

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-36-688

Susan D. Summer, Respondent,

v.

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

and Applicant for Intervention Russell L. Bauknight, as Person Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust. Cross-Appellant.

RECEIVED
OCT 23 2014
SC Court of Appeals

MOTION FOR LEAVE FOR CIRCUIT COURT TO
CONDUCT PROCEEDINGS, FOR TEMPORARY STAY OF APPEAL and TO HOLD
APPELLATE DEADLINES IN ABEYANCE

The Appellant State of South Carolina moves for this Court for leave for the Circuit Court to rule on matters remaining for consideration under its Order of September 19, 2014. The Defendant filed a Notice of Appeal last week as to the Circuit Court's Orders of that date and July 8, 2014 and an earlier oral ruling.

This case was brought under the Freedom of Information Act, S.C. Code Ann. §30-40-10, *et et seq.* The September 19 Order directed the Defendant to produce documents responsive to Respondent's FOIA requests including, under seal, exempt documents for the Court's review with a list of the documents to go to the Court and counsel for Plaintiff and Bauknight. The

Defendant, has submitted documents pursuant to the order, including exempt material while reserving all objections including his right to appeal. The following matters remain to be heard in in Circuit Court according to the September 19 Order:

4. The list of exempt documents shall . . . be the subject of a hearing to be held within thirty days of the production of the list.

6. Plaintiff s counsel shall, within thirty days, submit a statement of fees and costs requested by plaintiff pursuant to S.C. Code Ann. §30-4- 100(b) (Rev. 2007). At the same time as the hearing to consider exempt documents, this Court shall also issue a ruling as to whether Plaintiff is entitled to attorney’s fees and costs for any documents produced which were not previously supplied to her.

7. This Court shall issue a final judgment after consideration of the above matters.

The Defendant appealed the September 19 and other orders because they determined several matters in this case. This appeal may stay further proceedings in the Circuit Court in that the above matters may be affected by the issues in this appeal. Rule 205, SCACR (“[n]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.”). Having a ruling from the Circuit Court on the remaining matters would serve judicial economy in that an appeal from any such order could be consolidated with the instant appeal. Although Plaintiff has asked the Judge to defer a ruling on the amount of fees, the Court could still rule on whether Plaintiff is entitled to fees, excluding the amount, based upon his findings as to the document production.

Undersigned counsel has consulted with Plaintiff’s attorney, and he does not consent to this this motion. Although consultation with counsel for Mr. Bauknight may not be necessary, undersigned counsel has done so, and the attorney for Mr. Bauknight takes no position as to this motion.

Therefore, the Defendant respectfully requests that this Court grant the following relief:

1. Give the Circuit Court leave to determine the remaining matters in this case, subject to all claims and defenses of the Defendant and right of appeal from any ruling that the Circuit Court makes.
2. Stay the instant appeal and all deadlines herein until final judgment in the Circuit Court and any appeal is taken from that judgment.
3. Hold deadlines in abeyance while the Court of Appeals considers this motion.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar. No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR THE DEFENDANT
ATTORNEY GENERAL

October 23, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

Case No. 2012-CP-36-688

Susan D. Summer, Respondent,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina. . . . Appellant,
and Applicant for Intervention Russell L. Bauknight, as Person Representative of the
Estate of James Brown and Trustee of the James Brown 2000 Irrevocable
Trust. Cross-Appellant.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Respondent and Applicant for Intervention with the Appellant's Motion for Leave, for Temporary Stay and to Hold Deadlines in Abeyance by mailing copies to each of their attorneys at the addresses below via the United States Mail this October 23, 2014.

Thomas H. Pope, III, Esquire
Pope and Hudgens, P.A.
P.O. Box 190
Newberry, SC, 29108

Jay Bender, Esquire
Baker Ravenel & Bender, LLP
P.O. Box 8057
Columbia, SC 29202

RECEIVED

OCT 23 2014

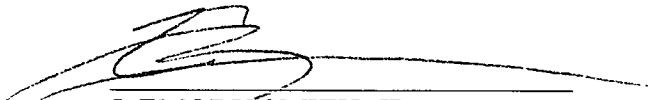
SC Court of Appeals

CERTIFICATE OF SERVICE

October 23, 2014

Page 2

Mark V. Gende, Esquire
Sweeny Wingate & Barrow, P.A.
P.O. Box 12129
Columbia, SC 29211

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", is written over a horizontal line. The signature is stylized and extends slightly to the left and right of the line.

J. EMORY SMITH, JR.
Deputy Solicitor General
Bar No. 5262
Attorney for the Attorney General



ALAN WILSON
ATTORNEY GENERAL

October 23, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
HAND DELIVERED

Re: Summer v. Wilson 2012-CP-36-00688

Dear Ms. Kitchings:

Enclosed for filing with your Office is the original and six copies of Appellant's Motion for Leave, for Temporary Stay and to Hold Deadlines in Abeyance together with the certificate of service. Thank you for your assistance.

Yours very truly,

J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for Defendant Attorney General

Enclosures

cc: Thomas H. Pope, III, Esquire
Jay Bender, Esquire
Mark V. Gende, Esquire

RECEIVED

OCT 23 2014

SC Court of Appeals