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Aug 08 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Clifton B. Newman, Circuit Court Judge

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Appellate Case No. 2023-001253  
Case No. 2010-CP-40-04900

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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

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,

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

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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, are Respondents,

v.

Adele J. Pope, Appellant.

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**RESPONDENTS' MOTION FOR TRANSFER OF APPEAL TO SUPREME COURT  
AND MOTION FOR EXPEDITED APPEAL**

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Appellant Adele J. Pope has filed her *fourth* pretrial appeal in this matter, seeking reversal of the order of the Honorable Clifton B. Newman sanctioning Pope for her repeated abusive filings by (1) awarding attorneys' fees; and (2) striking her answer and declaring her in default. The circuit court has set a date-certain hearing as to damages for November 7, 2023, with December 18, 2023 as an alternate date. Absent swift action by this Court, however, an automatic appellate stay will almost certainly preclude the damages hearing until well into 2024. Accordingly, Respondents respectfully request that the Supreme Court take jurisdiction over this case and grant an expedited appeal. This Motion is made pursuant to Rules 204(b) and 263(b), SCACR. Pursuant to Rule 240(b), SCACR, a full explanation for this Motion follows.

This matter is one of significant public interest, making it appropriate for certification under Rule 204(b). As this Court well knows, the seemingly never-ending cycle of motions and interlocutory appeals by Pope, in this and other cases involving the Estate of James Brown, is largely responsible for the fact that, nearly 17 years after James Brown's death, his dream of funding scholarships for deserving students attending educational institutions in South Carolina and Georgia remains unfulfilled.

**BACKGROUND**

In 2010, Plaintiffs/Respondents (lead Plaintiff/Respondent: Russell L. Bauknight, as Personal Representative of the Estate of James Brown ("the Estate")) filed the underlying action,

Case No. 2010-CP-40-4900 (“Case 4900”). Case 4900 is a breach of fiduciary duty action arising from Appellant Adele J. Pope’s and former-Defendant Robert Buchanan’s<sup>1</sup> tenure as co-personal representatives of the Estate of James Brown, the iconic entertainer.

The Honorable L. Casey Manning served as the original circuit court judge for Case 4900. This Court then appointed the Honorable Doyet Early to handle all matters related to the Estate. Upon Judge Early’s retirement, this Court then appointed the Honorable Clifton Newman to handle all Estate cases. *See* Order, Case No. 2010-CP-40-04900 (Beatty, C.J., filed December 10, 2019). Consistent with this Court’s repeated instructions that this case be resolved expeditiously (discussed in detail below), at a hearing on April 14, 2023 Judge Newman set Case 4900 for date-certain final hearing on November 7, 2023, with December 18, 2023 as a backup date. Respondents are aware that Judge Newman is set to retire from the active bench at the end of 2023.

At the outset of Case 4900, Pope lodged various counterclaims against the Plaintiffs’ group. All of Pope’s counterclaims were dismissed on motion for summary judgment, and this dismissal has been affirmed by our appellate courts. *See Bauknight, et al. v. Pope*, 2022-UP-364 (S.C. Ct. App. filed Aug. 23, 2022, Case No. 2018-002229), *cert. denied*, Order, Case No. 2022-001713 (S.C. S. Ct. filed April 18, 2023).

In a related matter, on June 8, 2013 Pope filed suit against the Estate after its denial of her claim for the fees she alleged were earned during her period of fiduciary administration. *See Pope v. Estate of James Brown, et al.*, Case No. 2013-CP-02-01337 (“Case 1337”). After an extended bench trial, the circuit court found the Estate owed Pope no fee whatsoever because the harm to the Estate caused by Pope’s repeated breaches of fiduciary duty overwhelmed and

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<sup>1</sup> In 2012, the Estate and other Plaintiffs settled all claims with Buchanan, and he has not been a party to Case 4900 since that time.

surpassed any benefits she provided; our appellate courts have affirmed this finding. *See Pope v. Estate of James Brown, et al.*, 2022-UP-229 (S.C. Ct. App. filed May 25, 2022, Case No. 2019-000362), *cert. denied*, Order, Case No. 2022-001195 (S.C. S. Ct. filed April 18, 2023). Thus, Pope's numerous breaches of fiduciary duty are established as a matter of law.<sup>2</sup> Therefore, the only remaining inquiry in Case 4900 is the amount of damages Pope caused by her breaches of fiduciary duty.

This Court has issued orders directing that Estate matters, including but not limited to Case 4900, be resolved in an expeditious way. *See e.g., In re Estate of Brown*, 430 S.C. 474, 498, 846 S.E.2d 342, 354 (2020) (“[u]pon remand, the circuit court shall *promptly* proceed with the probate of Brown's estate in accordance with his estate plan.”) (emphasis added); *Bauknight, et al. v. Pope*, Order, Case No. 2020-001383 (S.C. S. Ct. filed April 21, 2021) (“the motions [in Case 4900] 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); *Bauknight, et al. v. Pope*, Order, Case No. 2020-001713 (S.C. S. Ct. filed March 28, 2023) (“[Pope's] ... attempts to repeatedly delay the matter have frustrated the *prompt resolution* of this case.”) (emphasis added).

In addition, during the thirteen-year pendency of Case 4900, there have been numerous hearings, depositions, and appeals. So far, Pope has filed three unsuccessful pretrial appeals regarding approximately 30 trial court orders. *See Bauknight, et al. v. Pope* (S.C. Ct. App. Order

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<sup>2</sup> In its final Order, the Case 1337 trial court held that Pope was owed no fee due to breaches of fiduciary duty in the following areas: 1) failing to retain proper entertainment experts and failing to pay proper attention to the entertainment side of the Estate, choosing to focus on litigation instead, 2) failing to analyze properly a certain debt instrument, to which proper attention could have resulted in \$640,000 in savings to the Estate, 3) mismanaging copyright clearance requests, 4) mismanaging a Christie's Auction House sale of James Brown personal effects, 5) failing to file estate tax returns, 6) failing to protect James Brown's home, which was in poor condition, and 7) improperly valuing the Estate. *See, e.g.,* Order at 30-52 (filed Jan. 16, 2019, Case No. 2013-CP-02-01337). The foregoing list is not exhaustive.

filed March 17, 2011, Case No. 2010-CP-40-04900) (appeal dismissed); *Bauknight, et al. v. Pope*, 2020-UP-216 (S.C. Ct. App. refiled Sept. 16, 2020, Case No. 2017-001899), *cert. denied*, Order, Case No. 2020-001383 (S.C. S. Ct. filed April 21, 2021); *Bauknight et al v. Pope*, 2022-UP-364, *supra*. The instant appeal marks her fourth pretrial appeal in Case 4900.

Pope's conduct in litigating Case 4900—and her involvement in other Estate litigation matters—has been noted with disapproval by this Court numerous times. For instance, in response to Pope's repeated attempts to lift the Rule 241, SCACR automatic stay put in place in Case 4900 during her appeal of approximately 25 lower court orders, this Court addressed Pope's conduct by means of a stunning and strong rebuke of Pope for frivolous filings and delay of Case 4900:

We prohibit Appellant [Pope] 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.*

*Bauknight, et al. v. Pope*, Order, Case No. 2020-001713 (S.C. S. Ct. filed March 28, 2023) (emphasis added).

Via Order filed May 8, 2023 (“May 8 Order”), and following this Court’s rebuke of Pope and in response to Pope’s continued circuit court-level effort to lift the Rule 241 automatic stay, the circuit court granted the Estate’s Motion for Sanctions against Pope due to her abusive filings. The circuit court issued an award of attorneys’ fees to the Estate to compensate it for having to respond to Pope’s continued frivolous filings concerning the stay. (*See* Not. Appeal, at Ex. A.) The circuit court also struck her answer and placed her in default in Case 4900. (*Id.*) On July 18, 2023, circuit court denied reconsideration of the May 8 Order. (*See id.*, at Ex. B.)

The May 8 Order granting sanctions (and the subsequent Order denying reconsideration) are the subject of the instant appeal, which was filed on August 4, 2023. (*Id.*)

Notably, Pope filed the instant appeal only hours after the Estate filed a Petition for Rule to Show Cause and Motion for Sanctions due a new filing of Pope's; namely, a frivolous, contemptuous, and illogical 34-page Return to a simple motion to compel discovery that has been filed by the Estate. *See* Def.'s Ret. to Pls.' Mot. Compel (filed August 2, 2023, Case No. 2010-CP-40-04900); Pls.' Pet. for Rule to Show Cause and Mot. for Sanctions (filed August 3, 2023, Case No. 2010-CP-40-04900). The timing does not appear to be coincidence, but rather may be a conscious attempt to delay the hearing on the Estate's Petition for a Rule to Show Cause, possibly to a date after Judge Newman's retirement.

### **REQUESTS**

For the reasons stated below, the Estate and other Respondents respectfully request the Supreme Court break the thirteen-year logjam created by Pope's delay tactics by (1) taking up her instant appeal; (2) granting an expedited appeal with an expedited briefing schedule; and (3) resolving this appeal as soon as possible, so that case may proceed to final hearing in November or December 2023, as scheduled by Judge Newman.

### **ARGUMENT**

The Supreme Court should take this appeal and issue an expedited briefing schedule because:

(1) this is a case of significant importance to the State of South Carolina, as Mr. Brown was one of the state's most well-known citizens and the litigation difficulties surrounding his

Estate, many related directly to Pope, have been the topic of local, regional, national, and international news reporting and at least one nationally published book;<sup>3</sup>

(2) this is a case of significant importance because Mr. Brown's noble estate planning goal was the funding of scholarships for poor and needy children attending educational institutions in South Carolina and Georgia, and this goal cannot be realized until this case is resolved as Pope is the only remaining outstanding litigant, and in the thirteen-year span of Case 4900 an entire generation of students have missed the benefits of Mr. Brown's altruistic estate plan; as a result, the impact of this appeal will affect numerous stakeholders and benefit countless people who will attend educational institutions in this state and Georgia;

(3) Pope has repeatedly and intentionally delayed this case, as this Court has noted, and her delay tactics must be put to an end;

(4) Judge Newman has been appointed by this Court to hear all matters related to this case and he retires at the end of this year; it is of public importance to allow Judge Newman to fully dispose of the lingering and frivolous issues caused by Pope as he has the relevant understanding of not only the background and procedural history of this case, but the historical intricacies and nuances of the parties' conduct and relationship; it would be a hardship to the parties if another judge was assigned to the case and had to bring herself or himself current on thirteen years of litigation;

(5) each side has a sufficient number of attorneys and adequate resources to respond properly and timely to an expedited appeal;<sup>4</sup>

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<sup>3</sup> See JAMES MCBRIDE, *KILL 'EM AND LEAVE* (Random House) (2016); *see also* Pls.' Mot. for Direction from Court as to Pretrial Publicity and Exhibits thereto, filed Aug. 23, 2012, Case No. 2010-CP-04900.

<sup>4</sup> Although the number varies, Pope typically lists three to four appellate attorneys on her filings. Furthermore, Pope's typical filings are extraordinarily voluminous and by themselves indicate she and her team have ample time and resources to respond to an expedited schedule. For

(6) the issues to be briefed are not complex and do not require extraordinary research or writing; and

(7) this Court repeatedly has expressed the desire that this case be resolved expeditiously.

### **CONCLUSION**

Therefore, based on the arguments above, Respondents including the Estate of James Brown respectfully request that the Supreme Court of South Carolina take all matters related to this appeal, and issue an expedited briefing schedule to allow this appeal to be decided quickly so that the final hearing may proceed in November or December of 2023.

Respectfully submitted,

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

s/ Aaron J. Hayes  
Kenneth B. Wingate  
Mark V. Gende  
Aaron J. Hayes  
Sweeny, Wingate & Barrow, P.A.  
Post Office Box 12129  
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(803) 256-2233  
**ATTORNEYS FOR RESPONDENTS**

August 8, 2023  
Columbia, South Carolina

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instance, Pope's recent Return to a simple motion to compel discovery ran 34 pages and included 79 pages of exhibits. For its part, the Estate represents that its counsel have the capacity to respond to an expedited briefing schedule.

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v.

Adele J. Pope, Appellant.

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**PROOF OF SERVICE**

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The undersigned counsel for Respondents certifies that this day he has served a copy of the following upon Appellant:

1. Respondents' Motion for Transfer of Appeal to Supreme Court and Motion for Expedited Appeal

Said service upon Appellant having been accomplished by emailing a copy of same to her counsel of record, as follows:

Adam T. Silvernail Law Office of Adam T. Silvernail, LLC P.O. Box 7995 Columbia, SC 29202 <a href="mailto:adam@silvernailfirm.com">adam@silvernailfirm.com</a>	Daryl L. Williams Gertz & Moore, LLP P.O. Box 456 Columbia, SC 29202 <a href="mailto:dwilliams@gertzandmoore.com">dwilliams@gertzandmoore.com</a>
William Jeffrey Smith 1216 Crenshaw Street Newberry, SC 29108 <a href="mailto:wjstv@mindspring.com">wjstv@mindspring.com</a>	

s/ Aaron J. Hayes  
Aaron J. Hayes  
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1515 Lady Street (29201)  
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*Attorney for Respondents*

August 8, 2023

Columbia, South Carolina



SWEENY WINGATE & BARROW

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Reply to: Main Office

**Aaron J. Hayes**  
**(803) 256-2233**  
**ajh@swblaw.com**

**VIA E-MAIL: [supctfilings@sccourts.org](mailto:supctfilings@sccourts.org)**

The Honorable Patricia A. Howard  
Clerk of Court  
Supreme Court of South Carolina  
1321 Gervais Street  
Columbia, South Carolina 29201

RE: *Russell L. Bauknight, et al. v. Adele J. Pope (4)*  
Court of Appeals Case No.: 2023-001253  
Civil Action No.: 2010-CP-40-04900  
Our File: 4077-7389

Dear Ms. Howard:

Please find attached herewith for filing an electronic copy of Respondents' Motion for Transfer of Appeal to Supreme Court/Motion for Expedited Appeal in the above-referenced appeal. A Proof of Service is appended to the end of the Motion.

By hand-delivery along with a copy of this cover letter, my office will deliver the check for the \$50.00 filing fee.

As always, please do not hesitate to contact me directly if the Court requires anything further regarding this Motion.

Yours truly,

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

  
Aaron J. Hayes

August 8, 2023

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Enclosures as stated

cc: Hon. Patricia A. Howard, Clerk of Court, Supreme Court of South Carolina (via hand-delivery; cover letter and filing fee only)  
Hon. Jenny Abbot Kitchings, Clerk of Court, South Carolina Court of Appeals (via email sent to [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org))  
All counsel of record (via email)