

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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JUN 14 2013

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

THE HONORABLE DOYET A. EARLY, III, CIRCUIT COURT JUDGE

Case No. 2008-CP-02-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his
Guardian ad Litem,.....Respondents,

vs.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust
are.....Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Petitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust
are.....Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/
August 1, 2000.

**ATTORNEY GENERAL'S RETURN
TO APPELLANT POPE'S MOTION FOR COSTS**

The South Carolina Attorney General respectfully submits this Return to Appellant Adele J. Pope's Motion for Costs.

Rule 222(a), SCACR, states as follows: "Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed in part or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court." Pursuant to this Rule, "the prevailing party shall be entitled to recover, among other things, the cost of printing the party's final brief and an attorney's fee in an amount which shall be set by order of this Court." Taylor v. Medenica, 332 S.C. 324, 504 S.E.2d 590 (1998).

The "prevailing party" for purposes of awarding costs of litigation [is] one who "improves his or her position by the litigation." Morris v. CMS Oil and Gas Co., 227 P.3d 325 (Wyo. 2010) (quoting Schaub v. Wilson, 969 P.2d 552 (Wyo. 1998)). "A party should not be deemed the prevailing party for purposes of taxing costs unless the party improves his or her position by the litigation." Stamp v. Hagerman, 448 N.W.2d 849 (Mich. App. 1989) (citing LaForest v. Grunow, 204 N.W.2d 355 (Mich. App. 1975)).

In order to determine if Appellant Pope is entitled to costs, the Court must determine if she is the prevailing party. In its opinion, the Court stated "We affirm in part, reverse in part, and remand." Wilson v. Dallas, Op. No. 27227, 2013 WL 2005103 at 1 (S.C. S.Ct. refilled May 8, 2013). Thus even if Appellant Pope was the prevailing party on one issue, she was not the prevailing party as to all issues. Further, she did not improve her position by the litigation and is therefore not entitled to her costs.

Appellant Pope's first argument was that the settlement agreement was not eligible for

court consideration. Appellant's Final Brief at 8. However, the Court found as follows regarding this issue: "We find these requirements [to seek court approval of an agreement under section 62-3-1102] were met and the compromise was eligible for the court's consideration." Wilson at 10. Accordingly, Appellant Pope was not the prevailing party on this issue.

The second prong of Appellant's first argument was that "even if the settlement were eligible for consideration by the court, it did not meet the statutory standard required to nullify the testator's estate plan." Appellant's Final Brief at 8. As to this issue, the Court stated as follows: "We question whether the parties established the existence of a good faith controversy, but conclude the compromise was not just and reasonable, in any event." Wilson at 10.

Appellant Pope's second argument on appeal was that the circuit court erred in removing she and Robert L. Buchanan, Jr., from their fiduciary positions. Appellant's Final Brief at 41. In its opinion, the Court stated "We affirm the circuit court's removal of Appellants from their fiduciary positions . . ." Wilson at 21. Thus Appellant Pope was not the prevailing party on this issue.

While Appellant Pope may have prevailed on one of her arguments, she did not improve her position by the litigation. Accordingly, she is not the prevailing party and is not entitled to costs for the appeal. In the alternative, if the Court finds that she is entitled to costs, the costs should be apportioned and reduced to reflect that she was not the prevailing party on all issues of the appeal.

Respectfully submitted,

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June 14, 2013

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In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/
August 1, 2000.

Certificate of Service

I hereby certify that this 14th day of June, 2013, I served a copy of the within

Attorney General's Return to Appellant Pope's Motion for Costs on all counsel of record

by depositing a copy in the U.S. Mail and addressed as follows:

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