

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 24 2017

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

Doyet A. Early, III, Circuit Court Judge
L. Casey Manning, Circuit Court Judge

Appellate Case 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.; 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

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.

RETURN TO MOTION TO HOLD APPEAL IN ABEYANCE

Attorney General Wilson makes the following Return to the Motion to Hold in Abeyance filing deadlines in this appeal while, in the words of Appellant, “the lower court rules on all

pending and timely filed motions to alter, amend, vacate and / or reconsider the Orders appealed from.” Those Orders are addressed below.

The Order of the Honorable Doyet A. Early dated May 31, 2017, granting the Attorney General’s Motion to be Dropped as a Party

Appellant filed her Notice of Appeal as to this Order before filing her Rule 59, SCRC, Motion to Alter or Amend. This appeal must now be dismissed as to that Order. “Service and filing of a Notice of Appeal before the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions. . . . [I]n the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice.” *Hudson v. Hudson*, 349 S.E.2d 341, 341–42, 290 S.C. 215, 216 (1986).

Remaining Orders Appealed

The remaining orders appear to be interlocutory and not subject to review now. The Attorney General reserves the right to move to dismiss or otherwise respond to the appeals; however, for purposes of the Motion to Hold in Abeyance, because the appeal of the above May 31 Order must be dismissed, the appeals of the remaining Orders should be dismissed or the deadlines stayed until, at least, the Rule 59 Motion as to the May 31 Order is decided. The remaining orders included in this appeal are as follows:

1. Order of the Honorable Doyet A Early granting Motion for Protective Order as to Deposition of Attorney General, dated September 21, 2016

The Circuit Court summarily denied in Court a Motion to Alter or Amend as to this September 21 Order on November 21, 2016. If the Court of Appeals would like,

undersigned counsel can request a copy of the transcript including that oral ruling. This Order is not subject to further review in the Circuit Court.

2. Order of the Honorable Casey Manning denying Pope's Motion to Disqualify Sweeny, Wingate and Barrow and for other relief, dated July 5, 2015.
3. Order of the Honorable Casey Manning dated October 12, 2012, Setting Aside Entry of Default.

The Attorney General reserves the right to argue that Appellant has waived or abandoned any pending Rule 59 motions as to the July 5, 2015, and October 12, 2012, Orders.

Order Granting Summary Judgment As To Counterclaims

Appellant has not appealed this Order, but asks that her instant appeals as to other orders be held in abeyance while her Rule 59 motion as to this Order is decided. This Court has no jurisdiction over the Summary Judgment Order, and the pending Rule 59 motion as to that Order should not be a factor in whether the instant appeals are dismissed or their deadlines extended.

CONCLUSION

For the foregoing reasons, this Court should dismiss the appeal as to the Order of May 31, and dismiss or hold in abeyance the filing deadlines in the other appeals.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

[Signature block continues next page]

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

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BY: 

July 24, 2017

ATTORNEYS FOR THE ATTORNEY GENERAL

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v.

Adele J. Pope Appellant.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Return of the Attorney General to Appellant's Motion to Hold Appeal in Abeyance upon counsel for the other parties by mailing copies to them

CERTIFICATE OF SERVICE

Bauknight v. Pope 17-001523

July 24, 2017

Page 2

at the addresses below via the United States Mail this July 24, 2017:

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J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262
Attorney for the Attorney General



ALAN WILSON
ATTORNEY GENERAL

July 24, 2017

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
HAND DELIVERY

Re: Bauknight v. Pope, Appellate Case No. 2017-001523

Dear Ms. Kitchings:

Enclosed for filing with your Office are the original and six copies of the Return of the Attorney General to Appellant's Motion to Hold Appeal in Abeyance together with a certificate of service. Please confirm filing by stamping the additional copy of this Return.

Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for the Attorney General

cc: Adam T. Silvernail, Esquire
Walter H. Bundy, Jr., Esquire
M. Brent McDonald, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
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