

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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NOV 03 2014

SC Court of Appeals

M4051

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Lower Ct. Case No. 2013-CP-02-1337

Appellate Case No. 2014-00250

Adele J. PopeAppellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust,Respondents,

AND:

Robert L. Buchanan, Jr., Interested Party,

JOINT MOTION TO STRIKE RECORD ON APPEAL

Respondents Russell Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust (hereinafter "Estate and Trust") and Russell Bauknight, individually, move to strike the Record on Appeal filed and served by Appellant Adele Pope. Ms. Pope is appealing from the dismissal of her Complaint in its entirety against Russell Bauknight, individually, and a portion of her Complaint against Russell Bauknight, as Personal Representative and Trustee of the Estate and Trust pursuant to Rule 12(b)(6), SCRCF. Yet, the Record on Appeal is two

volumes and 738 pages long. Of those 738 pages, well over 300 pages are materials that were not designated by any party and were not presented below. Additionally, Ms. Pope fails to include two documents properly designated by the Estate and Trust. Accordingly, the Respondents were compelled to file this Motion to Strike the Record on Appeal. *See* Rule 210(c) (limiting content of the Record on Appeal to items designated by the parties and presented to the lower court). Respondents also ask that the time for filing Final Briefs be held in abeyance while this Motion to Strike is pending.

This is not the first time Ms. Pope has attempted to include matters in the Record that are improper. On May 8, 2014, this Court issued an Order striking Appellant's Designation of Matter because it did not comply with the South Carolina Appellate Court Rules. As a result, Ms. Pope was required to "serve and file an amended designation of matter that only designates matters that were presented to the circuit court and are relevant to the circuit court's January 7, 2014 order." She has now attempted to circumvent that Order by including lengthy documents in the Record on Appeal that have not been properly designated. Specifically, the following documents should not be included in the Record on Appeal:

- Approximately 80 pages of documents Ms. Pope refers to in her Index as a "Partial Appendix to a Supplemental Return." Although the attorneys representing Bauknight individually designated the Supplemental Return, they did not designate Ms. Pope's separate and extraneous "Appendix" to the Supplemental Return. Moreover, Ms. Pope includes only a "partial appendix," demonstrating that she personally chose which documents she wanted in the Record without designating them beforehand.
- Approximately 250 pages of documents, which Ms. Pope labels as a Supplemental Affidavit from July 13, 2009 signed by Ms. Pope and Mr. Robert Buchanan. This affidavit has numerous exhibits attached.
- Three orders from 2008. (Approximately 18 pages)

In addition to those improperly included documents, the Record on Appeal does not include:

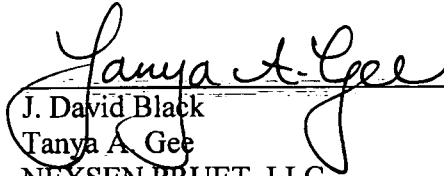
- May 9, 2013 Order of the Probate Court appointing Bauknight as Emergency Special Administrator and Special Trustee; and
- July 2009 Notice of Claim from Pope and Buchanan

The Respondents recognize that Ms. Pope has already filed an original and fourteen copies of her Record on Appeal and that reprinting the Record on Appeal may be costly. However, as reflected in the attached e-mail exchange, the parties conferred on September 29, 2014, and October 27, 2014, regarding the deficiencies in the Record. (Exhibit A) Despite this correspondence, regarding the deficiencies, Ms. Pope unexpectedly filed all fifteen copies of her Record on Appeal with the Court. (See October 28, 2014 Cover Letter filing Record on Appeal, but noting it was filed on October 27, attached as Exhibit B). Ms. Pope filed all of these copies even though (1) she had a motion pending requesting that she be able to file a reduced number of copies of the Record on Appeal (attached as Exhibit C) and (2) the due date for filing the Record was over a week away.

Based on the foregoing, Respondents ask that the Record on Appeal be stricken and an amended Record on Appeal be filed that complies with the South Carolina Appellate Court Rules and previous Order of this Court. Respondents further ask that the timelines for filing their Final Briefs be held in abeyance while this Motion to Strike is pending.

[Signature block on following page]

Respectfully submitted,


J. David Black
Tanya A. Gee
NEXSEN PRUET, LLC
Post Office Drawer 2426
Columbia South Carolina 29202
(803) 771-8900 / (803) 727-1409
DBlack@nexsenpruet.com
TGee@nexsenpruet.com

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


Frederick A. Crawford
Sheila M. Bias
RICHARDSON PLOWEDEN & ROBINSON
1900 Barnwell Street
Columbia South Carolina 29201
(803) 576-3718 / (803) 779-0016
fcrawford@richardsonplowden.com
sbias@richardsonplowden.com

Attorneys for Russell L. Bauknight, individually

November 3, 2014

Exhibit A

Gee, Tanya A.

From: Gee, Tanya A.
Sent: Monday, October 27, 2014 6:07 PM
To: 'Adele Pope'
Cc: Black, David
Subject: RE: Estate of Brown Record on Appeal - Appellate Case 2014-000250 [IWOV-NPCOL1.FID1454037]

I am happy to talk to you before filing a motion, but we will need to do so as soon as possible because our deadline for filing a Final Brief is fast approaching. The last correspondence I have from you on the -250 appeal is from September 26, explaining that you would try to send me a pdf of the index the following day. I never received a pdf of the index, though I do have an email from October 2 where you ask if there are any additional issues. I was out of the office at that time, and an automatic reply was sent on my behalf. I only noticed the extra materials and omitted materials when I received a copy of the record last week.

I explain all of that so you do not think I waited until after you filed your Record to bring up the problems. In that vein, it was my understanding that in lieu of filing the requisite number of copies of the Record on Appeal, you filed a motion for permission to file a reduced number of copies, which is still pending. It is a surprise to hear you filed the Record on Appeal today with that motion pending.

Hopefully we can work it out, but if we cannot, I will just file a simple motion with the Court of Appeals for them to dictate to us how to proceed.

Thanks,
Tanya

From: Adele Pope [<mailto:adele@popelawfirm.com>]
Sent: Monday, October 27, 2014 5:36 PM
To: Gee, Tanya A.
Cc: FCrawford@RichardsonPlowden.com; SBias@RichardsonPlowden.com
Subject: Re: Estate of Brown Record on Appeal - Appellate Case 2014-000250 [IWOV-NPCOL1.FID1454037]

Dear Ms. Gee:

I am sorry if I left out something you designated, and will prepare a supplement if I did.

I have made every effort to be accurate, but believe you are incorrect as to the matters which you say were not designated.

I would like an opportunity to discuss these issues with you, but have a James Brown hearing in the morning and will not be able to do so by Wednesday.

I will respond to you by Thursday if at all possible. Meanwhile, if you prefer to have a phone conversation, I will be glad to do so on Wednesday.

As you know, I have worked pro bono publico since May 8, 2013 to do everything I can to prevent a second dismembering of The James Brown "I Feel Good" Trust. I am dedicated to continuing that task in every appropriate way I can. I have

very little help,
and do many things myself. To avoid misunderstanding and expense, I checked with both you and Ms. Bias before putting the record together, and completed it in accordance with my understanding of the designations and those communications.

The ROA was served some time ago, and filed today. I have served my final briefs in accordance with the ROA as filed.

If you have time before we talk, please check my designations; yours and those of Ms. Bias; my counter-designations; and emails, especially those trying to ascertain what was meant by the claim. I will do the same on Thursday.

I look forward to addressing these issue with you, and trust that we can resolve them.

All my best,

Adele Pope
October 27, 2014
5:32 p.m.

<-----Original Message----->

>From: Gee, Tanya A. [TGee@nexsenpruet.com]

>Sent: 10/27/2014 1:29:13 PM

>To:

>adele@popelawfirm.com; FCrawford@RichardsonPlowden.com; SBias@RichardsonPlowden.com

>Subject: Re: Estate of Brown Record on Appeal - Appellate Case 2014-000250 [IWOV-NPCOL1.FID1454037]

>

>Dear Adele,

>

>I have reviewed the Record on Appeal you served upon us in the 2014-000250 appeal,
>and discovered some items that we designated were excluded from the Record on
>Appeal, and some items that were not designated were included in the Record on
>Appeal. I wanted to approach you about modifying the Record on Appeal before
>filing a motion with the Court.

>

>The following items we designated are missing from the Record on Appeal:

>May 9, 2013 Order of the Probate Court appointing Bauknight as emergency SA/ST

>July 2009 Notice of Claim from Pope and Buchanan

>

>The following items are included in the Record on Appeal even though no one
>designated them:

>Partial Appendix to a Supplemental Return (approximately 80 pages long)

>A supplemental affidavit from July 13, 2009 with numerous exhibits attached

>(approximately 250 pages long)

>Three orders from 2008 signed by Judge Early

>

>We ask that you please modify the Record to comply with Rule 210(c), SCACR. If

>you are unwilling to do so, or if I do not hear from you by Wednesday, October 29,

>I will file the appropriate motion.

>

>Thank you,


>Tanya

>

>

Gee, Tanya A.

From: Sheila Bias <SBias@RichardsonPlowden.com>
Sent: Monday, November 03, 2014 8:13 AM
To: Gee, Tanya A.
Subject: FW: Index to ROA 2014-000250 PDF

HOME	VCARD	LOCATION
		
Sheila Bias Attorney at Law sbias@richardsonplowden.com		
Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3718 Fax: 803.779.0016 www.RichardsonPlowden.com		

From: Sheila Bias
Sent: Monday, September 29, 2014 4:11 PM
To: 'Adele Pope'; ~~Tg@nexsenpruet.com~~ *incorrect address*; rlbuchananjr@atlanticbbn.net; BNewsome@nexsenpruet.com; bwilkins@nexsenpruet.com; Fred Crawford
Cc: Daisy Bonds
Subject: RE: Index to ROA 2014-000250 PDF

Ms. Pope,

Thank you so much for providing this Draft of the Index to the Record on Appeal. There are a few issues I wanted to bring to your attention regarding the Index and subsequent Record on Appeal. First, and I may be mistaken, but I do not see where you have included Item # 9 on Bauknight, Individually' s, Designation of Matter of to be Included in the Record on Appeal (Appellant's Reply to the Memorandum in Opposition to Appellant's Rule 59(e), SCRPC Motion related to the dismissal of claims against Russell L. Bauknight, Individually) in your draft Index. There is something that looks close to this Item on page 5 of your draft Index; however, that item has a date inconsistent with the Reply we referenced.

Additionally, there are several items included in the Index which were not listed in your Amended Designation of Matter to Be Included in the Record on Appeal, your Counter Designations of Matter to be Included in the Record on Appeal, nor on the lists for Respondents; and are, therefore, not properly inclusive in the Record on Appeal. These items should not be included in the Record on Appeal and, if they are, would be subject to a Motion to Strike. Those items are:

- Order of the Hon. Paul E. Short, Jr. dtd. January 20, 2014. (pg. ii)
- Order of the Hon. Doyet A. Early, III, dtd. April 1, 2008 Order (pg. ii)
- Order of the Hon. Doyet A. Early, III, dtd. February 20, 2008 ((pg. ii)
- Order of the Hon. Doyet A. Early, III, dtd. January 8, 2008 (pg. ii)
- Email Chain of The Honorable Doyet A. Early, III re: status conference to be held May 29, 2013 (pg. v)


- May 29, 2013 Notice of Disallowance by Bauknight of Pope and Buchanan's claims (pg. v)
- Pope's Reply to Bauknight's Memorandum in Opposition to Pope's Motion to Reconsider dtd. July 18, 2013 (pg. v)
- Joint [sic] of Pope and Buchanan in Support of Commissions and Payment of Certain Priority Expenses of Administration dtd. July 2009, with Exhibits (This also includes the Exhibit List and the 18 Exhibits listed thereafter) (pgs. v & vi).

Additionally, I have checked with our IT person regarding the attachments we sent last week and there do not appear to be any issues with the PDFs on our end.

Please let me know if you have any questions.

Best Regards,

Sheila

HOME	VCARD	LOCATION
		
<p>Sheila Bias Attorney at Law sbias@richardsonplowden.com</p>		
<p>Richardson Plowden & Robinson, P.A. 1900 Barnwell Street Columbia, SC 29201 Tel: 803.576.3718 Fax: 803.779.0016 www.RichardsonPlowden.com</p>		

From: Adele Pope [mailto:adele@popelawfirm.com] → *incorrect address*
Sent: Friday, September 26, 2014 2:53 PM
To: Sheila Bias [Tg@nexsenpruet.com]; lbuchananjr@atlanticbnn.net; BNewsome@nexsenpruet.com; bwilkins@nexsenpruet.com; Fred Crawford
Subject: Index to ROA 2014-000250 PDF

Dear Counsel,

Enclosed find another draft of the Index to Record on Appeal in Appellate Case No. 2014-000250.

Please let me know if you are unable to open this.

Thanks again for documents.

Have a nice weekend,
 Adele Pope

September 26, 2014

Gee, Tanya A.

From: Adele Pope <adele@popelawfirm.com>
Sent: Thursday, September 25, 2014 9:36 PM
To: Gee, Tanya A.
Subject: RE: PROPOSED INDEX TO RECORD ON APPEAL - APPELLATE CASE 2014-000250 [IWOV-NPCOL1.FID1454037]

Tanya:

Thanks very much.

Returning late, but will try to get you a pdf tomorrow.

Adele

<-----Original Message----->

>From: Gee, Tanya A. [TGee@nexsenpruet.com]

>Sent: 9/25/2014 8:23:59 AM

>To:

>adele@popelawfirm.com;BNewsome@nexsenpruet.com;BNewsome@nexsenpruet.com;FCrawford@

>RichardsonPlowden.com;SBias@RichardsonPlowden.com;BWilkins@nexsenpruet.com;BWilkin

>s@nexsenpruet.com;rlbuchananjr@atlanticbbn.net

>Subject: RE: PROPOSED INDEX TO RECORD ON APPEAL - APPELLATE CASE 2014-000250

>[IWOV-NPCOL1.FID1454037]

>

>I am having trouble opening the proposed index.. I think because it was drafted
>in Word Perfect, and I only have Microsoft Word on my computer. As a result, I
>can only see the tail end of each designation, and I cannot decipher what's what.

>
>I have attached documents that I think are the ones for which you are looking.

>

>Tanya

>

>From: Adele Pope [mailto:adele@popelawfirm.com]

>Sent: Monday, September 22, 2014 2:28 PM

>To: Gee, Tanya A.; Newsome, William G.; FCrawford@RichardsonPlowden.com;

>SBias@RichardsonPlowden.com; Wilkins, William W.; rlbuchananjr@atlanticbbn.net

>Subject: PROPOSED INDEX TO RECORD ON APPEAL - APPELLATE CASE 2014-000250

>

>September 22, 2014

>

>Dear Counsel,

>

>Attached please find the Index to the Record On Appeal as we are preparing to put
>it together. If you have additions or corrections, I would appreciate your letting
>me know by this Friday the 26th of September.

>

>Here are some of the issues that have come up in putting the record together:

>

>1. Some Orders and Pleadings contain confusing dates. I have tried to reconcile
>the designations.
>
>2. Billy's Disallowance did not contain copies of the various things the
>Disallowance disallowed. I have taken the designation of our claim to be Bob's and
>my Joint Affidavit and the 18 Exhibits of July 2009. Billy, if you want more,
>please send to me.
>
>3. Because of multiple cases and appeals, I cannot currently put my hand on:
>
>4. Documents duplicated in the record have generally been placed in record 1 time
>(orders, especially).
>
>- Russell's July 10, 2013 motion to dismiss, etc.,
>- the Estate/2000 Trust's motion to dismiss, etc. of July 10, 2013
>- Memorandum in Opposition to my Rule 59(e) Motion by Bauknight, Individually
>- Reply Memorandum to Memorandum in Opposition to Appellant's Rule 59(e), SCRCPP
>Motion related to the dismissal of claims against Russell L. Bauknight,
>Individually.
>Transcript of the October 8, 2013 hearing related to Bob.
>If one or more of you could kindly email these documents to me, it would be great.
>
>Thanks in advance for making this ROA as seamless as possible.
>
>Adele
>
>Sent September 22 to:
>William Newsome, Esquire
>J. David Black, Esquire
>William Wilkins, Esquire
>Frederick Crawford, Esquire
>Robert L. Buchanan, Jr.
>
>
>*** CONFIDENTIAL COMMUNICATION *** The information contained in this message may
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>cannot be used, for the purpose of (i) avoiding penalties under the Internal
>Revenue Code or (ii) promoting, marketing or recommending any transaction or
>matter addressed in this communication.

Exhibit B

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753

October 28, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

OCT 29 2014

NEXSEN PRUET, LLC
COLUMBIA

Re: Pope vs. Estate of James Brown and others
Appellate Case No. 2014-000250

Dear Ms. Kitchings:

In connection with the above appeal, I have filed the following documents:

1. An original unbound and 14, RECORD ON APPEAL; [Filed 10/27/14]
2. An original unbound and 14 copies, AMENDED BRIEF OF APPELLANT; [Filed 10/28/14]
3. An original unbound copy and 14 copies, REPLY BRIEF OF TO BRIEF OF RESPONDENT BAUKNIGHT, INDIVIDUALLY; [Filed 10/27/14]
4. An original unbound copy and 14 copies, REPLY BRIEF OF APPELLANT TO BRIEF OF ESTATE OF JAMES BROWN AND JAMES BROWN 2000 IRREVOCABLE TRUST (BAUKNIGHT);[Filed 10/28/14]

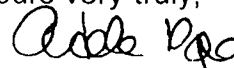
We also intended to file and obtain a copy of Proofs of Service of each of the three briefs, all of which were served on October 27. My copies suggest that, because of the similarity of the proofs, we may not have left all proofs of service with you.

Out of an abundance of caution, I am taking the liberty of providing the Court and counsel with 3 proofs of service of the three briefs, with an extra copy to you.

Could you kindly indicate by returning a file-stamped copy of each that you now have proof of service of all three briefs. A stamped return envelope is enclosed.

Thank you for your help.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*
S.C. Bar No. 4501

Enclosures: as stated
cc: Parties or Counsel as Shown on POD

Exhibit C

THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2014-00250

Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust;
Russell L. Bauknight, Individually, as former *Executor de son tort*, and in every
current and former fiduciary status claimed or held as to the Estate of James
Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

And Robert L. Buchanan, Jr.,.....Interested Party.

MOTION FOR PERMISSION TO FILE REDUCED NUMBER
OF COPIES OF RECORD ON APPEAL AND BRIEFS

Appellant respectfully moves this Court to allow Appellant and
Respondents to serve such reduced number of copies of the Record on Appeal
and Final Briefs herein as shall sufficiently serve the internal needs of the Court.

Respectfully submitted,



Adele J. Pope, *pro se*, SC Bar No. 4501
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

October 15, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 03 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

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

Lower Ct. Case No. 2013-CP-02-1337

Appellate Case No. 2014-00250

Adele J. Pope,Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as Former *Executor de son tort*, and in Every Current and Former Fiduciary Status Claimed or Held as to the Estate Of James Brown and the James Brown 2000 Irrevocable Trust,Respondents,

AND:

Robert L. Buchanan, Jr.,Interested Party.

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing **JOINT MOTION TO STRIKE RECORD ON APPEAL** 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 30 day of November, 2014, to the address shown below.

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108


NEXSEN PRUET, LLC

Tanya A. Gee
Special Counsel

November 3, 2014

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NOV 03 2014

SC Court of Appeals

VIA HAND DELIVERY

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

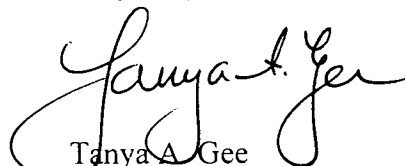
Re: *Adele J. Pope v. Estate of James Brown, Deceased: The James Brown 2000 Irrevocable Trust; Russell L. Bauknight, Individually, as former Executor de son tort, and in every current and former fiduciary status claimed or held as to the Estate of James Brown and The James Brown 2000 Irrevocable Trust AND Robert L. Buchanan, Jr.*
Appellate Case No. 2014-00250

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Dear Ms. Kitchings:

Enclosed herewith for filing in the above-referenced matter is the original and one copy of the **Joint Motion to Strike Record On Appeal** in the above referenced matter. Please return a received-stamped copy to me via our courier. Also enclosed is the **Proof Of Service** reflecting that counsel of record has been served with a copy of the same.

Very truly yours,


Tanya A. Gee
Special Counsel

TAG/hjr
Enclosure
cc w/encl.: Adele J. Pope