

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

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FEB 27 2015

Eugene C. Griffith, Jr., Circuit Court Judge

S.C. Supreme Court

Appellate Case No. 2014-002222

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

In Re: Susan D. Summer.....Plaintiff,

of whom Susan D. Summer is.....Respondent,

v.

Alan Wilson, in his capacity as Attorney General for South Carolina.....Defendant.

AND

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 Personal Representative of the
Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust.Cross-Appellant.

**REPLY TO SUMMER’S RETURN TO MOTION
TO WITHDRAW/DISMISS APPEAL**

Appellant/Cross-Appellant Russell L. Bauknight, as Personal Representative of the Estate
of James Brown and Trustee of the James Brown 2000 Irrevocable Trust (“Appellant/Cross-
Appellant”) submits this Reply to Respondent Sue Summer’s Return to Appellant’s Motion to
Withdraw/Dismiss his Notice of Appeal.

Summer first argues that there is a justiciable controversy because of the possibility that
Bauknight may seek in the future to intervene in litigation to protect potentially privileged

documents of the Estate. This argument fails because the particular documents sought by Summer in this matter have already been provided to her by the Attorney General, and thus are not capable of being protected from disclosure. *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006). In other words, the situation presented here is not capable of repetition because there is no longer an opportunity for the Estate and Trust to protect the documents at issue in this matter.

The issue presented in this case as to Appellant/Cross-Appellant Bauknight was very simple: Should the Estate and Trust be allowed to intervene to protect the documents sought by Summer from disclosure? Bauknight's motion to the lower court was denied, and before this appeal could be litigated, all documents at issue were provided to Summer by the Attorney General. Accordingly, there is nothing left for the Estate and Trust to litigate; the bell cannot be un-rung, and the appeal is moot. Summer herself advocated for this situation by repeatedly insisting that the documents at issue be immediately produced, a request which was endorsed by the trial court and complied with by the AG despite the fact that the pending appeal arguably stayed all such exchange of documents.

To deny Bauknight's motion to withdraw/dismiss this appeal would be to force the Estate and Trust to argue for what would be an absurd result. The best case scenario at this point would be for this Court to agree that Bauknight should have been permitted to intervene, which would logically result in the case being remanded and litigated in the lower court with Bauknight included as a party in interest. However, to grant intervention at this stage would be pointless, as Summer has already received and published the documents, and will have been doing so for months by the time this appeal has concluded. There is no longer any effective relief that can be had by the Estate and Trust as to this litigation, and therefore its petition to withdraw or for this

Court to dismiss its appeal should be granted in order to avoid further expense pursuing a now-frustrated result.

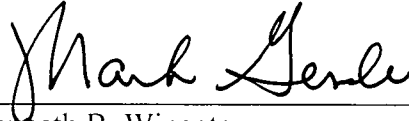
Summer also asserts that the Estate's documents are directly subject to disclosure through a purported agency relationship with the Attorney General. First, the issue of agency was never raised in the lower court, and thus is not preserved for review by this Court. *Holy Loch Distributors, Inc. v. Hitchcock*, 340 S.C. 20, 24, 531 S.E.2d 282, 284 (2000). Furthermore, had it been raised, such assertion would prove futile as Mr. Bauknight is not the agent of the Attorney General. Additionally, Summer's request would violate the Estate and Trust's constitutional right to due process by granting relief against the Estate and Trust in a case in which it was not permitted to participate. U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3; *Sloan v. S. Carolina Bd. of Physical Therapy Examiners*, 370 S.C. 452, 483, 636 S.E.2d 598, 614 (2006). Her assertion that the Estate and Trust should be judicially estopped from future applications for intervention similarly runs afoul of its constitutional rights.

Given the foregoing, Appellant/Cross-Appellant respectfully reiterates his request that this Court issue an order permitting his withdrawal of and/or dismissing his September 29, 2014 Notice of Appeal.

signature page follows

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeny, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
February 27, 2015

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Court of Common Pleas
Eugene C. Griffith, Circuit Court Judge

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S.C. Supreme Court

Case No. 2012-CP-36-00688

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

In re Susan D. Summer,.....Plaintiff,
of whom Susan D. Summer is.....Respondent,

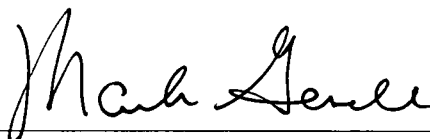
v.

Alan Wilson, In His Capacity as Attorney General for South Carolina.....Defendant.

PROOF OF SERVICE

I certify that I have served the Reply to Summer's Return to Motion to Withdraw/Dismiss Appeal by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2015, addressed to her attorneys of record, Jay Bender, Esquire, Post Office Box 8057, Columbia, SC 29202 and Thomas H. Pope, Esquire, P.O. Box 190, Newberry, SC 29108 and The Honorable Alan Wilson by depositing a copy of it in the United States Mail, postage prepaid, on February 27, 2015, addressed to his attorney of record, J. Emory Smith, Jr., Esquire, P. O. Box 11549, Columbia, SC 29211-1549.

February 27, 2015


Kenneth B. Wingate
Mark V. Gende
Joseph O. Thickens
Post Office Box 12129
Columbia, South Carolina 29211
(803)256-2233
(Attorneys for Appellants)