

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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OCT 12 2018

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

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

Appellate 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.; 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; 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,

v.

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

Of whom Adele J. Pope is the Appellant Appellant.

**RETURN OF ATTORNEY GENERAL IN OPPOSITION
TO MOTION TO CONSOLIDATE APPEALS**

Appellant adds further confusion to her filings in this case by moving to consolidate this

appeal with one of her two pending FOIA appeals. This Motion makes irrelevant arguments and brings in matter not pertinent to or considered by the Court as to the Orders under review. The motion is a distraction that addresses matters not properly before this Court, and it should be struck or otherwise denied. The Attorney General has submitted a separate Reply to those parts of Appellant's filing that function as a Return to his Motion to Correct the Record.

The appeal that Appellant is seeking to consolidate is one of two appeals by her from decisions dismissing Freedom of Information Act suits that she brought against the Attorney General. Final briefs in that case were filed nearly 18 months ago in April, 2017. *Pope v. Alan Wilson, in his capacity as Attorney General of South Carolina*, Appellate Case No. 2016-001708. She does not ask to consolidate the other FOIA case (Appellate case 2016-001727).

Appellant has waived her request to consolidate by opposing consolidation until this motion. Although she refers only to her opposition in 2011, she was still opposed just last year. In her 2017 opening brief in FOIA case 1708, she challenged the consolidation of that case with the instant case claiming that it denied her alleged rights and that "[t]here was no basis for . . . consolidation with the [instant] suit." Brief of Appellant at p. 16. Appellant cannot be opposed to consolidation, as she is in case 1708 in 2017, and be in favor of it a year later in instant case 1899, the two cases she seeks to combine. No document in the record of either case supports Appellant's undocumented assertion that the AG was responsible for consolidation of the cases below. Appellant's Motion at page 7("AG has FOIA suit . . . consolidated with Richland 4900.")

This Motion is also contradicted by Appellant's own position regarding oral argument in case 1708. Via counsel, Appellant has noted the availability of counsel for argument this Fall and stated that she does "not wish to see these matters delayed." Letter of counsel for Appellant to Claire Allen, June 22, 2018. She said nothing then about consolidation.

Moreover, the issues in the two appeals are not the same. Appeal 1708 is strictly a FOIA suit that was separately considered and dismissed by the circuit court. Not one of the documents at issue in that case are the subject of an order under appeal in instant case 1899. Appellant claims that consolidation will explain why the AG “should not be speaking through both the OAG and Wingate in this appeal” and that “[i]t will clarify that the designation ‘Special Appearance Counsel’ is appropriate for the limited role the Attorney General’s OAG counsel has played from 2010 until today.” Motion at p. 8. The Attorney General is not speaking through two counsel. As stated in his initial brief, “[t]he Attorney General is representing himself on this appeal” Brief at page 23. He has filed only one brief in the instant case, his Initial Brief as Respondent. Appellant has no authority to determine counsel for the AG.

Appellant’s Motion makes completely irrelevant arguments, makes undocumented, incorrect assertions and goes outside the Record on Appeal and the record below contrary to this Court’s Order of April 26, 2018. That Order directed that “[i]n the amended designation of matter and the amended initial brief, Appellant shall not list or reference any orders or other documents that were not presented to the circuit court as part of this case.” Only 7 of 18 items in the “brief chronology” are supported by citations to the record. The others are either unsupported or cite to attachments to her Motion that are not in the Record on appeal and apparently not filed in the instant case below. The Mellon attachments and argument are not only irrelevant, they are in direct conflict with this Court’s April Order because they are outside the record. The three page Wingate document at issue in case 1708 is completely irrelevant to this appeal, and Appellant’s argument is absolutely wrong in saying that the Office of the Attorney General “worked to assure that it was not disclosed” and that the “resistance to its disclosure did not stop.” Motion at page 6. To the contrary, the AG’s Brief in Appeal 1708,

with citations to the Record in that case, makes clear that the AG's position had long been that he had no opposition to releasing the document if Judge Manning found that it may be released when he considered a pending motion for a protective order. Brief of Respondent, Case 1708, p. 5, and p. 6, note 1.¹

CONCLUSION

This Motion should be denied because Appellant has waived this request, the cases are distinct, and the motion as with other filings of Appellant, argues irrelevant matter, addresses matters outside the record, and raises issues abandoned or otherwise not properly before this Court. See Motion to Strike Initial Brief, Order of April 26, 2018, Initial Brief of Respondent AG, Motion of AG to Strike Reply Brief. The orders at issue are focused on the legal issues. Appellant's arguments and references in her motion are contrary to the Appellate Court rules and serve only to distract and confuse. This Court should strike or otherwise deny this Motion.

Respectfully submitted,

ALAN WILSON
Attorney General

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

[Signature block continues next page]

¹ Appellant's motion also addresses other cases by referencing excerpts of her husband's deposition testimony about documents that are not the subject of either case 1708 or case 1899 including a FOIA case that was not consolidated with this one and a FOIA case in which she was not even a party. Motion at p. 6, note 1. The excerpts are contained in the affidavit of William Smith that is not properly before the Court as to the orders under appeal because it was filed in support of Appellant's Rule 59 Motion as to the lower court's order granting Respondents' Motion for Summary Judgment as to Appellant's counterclaim. Initial Brief of Respondent AG, at page 6, note 2. That summary judgment order is not under appeal (Rule 210(b) and Appellate Practice). *Id.*

J. EMORY SMITH, JR.
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October 12, 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
Trial Court Case 2010CP4004900

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Appellate 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.; 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

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..... Respondents,

v.

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

Of whom Adele J. Pope is the Appellant.

CERTIFICATE OF SERVICE

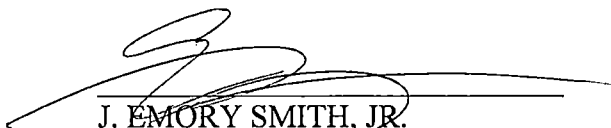
I hereby certify that I have served the Attorney General's Reply of the Attorney General

to the Response to Correct Record on Appeal and his Return to Appellant's Motion to Consolidate upon counsel for the other parties by mailing copies to them at the addresses below via the United States Mail this October 12, 2018:

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



ALAN WILSON
ATTORNEY GENERAL

October 12, 2018

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

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SC Court of Appeals

Re: Bauknight v. Pope, Appellate Case No. 2017-001899

Dear Ms. Kitchings:

I am enclosing for filing with your Office the Reply of the Attorney General to the Response to Correct Record on Appeal and his Return to Appellant's Motion to Consolidate together with a certificate of service. Thank you for your assistance.

Sincerely,

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

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