RECEIVED

Apr 30 2024

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

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

Supreme Court 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.; 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.; 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, Petitioner.

APPELLANT'S REPLY TO RESPONDENTS' RETURN TO PETITION FOR WRIT OF CERTIORARI AND RETURN TO MOTION FOR SANCTIONS

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT.

Petitioner, through her undersigned counsel, replies to the Respondents' Return to her Petition for Writ of Certiorari. Further, Petitioner and her counsel oppose Respondents' motion

for sanctions.

Reply to Return to Petition for Writ of Certiorari

Respondents, through Sweeny, Wingate and Barrow, P.A. ("SWB") assert in their return that this appeal concerns a "garden-variety motion to compel production of routine discovery information." [Return at 1] As set out in detail in Petitioner's Petition for Certiorari, the issues presented in this appeal are not simple discovery issues, but jurisdictional and constitutional issues. Rather than the "garden-variety" discovery matter which Respondents wish to characterize this appeal, the reality is that Respondents' motion to compel was explicitly based on Petitioner's being in default pursuant to orders which were on appeal by the time the motion to compel was heard and decided.

The release of Petitioner's and her husband's private financial information to Respondents "without objection," as ordered by the circuit court, cannot be undone, even if this Court reverses all or portions of the sanctions orders on which the orders on appeal in the instant case are based. See Affidavit of Thomas H. Pope III, filed herewith.

Respondents offer *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 439 S.E.2d 852 (1994) as being dispositive of the instant appeal, despite Petitioner having argued in detail in her Petition that *Hamm* presented a very different issue, finding that the Rule 241 stay was not in effect during the pendency of an appeal of interlocutory orders which were unripe for appeal. While *Hamm* does support the proposition that discovery orders are not immediately appealable, it sheds no light on the situation presented in this appeal. Here, the questions presented include whether the circuit court had jurisdiction to enter orders clearly related to matters on appeal, where no party had sought to lift the Rule 241 stay. Respondents have not and could not argue that the orders on appeal in Appellate Case No. 2023-1253 are unappealable.

Respondents, true to form, make no effort to acknowledge their own filings and statements to the courts. They argue that the orders on appeal herein are matters unaffected by the pending appeal of the sanctions orders, which does track with the argument they made at the August 10, 2023 hearing, held after the filing of the Notice of Appeal herein and which neither SWB nor the Court made any attempt to inquire into the absence of counsel for Petitioner. At that hearing, Respondents' counsel stated, "[Petitioner's] appeal was of the sanctions order that *struck her answer* . . .. That is wholly independent of discovery in this case. . .." [See Transcript, Exhibit B to Petition for Certiorari, p. 5] This statement, made when Respondents knew Petitioner was not represented at the hearing and would not have an opportunity to be heard, conflicts with the motion which was before the circuit court that day. Their motion includes little analysis, but asserts, "Defendant Pope is in default in this matter and Plaintiffs are awaiting a damages hearing. Therefore, Plaintiffs are entitled to full and complete responses, without objection." [See **Exhibit A**, attached hereto]

Consistent with their longstanding practice, Respondents primarily make vitriolic and unsupported attacks on Petitioner in their Return. Among the most startling is Respondents' suggestion that this nearly 14-year-old case is somehow "Pope-created," where Respondents brought this case against Petitioner, delayed and avoided discovery for years, and have attempted to ramrod a conclusion only since they obtained the orders striking Petitioner's answer and holding her in default – despite the pendency of the appeal of those orders. Respondents have repeatedly and falsely accused Petitioner of delay, often as precursor to their patently false but repeated suggestion that the pending litigation with Petitioner is preventing the James Brown "I Feel Good" Charity from distributing scholarships to needy and deserving students as Mr. Brown intended. [See Motion to Consolidate and Transfer, dtd. 2/23/24 at 3, on file in this case] Respondent

Bauknight could have made or the Attorney General could have compelled him to make scholarships at least 11 years ago.[1]

Respondents, after falsely alleging that Petitioner has been the source of delay in this case, go on to suggest that, rather than appealing the orders herein, which were issued without jurisdiction and in violation of the Due Process and other rights of Petitioner and her husband, Petitioner should have simply refused to comply with the orders, allowed the circuit court (presumably at Respondents' behest) to proceed with holding Petitioner in contempt, and then appealed the resulting contempt orders. It is unclear how Respondents can accuse Petitioner of causing delay, while simultaneously suggesting she should have defied the circuit court orders and created additional litigation below, rather than seeking this Court's review of the orders *while this Court already has before it the appeal of the orders on which Respondent's discovery motion is based.*

Petitioner notes that Respondents argue that there is no basis for review by this Court, while acknowledging that they were the first to ask that this Court take jurisdiction over this appeal. [Return at n. 1] Petitioner consented to the transfer and consolidation of this case, provided it did not delay the outcome of the already fully-briefed appeal in Case No. 2023-1253. The instant Petition was filed in good faith and was necessitated by Respondents' forceful efforts to have the circuit court move forward with matters clearly affected by the pending appeal.

Return to Motion for Sanctions

Respondents, who have made numerous requests and motions for sanctions against Appellant and her counsel in this and other cases, again move for sanctions against Petitioner and

[1] Bauknight told the Court in 2013 that "the Estate and Trust is <u>now</u> prepared to fund scholarships" [emphasis supplied]. *See* Return of Appellant to Motion to Consolidate and Transfer, dated January 5, 2024, at 4, on file in this case.

her counsel for seeking this Court's review of orders which *Respondents have already asked this Court to review.* As noted above, before the court of appeals' dismissal of the orders stemming from the August 10 hearing, Respondents moved this Court to certify Petitioner's appeal of these orders, which was then pending in the Court of Appeals. [Return at n. 1; *see also* Respondents' Motion to Consolidate and Transfer, dated February 23, 2024]

This Court has pending before it Petitioner's appeal of the sanctions orders on which the orders in the instant appeal are based, and Case 4900 cannot proceed to any final hearing until that pending appeal is finally resolved. Petitioner consented to the transfer of the appeal of the sanctions orders to this Court, now pending as Case No. 2023-1253. She further consented to certification and consolidation of this appeal with Case No. 2023-1253, provided consolidation did not delay consideration of the fully-briefed appeal. This Court declined to transfer and consolidate this appeal at that time and noted its expectation that the Court of Appeals would promptly conclude the appeal before it. Nothing in this Court's March 28, 2024 Order prohibited Petitioner from seeking this Court's review of the Court of Appeals' disposition, and her Petition is made in accordance with the South Carolina Appellate Court Rules.

Petitioner has not filed the instant Petition for purposes of delay but for the clearly-stated and supported reason of avoiding further litigation of what effect this Court's disposition of Case No. 2023-1253 will have on circuit court orders issued during the Rule 241 stay which are affected by the matters on appeal in Case No. 2023-1253. In an attempt to avoid this additional appeal, Petitioner notified the circuit court that the matters heard on August 10, 2023, were indeed affected by the pending appeal. [See Silvernail Affidavit, dtd. 11/16/23, Exhibit D to Petition for Cert.] Without response or further hearing, the circuit court issued its order nearly three (3) months later. Respondents, through SWB and Maynard Nexsen, have continued as recently as late April 2024

to ask that the circuit court proceed with hearing various matters despite the pending appeal in Case No. 2023-1253, and despite those matters being affected by matters pending before this Court.

Respondents have also continued to file motions, including this motion for sanctions, in this Court and the circuit court, piling up further litigation while this Court considers the matters before it. Petitioner, however, has made filings only as necessary to respond to Respondents and, where necessary to protect her civil and constitutional rights, to seek appellate review of the orders on appeal herein.

Respondents further accuse Petitioner of "sanctionable lies," a term they apparently use to refer to truths which are inconvenient to them. The Affidavit of Petitioner, filed herewith, and separate return of W. Jeffrey Smith, Esquire, in response to the sanctions motion address factual matters in more detail, but Petitioner and her counsel briefly address Respondents' outrageous allegation of certain "sanctionable lies" as follows:

1. "The lie about the continued presence of the Attorney General." Petitioner cannot fathom how this can be couched as a lie. One need only look at the caption in this case, *which sits atop Respondents' motion*, to see that Respondents include Russell L. Bauknight, on behalf of the Attorney General and others. Respondents drafted their complaint and named the parties to this case. After the Attorney General itself was dropped from the case, Respondents have never sought to have the caption amended; to have the parties changed; or to amend the allegations in the complaint and filings describing the Attorney General's purported vital role in the relief sought by Respondents
2. "The lie about the continued presence of Robert Buchanan." Petitioner has not

represented that Mr. Buchanan remains in the case, and Respondents' own argument shows that Petitioner has correctly represented Mr. Buchanan's participation.[2] In support of their argument that she has misrepresented facts, Respondents quote Petitioner's statement that recent orders granted relief Respondents had been seeking against Petitioner and Mr. Buchanan "for fourteen (14) years." Respondents go on to say that Mr. Buchanan settled "*twelve (12) years ago*." As Respondents are well aware, all allegations in their never-amended complaint, filed in May 2010, were made against Petitioner and Mr. Buchanan. The fact that Mr. Buchanan settled later (upon receiving a payment of $500,000) does not change Respondents' own allegations.

3. "The lie that Respondents are accusing Pope of a "federal felony." Again, Respondents wish to distance themselves from their own allegations. In their never-amended complaint in this case, Respondents accuse Petitioner and Mr. Buchanan of:

    a. "failing to use due diligence in determining the value of the estate, thereby making the estate vulnerable to millions of dollars in unnecessary and incorrect tax liability" [Complaint, ¶18(d.)];

    b. "by misrepresenting or presenting inaccurate statements under oath to the Court" Complaint, ¶18(q.)];

    c. "by failing to file appropriate tax returns" Complaint, ¶18(r.)]; and

    d. "[a]rtificially inflating the reported value of the estate, without any substantiation and without any consistency, for the purpose of justifying their claim for approximately $5 million in fees." [Complaint, ¶18(u.)]

    While Respondents do not use the term "federal felony," Petitioner has consistently

[2] The May 19, 2010 Complaint deals *only* with *joint actions* of Petitioner and Mr. Buchanan.

and accurately argued that Respondents have alleged facts which would amount to a federal felony. *See* 26 U.S.C.A. § 7206. The depositions of Governor McMaster confirm the seriousness of that allegation when made on behalf of the Attorney General, the State's chief prosecutor.

4. "The lie that Respondents are concealing 150 boxes of 'public' James Brown documents." Again, this "lie" appears to be proven by Respondents' own argument. They correctly state that these boxes were delivered to Bauknight by Petitioner and Mr. Buchanan, and Petitioner is familiar with their contents. In fact, a large amount of the documents contained in those boxes were on file in the public record prior to Bauknight's taking control of them. This is a reason why Petitioner has resisted Respondents' efforts to recharacterize the documents as confidential and to limit Petitioner's ability to defend herself with public documents. Respondents are incorrect that those documents were subject to confidentiality orders at the time they were delivered to Bauknight; Respondents' subsequent efforts to make public documents confidential have hindered proper discovery in this and other matters.[3]

Neither Pope nor her counsel have ever advanced a factual or legal argument to this or any other Court which they did not believe to be meritorious and appropriate. Respondents, however, have created substantial unnecessary litigation in seeking sanctions at every turn. Petitioner, now 80 years old, is eager to see the end of this litigation, but she should not be punished for continuing to defend herself from Respondents' recent attempts to barrel forward to an unjust conclusion of this matter after Respondents caused more than a decade of delay.

[3] The confidentiality order *in this case* confirms that no public or formerly public documents may be declared confidential.

Petitioner's counsel have represented and continue to represent Petitioner in good faith, as Respondent's continue to complicate this litigation. Respondents seem to suggest that Petitioner's counsel should be sanctioned because counsel declined to abandon their client or disavow their filings when asked to do so by Respondents. [Return at 12-13] Petitioner's counsel accepted Respondents' overture for exactly what it was: another attempt to intimidate Petitioner's counsel into abandoning their client, so Respondents could more easily abuse her.

This Court recently undertook a thoughtful review of policy issues surrounding motions for sanctions in *Pee Dee Health Care, P.A. v. Estate of Thompson*, 424 S.C. 520, 818 S.E.2d 758 (S.C. 2018). This Court's analysis includes significant concern about promoting what has been seen as improper overuse of motions for sanctions in litigation. As this Court noted, "the atmosphere of litigation [in South Carolina] is relatively collegial, and it is vitally important to our profession that we maintain that atmosphere to the extent possible...." Petitioner submits that the numerous motions for sanctions, including the instant motion, are exactly what this Court was concerned with in *Pee Dee Health Care*. In a footnote, this Court quotes from several sources noting concern about the increasing use of sanctions as litigation strategy devices, including the following:

> At least one empirical survey shows that both lawyers and judges believe that the rule has aggravated relations among lawyers. Other studies suggest that sanctions have become but another device in a litigator's bag of tricks, an additional tactic of intimidation and harassment. *Id.* at n. 1 (*quoting* Drew Erteschik and Colin McGrath, *The Rule 11 Motion: Don't Do It*, (June 28, 2018)).

Respondents, once again, are using the threat of sanctions to not only intimidate Petitioner, but to pressure her counsel to abandon her. Their inappropriate motion stands only to occupy more of this Court's time and delay the outcome of this matter, and neither Petitioner nor her counsel should be sanctioned for the filing of the Petition herein.

CONCLUSION

For the reasons set forth above, Petitioner respectfully asks that the Court deny Respondents' motion for sanctions; grant a Writ of Certiorari to review the orders appealed from; reverse or void the orders; and allow this this case to proceed to a just concusion.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
S.C. Bar No. 80219

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
SC Bar No. 0005225

Daryl L. Williams
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

Counsel for Appellant Adele J. Pope

April 30, 2024