

STATE OF SOUTH CAROLINA
In the Court of Appeals

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RECEIVED

Appeal from Richland County
Court of Common Pleas

JUL 12 2017

The Honorable Doyet A. Early, III, Circuit Judge
The Honorable L. Casey Manning, Circuit Judge

SC Court of Appeals

Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Respondents,

v.

Adele J. Pope.....Appellant.

APPELLANT'S MOTION TO HOLD APPEAL IN ABEYANCE

Appellant Adele J. Pope ("Appellant") moves, pursuant to Rule 240, South Carolina Appellate Court Rules, for an Order of this Court holding in abeyance all

filing deadlines in this appeal until the lower court rules on all pending and timely filed motions to alter, amend, vacate and/or reconsider the Orders appealed from.

The grounds of this motion are as follows:

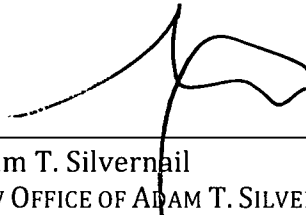
1. Appellant received written notice of the entry of the Order Granting Attorney General's Motion to be Dropped as a Party (the "Order") on July 10, 2017, via email from the Richland County Clerk of Court's office.
2. The Order was signed on May 31, 2017 and filed on June 13, 2017.
3. The Clerk of Court's coversheet for the Order indicates that it was mailed out on June 13, 2017, and the Clerk of Court's office indicates that it was emailed on that date.
4. No counsel of record for Appellant or the Office of the Attorney General received written notice of entry of the Order from the Clerk of Court prior to July 10, 2017, although counsel for the Attorney General obtained a copy of the Order on June 14, 2017.
5. The Affidavit of Adam T. Silvernail, attached hereto as **Exhibit A** and incorporated herein by reference, sets out a detailed account of Appellant's first receipt of written notice of entry of the Order and attaches relevant written communications with the Clerk of Court and other counsel.
6. Appellant submits that the time file motions and/or appeal runs from July 10, 2017, when she first received written notice of the entry of the Order.
7. Out of an abundance of caution, Appellant has filed herewith a Notice of Appeal of the Order (and certain related interlocutory Orders) to protect herself in the event the Clerk of Court's erroneous notation affects the timing

- for motions and/or appeal.
8. Appellant is proceeding with one or more timely motions in the Circuit Court, and she submits that this appeal should be held in abeyance until disposition of all timely-filed motions by the Circuit Court.
 9. Appellant notes that the related Orders appealed herein are each subject to motions under Rule 59(e) which have not been decided by the Circuit Court, which motions should be decided prior to this appeal proceeding.
 10. On July 10, 2017, Appellant also received written notice of an Order Granting Plaintiffs' Motion for Summary Judgment as to Appellant's counterclaims in this case. Although Summary Judgment Order was signed nearly a month after the Order dropping the Attorney General as a party, it grants summary judgment to all Plaintiffs, including the Attorney General.
 11. Appellant is proceeding with timely motions related to the Summary Judgment Order, and she submits that this appeal should be held in abeyance until final disposition of all timely-filed motions related to the Summary Judgment Order.

For the foregoing reasons, Appellant respectfully requests that this Court enter an Order holding this appeal in abeyance until final disposition of all pending or timely filed motions for relief from any Order appealed herein. This motion is based on the South Carolina Appellate Court Rules; applicable statutes and case law; and the entire record herein.

Respectfully submitted,

W.H. Bundy, Jr.
H. Brent McDonald
BUNDY McDONALD, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, South Carolina 29485
Telephone: (843) 492-4134
Facsimile: (843) 843-712-7318
walter@bundymcdonald.com



Adam T. Silvernail
LAW OFFICE OF ADAM T. SILVERNAIL, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com

Counsel for Appellant

July 12, 2017

Other Counsel of Record:

Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Mark V. Gende, Esquire
PO Box 12129
Columbia, SC 29211

Counsel for Respondents

C. Havird Jones, Esquire
J. Emory Smith, Jr., Esquire
PO Box 11549
Columbia, SC 29211

Counsel for Respondent Attorney General

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

**Appeal from Richland County
Court of Common Pleas**

**The Honorable Doyet A. Early, III, Circuit Judge
The Honorable L. Casey Manning, Circuit Judge**

Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Respondents,

v.

Adele J. Pope.....Appellant.

AFFIDAVIT OF ADAM T. SILVERNAIL

PERSONALLY APPEARED BEFORE ME Adam T. Silvernail, who, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) and give this affidavit of my own personal knowledge.
2. I am a member of the South Carolina Bar, and I am one of Appellant's counsel in this action.
3. On July 10, 2017, I received the Order Granting Attorney General's Motion to be Dropped as a Party via email from Anne Henley of the Richland County Clerk of Court's office. A copy of her email is attached as **Exhibit A**.
4. Prior to July 10, 2017, I had not received the signed Order from the Richland County Clerk of Court or elsewhere and was unaware that it had been signed.
5. Upon reviewing the coversheet on the Order, I noticed the Clerk's notation that the Order had been mailed to counsel of record on June 13, 2017.
6. I immediately contacted all other counsel of record to see whether anyone had received the Order prior to July 10.
7. Daryl L. Williams, Esquire, Walter H. Bundy, Esquire, and M. Brent McDonald, Esquire all confirmed that they had not previously received the Order from any source.
8. I searched my emails, including emails screened as 'junk,' and found no indication of having received an email or Order previously. In recent weeks, I have received other Orders, including an Order in this case granting summary judgment to the Attorney General (signed June 23,

2017, filed July 8, 2017 and received via email earlier on July 10, 2017) sent out by members of the Clerk of Court's office, including Ms. Henley.

9. J. Emory Smith, Jr., Esquire, also confirmed that he had not been sent a copy of the Order, although he had obtained one from the Clerk of Court's office on June 14, 2017. His email is attached as **Exhibit B**.
10. Anne Henley also responded, and her email is attached as **Exhibit C**. She indicated that the Order had been emailed out previously, but that she had sent it on July 10, 2017 at the request of Mr. Smith, who contacted her after not having received any indication that the Clerk of Court had distributed the Order to the parties.
11. Plaintiffs' counsel has not responded to my email.
12. I called Ms. Henley on July 12, 2017 and asked whether the Order had been emailed out on June 13th. She told me she had sent it, and I asked her to forward me a copy of the original email.
13. Ms. Henley advised that she had looked back through her emails after receiving the call from Mr. Smith, but had not found this one. She told me it was her understanding that no one had received the original email, and that I should use her email (**Exhibit C**) to show that if questions arose as to timing of the receipt of written notice of the entry of the Order.
14. I have made reasonable efforts to ascertain whether any counsel of record had been sent written notice of the entry of the Order by the Clerk's office, and all counsel of record other than Plaintiffs' counsel (who has not responded) have confirmed that July 10, 2017 was the first date on which

any received notice of the entry of the Order from the Clerk's office.

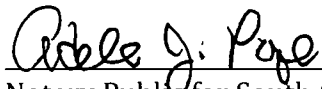
15. Although I believe that the time for filing motions for reconsideration and/or appeal runs from July 10, 2017, I am filing herewith a Notice of Appeal to ensure that the appeal deadline is met if the Order is considered to have been received on the date erroneously stated in the Clerk's coversheet.

FURTHER DEPONENT SAYETH NOT.



Adam T. Silvernail

SWORN TO BEFORE ME this 12th
Day of July, 2017.



Notary Public for South Carolina
My Commission Expires: 9/27/23

EXHIBIT A

Subject: FW:
Date: Monday, July 10, 2017 at 3:34:20 PM Eastern Daylight Time
From: ANNE HENLEY
To: dwilliams@gertzandmoore.com, adam@silvernaillawfirm.com, walter@bundymcdonald.com, rnrosen@rosen-lawfirm.com, sjones@scag.gov, joe@ctlawsc.com
CC: cwatson@sowellgray.com, kbw@swblaw.com, eak@swblaw.com, mvg@swblaw.com, esmith@scag.gov, jdonsbach@donsbachking.com, brent@bundymcdonald.com
Priority: High
Attachments: 2010CP4004900_ORDER_1349752.PDF

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: ANNE HENLEY
Sent: Monday, July 10, 2017 12:10 PM
To: 'esmith@scag.gov'
Subject: FW:
Importance: High

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: ANNE HENLEY
Sent: Monday, July 10, 2017 12:06 PM
To: ANNE HENLEY
Subject:

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004900

Russell Bauknight

Adele J Pope

James Brown 200 Irrevocable Trust

Tommie Rae Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. No. Suit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code 2136 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of June, 2010 and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of June, 2010 to attorneys of record or to parties (when appearing pro se) as follows:

- | | | | |
|--------------------|-----------------------------|--------------------------|--------------------|
| Kenneth B. Wingate | Everett Augustus Kendall II | Daryl L. Williams | J. Calhoun Watson |
| Mark V. Gende | John Andrew Donsbach Sr. | Adam Tremaine Silvernail | J. Emory Smith Jr. |
| Robert N. Rosen | Joseph Odell Thickens | Walter Henry Bundy Jr. | Adele J Pope |
| | | Michael Brent McDonald | Adele J Pope |

ATTORNEY(S) FOR THE PLAINTIFF(S) _____ ATTORNEY(S) FOR THE DEFENDANT(S) _____

Court Reporter _____ Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Russell L. Bauknight, as Trustee of the)
James Brown 2000 Irrevocable Trust and)
the James Brown Legacy Trust, as)
Personal Representative of the Estate of)
James Brown, and on behalf of Alan)
Wilson, in his capacity as Attorney)
General of the State of South Carolina;)
Tommie Rae Brown, individually and on)
behalf of her minor child, James B. II;)
Daryl J. Brown, individually and on)
behalf of his minor child Janise B.;)
Lindsey Delores Brown; Deanna J. Brown)
Thomas; Jason Brown-Lewis; Yamma N.)
Brown, individually and on behalf of her)
minor child Sydney L. and Carrington L.;)
Tonya Brown; Venisha Brown; Larry)
Brown; and Terry Brown)

Civil Action No.: 2010-CP-40-4900

FILED
2011 JUN 12 PM 3:11
JEROME

ORDER GRANTING
ATTORNEY GENERAL ALAN
WILSON'S MOTION TO BE
DROPPED AS A PARTY

and)

Alan Wilson, in his capacity as Attorney)
General of the State of South Carolina;)
Tommie Rae Brown, individually and on)
behalf of her minor child, James B. II;)
Daryl J. Brown, individually and on)
behalf of his minor child Janise B.;)
Lindsey Delores Brown; Deanna J. Brown)
Thomas; Jason Brown-Lewis; Yamma N.)
Brown, individually and on behalf of her)
minor child Sydney L. and Carrington L.;)
Tonya Brown; Venisha Brown; Larry)
Brown; and Terry Brown,)

Plaintiffs,)

vs.)

Adele J. Pope and Robert L. Buchanan,
Jr.,)

Defendants.)

WPE
#1

THIS MATTER COMES before me on the Motion of Attorney General Alan Wilson to be Dropped as a Party to this action, filed on March 25, 2013. The Court held a hearing and heard arguments from counsel on August 29, 2016. Senior Assistant Deputy Attorney General C.H. Jones, Jr. appeared for the Attorney General,¹ and Walter H. Bundy, Jr., Esquire, and M. Brent McDonald, Esquire, appeared for Defendant Adele J. Pope. Based on the pleadings, documents, and arguments of counsel presented to the Court, the Court finds that the Motion to be Dropped should be granted. Accordingly, the Attorney General's Motion to be Dropped as a Party is granted, and the Court Orders as follows.

The Attorney General moved to be dropped as a party pursuant to Rule 21, SCRPC, which states that “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” The Attorney General's Motion to be Dropped is consistent with Rule 21 and the language in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Following the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 2013 WL 697042 (filed February 27, 2013),² the Attorney General filed a Petition for Rehearing wherein he advised the Supreme Court that he would shortly be moving to have himself removed as a party to the 4900 case and that any further action in the case to protect the charitable beneficiaries could be pursued by the new Trustee. See Petition for Rehearing, page 26-27. The Supreme Court acknowledged the Attorney General's desire to withdraw in its opinion of May 2013, stating as follows in footnote 30: “[T]he AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now

1 In an abundance of caution, the Attorney General filed a Notice of Special Appearance to avoid any dispute regarding who would be able to argue and handle the Motion to be Dropped.

2 The initial opinion was issued on February 27, 2013. The Court later withdrew and superseded this opinion with *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

withdrawing as a party in that lawsuit and his office will maintain a monitoring role.” The Attorney General’s role in this matter is to protect the charitable beneficiaries, and with the appointment of Russell Bauknight (Bauknight), as the trustee, that is being handled to the satisfaction of the Attorney General. Accordingly, there is no need for the Attorney General to remain in this action. He is also immune from suit by the counterclaims as set forth later in this order.

Regarding the Attorney General’s role, the Complaint itself states that Henry Dargan McMaster³ is in the action as a beneficiary plaintiff and “in his capacity as the Attorney General for the State of South Carolina[.]” See Complaint, paragraph 3(a). As noted by the general law, the Attorney General, in his *parens patriae* capacity, has the duty to protect the public interest and the authority to do so as granted to him by the state constitution, statutory law, and common law. Further concerning charitable trusts, the Attorney General has the duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) (“[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the AG has the duty to represent the unspecified charitable beneficiaries.”); *see also* S.C. Code Ann. § 1-7-130 (2005) (“The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State.”); S.C. Code Ann. § 62-7-405(c) (2009) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.”); *Epworth Children’s Home v. Beasley*, 365 S.C. 157, 164 n.3, 616 S.E.2d 710, 714 n.3 (2005) (“The Attorney General is the proper party to protect the interests of the public at

³ Henry Dargan McMaster was Attorney General at the time the action was filed. Pursuant to Rule 25(d), SCRCP, Alan Wilson was substituted for Henry Dargan McMaster when he became Attorney General in January 2010.

Handwritten signature and initials, possibly "T.M.E." and "A.B.", in the bottom right corner of the page.

large in the matter of administering or enforcing charitable trusts.” (citing *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961)); see generally 15 *Am. Jur. 2d* Charities § 132 (2015) (“Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it generally is recognized that the state Attorney General, in his or her capacity as a representative of the state and of the public, is the, or at least a, proper party to institute and maintain proceedings for the enforcement of such gift or trust.”).

As the Supreme Court explained in *Wilson v. Dallas*, “[I]t is axiomatic that a trustee is always under the direction and guidance of the court. . . .” (*Id.* (citing *Kingdom v. Saxbe*, 161 N.E.2d 461, 466 (Ohio, Ashtabula County Prob. Ct. 1958)). In addition to the Attorney General, it is also appropriate for an individual Trustee to protect the charitable trust, as explained in S.C. Code Ann. § 62-7-405. Because of the actions of Bauknight, who is under the direction and guidance of the Court, there is no need for the Attorney General to be involved. In *Wilson v. Dallas*, the Court explained that “[a]lthough the AG certainly has duties in regards to charitable trusts, if he believed Appellants, as trustees, were not good stewards, the remedy would be to seek their removal and replacement.” The Attorney General has no concerns with the appointment of Bauknight and believes that the charitable beneficiaries will be protected while he is trustee.

Shortly after the Supreme Court’s ruling, in addition to filing this Motion and consistent with what he informed the Court, the Attorney General sought to withdraw from several other Brown matters. This Court then issued an Order Withdrawing Attorney General dated October 30, 2013. In that Order, the Court explained that allowing the Attorney General to withdraw is appropriate, in light of *Wilson v. Dallas*; the appointment of Bauknight as Special Trustee by

Handwritten signature and initials, possibly "TME" and "P.Y.", in the bottom right corner of the page.

Order dated June 13, 2013; the appointment of Bauknight as Special Administrator dated June 13, 2013; and the Attorney General's desire, pursuant to his statutory and common law authority, to have a monitoring role of the cases. Pursuant to this Order, the Attorney General withdrew from the following James Brown cases: 2007-CP-02-122, 2008-CP-02-1647, 2008-CP-02-872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810. I find the same reasoning applies in the present case and the Attorney General should be allowed to be dropped as a party.

This is a civil case, with causes of action including breach of fiduciary duty, breach of trust, and negligence. The Attorney General is a Plaintiff in the action to protect the interests of the charitable beneficiaries. Because Bauknight, as Trustee, is protecting these same interests, there is no need for the Attorney General to be a party and allowing him to be dropped will not prejudice any other Plaintiff.

The Attorney General's being a counterclaim defendant does not preclude his being dropped as a party because he is immune from suit as to those counterclaims for reasons set forth in his Supplemental Memorandum submitted herein.⁴ See, *Williams v. Condon*, 553 S.E.2d 496, 509, 347 S.C. 227, 250 (S.C.App.,2001); *Butz v. Economou*, 438 U.S. 478, 516 (1978); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4 ,1989); *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999); *Mathis v. McDonough*, 2014 WL 3894133, at *11 (D.Md.,2014); *Metro Charities, Inc. v. Moore*, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990); *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div.

⁴ Immunity is an affirmative defense under South Carolina case law, but as discussed in the Attorney's General's Reply to Plaintiff's Memorandum, cases indicate that it may be covered by the affirmative defense of failure to state a claim or cause of action or raised in a later pleading after the answer. See, *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007); *Ramsey v. City of Forest Park*, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App.,1992); *Baker v. Sudo*, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist.,1987).


1,1996); *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997). Further, to allow the counterclaims to proceed against the Attorney General would not only be contrary to his immunity, they would override his discretion in the protection of charitable beneficiaries by bringing this suit and now trying to end his involvement since Bauknight continues to protect the charitable beneficiaries.

WHEREFORE, for the reasons set forth herein, the Court grants the Attorney General's Motion to be Dropped as a Party.

IT IS SO ORDERED.



The Honorable Doyet A. Early, III
Presiding Judge

, South Carolina

5-31, 2017



State of South Carolina
The Circuit Court of the Second Judicial Circuit

DOYET A. EARLY, III
JUDGE

2959 MAIN HIGHWAY
POST OFFICE BOX 90
BAMBERG, SOUTH CAROLINA 29003
TELEPHONE: (803) 245-4004
FAX: (803) 245-2983
E-MAIL: deartyj@sccourts.org

June 6, 2017

The Honorable Jeanette W. McBride
Richland County Clerk's Office
PO Box 2766
Columbia, SC 29202

Re: Bauknight v. Pope; 2010-CP-40-4900

Ms. McBride,

Please find the enclosed Order Granting Attorney General Alan Wilson's Motion to be Dropped as a Party. Please file and send to all parties. If I can be of further assistance, please let me know.

Sincerely,

A handwritten signature in black ink, appearing to read "H.L. Scottie Hendrix II".

H.L. Scottie Hendrix II
Law Clerk for the Honorable D.A. Early III

EXHIBIT B

Subject: RE: Richland 4900

Date: Tuesday, July 11, 2017 at 11:42:02 AM Eastern Daylight Time

From: Emory Smith

To: Adam Silvernail

CC: Mark V. Gende, Rett Kendall, Ken B. Wingate, Walter Bundy, Brent McDonald, Adele Pope, Daryl Williams

The order is file stamped 6.12. I believe that the entry of the order was listed at least by the 14th but not the image that morning. We sent a courier to obtain a physical copy of the order on the 14th.

Emory

From: Adam Silvernail [mailto:adam@silvernailfirm.com]

Sent: Tuesday, July 11, 2017 11:28 AM

To: Emory Smith

Cc: Mark V. Gende; Rett Kendall; Ken B. Wingate; Walter Bundy; Brent McDonald; Adele Pope; Daryl Williams

Subject: Re: Richland 4900

Emory:

If you recall, when did the Order appear online and/or when did you obtain a physical copy? Do you recall whether it was before or after the summary judgment Order?

Adam

On Tue, Jul 11, 2017 at 11:21 AM, Emory Smith <ESmith@scag.gov> wrote:

The entry of the Order has been up on the Richland court records website for awhile, and before an image of it was posted, we sent a courier to obtain a physical copy of the order from the Court, but I do not believe that we ever received any email or written notification from Richland until yesterday.

Emory

J. Emory Smith, Jr.
Deputy Solicitor General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
[803-734-3642](tel:803-734-3642) Direct

From: Adam Silvernail [mailto:adam@silvernailfirm.com]

Sent: Tuesday, July 11, 2017 10:41 AM

To: Mark V. Gende; Rett Kendall; Ken B. Wingate; Emory Smith

Cc: Walter Bundy; Brent McDonald; Adele Pope; Daryl Williams

Subject: Richland 4900

Gentlemen:

As set out in my email of this morning to Ms. Henley, we received the Order granting the Attorney

General's motion to be dropped as a party for the first time yesterday afternoon.

I have confirmed that none of Defendant's counsel has previously received the Order, and it appears from Ms. Henley's email that Emory had also not received it. Ms. Henley's email nonetheless indicates that it was emailed out previously, but sent again after Emory advised that it had not arrived.

Please let me know whether any of you had received the Order prior to yesterday and, if so, please provide a copy of the cover email or letter.

Adam

--
--

Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
803/779-1770

--
--

Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
803/779-1770

EXHIBIT C

Subject: RE: FW:

Date: Tuesday, July 11, 2017 at 10:03:06 AM Eastern Daylight Time

From: ANNE HENLEY

To: Adam Silvernail

CC: dwilliams@gertzandmoore.com, walter@bundymcdonald.com, rrosen@rosen-lawfirm.com, sjones@scag.gov, joe@ctlawsc.com, cwatson@sowellgray.com, kbw@swblaw.com, eak@swblaw.com, mvg@swblaw.com, esmith@scag.gov, jdonsbach@donsbachking.com, brent@bundymcdonald.com, Early, Doyet A. Law Clerk (Martha S. Dennis), Adele Pope, Early, Doyet A.

It was email out, and Mr. Emory Smith called to say he had not received and asked if I would email again, and out of an abundance of caution he asked I email to all parties.

Thanks

Anne

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: Adam Silvernail [mailto:adam@silvernailfirm.com]

Sent: Tuesday, July 11, 2017 9:27 AM

To: ANNE HENLEY

Cc: dwilliams@gertzandmoore.com; walter@bundymcdonald.com; rrosen@rosen-lawfirm.com; sjones@scag.gov; joe@ctlawsc.com; cwatson@sowellgray.com; kbw@swblaw.com; eak@swblaw.com; mvg@swblaw.com; esmith@scag.gov; jdonsbach@donsbachking.com; brent@bundymcdonald.com; Early, Doyet A. Law Clerk (Martha S. Dennis); Adele Pope; Early, Doyet A.

Subject: Re: FW:

Dear Ms. Henley:

We received notice of the entry of the Order granting the Attorney General's motion to be dropped as a party for the first time yesterday, July 10, 2017, when you emailed it out. I write to clarify that, as the coversheet appears to indicate that the Order was mailed on June 13, 2017. We have not received any

mailed copy of the Order, and I have not heard from any other counsel of record that they received that.

I am copying this to all counsel on your email, as well as Judge Early and his law clerk.

Thank you.

Adam Silvernail

On Mon, Jul 10, 2017 at 3:34 PM, ANNE HENLEY <HENLEYA@rcgov.us> wrote:

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: ANNE HENLEY
Sent: Monday, July 10, 2017 12:10 PM
To: 'esmith@scag.gov'
Subject: FW:
Importance: High

Anne R. Henley
Civil Non-Jury Court Scheduler
Richland County Judicial Center
1701 Main Street
Columbia, SC 29202

803-576-1943

From: ANNE HENLEY
Sent: Monday, July 10, 2017 12:06 PM
To: ANNE HENLEY
Subject:

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Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
803/779-1770

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge
The Honorable L. Casey Manning, Circuit Judge

Case No. 2010-CP-40-4900

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN.....Respondents,

v.

Adele J. Pope.....Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal and Motion to Hold Appeal in Abeyance on all Respondents by hand-delivering a copy of same on July 12, 2017, addressed to his attorney of record as follows:

Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Mark V. Gende, Esquire
PO Box 12129
Columbia, SC 29211

Counsel for Respondents

C. Havird Jones, Esquire
J. Emory Smith, Jr., Esquire
PO Box 11549
Columbia, SC 29211

Counsel for Respondent Attorney General



Adam T. Silvernail