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S.C. SUPREME COURT

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

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

Appellate Case No. 2023-001253

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

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, are Respondents,

v.

Adele J. Pope, Appellant.

APPENDIX

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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)
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.)

ORDER CONCERNING PENDING
MOTIONS TO RECONSIDER

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

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
	)	
Russell L. Bauknight, as Personal	)	Case No. 2010-CP-40-04900
Representative of the Estate of James	)	
Brown and as Trustee of the James	)	
Brown 2000 Irrevocable Trust, et al.,	)	
	)	
	)	
Plaintiffs,	)	ORDER DENYING DEFENDANT'S
	)	MOTION TO LIFT STAY
v.	)	AND
	)	GRANTING PLAINTIFFS'
Adele J. Pope,	)	MOTION FOR SANCTIONS
	)	
	)	
Defendant.	)	

THIS MATTER CAME BEFORE THE COURT on April 14, 2023 at a hearing held pursuant to the South Carolina Supreme Court's order of March 28, 2023, stating in pertinent part: "[t]he Circuit court shall hold a hearing and issue an order within thirty days of the date of this order addressing Appellant's pending motions to reconsider and [Pope's November 1, 2023 motion] to lift the automatic stay in Case No. 210-CP-40-04900." *Bauknight, et al. v. Pope*, Order, Case No. 2020-001713 (S.C. S. Ct., March 28, 2023) ("The March 28, 2023 Order").

Counsel present at the hearing for the Estate of James Brown ("the Estate") were Mr. Mark V. Gende, Esq. (arguing for sanctions), Mr. Kenneth B. Wingate, Esq., and Mr. Aaron J. Hayes, Esq. (arguing against the motion to lift stay). Counsel present for Ms. Pope were Mr. Adam T. Silvernail, Esq. (arguing all matters), Mr. Daryl L. Williams, Esq., and Mr. William Jeffrey Smith, Esq. Mr. Charles E. Carpenter, Jr. Esq., also counsel for Pope, was unable to be present due to family needs. Defendant Ms. Adele J. Pope, Esq. was not present, and her counsel offered no explanation for her absence.

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 (SCRCP) and the South Carolina Frivolous Civil Proceedings Sanctions Act (FCPSA) provide the legal basis for sanctioning abusive and/or frivolous filings.

Rule 11, SCRCP 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), SCRCP (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).¹ 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.

¹ 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.

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

Electronically signed on 2023-05-08 12:18:48 page 12 of 12

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
	)	
Russell L. Bauknight, as Personal	)	Case No. 2010-CP-40-04900
Representative of the Estate of James	)	
Brown and as Trustee of the James	)	
Brown 2000 Irrevocable Trust, et al.,	)	
	)	
	)	
Plaintiffs,	)	ORDER DENYING DEFENDANT'S TWO
	)	REMAINING MOTIONS TO
v.	)	RECONSIDER
	)	
Adele J. Pope,	)	
	)	
	)	
Defendant.	)	

THIS MATTER COMES BEFORE THE COURT on the two remaining Motions to Reconsider filed by Defendant Pope:

1. Pope's July 30, 2012 Motion to Reconsider the July 5, 2012 Order of the Hon. L. Casey Manning Denying the Defendant's Motion to Disqualify Sweeny, Wingate & Barrow, P.A. from Representing the Attorney General, etc. and to Enjoin Russell Bauknight, etc.; and
2. Pope's October 20, 2015 Motion to Reconsider the October 13, 2015 Order of the Hon. L. Casey Manning Granting the Plaintiffs' Motion to Set Aside Default as to Counterclaims.

These Motions were heard in open court on April 14, 2023 in Aiken County. Present for Plaintiffs were Kenneth B. Wingate, Esq., Mark V. Gende, Esq., and Aaron J. Hayes, Esq. (arguing). Present for Defendant Pope were Adam T. Silvernail, Esq. (arguing), William J. Smith, Esq., and Daryl L. Williams, Esq.

After careful consideration of the arguments of counsel and the written briefs of the parties submitted over the prolonged life of these Motions, the Court hereby finds and orders as follows:

1. The subject matter of these two Motions is long moot. As to the first Motion, the Court notes that the Attorney General's Office has not been a party to this action for years, having been dropped as a party with the approval of the circuit court, the Court of Appeals, and the Supreme Court.¹ As to the second Motion, the Court notes that Defendant Pope is seeking to reinstate default as to counterclaims that have been dismissed on the merits by the Court of Appeals and the Supreme Court.² Therefore, the continued prosecution of these Motions by Defendant Pope is fruitless, futile, and a waste of time. These Motions are DENIED AS MOOT.
2. As an additional sustaining ground, and to the extent that any argument contained within these Motions is not moot, this Court hereby AFFIRMS the original, underlying rulings of Judge Manning and therefore these Motions are also DENIED on that basis.

AND IT IS SO ORDERED.

Signature page to follow.

Clifton Newman, Circuit Judge

Aiken, South Carolina

¹ The Attorney General's Office moved to be dismissed as a party to Case 4900 in March 2013, over a decade ago. The circuit court granted the motion. The Court of Appeals affirmed the dismissal. The Supreme Court denied certiorari. *See Bauknight, et al. v. Pope*, Op. No. 2020-UP-216 (S.C. Ct. App. re-filed Sept. 16, 2020) (affirming the dropping of the Attorney General as a party and holding that "the trial court correctly determined the Attorney General's interest in protecting the charitable beneficiaries was being served by [the current Personal Representative, Russell Bauknight]), *cert. denied*, Appellate Case No. 2020-001383 (S.C. S. Ct. Order filed April 21, 2021).

² At the time of the April 14, 2023 hearing, Pope's Petition for Writ of Certiorari to review the Court of Appeal's affirming of the circuit court's dismissal of the counterclaims was pending before the Supreme Court. This Court takes judicial notice that the Supreme Court denied the petition on April 18, 2023. *See Bauknight, et al. v. Pope*, Appellate Case No. 2022-001713 (S.C. S. Ct. Order, filed April 18, 2023).

April __, 2023



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

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Dec 30 2022

STATE OF SOUTH CAROLINA
In the Supreme Court
APPEAL FROM RICHLAND COUNTY

S.C. SUPREME COURT

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Supreme Court Appellate Case No. 2022-001713

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.; 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

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.; 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, 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

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

v.

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

Of whom Adele J. Pope is the Appellant.

**APPELLANT’S PETITION FOR ORDER LIFTING STAY TO CONCLUDE FINAL
CONSIDERATION OF 2010 AND SUBSEQUENT MOTIONS
REMANDED BY COURT OF APPEALS IN THIS CASE**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

Petitioner respectfully petitions this Court pursuant to Rule 241 SCACR and other applicable law for an Order Lifting Stay which will allow the circuit court to issue final orders in motions made in 2010 and 2011 which directly impact the circuit court’s grant of partial summary judgment which is the subject of this 2018 appeal and petition for certiorari. Lifting the stay in Richland 4900¹ will curb the effort of Respondent James Brown Legacy Trust (“Legacy Trust”), its trustee Russell Bauknight², and its primary Beneficiary-Owner Tommie Rae Hynie to deprive the appellate courts of jurisdiction over the Legacy Trust and its Owner-Beneficiaries, and from rendering the issues on appeal in this petition and on remand from the 2017 Richland 4900 appeal moot.

¹ Richland County Case No. 2010-CP-40-4900. [Summons & Complaint, R. 215-229]

² To avoid confusion, descendants and claimed descendants of James Brown are generally referred to herein by their first names, and all others by last names or abbreviated names, and abbreviated titles where applicable.

As described herein, since 2010 Hynie and those aligned with her have used the private law firm of Sweeny, Wingate & Barrow, PA. (“SWB”) and the power of the Office of the Attorney General of South Carolina³ to avoid discovery and conceal public and nonconfidential documents which show that Richland 4900 was never legally authorized by now-Governor Henry McMaster and that the claims of Hynie and others in the Richland 4900 complaint are without merit.

SWB, Bauknight and Hynie have bitterly resisted lifting the stay for any purpose since September 2017, when the third of four Richland 4900 pretrial appeals was filed. [R. 996-1000] The public documents they have been able to suppress in Richland 4900 are now part of the public record, and make clear that the allegations of the never-amended Richland 4900 complaint are without merit. [R.749 - 860]

For example, the public record now shows that the \$4 million at-death valuation of Brown’s “I Feel Good” charity was the result of a massive devaluation scheme proposed by Hynie in 2009 to discredit “Bobadele,” and that there is no legal or factual support for the claim of Hynie and Peter Afterman that Hynie and Respondent James II control tens of millions of dollars of termination rights proceeds under Sections 203 and 304 of the U.S. Copyrights. [R. 1350; 669-70; 979]

This motion to lift the stay is supported by the record of SWB’s and Bauknight’s actions since 2010 on behalf of the State/Attorney General of South Carolina to conceal the AG’s public, unsigned Special Counsel Litigation Retention Agreement with SWB and other public and nonconfidential documents.⁴ [R. 588, 1471- 75, 1787] It is also based on the record in the four

³ “Attorney General” or “AG.”

⁴ See, for example, the history of Hynie’s Richland 4900 deposition, which was delayed until 2016 and in which Hynie was directed not to answer questions about her marriages, and is still not completed. [R. 178-179] Also, the five-year automatic stay has been used to prevent the court from considering the testimony of 9 experts designated jointly by the Attorney General, through

Richland 4900 pretrial appeals since 2011, the 2016 appeal in the Legacy Trust's related FOIA case, and the memorandum which follows. [See Appellate Case Nos. 2016-1708; 2016-1727; 2017-1899]

MEMORANDUM IN SUPPORT OF MOTION TO LIFT STAY

Since September 2017 SWB and Bauknight, acting for the Attorney General, but promoting the interest of Hynie and other Owner-Beneficiaries of Respondent Legacy Trust have sought to deprive the appellate courts of jurisdiction over Hynie, the Legacy Trust and other Legacy Trust Owner-Beneficiaries and to render the issues in the Richland 4900 pretrial appeals moot. [R 987-995] As set out below, the undisputed facts concealed during eight years of stays since *Wilson v. Dallas* show that neither SWB nor Bauknight ever had authority to act for the State/Attorney General, yet both spoke for the Attorney General and concealed public documents in an effort to cover up the \$17 million theft of David Cannon [R. 250]; promote the false claims of Hynie [R. 588]; and blame the damage caused by the AG's 2008 settlement on replaced PR/Trustees Robert Buchanan and Appellant Adele Pope. [R. 588, 642]

Background Facts

a. The Estate Plan of James Brown and Fraud of Hynie and David Cannon

More than 22 year ago, in August 2000, entertainer James Brown finalized his estate plan, leaving the bulk of his fortune to his "I Feel Good" education charity. [R. 260] Among those with Brown when his will and 2000 Trust were executed were companion Hynie, daughter Venisha Brown, and David Cannon, one of Brown's trustees. [R. 260, 298, 1207]

Sixteen years ago, on Christmas Day 2006, James Brown died. [R. 1477]

SWB, in Richland 4900 and Bauknight in Aiken County Case 2013-CP-02-1337 ("Aiken 1337") in January 2017, all of whom were either deposed, testified at trial, or both, in Aiken 1337, and who were told that Hynie was Brown's spouse. [R. 172-3]

Fifteen years ago, Hynie was claiming to be Brown's spouse and had filed five lawsuits seeking more than half of Brown's "I Feel Good" charity for herself and Respondent James Brown II, then a minor. [R. 8-9] Daughter Venisha, with son Terry and others, had hired Louis Levenson, Esq. to file baseless suits to set aside Brown's estate plan.⁵

Fourteen years ago, in January 2009, Russell Bauknight recommended that the circuit court approve a 2008 settlement deal brokered by the Attorney General, including an amendment which proposed to give Hynie, Terry and Venisha about 35% of the assets of the "I Feel Good" Trust in exchange for half of their termination rights proceeds to some of the U.S. royalties to Brown's 900+ song copyrights which they and Respondent James II had assigned to Respondent Legacy Trust.

b. The Attorney General Does Not Sign the Special Counsel Agreement with SWB

Twelve and a half years ago, on May 18, 2010, Bauknight; Alan Medlin, Esq., an attorney for Hynie; David Bell, Esq. who represented both Terry and Forlando Brown⁶; and Levenson, who represented Venisha and 10 others, signed the Attorney General's public Special Counsel Litigation Retention Agreement with SWB. [R. 679] The three lawyers agreed for their 14 clients to pay SWB a 40% contingency on what SWB could get for them from Buchanan and Pope. [R. 679; 960; 1610]

⁵ Terry and son Forlando were originally clients of Levenson, but terminated him in March 2007 and became aligned with Cannon and Dallas in efforts to cover up Cannon's theft. [R. 870, 887] Both also became part of TJBL, an Atlanta investment group seeking to purchase Brown's music empire for \$100 million. [R. 1494; Complaint, p. 6, R. 222]

⁶ For a complete history of the years between 2008 and 2013 in which Bell, a Georgia attorney, represented Terry Brown in efforts to dismember Brown's estate plan through the AG's 2008 settlement, while representing Terry's son Forlando who claimed in federal court that Brown's 2000 Trust should be saved by enjoining it from taking any action until the thief Cannon and co-trustee Albert Dallas were reinstated as trustee, see S.C. Dist. Court Case No. 3-08-cv-00014-WOB

The AG's Special Counsel Litigation Retention Agreement with SWB was extraordinary in many ways, including that it was not signed by the Honorable Henry McMaster, then AG. In addition, the AG would pay SWB 23% or less on the 47.5% charitable share of the SWB recovery, but the AG's office would retain 10% of that contingency fee, even though the AG was not an attorney of record in Richland 4900. [R. 1409]

Also unusual was the provision that Bauknight, speaking both for Brown's Estate/2000 Trust and the Legacy Trust, agreed that funds devised by James Brown to the "I Feel Good" charity would be used to advance SWB's costs to pursue Richland 4900 for the Legacy Trust. [R. 1409; 1547] Hynie and the AG would repay more than 70% of these costs when there was a recovery.

The SWB Agreement, like the AG's other Special Counsel Agreements, said that it was a public document subject to FOIA, and that all other documents used in Richland 4900 were owned by the State of S.C. and subject to release under FOIA by both SWB and the AG. [R. 959-61; 1426; 1705] It also required the AG to approve every pleading, and for SWB to notify the AG of any challenges. The representative of the AG's Office was Sr. Asst. AG Havird "Sonny" Jones ("AG Jones").

Now-Governor McMaster left office as AG in January 2011, and was replaced as AG by the Honorable Alan Wilson. [R. 929] McMaster did not know he was a Richland 4900 plaintiff, nor did he authorize SWB or Bauknight to act on behalf of the State/Attorney General. [*Id.*] He did not know that in September 2010 Bauknight and Legacy Trust music manager Peter Afterman had valued Brown's worldwide music empire as of Brown's death at less than \$4.7 million. [R. 999]

If SWB could stop the appeal of the AG's 2008 settlement, and the music empire and termination rights proceeds brought \$100 million in a sale, Hynie would take nearly \$24 million;

and Terry, Venisha and 10 other Levenson and Bell clients would take about \$28 million. [R. 960; 1409] Hynie and the AG would also remain in 75% control of the music empire or the proceeds of the sale through Bauknight and the Legacy Trust. [R. 1409]

The day after Bauknight and the three lawyers signed the AG's Agreement with SWB, the Attorney General sued Buchanan and Pope in Richland 4900, a tort suit brought exclusively to benefit the Legacy Trust and its Owner-Beneficiaries to whom Buchanan and Petitioner never owed any duty. [R. 215-229, R. 1490]

When Buchanan and Pope moved to dismiss the complaint, SWB introduced AG Jones to the circuit court as a representative of the Attorney General, one of SWB's approximately 15 clients. [R. 961-962] The circuit court was told that the AG and all parties believed Richland County was the proper venue. [R. 1044-45] SWB described the Legacy Trust as the "Charitable Trust Settlement Entity," and assured the court that Richland 4900 was legal. [R. 462; 652; 1057-58; 1376; 1409; 1461]

c. SWB, Forlando, and the First Richland 4900 Pretrial Appeal (2011)

By January 2011, the month AG Wilson took office, SWB was claiming that the AG's public Special Counsel Agreement with SWB was the "epitome" of a private document, and would do so for a decade. [R. 475; 484; 967] The AG and others, through SWB, had secured a circuit court order declining to dismiss Richland 4900, describing Respondent Legacy Trust as a "Charitable Trust Settlement Entity" controlled by the AG. [R. 1057-58] Bauknight and Peter Afterman, at Hynie's suggestion, had devalued Brown's music empire from \$84 million to \$4.7 million. [R. 999, 582-583] Forlando had secretly become owner of his father's Legacy Trust interest and right of first refusal to buy the music empire. Forlando and the TJBL investors had valued at \$100 to \$150 million in 2008; [R. 888] By then the Legacy Trust had been amended to

allow Terry, and then Forlando, to begin a purchase/sale under the AG's 2008 settlement, and four Georgia law firms had been helping Forlando, Terry, and Dallas conceal Cannon's theft and pursue the federal suit to enjoin Brown's 2000 Trust until the thief Cannon and Dallas were reinstated as trustees. [R. 1267, 1374, 1235, 958]

That month a false claim about the proper withdrawal of Brown's Grammy© from a 2008 sale at Christie's of about 350 of Brown's 10,000 items of personal property⁷ was planted with an Atlanta law firm, while Bauknight and Afterman valued all 10,000 items of Brown's tangible personal property at less than \$.5 million. [R. 951- 952]

In 2011 Attorney General Alan Wilson, through SWB, opposed an early appeal and writ of prohibition in which the Court of Appeals was asked to declare Richland 4900 unconstitutional and illegal. Without advising AG Wilson, SWB took the position for the AG that the constitutional challenge was premature. [R. 924] The first Richland 4900 pretrial appeal was dismissed without prejudice. [R. 924]

By the end of 2011 numerous attorneys, including 17 working for Bauknight, were working to cover up Cannon's theft, forgeries and money laundering; make Hynie appear to be the spouse of James Brown; enforce the AG's 2008 settlement; and blame the damage on Buchanan and Pope in Richland 4900 . [R. 722, 862, 1235, 1282, 1663, 960]

Neither SWB nor Bauknight advised AG Wilson of the constitutional challenge to Richland 4900, or that the devaluation of the music empire from \$84 million would cause massive

⁷ Cannon, Dallas, Forlando and three Georgia law firms were actively involved in chilling the small 2008 sale, in which the 350 items sold for about \$800,000, and Dallas even filed a motion with the Court of Appeals to try to stop the sale about nine days before it was to take place. [R. 71-3]

income tax problems and cause the charity to lose \$1 million a year in scholarships, even if the AG's 2008 settlement were voided. [R. 945, 1005]

The union of Hynie and Forlando after the secret 2010 Legacy Trust amendment was a turning point in Richland 4900, after which the effort to conceal both public facts and public documents intensified. [R. 588-89, 888, 923, 936, 952]

In October 2011 Cannon, who had been named by the AG as a witness in Richland 4900, was allowed to enter an *Alford* plea to some of the takings; the AG sought no jail time or restitution, and Bauknight did not file a victims' statement for the needy students who had lost \$17 million. [R. 954, 963, 968, 487]

d. SWB, Bauknight, AG Jones and the AG's FOIA staff (2011 – 2022)

By 2011 SWB and Bauknight, acting for the State/AG, were already concealing 145 boxes of public James Brown Historical Documents which told the story of the \$17 million Cannon had stolen, Hynie's bigamy, and the damage the AG's 2008 settlement had caused Brown's "I Feel Good" charity. [R. 1345] In addition, SWB and Bauknight, using the AG's voice in Richland 4900, created, then repeated, the false claims which were being made by Hynie and the settling parties to the Supreme Court in *Wilson v. Dallas*. [R. 1005]

By 2011 documents to refute false claims about termination rights, the value of termination rights, the value of Brown's music empire, Hynie's bigamy and the fact that Richland 4900 was not legally authorized, were being suppressed in Richland 4900 discovery, under FOIA, in Supreme Court and Court of Appeals filings, and in Forlando's Case No. 3-08-cv-00014-WOB. [R. 598 - 599]

A 2012 filing by SWB of 100 media articles and public posts showed the extent to which the AG, Bauknight, Hynie and Forlando were going to silence and discredit all voices, and suppress

all documents, that refuted their claims of Hynie's spousal status; Cannon's innocence; and the incorrect assertion that the AG's 2008 settlement was good for Brown's "I Feel Good" charity.⁸ [R. 544- 622]

e. *Wilson v. Dallas*, the April 14, 2013 Letter, and Hynie's May 29, 2013 Plan

Between the February 27, 2013 first decision in *Wilson v. Dallas* and the final May 8 decision, Pope and her counsel met with AG Wilson, Solicitor General Robert Cook and Chief Deputy John McIntosh to discuss the double damage to Brown's "I Feel Good" charity by the IRS claims that Hynie was Brown's spouse and the devaluation of Brown's charity from \$80 million to less than \$4 million. [R. 994, 1006, 1736]

In his petition for rehearing in *Wilson v. Dallas* the Attorney General continued to support the AG's 2008 settlement, but announced he was getting out of Richland 4900 and hoped to conclude the FOIA cases in a short time. [R. 1006]

On April 24, 2013 the Attorney General, through Chief Deputy McIntosh, confirmed to SWB that AG had never hired SWB in Richland 4900; had no attorney-client relationship with SWB; and would not pay any portion of the fee set out in the AG's unsigned Special Counsel Agreement with SWB. [See Exhibit 2-B to Motion to Expedite, filed in this case on November 5, 2020.] Further, the AG advised SWB that if the *Wilson v. Dallas* decision remained the same, SWB would have to disgorge the funds Bauknight had advanced to SWB for Richland 4900.

⁸ The Court is asked to take judicial notice of a statement of Bauknight to the Honorable Clifton B. Newman in a case from which Buchanan and Pope have been excluded since 2013. Bauknight claimed Pope was seeking a \$19 million PR/Trustee fee when she had actually offered numerous times to settle her fee claim for \$2.1 million or less. [See p. 91, Transcript of 11/2/20 hearing, Case No. 2008-CP-02-1647, on file in the Aiken County Circuit Court as Exhibit 9 to Memo. Supp. Mot. to Extend Time, filed 2/24/21]

Ignoring the AG's April 24 letter, on May 10, 2013 AG Jones helped reinstate Bauknight as Brown's fiduciary; and on May 29, 2013 Hynie's attorney Medlin and Levenson announced to the Honorable Doyet Early their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. [R. 720, 992, 1009, 1543, 1739; 1742]

Bauknight and two Legacy Trust attorneys, including the Legacy Trust's "probate claims expert," were at the May 29 hearing, along with AG Jones, Bell and numerous others, including media representatives. [R. 720; 1742]. After Hynie's plan was announced, one Legacy Trust attorney joined Hynie and Levenson in a request that Buchanan and Petitioner be excluded from all James Brown hearings. [R. 887, 1003] Two weeks later they were excluded from all James Brown Aiken County hearings except their own fee cases. [R. 887; 184; 1543]

f. The *Wilson v. Dallas* remand and Orders Issued Between 2013 and February 2019

In 2013 the Aiken Circuit Court held a brief *Wilson v. Dallas* remand hearing attended by Bauknight's two attorneys who had joined Hynie and Levenson in the May 29 request to exclude Buchanan and Pope from James Brown cases. The Aiken Circuit Court praised the service of Buchanan from 2007 until 2013, all of which was joint with Pope. The court stated its ruling in the short record, finding that there was no basis for disgorgement of any of the full SA fee and partial \$550,000 PR/Trustee fee Buchanan had been paid for his work from November 2007 until May 2009. The circuit court "double approved" the payments to Buchanan, and left open the possibility of Buchanan's re-entry into Richland 4900 to pursue his counterclaims against the Legacy Trust, Hynie and Richland 4900 plaintiffs other than James Brown's Estate/2000 Trust under a pending 2012 motion which has still not been heard. [R. 721; 1543-45; 1610]

One of Bauknight's two attorneys was directed to present the court with an order satisfactory to Buchanan which would outline the ruling. The order was never filed. Instead, over

the next six years, the circuit court issued more than fifty orders and directives which increasingly supported Hynie's May 29, 2013 efforts and reversed the circuit court's earlier findings about Buchanan and Pope. [R. 1543-46, 174] Many of the orders and directives concealed public and nonconfidential documents. [R. 167-171, 176-179, 474-476]

In January 2019 the circuit court, at the request of Bauknight and disregarding the testimony of the Governor, the AG, the Solicitor General, and more than a dozen experts and lay witnesses, held that the only credible evidence was that Brown's worldwide music empire which earned \$5 million a year was worth less than \$4.7 million when Brown died, and that Buchanan and Pope had breached their duty to Respondent Brown's Estate/2000 Trust by opposing the AG's 2008 settlement.⁹

g. The Hynie Spousal Orders and Status Report to the Supreme Court (2015)

Between October 2013 and January 2015 an SA/ST chosen by Bauknight to defend against claims of Hynie and James II who knew nothing about termination rights or the value or operation of Brown's music empire, billed \$1 million; took one deposition; and allowed Hynie to be declared the spouse of James Brown in a circuit court summary judgment hearing in which the facts were stipulated and the SA/ST failed to proffer Hynie's handwritten bigamy admissions. [R. 1009] At the same time, Bauknight's music manager Afterman helped Hynie and James II siphon off more than \$1 million of U.S. royalties that they had assigned to Respondent Legacy Trust in 2009. [R. 1741]

⁹ The orders on appeal in Aiken 1337, now before this Court, track the history of the Aiken Circuit Court's change of opinion from full support for the PR/Trustee service of Buchanan and Pope to its 2019 finding, disregarding the testimony of the AG, the Solicitor General and the AG's own experts, that Buchanan and Pope should not have opposed or appealed the AG's 2008 settlement. [See Appellate Case No. 2022-1193, petition for certiorari pending]

In 2015 the circuit court declared Hynie the spouse of James Brown. [R. 731] The next day two circuit courts, *sua sponte*, directed that a joint mediation be held in Richland 4900 and Aiken County Case 2013-CP-02-1337 (“Aiken 1337”). [R. 133-5]

That year the circuit court also issued a rule to show cause to a journalist who re-released Hynie’s public handwritten bigamy admission which had been suppressed by an *ex parte* gag order secured by Hynie in 2008.¹⁰ [R. 551; 588; 614; 826] The circuit court, in a May 8, 2015 filing, failed to recall and report to the Supreme Court the May 29, 2013 announced plan of Hynie and Levenson to reinstate the AG’s 2008 settlement. [Status Report, R. 1544]

In 2015, based on misrepresentation made in a 2012 hearing, the circuit court, during a stay requested by SWB for the AG and all others, issued an order granting Hynie, the Legacy Trust and all other Richland 4900 plaintiffs relief from default as to Buchanan’s and Petitioner’s counterclaims. [R. 143-5; 1409; 1519; 1541; 1547]

h. The Post-Wilson Stay lifted and the Second (FOIA) Richland 4900 Appeal (2016)

In 2013, acting for the AG and all Richland 4900 plaintiffs, SWB obtained a 3-year *de facto* stay of Richland 4900 and the two related FOIA cases the AG had moved from Newberry County. [R. 147-8; 151]

In March 2016 Richland 4900 and both FOIA cases were assigned to Judge Early, and the stay was lifted. [R. 149-51] In May 2016 Bauknight, under oath, claimed that the Legacy Trust never existed. By July the circuit court had dismissed both FOIA cases and the second Richland

¹⁰ The Supreme Court declined to enforce the rule to show cause, and Hynie’s long-public bigamy admissions, suppressed by an *ex parte* 2008 circuit court order, returned to the public domain. [Order dtd. 3/4/15, Appellate Case Nos. 2015-000186 and 2015-000215] The AG, however, continued to refuse to release Hynie’s handwritten bigamy admissions, a copy of which the AG has possessed since early 2008, under FOIA or in Richland 4900 discovery.

4900 appeal, the FOIA case seeking the AG's unsigned, public Special Counsel Agreement with SWB, was filed. [See Court of Appeals Case No. 2016-1708]

That year now-Governor Henry McMaster stated emphatically under oath in Aiken 1337 that he never authorized SWB to bring Richland 4900 in the name of the State/AG and never authorized Bauknight to act for the AG. [R. 945; 988] McMaster did not learn he was a Richland 4900 plaintiff until after leaving office as AG in 2011. [R. 924]

i. Dismissal of the Attorney General under Rule 21 and the Third Appeal (2017)

In 2016 SWB and Bauknight continued to speak for the State/AG while AG Jones entered a special appearance for the sole purpose of seeking dismissal under Rule 21 SCRPC; praised Bauknight; praised SWB; and asserted that naming the AG as a Richland 4900 plaintiff had been a strategy decision. [Hearing 8/29/16; R. 1181] AG Jones did not disclose the April 24, 2013 letter of AG Wilson to SWB. AG Jones also rejected the offer of Pope's counsel to be dismissed with prejudice from Richland 4900. The dismissal Order was granted, reconsideration denied, and the third Richland 4900 appeal filed on September 10, 2017. [Notice of Appeal, Appellate Case No. 2017-1899]

In addition to appealing the AG's Rule 21 dismissal, Appellant appealed orders granting a 2010 motion of the AG and all other plaintiffs, through SWB, to be relieved from default as to the counterclaims of Buchanan and Pope, and denying 2011 motions to disqualify SWB as Richland 4900 counsel and enjoin Bauknight from speaking for the Attorney General in Richland 4900. [Notice of Appeal, Appellate Case No. 2017-1899]

By the end of 2017 Pope had moved to lift the stay, but the motion was opposed by the Attorney General, through SWB and Bauknight, and all other Richland 4900 plaintiffs. [R. 206-210; 987-995; 996-1040]

j. The Fourth Pretrial Appeal and the Second Motion to Lift Stay (2018)

By 2018 a stay had been imposed in Richland 4900 for most of the five years since *Wilson v. Dallas* and the actions of the AG, SWB, Bauknight and Hynie to suppress public and nonconfidential documents was increased and fully supported by the circuit court. [R 165-71; 176-9]

On October 30, 2018 Petitioner filed a supplemental motion to lift stay, providing further evidence that the Richland 4900 Plaintiff/Respondents were seeking to deprive the appellate courts of jurisdiction over them and render the issues on appeal from Richland 4900 moot. [Exhibit B to Respondents' Return to Motion to Lift Automatic Stay, filed in this case on 8/10/20] The Attorney General, Respondent Hynie and all other Respondents moved on November 9, 2018 to strike the motion and opposed the lifting of the stay. [*Id.*] The stay was not lifted. [*Id.*]

On December 6, 2018 Petitioner filed a Supplemental Memorandum in Support of Lifting Stay. [*Id.*; R. 1746]

On December 17, 2018 Petitioner filed S.C. Court of Appeals Case No. 2018-002229. Petitioner appealed the circuit court's grant of summary judgment to the Attorney General, Hynie and all Richland 4900 Plaintiffs, as well as more than 20 orders issued since May 29, 2013 which advance Hynie's May 29, 2013 announced plan to reinstate the AG's 2008 settlement and use Richland 4900 to blame the damage she caused on Buchanan and Pope.¹¹

¹¹ The circuit court, on motion of the AG, Hynie and others, granted all Richland 4900 Plaintiffs summary judgment as to the counterclaims of Buchanan and Petitioner based solely on *Wilson v. Dallas*; while the Rule 241 stay was in place; with knowledge that Governor McMaster had stated under oath that he never authorized SWB to bring Richland 4900 in the name of the State/Attorney General; with knowledge that 11 Respondents were claiming that Hynie was not the spouse of James Brown and was not entitled to any relief she seeks in Richland 4900; and with the parties not properly joined. [R. 188-203; 1749]

The partial summary judgment order was issued without hearing motions dating back to 2010 to correct the parties; after a new circuit judge had announced that discovery would begin anew; without considering the undisputed facts and admissions of the Respondents and the Attorney General's nine experts; and based solely on *Wilson v. Dallas*. [R. 188-203]

On February 1, 2019 the Attorney General and all Respondents moved to strike Petitioners October 2018 motion to lift stay. [Mot. Strike, 2/1/19] The Attorney General, through SWB and Bauknight, with Hynie and others, characterized the statements in the motion to lift stay as "irrelevant" or containing "gross misrepresentations." The Attorney General and all Respondents claimed that the motion was "wholly contemptuous." [*Id.*, p.7] The AG's and Respondents' motion cited the Supreme Court's June 10, 2015 order and also cited the January 19, 2019 Aiken 1337 circuit court order which had found Buchanan and Pope breached their fiduciary duty by opposing the AG's 2008 settlement. [Mot. to Strike pp. 7 – 11].

The Attorney General, Hynie and others, through SWB, said " now is the time for the Supreme Court to consider whether contempt charges are appropriate. " [Mot. Strike, p. 14]

On February 26, 2019, the circuit court issued its Order Denying Defendant's Motions to Lift Stay Pursuant to Rule 241, SCACR and Denying Plaintiffs' Motions to Strike Defendant's Motion to Lift Stay, All in Connection with Appellate Case No. 2017-001899 and 2018-2229. [Order, 2/26/19]

In 2019 Richland 4900 and Aiken 1337 were assigned to the Honorable Clifton Newman.

In 2019 the two 2011 James Brown FOIA cases were remanded to the circuit court. After resistance, SWB was ordered to release the AG's unsigned Special Counsel Litigation Retention Agreement. [Exhibit A, p. 6] The AG was ordered to release the same public document under the 2011 FOIA request. [Exhibit A, p. 8]

The 2011 FOIA request for the claimed \$4.7 million valuation, Legacy Trust 2010 amendment and related documents, was, on motion of the Attorney General, dismissed a second time. It is now the subject of Court of Appeals Case No. 2021-000518.

The AG claims that he never received FOIA requests related to the devaluation of the music empire from \$84 million to less than \$4.7 million. [See Appellate Case No. 2021-000518]

The Attorney General, SWB and Bauknight, in multiple capacities, continue to withhold the claimed \$4.7 million valuation even though it has been shared with Hynie, other will contestants and Forlando, who declared it “bogus,” and has been used in Richland 4900 for a decade to falsely accuse Buchanan and Petition of the federal felony of overstating the value of Brown’s music empire to the IRS by \$79 million to get a \$5 million commission on Brown’s claimed \$5 million estate. [See Appellate Case No. 2021-000518]

In June 2020 Bauknight persuaded the circuit court that Richland 4900 and Aiken 1337 are “companion cases” so that he could withhold \$119,000 and accruing interest of Petitioner’s money for the benefit of Hynie, Forlando and other Legacy Trust Owner-Beneficiaries. The \$119,000 is Petitioner’s \$47,972 SA fee, with interest, awarded in three court orders. [See Appellate Case No. 2021-00160; R. 1011]

In October 2020 the Attorney General released under FOIA to another citizen the April 24, 2013 letter which both SWB and Bauknight, acting for the State/AG, had concealed for seven years, including in court-ordered depositions of two SWB attorneys. [See Exhibit 2-B to Motion to Expedite, filed in this case on November 5, 2020.]

In 2020 the following issues were remanded to the circuit court from Court of Appeals Case No. 2019–001899:

- Should the 2012 order denying the 2011 motion to disqualify SWB as counsel in Richland 4900 be altered, amended or vacated?

- Should the 2012 order denying the 2011 motion declining to enjoin Bauknight from speaking on behalf of the Attorney General in Richland 4900 be altered, amended or vacated?

- Should the 2015 order granting the 2010 motion of the Attorney General, Hynie, the Legacy Trust, and all other Richland 4900 beneficiaries relief from default as to the counterclaims of Buchanan and Petitioner be altered, amended or vacated?
[*Bauknight v. Pope*, S.C. Ct.App. Op. No. 2020-UP-216 (July 15, 2020)]

In 2021 SWB and Bauknight, speaking for the State/AG, secured an order holding that Judge Casey Manning should hear the remanded issues, even though he has had no involvement with Richland 4900 since March 2016 and has now retired. [Exhibit B]

On November 2, 2022. Petitioner filed the motion to lift stay which is the subject of this Petition. [Exhibit C, Petition to Lift Stay, with verification and Exhibits]. It was presented to the circuit court by email on November 2, 2022 [Exhibit D]

On November 3, 2022, speaking for all Richland 4900 Plaintiffs, SWB opposed lifting the stay and suggested that SWB would submit a memorandum in opposition to the motion. [Exhibit E].

SWB asked the circuit court to summarily dismiss the effort to reverse the ruling assigning the above questions to Judge Manning. SWB stated in part:

You already have the ability to take action on the remanded issues and have started the process via order dated August 21, 2021, your (*sic.*) referred the remanded issues to Judge Manning for disposition. On the cusp of Judge Manning’s ruling, Ms. Pope filed a motion to reconsider your August 21, 2021 referral order.

Plaintiffs, therefore, request that your Honor deny the “Petition for Expedited Lifting of Stay,” deny Ms. Pope’s motion to reconsider your August 21, 2021 Order, and allow Judge Manning to dispose of the remanded issues as was this Court’s plan all along. These orders could be accomplished quickly with Form 4 orders, and no more hearings are required on these well-briefed, decade-old procedural issues.

Almost two months have elapsed since the Petition to Lift Stay was filed, and more than a year has elapsed since Petitioner sought reconsideration of the re-assignment of the 2020 remanded issues to Judge Manning. SWB and Bauknight, acting for Hynie and others, are now holding \$119,000 of Petitioner's money and about \$9,000 a year of interest until the conclusion of this 12 ½ -year-old case brought by the State/Attorney General and now being conducted solely for the benefit of SWB's private clients, primarily Hynie and Forlando. [See Appellate Case No. 2021-00160; R. 1011]

Hynie and James II are now residents of London, U.K., and most minor Respondents are now adults who have repudiated the claims they made in Richland 4900, along with their parents, and terminated Levenson, who signed the 40% contingency fee with SWB for them. [R. 998] In addition, all persons named in the Will of James Brown have now filed notices that they have received all assets to which they are entitled under Brown's Will and from his estate.

ARGUMENT

Rule 241(a) provides that the service of a notice of appeal "acts to automatically stay matters decided" in the order(s) appealed from. When Petitioner initially moved to lift the automatic stay in 2017 in the circuit court, the motion was denied based on the circuit court's finding that the then-pending appeal (Appellate Case No. 2017-1899) created an automatic stay applying "to all matters being litigated in [Richland 4900]." [R. 209]

On April 21, 2021, this Court declined to review the court of appeals' decision in Case No. 2017-1899, but remanded the matter with the note that "[t]he motions currently pending before the Honorable Clifton B. Newman in the circuit court may now be resolved." [Order, dtd. 4/21/21, Case No. 2020-1383] On August 22, 2021, Judge Newman entered an order assigning the long-pending undecided motions for reconsideration to the Honorable L. Casey Manning. [Order, dtd.

8/22/21] Petitioner moved to alter or amend Judge Newman's order based on jurisdictional and procedural concerns, and the circuit court has not heard or decided that motion.

Petitioner filed a motion in the circuit court to lift the stay pursuant to Rule 241(d)(1) on November 2, 2022, but that motion has also not been heard or acted upon by the circuit court in nearly 2 months. Rule 241(d)(1) provides that "unreasonable delay by the lower court . . . shall constitute an extraordinary circumstance" justifying the appellate court's consideration of lifting the stay. In light of the pending Petition for Certiorari, Petitioner submits that the circuit court has unreasonably delayed consideration of her request that the stay be lifted.

Pursuant to Rule 241(c)(2), the Court should consider whether an order lifting the stay "is necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot." The primary issue before this Court is whether all Respondents should have been granted summary judgment on Petitioner's and Buchanan's counterclaims in 2017, where discovery was incomplete and where motions relating to the proper joinder of parties have remained undecided for years. Proceeding with the ultimate disposition of this appeal without lifting the stay to finally determine a 2011 motion to disqualify SWB and to prevent Bauknight from acting for the Attorney General while he serves Hynie would not promote either justice or judicial economy. Nor would failure to finalize a 2010 motion with virtually no support in fact or law which let the Legacy Trust, Hynie and others to whom Buchanan and Petitioner never owed a duty out of default as to their counterclaims without even properly joining the parties. There is a clear attempt by all Respondents to render these decade-old issues moot.

Petitioner respectfully submits that it would be manifestly unjust to allow the remanded issues to become moot while Respondents Hynie, James II, Tonya Brown and the Legacy Trust, to whom Buchanan and Petitioner never owed any duty, are being allowed to escape the

jurisdiction of the Supreme Court and circuit court while Bauknight and SWB hold Petitioner's funds for their benefit. This is especially so because this is an appeal of a pre-conclusion-of-discovery grant of partial summary judgment in a case which, through no fault of Buchanan or Pope, has been plagued with delay, stays, and discovery noncompliance.

Counsel understands that Respondents have asked for an extension until the 26th of January, 2023 to respond to the Petition for Certiorari; does not oppose a delay until that time for Respondents to address this Petition; but submits that the issues on remand are an integral part of this Petition for Certiorari, and are filing this petition now, rather than after January 26, 2023, to avoid further unnecessary delay.

For every reason stated in the four petitions to lift stay, Petitioner respectfully submits that judicial economy, as well as the retention of jurisdiction over the parties and the issues on appeal, will be served by lifting the stay so that the parties may be properly joined and the 2010 and 2011 issues that were remanded more than a year ago can be promptly decided.

Conclusion

For the foregoing reasons and each reason stated in the verified motion to lift stay filed herewith, and based on the sworn testimony on file herein and the public admissions of Respondents, Petitioner asks that the Court lift the stay imposed in Richland 4900 since 2017 and take such related action as will insure that the remanded issues are promptly determined by a circuit court judge with proper jurisdiction.

Respectfully submitted,

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December 28, 2022

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Counsel for Petitioner Adele J. Pope

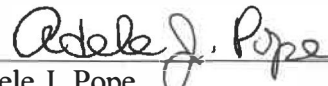
STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

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VERIFICATION

The undersigned Petitioner Adele J. Pope hereby certifies that I have read the allegations in the forgoing Petition and that they are true based on my knowledge and belief.


Adele J. Pope

SWORN TO BEFORE ME THIS 28th Day
of December, 2022.

 (L.S.)

Notary Public for South Carolina

My Commission expires: 2/27/2027

RECEIVED

Dec 30 2022

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE PROBATE COURT

)

) Case No.: 2010-CP-40-4900

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.;
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
L., Carrington L., and Tonya Brown; Venisha
Brown; Larry Brown; and Terry Brown

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

Plaintiffs.

v.

Adele J. Pope,

Defendant.

TO: THE JAMES BROWN LEGACY TRUST ("LEGACY TRUST"); ITS TRUSTEE RUSSELL BAUKNIGHT, ("BAUKNIGHT"); BAUKNIGHT ON BEHALF OF THE ATTORNEY GENERAL OF SOUTH CAROLINA ("AG"); THE REMAINING PLAINTIFFS IN THIS ACTION ("RICHLAND 4900") AS NAMED IN THE CAPTION OF THE ORDER OF THE HONORABLE CLIFTON NEWMAN DATED AUGUST 22, 2021 AND THEIR COUNSEL:

Please take notice that Defendant Adele J. Pope moves the Court under Rule 59, Rule 60 and other applicable law for an Order altering, amending and/or vacating the Order of the Honorable Clifton Newman (“Judge Newman”) Concerning Motions to Reconsider dated August 22, 2021, filed August 23, 2021, and received by Defendant on that day, a copy of which is attached hereto as Exhibit A, including by correcting the caption to include plaintiff Legacy Trust and Bauknight on behalf of the AG, as contained in the Richland 4900 Complaint which is attached hereto as Exhibit 1¹, and which parties were omitted from the caption of the order as presented by Plaintiffs’ counsel and signed by Judge Newman.

Judge Newman is the Sole Trial Court Judge with Jurisdiction Over the Motions

1. The Court overlooked or misapprehended that Judge Newman, having been duly assigned to the 11-year-old Richland 4900 by the Supreme Court, is the sole circuit judge with jurisdiction to address the Rule 59 motions and the related Rule 60 issues resulting from the fraud of Tommie Rae Hynie (“Hynie”); unconstitutional and improper State Action of Sweeny, Wingate & Barrow, P.A. (“SWB”) and Russell Bauknight (“Bauknight”) on behalf of the State/AG in violation of the Due Process, FOIA and other rights of Robert Buchanan (“Buchanan”) and Appellant; and the material and changing misrepresentations of Plaintiff Legacy Trust, all of which relate directly to the two motions the Court proposed to transfer to the Honorable L. Casey Manning (“Judge Manning”).

2. The Court overlooked or misapprehended that Judge Manning is not the trial judge in this case; has had no access to the voluminous record of Richland 4900 after his replacement in

¹ The Richland 4900 Complaint attached as Exhibit 1 bears the original, probate court number. It was timely removed to the Richland County Circuit Court and assigned Case No. 2010-CP-40-4900, but is generally referred to as “Richland 4900.” The Richland 4900 Complaint has never been amended, and neither the Legacy Trust, nor Hynie, nor any other Richland 4900 plaintiff has moved to amend the Richland 4900 complaint since it was filed on May 19, 2010.

March 2016; and had no substantial involvement in this case after the December 2012 hearing because Hynie, the Legacy Trust, and the Legacy Trust owners sought and obtained repeated stays and disruptions, not only of Richland 4900, but of three FOIA cases, all of which concealed the fraud and material misrepresentations Hynie, the Legacy Trust, and Hynie's music advisor Peter Afterman were making to multiple courts, including the Aiken County Court and the Supreme Court of South Carolina ("Supreme Court") in their effort to enforce, and then reinstate, the 2008 settlement deal brokered by the AG which dismembered James Brown's "I Feel Good" charity.

3. The Court overlooked or misapprehended that, as the deposition of the Honorable Alan Wilson ("AG Wilson"), portions of which are attached hereto as Exhibit N shows, Hynie, the Legacy Trust, and Legacy Trust attorneys paid \$375- \$500 an hour, worked with SWB and certain of the AG's FOIA counsel to conceal from Judge Manning and AG Wilson the increasing evidence that the representations made by Hynie, Legacy Trust attorneys and clients of Louis Levenson, Esq. ("Levenson") in Richland 4900 and to the Supreme Court were false and misleading; that Bauknight, SWB, Hynie and other Legacy Trust owners knew them to be false; and that Bauknight and SWB were actively disrupting FOIA and obtaining stays and delays in Richland 4900 to conceal the false statements and improper actions of Hynie and those aligned with her both from AG Wilson and from Judge Manning in Richland 4900.

4. The Court overlooked or misapprehended that the unconstitutional, illegal and unauthorized State action of Bauknight, who has acted for 11 years "on behalf of the Attorney General of South Carolina," not only misled Judge Manning, but violated the Due Process, First Amendment, and FOIA rights of Buchanan and Appellant, including years of Section 1983 violations by Bauknight and SWB after the April 24, 2013 direction of AG Wilson that the AG's office had never hired SWB in Richland 4900, and that SWB would, under *Wilson v. Dallas*, be required to disgorge funds the Legacy Trust had advanced to SWB from funds Brown devised to

his “I Feel Good” Charity.

5. The Court overlooked or misapprehended that on April 24, 2013 AG Wilson put SWB, the Legacy Trust and Bauknight on actual notice that their State/AG action since 2010 had been unauthorized and improper; that the AG would not pay any portion of the funds advanced to the Legacy Trust from Brown’s charity; and that SWB would have to disgorge what it had advanced from Brown’s charity for Hynie and Wingate private clients, but Bauknight, Hynie, SWB and the Legacy Trust concealed this information from Judge Manning by requesting – on behalf of the State/AG for whom they had no authority to speak -- 3 years of stays and delays, which Judge Manning, believing the requests were legally made by the State/Attorney General, granted.

6. The Court overlooked or misapprehended that on April 24, 2013 AG Wilson gave notice to SWB that the AG’s Office had never hired SWB, and SWB, the Legacy Trust, and Bauknight, in response – and purporting to act for the State/AG – sought 3 years of stays from Judge Manning in Richland 4900 while continuing to disrupt no fewer than three FOIA suits to try to conceal from Judge Manning, and prevent public release of, evidence that Hynie’s attempted marriage to James Brown was bigamous; that the claimed \$4.7 million value of James Brown’s music empire was fabricated by Hynie’s and the Legacy Trust’s music manager Peter Afterman to discredit “Bobadele;” that Bauknight had used the \$4.7 million to increase Forlando Brown’s (“Forlando’s”) trust share tenfold; and that the AG’s 2008 settlement was not good for Brown’s charity and did not save taxes, as Bauknight, the Legacy Trust, the Richland 4900 Complaint and Hynie claimed.

7. The Court overlooked or misapprehended that Judge Manning – from May 2013 until March 2016 - was never told by SWB, Hynie, Bauknight or Levenson that on May 29, 2013, Hynie, through counsel, and Levenson announced to the Honorable Doyet A. Early, III (“Judge Early”) in open court their plan to defy the Supreme Court’s decision in *Wilson v. Dallas* issued on May 8, 2013; try to make Hynie the spouse of James Brown; give Hynie \$1 million a year; give Hynie

almost a quarter of Brown's "I Feel Good" charity; and return Hynie to 75% control over James Brown's music empire with the AG in direct defiance of the Supreme Court's direction, then blame the damage on Buchanan and Pope in Richland 4900.

8. The court overlooked or misapprehended that Hynie's and the Legacy Trust's fraud is fully documented in the answer and counterclaim of Buchanan and Appellant; that – acting for the State/AG – Bauknight and SWB illegally attempted to silence Buchanan from discussing the fraud in 2012 by paying him \$500,000 from funds Brown devised to the "I Feel Good" charity; and that after the AG advised on April 24, 2013 that it had never hired SWB, preventing a hearing by Judge Manning on whether the conditions the State/AG place on Buchanan were illegal.

9. The Court overlooked or misapprehended that Solicitor General Robert Cook correctly described Richland 4900 as like no other case he had ever seen in 40 years with the AG's office, and that it was made complex by Hynie's fraud on multiple courts; Hynie's ability to hijack certain members of the Office of the AG; Hynie's ability to persuade the circuit court to issue *ex parte* Orders and seal evidence of her fraud; and Hynie's effective control of the Legacy Trust and Richland 4900 through SWB and Bauknight, all funded by James Brown's charity.

10. The Court overlooked or misapprehended that on April 24, 2013 AG Wilson made clear that the Office of the AG had never hired SWB, but Hynie, the Legacy Trust owner-successors, SWB and Bauknight all concealed this clear information from Judge Manning for 3 years, and both SWB and Bauknight continued to act solely for the benefit of Hynie and other private Legacy Trust owners, including by seeking – on behalf of the State/AG.

11. The Court overlooked or misapprehended that the 3-year stay procured from Judge Manning by the Legacy Trust and Bauknight and SWB purporting (without authority) to act for the State/AG, prevented Judge Manning from being aware of the fraud and increasing vitriol of Hynie, Levenson (even after fired by most Richland 4900 Plaintiffs), Bauknight, and SWB, all

funded by James Brown's charity for the purpose of reinstating the AG's 2008 settlement; putting Hynie back in 75% control of the music empire with the AG under the AG's 2008 settlement; and taking more than half of Brown's "I Feel Good" charity for Hynie, Forlando Brown ("Forlando") and 5 Levenson clients.

12. The Court overlooked or misapprehended that only Judge Newman has the record to understand how SWB, Bauknight, Hynie and Legacy Trust owner-successors deprived Judge Manning of the April 24, 2013 letter of AG Wilson, [Exhibit C, p.35] through Chief Deputy AG McIntosh, confirming that the Office of the AG had never engaged SWB to bring Richland 4900 in the name of the State/AG and would not pay any portion of SWB's fee as claimed under the Wingate Contract, and how Hynie – taking charge of Richland 4900 – defrauded multiple courts with funding from Brown's charity until 2020.

The Role of Hynie and the Legacy Trust is Central to the Motions

13. The Court overlooked or misapprehended that the 11-year fraud of Hynie, SWB's unconstitutional claims to act for the State/AG, including after the April 24, 2013 letter of the AG [Exhibit C, p.35]; and the material misstatements and disappearance of Plaintiff Legacy Trust are all essential to the consideration of the motions to alter, amend and vacate Judge Manning's Orders of July 12, 2012 and October 20, 2015, and that Hynie's fraud and the other wrongful acts of Hynie and the Legacy Trust were concealed from Judge Manning at all times by SWB and Bauknight, both acting under unauthorized color of the State/AG for the benefit of Hynie and those Legacy Trust owner-successors aligned with Hynie.

14. The Court overlooked or misapprehended that it would violate the Supreme Court's assignment of exclusive jurisdiction of this case to Judge Newman and further damage the Due

Process, First Amendment and FOIA rights of Buchanan² and Pope to assign this case to Judge Manning, who was told at all times by SWB that SWB and Bauknight had full authority to act for the State/Governor McMaster when Governor McMaster himself had stated under oath and emphatically that he did not authorize SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act “on behalf of” the State/AG in Richland 4900; and did not even know he was a named Plaintiff in Richland 4900 until after leaving office as AG in January 2011. [See Deposition of Governor McMaster, Exhibit L, pp. 89 – 97]

15. The Court overlooked or misapprehended that it was the direct act of SWB, claiming to speak for the State/AG Wilson, but acting for Hynie and SWB’s other private clients, Legacy Trust owner-successors, which prevented Judge Manning from having the benefit of Governor McMaster’s deposition or the Wingate Contract, both of which confirm that all of SWB’s actions on behalf of the State/AG, like those of Bauknight, were unconstitutional, illegal, improper and in direct violation of 42 U.S.C.A §1983. [Exhibit L, p. 92; April 24, 2013 Letter of AG Wilson, Exhibit C, p. 35]

16. The Court overlooked or misapprehended that Buchanan and Pope were unable to present the evidence of the fraud of Hynie and the Legacy Trust, the unconstitutional acts of SWB and Bauknight on behalf of the State/AG, or the material misstatements of Levenson and others for the Legacy Trust to Judge Manning and the Supreme Court because of stays and delays secured

² In 2012 SWB and Bauknight, purporting (without authority) to act for the State/AG Wilson, reached a “settlement” with Buchanan for the Legacy Trust and its owners; allowed Bauknight to advance \$500,000 from funds devised to Brown’s charity for releases for the State/AG from Buchanan’s and Pope’s counterclaims for fraud, abuse of process, intentional interference with conflict and other causes of action; and purported to silence Bauknight from criticism of all Legacy Trust owners except Forlando. SWB and Bauknight concealed that Forlando was a 4.79% owner of the Legacy Trust, and have concealed since April 24, 2013 that he is now an approximately 9% stakeholder in Richland 4900. With Hynie’s approximately 46%, Hynie now controls the Legacy Trust, SWB, and Bauknight, as trustee, with the undisclosed Forlando.

by Hynie, Legacy Trust owner-successors aligned with Hynie, and SWB, illegally purporting to act for the State/AG.

17. The Court overlooked or misapprehended that while the motion to alter or amend the July 5, 2012 Order was pending before Judge Manning, and prior to the issuance of Judge Manning's October 13, 2015 Order, on April 24, 2013 AG Wilson notified SWB that the Office of the AG ("Governor McMaster") had never hired SWB in Richland 4900 and that the Office of the AG would pay no part of SWB's fee under the Wingate Contract. SWB not only failed to notify Judge Manning of this significant change, but failed to notify Judge Early until his retirement in February 2019. [Exhibit C, p.35]

18. The Court overlooked or misapprehended that even after Governor McMaster testified emphatically under oath in 2016 that he had never authorized either SWB or Bauknight to act for the State/AG in Richland 4900, both SWB and Bauknight concealed the information from Judge Early until his retirement in 2019. [Exhibit L, p. 92]

19. The Court overlooked or misapprehended that SWB, Hynie and the Legacy Trust concealed from Judge Manning from 2011 until 2016, by obtaining stays and delays in the name of the State/AG (without legal authority), the improper acts of Hynie and Legacy Trust owner-successors aligned with Hynie, and increasing evidence of Hynie's fraud and control over the Legacy Trust, SWB and Richland 4900, all financed with funds from James Brown's charity.

20. The Court overlooked or misapprehended that Hynie, Peter Afterman, and the Legacy Trust concealed from Judge Manning through a series of successful stays and delays requested in the name of the State/AG (without authority), the tens of millions of dollars that were being spent from James Brown's charity to carry out the May 29, 2013 announced plan of Hynie and Levenson to ignore *Wilson v. Dallas*; reinstate the AG's 2008 settlement which the Richland 4900 complaint seeks to uphold, and which would give Hynie about \$1 million a year and nearly a quarter of the

assets of Brown's "I Feel Good" Trust; and blame the tens of millions of dollars damage they caused on Buchanan and Pope in Richland 4900.

21. The Court overlooked or misapprehended that SWB concealed from Judge Manning from 2011 until 2016 the public evidence that the Wingate Contract was not signed by most Richland 4900 plaintiffs, but by Levenson, Hynie's attorney and David Bell, Esq., who would get close to \$20 million in contingency legal fees from Brown's "I Feel Good" charity if they could stop the appeal by Buchanan and Defendant which became *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

22. The Court overlooked or misapprehended that SWB concealed from Judge Manning the fraud of Hynie; her FOIA disruption; her false claims about the Copyright Act; and actions of Hynie's agents to control Richland 4900 for the benefit of Hynie, and not for Brown's charity, as set out in the Richland 4900 complaint, but did so while (without authority) purporting to act on behalf of the State/AG.

23. The Court overlooked or misapprehended that SWB lacked candor with Judge Manning from 2011 until 2016, as did its attorneys in their 2017 depositions ordered by the Honorable Jean Toal, Acting Circuit Judge.

24. The Court overlooked or misapprehended that in the March 2017 court-ordered depositions, SWB attorneys challenged the sworn testimony of the Governor; claimed that SWB had had no change in clients since 2011 except that AG Wilson was now AG; failed to disclose the alleged disappearance of Plaintiff Legacy Trust, the primary Richland 4900 Plaintiff as shown in the Complaint [Exhibit 1]; failed to disclose the AG's April 24, 2013 letter confirming SWB had never been hired by the Office of the AG [Exhibit C, p. 35]; and claimed that they had, in fact, been hired by Governor McMaster.

25. The Court overlooked or misapprehended that Judge Newman, not Judge Manning, is

the trial judge in this matter; should hear the motions to alter, amend or vacate; and should, in both motions, consider the full record in this case, including SWB's improper deletion of Plaintiff Legacy Trust and Bauknight "on behalf of" the AG from the caption in the order presented to, and signed by, Judge Newman.

Judge Newman Should Consider the Concealing and Alternation of Documents

26. The Court overlooked or misapprehended that the attempt by SWB to remove the Legacy Trust as a party to Richland 4900; secure its relief from default; and suppress the Legacy Trust's role in the fraud, civil conspiracy, and other wrongdoing which are the subject of the motions to alter the 2012 and 2015 order was improper; such action cannot be taken by adopting a patently incorrect caption; and the caption should be restored to assure that the Legacy Trust and Bauknight on behalf of the Attorney General of South Carolina remain parties to this action, as they have been for 11 years, and to avoid confusion.

27. The Court overlooked or misapprehended that material changes to, or disappearance of, documents have been a significant problem in Richland 4900 and other matters in which Hynie is involved, including that a signature page on the Wingate Contract as identified by SWB attorneys when questioned under order of Judge Toal in 2017 is different from the same page in the Wingate Contract produced by SWB when ordered to be produced by Judge Newman in 2020.

28. The Court overlooked or misapprehended that the change is material and troublesome because David Bell, Esq., who signed for Terry in the first version of the Wingate Contract, simultaneously claimed, with Hynie, and Bauknight that the value of Brown's music empire was \$4.7 million, while Bell's client Forlando has stated under oath that offers of \$150 million were available for the music empire when the AG took over the music empire, and that the \$4.7 million value is "bogus."

29. The Court overlooked or misapprehended that the unexplained change in the Wingate

Contract is also material because it relates to the authorization of SWB to act for Terry Brown, who, through son Forlando, is a 9% owner-successor of the Legacy Trust and Terry is an approximately 10% owner of the termination rights proceeds under Sections 304 and 203 of the U.S. Copyright Act which were placed in the Legacy Trust in 2009, but which Bauknight now claims have disappeared.

30. The Court overlooked or misapprehended that documents which SWB concealed from Judge Manning, and continue to try to conceal, include Hynie's public handwritten admissions of her bigamy.

The Impact of the Fraud of Hynie on Multiple Courts is Important to the Motions

31. The Court overlooked or misapprehended that Judge Manning is not able to assess the impact of Hynie's fraud on multiple courts, now a matter of public record, which is fully documented in the Richland 4900 record and the record of cases which the Legacy Trust sought to consolidate with Richland 4900 after Judge Manning was replaced.

32. The Court overlooked or misapprehended that Richland 4900 began with the threat of Hynie's attorney in March 2010 that the AG, through SWB, would sue if Buchanan and Pope did not drop the appeal which became *Wilson v. Dallas*, and Hynie assumed increasing control over the Legacy Trust after the April 24, 2013 announcement to SWB that the AG had never been a Richland 4900 client of SWB.

33. The Court overlooked or misapprehended that the stated strategic purpose of Richland 4900 was to make sure that Buchanan and Pope, who were protecting Brown's charity against Hynie and the AG's 2008 settlement, not be reinstated so that the AG's 2008 settlement could be carried out regardless of the Supreme Court's opinion, and the May 29, 2013 announced plan of Hynie and Levenson to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement carried out that plan until 2020.

34. The Court overlooked or misapprehended that every allegation contained in Buchanan's and Pope's counterclaims had turned out to be correct. [Ans. and CC]

35. The Court overlooked or misapprehended that SWB, Hynie, the Legacy Trust, and Levenson, in order to stop the *Wilson v. Dallas* appeal, concealed from Judge Manning the Wingate Contract, the handwritten Hynie admissions or her bigamy; and other material documents.

36. The Court overlooked or misapprehended that by 2011 SWB, Hynie and Bauknight began a 9-year effort, which was largely successful, to suppress public documents which would defeat their claims in Richland 4900 and in the Supreme Court.

37. The Court overlooked or misapprehended that SWB and Bauknight's Legacy Trust lawyers charging \$375 - \$500 an hour, concealed public documents and claimed that Brown's worldwide music empire was worth only \$4.7 million, but also claimed that Buchanan and Pope had caused tens of millions of dollars by not accepting a \$100 million offer; that Hynie's elective share claim was a "slamdunk," that Brown's Estate/2000 Trust had no corpus to speak of; and that, because of termination rights under the Copyright Act, there would be nothing left in the "I Feel Good" Charity in 2023 if the AG's 2008 settlement were not upheld and Hynie made the spouse of James Brown.

38. The Court overlooked or misapprehended that, as shown in the affidavits of Peter Afterman, who had been helping Hynie's lawyers since 2013 as she siphoned off royalties Brown gave the "I Feel Good" charity, the false position Hynie, SWB and Bauknight took with Judge Manning from 2011 until 2016 continued until at least 2020.

39. The Court overlooked or misapprehended that 11 Richland 4900 Plaintiffs represented by Levenson went along with Hynie, although all of them knew, many from Brown himself, that Hynie was not Brown's spouse.

40. The Court overlooked or misapprehended that, acting for the State/AG, but for the

benefit of Hynie, in 2012 SWB rejected and filed offers which would have let the State/AG and the minor beneficiaries out of Richland 4900 and ended the FOIA cases.

41. The Court overlooked or misapprehended that while actively pursuing Richland 4900, at a May 17, 2016 FOIA hearing the Legacy Trust sought to be dismissed and supported its motion to dismiss with a May 2, 2016 affidavit of Bauknight which stated in part:

10. Since the ...Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust.

...

20. The only funds that the Legacy Trust was ever designed to hold were the private funds of James Brown, and this functioning of the court approved Legacy Trust was overturned and struck down by *Wilson v. Dallas*.

Therefore, the court approved Legacy Trust under the settlement agreement does not exist. [Hearing, Trans. 5/17/16, p. 1, Aff. Bauknight, 5/2/16]

The Motions Involve Fraud, Material Misrepresentations and Improper State Acts

42. The Court overlooked or misapprehended that, with knowledge that it was taking unconstitutional State action primarily for the benefit of Hynie and other private Legacy Trust owners, SWB concealed from Judge Manning and this Court, from 2010 until 2020, the public Wingate Contract which makes clear that Governor McMaster, as AG, did not sign the Wingate Contract to sue Buchanan. and Defendant; did not legally authorize SWB to bring Richland 4900 in the name of the State/AG; did not authorize Bauknight to act "on behalf of" the AG in Richland 4900; and did not even know until after leaving office as AG in January 2011 that he was a named Plaintiff in Richland 4900.

43. The Court overlooked or misapprehended that SWB, for the benefit of Hynie and Legacy Trust owners aligned with her, successfully prevented the deposition of Governor McMaster from 2011 until 2016, and since 2016 have gone to extraordinary lengths to prevent the Court from having access to Governor McMaster's sworn testimony,

44. The Court overlooked or misapprehended that the fraud of Hynie; the material

incorrect claims of the Legacy Trust to Judge Manning, if considered by Judge Manning without the full record, would further violate the Due Process and other rights of Buchanan and Defendant.

45. The Court overlooked or misapprehended that stays sought and obtained by Hynie, the Legacy Trust and other private clients of SWB, while SWB illegally claimed to be acting for the State/AG, must be considered by Judge Newman.

46. The Court overlooked or misapprehended that Judge Newman is “trial judge,” as contemplated by Rule 59, in this action.

47. The Court overlooked or misapprehended that the Exhibits attached hereto are a mere sampling of the matters to be considered in determining whether Hynie, the Legacy Trust, Tonya Brown, Terry Brown and others had a meritorious defense and should be relieved from default, and include Exhibit 1, the Richland 4900 Complaint (and the Ans. And Counterclaims, not included) ; Ex. B, Hearing August 30, 2010; Exhibit C, Correspondence SWB, AG Others, January 20, 2012 – April 24, 2013; Ex. D- Hearing March 31, 2014; Exhibit E – Hearing, June 30, 2015; Exhibit F - Hearing, January 14, 2016; Ex. G – Depos. Sonny Jones May 4, 2016; Exh. H Hearing, May 16, 2016; Exhibit I – Hearing, May 17, 2016; Ex. J – Deposition – Hynie – June 16, 2016; Ex. K – Hearing, August 29, 2016; Ex. L. – Portion, Deposition of Governor McMaster, October 19, 2016; Exhibit M. Portion, Deposition of Yamma Brown Jan.27, 2017; Ex. N – Portion, Deposition of AG Alan Wilson March 21, 2017; Exhibit O – Portion of Deposition of James Hardin, Esq., March 27, 2017; Ex. P – Portion of Deposition of Dr. Terry Cox April 12, 2017; Ex. Q – Hearing August 15, 2017; Ex. R Affidavit Peter Afterman, October 29, 2019; Ex S – Transcript January 1, 2020; and Exhibit T, Declaration of Peter Afterman, September 2, 2020. Ex. T – Declaration Afterman Sept. 2, 2020

SWB’s and Bauknight’s FOIA Disruption While Acting for the State/AG is Material

48. The Court overlooked or misapprehended that Judge Manning was not informed of

SWB's 2012 direction to the AG not to comply with his FOIA duties, resulting in the concealing of the public Wingate Contract for 9 years when SWB stated that AG Wilson should not comply with FOIA because:

First, you will certainly incur the sanctions of costs and attorney fees in the pending FOIA actions. That defeat will be more costly and publicly embarrassing than a decision to continue litigating the fee agreement issue.

Secondly, your decision will jeopardize the rights of your co-litigants...

Third, FOIA specifically exempts from production privileged documents. Whether this complicated fee agreement is privileged is currently before the Court. You are complying with both the letter and spirit of FOIA if you decline to produce the requested documents until the Court has determined whether any of the fee agreement is privileged. [Aff. 10/27/20]

Defiance of the Supreme Court by Hynie, SWB, Bauknight and the Legacy Trust

49. The Court overlooked or misapprehended that on February 27, 2013 the Supreme Court in footnote 29 of its first, later replaced, *Wilson v. Dallas* decision³ stated:

Although Brown's music rights have been widely reported as being worth up to \$100 million or more at his death, Bauknight filed documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned . . .

Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel Kenneth Wingate, for Wingate to sue Appellant Pope on behalf of the State, Bauknight and others while also representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure. [*Wilson*]

50. The Court overlooked or misapprehended that on March 15, 2013 the Legacy Trust

³ 403 S.C. 411, 746 S.E.2d 743 (2013).

moved to stay Richland 4900 and the FOIA cases to regroup to reinstate the AG's 2008 settlement and conceal evidence that it was bad for Brown's "I Feel Good" Trust.

51. The Court overlooked or misapprehended that on May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*. Footnote 29 was removed. Footnote 30, however, stated:

We note that the AG and/or Bauknight have allegedly entered into a contingency-fee contract with outside counsel Kenneth Wingate, for Wingate to sue Appellants on behalf of the State, Bauknight; and others while also representing private plaintiffs in the suit. We are aware that a suit has been filed in Richland County seeking damages to Brown's estate allegedly arising during Appellants' service as fiduciaries. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to the purported arrangement. However the AG has recently informed the Court, in petitions filed after this Court's initial opinion, that he is now withdrawing as a party to that lawsuit and his office will maintain a monitoring role. *Wilson v. Dallas*, n. 30.

52. The Court overlooked or misapprehended that on May 10, 2013 SWB wrote the circuit court seeking a stay of the FOIA cases and Richland 4900, asserting that the Supreme Court placed no "primacy" on hearing Richland 4900 or the FOIA matters. [Ltr., Gende to Jg. Manning, 5/10/13]

53. The Court overlooked or misapprehended that the position taken by SWB and Bauknight that day is the same position they are taking today for Hynie and those aligned with her, as stated in the Richland 4900 Complaint.

The Legacy Trust's Disappearance With the Termination Rights is Material

54. The Court overlooked or misapprehended that at a May 17, 2016 hearing, while seeking summary judgment in Richland 4900, the Legacy Trust took the opposite position in a FOIA case by stating the following, although it has since pursued Richland 4900 for an additional 5 years:

10. Since the ...Supreme Court's order in *Wilson v. Dallas*, the Attorney General has had no involvement in the Legacy Trust.

...

20. The only funds that the Legacy Trust was ever designed to hold were the private funds of James Brown, and this functioning of the court approved Legacy Trust was overturned and struck down by *Wilson v. Dallas*. Therefore, the court approved Legacy Trust under the settlement agreement does not exist. [Hearing, Trans. 5/17/16, p. 1, Aff. Bauknight, 5/2/16]

Bauknight's Support for Hynie in Other Courts Should be considered

55. The Court overlooked or misapprehended that in 2012 Bauknight joined Hynie in using the \$4.7 million claimed value the AG had been refusing to release under multiple FOIA requests and in this suit for more than a year in a motion filed in the Court of Appeals which shows the position the AG, SWB, the Legacy Trust and Hynie take today:

And while Pope can use her word processor to change the caption, there is nothing she can do to change the facts establishing Tommie Rae's marriage to James Brown. [Mot. 9/18/12, p. 2]

SWB's Lack of Candor with the Court

56. The Court overlooked or misapprehended that on November 24, 2015 Wingate, speaking for the AG (without authority), Hynie and the Legacy Trust, stated:

With respect to all other plaintiffs and contrary to Mrs. Pope's absolutely baseless assertions, [SWB] has never been informed of any termination of representation by any Plaintiff. Therefore, [SWB] did represent and still represents all plaintiffs. [Pls' Memo. in Opposition to Motion to Amend Order, R4900, 11/30/15, p 2]

57. SWB, now trying to erase the Legacy Trust and Bauknight's actions "on behalf of the Attorney General of South Carolina," said the same thing when 2 SWB attorneys testified under Court order in 2017.

Respectfully submitted,

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September 2, 2021

Counsel for Defendant Adele J. Pope

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Supreme Court Appellate Case No. 2022-001713
Court of Appeals Appellate Case No. 2018-002229
Civil Action No. 2010-CP-40-04900

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

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, Respondents,

v.

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

Of whom Adele J. Pope is the Appellant.

**RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S "PETITION FOR
EXPEDITED LIFTING OF STAY AND CONSIDERATION BY THE CIRCUIT COURT
OF ISSUES REMANDED BY THE COURT OF APPEALS IN CASE NO. 2017-001899,
AND SUPPORTING MEMORANDUM"**

and

**RESPONDENTS' MOTION FOR SANCTIONS DUE TO APPELLANT'S ABUSIVE,
SERIAL FILINGS (AS AMENDED TO INCLUDE RULE 11 CERTIFICATION)**

TO: Hon. Clifton Newman, Circuit Judge; and to Adele Pope, Esq., through her counsel Adam Silvernail, Esq., Charles E. Carpenter, Jr., Esq., William Jeffrey Smith, Esq., and Daryl L. Williams, Esq.

INTRODUCTION

Appellant Pope's November 3, 2022 Petition for Expedited Lifting of Stay is wholly unnecessary because the Court already has jurisdiction to address the "Appeal 1899" remand issues.¹ Also, Pope's Petition clearly is filed for an improper ulterior purpose. Therefore, Pope's Petition must be denied.

Pope's Petition is frivolous *per se* because it is an abusive, serial filing for which both Appellant Pope and her counsel should be sanctioned under Rule 11, SCRCP and the South Carolina Frivolous Proceedings Act, S.C. Code Ann. § 15-36-10, *et seq.* Pope and her counsel have been warned—by this Court no less—against filing this very Petition, and they should be sanctioned for ignoring the Court's instructions.

Pope filed a contemporaneous and duplicative petition in the South Carolina Supreme Court. The State's highest court rejected her argument and labeled her petition "frivolous." The Supreme Court enjoined her from any similar requests, rebuked Pope's pattern of delay in this matter, and threatened sanctions for further frivolous filings. The Supreme Court also took a dim view of Appellant's habit of filing serial petitions to lift stay:

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**

¹ This Return in Opposition to Petition to Lift stay is filed using an appellate caption, pursuant to Rule 241(d)(3), SCACR.

repeatedly delay the matter have frustrated the prompt resolution of this case.

Bauknight, et al. v. Pope, Order, Case No. 2020-001713 (S. Ct., March 28, 2023) (attached hereto as **Exhibit A**). (emphasis added).

For these reasons, and others discussed below, Pope's motion should be denied and sanctions should be entered.

RELEVANT PROCEDURAL HISTORY

Bauknight, et al. v. Pope, Case No. 2010-CP-40-04900 ("Case 4900") is the Estate of James Brown's (and a number of James Brown's children's and grandchildren's) suit against Pope for the substantial damages she caused due to multiple breaches of fiduciary duty while administering the Estate as co-Personal Representative. (The other co-Personal Representative reached a settlement with the Estate and has been out of the case for over 10 years.) Case 4900 was filed in 2010 and has yet to be tried due to, among other things, Pope's numerous pretrial appeals. Following is a brief procedural history relevant to Pope's Petition:

On May 19, 2010, Case 4900 was filed against Defendant Pope alleging, *inter alia*, breach of fiduciary duty by Pope against the Estate and other Plaintiffs/Respondents. On September 12, 2017, Pope appealed five Case 4900 pretrial orders in what became Appellate Case No. 2017-001899 ("Appeal 1899"). Two of the orders Pope appealed in Appeal 1899 are relevant to the instant Petition:

- Judge L. Casey Manning's October 13, 2015 Order Granting Plaintiffs' Motion to Set Aside Default as to Defendant's Counterclaims ("the Motion to Set Aside"); and
- Judge L. Casey Manning's July 5, 2012 Order Denying Defendant's Motion to Disqualify Sweeny, Wingate & Barrow, P.A. from Representing the AG, To Enjoin Russell Bauknight from Acting as Agent for the Attorney General, and for related relief ("the Motion to Disqualify").

On December 17, 2018 Pope appealed twenty-five (25) more Case 4900 pretrial orders in what became Appellate Case No. 2018-002229 (“Appeal 2229,” now pending before the Supreme Court as Appellate Case No. 2022-001713). Pope’s 2017 and 2018 appeals triggered the Rule 241, SCACR automatic stay, curtailing activity in Case 4900.

Pope and her counsel, Adam Silvernail, Esq. then made four successive (and failed) attempts to lift the Rule 247 stays that arose due to Pope’s own appeals:

- (1) **First** attempt to lift stay: October 24, 2017. Pope unsuccessfully moves to lift the appellate stay created by Appeal 1899. (See attached order denying Pope’s motion at **Exhibit B.**)
- (2) **Second** attempt to lift stay: October 30, 2018. Pope unsuccessfully moves, via “supplemental motion,” to lift the appellate stay created by Appeal 1899. (See attached order denying Pope’s motion at **Exhibit C.**)
- (3) **Third** attempt to lift stay: January 22, 2019. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (See attached order denying Pope’s motion at **Exhibit C.**)
- (4) **Fourth** attempt to lift stay. April 27, 2020. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (See attached order denying Pope’s motion at **Exhibit D.**)

On July 28, 2020, via written order, this Court not only denied Appellant’s fourth attempt to lift stay, but this Court also **cautioned Appellant against serial filings of the same motion.** (See Ex. D.)²

On September 16, 2020 the Court of Appeals issued an order in Appeal 1899, affirming in part and dismissing in part. The dismissals were issued because the Court of Appeals found that Appellant had filed two not-yet-ruled-upon Motions to Reconsider concerning Judge

² The July 28, 2020 Order refers to the April 27, 2020 Motion to Lift Stay as the third attempt, though, as explained *supra*, it was the fourth attempt. There is no discrepancy, merely a difference in semantics, as Pope couched her second attempt to lift the stay as a “supplement” to the first attempt. Any way one slices it, Appellant has tried this tactic many times before and has been warned against repeat filings of this Petition.

Manning's rulings on the Motion to Set Aside Default and Motion to Disqualify. *See Bauknight, et al. v. Pope*, Op. No. 2020-UP-216, Case No. 2017-001899 (Ct. App., Sept. 16, 2020) (attached hereto as **Exhibit E**).

On April 21, 2021, the South Carolina Supreme Court denied Pope's Petition for Certiorari concerning Appeal 1899. The Supreme Court's order remanded the "motions currently pending [that is, Pope's 59(e) motions on the Motion to Set Aside Default and Motion to Disqualify]" to The Honorable Clifton Newman, so that the litigation may be "promptly concluded." *See Bauknight, et al. v. Pope*, Order, Case No. 2020-001383 (S. Ct., April 21, 2021) (attached hereto as **Exhibit F**).

On August 22, 2021, this Court ordered that the two Motions to Reconsider be heard by Judge Manning as soon as practicable, because he heard and ruled upon the original motions. (Order, Case No. 2010-CP-40-04900, e-filed on August 23, 2021 (attached hereto as **Exhibit G**.) Unfortunately, on September 2, 2021, Pope moved to reconsider Judge Newman's referral to Judge Manning.³ (*See* Def.'s Mot. to Alt., Amend, Vacate, and/or Reconsider Order Concerning Mots. To Reconsider, Case No. 2010-CP-40-04900, filed Sept. 2, 2021.) The Court has yet to rule on this motion.⁴ The instant petition, filed November 3, 2022 under the guise of seeking resolution of the 1899 remand, is really Pope's **fifth** attempt to lift the Rule 241 appellate stay in Case 4900.

³ This Court's referral of the motions was based on its analysis and conclusion that Judge Manning had continuing jurisdiction pursuant to Rule 59(f), SCRCP. (**Exhibit G**, at 3.) Pope's 18-page motion to reconsider contains *one sentence* regarding the Court's reasoning for the referral to Judge Manning: "The Court overlooked or misapprehended that Judge Newman is 'trial judge,' as contemplated by Rule 59, in this action." (Mot. Reconsider, filed Sept. 2, 2021, at 14 ¶ 46.)

⁴ As discussed *infra*, the September 2, 2021 motion may be moot due to the Supreme Court's Order of March 28, 2023.

Without waiting for this Court to rule on the instant Petition, Pope filed a nearly identical version of it in the South Carolina Supreme Court on December 30, 2022. Via order filed on March 28, 2023, the Supreme Court made short work of the petition: “Appellant has filed a petition asking this Court to lift the automatic stay imposed in this case pursuant to Rule 241(a), SCACR. The petition is denied.” (Ex. A.)

Needless to say, Plaintiffs/Respondents oppose this fifth attempt to lift stay and ask that both Pope and her attorney, Adam Silvernail, Esq.—and, if the Court sees fit, her other counsel—be sanctioned for filing multiple frivolous motions.

ARGUMENT

I. This Court already has jurisdiction over the 1899 remand, therefore Pope’s Petition to Lift Stay is completely unnecessary.

Pope obliquely claims that an order lifting stay is necessary to effectuate the Court of Appeals’ and Supreme Court’s rulings in Appeal 1899. Pope is wrong. This Court has the jurisdiction to resolve the 1899 remand, and indeed the Court had already begun doing so, but has been stymied by Pope’s actions.

The Court of Appeals’ position with respect to the two pending Motions to Reconsider was stated in its September 16, 2020 Order:

- (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 yet been ruled upon by the trial court. ...
- (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. ...

(Ex. E.)

The Supreme Court's position with respect to the two pending Motions to Reconsider was stated in its April 21, 2021 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.

(Ex. F.)

This Court's position with respect to the two pending Motions to Reconsider was clearly stated in its August 22, 2021 Order:

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 [the Motion to Reconsider the Order Setting Aside Default and the Motion to Reconsider the Order refusing to Disqualify/Enjoin] be heard by Judge Manning as soon as reasonably practicable. ... 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...

(Ex. G at 4.)

It is beyond dispute that the Court of Appeals, the Supreme Court, and this Court had all begun the process of resolving the pending Motions to Reconsider in a straightforward fashion. All that was required of Appellant to receive rulings on the Motions to Reconsider was to contact Judge Manning's office jointly with the undersigned and request disposition of them. Instead of simply following this Court's August 22, 2021 Order, Appellant moved to "reconsider" it, filing an 18-page memorandum and 196 pages of exhibits that had nothing whatsoever to do with the question of Judge Manning's continuing jurisdiction under Rule 59(f), SCRCP. (*See* Sept. 2, 2021 Mot. Reconsider plus exhibits.) In essence, Appellant filed a motion to reconsider an order

directing the disposition of *other* motions to reconsider. Appellant's filings have reached the level of parody, and Appellant's argument that Plaintiffs/Respondents are somehow the problem is factually erroneous and abject hypocrisy. In any event, the Supreme Court's Order of March 28, 2023 makes it crystal clear that the Petition to Lift Stay is not necessary to complete the 1899 remand. This Court already has the jurisdiction needed to address the two remaining 59(e) Motions.⁵

II. Appellant clearly has an improper ulterior purpose for this Petition.

Though Appellant does not provide a list of what else she would seek to accomplish should the stay be lifted, she clearly implies that she has much more in mind than simply finishing the 1899 remand. (*See* Pet., at p. 1 (requesting “immediate consideration of motions pending in this case since 2010, *including* those remanded by the Court of Appeals [in the 1899 remand]”) (emphasis added); *see also id.*, at p. 17 (“[a]ll motions pending since 2010 should be heard by the circuit court judge to whom Richland 4900 is currently assigned”).) As noted in Section I, *infra*, the instant Petition is completely unnecessary to finish the 1899 remand, so there must be some other purpose behind Pope's filing of the Petition.

The prosecution of *any* matters in the trial court other than the 1899 remand would be improper. Other than the Appeal 1899 remand matters, the entirety of Case 4900 is subject to stay due to the breadth of Appeal 2229, which is pending and involves twenty-five pretrial orders to include appeals from key motions. *See* Rule 241(a), SCACR (“[a]s a general rule, the service of a notice of appeal in a civil case acts to automatically stay matters decided in the order, judgment, decree or decision on appeal...”); *see also id.* (noting that a trial court only retains jurisdiction over matters “not stayed by the appeal”). Clearly, Appellant is seeking a “blank

⁵ Plaintiffs/Respondents will prepare a separate Supplemental Memorandum concerning the merits (or lack thereof) of the two remaining 59(e) Motions.

check” to invade the appellate stay to accomplish unknown ends, which Rule 241(a), SCACR, does not allow.⁶

III. The Petition is an abusive serial filing meriting sanctions against Pope, Silvernail, and possibly Pope’s other counsel.

Plaintiffs request the court sanction both Pope and Silvernail because their conduct in filing the instant motion conflicts with Rule 11, SCRCP and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. § 15-36-10, *et seq.* (“FCPSA”) is a continuation of a pattern of abusive filings, and is worthy of strong sanctions as a punishment and to deter future abusive and frivolous filings.

a. Rule 11, SCRCP, and the FCPSA authorize sanctions against Pope and her counsel.

Rule 11, SCRCP and the FCPSA provide the legal basis for sanctioning abusive and/or frivolous filings. Rule 11, SCRCP 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

⁶ Though Appellant never provides a complete list of what she claims needs to be accomplished if the stay were to be lifted, she makes a reference to a 2012 Motion to “reinstate Buchanan as a party.” (See Pet., at p. 16.) Robert Buchanan, a co-Personal Representative of the Estate of James Brown alongside Appellant during her tenure, was originally her co-defendant in Case 4900. Mr. Buchanan settled—with prejudice—all claims between him and Plaintiffs/Respondents over a *decade* ago. Since that time, Mr. Buchanan has not appeared in the trial court or sought to appeal any matter.

incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

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

Rule 11 requires in represented cases that an attorney of record sign a motion filed with the court. *Id.* In signing the motion, the attorney certifies, *inter alia*, that (1) he has read the motion, and (2) that there is good ground to support the motion. *Id.* Rule 11 also allows the court to impose an appropriate sanction for all motions filed in violation of the Rule. *Id.* Sanctions may include the reasonable expenses the opposing party incurs due to the filing, including attorneys' fees. *Id.*

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 has the same reading requirement for counsel filing a motion 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). The FCPSA also allows the court to impose “any sanction which the court considers just, equitable, and proper under the circumstances” *Id.* at (B)(2).

b. Actions of Pope and Silvernail in this filing that warrant sanctions.

Pope and Silvernail have filed this same Petition, or one substantially similar, four times before and have failed to prevail on any of the motions. Incredibly, the instant filing is the **fifth** time Pope and Silvernail have moved to lift an appellate stay in Case 4900. Such repeated filing of the same or similar motion, which has been defeated every single prior time, is the epitome of a serial, abusive filing. This abusive conduct is especially egregious because the stays in Case 4900 have been *created by her own pretrial appeals*.⁷

Furthermore, the instant abusive and frivolous filing is in violation of a prior court order, because in this Court's most recent order denying the Pope's fourth attempt to lift the stay, the Court cautioned Pope against making such repeat motions to lift stay:

While the issue in *Elam* was the successive filing of motions for reconsideration, the same rationale applies to the successive motions of [Pope] in the instant matter.

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

(Ex. D at 3.)

By maintaining the instant Petition, *which should have been withdrawn immediately upon receiving the South Carolina Supreme Court's March 28, 2023 order*, Pope and Silvernail, and possibly Pope's other counsel of record, have chosen to disregard the order of the court and therefore are subject to sanctions for their abusive and frivolous filing. There is no reasonable argument that the instant Petition, or the prior motions to lift stay beyond the first one, were made in good faith.

⁷ One would think that if Appellant truly believed that appellate stays in the trial court were detrimental to her case, she would stop filing serial pretrial appeals.

Finally, as noted above, when the Supreme Court dealt with the mirror image version of this Petition, it issued a blistering warning to Pope concerning *further* frivolous filings.

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.**

(Ex. A (emphasis added).)

For the Supreme Court to use the word “further,” the Justices clearly had determined that prior filings were frivolous, perhaps to include the instant Petition, which was filed prior in time to the Supreme Court version and of which the Supreme Court was aware. (*See id.* (“Appellant has also filed a motion with the circuit court to lift the automatic stay...”).)

Also, Pope's failure to immediately withdraw the instant petition after the Supreme Court's blistering rebuke of her motion and other actions is stark evidence of her disregard for the opinion of the Supreme Court and her scheme for this Court to waste its time considering the patently frivolous petition. Pope's actions here serve as an irrefutable example of how she disregards the Courts and their rules with frivolous filings in her overarching scheme to deflect and delay liability for her multiple breaches of fiduciary duty while serving as personal representative of the Estate. Pope, who once claimed to be a champion of the testamentary wishes of James Brown, now does everything in her power to frustrate his wishes, especially Mr. Brown's noble goal of providing scholarships to poor and needy children, not one of which has been able to be written in large part because of Pope's tactics of delay and deflect through repeated frivolous filings.

- c. Additional abusive conduct of Pope and/or Pope and Silvernail meriting notice by the Court in considering sanctions in this matter.

Pope has a long and well-documented history of abusive conduct in this and other James Brown Estate cases, which the court should consider when evaluating the circumstances of her current abusive, frivolous motion.⁸

(i) As to Pope:

Pope has been rebuked—and enjoined—by the South Carolina Supreme Court for making meddlesome filings in James Brown 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. Ct., June 10, 2015) (attached hereto as **Exhibit**

H). Indeed, Pope already has one contempt petition related to the June 10, 2015 Order that is pending in abeyance:

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.

⁸ See *Holmes v. East Cooper Comm. Hosp.*, 408 S.C. 138, 165 n.18, 758 S.E.2d 483, 498 n.18 (2014) (considering the appellant’s past litigation history—to include an injunction from the South Carolina Supreme Court due to “vexatious and meritless filings”—in affirming the trial court’s award of sanctions against the appellant. As noted herein, Appellant has received a similar injunction from the Supreme Court.

Order, Appellate Case No. 2020-000764 (S. Ct., Aug. 10, 2020) (attached hereto as **Exhibit I**).

The Supreme Court has made it clear that it stands behind the August 10, 2020 Order:

[Pope] has filed a motion for an order quashing service of the disallowance of her creditor's claim against the estate of Venisha Brown, and holding the disallowance in abeyance pending resolution of a breach of fiduciary duty action against her. In effect, [Pope] is seeking an exception to our order forbidding her from involvement in the estate of Venisha Brown. *See In the Matter of Adele Jeffords Pope*, S.C. Sup. Ct. Order dated August 10, 2020. The motion is denied.

Order, Appellate Case No. 2020-000764 (S. Ct., Nov. 9, 2020) (attached hereto as **Exhibit J**).

Additionally, in Appeal 2229, Appellant had at least two Briefs, one Designation of Matter, and one five-volume Record on Appeal stricken due to violations of the Appellate Court Rules, including the use of extraneous material similar to what is present in the instant Petition. *See* Orders of the Court of Appeals, Case No. 2018-002229, dated July 26, 2019, May 21, 2020, and August 21, 2020.

(ii) As to Pope and Silvernail:

Adam Silvernail is a South Carolina attorney. He signed the instant motion and three of the four prior motions to lift stay discussed above. Therefore, it is assumed that he read the motions. Prior to filing, Silvernail could not reasonably conclude that the instant Petition (or the previous three) was in good faith, because a motion to lift stay, utilizing the same or substantially similar arguments, had been defeated no less than *four* times before. Silvernail is not excused because the instant motion contains a verification by Pope. To the extent Silvernail seeks to rely on the verification to excuse his obligations under Rule 11 or the FCPSA, such reliance lacks

merit. *See* Rule 11(a), SCRCP (“[in imposing sanctions] may impose upon the person who signed it, a represented party, *or both*, an appropriate sanction . . .”) (emphasis added).⁹

Adele Pope, Esq. 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). For the same reasons that Silvernail is subject to motions for the instant filing and for at least the three prior motions to lift stay in Case 4900, Pope is also subject to the same sanctions. Furthermore, Pope’s verification brings her actions under both Rule 11 and the FCPSA.¹⁰

- (iii) As to other counsel whose names appear in the signature block on Pope’s motions:

Respondents acknowledge that Charles E. Carpenter, Jr., Esq., William Jeffrey Smith, Esq., and Daryl L. Williams, Esq. do not have their physical signatures or “s/” affixed to the complained of motions. However, these attorneys’ names virtually always appear in the signature block section of the motions and briefs. Therefore, to the extent Pope and/or Silvernail is affixing these attorneys’ names without their consent or without allowing them the opportunity to read the filings and approve or disapprove, Pope and/or Silvernail should answer to this court for their actions. However, to the extent these attorneys are reading these frivolous filings and consenting to their names being included in the signature block, they attorneys should have to

⁹ The instant Petition also lists Charles E. Carpenter, Jr., Esq., William Jeffrey Smith, Esq., and Daryl L. Williams, Esq. as counsel of record for Appellant. All three are members of separate law firms, and upon information and belief none are connected to Adam Silvernail’s law firm other than as co-counsel for this litigation.

¹⁰ Pope’s pending appeal in Appeal 2229 does not deprive this Court of jurisdiction to resolve a claim of post-Notice of Appeal frivolous filings. *See Holmes, supra*.

answer to this Court for their individual actions, and the Court should analyze these attorneys' conduct under the same legal principles as outlined above concerning sanctionable conduct.

d. Range of potential sanctions.

Under the FCPSA this Court may impose any sanction it deems just, equitable, and proper under the totality of the circumstances. *See* S.C. Code Ann. § 15-36-10(B)(2). This Court's decision to impose sanctions is left to the discretion of the trial court 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 and Silvernail's abusive and frivolous conduct extend to the instant motion, prior motions, and filings in the court of appeals and other courts and cases. Their efforts have frustrated and delayed the litigation of Case 4900, have frustrated this Court's efforts to dispose of the remanded issues from Appeal 1899, and have frustrated the Supreme Court's stated desire that the James Brown Estate litigation matters be resolved quickly. Due to Pope's and Silvernail's abusive and frivolous actions, the Brown Estate is not able to close, and the main purpose of Mr. Brown's estate planning—that financial scholarships be made to deserving and needy children in South Carolina—remains unfulfilled and frustrated. This frustration must end, and Plaintiffs/Respondents ask this Court to do so by means of the following sanctions:

First, the Plaintiffs/Respondents ask the court award the fees and costs associated with responding to the instant petition, jointly and severally against Pope, Silvernail, and if the Court so directs, against Pope's other counsel.

Second, the Plaintiffs/Respondents ask the court award the fees and costs associated with responding to the three prior motions to lift stay in Case 4900 (absenting the first motion) and

her frivolous filing in the Supreme Court of the same petition, jointly and severally against Pope, Silvernail, and if the Court so directs, against Pope's other counsel.

Third, the Plaintiffs/Respondents ask the court to strike Pope's Answer and find her in default, thus terminating Pope's abusive and frivolous misuse of motions and filings in Case 4900. Such filings have been interposed for delay and distortion of the record. (*See* Ex. A ("[t]his 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").) Such filings have been used as a tool to abuse her party opponents and ruthlessly run up the legal fees for the Estate of James Brown, from which she was removed for cause as a fiduciary in 2009. *See Wilson v. Dallas*, 403 S.C. 411, 449, 743 S.E.2d 746, 767 (2013). Her reign of abuse must end, and Plaintiffs/Respondents ask this Court to use this opportunity to do so.

CONCLUSION

Pope's petition for Expedited Lifting of Stay is unnecessary and interposed for an improper ulterior purpose. Respondents request that the Court deny the Petition.

Respondents assert that the Petition is frivolous *per se* as it amounts to a serial, abusive filing, for which Pope and Silvernail must be sanctioned due to this Court's prior warning on this precise issue *and* their long history of such filings in this and related cases. Respondents request all available sanctions and relief, as noted above.

Signature block on following page.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark V. Gende
Kenneth B. Wingate
Mark V. Gende
Aaron J. Hayes
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street (29201)
P.O. Box 12129
Columbia, SC 29211
(803) 256-2233

Columbia, South Carolina

April 6, 2023

RULE 11 CERTIFICATION

I hereby certify, pursuant to Rule 11(a), SCRCPP, that consultation with opposing counsel concerning resolution of the issues contained in the foregoing Motion for Sanctions would serve no useful purpose.

s/ Mark V. Gende

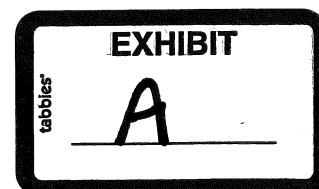
The Supreme Court of South Carolina

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, 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 children 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 are Respondents,

v.

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

Of whom Adele J. Pope is the Appellant.

Appellate Case No. 2022-001713

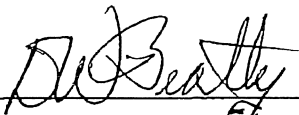
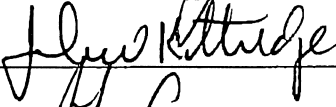
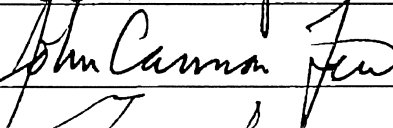
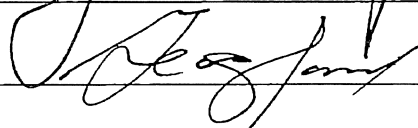
ORDER

Appellant has filed a petition asking this Court to lift the automatic stay imposed in this case pursuant to Rule 241(a), SCACR. The petition is denied.

Appellant has also filed a motion with the circuit court to lift the automatic stay as well as motions to reconsider orders issued by the circuit court. The circuit court shall hold a hearing and issue an order within thirty days of the date of this order addressing Appellant's pending motions to reconsider and to lift the automatic stay in Case No. 2010-CP-40-04900. We caution Appellant that filing any additional motions in response to the circuit court's scheduling order for this hearing will be seen as an intentional effort to delay the case.

Further, 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.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.

Hill, J., not participating

Columbia, South Carolina
March 20, 2023

cc:

Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Everett Augustus Kendall, II, Esquire
Aaron Jameson Hayes, Esquire
Adam Tremaine Silvernail, Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
Charles E. Carpenter, Jr., Esquire
Adele Jeffords Pope, Esquire
The Honorable Clifton Newman

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
RICHLAND COUNTY
CLERK OF COURT
C. D. H. S.

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



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

Handwritten signature and initials, possibly reading 'JME' and '#2'.

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.)



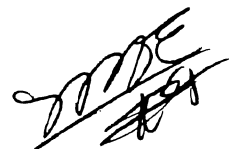
CONCLUSIONS OF LAW

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.

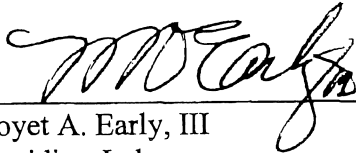
Rule 241(c)(2) sets forth considerations under which the automatic stay may be lifted: where it is necessary to preserve the jurisdiction of the appeal or to prevent a contested issue from becoming moot. Defendant has not presented any facts or issues that address these considerations and the Court is 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.

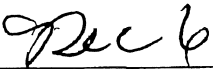


IT IS THEREFORE ORDERED, DECREED AND ADJUDGED that Defendant's Motion to Lift the Automatic Stay during appeal should be DENIED.

IT IS SO ORDERED.



Doyet A. Early, III
Presiding Judge


_____, 2017

FORM 4

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 2:40
- ☐ **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, 2017 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 Thickens

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 Francis W. Bride

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

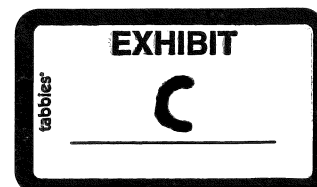
FIFTH JUDICIAL CIRCUIT

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

Electronically signed on 2019-02-26 08:42:48 page 6 of 6

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

THE FIFTH JUDICIAL CIRCUIT

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,)

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,)

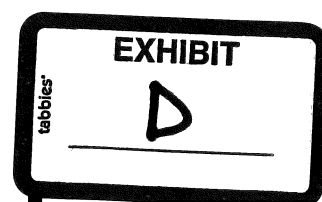
v.)

Adele J. Pope)

Defendant.)

Civil Action No. 2010-CP-40-04900

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



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

Electronically signed on 2020-07-27 21:19:55 page 4 of 4

**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

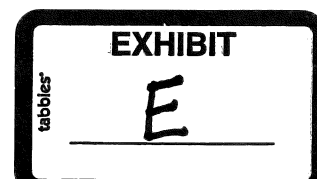
Alan Wilson, in his capacity as Attorney General of the
State of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child, James B.
II; Daryl J. Brown, individually and on behalf of his
minor child Janise B.; Lindsey Delores Brown; Deanna J.
Brown Thomas; Jason Brown-Lewis; Yamma 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, SCRCP. 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.

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.

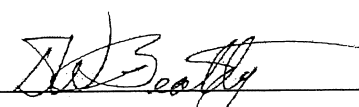
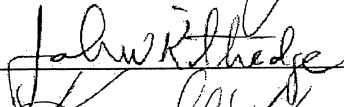
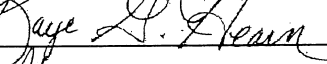
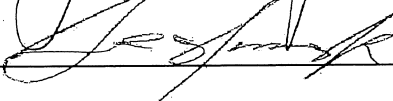
Adele J. Pope and Robert L. Buchanan, Jr., Defendants,

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

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)
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.)

ORDER CONCERNING PENDING
MOTIONS TO RECONSIDER



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), SCRCF. 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), SCRCF ("[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

Electronically signed on 2021-08-22 13:01:59 page 5 of 5

The Supreme Court of South Carolina

Ex parte: Adele J. Pope, Appellant,

In re: Estate of James Brown, a/k/a James Joseph
Brown, Respondent.

Appellate Case No. 2013-001649

and

Adele J. Pope, Appellant,

v.

Estate of James Brown, Deceased; The James Brown
2000 Irrevocable Trust; Russell L. Bauknight,
Individually, as former Executor de son tort, and in every
current and former fiduciary status claimed or held as to
the Estate of James Brown and The James Brown 2000
Irrevocable Trust, Respondents,

and

Robert L. Buchanan, Jr., Interested Party.

Appellate Case No. 2014-000250

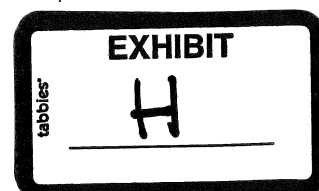
and

Alan Wilson, in his Capacity as Attorney General of South Carolina;
and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is Petitioner,



And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

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

Appellate Case No: 2014-001279

and

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, James B., through his Guardian ad Litem, Respondents,

v.

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, Defendants, 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.

Appellate Case No. 2009-142286

ORDER

By order dated February 19, 2015, this Court stayed all proceedings in the Aiken County Circuit Court involving the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown. We hereby lift that stay.

This Court greatly appreciates the attention the Honorable Doyet A. Early, III, has paid to the management of these complicated and contentious matters and expects the actions in the circuit court to continue as expeditiously as possible as set forth in the status report and in accordance with this Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Judge Early shall order payment of any personal representative and trustee distributions that have been finally determined.

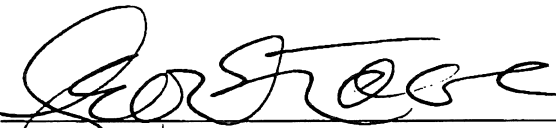
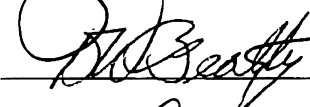
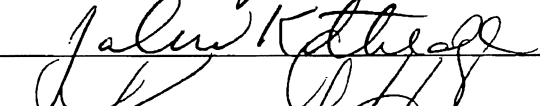
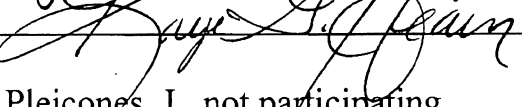
Adele J. Pope has filed a motion seeking confirmation that the stay does not affect Richland County cases in which she is involved. Because we lift the stay, we deny Pope's motion as moot.

In addition, Pope has filed a motion to reopen another case involved in the Estate and Trust. In that case, the Court of Appeals dismissed Pope's appeal because she was not an aggrieved party. This Court denied Pope's petition for a writ of certiorari, and the remittitur was sent on October 28, 2014. We deny Pope's motion to reopen the case because this Court no longer has jurisdiction over the matter. *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893) (the appellate court has no

jurisdiction in a matter when the remittitur was properly sent).

By opinions filed simultaneously with this order, we affirmed Pope's appeals in Appellate Case Nos. 2013-001649 and 2014-000250. David C. Sojourner, Jr. has filed a motion to intervene in those appeals. Based on the affirmance of the circuit court's orders, we deny the motion to intervene as moot.

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.

 C.J.
 J.
 J.
 J.
Pleicones, J., not participating

Columbia, South Carolina

June 10, 2015

cc:

Adele J. Pope, Esquire
 Eugene C. Covington, Jr., Esquire
 Robert N. Rosen, Esquire
 Albert P. Shahid, Jr., Esquire
 William W. Wilkins, Esquire
 J. David Black, Esquire
 Fred Lewis Kingsmore, Jr., Esquire
 Burl F. Williams, Esquire
 John Andrew Donsbach, Sr., Esquire

Corey Ty Landon Smith, Esquire
David G. Cannon
James B. Richardson, Jr., Esquire
David Lawrence Michel, Esquire
Tressa T.H. Hayes, Esquire
Louis Levenson, Esquire
Robert D. Cook, Esquire
S. Alan Medlin, Esquire
Alan McCrory Wilson, Esquire
T. Heyward Carter, Jr., Esquire

The Supreme Court of South Carolina

In the Matter of Adele Jeffords Pope, Respondent.

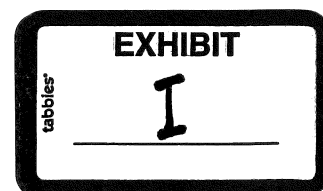
Appellate Case No. 2020-000764

ORDER

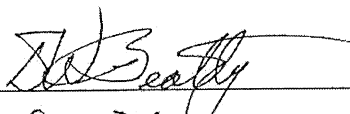
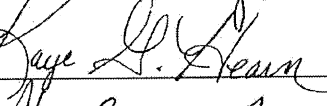
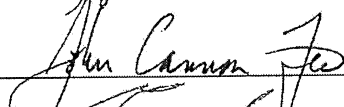
The Honorable Clifton Newman presided over a hearing on a petition by Deanna Brown-Thomas seeking to be appointed personal representative of the estate of her sister, Venisha Brown, both daughters of James Brown. Respondent answered the petition as a creditor, and subsequently filed several motions, including a motion to have herself named as the personal representative of Venisha Brown's estate. Counsel for Deanna Brown-Thomas moved to hold Respondent in contempt of this Court's order dated June 10, 2015. In that order, this Court prohibited Respondent from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, in which she clearly has no standing, and cautioned Respondent that continued attempts to involve herself in the resolution of the Estate and Trust of James Brown may result in contempt charges. Judge Newman did not rule on the motion for contempt, but asked this Court to determine whether Respondent's action seeking to have herself named as personal representative of Venisha Brown's estate violates this Court's order dated June 10, 2015.

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. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994) (stating charges of constructive contempt are brought by a rule to show cause which must be based upon an affidavit or verified petition). This affidavit asserts that Respondent'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 Respondent's future compliance with this order and our order dated June 10, 2015. We direct Respondent to cease all attempts to become involved in the estate of Venisha Brown. In addition to having no standing in



appeals or actions involving the Estate and Trust of James Brown, we find Petitioner has no standing in any proceeding related to the estate of Venisha Brown. We further find that because Venisha Brown's estate is engaged in litigation against Respondent, Respondent's attempt to become the personal representative of the estate may involve a conflict of interest. *See* Rule 1.7(a)(1), (2), RPC, Rule 407, SCACR (providing "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."). If Respondent 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.

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

Columbia, South Carolina
August 10, 2020

cc: Joyce Farr Cheeks, Esquire
Eddye L. Lane, Esquire
Mark V. Gende, Esquire
Adele Jeffords Pope, Esquire
The Honorable Clifton Newman

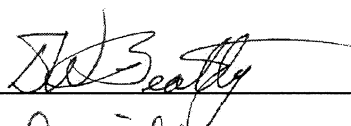
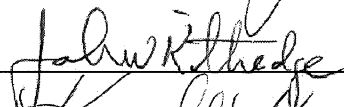
The Supreme Court of South Carolina

In the Matter of Adele Jeffords Pope, Respondent.

Appellate Case No. 2020-000764

ORDER

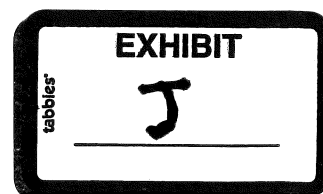
Respondent has filed a motion for an order quashing service of the disallowance of her creditor's claim against the estate of Venisha Brown, and holding the disallowance in abeyance pending resolution of a breach of fiduciary duty action against her. In effect, Respondent is seeking an exception to our order forbidding her from involvement in the estate of Venisha Brown. *See In the Matter of Adele Jeffords Pope*, S.C. Sup. Ct. Order dated August 10, 2020. The motion is denied.

	_____	C.J.
	_____	J.
	_____	J.
	_____	J.
	_____	J.

Columbia, South Carolina
November 9, 2020

cc:

Joyce Farr Cheeks, Esquire
Eddye L. Lane, Esquire
The Honorable Clifton Newman



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
	)	
	)	
Russell L. Bauknight, as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust, et al.,	)	Case No. 2010-CP-40-04900
	)	
	)	
	)	
Plaintiffs,	)	PLAINTIFFS' PETITION FOR RULE TO
	)	SHOW CAUSE AND MOTION FOR
v.	)	SANCTIONS
	)	
Adele J. Pope,	)	(verified)
	)	
	)	
Defendant.	)	

TO: ADAM SILVERNAIL, ESQ. AND DARYL WILLIAMS, ESQ., ATTORNEYS FOR THE DEFENDANT, AND TO THE DEFENDANT ABOVE-NAMED:

On August 2, 2023, Defendant Adele J. Pope, Esq. and her attorneys, Adam T. Silvernail, Esq. and Daryl L. Williams, Esq. filed a "Return and Opposition to Motion of Sweeny, Wingate & Barrow, P.A. . . ." ("the Return"). The Return is frivolous, slanderous, abusive, lacking rational bases, and contemptuous.

The Return is a clear violation of this Court's May 8, 2023 Order, sanctioning Pope for prior frivolous and abusive filings and warning her attorneys about the same actions:

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.

(Order Denying Def.'s Mot. to Lift Stay and Granting Pls.' Mot. for Sanctions, filed May 8, 2023, at 9 (emphasis added).)

Moreover, the Return violates the South Carolina Supreme Court's March 28, 2023 Order, wherein the Supreme Court found certain of Pope's prior filings to be frivolous and the Justices expressly warned Pope to desist. 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.**

(Order, filed March 28, 2023 (S.C. S. Ct., App. Case No. 2022-001713) (emphasis added).)

Based on the South Carolina Supreme Court's March 2023 rebuke of Pope and this Court's May 2023 sanctions order, in which Mr. Silvernail and Mr. Williams were admonished about prior filings and warned about any future frivolous, abusive filings, Plaintiffs respectfully petition this Court to issue: (1) a Rule to Show Cause as to why Adele J. Pope, Esq., Adam T. Silvernail, Esq., and Daryl L Williams, Esq. should not be held in contempt for their respective roles in filing the Return, (2) an order sanctioning the same individuals for the costs incurred by the Estate in responding to the Return and filing the instant Petition for Rule to Show Cause and Motion for Sanctions, (3) and an order for any further relief and/or sanction(s) the Court deems proper.

This Petition and Motion may be further supplemented by a Memorandum of Law.

Signature and Verification on Following Page.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Mark V. Gende

Kenneth B. Wingate

Mark V. Gende

Aaron J. Hayes

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina

August 3, 2023

VERIFICATION

I hereby testify that I am over the age of eighteen, of sound mind, and competent to testify as to the matters contained herein, of which I have personal knowledge since I am counsel of record for the Plaintiffs in the above-captioned action. I hereby certify that the foregoing Petition for Rule to Show Cause and Motion for Sanctions is true and correct, to the best of knowledge, information, and belief.



Mark V. Gende

SWORN TO AND SUBSCRIBED BEFORE ME

This 3 Day of August, 2023



Notary Public, State of South Carolina

My commission expires: 10.29.2028

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

Jan 26 2023

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

Supreme Court Appellate Case No. 2022-001713

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

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, 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

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

v.

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

Of whom Adele J. Pope is the Petitioner.

**RESPONDENTS' RETURN TO DECEMBER 28, 2022 PETITION FOR ORDER
LIFTING STAY**

INTRODUCTION

Petitioner's¹ December 28, 2022 (amended December 30, 2022) "Petition for Order Lifting Stay to Conclude Final Consideration of 2010 and Subsequent Motions Remanded by Court of Appeals in this Case"² is wholly improper. Respondents assert that the Petition to Lift Stay should be denied for three reasons. First, Petitioner is in violation of Rules 241(c)(2) and (d)(1), SCACR, as there no danger of this Court losing jurisdiction nor are there any extraordinary circumstances precluding the lower court from considering the underlying motion to lift stay. Second, if needed the lower court already has jurisdiction to address the issues complained of in the Petition to Lift Stay, and indeed the lower court essentially has completed the process of addressing the remand issues and the only obstacle standing in the way of the resolution of the remand issues is Pope's own Rule 59(e), SCRCR motion. Third, the Petition clearly is filed for an improper ulterior purpose.

RELEVANT PROCEDURAL HISTORY

The underlying action, *Bauknight, et al. v. Pope*, Case No. 2010-CP-40-04900 ("Case 4900") is the Estate of James Brown's (and several James Brown's children's and grandchildren's)

¹ Alternatively referred to herein as "Pope" and/or "Appellant."

² Alternatively referred to herein as "the Petition" or "Petition to Lift Stay." Also at issue before this Court is Petitioner's Petition for Writ of Certiorari, which will be identified specifically when referred to herein.

suit against Pope for the substantial damages she caused due to multiple breaches of fiduciary duty while administering the Estate as co-Personal Representative. (The other co-Personal Representative reached a settlement with the Estate and has been out of the case for over 10 years.) Case 4900 was filed in 2010 and has yet to be tried due to, among other things, Pope's numerous pretrial appeals. Following is a brief procedural history relevant to Pope's Petition:

On May 19, 2010, Case 4900 was filed against Defendant Pope alleging, *inter alia*, breach of fiduciary duty by Pope against the Estate and other Plaintiffs/Respondents.

On September 12, 2017, Pope appealed five Case 4900 pretrial orders in what became Court of Appeals Appellate Case No. 2017-001899 (Supreme Court Appellate Case No. 2020-001383) (referred to herein as "Appeal 1899"). Two of the orders Pope appealed in Appeal 1899 are relevant to the instant Petition:

- Judge L. Casey Manning's October 13, 2015 Order Granting Plaintiffs' Motion to Set Aside Default as to Defendant's Counterclaims
- Judge L. Casey Manning's July 5, 2012 Order Denying Defendant's Motion to Disqualify Sweeny, Wingate & Barrow, P.A. from Representing the AG, To Enjoin Russell Bauknight from Acting as Agent for the Attorney General, and for related relief.

On December 17, 2018 Pope appealed twenty-five (25) more Case 4900 pretrial orders in what became Court of Appeals Appellate Case No. 2018-002229 (referred to herein as "Appeal 2229" or "the instant appeal") (petition for writ of certiorari currently pending in this Court and bearing the above-stated caption and case number). Pope's 2017 and 2018 appeals triggered the Rule 247, SCACR automatic stay, curtailing activity in Case 4900.

Pope and her counsel, Adam Silvernail, Esq. then made four successive (and failed) attempts to lift the Rule 247 stays that arose due to Pope's own appeals:

- Pope’s **first** attempt to lift stay: October 24, 2017. Pope unsuccessfully moves to lift the appellate stay created by Appeal 1899. (See attached order denying Pope’s motion at **Exhibit A**.)
- Pope’s **second** attempt to lift stay: October 30, 2018. Pope unsuccessfully moves, via “supplemental motion,” to lift the appellate stay created by Appeal 1899. (See attached order denying Pope’s motion at **Exhibit B**.)
- Pope’s **third** attempt to lift stay: January 22, 2019. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (See attached order denying Pope’s motion at Exhibit B.)
- Pope’s **fourth** attempt to lift stay: April 27, 2020. Pope unsuccessfully moves to lift the appellate stay created by Appeal Nos. 1899 and 2229. (See attached order denying Pope’s motion at **Exhibit C**.)

On July 28, 2020, via written order, the circuit court not only denied Appellant’s fourth attempt to lift stay, but the court also cautioned Appellant against serial filings of the same motion. (See Ex. C.)

On September 16, 2020 the Court of Appeals issued an order in Appeal 1899, affirming in part and dismissing in part. The dismissals were issued because the Court of Appeals found that Appellant had filed two not-yet-ruled-upon Motions to Reconsider concerning Judge Manning’s above-referenced orders on the Motion to Set Aside Default and Motion to Disqualify. See *Bauknight, et al. v. Pope*, Op. No. 2020-UP-216, Case No. 2017-001899 (Ct. App., Sept. 16, 2020) (attached hereto as **Exhibit D**).

On April 21, 2021, this Court denied Pope’s Petition for Certiorari concerning Appeal 1899. This Court remanded the “motions currently pending [that is, Pope’s 59(e) motions on the Motion to Set Aside Default and Motion to Disqualify]” to The Honorable Clifton Newman, so that the litigation may be “promptly concluded.” See *Bauknight, et al. v. Pope*, Order, Case No. 2020-001383 (S. Ct., April 21, 2021) (attached hereto as **Exhibit E**).

On August 22, 2021, the circuit court ordered that the two Motions to Reconsider be heard by Judge Manning as soon as practicable, because he heard and ruled upon the original motions. (Order, Case No. 2010-CP-40-04900, e-filed on August 23, 2021 (attached hereto as **Exhibit F**).) Unfortunately, on September 2, 2021, Pope moved to reconsider Judge Newman’s referral to Judge Manning. (*See* Def.’s Mot. to Alt., Amend, Vacate, and/or Reconsider Order Concerning Mots. To Reconsider, Case No. 2010-CP-40-04900, filed Sept. 2, 2021.) The circuit court has yet to rule on the September 2, 2021 motion. Pope’s **fifth** attempt to lift stay occurred November 3, 2022. Pope filed a trial court petition to lift the appellate stay created by Appeal 2229 (now the above-captioned Appeal 1713), which is her fifth attempt to lift a Rule 247 appellate stay in Case 4900. The November 3, 2022 Petition filed in the circuit court, which Judge Clifton Newman has not yet ruled upon, is the subject of the instant Petition before this Court.

ARGUMENT

I. THE INSTANT PETITION IS FILED IN VIOLATION OF RULES 241(c)(2) and (d)(1), SCACR.

Rule 241(c)(2)

Rule 241(c)(2), SCACR contemplates lifting of appellate stays in the trial court when a lifting of the stay is “necessary to preserve jurisdiction of the appeal or to prevent a contested issue from becoming moot.” Neither situation is applicable here. Petitioner makes no serious contention that this Court will lose jurisdiction over the issues on appeal. (*See* Pet., at pp. 20-21.) Regarding whether any contested issue will “become moot,” Respondents assert that the two main issues raised in the Petition (i.e. the Motion to Disqualify and the Motion to Set Aside Default) are moot *already* and therefore this Petition is superfluous.³ For the reasons stated in Respondents’ Return

³ Notably, and contrary to Petitioner’s allegations, these issues are moot not because of the clandestine actions of Respondents, but because Petitioner has argued them and lost.

to Petition for Writ of Certiorari, filed contemporaneously herewith, Respondents assert that Petitioner’s allegation concerning the Attorney General’s conduct at the outset of the case is the epitome of a dead issue. (*See* Ret. To Pet. for Writ of Cert., Case No. 2022-001713 filed January 26, 2023, at pp. 1-2, 21-22.) The issue regarding the propriety of the setting aside of Respondents’ default as to Petitioner’s counterclaims is also defunct, as the current Petition for Writ of Certiorari involves the Court of Appeals’ *affirming the summary dismissal of these very counterclaims*. (*See, e.g.,* Pet. for Writ of Cert., Case No. 2022-001713 filed Dec. 7, 2022, at p. 2.) As a matter of law and logic, there is no reason to consider a prior default on claims that have been dismissed for lack of merit.

Rule 241(d)(1)

Rule 241(d)(1), SCACR requires that an application to lift an appellate stay “must first be made to the lower court or administrative tribunal which entered the order or decision on appeal.” Only in “extraordinary circumstances” can the application be made directly to the appellate court. *Id.* In light of the foregoing rules, it is clear that the Petition is filed improperly before this Court. Petitioner has made this Petition before the circuit court, and the issue belongs with the circuit court. Petitioner claims that an “unnecessary delay” by the circuit court constitutes an “extraordinary circumstance” pursuant to Rule 241(d)(1). (*See* Pet., at p. 20.) While Petitioner correctly recites the text of the rule, her application of the facts to the rule is incorrect. A busy circuit court’s inability to reach Petitioner’s trial court petition—not even three months old—is not evidence of “unnecessary delay.” Petitioner is simply being impatient, which does not constitute an “extraordinary circumstance.”

II. IN THE ALTERNATIVE, THE CIRCUIT COURT ALREADY HAS JURISDICTION OVER THE APPEAL 1899 (APPEAL 1383) REMAND, THEREFORE POPE’S PETITION TO LIFT STAY IS COMPLETELY UNNECESSARY.

Assuming, *arguendo*, that there are any live issues left regarding the Motion to Disqualify and/or the Motion to Set Aside Default, Pope is in error when she claims that an order lifting stay is required to effectuate the Court of Appeals' and Supreme Court's rulings in Appeal 1899/Appeal 1383. Pope is wrong. The circuit court has the jurisdiction to resolve the remand, and indeed the circuit court has already begun doing so but has been stymied by Pope's actions.

The Court of Appeals' position with respect to the two pending Motions to Reconsider was stated in its September 16, 2020 Order:

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 yet been ruled upon by the trial court...

...

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...

(Ex. D.)

This Court's position with respect to the two pending Motions to Reconsider was stated in its April 21, 2021 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.

(Ex. E.)

The circuit court's position with respect to the two pending Motions to Reconsider was clearly stated in its August 22, 2021 Order:

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 [the Motion to Reconsider the Order Setting Aside Default and the Motion to Reconsider the Order refusing to Disqualify/Enjoin] be heard by Judge Manning as soon as reasonably practicable... [t]he 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...

(Ex. F.)

It is beyond dispute that the circuit court, the Court of Appeals, and this Court have all begun the process of resolving the pending Motions to Reconsider in a straightforward fashion. All that was required of Pope to receive rulings on the Motions to Reconsider was to contact Judge Manning's office jointly with the undersigned and request disposition of them. Instead of simply following this Court's August 22, 2021 Order, Pope moved to reconsider it in a document entitled "Defendant's Motion to Alter, Amend, Vacate and/or Reconsider Order Concerning Pending Motions to Reconsider, Dated August 23, 2021." (Sept. 2, 2021 Motion, *supra*.) In essence, Petitioner now has filed a motion to reconsider an order directing the disposition of *other* motions to reconsider. Petitioner's filings have reached the level of parody, and Petitioner's argument that Plaintiffs/Respondents are somehow the problem is factually erroneous and abject hypocrisy.

The Petition to Lift Stay is not necessary to complete the 1899 remand. All that is required is for the circuit court to deny Pope's Motion to Reconsider the August 22, 2021 Order. After that is done, Judge Manning (retired but active) will be able issue "Form 4" or other orders resolving the two outstanding Motions to Reconsider. Further hearings are not necessary. *See* Rule 59(f), SCRCF ("[Rule 59(e) motions to reconsider] may in the discretion of the court be determined on briefs filed by the parties without oral argument.").

III. POPE CLEARLY HAS AN IMPROPER ULTERIOR PURPOSE FOR THIS PETITION.

Though Pope does not provide a list of what else she would seek to accomplish should the stay be lifted, she clearly implies that she has much more in mind than simply finishing the 1899 remand. (*See* Pet., at Ex. A p. 1 (requesting “immediate consideration of motions pending in this case since 2010, *including* those remanded by the Court of Appeals [in the 1899 remand]”) (emphasis added); *see also id.*, at p. 17 (“[a]ll motions pending since 2010 should be heard by the circuit court judge to whom Richland 4900 is currently assigned”).)

The prosecution of *any* matters in the trial court other than (potentially) the 1899 remand would be improper. Other than the Appeal 1899 remand matters, the entirety of Case 4900 is subject to stay due to the breadth of Appeal 2229 (the instant appeal), which is pending and involves twenty-five pretrial orders to include appeals from key motions. *See* Rule 241(a), SCACR (“[a]s a general rule, the service of a notice of appeal in a civil case acts to automatically stay matters decided in the order, judgment, decree or decision on appeal...”); *see also id.* (noting that a trial court only retains jurisdiction over matters “not stayed by the appeal”). Clearly, Appellant is seeking a “blank check” to invade the appellate stay to accomplish unknown ends, which Rule 241(a), SCACR, does not allow.⁴

⁴ Though Appellant never provides a list of what she claims needs to be accomplished if the stay were to be lifted, she makes a reference to a 2012 Motion to “reinstate Buchanan as a party.” (*See* Pet., at Ex. A p. 16.) Robert Buchanan, a co-Personal Representative of the Estate of James Brown alongside Appellant during her tenure, was originally her co-defendant in Case 4900. Mr. Buchanan settled—with prejudice—all claims between him and Plaintiffs/Respondents over a *decade* ago. Since that time, Mr. Buchanan has not appeared in the trial court or sought to appeal any matter.

CONCLUSION

Pope's Petition for Order Lifting of Stay is procedurally improper, completely unnecessary, and interposed for an improper ulterior purpose. Respondents request that the Court deny the Petition.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/ Aaron J. Hayes
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January 26, 2023

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Supreme Court Appellate Case No. 2022-001713

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.; 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

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.; 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, 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

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

v.

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

Of whom Adele J. Pope is the Appellant.

**RESPONSE TO RETURNS AND MOTIONS FOR SANCTIONS OF SWEENEY,
WINGATE AND BARROW, PA (“SWB”) FILED APRIL 6 AND APRIL 10, 2023, AND
IN FURTHER SUPPORT OF RECONSIDERATION OF ORDERS GRANTING RELIEF
OF RICHLAND 4900 PLAINTIFFS FROM DEFAULT AND DECLINING TO
DISQUALIFY SWB AS COUNSEL FOR ATTORNEY GENERAL**

Appellant responds to the returns and motions of Sweeny Wingate and Barrow, P.A. for sanctions against Defendant/Appellant Adele Pope and her counsel filed by all Respondents on April 6 and April 10, 2023, as follows:

1. All relief sought in the April 6 and 10 returns and motions should be denied; the granting of the 2010 motion of Richland 4900 plaintiffs for relief from default should be reconsidered and denied; the 2011 motion of Defendants Robert Buchanan and Pope to disqualify SWB as counsel for the State/Attorney General (“AG”) in Richland 4900 and for related relief should be reconsidered and granted; and all requests for sanctions should be denied.

2. All statements made to this Court, the Court of Appeals, the Supreme Court and all other S.C. and federal courts, including but not limited to those made in all James Brown cases and in Federal District Court Case No. 3-08-cv-00014-WOB, by Buchanan and Pope and their counsel were true to the best of their knowledge and/or the knowledge of counsel as stated, and were made in good faith, in accordance with applicable rules, and for a proper purpose.

3. At all times prior to the appeal of this case on September 12, 2017, and since, including in the requests which are the subject of the April 14, 2023, hearing, Defendant's counsel reasonably relied on applicable law and known facts, and their motions, statements, filings, and pleadings in this case since 2010 have been based on the following and other positions which were taken in good faith and with sound legal basis:

a. Richland 4900 was unconstitutional and/or unauthorized and/or otherwise improper because SWB purported to speak for the AG while acting primarily for Respondents Hynie Brown; 11 clients of Levenson, Esq.; and the James Brown Legacy Trust ("Legacy Trust"), its trustee, and its 14 owner-beneficiaries.

b. SWB lacked legal authority to act for the AG while representing the Legacy Trust and its 14 owner-beneficiaries who were seeking to dismember the "I Feel Good" charity of entertainer James Brown.

c. Respondent Hynie Brown was not the spouse of entertainer James Brown and the AG and Plaintiffs helped her conceal undisputed evidence of this fact.

d. James Brown died with an approximately \$100 million fortune and an approximately \$15 million debt to TIAA, and left the bulk of that fortune to his "I Feel Good" charity for needy students.

e. The "I Feel Good" charity, under Brown's Will, had a value of about \$80 million at Brown's death, not the approximately \$4 million claimed by the AG and Respondents.

f. The claimed \$4.7 million value was proposed in 2009 by Hynie Brown to discredit Buchanan and Pope, but adopted by SWB, the AG and all Respondents and used to falsely accuse Buchanan and Pope of the federal felony of overstating the value of James Brown's assets by \$79 million to the IRS to get a \$5 million commission.

g. SWB and Hynie Brown, aided by the AG, concealed public documents which should have ended this case a decade ago.

h. Buchanan and Pope moved to disqualify SWB when it began making the \$4.7 million valuation claim on behalf of the State/AG and on behalf of a Plaintiff with a right of first refusal to buy the music empire under the AG's 2008 settlement.

i. The AG and all Richland 4900 Plaintiffs joined Plaintiff Tommie Rae Brown in known incorrect statements in Richland 4900 and to the Supreme Court including that Hynie Brown controlled 50% of termination rights worth tens of millions of dollars.

4. Defendant/Appellant's counsel advised the Honorable Clifton Newman in 2021, and asserts, that the reconsideration of the two motions remanded in 2019 can be completed without lifting the stay, based on the voluminous record in this case since 2010 and undisputed law and facts found within the public record.

5. The denial of the sanctions requests and the reconsideration of the disqualification denial and grant of relief from default are supported by the full record of this case; applicable law; the undisputed public record; admissions of the AG and Plaintiffs/Respondents; and affidavits of Charles Carpenter; Wm. Jeffrey Smith; Robert Buchanan; Adele Pope; Walter Bundy; Thomas Pope; Samantha Luck; Deborah Spence; Joseph McDonald; and Adam Silvernail,

6. The motion to lift stay was based on new matter directly relevant to this case as set out in the motion, supporting filings, and in the affidavits of counsel.

7. Appellant desires to lift the stay only if, in the opinion of the Court, it would expedite the resolution of this case which was filed against Buchanan and Pope almost 13 years ago by the AG, Legacy Trust, its trustee and 14 owner-beneficiaries.

Conclusion

For the foregoing reasons, the court should reconsider and deny the motion granting the Richland 4900 plaintiffs relief from default; reconsider and grant the motion to disqualify SWB and the related relief sought in that motion; and deny the requests for sanctions.

Respectfully submitted,

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April 13, 2023

Counsel for Appellant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Russell L. Bauknight, as Personal Representative of the Estate of James Brown and as Trustee of the James Brown 2000 Irrevocable Trust, et al.,

Plaintiffs,

V.

Adele J. Pope,

Defendant.

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2010-CP-40-04900

**PLAINTIFFS’ MEMORANDUM OF LAW IN
OPPOSITION TO DEFENDANT’S
“MOTION TO ALTER OR AMEND AND
VACATE MOTION GRANTING
SANCTIONS INCLUDING STRIKING OF
ANSWER”**

**TO: ADAM T. SILVERNAIL, ESQ., AND DARYL WILLIAMS, ESQ., ATTORNEYS
FOR THE DEFENDANT, AND TO THE DEFENDANT ABOVE-NAMED:**

INTRODUCTION

The Court’s Order of May 8, 2023—striking Pope’s Answer due to her frivolous behavior and imposing monetary sanctions—is a correct application of law to fact.¹ Nevertheless, Pope continues to make frivolous filings.² Her May 17, 2023 “Motion to Alter or Amend and Vacate Motion [*sic*] Granting Sanctions Including Striking of Answer” (“the Motion”) is more of the same. The Motion should be denied. Pope’s Motion is full of so many

¹ Hereinafter, the May 8, 2023 Order that is the subject of this Motion is referred to as the “May 8 Order.”

² See *Bauknight, et al. v. Pope*, Order, Case No. 2022-001713 (S.C. S. Ct. March 28, 2023) (“[t]his case has been ongoing since 2010, and [Pope’s] frivolous filings and attempts to repeatedly delay the matter have frustrated the prompt resolution of this case”). Hereinafter, this Order is referred to as the “March 28 Order.”

frivolous, incendiary, and absurd untruths that it is impossible for Plaintiffs to issue a point-by-point rebuttal.³ However, Plaintiffs will address certain issues.⁴

STANDARD OF REVIEW

While a party may file a motion to reconsider pursuant to Rule 59(e), SCRCP, “[a] party cannot use a Rule 59(e) motion to present to [the lower court] an issue the party could have raised prior to the judgment but did not.” *Gartside v. Gartside*, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009). The court need not grant a hearing on a Rule 59(e) motion, but rather may rule upon the motion after reviewing the briefs of the parties. *See* Rule 59(f), SCRCP.

ARGUMENT

I. POPE COMPLETELY IGNORES THE MARCH 28, 2023 ORDER OF THE SUPREME COURT DEEMING HER A FRIVOLOUS FILER. POPE ALSO IGNORES THIS COURT’S PRIOR WARNINGS ABOUT PETITIONS TO LIFT STAY.

The overall posture of Pope’s Motion completely ignores the fact that the May 8 Order was not entered in a vacuum. In the James Brown Estate litigation alone, Pope has history of frivolous filings that have clogged the dockets of courts at every level in this state. The Supreme Court held as much when on March 28, 2023, it ordered this Court to rule on the circuit court version of Pope’s Petition to Lift Stay. The March 28 Order stated:

[W]e prohibit [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.

³ As it has been said, “it takes a minute to tell a lie, and an hour to refute it.”

⁴ To the extent the Court requests clarification on an issue not addressed herein, Plaintiffs will supplement this Memorandum.

March 28 Order, at 1-2 (emphasis added). The Supreme Court’s usage of the word “further” to modify “frivolous” speaks volumes. The Supreme Court also used the word “filings” in the plural. There is no ambiguity about what the Supreme Court thinks about Pope’s conduct in this litigation. When Pope proclaims that “[p]rior to the March 28 Order . . . no filing in this case or any appeal from this case had been labeled as frivolous by any Court, and every filing cited in [the May 8] Order predates the March 28 Order of the Supreme Court,” *see* Motion at p. 15, she misses the point. The Supreme Court has reviewed Pope’s conduct in this litigation and found it to be frivolous.

Pope also ignores the fact that the circuit court version of the motion that started the current dispute—Pope’s November 1, 2022 “Petition for Expedited Lifting of Stay,” etc. (hereinafter the “November 1 Petition”)—was filed in violation of this Court’s now-three-year-old warning against this type of motion. “The successive motions [to lift appellate stay] of the Defendant are improper, and there is no right to repeated petitions to the Court to change its rulings on matters previously decided...” (Order, Case No. 2010-CP-40-04900 (filed July 28, 2020). When Pope filed her petition on November 1, 2022, the Court’s warning had been in place for two-and-a-half years. Without question, Pope was on notice that serial petitions to lift stay in this case were improper, but she chose to file a new one anyway and must accept the consequences of ignoring this Court’s instructions.

Without question, this Court was correct to apply the findings of the Supreme Court’s March 28 Order⁵ and this Court’s warning concerning petitions to lift stay when the Court

⁵ The May 8 Order also cites to other orders of the Supreme Court that castigate Pope for her conduct in other James Brown Estate-related litigation; those orders are not reiterated here, but certainly are on point.

fashioned the relief granted to Plaintiffs in the May 8 Order. Pope's Motion incorrectly ignores these rulings.

II. POPE IMPROPERLY RAISES NEW ARGUMENTS.

A Rule 59(e) Motion is not the proper forum in which to raise new arguments which could have and should have been raised beforehand. *See Gartside, supra*. By Plaintiffs' count, none of the arguments raised in "Legal Argument" section of the Motion, pp. 10-27, were articulated by Pope in her written or verbal opposition to the Motion for Sanctions. Therefore, her arguments must be disregarded as untimely.

III. FOR THE RECORD, PLAINTIFFS NOTE THAT ALL OF POPE'S ARGUMENTS ARE WRONG.

a. Pope should have withdrawn her petition to lift stay but did not. Therefore, it was still pending at the time of the April 14 hearing.

Shockingly, Pope blames the Court and Plaintiffs for her decision not to withdraw the November 1 Petition in the wake of the March 28 Order: "[n]either the 16 Plaintiffs nor the Court asked Defendant's counsel to withdraw the already-resolved motion..." (Mot., at p. 11.) Pope has no one to blame but herself. She chose to leave the November 1 Petition pending even after the mirror-image Supreme Court version of the Petition had been excoriated by the March 28 Order. Her current claim that the November 1 Petition was "moot" and "already resolved" in advance of the April 14 hearing flies in the face of her arguments *at* the hearing *and* before, wherein she requested that the stay be lifted. (*See, e.g.,* Def.'s Resp. to Rets. and Mots..., filed April 13, 2023, at p. 4 ("[Pope] *desires* to lift the stay only if, in the opinion of the Court, it would expedite the resolution of this case...") (emphasis added).) Via the Supreme Court's Order of March 28, Pope was sent a very clear message that she chose to ignore. Her after-the-fact attempt to rewrite history cannot change her arguments of record.

b. This Court had jurisdiction to consider the Motion for Sanctions.

Pope claims that this Court was without jurisdiction to consider the Motion for Sanctions because the Rule 241 appellate stay—the very subject of Pope’s November 1 Petition, no less—was in place at the time of the April 14 hearing. (*See Mot.*, at pp. 11-12). Pope’s contention defies logic. Under her interpretation, a party could file an utterly egregious, abusive, and offensive petition to lift appellate stay in the trial court, and the trial court would be powerless to do anything about it because the case is (by definition) already on appeal. This cannot be the law. If a trial court has jurisdiction to hear a petition to lift appellate stay, *see* Rule 241(d)(1), SCACR, the trial court must have jurisdiction to rectify the harm done by an abusive petition.

Further, Pope again ignores the instructions of the March 28 Order. In that Order, the Supreme Court instructed this Court to hold a hearing to “address” Pope’s November 1 Petition. *See* March 28 Order. In the same Order, the Supreme Court had already deemed frivolous the version of the petition submitted to its attention, leaving little doubt as to the Supreme Court’s opinion of the November 1 Petition. But clearly the Supreme Court wanted this Court to address the November 1 Petition, and this Court did so, albeit not to Pope’s liking.

c. Striking of pleadings and monetary sanctions are allowable under Rule 11, SCRCP.

Pope contends—without citation to authority—that this Court is unable to strike a pleading and/or award monetary sanctions under Rule 11, SCRCP. (*See Mot.*, at pp. 13-15.) Pope ignores the plain text of Rule 11, which holds that an attorney’s signature on a pleading avers that “there is good ground to support it . . . and that it is not interposed for delay.” Rule 11(a), SCRCP. Logically, a pleading that is without “good ground” and/or is submitted for the purpose of delay is violative of Rule 11. Any pleading submitted in violation of Rule 11 subjects the attorney-signer, the party, *or both* to “an appropriate sanction . . . including a reasonable

attorney's fee." *See id.* Clearly, monetary sanctions such as attorneys' fees are contemplated on the face of the Rule. Case law supplies the support for a non-monetary sanction: "[t]he [Rule 11] sanction may include . . . a directive of a nonmonetary nature designed to deter the party or the party's attorney from bringing any future frivolous action or action in bad faith." *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d 160, 162 (1996). *Runyon* is clear that Rule 11 sanctions are within the discretion of the trial court, *see* 322 S.C. at 119, 417 S.E.2d at 162, and this Court is certainly well within its discretion to strike Pope's Answer after years of vexatious filings, all of which is well-analyzed in the May 8 Order.

d. The Court was correct to sanction Pope pursuant to the FCPSA, because it is the law of the case that Pope is a frivolous filer.

Pope contends that sanctions under the FCPSA are improper "because a preponderance of the evidence does not support the finding that Defendant's filings were frivolous or delayed this case."⁶ (Mot., at p. 15.) Pope blatantly ignores the March 28 Order of the Supreme Court holding that Pope's filings are both frivolous and the source of delay. These un-appealed findings are the law of the case, which Pope is estopped to contradict and to which all parties are now bound.

Also in this section of her Motion, Pope chooses to cast aspersions on this Court via her unfounded accusations of bias against the Court. (*See* Mot., at p. 18 ("[t]his . . . again displays the Court's bias against Defendant in favor of Tommie Rae and those aligned with her").) This

⁶ Pope also contends that sanctions under the FCPSA were improper because the Motion for Sanctions was filed in excess of 10 days after the decisions on all petitions to lift stay except the November 1, 2022 Petition. (*See* Motion, at pp. 15-16.) Pope's argument in this regard does not amount to much, as Plaintiffs were well within their rights to file based on the frivolous nature of the November 1, 2022 Petition, standing alone. Also, the case law is clear that Rule 11 motions are not subject to the 10-day rule in the FCPSA. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 818 S.E.2d 758 (2018) (affirming the possibility of an award of Rule 11 sanctions, even though a companion motion for sanctions under FCPSA was untimely, because Rule 11 does not have the same time limit).

is wholly improper. *See Mallett v. Mallett*, 323 S.C. 141, 145-46, 473 S.E.2d 804, 807 (Ct. App. 1996) (“[i]t is not enough for a party seeking disqualification to simply allege bias . . . [t]he party must show some evidence of bias or prejudice”) (citations omitted). Further, “[s]uch bias must stem from an extrajudicial source and result in decisions based on information other than what the judge learned from his participation in the case. *Id.* at 145, 473 S.E.2d at 807. Nothing in this case suggests bias or the use of information outside of the record. Pope is wrong to submit such a serious, unfounded accusation.

e. The award of attorneys’ fees is correct.

Pope’s arguments against the imposition of an award of \$32,137.50 in attorneys’ fees to the Estate of James Brown are completely unhinged and nearly impossible to follow. (*See Mot.*, at pp. 18-25.) However, what is clear is that this Court did what it was supposed to do by applying the appropriate six-pronged test from *Glasscock v. Glasscock* when reviewing Plaintiff’s counsel’s fee affidavit. (*See May 8 Order*, at p. 10 n. 1; *see also* Aff. of Mark Gende, filed April 28, 2023). The Court expressly held that “each *Glasscock* factor weighs in favor of Plaintiffs’ claim for fees as stated in counsel’s Affidavit.” (*May 8 Order*, at p. 10 n. 1.) This holding should end the analysis, as the amount of attorneys’ fees is left to the sound discretion of the trial court. *See Horton v. Jasper County School Dist.*, 423 S.C. 325, 330, 815 S.E.2d 442, 444 (2018) (citations omitted).

The gravamen of Pope’s argument in this section of her Motion appears to stem from her conspiracy theory-style contentions that there is some scheme afoot amongst the Plaintiffs to this case. Plaintiffs object in the strongest terms to Pope’s abusive and false recitations of the procedural history and basic facts of this case, contained throughout her Motion but particularly

evident in section e. As noted, a point-by-point rebuttal is not feasible, but Plaintiffs point out to the Court the following:

- The award of attorneys' fees to the Estate of James Brown—as the payor of the undersigned and the lead Plaintiff—is completely appropriate. Pope is being intentionally deceptive when she proclaims that the Estate “does not seek damages in the complaint,” *see* Motion at p. 19. Paragraph 1 of the Complaint identifies Plaintiff Russell Bauknight *as the personal representative of the Estate of James Brown*. (See Compl., at ¶ 1.)
- Pope's Motion's demand for an “allocation” of the attorneys' fee award to certain individual and/or nonexistent Plaintiffs based on her apportionment formula is a potentially contemptuous, back-door attempt by Pope to get judicial approval for the counterfactual alternate reality created by her. Pope contends that an allocation of the attorneys' fees award among the various Plaintiffs—as beneficiaries of the non-existent James Brown Legacy Trust—is somehow necessary. Pope is wrong. Without conceding that apportionment is even appropriate, nevertheless it is worth noting that Pope's Motion advances an apportionment formula that has no basis in current reality. Pope knows this to be so. The formula propounded by Pope appears to be based loosely on a division of assets envisioned in a 2009 settlement agreement among Estate beneficiaries, an agreement that Pope successfully fought to abolish in the appeal that became *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Thus, Pope knows that the apportionment formula she advances in the instant Motion was abrogated over 10 years ago. Reality notwithstanding, Pope continues to promote the fiction of the existence of the Legacy Trust, despite the holding in *Wilson v. Dallas* and an order in Case 4900 holding the

Legacy Trust was never funded, did not come into existence, and does not now exist. In her Motion, in which she suggests that funds from attorneys' fee award be allocated pursuant to the defunct distribution schedule of the Legacy Trust, Pope knowingly is advocating a falsehood and is seeking to overturn the non-existence of the Legacy Trust by inviting this Court to issue an order funding it.⁷

Finally, Pope's Motion could be construed to be a violation of the Supreme Court's June 10, 2015 Order directing Pope not to interfere in the affairs of the Estate.⁸ Her intrusion into what is purely an Estate matter (i.e. how the attorneys' fee award should be apportioned between the Estate and its beneficiaries) is a bold interference with the Estate and is in stark violation of the Supreme Court's mandate that she stay away from how the Estate is to be distributed.

- Pope's constant refrain that the undersigned law firm is "covering up the fraud" of Tommie Rae and others must cease. But for the presence of this litigation, these statements would be slanderous. All of Pope's counterclaims against all Plaintiffs—including Pope's counterclaim for fraud—have been dismissed on the merits by every court in South Carolina.
- Plaintiffs are not precluded from filing a Rule 11 Motion for fees based on Pope's past conduct at earlier stages in this case. *See Pee Dee Healthcare, supra* (noting that

⁷ By order of Judge Doyet A. Early, III, the Legacy Trust has been held not to exist due to *Wilson v. Dallas*. *See Pope v. Wilson*, Order, Case No. 2012-CP-40-00350 (S.C. Ct. Comm. Pl. filed June 20, 2016), *rev'd on other grounds*, 2019-UP-219 (S.C. Ct. App. filed June 19, 2019).

⁸ *See Ex Parte Adele J. Pope*, Order, Case No. 2013-001649 (S.C. S. Ct. June 10, 2015) ("Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown . . . 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.").

strategic timing of a Rule 11 motion until after the bulk of the litigation is concluded is permissible).

- Pope's objections to the fee affidavit are unfounded. Pope could have responded to the fee affidavit but chose not to. The fee affidavit was filed April 28, 2023, and the May 8 Order was not entered until 10 days later. No objections or counter affidavits were filed by Pope.
- Pope's claim that the fee claim is excessive is not based in reality. Plaintiffs' claim for fees is, if anything, too *low* not too high. Pope cannot claim with a straight face that Plaintiffs' claimed fees are excessive. Plaintiffs voluntarily limited their fee request to one attorney, although multiple attorneys have worked on it. (*See* Aff. of Mark Gende, at ¶ 11.) Plaintiffs submitted their detailed time sheets for every time entry claimed. (*See id.*, at Exhibits.) Finally, Pope ignores the fact that every petition to lift stay involved review of *hundreds* of pages of briefs and/or exhibits filed by Pope, and necessitated briefing and hearing attendance in response. When compared with Pope's filings, it is apparent that Plaintiffs' fee affidavit and time sheets detailing Plaintiffs' actions in response to said filings are more than reasonable.
- Pope has unclean hands when she decries certain time entries. For instance, in her Motion Pope argues against time entries related to a motion to strike one of Pope's petitions to lift stay from 2019. (*See* Mot., at p. 23.) While the motion to strike may not have been successful, it was directly related to opposing a petition to lift stay, and these serial petitions later were the subject of the March 28 Order in which Pope *was enjoined*

from filing further petitions of this sort. Plaintiffs are entitled to compensation for each time entry claimed in the exhibits to the fee affidavit.⁹

f. Pope is the sole source of delay in this case.

Pope claims that Plaintiffs—not Pope herself—are the reason that this case has gone on for so long. As noted above, the March 28 Order of the Supreme Court held otherwise. Further, Plaintiffs point out that Pope has filed no less than three pretrial appeals in this case, encompassing nearly every order that has been issued by the circuit court to date. Plaintiffs have filed no pretrial appeals. Pope, and Pope alone, is the reason for the numerous delays in this case.

g. As usual, Pope fails to articulate a Due Process violation.

Pope claims that the May 8 Order perpetrates a violation of her “Due Process and First Amendment rights, as well as being a result of continuing violations of 42 U.S.C.A. § 1983.” (Mot., at pp. 27-28.) However, Pope never plausibly states *how* her due process, First Amendment, or § 1983 rights are being violated. This argument in her Motion is a tired retread of Pope’s frivolous refrain that has been defeated at every turn, to include in the appellate record of this very case. *See Bauknight, et al v. Pope*, 2022-UP-346, at pp. 9-10 (S.C. Ct. App. filed August 24, 2022) (rejecting Pope’s Due Process violation arguments as abandoned *and* inaccurate). Pope’s argument in this regard is also a complete denial of the reality that the only State agency ever involved in this case—the Attorney General’s Office—has not been a party for

⁹ Pope objects to an “August 2, 2020” entry for 2.5 hours of time. (See Motion, at p. 23.) Plaintiffs believe the time entry referred to is from August 7, 2020. Plaintiffs concede that this time entry was inadvertently included in the fee claim. Plaintiffs consent to subtract \$750.00 from the \$32,137.50 fee award granted by the May 8 Order. Upon the payment of \$31,387.50 to Plaintiffs by Pope, Plaintiffs will stipulate that the May 8 Order’s fee award is satisfied.

Plaintiffs have re-reviewed every other time entry within the exhibits to the fee affidavit and affirm that said time entries are connected to the petitions to lift stay.

years and was removed from the case with the approval of the circuit court, the Court of Appeals, and the Supreme Court. *See Bauknight, et al. v. Pope*, 2020-UP-216 at 5 (S.C. Ct. App. re-filed Sept. 16, 2020), *cert. denied*, App. Case No. 2020-001383 (order filed April 21, 2021) (affirming—with approval—the circuit court’s 2017 order dropping the Attorney General as a party). Pope’s argument in this section represents the height of frivolity.

IV. THIS FILING BY POPE IS MORE OF THE SAME.

Pope claims that her motion “is supported by the entire record, including each motion to lift stay and associated filings, the 10 affidavits opposing sanctions, the matters stated herein, the sworn deposition testimony of Tommie Rae, Governor Henry McMaster, Plaintiffs Daryl Brown, Deanna Brown-Thomas, Yamma Brown, Daryl Brown, Larry Brown, and others, the admissions of Plaintiffs’ experts, and such memoranda as shall be presented at the hearing on this matter.” (Motion, at p. 5.) After all the findings of frivolity that have been issued against her, still Pope would have this Court review the untold thousands of pages of material that are represented in the foregoing itemization. This spiderweb of citations to self-created and self-serving “sources” is the precise conduct that got her Answer stricken in the first place, and still she persists. This Court should continue to reject these specious arguments made by Pope.

CONCLUSION

For the foregoing reasons, Pope’s May 17 Motion must be denied. The Court’s Order of May 8, 2023 is correct and appropriate with respect to the facts and the law.

Signature block on following page.

Respectfully submitted,

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