentiary support. *Steinke v. South Carolina Dep't of Labor, Licensing and Regulation*, 336 S.C. 373, 398, 520 S.E.2d 142.”) *See also Gaddy v. Douglass*, 597 S.E.2d 12 (S.C.App. 2004) (Court of Appeals immediately lifted automatic stay as provided in Rule 225, SCACR.)

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CONCLUSIONS OF LAW

In her Motion and all supporting documents, Defendant presents no facts and makes no argument based on Rule 241 of the South Carolina Rules of Civil Procedure. The Motion makes no reference to the effect of the particular orders from which the appeal is taken, to the scope of the relief she is seeking or the reasons why such relief is necessary.

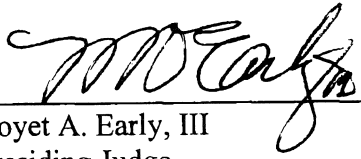
The provisions of Rule 241(a) SCRAP automatically impose a stay as to all matters decided in the orders on appeal. The orders on appeal here are wide-ranging, effecting both the inclusion/exclusion of parties to the suit and to the right of the attorneys to represent those parties. Defendant has not demonstrated that any of the exceptions of 241(b) apply and the Court finds there are none. Thus, this Court finds that the automatic stay applies to all matters being litigated in this case.

Rule 241(c)(2) sets forth considerations under which the automatic stay may be lifted: where it is necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Defendant has not presented any facts or issues that address these considerations and the Court is not independently aware of any such issues. Thus, this Court finds that there is no basis for lifting of the automatic stay.

Defendant's argument is based entirely on concerns about prejudice that could be caused by delay in proceeding with discovery during the pendency of the appeal. While the Court is mindful of the age of this case desires to see it continue to move forward, the Court can find no legal basis for lifting a stay on this basis. Moreover, the Court finds that there is no prejudice to the Defendant as a result of the stay as the parties have had adequate opportunity to engage in discovery during the pendency of the case.

IT IS THEREFORE ORDERED, DECREED AND ADJUDGED that Defendant's Motion to Lift the Automatic Stay during appeal should be DENIED.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge

Dec 6, 2017

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004900

Russell Bauknight

Adele J Pope

James Brown 200 Irrevocable Trust

Tommie Rae Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 8 day of Dec, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

Kenneth B. Wingate
Mark V. Gende
Robert N. Rosen

Everett Augustus Kendall II
John Andrew Donsbach Sr.
Joseph Odell Thickers

Daryl L. Williams
Adam Tremaine Silvernail
Walter Henry Bundy Jr.
Michael Brent McDonald

J. Calhoun Watson
J. Emory Smith Jr.
Adele J Pope
Adele J Pope

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court *Francine Williams*

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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 children 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 children SYDNEY L. and CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs,

v.

Adele J. Pope,

Defendant.

IN THE COURT OF COMMON PLEAS

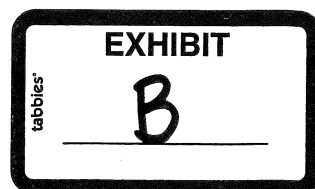
FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

**[Appellate Case Nos.
2017-001899 and 2018-002229]**

**ORDER DENYING DEFENDANT'S
MOTIONS TO LIFT STAY PURSUANT
TO RULE 241, SCACR, AND DENYING
PLAINTIFFS' MOTIONS TO STRIKE
DEFENDANT'S MOTIONS TO LIFT
STAY, ALL IN CONNECTION WITH
APPELLATE CASE NOS.
2017-001899 AND 2018-002229**

These matters came before the Court pursuant to Defendant's motion to lift automatic stay pursuant to Rule 241, SCACR, filed on October 30, 2018, in this Court in connection with



Appellate Case No. 2017-001899, and pursuant to a separate motion of Defendant to lift automatic stay pursuant to Rule 241, SCACR, filed on January 22, 2019, in this Court in connection with Appellate Case No. 2018-002229. For the reasons set forth herein, the Defendant's motions are DENIED.

In connection with Defendant's motion to lift stay filed on October 30, 2018 (re: Defendant's appeal of five (5) Orders in Appellate Case No. 2017-001899), the following were filed in this Court:

1. [Defendant's] Supplemental Motion for Order for Limited Lifting of Stay (filed on October 30, 2018)
2. [Plaintiffs'] Motion to Strike Adele J. Pope's Supplemental Motion for Order for Limited Lifting of Stay (filed on November 9, 2018)
3. [Plaintiffs'] Return to Adele J. Pope's Supplemental Motion for Order for Limited Lifting of Stay (filed on November 9, 2018)
4. [Defendant's] Return of Appellant to Motion of Attorney General and Other Respondents to Strike Motion to Lift Stay (filed on November 20, 2018)
5. Plaintiffs' Reply to Pope's Return to Motion to Strike Pope's Supplemental Motion for Order for Limited Lifting of Stay (filed on November 29, 2018)
6. [Defendant's] Supplemental Memorandum in Support of Lifting Stay (filed on December 6, 2018)
7. [Defendant's] Affidavit in Support of Supplemental Motion to Lift Stay for Limited Purposes (filed on December 17, 2018)

In connection with Defendant's separate motion to lift stay filed on January 22, 2019 (re: Defendant's appeal of twenty-five (25) Orders in Appellate Case No. 2018-002229), the following were filed in this Court:

1. Pope's Petition for Order Lifting Stay (filed on January 22, 2019)
2. [Plaintiffs'] Motion to Strike Adele J. Pope's Petition for Order Lifting Stay (filed on February 1, 2019)
3. [Plaintiffs'] Return to Adele J. Pope's Petition for Order Lifting Stay (filed on February 1, 2019)

4. [Pope's] Return and Opposition to Motion to Strike Petition to Lift Stay (filed on February 6, 2019)
5. [Pope's] Reply to Return by SWB to Motion of Appellant to Lift Stay (filed on February 6, 2019)

A hearing was held on these matters on February 7, 2019. Attorney Adam T. Silvernail was present for the Defendant, and attorneys Kenneth B. Wingate and Paul D. Kent were present for the Plaintiffs.

Upon consideration of the pleadings and the arguments of counsel for the parties, I make the following findings of fact and conclusions of law:

a. "As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, decree or decision." Rule 241(a), SCACR. "After the service of the notice of appeal, any party may move for an order lifting the stay in cases which involve the general rule." Rule 241(c)(1), SCACR. "In determining whether an order should issue pursuant to this Rule, the lower court . . . should consider whether such an order is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." Rule 241(c)(2), SCACR.

b. In Defendant's motions and related pleadings, and except for the routine procedural substitution of a party in connection with the recent death of Venisha Brown, Defendant is moving this Court¹ to lift the stay so that this Court will take actions she has listed and numbered as 2-16

¹ A year prior to Defendant's filing of the 2 motions to lift stay currently before this Court, Defendant filed a motion to lift stay on October 24, 2017, pursuant to Rule 241, SCACR, and therein requested an expedited hearing and Order lifting the stay. Defendant subsequently filed an Affidavit of Adele Pope on November 8, 2017. Plaintiffs (Respondents in Appellate Case No. 2017-001899) filed a Memorandum of Law in Opposition to Motion to Lift Stay on November 13, 2017. Defendant filed a document entitled "Appellant's Reply to Respondents' Memorandum in Opposition to Lifting Stay" on November 13, 2017. A hearing was held on November 14, 2017. This Court denied Defendant's motion to lift stay pursuant to an Order Denying Defendant's Motion to Lift Stay While on Appeal (dated December 6, 2017, and filed on December 8, 2017).

on pages 2-5 of her motion to lift stay filed on October 30, 2018. Those actions are sought solely for the benefit of Pope's litigation strategies, and they are in no way necessary in this case ("Case 4900") to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.

c. Defendant's request for seeking an order lifting the automatic stay is primarily for the Court to take specific action in connection with many of the parties' assets. Defendant has requested that certain assets of many of the parties be marshaled and secured, enjoined from transfer, frozen, and (regarding Venisha Brown's estate) marshaled and secured by a receiver. In connection with that specific action, she has requested (1) the appointment of a Guardian ad Litem for a party, (2) the addition of a party to Case 4900, (3) an accounting by the Personal Representative of the Estate of James Brown, (4) that the Court poll certain parties to determine if they ratify action taken for them, (5) that the Court determine the successors in interest to the James Brown Legacy Trust, and (6) that a transfer to a party be enjoined.

d. Pursuant to this Court's Order dated June 23, 2017 (filed on July 8, 2017), Defendant's counterclaims have been barred by collateral estoppel based on the Supreme Court's holding in *Wilson v. Dallas*, and the Plaintiff's motion for summary judgment as to Defendant's counterclaims was granted. This Court filed on November 26, 2018, an Order Denying Defendant/Counter-Claim Plaintiff's Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment.

e. Defendant's stated reason for her motions to lift stay is to seek this Court's assistance in freezing "funds that may be needed to fund [Defendant]'s counterclaims." Defendant's motion to lift stay filed on October 30, 2018, at p. 19. Though Defendant's counterclaims are barred by collateral estoppel and summary judgment has been granted in favor of the Plaintiffs as to Defendant's counterclaims (*supra*), she has stated to this Court: "They [the

Plaintiffs] seek to deprive the Court of jurisdiction over their persons and over the millions of dollars of distributions and payments which are lower priority than [Defendant's] counterclaims against them. Defendant's motion to lift stay filed on October 30, 2018, at p. 19. The only conclusion to be drawn is that Defendant clearly believes that her now dismissed counterclaims are valued at millions of dollars.

f. Defendant has not presented any facts or issues that demonstrate to the Court that lifting the stay is necessary to preserve jurisdiction of the appeal or that lifting the stay is necessary to prevent a contested issue from becoming moot. Therefore, this Court finds that there is no basis for lifting of the automatic stay pursuant to Defendant's motions.

g. In connection with Defendant's motions to lift stay, Plaintiffs moved the Court to strike Defendant's motions to lift stay and Defendant's pleadings of Pope entitled:

- A. Return of Appellant to Motion of Attorney General and Other Respondents to Strike Motion to Lift Stay (filed on November 20, 2018)
- B. Supplemental Memorandum in Support of Lifting Stay (filed on December 6, 2018)
- C. Affidavit in Support of Supplemental Motion to Lift Stay for Limited Purposes (filed on December 17, 2018)

Plaintiffs argued the basis for striking these pleadings, but in exercising my discretion, I deny the Plaintiffs' motions to strike.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Defendant's motions to lift the automatic stay during appeal are DENIED, and Plaintiffs' motions to strike are DENIED.

IT IS SO ORDERED.

_____, 2019

Doyet A. Early, III
Presiding Judge



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al
Case Number: 2010CP4004900
Type: Order/Lift Automatic Stay

So Ordered

s/D.A. Early III 2136

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-04900

RUSSELL L. BAUKNIGHT, as Trustee of)
the James Brown 2000 Irrevocable Trust, as)
Personal Representative of the Estate of James)
Brown; 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)
children Sydney L. and Carrington L.; Tonya)
Brown; Venisha Brown; Larry Brown; and)
Terry Brown,)

**ORDER DENYING MOTION OF THE
DEFENDANT TO LIFT STAY AND FOR
RELATED RELIEF**

and)

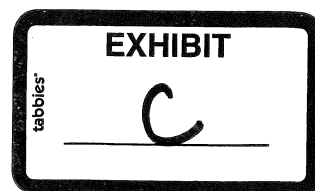
TOMMIE RAE BROWN, individually and on)
behalf of her minor child, JAMES B. II;)
DARYL J. BROWN, individually and on)
behalf of his minor child JANISE B.;)
LINDSEY DELORES BROWN; DEANNA J.)
BROWN THOMAS; JASON BROWN-)
LEWIS; YAMMA N. BROWN, individually)
and on behalf of her minor children SYDNEY)
L. and CARRINGTON L.; TONYA)
BROWN; VENISHA BROWN; LARRY)
BROWN; and TERRY BROWN,)

Plaintiffs,)

v.)

Adele J. Pope)

Defendant.)



This matter comes before the Court on June 26, 2020, for a hearing on a Motion filed by the Defendant on April 27, 2020, to Lift the Automatic Stay pursuant to Rule 241, SCACR, and for related relief. For the reasons set forth herein, the Motion of the Defendant is DENIED.

Attorneys Adam T. Silvernail, Esq. and Jeffery Smith, Esq. appeared on behalf of the Defendant. Attorneys Mark V. Gende, Esq., Kenneth B. Wingate Esq., and Charles G. Doolittle Esq., appeared on behalf of the Plaintiffs.

The Court carefully considered all briefs filed by the parties and oral arguments made at the hearing.

FINDINGS OF FACT

1. The current motion of the Defendant is the third time Defendant has moved to lift the Rule 241, SCACR, automatic stay in this matter.
2. The first two motions of the Defendant were denied.
3. The Defendant has appealed one of the denials to the court of appeals and that appeal is currently pending.

CONCLUSIONS OF LAW

The motion of the Defendant to lift the stay represents her third attempt to do so. Defendant has also appealed the order of the trial court denying one of her previous motions to lift the stay. The motion of the Defendant to lift the stay and for related relief represents a successive motion based on the same or similar grounds as her prior motions and is, therefore, improper.

Our Supreme Court has addressed and cautioned against filing successive motions. In *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), the Supreme Court decided whether an appeal was timely after the Department of Transportation filed successive written motions. The Court declared that successive motions for reconsideration on the same or similar

grounds are improper, because a “losing litigant is not entitled to return to trial court indefinitely hoping for a change of heart or a more sympathetic judge, or to string out arguments. The Court noted ‘[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up.’” *Id.* at 20; 602 S.E.2d 777-78 (citations omitted). While the issue in Elam was the successive filing of motions for reconsideration, the same rationale applies to the successive motions of the Defendant in the instant matter.

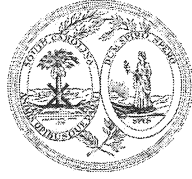
The successive motions of the Defendant are improper, and there is no right to repeated petitions to the Court to change its rulings on matters previously decided, especially when Defendant has already appealed a previously denied motion.

IT IS THEREFORE ORDERED that the motion of the Defendant to lift the automatic stay during appeal and for related relief is DENIED.

AND IT IS SO ORDERED.

_____, 2020

Clifton Newman
Presiding Judge



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al
Case Number: 2010CP4004900
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

EXHIBIT D

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

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 children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

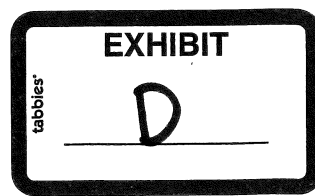
Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma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

v.

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

Of whom Adele J. Pope is the Appellant.

Appellate Case No. 2017-001899



Appeal From Richland County
L. Casey Manning, Circuit Court Judge
Doyet A. Early, III, Circuit Court Judge

Unpublished Opinion No. 2020-UP-216
Submitted April 1, 2020 – Filed July 15, 2020
Withdrawn, Substituted and Refiled September 16, 2020

AFFIRMED IN PART AND DISMISSED IN PART

Charles E. Carpenter, Jr., of Carpenter Appeals & Trial Support, LLC, Adam Tremaine Silvernail, of Law Office of Adam T. Silvernail, LLC, and Daryl L. Williams, of Gertz & Moore, LLP, all of Columbia, and William Jeffrey Smith, of Newberry, all for Appellant.

Kenneth B. Wingate and Mark V. Gende, both of Sweeny Wingate & Barrow, PA, of Columbia, for Respondents Russell L. Bauknight, Daryl J. Brown, Larry Brown, Lindsey Delores Brown, Terry Brown, Tommie Rae Brown, Tonya Brown, Venisha Brown, Yamma Brown, Jason Brown Lewis, Deanna Brown Thomas.

Attorney General Alan McCrory Wilson, Solicitor General Robert D. Cook, and Deputy Solicitor General J. Emory Smith, Jr., all of Columbia, for Respondent Alan Wilson.

PER CURIAM: Adele J. Pope appeals from the dismissal of the Attorney General¹ of South Carolina as a plaintiff in a lawsuit he and others filed against Pope and Robert Buchanan, Jr. in 2010.² Pope argues the trial court erred in (1) granting the Attorney General and other Respondents³ relief from default as to Buchanan's and Pope's counterclaims; (2) not disqualifying Respondents' counsel from representing the Attorney General and not enjoining Russell L. Bauknight⁴ from acting on behalf of the Attorney General; (3) ruling Attorney General Wilson cannot be deposed in a tort suit Attorney General McMaster brought in 2010; and (4) granting the Attorney General's motion to withdraw as a party under Rule 21, SCRCP. We affirm in part and dismiss in part pursuant to Rule 220(b), SCACR, and the following authorities:

(1) 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 been ruled upon by the trial court. Our appellate courts have held that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson v. Hudson*, 290 S.C. 215, 216, 349 S.E.2d 341, 341-42 (1986) ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice."); *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (2004) (citing to *Hudson* for the holding that when a

¹ At the time the suit was filed, the Honorable Henry Dargan McMaster was the Attorney General. In January 2011, the Honorable Alan McCrory Wilson became the Attorney General.

² Buchanan is not a party to this appeal.

³ Respondents include: 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 children Sydney L. Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown (collectively, Respondents).

⁴ Trustee of James Brown's 2000 Irrevocable Trust and the James Brown Legacy Trust, Personal Representative of the Estate of James Brown, and attorney for Alan Wilson, in his capacity as Attorney General of the State of South Carolina.

timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature). Therefore, because Pope's motion to alter, amend, or vacate has not been ruled upon by the trial court, we find this issue is not immediately appealable and dismiss the appeal of the October 13, 2012 order granting Respondents' motion to set aside the entry of default.⁵

(2) 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. When a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature. *Hudson*, 290 S.C. at 216, 349 S.E.2d at 341-42 ("[I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice."); *Elam*, 361 S.C. at 20 n.2, 602 S.E.2d at 778 n.2 (citing to *Hudson* for the holding that when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature). Therefore, because Pope's Rule 59(e) motion to reconsider the denial of her motions to disqualify the law firm and enjoin Bauknight has not been ruled upon by the trial court, we find this issue is not immediately appealable and dismiss the appeal of the July 5, 2015 order denying Pope's motion to disqualify Sweeny, Wingate & Barrow Law Firm from representing the Attorney General and to enjoin Bauknight from purporting to speak for the Office of the Attorney General.⁶

(3) Pope argues the trial court erred in ruling Attorney General Wilson cannot be deposed in a tort suit Attorney General McMaster brought in 2010. "[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right." *Grosshuesch v.*

⁵ See also *Jefferson by Johnson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988) ("[T]he grant or denial of a Rule 55(c)[, SCRC] motion is not directly appealable under S.C. Code Ann. § 14-3-330 (1976).").

⁶ See also *EnerSys Delaware, Inc. v. Hopkins*, 401 S.C. 615, 619, 738 S.E.2d 478, 480 (2013) (holding "an order denying a motion to disqualify an attorney is not immediately appealable" and dismissing the appeal as interlocutory).

Cramer, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008). Therefore, we find this issue is not immediately appealable.

(4) Pope argues the trial court erred in granting the Attorney General's motion to withdraw as a party under Rule 21, SCRCF. Trial judges have the authority to realign parties at any stage of an action and such decisions will not be disturbed on appeal absent a showing of an abuse of discretion and resulting prejudice. *Branham v. Ford Motor Co.*, 390 S.C. 203, 243, 701 S.E.2d 5, 26 (2010). We find the trial court correctly determined the Attorney General's interest in protecting the charitable beneficiaries was being served by Bauknight as the current trustee and representative. *See Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) ("[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the [Attorney General] has the duty to represent the unspecified charitable beneficiaries."); *id.* at 449 n.30, 743 S.E.2d at 767 n.30 (noting the Attorney General was withdrawing from another James Brown case and maintaining a monitoring role); *cf. Epworth Children's Home v. Beasley*, 365 S.C. 157, 163-64, 616 S.E.2d 710, 713-14 (2005) (noting the trustees wished to terminate the trust in a manner that was violative of the settlor's intent, and the attorney general intervened to protect the charitable trust from destruction); *Furman v. McLeod*, 238 S.C. 475, 482-83, 120 S.E.2d 865, 868 (1961) (finding the attorney general was made a party to protect the public interest when trustees sought to deviate from the technical terms of the trust).

AFFIRMED IN PART and DISMISSED IN PART.⁷

THOMAS, MCDONALD, and HEWITT, JJ., concur.

⁷ We decide this case without oral argument pursuant to Rule 215, SCACR.

EXHIBIT E

The Supreme Court of South Carolina

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 children 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 children Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents,

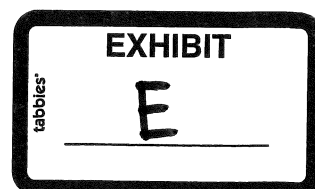
v.

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


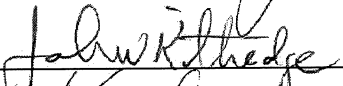


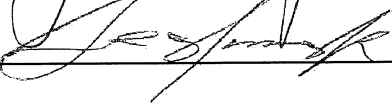
Of whom Adele J. Pope is Petitioner.

Appellate Case No. 2020-001383

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.

	C.J.
	J.
	J.
	J.
	J.

Columbia, South Carolina
April 21, 2021

cc: Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Adam Tremaine Silvernail, Esquire
Charles E. Carpenter, Jr., Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire
Alan McCrory Wilson, Esquire
Robert D. Cook, Esquire
Aaron Jameson Hayes, Esquire
The Honorable Jenny Abbott Kitchings
The Honorable Clifton B. Newman

EXHIBIT F

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) THE FIFTH JUDICIAL CIRCUIT
)
)

RUSSELL L. BAUKNIGHT, as) Civil Action No.: 2010-CP-40-04900
Trustee of the James Brown 2000)
Irrevocable Trust, as Personal)
Representative of the Estate of James)
Brown; 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 children Sydney L. and)
Carrington L.; Tonya Brown; Venisha)
Brown; Larry Brown; and Terry)
Brown,)
)
)
and)
)
)

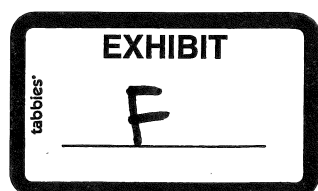
ORDER CONCERNING PENDING
MOTIONS TO RECONSIDER

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 children SYDNEY L. and)
CARRINGTON L.; TONYA)
BROWN; VENISHA BROWN;)
LARRY BROWN; and TERRY)
BROWN,)
)
)

Plaintiffs,)
)
)

v.)
)
)

Adele J. Pope)
)
Defendant.)



THESE MATTERS CAME BEFORE THE COURT on Friday, July 30, 2021. Present before the Court were Aaron J. Hayes, Esq., for Plaintiffs, and Adam T. Silvernail, Esq., for Defendant. Pursuant to remittitur from the appellate courts, currently pending before the circuit court are two Motions to Reconsider:

- Defendant Pope’s Motion to Alter, Amend and/or Vacate Order Granting Plaintiffs’ Motion to Set Aside Default (filed October 20, 2015); and
- Defendant Pope’s Motion to Vacate, Set Aside, Alter and/or Amend Order Denying Injunction as to Russell L. Bauknight serving as Agent for the State/Attorney General and Denying Injunction and Disqualification of Sweeney, Wingate & Barrow, PA . . .” (filed July 30, 2012).

At the beginning of the proceedings on July 30, 2021, the undersigned confirmed from counsel that these Motions to Reconsider stem from Orders issued by Judge L. Casey Manning. Specifically, the Order Setting Aside Default was signed by Judge Manning on October 13, 2015. The Order Denying Disqualification/Injunction was signed by Judge Manning on July 5, 2012. This Court acknowledged that Judge Manning originally heard the factual and legal presentations of the parties prior to his issuance of the above-referenced Orders, and at the conclusion of the proceedings on July 30, 2021, the Court directed that the parties prepare a proposed order, jointly if possible, sending these Motions to Judge Manning for resolution. Therefore, the Court finds and orders as follows:

- The undersigned has received exclusive jurisdiction from the South Carolina Supreme Court to “hear and dispose of” the instant case. See Order of Supreme Court, Civil Action No. 2010-CP-40-04900, signed Dec. 4, 2019 and filed Dec 10. 2019. The undersigned is to “decide all matters pertaining to this case.” Id.

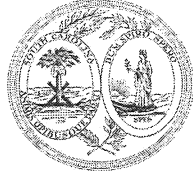
- The two underlying Orders of Judge Manning, which generated the two Motions referenced above, were the subject of an appeal to the Court of Appeals which was dismissed by that Court due to the status of the instant Motions as not yet ruled upon. See Bauknight, et al. v. Pope, 2020-UP-216 (App. Case No. 2017-001899), withdrawn, substituted, and re-filed Sept. 16, 2020 (Ct. App. 2020).
- The Supreme Court denied Defendant Pope's Petition for Certiorari to review the above-referenced decision of the Court of Appeals, and stated that "[t]he 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." Bauknight, et al. v. Pope, App. Case No. 2020-001383 (decision filed April 21, 2021). Accordingly, the Remittitur to this Court was issued on April 23, 2021.
- The Court notes that Rule 59(f) of the South Carolina Rules of Civil Procedure provides, with respect to motions of the sort at issue here, that "the trial judge shall retain jurisdiction of the action for the purpose of hearing and disposing of such motion if not heard and disposed during the term." Of course, Judge Manning is the "trial judge" regarding these two Motions.
- In light of the above, this Court does not construe the Supreme Court's December 4, 2019 Order Granting Exclusive Jurisdiction, nor the Supreme Court's April 21, 2021 Order Denying Certiorari, as intended to deprive Judge Manning of his continuing Rule 59(f) jurisdiction to resolve these Motions. Further, this Court is unaware of any reason that Judge Manning is "unable to proceed," and therefore the provisions of Rule 63 of the South Carolina Rules of Civil Procedure are not triggered.

- 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 be heard by Judge Manning as soon as reasonably practicable. This Court holds that jurisdiction remains with Judge Manning concerning these two Motions. See Rule 59(f), SCRPC. This Court holds that jurisdiction remains with the undersigned on all other matters in this case. See December 4, 2019 Order of Supreme Court, supra.
- The 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, to be held as soon as reasonably practicable. Nothing in this Order precludes Judge Manning from deciding these Motions on the written submissions of the parties, should Judge Manning so choose. See Rule 59(f), SCRPC (“[t]he motion may in the discretion of the court be determined on briefs filed by the parties without oral argument.”).
- This Order applies solely to the two pending Motions to Reconsider, referenced above. This Order applies to no other matter in this case.

AND IT IS SO ORDERED.

Clifton B. Newman, Circuit Judge

Columbia, South Carolina
August __, 2021



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al
Case Number: 2010CP4004900
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127