

RECEIVED

Apr 23 2024

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. 2024-000573

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, Respondents,

v.

Adele J. Pope, Petitioner.

RETURN TO PETITION FOR WRIT OF CERTIORARI

and

MOTION FOR SANCTIONS AGAINST POPE AND COUNSEL

INDEX

Counter-Statement of Questions Presented 3

Counter-Statement of the Case and Facts..... 4

Arguments

1. THE NOVEMBER 8 DISCOVERY ORDER IS NOT IMMEDIATELY APPEALABLE..... 5

2. THE CIRCUIT COURT HAD JURISDICTION TO ENTER THE NOVEMBER 8 ORDER..... 8

Motion for Sanctions against Pope and Her Counsel 8

Conclusion 14

COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Was the Court of Appeals correct to dismiss this appeal because, as a matter of black-letter law, the discovery order on appeal is interlocutory and not immediately appealable?
2. Was the Court of Appeals correct to ignore Pope's frivolous contention that the circuit court lacked jurisdiction to grant a motion to compel when no appellate stay operated to preclude the hearing of the motion to compel?
3. Should this Court sanction Pope and her counsel for willfully filing a frivolous Petition for Writ of Certiorari, considering her extensive history of frivolous and abusive litigation tactics?

COUNTER-STATEMENT OF THE CASE AND FACTS

Yet again—and despite well-nigh unprecedented levels of court sanction—Petitioner Adele J. Pope and her attorneys have chosen the path of frivolity and delay. Pope’s most recent Petition for Writ of Certiorari concerns a pretrial discovery order granting a garden-variety motion to compel production of routine discovery information. To put it plainly, the Petition is devoid of any merit. Moreover, in the context of the litigation history between these parties, the Petition is yet another sanctionable, frivolous filing. Respondents ask this Court to deny the Petition and issue the strongest possible sanctions against Pope and her counsel.

At this juncture, Respondents will not belabor the Pope-created, tortured history of the underlying action, Case No. 2010-CP-40-04900 (“**Case 4900**”). Including the current appeal, Case 4900 has long been mired in frivolous pretrial appeals filed by Pope. Relevant to this appeal are the facts that follow. On May 8, 2023, the circuit court (Judge Clifton B. Newman, presiding) entered an Order striking Pope’s Answer due to her history of abusive and frivolous conduct in Case 4900 stemming from, *inter alia*, her handling of her prior pretrial appeals in Case 4900. (*See* Order, filed May 8, 2023, Case 4900 (“**May 8 Order**”).) The circuit court indicated that a damages hearing was to be held as soon as practicable. (*Id.*)

On July 11, 2023, Respondents, as Plaintiffs below, filed a garden-variety motion to compel seeking updated liability insurance information, information concerning Pope’s net worth and financial institutions, and Pope’s tax returns. On August 4, 2023, Pope filed and served a Notice of Appeal in what became Appellate Case No. 2023-001253, to appeal the May 8 Order. *See* App. Case No. 2023-001253 (“**Appeal 1253**”). The presence of Appeal 1253 notwithstanding, on August 10, 2023 the circuit court heard the motion to compel and on November 8, 2023 entered an order granting it. (*See* Order, filed November 8, 2023, Case 4900 (“**November 8 Order**”).)

Rather than comply with the straightforward terms of the November 8 Order, on December 15, 2023 Pope chose to appeal it to the Court of Appeals. *See* App. Case No. 2023-001941 (“**Appeal 1941**”). The Court of Appeals *sua sponte* dismissed Appeal 1941 on December 20, 2023, citing *Hamm v. S.C. Pub. Serv. Comm’n*, 312 S.C. 238, 439 S.E.2d 852 (1994), for the well-known proposition that discovery orders are interlocutory and not immediately appealable. *See* Order, App. Case No. 2023-001941, filed Dec. 20, 2023. Via Order filed March 18, 2023, the Court of Appeals denied Pope’s Petition for Rehearing in Appeal 1941. *See* Order, App. Case No. 2023-001941, filed March 18, 2023. Despite prior dispositive instructions from this Court *concerning the very issues in this Petition*,¹ and despite Respondents’ cautionary request that Pope not file this Petition as it could be considered frivolous and sanctionable,² nonetheless Pope now brings this unnecessary Petition.

ARGUMENTS

1. THE NOVEMBER 8 DISCOVERY ORDER IS NOT IMMEDIATELY APPEALABLE.

Pope has no basis in law to appeal the November 8 Order granting a simple motion to compel. The law is clear: “[d]iscovery orders, however, are interlocutory and are not immediately appealable.” *Hamm*, 312 S.C. at 241, 439 S.E.2d at 853 (citing *Ex Parte Whetstone*, 289 S.C. 580,

¹ On February 23, 2024, Respondents filed a Motion to transfer (certify) Appeal 1941 to this Court, and to consolidate it with Appeal 1253. *See* Mot. Transfer & Consolidate, filed Feb. 23, 2024, Appeal 1253. Via Order filed on March 28, 2024, this Court denied the Motion to Transfer and Consolidate because “it appears the court of appeals will expeditiously *conclude* the matter.” *See* Order, filed in, *inter alia*, Appeal 1253, March 28, 2024 (emphasis added) (“March 28 Order”). The Court was referring to Appeal 1941 when it used the phrase “conclude the matter.” Despite this Court’s statement of finality in the March 28 Order, Appeal 1941 is now before this Court on Pope’s current Petition for Writ of Certiorari, having been assigned the above-captioned case number. As discussed further *infra*, nothing in the March 28 Order could be construed as an invitation from this Court for Pope to file the instant Petition.

² *See* email exchange of counsel (attached hereto as **Exhibit A**).

347 S.E.2d 881 (1986)). In *Hamm*, the Supreme Court found no abuse of discretion when the tribunal, the South Carolina Public Service Commission, refused to continue a hearing while a discovery order appeal was pending: “we find no abuse of discretion by the Commission in refusing to grant a continuance where the basis for the motion was the unresolved appeal of an order not yet ripe for appeal.” *Id.* This quote from *Hamm* illustrates the strength of the rule concerning the interlocutory status of discovery orders; such orders are *per se* not immediately appealable, so much so that a trial court should not even postpone a trial while such a frivolous appeal is pending.

Further, this Court has prescribed a procedure for appellate review of a pretrial discovery order should a party be so inclined, but Pope has not followed this path. In *Davis v. Parkview Apartments*, the Court explained that for a party to seek pretrial review of discovery orders, “the normal course is to refuse to comply, suffer contempt, and appeal from the contempt finding.” 409 S.C. 266, 280, 762 S.E. 535, 543 (2014) (citing *Ex Parte Whetstone*, 289 S.C. at 580, 347 S.E.2d at 881-82). In other words, upon receiving an adverse discovery order, an objecting party can either comply or be held in contempt for noncompliance. By filing an appeal *before* being held in contempt, Pope has chosen the third “option” expressly prohibited by our courts. Pope has neither complied with the November 8 Order nor suffered the pain of contempt for her noncompliance. Rather, she seeks to “eat her cake and have it too” and in so doing burden this Court—and Respondents—with yet another meritless pretrial appeal.

Pope seeks to overcome the binding law of South Carolina through half-hearted arguments about violations of “due process” against “Pope and her husband.” As usual, Pope fails to explain cogently how it violates her due process rights for her—as a tort case defendant—to be required to produce insurance information, financial institution information, and tax returns. Indeed, the

requested information is nearly always required to be produced in any tort case with a punitive component, as a basic operation of standard civil discovery. Insurance disclosures are within the scope of discovery pursuant to Rule 26(b)(2), SCRPC and accordingly the *Rules* provide a standard interrogatory for this topic, *see* Rule 33(b)(4), SCRPC. A defendant’s ability to pay a punitive damages award—evidenced by items such as tax returns and banking information—is an express statutory factor for the factfinder to consider when awarding punitive damages. *See* S.C. Code Ann. § 15-32-520(E)(7). Considering the black-letter law requiring the production of this basic information, Pope’s claim of due process violation is patently meritless.

Pope’s claim of due process violation as to her husband, Thomas Pope, is likewise baseless. Presumably, Pope and her husband are married filing jointly, such that production of Pope’s tax returns would reveal income information about Thomas Pope.³ First, Respondents note there is a standard confidentiality order on file in Case 4900, allowing any party to designate any material as confidential prior to production, and so there is no reason Pope could not produce the returns and stamp “confidential” on them. *See* Second Am. Conf. Order, filed Feb. 1, 2017, Case 4900. Second, even if Thomas Pope may be affected by Pope’s production of her tax returns or banking information, the November 8 Order is still interlocutory and non-appealable. This Court has extended the non-appealability rule to non-party discovery orders. *See Ex Parte Whetstone*, 289 S.C. at 580, 347 S.E.2d at 881 (“We now hold that an order directing a non-party to submit to discovery is not immediately appealable.”). Also, this Court has set out the same process for non-parties to object to and appeal non-party discovery requests, and true to form neither Pope nor anyone associated with her have done what the law requires in this regard. *See id.* at 580-81, 347 S.E. 881-82 (“Instead of appealing immediately, a non-party has two alternatives. He may either

³ For the record, Respondents note they have never sent any discovery requests to Thomas Pope.

comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for failure to comply.”). Pope complains of due process violations against her and her husband, and yet it is she who will not follow the law.

2. THE CIRCUIT COURT HAD JURISDICTION TO ENTER THE NOVEMBER 8 ORDER.

Pope has no basis to complain that the circuit court lacked jurisdiction to enter the November 8 Order. Pope contends that the filing of the Notice of Appeal in what became Appeal 1253 deprived the circuit court of jurisdiction to hear Plaintiffs/Respondents’ motion to compel. Pope is wrong. Under Rule 205, SCACR, a trial court, even in the presence of a pending appeal, may proceed “with matters not affected by the appeal.” *Accord*, Rule 241(a), SCACR (“The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal.”). In Appeal 1253, the sole issue is whether the circuit court was correct to strike Pope’s Answer (and impose a monetary penalty) as a litigation sanction for a decade-plus of litigation abuse. Regardless of whether Pope’s Answer remains stricken, Respondents are entitled to the information that is the subject of the motion to compel. In other words, whether Respondents are asking a judge (via default judgment hearing) or a jury (via a traditional trial) to enter judgment against Pope, Respondents are entitled to know Pope’s current insurance status and financial status. As the circuit court correctly held, the motion to compel was not “affected by the appeal” and the circuit court retained jurisdiction to hear and enforce it. *See* Nov. 8 Order, at p. 3.

MOTION FOR SANCTIONS AGAINST POPE AND HER COUNSEL

The current Petition for Writ of Certiorari is but the latest in a long line of frivolous filings made by Pope and facilitated by her attorneys. Respondents respectfully request that this Court deploy extreme measures to rebuke Pope and her attorneys for their conduct. Pursuant to Rule

269, SCACR, “[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion for that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” In this case, the Petition is both “frivolous” and “taken solely for the purposes of delay,” as those terms are used in Rule 269. Put another way, the Petition is frivolous in its content and in the very fact of its filing under the circumstances of this case.

The Petition is frivolous because it is full of lies.

While it may not be possible to rebut every falsehood contained in the Petition, Respondents will point out to the Court several statements that are demonstrably, unequivocally false:

- **The lie about the continued presence of the Attorney General.** Pope claims that “the Attorney General of South Carolina, acting through private law firm, Sweeny, Wingate and Barrow, P.A. (“SWB”) has secured what may be the most troublesome and extraordinary discovery rulings in the legal history of the state.” (Pet., at p. 6.) Pope’s delusions of grandeur aside, in this excerpt and throughout the other portions of the Petition Pope knowingly and falsely represents that the Attorney General is still a party to Case 4900. The Attorney General’s Office filed a motion to be dropped as a party to Case 4900 *over eleven (11) years ago*, and the order dropping the Attorney General has been affirmed by all appellate courts. *See Bauknight, et al. v. Pope*, 2020-UP-216 (S.C. Ct. App., refiled Sept. 16, 2020), *cert. denied*, Order, App. Case No. 2020-001383 (filed April 21, 2021). Pope’s repeated references to the Attorney General’s Office as an active Case 4900 litigant are sanctionable lies.

- **The lie about the continued presence of Robert Buchanan.** Throughout the Petition, Pope references her former co-Personal Representative, Robert Buchanan, in a transparent attempt to “name drop.” Also, much like she does with the Attorney General’s Office, Pope acts as if Mr. Buchanan is still a party to Case 4900. (*See, e.g., Pet.*, at p. 7 (“[t]he circuit court... issued a series of orders between 2020 and 2023 that SWB and its private clients had been trying to secure against Buchanan and Pope for fourteen (14) years.”).) Respondents and Mr. Buchanan settled all claims between them *twelve (12) years ago*. Pope’s repeated references to Mr. Buchanan as if he is an active participant in Case 4900 are sanctionable lies.
- **The lie that Respondents are accusing Pope of a “federal felony.”** Throughout the Petition, and throughout the life of this case, Pope repeatedly asserts that Respondents have accused her of the “federal felony” of overvaluing the Estate of James Brown. (*See, e.g., Pet.*, at p. 7 (“which the Attorney General and Respondents had used since 2010 to falsely clam that Buchanan and Pope had committed the federal felony of overstating James Brown’s assets to the IRS by \$79 million to secure a \$5 million commission...”).) Pope is the only one who ever uses the words “federal felony.” Respondents are suing Pope in tort to recover for the maladministration of James Brown’s Estate when Pope was the personal representative. Case 4900 is a tort action, plain and simple. Pope’s usage of criminal verbiage is done for her own ends, whatever those may be. But to put those words into the mouths of Respondents is to mischaracterize Respondents’ motives and claims and to promulgate a falsehood about Respondents. Pope’s

repeated refrain that Respondents are accusing her of a “federal felony” is a sanctionable lie.

- **The lie about Respondents concealing 150 boxes of “public” James Brown documents.** In two places in the Petition, Pope accuses Respondents of “concealing” 150 (or 145) boxes of “public James Brown documents.” (*See* Pet., at pp. 6, 9.) Respondent Estate of James Brown notes that any implication that “boxes” of documents are being concealed from Pope is not true. The current personal representative of the Estate took possession of this large amount of boxes *from Pope* when he took over for her as personal representative. Pope knows the contents of these boxes and has conducted discovery in multiple civil actions where access was or could have been granted to her. To the extent Pope is implying that the Estate has removed the boxes—which contain commercially sensitive information—from the public eye, Pope is wrong. The documents in the boxes were never public to begin with, as the multiple confidentiality orders across multiple cases, including Case 4900, can attest. The boxes are not being “concealed,” rather they are being protected. Pope’s recent affectation of a transparency crusader persona is nothing more than a back-door attempt to damage the Estate and its ongoing operations. Pope’s allegation of Respondents’ “concealing” the boxes is a sanctionable lie.

The Petition is taken solely for the purposes of delay, as this Court essentially told Pope not to file it but she did anyway.

As explained in footnote 1, *supra*, Respondents, who are tired of Pope’s frivolous pretrial appeals, asked this Court to transfer and consolidate Appeal 1941 (appeal of the November 8 Order) with Appeal 1253 (appeal of May 8 Order striking Answer; already briefed before this

Court and ready for consideration). On March 28, 2024, this Court denied the request for a straightforward logistical reason: the court of appeals was already in the process of *concluding* Appeal 1941. This Court held as follows:

Pursuant to Rules 204(b) and 214, SCACR, Petitioner-Respondent Russell L. Bauknight moves to certify Appellate Case No. 2023-001941 front the court of appeals to this Court and consolidate the matter with Appellate Case No. 2023-001253 and Appellate Case No. 2024-000176.⁴ The motions to certify and consolidate are denied, *for it appears the court of appeals will expeditiously conclude the matter. We further note our continuing concern with Respondent-Appellant Adele J. Pope's repeated abusive and meritless filings regarding the underlying estate and trust.*

March 28 Order, *supra* (emphasis added). Indeed, the court of appeals had denied a petition for rehearing/reinstatement/reconsideration *en banc* via order filed in Appeal 1941 on March 18, 2024, and as this Court was aware all that remained was for the court of appeals to issue the remittitur. Of course, the court of appeals never got the chance to issue the remittitur because of Pope's filing of this Petition on April 10, 2024, despite this Court's clear statements just 12 days prior that 1) it viewed the matter as "concluded" by the court of appeals and 2) it had ongoing concerns with Pope's "abusive and meritless" conduct. Only a party seeking unreasonable delay would file a petition under these circumstances.

Moreover, on April 3, 2024, counsel for Respondents requested that counsel for Pope not file the instant Petition, as it would only be filed for the purposes of delay and Respondents would be required to move for sanctions. *See* Ex. A. Even after the filing of the Petition, on April 15, 2024 counsel for Respondents gave counsel for Pope the professional courtesy of having some time to distance themselves from the filing if they saw fit. *Id.* Counsel for Respondents received

⁴ Though the undersigned attorneys are not involved, the undersigned are informed and believe that Appellate Case No. 2024-000176 is the case number assigned to this Court's Order requiring Pope to appear on May 29, 2024, to show cause as to why she should not be held in criminal contempt.

no substantive response to these emails, leading to the conclusion that Pope’s counsel consent to the filing of the Petition, even though all three of her attorneys, Adam Silvernail, Daryl Williams, and W. Jeffrey Smith have been warned by the circuit court not to enable Pope’s frivolous behavior.⁵

More evidence of Pope’s intent to cause delay comes from the flawed nature of the Petition itself. As noted above in Arguments Sections 1 and 2, the Petition is wholly without merit. Direct pretrial appeals from discovery orders are barred. There is a procedure for the pretrial appeal of an adverse discovery order when the party seeking to appeal has been held in contempt for noncompliance, and Pope has ignored this route. Pope’s jurisdictional objection is incorrect. In sum, the obviously meritless nature of the Petition leads to the inescapable conclusion that Pope again seeks to delay an already fourteen-year-old case.

Requested Sanctions

Candidly, Respondents are nearly at a loss to suggest a remedy to this Court, as all known manners of sanctions have been ordered against Pope over the life of this case and it appears that she is simply emboldened as the years go by. She has been subject to five-figure financial penalties. She has had pleadings and briefs stricken by the circuit court and the appellate courts. She has lost appeal after appeal. She has received cautionary order after cautionary order from this Court detailing her litigation abuse and ordering her to stop. *See* Chart, attached hereto as **Exhibit B**. And on May 29, 2024, she must appear in this Court in a related case to show cause

⁵ The May 8 Order, currently on appeal in Appeal 1253, states as follows: “[t]he Court now wants to be very clear to Pope and to her attorneys Silvernail, Williams, Smith . . . 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... 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.” May 8 Order, at p. 9.

as to why she should not be held in criminal contempt and (possibly) incarcerated. And even still the lies, deception, and abuse flow forth unceasing from Pope. Somehow, her attorneys have stayed above the fray but perhaps it is time for that mercy to cease as well, especially because they were given the chance to remove their names from this frivolous Petition and chose not to. Respondents request the Court craft the remedy that fits the circumstances, which as to Pope may include but not be limited to 1) additional financial sanctions including but not limited to the costs and fees for responding to Pope's actions subsequent to the circuit court granting the underlying motion to compel, 2) using this frivolous Petition as an additional sustaining ground to affirm the order on appeal in Appeal 1253, 3) an injunction on future appeals and/or other gatekeeper orders, 4) the issuance of another rule to show cause, and/or 5) any other action this Court deems appropriate. As to her attorneys, Adam Silvernail, Daryl Williams, and W. Jeffrey Smith, the requested sanctions may include but not be limited to 1) financial sanctions, jointly and severally with Pope and each other, including not limited to the costs and fees for responding to Pope's actions subsequent to the circuit court granting the underlying motion to compel, 2) the issuance of a rule to show cause, and/or 3) any other action this Court deems appropriate.

CONCLUSION

For the foregoing reasons, Respondents request that this Court deny Pope's Petition for Writ of Certiorari. Respondents also request that the Court issue the strongest possible sanctions against Pope and her attorneys due to the blatantly frivolous nature of the Petition.

Signature page to follow.

Respectfully submitted,

SWEENY, 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 RESPONDENTS

Columbia, South Carolina

April 23, 2024