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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.

BRIEF OF RESPONDENTS

Kenneth B. Wingate, SC Bar No. 8004
Mark V. Gende, SC Bar No. 72835
Aaron J. Hayes, SC Bar No. 100114
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Counsel for Respondents

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II. SHOULD THIS COURT AFFIRM THE CIRCUIT COURT'S ORDER GRANTING SANCTIONS, WHEN IT IS CLEAR FROM POPE'S MOST RECENT FILINGS THAT SHE INTENDS TO CONTINUE TO BEHAVE IN A SANCTIONABLE MANNER?

STATEMENT OF THE CASE

Overview of Prior Rulings Concerning Pope's Conduct

Pope has been rebuked—and enjoined—by this 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, *Ex Parte Pope*, Appellate Case No. 2013-001649 (S.C. June 10, 2015) (App'x. pp. 113-117.) In deferring any ruling on a subsequent contempt petition against Pope for violating the June 10, 2015 Order, this Court again warned Pope that she could face serious consequences, including for previous litigation misconduct:

> 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, *In re Adele Jeffords Pope*, Appellate Case No. 2020-000764 (S.C. Aug. 10, 2020) (emphasis added) (App'x. pp. 118-119.) This Court issued its most recent Order concerning Pope's conduct on March 28, 2023:

> We 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 [Pope] 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 [Pope's] frivolous filings and attempts to repeatedly delay the matter have frustrated the prompt resolution of this case.

Order, *Bauknight, et al. v. Pope*, Appellate Case No. 2020-001713 (S.C. Mar. 28, 2023) ("March 28 Order") (App'x pp. 82-84.) In the civil action underlying the current appeal ("Case 4900"),

Pope has already received a warning from Judge Clifton Newman concerning her serial motions to lift an appellate stay:

> While the issue in *Elam* [*v. S.C. Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004)] 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.

Order, *Bauknight, et al. v. Pope*, Case No. 2010-CP-04900 (S.C. Ct. Comm. Pl. July 28, 2020). (R. pp. 91-92.)

Overview of Case 4900

Bauknight, et al. v. Pope, Case No. 2010-CP-40-04900 ("Case 4900") was filed on May 19, 2010, against Defendant Adele J. Pope, Esq. and her co-personal representative/trustee, Robert L. Buchanan, Esq.[1] (Compl., R. pp. 125-135.) Case 4900 seeks recovery for damages caused to the Estate by Pope during her tenure as PR/Trustee. (*Id.*) In response to the Complaint, Pope filed a Motion to Dismiss (R. p. 136-146) and later an Answer and Counterclaims (R. p. 395-427). Pope's Motion to Dismiss was denied. (R. p. 1-8.) Pope's Counterclaims were dismissed at summary judgment (R. pp. 52-67), and this dismissal has been affirmed on appeal. *See Bauknight et al v. Pope*, 2022-UP-364 (S.C. Ct. App. Aug. 23, 2022, Appellate Case No. 2018-002229), *cert. denied*, Appellate Case No. 2022-001713 (S.C. April 18, 2023) ("Appeal 2229").

On May 28, 2023, following briefing and oral argument by the parties, Judge Newman entered an order sanctioning Pope by striking her Answer, placing her in default, and imposing monetary sanctions. (R. pp. 109-120 ("May 8 Order") (clearer version appears at App'x pp. 6-

[1] Over ten years ago Buchanan reached a settlement with the Estate and has not been a party to the case since that time, as the caption to this appeal properly reflects.

17).) Respondents, as Plaintiffs below, have a Motion for Entry of Judgment by Default in Case 4900 that is pending. (R. pp. 1012-1013.) As described further below, the May 8 Order and the subsequent Order Denying Reconsideration (R. pp. 121-122) are the subject of the instant appeal. (Notice of Appeal, Aug. 4, 2023 (R. pp. 1051-1053).)

Statement of the Case Specific to the Current Appeal

Case 4900 has been subject to three previous pretrial appeals by Pope. *See* Order, *Bauknight, et al. v. Pope* (S.C. Ct. App. Mar. 17, 2011, Appellate Case No. 2011186406); Opinion, *Bauknight, et al. v. Pope*, 2020-UP-216 (S.C. Ct. App. refiled Sept. 16, 2020, Appellate Case No. 2017-001899), *cert. denied*, Appellate Case No. 2020-001383 (S.C. April 21, 2021); Opinion, *Bauknight et al v. Pope*, 2022-UP-364 (Appeal 2229), *supra*. This appeal is Pope's fourth pretrial appeal. During the pendency of the petition for writ of certiorari of her third pretrial appeal—Appeal 2229—Pope filed in the circuit court a "Petition for Expedited Lifting of Stay" on November 1, 2022. (R. pp. 899-917 ("November 1 Petition").) Prior to the circuit court's consideration of that petition, Pope filed a nearly identical "Petition for Order Lifting Stay" in this Court on December 28, 2022 (amended December 30, 2022) under the appellate case number assigned to Pope's petition for writ of certiorari in Appeal 2229. (App'x. pp. 22-44 ("December 30 Petition").) Via Return filed on January 26, 2023, Respondents opposed the Supreme Court version of the Petition for Order Lifting Stay, pointing out to the Court numerous issues with the petition and advising the Court that it was at least Pope's fifth attempt to lift an appellate stay. (App'x. pp. 125-135.) In the March 28 Order, this Court denied the December 30 Petition. (App'x. pp. 82-84.) Also, the March 28 Order instructed Judge Newman to hold a hearing "addressing" the November 1 Petition. (*Id.*) As noted above, the March 28 Order prohibited Pope from filing any additional motions to lift stay and cautioned her that "further" frivolous filings in the circuit

court or Supreme Court could result in contempt proceedings. (*Id.*) This Court noted that "[Pope's] *frivolous filings and attempts to repeatedly delay the matter* have frustrated the prompt resolution of this case." (*Id.* (emphasis added).)

On April 6, 2023 (amended April 10, 2023) Respondents, as Plaintiffs below, filed a Return in Opposition to the November 1 Petition. (R. pp. 994-1011 (Amended Version and Exhibits at App'x. pp. 63-120).) Respondents included a Motion for Sanctions within their Return, arguing, *inter alia*, that Pope's November 1 Petition was a serial, abusive filing and represented a continuation of over a decade of abusive litigation tactics by Pope. (*Id.*) Respondents requested attorneys' fees as a sanction for having to deal with serial petitions to lift stay, and Respondents also requested that the Court strike Pope's Answer. (*Id.*) On April 13, 2023, Pope filed a "Response to Returns and Motions for Sanctions…" indicating that she still desired to lift the stay. (App'x. pp. 136-139.) Judge Newman heard the Motion for Sanctions and other motions in open court on April 14, 2023. (R. pp. 1135-1172.) By Order dated May 8, 2023, Judge Clifton Newman granted Respondents' Motion for Sanctions, awarding monetary sanctions of $32,137.50 and striking Pope's Answer and placing her in default. (R. pp. 109-120.) Also on May 8, 2023, Judge Newman issued a separate order concerning two motions that are not the subject of the instant appeal, in which he concluded that Pope's prosecution of those particular motions was "fruitless, futile, and a waste of time." (App'x. pp 18-21.) By Order dated July 18, 2023, Judge Newman denied reconsideration of the May 8 Order. (R. pp. 121-122.)

On May 16, 2023, Respondents, as Plaintiffs below, moved for entry of judgment by default against Pope, and this motion is pending. (R. pp. 1012-1013.) On July 11, 2023, Respondents, as Plaintiffs below, filed a garden-variety Motion to Compel against Pope seeking updated insurance information and other financial information. (R. pp. 1014-1016.) On August 2, 2023, Pope filed

a "Return and Opposition to Motion to Compel Discovery" that, *inter alia*, accuses Respondents and their counsel of committing or obstructing the investigation of numerous felonies, and covering up at least three murders (including that of James Brown himself). (R. pp. 1017-1050; *see id.* at 1026-1027, 1042.) On August 3, 2023, Respondents' counsel filed a verified Petition for Rule to Show Cause, asserting that by filing such a frivolous Return to a simple Motion to Compel, Pope and her counsel had violated this Court's March 28 Order warning against further frivolous filings as well as the circuit court's May 8 Order containing the same warning. (App'x. pp. 121-124.) The Petition for Rule to Show Cause has yet to be heard.

Pope served her Notice of Appeal of the May 8 Order and the subsequent order denying reconsideration on August 4, 2023. (R. pp. 1051-1053.) On August 8, 2023, Respondents moved this Court to certify the appeal and grant an expedited appeal, as the case is set to be tried in November of 2023. (Resp. Mot. for Transfer of App. to S. Ct. and Mot. for Expedited App., filed August 8, 2023, App. Case No. 2023-001253.) Via Order dated September 12, 2023 and filed within the above-captioned appeal, this Court granted the Motion to Certify and the Motion to Expedite.

STANDARD OF REVIEW

"[T]he determination of whether to award attorney's fees under Rule 11, SCRCP, or the Frivolous Civil Proceedings Sanctions Act (FCPSA) … is treated as one in equity." JEAN H. TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 248 (3d ed. 2016) (citations omitted). "Generally, the standard of review in equity cases takes precedence, as the South Carolina Constitution permits an appellate court take its own view of the facts underlying the sanctions." *Id.* (citing *Father v. S.C. Dep't of Soc. Svcs.*, 353 S.C. 254, 260, 578 S.E. 2d 11, 14 (2003)). "However, if the appellate court agrees with the trial court's findings of fact, it then reviews the decision to award sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." *Id.* (citing *Ex Parte Gregory,* 378 S.C. 430, 437, 663 S.E.2d 46, 50 (2008); *Father*, 353 S.C. at 260, 578 S.E.2d at 14; *Se. Site Prep, LLC v. Atl. Coast Builders & Contractors, LLC*, 394 S.C. 97, 104, 713 S.E.d 650, 654 (Ct. App. 2011)). "Therefore, in such cases 'the imposition of sanctions will not be disturbed on appeal unless the decision is controlled by an error of law or is based on unsupported factual conclusions.'" *Id.* at 249 (quoting *Se. Site Prep*, 394 S.C. at 104; 713 S.E.2d at 654).

Concerning the review of an order striking a party's pleading, South Carolina courts have held that "the matter of striking from a pleading is largely within the discretion of the trial judge." *Robinson v. Code*, 384 S.C. 582, 585, 682 S.E.2d 495, 496 (Ct. App. 2009) (citing *Brown v. Coastal States Life Ins. Co.*, 264 S.C. 190, 194, 213 S.E.2d 726, 728 (1975)). "[T]he grant of a motion to strike will not be reversed except for an abuse of discretion or error of law." *Id.* When the court orders a default or dismissal as a sanction, "the trial court must determine that there is some element of bad faith, willfulness, or gross indifference to the rights of other litigants." *Karppi v. Greenville Terrazo Co., Inc.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997).

ARGUMENT

I. THE CIRCUIT COURT WAS WITHIN ITS DISCRETION WHEN IT SANCTIONED POPE—INCLUDING BY STRIKING HER ANSWER—DUE TO POPE'S SERIAL FRIVOLOUS FILINGS OF MOTIONS TO LIFT AN APPELLATE STAY AND OTHER ABUSIVE LITIGATION CONDUCT OVER THE LIFE OF THIS CASE.

a. The Circuit Court was Appropriately Sanctioned Pope for Failing to Withdraw Her Circuit Court Petition to Lift Stay.

Shockingly, Pope blames the circuit court and Respondents for her failure to withdraw the November 1 Petition in the wake of the March 28 Order: "[n]either Respondents nor the circuit court asked Appellant's counsel to withdraw the already-resolved motion…" (Br. of App. at 29.) 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 is inconsistent with her actions, namely the filing of a brief the day before the hearing, 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 (App'x. p. 138) ("[Pope] *desires to lift the stay* only if, in the opinion of the Court, it would expedite the resolution of this case…") (emphasis added).) Pope's attempt to rewrite history cannot change her arguments of record, nor does it change the fact that Respondents had to undertake the time and expense to oppose the never-withdrawn November 1 Petition.[2] (*See, e.g.*, Pls.' Ret. in Opp. to Pet. for Exp. Lifting of Stay and Motion for Sanctions (R. pp. 994-1011).) Indeed, since Pope briefed the November 1 Petition mere hours before the hearing, Respondents had no choice but to attend the April 14 hearing prepared to argue

[2] As explained in-depth below, Pope's filing of the November 1 Petition was not the sole reason for the Court's issuance of the May 8 Order, but rather was simply the most recent in a long line of abusive litigation tactics deployed by Pope in this case.

against it. By the time Respondents' counsel stepped into the courtroom for the April 14 hearing, the damage to Respondents caused by Pope's frivolous Petition had been done already.

b. The Circuit Court Had Jurisdiction to Consider and Rule on the Motion for Sanctions.

Pope claims that the circuit 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—was in place at the time of the April 14 hearing. (*See* Br. of App. at 29-30.) 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. Since 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. *Accord*, Rule 205, SCACR ("[n]othing in these Rules shall prohibit the lower court . . . from proceeding with matters not affected by the appeal.").

Further, Pope's argument ignores the March 28 Order, in which this Court explicitly instructed the circuit court to hold a hearing "addressing" Pope's November 1 Petition. (App'x. p. 82-84.) In the same Order, this Court had already deemed frivolous the version of the petition submitted to its attention, leaving little doubt as to the propriety (or lack thereof) of the November 1 Petition. (*See id.*) But clearly this Court asked the circuit court to address the November 1 Petition, and the circuit court did just that, albeit not to Pope's liking.

c. The Circuit Court Correctly Applied Rule 11, SCRCP to Award Monetary Sanctions and Strike the Answer.

Pope attempts to use the fact that she is represented by counsel as a shield against the sanctions that were imposed against her (but not her attorneys) in the May 8 Order. (*See* Br. of

App. at 30.) Pope implies that though she signed the verification of the November 1 Petition, it was her attorneys who wrote it. (*See id.*) The clear implication is that Pope believes the circuit court erred in sanctioning her for the conduct of her attorneys. However, this argument misses the mark. One look at the May 8 Order reveals that while the circuit court saw fit to issue stern warnings against Pope's counsel (*see, e.g.*, R. p. 110), the circuit court felt compelled to address the person truly responsible for the management of her case: Pope herself. Pope should not benefit from the circuit court's kindness to her attorneys. Pope's own cited case law proves the point: "Although Rule 11 *allows for the possibility of sanctions against a client*, it primarily speaks in terms of an attorney's professional responsibilities." (Br. of App. at 30 (quoting *Kovach v. Whitley*, 437 S.C. 261, 878 S.E.2d 863 (2022) (emphasis added).)

Pope then contends—without any real citation to authority—that sanctions for violating Rule 11 "are only stated to include expenses and attorneys' fees" and that she can find no cases suggesting that striking the answer is an appropriate sanction for Rule 11 violations. (*See* Br. of App. at 31-33.) 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 violates 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* (emphasis added). Clearly, monetary sanctions such as attorneys' fees are contemplated on the face of the Rule. However, 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

selection of an appropriate Rule 11 sanction is within the discretion of the trial court, *see id.*, and here the circuit court was well within its discretion to strike Pope's Answer after years of vexatious filings, of which the November 1 Petition represents only the latest example and is perhaps the proverbial "straw that broke the camel's back." The circuit court in the May 8 Order engaged in an exhaustive review of Pope's conduct over the life of James Brown Estate litigation, *see, e.g.*, R. pp. 111-113, and was within its discretion to rule as it did.

Finally, Respondents note for the record Pope's apparent extreme disconnect from the reality of the history of this litigation, evidenced by statements in her Brief such as "[p]rior to the March 28, 2023 Order of this Court, no filing in this case or any appeal from this case had been labeled as frivolous by any Court…" (Br. of App. at 32.) In reality, the history of this litigation is littered with rulings striking Pope's appellate filings and warning her from engaging in similar behavior in the future. (*See* R. p. 113; *see generally* Appeal 2229.) Indeed, as noted by the circuit court in the May 8 Order, this Court has a contempt petition in abeyance to secure Pope's non-interference with Estate distribution matters. (R. p. 112.) Case law is clear that a party's past conduct in the litigation (and related litigation) is a proper consideration for a circuit to consider when ruling on a motion for sanctions. *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 discussed further below, Pope has been the recipient of a *Holmes*-style injunction order from this Court.

d. Alternatively, the Circuit Court Properly Applied the FCPSA to Award Monetary Sanctions and Strike the Answer.

Pope contends that sanctions under the Frivolous Civil Proceedings Sanctions Act (S.C. Code Ann. 15-36-10, *et seq.* ("FCPSA")) are improper "because a preponderance of the evidence

does not support the finding that Defendant's filings were frivolous or delayed this case."[3] (Br. of App at 33.) Pope blatantly ignores the March 28 Order of this Court holding that Pope's filings are both *frivolous* and the source of *delay*: "[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." (App'x. p. 84.) These un-appealed findings are the law of the case, which Pope is estopped to contradict and to which all parties are now bound, as the circuit court correctly concluded in the May 8 Order. (R. p. 111.)

The May 8 Order also recites Judge Newman's consideration of additional evidence: two additional orders from this Court and one of his own prior orders. Pope has been warned by this Court on two prior occasions about her improper conduct and on each occasion was threatened with the possibility of contempt. On June 10, 2015, Pope was rebuked by this 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). (App'x. p. 113-117.)

Also, 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,

[3] Pope also contends that sanctions under the FCPSA were improper because the Motion for Sanctions was filed more than 10 days after the decisions on all petitions to lift stay except the November 1, 2022 Petition. (*See* Br. of App. at 33.) However, Respondents were well within their rights to file based on the frivolous nature of the November 1, 2022 Petition, standing alone. As an additional sustaining ground, Respondents note that 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 Rule 11 sanctions, even though a companion motion for sanctions under FCPSA was untimely, because Rule 11 does not have the same time limit).

one of the Plaintiffs/Respondents to this matter (which would have resulted in Pope being both the defendant and a plaintiff Case 4900 and enabled her to interfere in matters of the Estate), this Court again warned Pope:

> 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. Ct., Aug. 10, 2020). (App'x. pp. 118-119.) Furthermore, Judge Newman himself previously had 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). (App'x pp. 97-100.) Pope's persistence in frivolous conduct despite repeated warnings from numerous judges is clear and convincing evidence of Pope's "bad faith, willfulness, or gross indifference to the rights of other litigants." *Karppi v. Greenville Terrazo Co., Inc.*, 327 S.C. 538, 543, 489 S.E.2d 679, 682 (Ct. App. 1997).

Finally, and as an additional sustaining ground, at oral argument on the sanctions motions counsel for the Estate detailed numerous examples of similar conduct by Pope, which were adopted by the circuit court in the May 8 Order, as the conduct described therein all comes from matters of record. (*See* R. p. 113.) Examples cited by Judge Newman include: 1) lengthening the time to take Case 4900 to trial by initially agreeing to consolidate Case 4900 with Aiken County Case No. 1337 (Pope's fee claim against the Estate) only to withdraw her consent at a hearing intended to effectuate the consolidation; 2) appealing almost thirty pre-trial orders in Case 4900, only to abandon most of those appeals; 3) engaging in abusive appellate practice in Appeal 2229 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 4) filing a motion to reconsider the circuit court's referral to Judge Casey Manning of two motions to reconsider, one of which was over a decade old before it was heard. (*Id.*; *see also* App'x pp. 45-62 (Pope's motion to reconsider an order governing other motions to reconsider).) Respondents submit that these actions as recited by the circuit court, when taken together, support this Court's finding that "Appellant's frivolous filings and attempts to repeatedly delay this matter have frustrated the prompt resolution of this case."

Therefore, based on the repeated warnings of this Court and the circuit court to Pope, the unchallenged representations concerning her bad acts during the course of this litigation coupled with Pope's failure to offer any justification for her actions, Judge Newman had more than a preponderance of evidence to support his monetary sanction and to strike Pope's answer. Pope is completely incorrect to state that the circuit court was without sufficient evidence when it issued the May 8 Order.

e. The Circuit Court Appropriately Awarded Monetary Sanctions Based upon Pope's Long History of Abusive Litigation Tactics and Actions that Have Caused Undue Delay.

Pope's arguments against the imposition of an award of $32,137.50 in attorneys' fees to the Estate of James Brown are nearly impossible to follow. (*See* Br. of App. at pp. 36-41.) 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*, 304 S.C. 158, 403 S.E.2d 213 (1991), when reviewing Respondents' counsel's fee affidavit. (*See* May 8 Order, at p. 10 n.1 (R. p. 118); *see also* Aff. of Mark Gende, filed April 28, 2023 (R. p. 2483-2534).) The Court expressly held that "each *Glasscock* factor weighs in favor of Plaintiffs' claim for fees as stated in counsel's Affidavit." (R.

p. 118.) 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 challenged to the fee award appears to stem from her conspiracy theory-style contentions that there is some scheme afoot amongst the Respondents to this case. Respondents 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 Brief but particularly evident in "Argument" Section e. beginning at page 36. A point-by-point rebuttal is not feasible, but Respondents 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/Respondent—is completely appropriate. Pope is being intentionally deceptive when she proclaims that "no relief is sought in the complaint for James Brown's estate," Br. of App. at 38. Paragraph 1 of the Complaint identifies Plaintiff Russell Bauknight *as the personal representative of the Estate of James Brown*. (*See* Compl., at ¶ 1 (R. p. 125).)
- Pope's constant refrain that the undersigned law firm is "covering up the fraud" of Tommie Rae and others is more of the same sanctionable, frivolous material from Pope. All of Pope's counterclaims against all Respondents—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 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. Respondents voluntarily limited their fee request to one attorney. (*See* Aff. of Mark Gende, at ¶ 11 (R. p. 2484.) Respondents submitted their detailed time sheets for every time entry claimed. (*See id.*, at Exhibits (R. p. 2487-2534).) 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 Respondents' fee affidavit and time sheets detailing Respondents' actions in response to said filings are more than reasonable.
- If Pope is dismayed by the amount of time spent as logged by counsel, she has no one but herself to blame for filing not just frequently, but voluminously. For instance, in her Brief Pope argues against time entries related to a motion to strike one of Pope's petitions to lift stay from 2019. (*See* Br. of App. at p. 39.) 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.[4]

[4] Pope objects to an "August 2, 2020" entry for 2.5 hours of time. (*See* Br. of App. at p. 39.) Respondents believe the time entry referred to is from August 7, 2020. In their Memorandum of Law in Opposition to Pope's Motion to Reconsider the May 8 Order, Respondents conceded to the trial court that this time entry was inadvertently included in the fee claim. (App'x. p. 150.) Therefore, Respondents have consented to subtract $750.00 from the $32,137.50 fee award granted by the May 8 Order. (*Id.*)

f. The Circuit Court Correctly Found that Pope is the Root Cause of Delay in Case 4900.

Pope claims that Respondents—not Pope herself—are the reason that this case has gone on for so long. As discussed at length herein, the Supreme Court's March 28 Order held otherwise. Further, Respondents reiterate 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. Respondents have filed no pretrial appeals. Pope, and Pope alone, is the reason for the numerous delays in this case. *See also* Argument Section I.d., *supra*.

g. This Court Should Disregard Pope's Continued Frivolous and Irrelevant Arguments.

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." (Br. of App. at 44.) However, Pope never plausibly states *how* her due process, First Amendment, or §1983 rights are being violated. This argument in her Brief 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* Opinion, *Bauknight, et al v. Pope*, 2022-UP-346, at pp. 9-10 (S.C. Ct. App. Aug. 24, 2022), *cert. denied*, Order, Appellate Case No. 2022-001713 (S.C. April 18, 2023) (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 years and was removed from the case with the approval of the circuit court, the Court of Appeals, and the Supreme Court. *See* Opinion, *Bauknight, et al. v. Pope*, 2020-UP-216 at 5 (S.C. Ct. App. refiled Sept. 16, 2020), *cert. denied*, Appellate Case No. 2020-001383 (S.C. 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.

II. THIS COURT SHOULD AFFIRM THE CIRCUIT COURT'S ORDER GRANTING SANCTIONS, SINCE IT IS CLEAR FROM POPE'S MOST RECENT FILINGS THAT SHE INTENDS TO CONTINUE TO BEHAVE IN A SANCTIONABLE MANNER.

Since the circuit court's issuance of the May 8 Order, Pope's behavior has become even more shocking and abusive toward Respondents and their counsel. For instance, Pope's conduct in the prosecution of this very appeal is frivolous. In response to this Court's September 12, 2023 Order granting certification and an expedited appeal, Pope filed a 45-page brief, mostly comprised of a statement of the case, and a six-volume Record on Appeal running into thousands of pages that is full of self-serving citations to self-created sources that have accumulated over the thirteen-year-life of this case. Respondents submit that there is nothing in the Court's September 12 Order that could be interpreted as inviting the filing of such a bloated Record.

Even more disturbing are Pope's filings in the trial court subsequent to the issuance of the May 8 Order. In a Return to a simple Motion to Compel filed by Respondents, Pope claims:

> SWB's, Bauknight's, and the Legacy Trust's actions under color of state law for the AG were particularly egregious in light of the fact that CNN Reporter Thomas Lake, after interviewing more than 100 witnesses, had discovered that there was material evidence that both James Brown and his last wife Adrienne Rodriguez (Adrienne) has been murdered, and that Cannon – at a minimum – was a critical witness. Instead, Cannon was now dead, and Hynie, with SWB and Bauknight acting for the State/AG, had covered up his fraud *and possible involvement in the deaths of James Brown and Adrienne*.

(R. p. 1042 (emphasis added).) Respondents will not dignify this Return with too much discussion; suffice it to say that Pope has no qualms baselessly accusing Respondents and their attorneys of obstructing murder investigations, if not actually covering up the murders. This alone merits the strongest sanctions.

If this Court is looking for contrition from Pope, the Court will not find it. Despite the March 28 Order of this Court and the May 8 Order of the circuit court, Pope persists in lodging frivolous and vitriolic attacks against Respondents (and their counsel) and these attacks appear to be increasing in severity. Nothing short of this Court's affirming of the circuit court's order striking her Answer can suffice to address this extreme conduct.

CONCLUSION

For the foregoing reasons, the Estate of James Brown and the other Respondents respectfully request that this Court 1) deny Pope's appeals; 2) affirm Judge Newman's May 8 Order in its entirety; and 3) remand this case to proceed to a default damages hearing in front of Judge Newman at the earliest opportunity, but in any event before the end of the year, and 4) issue any further relief this Court considers appropriate, including but not limited to denying Pope the opportunity to file any further appeals in Case 4900. *See McCullough v. McCullough*, 242 S.C. 108, 110, 130 S.E.2d 77, 78 (1963) ("[t]he right of appeal is a matter of grace and is not an inherent or vested right") (citations omitted).

Respectfully submitted,

SWEENY, WINGATE & BARROW, PA

s/ Aaron J. Hayes
Kenneth B. Wingate, SC Bar No. 8004
Mark V. Gende, SC Bar No. 72835
Aaron J. Hayes, SC Bar No. 100114
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
Counsel for Respondents

Columbia, South Carolina
September 26, 2023

CERTIFICATION OF COUNSEL

I hereby certify that the foregoing Brief of Respondents complies with Rule 211(b), SCACR.

s/ Aaron J. Hayes