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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

Certiorari to the Court of Appeals
Appeal from Richland County
Court Of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2024-001028

Adele J. Pope..... Petitioner,

v.

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

RETURN TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Court of Appeals properly affirmed the circuit court's finding that the Attorney General did not receive Petitioner's 2011 Freedom of Information Act request and its dismissal of this action?
2. Whether the Court of Appeals properly decided this case on the above ground following the report of the Attorney General in March, 2024, that it located the appraisal that was the subject of the 2011 FOIA request?
3. Whether judicial economy would be served by remanding this case for the circuit court to direct the Attorney General to respond to the 2011 FOIA requests and other requests for the same documents?
4. Whether the response of the Attorney General to FOIA requests other than the 2011 request are before this Court?
5. As an additional sustaining ground, whether Petitioner may pursue her 2011 FOIA request when she already has the appraisal at issue?
6. As an additional sustaining ground, whether the Court of Appeals should have granted the Attorney General's Motion to Dismiss this appeal because of Petitioner's litigation misconduct?

STATEMENT OF THE CASE

Procedural History

Petitioner brought this action by a Complaint filed in Newberry County on August 3, 2011. Record (R.) VI, p. 43. The Complaint requested, in part, that the Court declare documents public that she sought by a June 30, 2011, Freedom of Information Act request and that they be made

available for inspection and copying. *See* Statement of Facts, *infra*. The Respondent Attorney General (AG) filed a Motion to Dismiss and Alternative Motion to Strike the Affidavit of Petitioner attached to the Complaint. R. VI, p. 80. Under SCRCP, Rules 12(b)(3) and (8), the Motion contended that venue was improper and that it should be in Richland County where the related litigation was pending. *Bauknight etc. v. Pope*, 2010-CP-40-4900. The Motion also contended that another action was pending between the parties, *Bauknight, supra*, and that Petitioner was pursuing through the instant suit the same discovery issues pending in case 4900.

Petitioner filed a Motion for Summary Judgment dated September 29, 2011. R. VI, p. 112. She filed numerous affidavits that were the subject of several Motions to Strike filed by the Petitioner. R. VI, pp. 80, 110, 121, 123, 126, 248 and 250 (Affidavits in Record addressed by Motions to Strike of 9-2-11, 9-14-11, 9-27-11, 10-13-11, 1-9-12, 3-28-12, 3-29-12).

On October 24, 2011, the Attorney General filed an affidavit of Senior Assistant Attorney General Tracy Meyers stating that records of the Office of the Attorney General (OAG) did not show that the letter had ever been mailed or delivered to that Office. R. VII, pp 515-517. The affidavit and the failure to mail or deliver were among the grounds of the Attorney General's Memorandum in Opposition to Plaintiff's Motion for Summary Judgment filed January 11, 2012. R. VII, p. 606.

Following a hearing, the circuit court issued a Form 4 Order on January 11, 2012, transferring venue of this case to Richland. R. VI, p. 10. On February 1, 2012, Respondent Attorney General moved to consolidate this case with case 4900. R. VI, p. 178.

On December 20, 2012, the Attorney General moved to amend his Motion to Dismiss to assert lack of subject matter jurisdiction and to drop improper venue. R. VI, p. 160. The lack of subject matter jurisdiction ground was based upon Petitioner's failed to accomplish mailing or

delivery of her FOIA request as required by §30-4-30(c) and because the items requested were exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil Procedure for which Petitioner was seeking the documents. *Id.*

Subject to his pending Motions, the Respondent AG filed an Answer dated March 7, 2013. The Answer included the defenses asserted in the Motion to Dismiss and Motion to Amend Motion to Dismiss. R. VI, p. 190. The Answer also included the defense that the Office of the Attorney General had no documents that could be considered responsive to the FOIA request except for a draft of the Legacy Trust attached thereto and included in the Record on Appeal in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). R. VI, pp. 187, 206, 207. The Respondent AG also filed a Motion for Judgment on the Pleadings on March 7, 2013. R. VI, p. 241.

The Supreme Court gave the Honorable Doyet Early, III, jurisdiction of this case by Order dated March 24, 2016. Judge Early heard pending motions in this case on May 17, 2016. He issued an Order dated June 14 dismissing this case. R. VI, p. 19. He found that the documents at issue were potentially discoverable in pending litigation in Richland / Aiken counties and would be governed by the Rules of Civil Procedure. He found that the documents were exempt from disclosure under FOIA for this reason and that FOIA could not be used to bypass civil discovery. The Court denied Plaintiff's Motion to Alter or Amend by Form 4 Order dated July 22, 2016. R. VI, p. 22. Plaintiff appealed the above 2016 Orders.

The Court of Appeals reversed the circuit court's order dismissing Complaint and remanded for further proceedings on the basis of its conclusion in its Opinion in *Pope v. Wilson*, 427 S.C. 377, 389, 831 S.E.2d 442, 448, (Ct. App., 2019) which included the statement that “[i]f the government invokes the exemption in section 30-4-40(a)(4), [m]atters specifically exempted

from disclosure by statute or law,’[footnote omitted; emphasis as added by Court of Appeals] to seek protection under discovery rules, it must point to the specific language of a discovery rule that expressly prohibits disclosure of a particular type of record.” The Court of Appeals found that the case was not moot because Plaintiff challenged the claim that the Attorney General had given her all the documents responsive to her request. The Court did not address the Attorney General’s additional sustaining grounds including that the Court lacks subject matter jurisdiction because the Attorney General never received Petitioner’s FOIA request.

Following remand, a hearing was held on remaining issues before the Honorable Clifton Newman on November 19, 2020. The parties filed memoranda before the hearing. R. VII, p. 749 (Memorandum of AG). The Attorney General’s Memorandum argued that the Court lacked jurisdiction when Petitioner’s FOIA request was not received by mail or delivery, that he had supplied all documents responsive to the FOIA request and that his Motions to Strike should be granted. *Id.* The Attorney General filed a Response in Opposition to Petitioner’s Proposed Order, Supplemental Memorandum and Affidavit. (R. VII, p. 834).

Judge Newman entered an Order on April 1, 2021, granting the Attorney General’s Amended Motion to Dismiss and Motion for Judgment on the Pleadings because he never received the written FOIA request by mail or delivery. R. VI, p. 16. Petitioner filed a Motion to Alter or Amend (R. VI, p. 327) which the Court denied by Order of April 23, 2020. R. VI, p. 41.

Petitioner appealed Judge Newman’s Order. On March 19, 2024, undersigned counsel served Petitioner’s counsel and filed a letter with the Court of Appeals to correct the Attorney General’s final brief which stated, in part, as follows:

I was just informed yesterday that the Office of the Attorney General had located a

confidential document that our final brief of Respondent reported that we did not have. The document is an appraisal [a.k.a. valuation] of the value of assets of the Brown estate. . . .

A comprehensive search of documents in 2015, for which I can produce affidavits executed that year, located no appraisal. Apparently, a large number of documents were scanned for the first time in 2017. In an electronic document search to respond to a new FOIA request from Petitioner in 2024, the appraisal was located last Friday. According to the information I have been given, the appraisal does not show how or when the document came to the Office of the Attorney General.

Petitioner filed a Return to the letter dated March 29. The Attorney General moved to strike the Return and dismiss this appeal. The Motion quoted from this Court’s Order of March 28, 2024, in *Ex Parte Russell L. Bauknight In Re Adele Pope*, Appellate Case 2024-000176, as stating the Court’s “continuing concern with . . . Pope’s repeated abusive and meritless filings regarding the underlying estate and trust.” Exhibits to Motion at page 1. Petitioner filed a Return, and in Reply, the Attorney General noted that “[t]he fact that Petitioner would make the absurd suggestions that the Motion was made to avoid scrutiny shows that she is undeterred in making wild, baseless and abusive allegations.” The Court did not grant the motion.

At oral argument, the Court of Appeals panel acknowledged that it had seen the March 29, Order of this Court which stated that “[i]t is clear that Pope has a copy of the Appraisal.” video transcript, https://media.sccourts.org/COA_Videos/2021-000518.mp4, April 2, 2024, at 15:23. *Ex Parte: Russell L. Bauknight, etc. In re Adele J. Pope*. Pope v. Wilson, Appellate case No. 2021-000518, March 29, 2024.

Following oral argument, the Court of Appeals affirmed “the circuit court's finding that the AG did not receive the request as required under the FOIA and conclude the circuit court properly dismissed the action.” *Pope v. Wilson*, No. 2021-000518, 2024 WL 2050282, at *1 (S.C. Ct. App. May 8, 2024). Petitioner petitioned for rehearing, and rehearing was denied. She then filed this Petition for Writ of Certiorari.

Factual Background

Petitioner requested the following documents in a June 30, 2011, letter addressed to the “Custodian of Records of the Office of the Attorney General” (R. VI, p. 52) but never received by the Office:

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

Tracy Meyers of the Office of the Attorney General (OAG) wrote Petitioner on August 5, 2011, that the Office had not received that request. R. VII, p. 475. The letter said that Civil Division attorneys notified her that Petitioner had “refer[ed] to a request dated June 30, 2011 in a motion filed by [her] in a . . . circuit court case.” The letter did not say that Petitioner had attached her request to that Motion, and Petitioner has not produced a document showing that she had. In fact, Ms. Meyers’ letter said that if Petitioner had made such a request, “if you will forward it to me with the next five (5) business days, I will expedite a response to it.” Petitioner did not forward the request. According to Ms. Meyers’ affidavit of October 20, 2011, and filed with the circuit court four days later, records of the OAG did not show that the letter had ever been mailed or delivered to that Office. R. VII, pp. 515 & 516¹. Without proper mailing or delivery

¹ As stated in Ms. Meyers’ Affidavit (R. VII, p. 516):

3. She never received from Ms. Pope the June 30 letter Ms. Pope claims to have sent to the Office of the Attorney General. She requested checks of Office mail logs, none of which showed that the letter had been mailed or delivered to the Office of the Attorney General by Ms. Pope or her attorney which is necessary to require a response from this Office under FOIA.
4. Attachment of the June 30, 2011 letter to the complaint in the [instant] suit does not constitute a request under FOIA to which the Office of the Attorney General must respond.

of the FOIA request to the OAG, the requirements of FOIA were never triggered. §30-4-30(c) (“[e]ach public body, upon written request for records made under this chapter shall within fifteen days . . . of the receipt of any such request notify the person making such request of its determination . . .”). (emphasis added).

Petitioner contends that the Attorney General did not raise this defense in his Motion to Dismiss. He did not do so because that Motion was based upon the limited grounds of improper venue and the pendency of another action between the parties under Rules 12(b)(3) and (8). R. VI, p. 80. Contrary to Petitioner’s statement that the Attorney General did not raise this issue of non-receipt until December 20, 2012, he raised the issue in October 2011, when he filed the Meyers affidavit, *supra*, and raised the defense in opposition to Plaintiff’s Motion for Summary Judgment filed January 17, 2012. (R. VII, p. 618). Of course, since the non-receipt deprives the Court of subject matter jurisdiction, it could be raised at any time.

The Attorney General’s Answer to the Complaint reserved his defenses, including lack of receipt of the FOIA request, and attached the only document that could be responsive to Petitioner’s Request No. 1, *supra*, the unsigned Legacy Trust draft. R. VI, pp. 187, 206-240. and 27 -42). As to Request 2 for correspondence between the OAG and Russell Bauknight regarding value of assets, the Office of the Attorney General had nothing responsive then. Moreover, the appraisal that Petitioner has sought is confidential pursuant to a Court order in a Federal case involving her, but she would have access to it since 2013 through that proceeding. *Brown v. Pope*, 3:08-cv-14-WOB (D.S.C., November 15, 2013, the Honorable J. Gregory Wehrman, Magistrate Judge). As noted above, this Court found on March 29 of this year that Petitioner had the Appraisal.

ARGUMENT

No special and important reasons exist to grant certiorari in this case. Rule 242(b), SCACR. None of following factors are present in this case to warrant consideration of granting the writ: novel questions of law, a dissent in the Court of Appeals decision, a conflict with a prior opinion of the South Carolina or United States Supreme Court or a substantial constitutional issue. Rule 242 (b)(1-4).

I

THE COURT OF APPEALS CORRECTLY AFFIRMED THE CIRCUIT COURT'S DECISION BECAUSE THE ATTORNEY GENERAL'S OFFICE DID NOT RECEIVE PETITIONER'S FOIA REQUEST

Petitioner argues that the Court of Appeals erred because that Court's previous 2019 opinion remanded the case only for the Attorney General to identify a specific discovery rule that barred disclosure. The Court of Appeals did not limit its remand to that issue. The Court specifically stated that it "decline[d] to address the Attorney General's additional sustaining grounds. *See I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420, 526 S.E.2d 716, 723 (2000) ('It is within the appellate court's discretion whether to address any additional sustaining grounds.')." 427 S.C. at 380, 831 S.E. 2d at 444, fn. 2.

Petitioner presents no argument showing that the Court of Appeals erred in affirming the dismissal due to non-receipt of the FOIA request. She vaguely references that the law provides for no specific method for the transmittal of FOIA requests but overlooks that the law requires "receipt". Section 30-4-30(c) is very plain in limiting duties to respond to FOIA requests to receipt of a written request. "(c) Each public body, upon written request for records made under this chapter, shall within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of

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

As found by Judge Newman, who referenced the Meyers affidavit, *supra*, “the Office of the Attorney General never received this letter and Plaintiff has failed to show otherwise.” R. p. *. He found that “attaching the FOIA request to this lawsuit, another lawsuit, or mailing it to retain[ed] counsel is not compliant with the statute.” R. p. *. Petitioner does not support her claim that delivering the FOIA request to an outside attorney would comply with FOIA. The Attorney General had not retained counsel for purposes of responding to FOIA requests, and the statute, *supra*, requires receipt by the public body. Moreover, her FOIA request was directed to the “Custodian of Records” at the Attorney General’s Office, not a law firm.

Petitioner could have remedied the non-receipt, of which she was notified by Ms. Meyers, by simply resubmitting the same June 30 request to the Attorney General, but she failed to do so. Instead, she has carried on litigation for 13 years about her initial request without curing her error in her effort to obtain a copy of a document she already had. As Judge Newman stated, “[w]ithout proper mailing or delivery of the FOIA request to the OAG, the requirements of FOIA were never triggered.” R. p. * (Order at page 3).

II

REMANDING THIS CASE TO THE CIRCUIT COURT WOULD NOT BE APPROPRIATE UNDER THE LAW AND THE FACTS

Petitioner argues that the Court of Appeals should have addressed the “revelation” that the Attorney General’s Office had the appraisal or remanded this case to the circuit court to consider the confidentiality of the valuation and three additional requests” for it and Legacy Trust documents. The Court did not need to do so, because of its determination that the June 30, 2011 FOIA request was never received by the Attorney General so as to “trigger” FOIA requirements. Moreover, only Petitioner’s June 30, 2011 FOIA request is before the Court.

III

AS AN ADDITIONAL SUSTAINING GROUND, THIS COURT SHOULD DENY THIS PEITION BECAUSE OF THE ABUSIVE, MERITLESS RETURN PETITIONER FILED AT THE COURT OF APPEALS

Just one day after the Supreme Court expressed concern about Petitioner’s “abusive and meritless filings,” Petitioner filed an abusive and meritless return to the March 19, 2024, letter from the Office of the Attorney General. *Ex parte: Bauknight etc. In re Adele Pope*, Case No. 2024-000176 (S.C. S. Ct. March 28, 2024). Her 26 page return is filled with outrageous, baseless accusations and reams of irrelevant statements of her version of the history of this case, other proceedings and James Brown matters without citations to the record in this case or any other evidentiary support whatsoever. The accusations and other statements are too many to address in in a return. Needless to say, we deny the false accusations.

In particular, Petitioner alleges concealment and hiding of the appraisal which is false and offensive. She has had access to it for years, the Supreme Court said she had it in its March 29

order, and its availability to others is confidential pursuant to court orders. Order, *Brown v. Pope*, 3:08-cv-14-WOB (D.S.C. November 14, 2013, Judge Wehrman), Motion Exhibits p. 5 (“[T]he Court will require Trustee Bauknight to provide a copy of the valuation to any party upon request. However, the Court orders that the contents of the valuation itself shall be subject to protection under the extant confidentiality order.”); Order, *Pope v. Estate of James Brown*, C/A No. 2013CP0201337 (the Honorable Doyet Early June 16, 2017), Motion Exhibits, pp. 7 & 9 (“The appraisal [aka valuation] and all underlying documents are confidential.”). While failing to address the plain language of the Wehrman order or even to mention the Early order, Petitioner chooses instead to attack affidavits executed by an attorney within the Office of the Attorney General as false. Those affidavits are quite clear that a careful search was made in 2015 and the valuation was not located. Exhibits, at pp. 13 & 15. As explained in the March 2024 letter to the Court of Appeals, *supra*, the appraisal was apparently included in a scan of a large number of documents in 2017 and discovered in an electronic search in March pursuant to a new Pope FOIA request. We do not know how or when the document arrived at the Office of the Attorney General.

Petitioner’s Return violates the Appellate Court Rules in its numerous, unsupported allegations. Even if the letter of counsel of March 19 were considered a motion, which it is not, Petitioner was required to support her statements of alleged fact. Rule 240(c)(3) and (e), SCACR. Petitioner has not supported her allegations with exhibits. Moreover, she argued some of the issues on appeal, and therefore would be required to follow the Appellate Court Rules regarding briefing. In particular, she failed to follow Rule 208(b)(4) which requires that “[t]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.”

In failing to provide citations, she may also have violated Rule 210(c) (“The Record shall not. . . include matter which was not presented to the lower court or tribunal. . .”).

Petitioner has also raised new issues in her Return to the Motion which is improper. Her 26 page Return to the less than two page long letter rambles through pages of irrelevant matter and arguments not previously briefed by her and unsupported by citations to the record. For example, she argues that the Office of the Attorney General “suppress[ed]” the testimony of Henry McMaster and others. Return at page 14. She refers 12 times to attorney Medlin in her Return and multiple times to “Bobadele” (for Bob Buchannan and Adele Pope), but those names do not appear in her briefs on appeal. As stated in Toal, Walker & Baker, Appellate Practice in South Carolina, (3d ed., 2016), p.436 regarding briefing: “No new issues may be raised by the Petitioner in the reply brief.” *See also, Bochette v. Bochette*, 300 S.C. 109, 112, 386 S.E.2d 475, 477 (Ct. App. 1989)(“[a]n Petitioner may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the Petitioner's brief.”) Petitioner’s arguments are not responsive to the Attorney General’s arguments.

This Court has struck Petitioner’s filings at least five times for failure to follow the Appellate Court rules in this case and in other appeals. Order, *Pope v. Wilson*, December 10, 2021 (Citing Rule 210(c), SCACR (“The Record shall not, however, include matter which was not presented to the lower court or tribunal.”) and see Motion and Exhibits to September 24, 2021, Motion to Strike. Her failure to follow the rules warrants dismissal of this Petition, but more importantly so do her egregious false allegations as set forth below.

False Accusations

Most offensive of all are the false accusations in Petitioner’s Court of Appeals Return. She makes multiple, unfounded accusations that attorneys have executed false affidavits or

repeated falsehoods or otherwise engaged in deception. *See, eg*, Plaintiff’s Return to March 17 letter, p. 11 (“have made known false claims, including under oath, to citizens and multiple courts to prevent release of the public \$4.7 million valuation”); p. 12 (“repeats some of the false claims about confidentiality” “a 2016 [sic - 2015] false affidavit” “repeats some of the false claims” “trail of FOIA deception”); p. 15 (“specious affidavit”) and p. 21 (“specious affidavits of FOIA staff”). Pope excoriates litigation counsel for simply doing their jobs and taking legal positions with which she disagrees.

The Supreme Court has admonished Petitioner about such conduct including her abusive and meritless filings. Order, *Ex parte: Bauknight etc. In re Adele Pope*, Case No. 2024-000176 (S.C. S. Ct. March 28, 2024, Exhibits to Motion, p. 3 (“We further note our continuing concern with Respondent-Petitioner Adele J. Pope’s repeated abusive and meritless filings regarding the underlying estate and trust.”); *see also, Bauknight, et al. v. Pope*, Order, Case No. 2020-001713 (S.C. S. Ct., March 28, 2023), Exhibits to Motion, p. 30 “we take this opportunity to caution Petitioner that further frivolous filings in the circuit court or this Court . . . may result in contempt proceedings.”).

The Honorable Clifton Newman sanctioned Petitioner last year by striking her answer in another James Brown Estate related case for frivolous filings and referred to her “abusive” conduct. Order, *Bauknight v. Pope*, 2010CP1004900 (May 8, 2023), appeal pending, South Carolina Supreme Court. Exhibits to Motion to Strike or Dismiss, pp. 20-28. Similarly, dismissal of this appeal is warranted for Petitioner’s abusive and frivolous Return.

Of course, as Petitioner contended in her Return to the Motion, the Attorney General did not file its Motion to Strike and Dismiss because it was “motivated to avoid any scrutiny of how or when its office came into possession of the appraisal.” The Motion was made because

Petitioner's Return, like others of her filings, violates the Appellate Court rules and prior orders of the Courts and is abusive and frivolous despite admonitions from the courts including the Supreme Court on March 28. The fact that Petitioner would make the absurd suggestion that the Motion was made to avoid scrutiny shows that she is undeterred in making wild, baseless and abusive allegations.

CONCLUSION

This Petition for Certiorari is meritless and should be denied. The Court of Appeals correctly affirmed Judge Newman's dismissal of this case because the Office of the Attorney General never received Petitioner's FOIA request.

As an additional sustaining ground for the Court of Appeals decision, her appeal was subject to dismissal due to Petitioner's egregious Return to the March letter from undersigned counsel. Petitioner has ignored the Appellate Court rules, the Orders of the Appellate Courts and engaged in frivolous and abusive filings as to which the Supreme Court admonished her the day before she filed her Return. That she would continue with such conduct the next day shows that she is undeterred. This case and this improper conduct needs to be brought to a close. Attorneys should be able to do their jobs and represent their clients without being subjected to Petitioner's abusive, false allegations for simply taking positions contrary to hers.

For the foregoing reasons, the Attorney General respectfully requests that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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