

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

173086

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

Appellate Case No. 2013-001649

Lower Court Case Nos. 2007-CP-02-0122; 2008-CP-02-0872; 2007-CP-02-0322;
2010-CP-02-072; 2012-CP-02-1059; 2008-CP-02-1426; 2008-CP-02-1712; 2008-CP-02-
2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-
CP-02-1647; 2013-CP-02-1348

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

v.

Albert H. Dallas and others..... Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is Appellant,

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

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

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

**RETURN TO APPELLANT'S MOTION FOR EXTENSION
AND MOTION TO DISMISS**

Respondent Russell Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust (hereinafter “the Estate and Trust”), opposes Appellant Adele Pope’s motion for an extension.

Pope’s request is extraordinary. She asks for an additional 45 days (for a total of 55 days rather than the 10 days allowed by the Appellate Court Rules) to respond to the Estate and Trust’s straight-forward motion to strike. Remarkably, her motion for an extension is 5 pages long, and attached to it she has written a 2-page affidavit and a 10-page “factual addendum.” If Pope truly intended to object to the motion to strike, surely she could have addressed the primary issue raised – whether the items she designated for the record on appeal were presented to the trial court – in these 17 pages.

However, Pope’s purpose for filing this motion for an extension is not to further her pursuit of a legitimate appeal. Rather, she seeks to complicate and delay the Estate and Trust litigation, as she has done ever since the Supreme Court affirmed her removal for cause as personal representative and trustee in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Estate and Trust asks this Court to dismiss Pope’s appeal because it lacks merit and is being pursued for an improper purpose. *See* Rule 269, SCACR (giving the Court of Appeals authority to impose “such sanctions as the circumstances of the case and discouragement of like conduct in the future may require” when an appeal or motion is frivolous, taken solely for the purposes of delay, or is not in compliance with the Appellate Court Rules); *Doe v. Duncan*, S.C. Sup. Ct. Order dated Dec. 2, 2009 (Appellate Case No. 2009-115446) (denying petition for certiorari and imposing nonmonetary sanction upon petitioner Cynthia Holmes for her vexatious and meritless filings by directing clerks of court to refuse filings from Holmes unless she was

represented by a licensed attorney, other than herself). *Cf. Ex parte Bon Secours-St. Francis Xavier Hosp., Inc.*, 393 S.C. 590, 598, 713 S.E.2d 624, 628 (2011) (explaining that Rule 11, SCRCP, sanctions may include reasonable attorneys' fees and costs, a fine paid to the court, a monetary penalty paid to the party defending the action brought in bad faith, or a nonmonetary directive designed to deter the party or the party's attorney from bringing future actions in bad faith).

Background

Pope formerly served as the personal representative and trustee of the Estate and Trust, but was removed for cause in 2009. Her removal for cause was affirmed by the Supreme Court. *Wilson*, 403 S.C. at 448-49, 743 S.E.2d at 766-67. In its opinion, the Supreme Court found Pope's continued involvement was not in the Estate's best interests. *Id.* Ignoring the harm she is causing to the Estate, Pope continues to intermeddle in the Estate's affairs, as demonstrated by the numerous pleadings, motions, proposed scheduling orders, affidavits, and so forth that she has filed in the trial court since the *Wilson* opinion was issued. When the trial court put a stop to her barrage of filings, Pope turned to this Court and has filed numerous appeals, some of which have been dismissed.¹

¹ Pope has filed **five** separate appeals since May of 2013, when the Supreme Court affirmed her removal. In addition to this appeal, Pope has filed appellate case number 2013-02582 (which this Court dismissed because Pope lacked standing and because the order on appeal was not subject to immediate review); appellate case number 2014-000250 (which is in the initial briefing stage; Pope's first initial brief of the appellant was stricken and had to be re-filed because she included matters that were not properly included in the record); appellate case number 2014-00794 (which this Court has dismissed because Pope does not have standing); and appellate case number 2014-001311 (now-consolidated with the -250 appeal).

The latest motion filed by Pope is titled: “MOTION FOR AND MEMORANDUM IN SUPPORT OF EXTENSION OF TIME TO FILE RETURN AND OPPOSITION TO MOTION OF [ESTATE AND TRUST] TO STRIKE DESIGNATIONS; TO FILE RELATED MOTIONS; AND TO FILE REPLY BRIEF OF **APPELLANTS**.” (emphasis added). Despite her use of the plural “Appellants,” there is only one appellant, Adele Pope. She represents *no one*. She has *no legal interest* in the James Brown Estate and Trust. Acting pro se, she is asking this Court to allow her to remain as a party to the proceedings below even after she was removed for cause. It is telling to note that *everyone* who has a legal interest in the Estate and Trust, and that includes some heirs who support the estate plan and others who do not, have no objection to Judge Early’s orders and consequently are nowhere to be found in this appeal.

In Pope’s motion for an extension, she explains that she needs more time to further intermeddle, delay the appeal, and cause waste to the Estate and Trust by: (1) filing a motion to terminate David Bell, even though Pope does not represent and cannot speak for Bell’s client; (2) filing a motion to consolidate this case with the -250 appeal, even though the initial briefs of the Appellants and Respondents have been filed in the above-captioned appeal, Pope has already filed a separate Initial Appellant’s Brief in the -250 appeal, and the Estate and Trust is nearly finished with its Initial Respondent’s Brief in the -250 appeal;² (3) filing a motion to transfer this case to the South Carolina Supreme Court and/or filing a motion to reopen the *Wilson v. Dallas* decision, even though that appeal has already been decided, rehearing has been denied, and the case has been remitted to the lower court; (4) filing a “motion” in other Estate of Brown lawsuits

² The Initial Respondent’s Brief for the -250 appeal is due on July 30, 2014.

pending below, even though she does not explain what type of motion she would file or why such a motion would be relevant to this appeal; and (5) filing a motion to consolidate this appeal with the -794 appeal, even though the -794 appeal has been dismissed.

The Estate and Trust urges this Court to deny the motion for an extension, dismiss the appeal, and put an end to Pope's destructive litigation.

Argument

When deciding whether to sanction an attorney or a party for filing a frivolous appeal, the Court must consider two competing policies: (1) the preference for allowing appeals to be decided on their merits and (2) the importance of discouraging irresponsible, vexatious litigation that unduly burdens the overworked judicial system, causes unnecessary delay to other citizens who have legitimate appeals waiting to be decided, and unnecessarily drives up the cost of litigation for the opposing party. *See, e.g., Baulch v. Johns*, 70 F.2d 813, 816-17 (5th Cir. 1995) (imposing sanctions against an attorney who made frivolous appellate arguments that needlessly wasted the time of the opposing counsel and the court). Based on the particular facts of this case, dismissal is appropriate because Pope's initial brief, designation of matter, affidavits, and motions demonstrate that this appeal is being used for the purposes of obfuscation and delay. Pope has filed a mountain of paper with this Court, yet her filings are inaccurate, baseless, and largely incomprehensible.

Pope's designation of matter includes 11 items that post-date the orders on appeal; 16 items that are from lower court cases not among the thirteen cases involved in this appeal; 9 items that are pertinent only to other appeals; and 13 items that are either not clearly identified, were not presented below, or are not relevant to this appeal.

Furthermore, in her appellant's brief, Pope's arguments are conclusory in nature and fail to cite relevant supporting authority. *See, e.g. D.R. Horton, Inc. v. Wescott Land Co.*, 398 S.C. 528, 548-49, 730 S.E.2d 340, 351 (Ct. App. 2012) (finding issue abandoned where appellants made conclusory arguments and cited to only one case in their reply brief). Most importantly, her only interest in the Estate and Trust litigation extinguished once she was removed for cause from serving as the personal representative and trustee. Thus, she has no standing to continue to interject herself into the Estate and Trust litigation. As the Supreme Court stated in *Wilson*, her continued involvement as a fiduciary is not in the Estate's best interest, and she otherwise has no personal stake in the litigation as she does not represent any of the beneficiaries of the Estate or Trust, nor is she a beneficiary herself.

Frivolous appeals are difficult to define. Certainly, the appellate courts of this state are wary of identifying an appeal as frivolous because courts are sensitive to the chilling effect such a characterization can have on zealous advocates' willingness to raise novel and/or unpopular issues on appeal. However, like Justice Stewart explained in his landmark concurrence regarding the definition of obscenity, this Court knows a frivolous appeal when it sees it. *See Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Stewart, J., concurring) (attempting to define "hard-core pornography" and stating that he would "not today attempt further to define the kinds of material I understand to be embraced within that shorthand description; and perhaps I could never succeed in intelligibly doing so. But I know it when I see it"). Considering the lack of underlying merit to Pope's appeal and the way in which she is litigating that appeal, with lengthy extension requests such as this one, the fact that this Court's dismissal might "chill" Pope from continuing this

vexatious litigation is the desired consequence of Rule 269, SCACR. *See also Foley v. Fix*, 106 F.3d 556 (4th Cir. 1997) (imposing monetary sanction against appellant for filing a frivolous appeal, and enjoining appellant from filing further appeals until the fine was paid and a district court certifies that his appeal has some arguable merit).

Pope's appeal should be dismissed.

Respectfully submitted,


William W. Wilkins, SC Bar No. 6112
J. David Black, SC Bar No. 68499
Tanya A. Gee, SC Bar No. 70191
NEXSEN PRUET, LLC
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409
WWilkins@nexsenpruet.com
DBlack@nexsenpruet.com
TGee@nexsenpruet.com

Attorneys for Russell L. Bauknight, the
Personal Representative of the Estate of
James Brown and the Trustee of the James
Brown August 1, 2000 Irrevocable Trust
Agreement

July 25, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-001649

Lower Court Case Nos. 2007-CP-02-0122; 2008-CP-02-0872; 2007-CP-02-0322;
2010-CP-02-072; 2012-CP-02-1059; 2008-CP-02-1426; 2008-CP-02-1712; 2008-CP-02-
2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-
CP-02-1647; 2013-CP-02-1348

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

v.

Albert H. Dallas and others..... Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is..... Appellant,

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

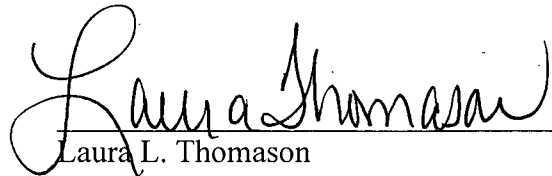
And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J.
Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested
Persons.

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

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **Return to Motion for Extension and Motion to Dismiss** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 25th day of July, 2014, to the addresses shown below.

Adele J. Pope, Esquire 1228 Walnut Street Newberry, South Carolina 29108	Matthew D. Bodman, Esquire 1500 Calhoun Street Columbia, South Carolina 29201
Robert N. Rosen, Esquire S. Alan Medlin, Esquire 18 Broad Street, Suite 201 Charleston, South Carolina 29401	David B. Bell, Esquire Law Office of David B. Bell Post Office Box 1011 Augusta, Georgia 30903-1011
David G. Cannon Post Office Box 865 Barnwell, South Carolina 29812	Mr. Albert P. Shahid, Jr., Esquire 89 Broad Street Charleston, South Carolina 29401
Eugene C. Covington, Jr., Esquire Post Office Box 2343 Greenville, South Carolina 29602	



Laura L. Thomason
Legal Assistant to Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409

Columbia, South Carolina

Tanya A. Gee
Special Counsel

July 25, 2014

VIA HAND DELIVERY

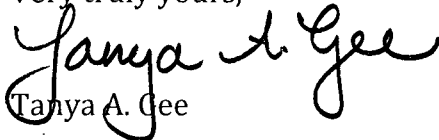
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: Ex parte: Adele J. Pope, Appellant
In Re: The Estate of James Brown and The James Brown 2000
Irrevocable Trust u/a/d August 1, 2000, Respondents
APPELLATE CASE NO. 2013-001649

Dear Ms. Kitchings:

Please find enclosed an original and seven copies of Respondent Bauknight's Return to Motion for Extension and Motion to Dismiss as well as a \$25 filing fee. Please return a received-stamped-copy to me via our courier. Also enclosed is a proof of service reflecting that counsel of record has been served with copies of the same.

Very truly yours,


Tanya A. Gee

Enclosures

cc w/encl.: Adele J. Pope, Esquire
Matthew D. Bodman, Esquire
Robert N. Rosen, Esquire
David B. Bell, Esquire
David G. Cannon
Eugene C. Covington, Jr., Esquire
Albert P. Shahid, Jr., Esquire

RECEIVED

JUL 25 2014

SC Court of Appeals

- Charleston
- Charlotte
- Columbia**
- Greensboro
- Greenville
- Hilton Head
- Myrtle Beach
- Raleigh