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

Case No. 2010-CP-40-4900

Appeal Case No. 2017-001899

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, Defendant,

Of whom Adele J. Pope is the Appellant.

SUPPLEMENT TO MOTION TO STRIKE THE INITIAL BRIEF AND DESIGNATION OF MATTER OF APPELLANT

A Motion to Strike the Initial Brief and Designation of Matter of Appellant was filed on February 23, 2018, on behalf of Respondent Bauknight and all other Respondents. Said motion affirmatively joined with the Motion of the Attorney General to Strike Initial Brief and Designation of Appellant and Request to Stay Briefing filed on February 22, 2018, and incorporated by reference the Attorney General's arguments and requests. This Supplemental Motion to Strike the Initial Brief and Designation of Matter of Appellant includes (1) additional legal support for striking Appellant's brief and Designation or dismissing Appellant's appeal and (2) a list of irrelevant matter included by Appellant in this appeal in connection with numbers I and II set forth in Appellant's Statement of Issues on Appeal in her initial brief.

I. Appellant's Initial Brief contains vast amounts of material that is irrelevant to the issues on appeal, and the irrelevant material should be stricken from her appeals or her appeals should be dismissed with prejudice.

A. The legal standard concerning matter included in an appeal.

1. South Carolina Appellate Court Rules

The matter to be included by the parties in an appeal is encompassed in the briefs and the Record on Appeal. In general, Rules 208 – 212, SCACR, provide the specifications for all written material and documentation that the appellate court will consider. Those Rules mandate the interconnection of the briefs and the Record on Appeal.

Regarding the briefs, Rule 208(b)(1)(D), SCACR, provides that "[a] party may also include a separate statement of facts *relevant to the issues presented for review, with reference to the record on appeal*, which may include contested matters and summarize the party's contentions. (emphasis added) Rule 208(b)(4), SCACR, further provides that "[t]he brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which

may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged."

The Record on Appeal is preceded by the parties service, along with an initial brief, of a Designation of Matter to be Included in the Record on Appeal. Rule 209(a), SCACR. Rule 209(b), SCACR, sets forth two important limitations on matter included in the Designation. One is that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." (The limiting provision of Rule 210(c) is that "[t]he Record shall not ... include matter which was not presented to the lower court or tribunal.) The other limitation is that *"[a] party shall not include any matter in his Designation which is not relevant to the appeal."* (emphasis added)

In an appeal, the inclusion by the parties of only relevant matter is critical to an efficient review by the appellate court of the issues. Rule 209(c), SCACR, requires a certificate signed by a party's counsel of record "that the Designation contains no matter which is irrelevant to the appeal." Because of the mandatory interconnection of the briefs and the Record on Appeal, the briefs also shall not contain any matter which is not relevant to the appeal.

Subject to a few limited exceptions, Rule 210(h), SCACR, specifies that "the appellate court will not consider any fact which does not appear in the Record on Appeal." Implied is that any fact appearing in the Record on Appeal must be relevant to be considered by the appellate court.

Finally, to emphasize the importance of the parties including only relevant matter to the appeal, Rule 269, SCACR, allows "such sanctions as the circumstances of the case and discouragement of like conduct in the future may require" for an appeal that "is frivolous or

taken solely for the purposes of delay, *or is not in compliance with these Rules*." (emphasis added) Arguably a minor noncompliance with the Rules would not result in sanctions, but a substantial noncompliance for which such conduct in the future should be discouraged would necessitate sanctions.

2. South Carolina case law

Because the South Carolina Appellate Court Rules are abundantly clear that the parties shall include only relevant matter to the appeal, there is minimal applicable South Carolina case law addressing the issue of noncompliance with the Rules.

In *Henning v Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992), the respondents moved to dismiss the appeal claiming that the appellant's initial brief failed to comply with the then applicable appellate court rules (which were similar to the current Rules) and that appellant's Designation was insufficient. The court found:

> Appellant's brief fails to comply with the [then applicable appellate court rules] in the following particulars: the components of the brief are incorrectly organized and labeled, the issues are not distinctively headed, the table of authorities is not alphabetized or referenced to the body of the brief, the statement of the case contains contested matter and omits required information, and the arguments contain no citations to the record or to the cases listed in the table of authorities.
>
> Counsel is advised that the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Henning, 307 S.C. 436, 437, 415 S.E.2d 794. The court ruled that "[a]lthough this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules, we decline to do so and deny the motion to dismiss." *Id.* at 437, 415 S.E.2d at 794. The court instead ordered the appellant to serve and file an initial brief that complied with the then applicable appellate court rules, but that "[n]o changes shall be made to appellant's arguments

except that appellant may add citations to the cases listed in the current table of authorities and references to the record ...." *Id.* at 438, 415 S.E.2d at 794. The court also allowed appellant to serve and file an amended Designation subject to its compliance with then applicable appellate court rules. *Id.* at 438, 415 S.E.2d at 794, 795.

In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), involved an appeal by an inmate who had submitted sixty four *pro se* petitions over a three-year period. The court indicated that "[e]ach petition submitted by petitioner has been frivolous and dismissed ...." *In re Maxton* at 4, 478 S.E.2d 679. The court ruled:

> Despite the fact that petitioner has been informed numerous times that it is not appropriate to raise these matters before this Court, he has continued to file these petitions in an increasing number. More often than not, these petitions attempt to raise claims identical to ones previously dismissed by this Court. Further, the filing of these repetitive and frivolous petitions has wasted this Court's time and resources and has interfered with the fair administration of justice.

Id. at 4, 478 S.E.2d at 679. The court required the petitioner to pay "a filing fee for any future petitions of this type from petitioner" and to accompany any such petition with a proper affidavit certifying "that the matter raised in the petition is nonfrivolous." *Id.* at 5, 478 S.E.2d at 679, 680.

3. Other jurisdictions' case law

Pursuant to research of cases in other State jurisdictions addressing the issue of noncompliance with appellate rules regarding an appellant's inclusion of irrelevant matter to an appeal, some States have few or no contemporary, applicable cases and other States provide several.

Walters v. Rodriguez, 2011 IL App (1st) 103488, 356 Ill.Dec. 103, 960 N.E.2d 1226 (2011), is an Illinois case which addressed issues of noncompliance with appellate rules by an appellant. The Appellate Court of Illinois provides a comprehensive analysis and ruling:

We begin by addressing defendants' argument that plaintiffs' statement of facts should be disregarded for their failure to comply with our supreme court rules. We note that " '[a] reviewing court is entitled to have the issues on appeal clearly defined with pertinent authority cited and a cohesive legal argument presented. The appellate court is not a depository in which the appellant may dump the burden of argument and research.' " (Internal quotation marks omitted.) Gandy v. Kimbrough, 406 Ill.App.3d 867, 875, 346 Ill.Dec. 771, 941 N.E.2d 329 (2010) (quoting In re Marriage of Auriemma, 271 Ill.App.3d 68, 72, 207 Ill.Dec. 662, 648 N.E.2d 118 (1995)). Supreme Court Rule 341(h)(6) and (7) require a statement of the facts, with citation to the record, necessary for an understanding of the case and a clear statement of contentions with supporting citation of authorities and pages of the record relied on. Ill. S.Ct. R. 341(h)(6), (h)(7) (eff. July 1, 2008). These rules are not merely suggestions, but are necessary for the proper and efficient administration of the courts. First National Bank of Marengo v. Loffelmacher, 236 Ill.App.3d 690, 691–92, 177 Ill.Dec. 299, 603 N.E.2d 80 (1992).

We will not sift through the record or complete legal research to find support for this issue. The burden of a sufficient record falls on the appellant. Foutch v. O'Bryant, 99 Ill.2d 389, 391–92, 76 Ill.Dec. 823, 459 N.E.2d 958 (1984). Issues that are ill-defined and insufficiently presented do not satisfy the rule and are considered waived. Express Valet, Inc. v. City of Chicago, 373 Ill.App.3d 838, 855, 311 Ill.Dec. 951, 869 N.E.2d 964 (2007). In fact, for these violations, this court may not only strike portions of the brief or consider arguments waived, but strike a brief in its entirety and dismiss the matter. Marengo, 236 Ill.App.3d at 692, 177 Ill.Dec. 299, 603 N.E.2d 80. Where the record is not complete, any doubts which might arise from the incompleteness of the record will be resolved against the appellant. Foutch, 99 Ill.2d at 392, 76 Ill.Dec. 823, 459 N.E.2d 958. Further, "the reviewing court must presume the circuit court had a sufficient factual basis for its holding and that its order conforms with the law." Corral v. Mervis Industries, Inc., 217 Ill.2d 144, 157, 298 Ill.Dec. 201, 839 N.E.2d 524 (2005).

We agree with defendants that plaintiffs' recitation of the facts is wholly deficient and should be disregarded. As noted, plaintiffs have repeated the entirety of their recitation of facts and analysis concerning their arguments on res judicata and collateral estoppel from their memorandum below. Almost all citations to the record in their brief pertain to the federal court record and not the record before this court. Plaintiffs do repeat their footnote from their trial memorandum that explained to the trial court, and now this court, that the federal exhibits and docket entries can be produced, upon request by the court. As expressed in the case law above, it is not for this court to request a record and conduct research for the parties, but for the parties to prepare and submit a complete record and provide citation to the record and authority in support of its arguments.

> Plaintiffs have completely failed to comply with Rule 341 by not only citing predominantly to the federal record, but by providing incorrect citations. Plaintiffs provided some citations to the record before this court in the introduction and conclusion of their facts and in some portions of their analysis. Unfortunately, the majority of these citations are to pages of the record unrelated to plaintiffs' statements and contentions. It is of further disappointment that we are also without the benefit of a reply brief to provide any explanation or discussion of this issue and defendants' analysis. Therefore, plaintiffs' facts are disregarded and the unsupported arguments are considered waived. Accordingly, we have not been presented any reason to overcome the presumption under Foutch and Corral that the trial court correctly ascertained the facts of the case and followed the law in granting defendants' motion to dismiss and we affirm that ruling.

Walters, 356 Ill.Dec. 103, 105, 106, 960 N.E.2d 1226, 1228.

Jackson v. Davis, 153 So.3d 820 (2014), is an Alabama case in which the Court of Civil Appeals of Alabama addressed a motion to strike portions of a brief containing facts in a brief and attachments to a brief not in or part of the record.

> "As we have stated on many prior occasions, '[a]n appellate court is confined in its review to the appellate record, that record cannot be "changed, altered, or varied on appeal by statements in briefs of counsel," and the court may not "assume error or presume the existence of facts as to which the record is silent." ' Beverly v. Beverly, 28 So.3d 1, 4 (Ala.Civ.App.2009) (quoting Quick v. Burton, 960 So.2d 678, 680–81 (Ala.Civ.App.2006))."

> Dreading v. Dreading, 84 So.3d 935, 937 (Ala.Civ.App.2011). Further, " " '[a]ttachments to briefs are not considered part of the record and therefore cannot be considered on appeal." " ' Roberts v. NASCO Equip. Co., 986 So.2d 379, 385 (Ala.2007) (quoting Morrow v. State, 928 So.2d 315, 320 n. 5 (Ala.Crim.App.2004), quoting in turn Huff v. State, 596 So.2d 16, 19 (Ala.Crim.App.1991)). Accordingly, the tenant's motion to strike is granted, and neither the attachments nor any references to the additional facts not included in the record have been considered in the disposition of this matter.

Jackson, 153 So.3d 820, 829.

B. A listing of the extensive amount of irrelevant matter included in Appellant's initial brief

The list below in this subsection B includes irrelevant matter included by Appellant in this appeal in connection with numbers I and II set forth in Appellant's Statement of Issues on

Appeal in her initial brief. Irrelevant matter included by Appellant in this appeal in connection with numbers III and IV set forth in Appellant's Statement of Issues on Appeal in her initial brief has been, and/or will be further, addressed by Respondent Attorney General, and previously incorporated by reference in the initial motion of Respondent Bauknight and all other Respondents.

1. Page 1, second paragraph of Statement of the Case, the reference to [Aff AJP 8/10/11]. Said reference is also not included in Appellant's Designation.

2. Page 1 (in section **a. Order Granting Plaintiffs' Motion to Set Aside Default**), second sentence of first paragraph. Said sentence also violates Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

3. Page 1, footnote 4. Said footnote also violates Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

4. Page 2, first full sentence at top of page. The sentence also has no required reference.

5. Page 2, portions of first full paragraph. Said portions of first full paragraph also violate Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

6. Page 2, portions of second full paragraph. Said portions of second full paragraph also violate Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

7. Page 2, the word "proposed" in the second sentence of the third full paragraph. Said word also violates Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

8. Page 2, the phrase "five years after the motion was filed" in the fifth full paragraph. Said phrase also violates Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

9. Page 2 (in section **b. Order Declining to Disqualify Respondents' Counsel or Enjoin Bauknight**), first paragraph which carries over to page 3, may not directly include an issue of relevancy, but the referenced motion was filed on May 19, 2011 (not on May 18), and in said motion Petitioner sought to disqualify "Sween[y], Wingate & Barrow" not the law firm of Kenneth Wingate, Esq. The second said issue also violates Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

10. Page 3, first full paragraph.

11. Page 3, portions of second full paragraph. Said portions of second full paragraph also violate Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

12. Page 3, third full paragraph and corresponding footnotes 5 and 6.

13. Page 3, portions of fourth full paragraph. Said portions of fourth full paragraph also violate Rule 208(b)(1)(C) by including contested matters. The included contested matters appear to be intentionally subjective and argumentative and, therefore, not a concise history of the proceedings necessary to an understanding of the appeal.

14. Page 18, footnote 24.

15. Page 18, second full paragraph.

16. Page 18, third full paragraph and corresponding footnote 25.

17. Page 19, second sentence of second full paragraph.

18. Page 19 (in section **II**), first paragraph, including reference to [FOIA Compl.]. Also, it is not apparent that said reference is included in Appellant's Designation.

19. Page 19 (in section **II**), second paragraph, including reference to [AG Contract, pg.]. Also, it is not apparent that said reference is included in Appellant's Designation.

20. Page 19 (in section **II**), last sentence of third paragraph and case citation. It is not apparent from any matter included in Appellant's Designation that she has raised a jurisdictional argument in connection with this issue, and, if she has done so pursuant to her Designation or brief, it is inapplicable to this appeal and therefore irrelevant.

21. Page 20, second paragraph.

22. Page 20, third paragraph. Also, Appellant makes no reference to the record supporting her argument.

23. Page 20, fourth paragraph. Also, Appellant makes no reference to the record or a case citation supporting her argument.

24. The following is a list of additional irrelevant matter included by Appellant in this appeal in connection with numbers III and IV set forth in Appellant's Statement of Issues on Appeal in her initial brief which may not have been specifically addressed by Respondent Attorney General.

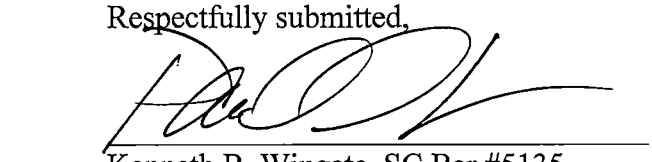
a. Page 6, first full paragraph.
b. Page 6, footnote 9.
c. Page 12, fourth full paragraph beginning with "At the request ...."
d. Page 13, second paragraph.

C. All irrelevant matter should be stricken or her appeals dismissed with prejudice.

Pursuant to the legal standard concerning matter included in an appeal set forth in subsection **A** above, all irrelevant matter included by Appellant in this appeal should be stricken from Appellant's Designation and brief.

Alternatively, pursuant to the legal standard concerning matter included in an appeal set forth in subsection **A** above and Appellant's substantial noncompliance with the Rules (as set forth in subsection **B** above and in the Motion of the Attorney General to Strike Initial Brief and Designation of Appellant and Request to Stay Briefing), the Appellant's appeal should be dismissed pursuant to Rule 260(a), SCACR, and/or Rule 269, SCACR.

Respectfully submitted,



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March 2, 2018

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

Case No. 2010-CP-40-4900

Appeal Tracking No. 2017-001899

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, Defendant

Of whom Adele J. Pope is the Appellant.

PROOF OF SERVICE

I certify that I have served the Supplement to Motion to Strike the Initial Brief and Designation of Matter of Appellant by depositing a copy of it in the United States Mail, postage prepaid, on March 2, 2018, addressed to the following attorneys of record:

Other Counsel of Record:

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Respectfully submitted,

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The Honorable Jenny Abbott Kitchings
VIA HAND DELIVERY TO THE COURT ONLY
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900/Appellate Case No. 2017-001899
Our File: 4077-7389

Dear Ms. Kitchings:

Respondents are filing herewith a Supplement to Motion to Strike the Initial Brief and Designation of Matter of Appellant. This supplement is filed in connection with our Motion to Strike the Initial Brief and Designation of Matter of Appellant, filed on February 23, 2018, on behalf of Respondent Bauknight and all other Respondents. Said motion affirmatively joined with the Motion of the Attorney General to Strike Initial Brief and Designation of Appellant and Request to Stay Briefing, filed on February 22, 2018, and incorporated by reference the Attorney General's arguments and requests.

Should you require additional information regarding this filing, please do not hesitate to contact me. By copy of this correspondence, counsel are notified of the same.

Very truly yours,

SWEENY, WINGATE & BARROW, P.A.

for Mark V. Gende

MVG/pdk
Enclosures
cc: Adam T. Silvernail, Esquire, Law Office of Adam T. Silvernail LLC
W.H. Bundy, Jr., Esquire, Bundy McDonald, LLC
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