

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 No.: 2014-00250
Civil Action No.: 2013-CP-02-1337

RECEIVED

NOV 12 2014

SC Court of Appeals

Adele J. PopeAppellant,

vs.

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 the Estate of James Brown and the James Brown
2000 Irrevocable Trust.Respondents.

AND

Robert L. Buchanan, Jr.,Interested party

**REPLY TO APPELLANT'S RETURN IN OPPOSITION TO THE MOTION OF BAUKNIGHT,
INDIVIDUALLY, TO STRIKE THE RECORD ON APPEAL**

This matter is before the Court on Respondents' Joint Motion to Strike the Record on Appeal. Although Respondents have filed a Joint Motion, Appellant has chosen to address Respondents separately in her Return to the Motion. Respectfully, Appellant's return has not stated compelling grounds as to why the Motion to Strike should not be granted.

Contrary to Appellant's assertions, Respondents do not, in bad faith, complain that the Record on Appeal contains matters which were properly designated by Bauknight, individually.

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Although Bauknight, individually, designated the Supplemental Return to Letter/Motion filed by Appellant, the “Appendix” Appellant now claims was a part of that submission was not designated. Importantly, the “Appendix” could not have been properly designated, as the documents contained therein are not in compliance with Rule 210, SCACR. Specifically, the “Appendix” was a separate set of documents, which were separately served, identified as supporting two separate motions, and, most importantly, contained documents which had never been before the trial judge. (See Exhibit A). As Appellant notes in her Return, it was her hope that this Court would take Judicial Notice of the items in the “Appendix.” Indeed, this Court has specifically ruled, via Order filed June 30, 2014, that Appellant’s Motion to Take Judicial Notice under Rule 201(d) and Supplement the Record (with the very documents which comprise the “Appendix” at issue) was denied. (See Exhibit B). Additionally, this Court specifically admonished, in that same Order, that the Record on Appeal “shall not include matter which was not presented to the lower court.” Id.

Appellant’s opposition to the Motion to Strike the Record on Appeal is yet another attempt of Appellant to place items that were not before the trial judge into the Record on Appeal by seeking Judicial Notice of said items. This Court has already ruled that it will not take judicial notice of the “Appendix” in question and has denied Appellant’s request to supplement the Record on Appeal with these items. Nevertheless, Appellant has persisted in including this material. As such, these improperly included items must be stricken from the Record on Appeal and an Amended Record on Appeal be filed in its place.

Additionally, although Appellant makes much of the “Appendix” being “properly designated,” she does not address the remaining items Respondents’ have indicated are not properly included in the Record on Appeal. Indeed, Appellant has no colorable response for the

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inclusion of the remainder of documents given that counsel for Bauknight, individually, communicated with Appellant, prior to the completion of the Record on Appeal, and advised that inclusion of such items was improper and would make the Record on Appeal subject to a Motion to Strike. (See Exhibit A to Joint Motion to Strike the Record on Appeal).

Finally, this Court should reject Appellant's contention that the Motion to Strike has been made in bad faith and that striking the Record on Appeal will cause a hardship to Appellant. Counsel for Bauknight, individually, and counsel for Bauknight in his fiduciary capacities communicated with Appellant prior to the completion of the Record on Appeal regarding items Appellant wished to include in the Record on Appeal but which were not properly designated. Additionally, and as argued in the Joint Motion to Strike the Record on Appeal, Appellant's hardship is self-inflicted. Appellant filed a Motion seeking to reduce the number of copies of the Record on Appeal to be filed then, inexplicably filed all copies required by the rules, even before this Court had the opportunity to rule on the motion.

Based on the foregoing and the grounds in the Joint Motion to Strike the Record on Appeal, Respondent Bauknight, individually, asks 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.

Signature Page to Follow

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Respectfully submitted,

A handwritten signature in cursive script that reads "Sheila Bias". The signature is written in black ink and is positioned above a horizontal line.

Frederick A. Crawford

Sheila M. Bias

RICHARDSON PLOWDEN & ROBINSON, P.A.

1900 Barnwell Street

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fcrawford@richardsonplowden.com

sbias@richardsonplowden.com

ATTORNEYS FOR RUSSELL L. BAUKNIGHT, INDIVIDUALLY

November 12, 2014

EXHIBIT A

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

June 17, 2014

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

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

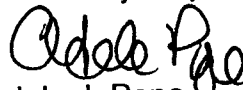
Dear Ms. Kitchings:

In connection with the above-referenced appeal, enclosed please find:

1. Original and seven copies, Supplemental Return and Memorandum Opposing Letter Motion of Russell L. Bauknight, Individually, to Be Dismissed;
2. Original and one copy, Certificate of Service of Supplemental Return;
3. Original and seven copies, Motion of Appellant to Require Unsealing and Delivery of Documents by Respondent Bauknight; Take Judicial Notice under Rule 201(d); and Supplement Record;
4. Original and one copy, Certificate of Service of Motion;
5. Original and seven copies, Appendix Supporting Above Motions;
6. Original and one copy, Certificate of Service of Appendix
7. Check in the amount of \$25, for filing fee for the Motion.

Kindly return a file-stamped copy of each with the courier who delivers this package. Thank you.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*

cc:
Counsel and Parties as shown on Certificate

EXHIBIT B

The South Carolina Court of Appeals

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.

Appellate Case No. 2014-000250

ORDER

On May 23, 2014, Russell Bauknight filed a request to have his name, in his individual capacity, removed from the caption of this appeal, arguing his individual interests are not affected by the order on appeal. Bauknight's request is denied.¹

Appellant's motion "to require unsealing and delivery of documents by Respondent Baughnight; take judicial notice under Rule 201(d); and supplement record" is denied. We note that the record on appeal shall not include matter which was not presented to the lower court. *See* Rule 210, SCACR.


A.J.
FOR THE COURT

¹ We note that on June 17, 2014, Appellant filed a supplemental notice of appeal in this matter, appealing the trial court's orders dismissing Bauknight from the action in his individual capacity.

FILED

June 30, 2014

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

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Appellate No.: 2014-00250

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Adele J. PopeAppellant

vs.

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
a former fiduciary status claimed or held as the Estate of James Brown
2000 irrevocable trust.....Respondents.

And Robert L. Buchanan, Jr., interested party

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson Plowden & Robinson, P.A.,
attorneys for Respondent Russell L. Bauknight, individually, do hereby certify that I
have this date served the foregoing Reply to Appellant's Return in Opposition to the
Motion of Bauknight, Individually, to Strike the Record on Appeal, by personally
depositing a copy of the same in a United States Postal Service mailbox, postage
prepaid, addressed to the following:

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

Tanya Gee, Esquire
William G. Newsome, III, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Post Office Box 2426
Columbia, South Carolina 29202-2426


Kathy J. Templeton

Dated: November 12, 2014

November 12, 2014

www.richardsonplowden.com

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Direct Dial (803) 576-3718

sbias@richardsonplowden.com

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: **Adele J. Pope v. Russell L. Bauknight, Individually, et. al.**
Appellate Case No.: 2014-00250
Our File No.: 101-2606

Dear Ms. Kitchings:

As counsel for the Respondent Russell L. Bauknight, Individually, I have enclosed for filing an original and seven (7) Copies of Reply to Appellant's Return in Opposition to the Motion of Bauknight, Individually, to Strike the Record on Appeal in the above referenced matter, along with our original Certificate of Service. I have also enclosed one additional copy of our Reply and would request that it be file stamped and returned to our courier.

We are this day serving a copy of our Respondent's Motion on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,



Sheila M. Bias
SC Bar # 100005

SMB/

cc: Adele J. Pope, Esquire
Tanya Gee, Esquire
William G. Newsome, III, Esquire
Frederick A. Crawford, Esq.

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