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Aug 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas
Clifton B. Newman, Circuit Court Judge

Appellate Case No.2021-000518

Adele J. Pope.....Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina Respondent.

MOTION TO CERTIFY APPEAL TO SUPREME COURT

Respondent Attorney General respectfully moves for the Supreme Court to certify this case for review by that Court pursuant to Rule 204(b), SCACR.

BACKGROUND

This case has been pending at the Court of Appeals since the Notice of Appeal was filed over two years ago on May 17, 2021. The Record on Appeal and all final briefs were filed on or about October 3, 2022, but the case has not yet been scheduled for oral argument.

This appeal is taken from the Order of the Honorable Clifton Newman on April 1, 2021, dismissing this case and his Order of April 23, 2021, denying Appellant's Motion to Alter or

Amend. Record on Appeal, Vol. I at pp. 34 & 36.¹ The April 1 Order reached the following conclusions:

Plaintiff asked for the following documents in a June 30, 2011, letter addressed to the “Custodian of Records of the Office of the Attorney General”:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

The Office of the Attorney never received this letter.

Tracy Meyers of the Office of the Attorney General (OAG) wrote Plaintiff on August 5, 2011, that the Office had not received that request, which Plaintiff had referenced in a motion in another case, and that if she would forward the request, a response would be expedited. According to Ms. Meyers’ affidavit of October 20, 2011, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. Without proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.

While FOIA serves a vitally important function in assuring that public business in an open manner, Section 30-4-30(c) is quite plain in limiting duties to respond to FOIA requests to receipt of a written request. (“(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request notify the person making such request of its determination and the reasons therefor.” (emphasis added). The Office of the Attorney General never received the FOIA request by mail or delivery. Attaching the request to this lawsuit over alleged failure respond to the request, is not sufficient to require a response under FOIA.

The authority to sue under FOIA is limited to actions “to enforce the provisions of this chapter in appropriate cases” §30-4-100. Therefore, no basis exists for enforcement when no “receipt” of “written request” has occurred (§30-4-30(c)), and subject matter jurisdiction is lacking. *Gasparutti v. U.S.*, 22 F.Supp.2d 1114, 1116 (C.D.Cal.,1998).

¹ The case was originally dismissed int 2016 by Order of the Honorable Doyet Early on grounds that the documents could be sought in Civil discovery in other pending litigation, but the Court of Appeals reversed without taking up the issues in the instant appeal. Order of Judge Newman, Record on Appeal, Vol. I at p. 37.

R. V. I, pp. 38 & 39. Although Appellant’s brief attempted to raise other issues, this issue is the central one on this appeal, and Judge Newman’s Order regarding it is dispositive.

REASONS FOR GRANTING THIS MOTION

Rule 204 states that “Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance.” This case is important because this Court has said that litigation involving Appellant needs to be resolved promptly. *See, Bauknight v. Pope*, Appellate Case No. 2020-001383, Order, April 21, 2021 (“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.”). Granting this motion in the instant case would be consistent with that statement of the Court for prompt resolution particularly when Judge Newman, who decided this case, is scheduled to retire at the end of this year. As noted above, this appeal is fully briefed, and the Record on Appeal is on file. It is ready to be reviewed, and respectfully, Judge Newman’s Orders should be affirmed.

CONCLUSION

The Attorney General respectfully requests that this Court grant the Motion to Certify this case for review.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues on next page]

s/ J. EMORY SMITH, JR.
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August 15, 2023

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Motion to Certify Appeal by emailing it to counsel for the Appellant at the email address below this August 15, 2023 (Copy of email attached):

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
adam@silvernailfirm.com

s/ J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
esmith@scag.gov

Counsel for the Attorney General

Emory Smith

From: Emory Smith
Sent: Tuesday, August 15, 2023 9:59 AM
To: Adam Silvernail
Subject: RE: FW: Pope v. Wilson, Appellate Case No. 2021-000518
Attachments: Motion to Certify (03362648xD2C78).PDF

Good morning, Adam. I hope you're well.

Attached is our Motion to Certify this appeal to the Supreme Court for review. I will efile shortly there and at the Court of Appeals.

Emory

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