

# EXHIBIT B



The court allowed extensive oral argument. With only slight modifications, Pope's oral argument for her motion to lift stay followed the content of her brief. The Estate opposed the motion as moot due to the Supreme Court's March 28, 2023 order denying essentially the same motion. The Estate also argued in support of its motion for sanctions. The Court has also considered the parties' written submissions, including the Estate's substantive legal argument on sanctions, and Pope's four-page return and numerous affidavits.

For the reasons stated below, the Court DENIES Pope's motion to lift the stay and GRANTS the Estate's motion for sanctions against Pope. The Court will not sanction Pope's counsel at this time, but strongly reminds them as counsel of record they are responsible for the content of their filings notwithstanding that their client is also an attorney.

**1. Motion to lift stay**

In its March 28, 2023 Order, the Supreme Court denied Pope's petition to lift stay with very strong language, characterizing the motion as frivolous. Pope's motion to lift stay pending before this Court is in essence the same motion. Including her petition before the Supreme Court, Pope has filed six iterations of the same motion. Therefore, this Court denies Pope's motion to lift stay as moot. Once the Supreme Court denied Pope's petition to lift stay, the Court would have expected Pope to withdraw the same motion still pending in this Court. But she did not. Instead she argued for lifting the stay at the hearing. This Court also adopts the opinion of the Supreme Court that Pope's motion to lift stay is frivolous. It is a vexatious, serial, and abusive repetition of the same motion that she has lost each previous time. As additional sustaining grounds, this Court also finds Pope's serial filing of essentially the same motion, along with other considerations, to be sanctionable, as discussed below.

## 2. Motion for sanctions

The Supreme Court's March 28, 2023 order found Pope's petition/motion to be frivolous. The order also found Pope to have engaged in frivolous filings and repeated attempts to delay Case 4900. The relevant language of that order is:

We prohibit Appellant from filing any additional requests to have the automatic stay lifted in either the circuit court or this Court. **We take this opportunity to caution Appellant that further frivolous filings in the circuit court or this Court in this matter may result in contempt proceedings.** This case has been ongoing since 2010, and **Appellant's frivolous filings and attempts to repeatedly delay the matter have frustrated the prompt resolution of this case.**

March 28, 2023 Order (emphasis added).

Prior to Pope filing her petition to lift stay in the Supreme Court, she had filed five iterations of essentially the same motion in the circuit court, including the most recent version filed on November 1, 2022. The November 1 Motion is a repetition of arguments made by Pope time and time again. The voluminous motion consists of 15 pages of argument, 77 pages of exhibits, and incorporation by reference "the [entire] record in Richland 4900 and its four appeals." Pope's failure to immediately withdraw the motion after the Supreme Court's strong rebuke of her petition and other actions is evidence of her disregard for the opinion of the Supreme Court and of her willingness for this Court to waste its time considering her patently frivolous motion. For the following reasons, this Court sanctions Pope for her conduct.

First, the South Carolina Supreme Court's March 28, 2023 Order found that Pope's petition to that court was frivolous and that Pope has exhibited a pattern of frivolous filings and repeated attempts to delay Case 4900, *supra*. These findings by the State's highest court alone are sufficient to sustain this order granting sanctions.

Second, Pope has been warned repeatedly of serious consequences for her litigation conduct by both the Supreme Court and this Court. Pope was warned by the Supreme Court on

two prior occasions about her improper conduct and on each occasion was threatened with the possibility of contempt. On June 10, 2015, the South Carolina Supreme Court rebuked Pope for making meddlesome filings in Estate-related matters in which she has no standing:

Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, such as the above actions, in which she clearly has no standing. We caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may result in contempt charges.

Order, Lead Appellate Case No. 2013-001649 (S.C. S. Ct., June 10, 2015).

On August 10, 2020, in response to a petition alleging Pope had violated the June 10, 2015 order by attempting to become the personal representative of the estate of Venisha Brown (one of Plaintiffs' counsels' clients in Case 4900), the Supreme Court again warned Pope:

Upon request from the Clerk of Court, Mark V. Gende, counsel for Venisha Brown's estate, provided the Court with an affidavit to support the request for a finding of contempt . . . This affidavit asserts that [Pope's] actions are in violation of the June 10, 2015 order.

We decline to issue a rule to show cause at this time and hold that request in abeyance pending [Pope's] future compliance with this order and our order dated June 10, 2015 . . . If [Pope] fails to conform to these instructions as ordered and takes any further action with respect to any case related to the Estate of James Brown, which includes any proceeding in the estate of Venisha Brown, a rule to show cause will be issued, and any and all violations of the orders of this Court will be considered as grounds for holding her in contempt.

Order, Appellate Case No. 2020-000764 (S.C. S. Ct., Aug. 10, 2020).

This court has also warned Pope that her serial filings to lift the stay in Case 4900 were improper:

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.

Order, Case No. 2010-CP-40-04900 (filed July 28, 2020).

Sanctions against Pope are warranted because the South Carolina Supreme Court has found her petition to lift stay was frivolous, that Pope has engaged in other frivolous filings, and that Pope has repeatedly engaged in efforts to delay the deposition of Case 4900. Additionally, this court has warned her of her repeated, improper filings. Pope has ignored these warnings.

Third, Pope has a history of improper conduct. In addition to the examples meriting the courts' warnings listed above, at the hearing counsel for the Estate detailed additional examples of similar improper, frivolous, and/or delaying conduct by Pope in Case 4900 and related appeals, including: a) Causing substantial delay by opposing the consolidation of some or all of Case 4900 with Aiken Case 1337, Pope's fee claim case against the Estate. Case 1337 went to trial in 2017. b) Appealing almost thirty pre-trial orders in Case 4900, only to abandon most of these appeals. c) Engaging in abusive appellate practice in Appellate Case 2018-02229, dealing with several Case 4900 pretrial orders, resulting in the appellate court striking two of Pope's briefs, a designation of matter, and a record on appeal. And d) concerning the two Rule 59(e) motions, also heard on April 14, 2023, (*see* related order denying the same), Pope filed a motion to reconsider this Court's referral of those motions to Judge Casey Manning (who had ruled on the original orders), resulting in further delaying of this matter. These actions cited by counsel for the Estate, and others appearing in the record of the hearing, when taken together appear to this Court, to support the Supreme Court's finding that "[Pope's] frivolous filings and attempts to repeatedly delay this matter have frustrated the prompt resolution of this case."

Fourth, Pope offered no reasonable explanation or justification for her conduct that would allow the court to excuse her actions. Instead, the affidavits of Pope, Silvernail, Williams, Smith, and Carpenter, and Mr. Silvernail's oral argument, merely restated Pope's position that her filings were all proper. Neither Pope nor counsel ever admitted to any improper or even questionable

conduct, despite the clear words of the Supreme Court's March 28, 2023 Order. In fact, the affidavits cited never even acknowledged the Supreme Court's order, and at the hearing Silvernail made only one reference to being surprised by the order's severity. Absent any reasonable justification of Pope's conduct, the Court is left to conclude Pope's conduct is willful and purposeful.

Fifth, Rule 11, South Carolina Rules of Civil Procedure (SCRPC) and the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) provide the legal basis for sanctioning abusive and/or frivolous filings.

Rule 11, SCRPC states in pertinent part:

a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina.... *The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.*

...

If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11(a), SCRPC (emphasis added).

The FCPSA states in pertinent part:

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

S.C. Code Ann. § 15-36-10(A)(4). Furthermore:

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

*Id.* at (B)(2). Finally, allowable sanctions for violations include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

*Id.* at (G).

The FCPSA imposes on counsel the same reading requirement as Rule 11. *See Father v. S.C. Dep't. of Soc. Svcs.*, 345 S.C. 57, 72, 545 S.E.2d 523, 531 (Ct. App. 2001) (“[t]he criteria for Rule 11 sanctions are essentially the same as those for sanctions under the [FCPSA].”). Additionally, the FCPSA enunciates a “reasonable attorney” standard to determine whether the

motion is sanctionable for, among other things, making frivolous arguments, which either are not reasonable supported by the facts or by existing law and/or there is no good faith argument for the extension, modification or reversal of existing law. S.C. Code Ann. 15-36-10(A)(4)(c).

Pope is also a longstanding South Carolina attorney. The fact that she is a party represented by counsel in Case 4900 does not excuse her from the requirements of professional conduct. *See Holmes v. East Cooper Comm. Hosp.*, 408 S.C. 138, 143, 758 S.E.2d 483, 486 (2014) (upholding sanctions against an attorney-plaintiff for repeat filings of the same dismissed claims). Furthermore, Pope's verification of the November 1, 2022 motion to lift stay clearly brings her actions under both Rule 11 and the FCPSA.

The FCPSA also allows the court to impose "any sanction which the court considers just, equitable, and proper under the circumstances," *see* S.C. Code Ann. §15-36-10(B)(2), and costs related to defending against a frivolous motion, *see* S.C. Code Ann. § 15-36-10(G)(1). The decision to impose sanctions is left to this Court's discretion and will not be disturbed on appeal absent a clear abuse of discretion. *See Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). As shown above, Pope's abusive and frivolous conduct extends to the instant motion, prior motions, and filings in the court of appeals and other courts and cases. Pope's efforts have frustrated and delayed the litigation of Case 4900, have frustrated this Court's efforts to dispose of the remanded issues from Appeal No. 2017-01899 related to the motions to reconsider, and have frustrated the Supreme Court's stated desire that the James Brown Estate litigation matters be resolved promptly. *See Bauknight, et al. v. Pope*, Order, Case No. 2020-001383 (S.C. S. Ct., filed April 21, 2021) ("[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*") (emphasis added). Counsel for the Estate stated at the hearing that in large part, due

to Pope's serial, abusive, and frivolous actions, the James Brown Estate has not able to close its litigation matters and begin dispensing scholarships to underprivileged, deserving children in South Carolina and Georgia--the main purpose of Mr. Brown's noble estate plan. Sanctions must be awarded as a result of this conduct and to deter future similar conduct.

### **SANCTIONS**

In its filing, the Estate requested the imposition of sanctions, jointly and severally, on each attorney who participated in the subject filings. While there are good and solid grounds to do so, at this time this Court chooses to sanction only Pope because only she has been warned repeatedly by the highest court of our state, although all of Pope's counsel should have noted the seriousness of each warning and acted prudently. Pope, though, has chosen to disregard those warnings and thus has shown "bad faith, willful disobedience or gross indifference," justifying a severe sanction. *QZO, Inc. v. Moyer*, 358 S.C. 246, 257, 594 S.E.2d 541, 547 (Ct. App. 2004). It appears from the argument of the Estate's counsel and the affidavits provided by Pope, that she has directed the decisions and actions of her counsel, who appear to have taken more of a read-and-sign approach to her filings. The Court now wants to be very clear to Pope and to her attorneys, Silvernail, Williams, Smith, and Carpenter (and any other attorney who may represent Pope in this matter) that they are on notice that any further frivolous or improper filings of any nature or any further attempts to delay this matter will not be tolerated and will result in a rule to show cause and/or the imposition of sanctions on the attorney(s) consistent with the gravity of their actions. Further, counsel for Pope are admonished not to enable Pope's frivolous and improper conduct by merely filing papers for her without serious legal vetting and advising.

Notwithstanding the Court's decision not to sanction Pope's counsel at this time, the conduct of Pope detailed above merits severe sanctions. Therefore, the court imposes the following:

1. Pope will pay the costs and attorney's fees related to the Estate's defense of her serial motions to lift stay, excluding the initial motion but including the petition to the Supreme Court. The Estate has submitted an affidavit of attorneys' fees and costs in the amount of \$32,137.50. The court has reviewed the affidavit and finds it reasonable under the standard set out in *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 213 (1991).<sup>1</sup> Therefore, Pope is directed to pay \$32,137.50 to the Estate within 30 days of the date of this Order.

2. Pope's Answer in Case 4900 is stricken, and she is declared to be in default. That Pope has engaged in a pattern of frivolous filings and repeated efforts at delay, thereby demonstrating willfulness and bad faith, is not just the opinion of this Court, but it is the opinion of the Supreme Court and therefore is now the law of the case. Repeated frivolous filings and efforts to delay the prompt resolution of Case 4900, which is already over a decade old, deserve the harshest sanction available to this court. The court has assessed this sanction under the provisions of Rule 11, SCRCP and the FCPSA, and it finds striking the Answer proper. Striking Pope's Answer is an appropriate consequence for a litigant who has repeatedly delayed court action by frivolous filings and other improper delay tactics.

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<sup>1</sup> The reasonableness of an attorney's fee award is gauged by the consideration of six factors: 1) the nature, extent, and difficulty of the case, 2) the time necessarily devoted to the case, 3) the professional standing of counsel, 4) contingency of compensation, 5) beneficial results obtained, and 6) customary legal fees for similar services. *Glasscock*, 304 S.C. at 161, 403 S.E.2d at 315 (quoting *Donahue v. Donahue*, 299 S.C. 353, 384 S.E.2d 741 (1989)). The Court finds that each *Glasscock* factor weighs in favor of Plaintiffs' claim for fees as stated in counsel's Affidavit.

THEREFORE, the Estate's motion for sanctions is GRANTED. Pope must pay \$32,137.50 to the Estate within 30 days, and Pope's Answer in Case 4900 is stricken. Upon the Estate's filing of a motion for judgment by default, a damages hearing will be set at the earliest mutually agreeable date for the Court and the Estate.

IT IS SO ORDERED.

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Clifton Newman, Circuit Judge

Aiken, South Carolina

April \_\_\_\_, 2023



Richland Common Pleas

**Case Caption:** Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al

**Case Number:** 2010CP4004900

**Type:** Order/Sanctions

So Ordered

s/ Clifton B. Newman, 2127