

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.

**REPLY TO APPELLANT'S RETURN AND OPPOSITION TO
MOTION OF ATTORNEY GENERAL TO STRIKE**

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SC Court of Appeals

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. Respondent Bauknight and all other Respondents filed and served on March 2, 2018, a Supplement to Motion to Strike the Initial Brief and Designation of Matter of Appellant. Appellant served on March 2, 2018, on counsel for Respondent Bauknight and all other Respondents, a (1) Return and Opposition to Motion of Attorney General to Strike (hereinafter "Appellant's Return to AG's Motion"), and a (2) Return and Memorandum in Opposition to Motion of [Respondents] to Strike Initial Brief and Designations (hereinafter "Appellant's Return to Bauknight Motion").

ARGUMENT

This is a Reply pursuant to Rule 240(f), SCACR, to Appellant's Return to AG's Motion.

Appellant has grossly confused the overall case in the lower court with the four issues she has appealed and are presently before this court. Rather than properly restrict her initial brief and Designation to the four issues on appeal, Appellant has argued the overall case in 4900 — and other cases involving the Estate of James Brown — and contends that every matter and every issue is relevant to her appeals.

I. Appellant's return fails to meet the standards of South Carolina Appellate Court Rules

Appellant's Return to AG's Motion fails to meet the standards as are required for a return to motion in an appeal. Rule 240(e), SCACR, provides that "[t]he provisions of Rule 240(c) shall apply to a return." As applied to Appellant's Return to AG's Motion, Rule 240(c), SCACR, requires that Appellant's return to motion include "[a] memorandum with citation of

authorities in support of” of return to motion [see Rule 240(c)(2)], and “[w]here the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.” [See Rule 240(c)(3)] From page 2 through page 23, Appellant makes a long chain of conclusory statements that are not supported by citations of authorities or references to relevant matter.

From page 23 through page 36 in which Appellant addresses Schedules A and B attached to the Attorney General’s motion, she continues to argue the overall case in 4900 — and other cases involving the Estate of James Brown — and contends that every matter and every issue is relevant to her appeals, rather than properly restricting her initial brief and Designation to the four issues on appeal.

Appellant’s returns to motions, initial brief, and Designation, are all so broad as to attempt to include every matter ever presented to the lower court. Appellant’s inclusion goes so far beyond the “kitchen sink” approach that is prohibited by Rules 208 – 212, SCACR, that she substantially hinders appellate review.

II. Examples of specific misstatements by Appellant

The following are two specific known misstatements by Appellant which she asserts in error to this court in Appellant’s Return to AG’s Motion:

A. In the second full paragraph on page 4 of Appellant’s Return to AG’s Motion

In the second full paragraph on page 4 beginning with “After the initial ruling,” Appellant incorrectly states that “the Wingate firm counsel” has opposed her efforts to have a ruling by the lower court on her Rule 59(e) motion regarding the grant of summary judgment in favor of plaintiffs on defendant’s counterclaims. Appellant filed her Notice of Appeal in this

appeal on September 12, 2017. Appellant's filing automatically stayed, pursuant to Rule 241(a), SCACR, matters decided in the orders she appealed. Appellant then filed a Motion to Lift Stay (**Exhibit A**) on October 24, 2017, followed by her filing on November 8, 2017, of an Affidavit of Appellant in Support of Motion to Lift Stay (**Exhibit B**). Appellant's motion was so utterly deficient, ill-conceived, and vitriolic in tone, that Plaintiffs filed, on November 13, 2017, a Memorandum of Law in Opposition to Motion to Lift Stay (**Exhibit C**), and therein sought appropriate sanctions against Appellant. Appellant filed on November 13, 2017, Appellant's Reply to Respondent's Memorandum in Opposition to Lifting Stay (**Exhibit D**). An Order Denying Defendant's Motion to Lift Stay While on Appeal (**Exhibit E**) was filed on December 8, 2017, following a hearing on the motion on November 14, 2017. The Order provided that Pope's motion to lift stay was deficient of (1) required facts and arguments, (2) applicable exceptions, (3) any prejudice to Pope, and (4) any basis for lifting the automatic stay.

Despite Appellant's motion to stay being wholly deficient and the lower court denying her motion due to such deficiency, counsel for Plaintiffs sent a letter (**Exhibit F**) to Judge Early on January 11, 2018, specifically requesting the court to consider lifting the stay in order to rule on Pope's Rule 59(e) motion regarding an Order Granting Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims (**Exhibit G**)(dated June 23, 2017, and filed on July 8, 2017). Also, on October 10, 2017, during the stay counsel for Plaintiffs appeared before the lower court on the hearing on Pope's Rule 59(e) motion (see **Exhibit C**, page 2, last paragraph carrying over to page 3). Appellant knows that "the Wingate firm counsel" has specifically not opposed, but has specifically supported, her efforts to have a ruling by the lower court on her Rule 59(e) motion regarding the grant of summary judgment in favor of Plaintiffs on Defendant's counterclaims. Yet, Appellant continues to advance this statement to this court.

B. In the third full paragraph on page 11 of Appellant's Return to AG's Motion

In the third full paragraph on page 11 beginning with "In July 2012 the AG," Appellant incorrectly states that a motion is pending to void as against public policy a settlement with Buchanan. Buchanan is no longer a party to the lower court case and is not a party to this appeal. On May 18, 2012, the attorneys for the Plaintiff — not Appellant or her counsel — filed a Motion to Enforce Settlement Agreement (**Exhibit H**). The settlement agreement was between the Plaintiffs and Buchanan, and the Appellant was not a party to such agreement. On May 21, 2012, Appellant filed a Return and Objection to Motion to Enforce Purported Settlement Agreement (**Exhibit I**). Pursuant to an Order to Conduct Mediation (**Exhibit J**) dated July 19, 2012 (Honorable L. Casey Manning), the court provided the following summary of the status conference (as it applied to the settlement agreement between Plaintiffs and Buchanan) attended on July 5, 2012, by counsel for Plaintiffs, counsel for Buchanan, counsel for Pope, and a representative for the Attorney General:

"Mr. Gende reported that the Plaintiffs have conducted mediation with Defendant Buchanan on all outstanding issues between Plaintiffs and Defendant Buchanan, and have achieved a mediation agreement resolving all such issues. Messrs. Watson and Braithwaite confirmed Mr. Gende's assertion that the Plaintiffs and Defendant Buchanan were in the process of finalizing the settlement documents that will end all litigation between Plaintiffs and Defendant Buchanan. Mr. Gende noted that Defendant Pope refused to participate in this mediation"

Judge Manning signed an Order of Dismissal (**Exhibit K**) on July 13, 2012, finding that the Plaintiffs and Buchanan had reached a final settlement that resolved all claims between them, and he ordered that, with the consent of the Plaintiffs and Buchanan, "this matter is dismissed with prejudice." The dismissal dispensed with Plaintiffs' motion to enforce the Buchanan settlement.

Therefore, there is no outstanding motion to enforce the agreement. Appellant knew then and certainly knows now in the year 2018 that there is no such pending motion regarding the settlement between the Plaintiffs and Buchanan. Appellant continues to advance this incorrect statement to this court on page 26, item 19, where she asserts that the Motion to Enforce Settlement Agreement is her own motion (not Plaintiff's motion).

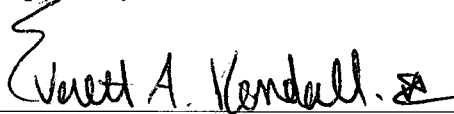
III. Respondents adopt Attorney General's reply

Respondents adopt by reference the reply of the Attorney General to Appellant's Return to AG's Motion.

CONCLUSION

All irrelevant matter included by Appellant in this appeal should be stricken from Appellant's Designation and brief. Alternatively, the Appellant's appeal should be dismissed pursuant to Rule 260(a), SCACR, and/or Rule 269, SCACR.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENTS

March 9, 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

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v.

Adele J. Pope, Defendant

Of whom Adele J. Pope is the Appellant.

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I certify that I have served the **Reply to Appellant's Return and Opposition to Motion of Attorney General to Strike** by depositing a copy of it in the United States Mail, postage prepaid, on March 9, 2018, addressed to the following attorneys of record:

Other Counsel of Record:

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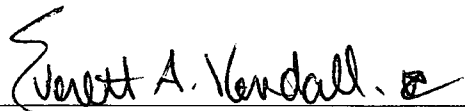
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Respectfully submitted,

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March 9, 2018



SWEENEY WINGATE & BARROW P.A.

March 9, 2018

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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

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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 the following:

1. **Reply to Appellant's Return and Memorandum in Opposition to Motion of Respondents to Strike Initial Brief and Designations**
2. **Reply to Appellant's Return and Opposition to Motion of Attorney General to Strike**

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,

SWEENEY, WINGATE & BARROW, P.A.

Everett A. Kendall, II

EAK/pdk
Enclosures

cc: Adam T. Silvernail, Esquire, Law Office of Adam T. Silvernail LLC
W.H. Bundy, Jr., Esquire, Bundy McDonald, LLC
M. Brent McDonald, Esquire, Bundy McDonald, LLC
J. Emory Smith, Jr., Esquire, Office of the Attorney General