

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

JUL 21 2017

SC Court of Appeals

Case No. 2010-CP-40-4900

Appeal Tracking No. 2017-001523

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

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, Respondents,

v.

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

Of whom Adele J. Pope is the Appellant.

RESPONSE TO APPELLANT'S MOTION TO HOLD APPEAL IN ABEYANCE

Respondents oppose Appellant's motion to hold in abeyance her Notice of Appeal of four circuit court orders. The motion and notice of appeal were served on respondent by hand on July 12, 2017.

ARGUMENT

Appellant's motion is irregular and a non-sequitur.

First, Appellant chose to file an appeal on three orders where Motions to Alter or Amend are still pending with the trial court. Pursuant to Rule 203(b)(1) of the *South Carolina Rules of Appellate Procedure*, the timely filing of a Motion pursuant to SCRCP 59 stays the time for filing an appeal. Thus, the filing of the Notice of Appeal was either premature, or it supersedes the motions below.

Second, Appellant has filed a 59(e) Motion as to one of the appealed orders *after* filing the Notice of Appeal. A copy of the Motion Coversheet to Appellant's "Motion to Alter, Amend, Vacate and/or Reconsider Order Granting Attorney General's Motion to be Dropped as a Party" is attached hereto at Exhibit 1.

Third, Appellant's Motion makes significant reference to an order that is not included among the orders on appeal, but about which it intends to file a 59(e) Motion in the future. *See* Motion to Hold Appeal in Abeyance at Paragraph 9. In fact, on July 13, 2017, subsequent to filing the instant Motion, Appellant did file a "Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment as to Counterclaims." A copy of the Motion Coversheet is attached at Exhibit 2.

Upon the filing of the Notice of Appeal, the trial court lost jurisdiction to rule on the outstanding 59(e) Motions. *See* Rule 205 SCRAP. Now Appellant asks this Court to hold filing deadlines in abeyance until the trial court rules on the Motions. The Appellant is essentially

asking for this Court to create “concurrent” jurisdiction between the Court of Appeals and the Circuit Court. There is no basis in law for that procedure.

Appellant makes her motion pursuant to Rule 240 of the South Carolina Appellate Court Rules, but that rule is merely the general rule for any appellate court motion. Rule 240 does not mention or provide for a motion to hold a notice of appeal in abeyance. Respondent knows of no case law supporting a motion to hold in abeyance a notice of appeal. Further confusing the issue, appellant seeks to bootstrap what she refers to as “certain related interlocutory orders,” Motion at Para. 7, into this legally unrecognized status of noticed-for-appeal-but-held-in-abeyance.

A possible reason there is no precedent for a motion to hold in abeyance a notice of appeal is that the two filings are contradictory. On one hand appellant wants her notice before the court of appeals, but on the other hand she does not want the court of appeals to take any action. Appellant and her counsel in affidavits claim the need to make this odd filing combination out of an abundance of caution because she is concerned that, regarding the circuit court’s order dropping the Attorney General from the underlying action, the deadline for filing a Rule 59(e) motion had passed and the deadline for filing her notice of appeal was shortly to expire.

Appellant’s purported concern arises from the Richland County Clerk of Court’s coversheet notation that the order dropping the Attorney General was mailed to counsel for the parties on June 13, 2017. However, appellant and her counsel’s affidavits describe efforts to ascertain whether the Clerk actually mailed the document on June 13, 2017. They conclude the clerk did not mail the order until July 10, 2017 and written notice was received on July 12, 2017. Pursuant to Rule 59(e), SCRPC, appellant then would have 10 days from July 12, 2017 to file a motion to alter or amend a judgment or she may choose to file a notice of appeal directly. There

is no legitimate reason to file a notice of appeal *and* ask the court to hold it in abeyance, *because both the trial court and the court of appeals cannot have jurisdiction over the same issue at the same time*. The proper procedure is for appellant to file a Rule 59(e) motion *or* to proceed to appeal.

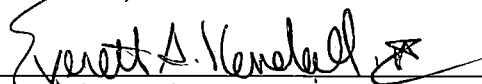
Appellant also cites no authority for bootstrapping into her appeal of the order dropping the Attorney General three additional orders, concerning which Rule 59(e) motions to alter or amend are still pending. Appellant claims these orders are “related” but gives no explanation of their relationship. As discussed above, the proper procedure is to wait for the trial court to rule on the outstanding Rule 59(e) motions and then file a notice of appeal. However, any appellant may choose to forego a Rule 59(e) motion and proceed directly to appeal. But a litigant cannot have it both ways at once. Respondents, therefore, argue that by filing a notice of appeal regarding the three additional orders, she has waived her Rule 59(e) motions and must proceed to appeal on those issues.

CONCLUSION

Appellant has chosen to pursue relief from Judge Early’s orders from the Court of Appeals. In doing so, she has taken away his jurisdiction to rule on then-pending and later filed motions to reconsider. There is no reason to delay the appeals process.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Everett A. Kendall, II

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia, SC 29211

(803) 256-2233

ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina

July 21, 2017

Other Counsel of Record:

W.H. Bundy, Jr., Esquire
Brent McDonald, Esquire
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

and

Daryl L. Williams, Esquire
Gertz & Moore, LLP
P.O. Box 456
Columbia, SC 29202

and

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail LLC
1905 Marion Street (29201)
P. O. Box 7995
Columbia, SC 29202
Attorneys for Appellant

C. Havird Jones, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent Attorney General

EXHIBIT 1

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
RUSSELL L. BAUKNIGHT, ET AL)
 Plaintiff,)
 vs.)
ADELE J. POPE,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2010-CP-40-4900
 MOTION AND ORDER INFORMATION
 FORM AND COVERSHEET

Plaintiff's Attorney: <u>Mark V. Gende</u> , Bar No. _____ Address: <u>PO Box 12129, Columbia, SC 29211</u> Phone: <u>(803) 256-2233</u> Fax _____ E-mail: <u>mvg@swblaw.com</u> Other: _____	Defendant's Attorney: <u>Adam T. Silvermail</u> , Bar No. <u>80219</u> Address: <u>PO Box 7995, Columbia, SC 29202</u> Phone: <u>(803) 779-1770</u> Fax _____ E-mail: <u>adam@silvermaillawfirm.com</u> Other: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Motion to Alter, Amend and/or Vacate Order Granting AG's Motion to be Dropped</u> Estimated Time Needed: <u>30 minutes</u> Court Reporter Needed: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type	
<input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant	<u>19 July 2017</u> Date submitted
SECTION III: Motion Fee	
<input checked="" type="checkbox"/> PAID - AMOUNT: \$ _____ <input type="checkbox"/> EXEMPT: (check reason)	
<input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____	

EXHIBIT 2

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

RECEIVED

Case No. 2010-CP-40-4900

JUL 21 2017

Appeal Tracking No. 2017-001523

SC Court of Appeals

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

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, Respondents,

v.

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

Of whom Adele J. Pope is the Appellant.

PROOF OF SERVICE

I certify that I have served the Response to Appellant's Motion to Hold Appeal in Abeyance by depositing a copy of it in the United States Mail, postage prepaid, on July 21, 2017, addressed to the following attorneys of record:

Other Counsel of Record:

W.H. Bundy, Jr., Esquire
Brent McDonald, Esquire
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

and

Daryl L. Williams, Esquire
Gertz & Moore, LLP
P.O. Box 456
Columbia, SC 29202

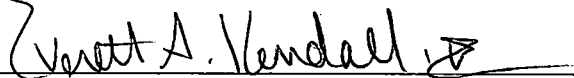
and

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail LLC
1905 Marion Street (29201)
P. O. Box 7995
Columbia, SC 29202
Attorneys for Appellant

C. Havird Jones, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Attorney for Respondent Attorney General

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
Everett A. Kendall, II
Sweeney, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233
ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina
July 21, 2017

S·W·B

SWEENY WINGATE & BARROW P.A.

July 21, 2017

Reply to: Main Office
Everett A. Kendall, II
(803) 256-2233 x7130
eak@swblaw.com

Via Hand-Delivery

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

JUL 21 2017

SC Court of Appeals

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900/Appellate Case No. 2017-001523
Our File: 4077-7389

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of the Response to Appellant's Motion to Hold Appeal in Abeyance and Proof of Service in connection with the above-referenced matter.

Please file the original and return the clocked copy to me via our courier.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Yours truly,

SWEENY, WINGATE & BARROW, P.A.



Everett A. Kendall, II

EAK/ljm

Enclosures

cc: Adam T. Silvernail, Esquire, Law Office of Adam T. Silvernail LLC
C. Havird Jones, Jr., Esquire, Office of the Attorney General
M. Brent McDonald, Bundy McDonald, LLC
Daryl L. Williams, Esquire, Gertz & Moore, LLP
W.H. Bundy, Jr., Esquire, Bundy McDonald, LLC