

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

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 Brown II; 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 Lumar and Carrington Lumar; 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 BROWN II; 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 LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope,

Defendant

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2016 SEP 20 PM 12: 21
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

ORDER DENYING DEFENDANT'S
MOTION FOR SANCTIONS

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SC Court of Appeals

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This matter came before the Court on Defendant Adele Pope's motions to compel the depositions of Janise Vanisha Brown and Lindsey Delores Brown and for attorney's fees and costs. The Court heard oral arguments on this motion on Monday, August 29, 2016 and hereby finds and orders as follows:

On June 23, 2016, counsel for Mrs. Pope noticed the depositions of a number of the plaintiffs' group individuals, including Janise Vanisha Brown and Lindsey Delores Brown for August 19, 2016.

On July 15th, Plaintiff's counsel sent a letter to Ms. Pope's counsel acknowledging the notices and discussing for each of the noticed individuals various issues related to dates, availability, objections, and/or difficulties in contacting certain clients. At oral argument, Plaintiffs' counsel represented that his omission of Lindsey Delores Brown from this letter was an inadvertent oversight.

On August 11th, Plaintiff's counsel sent an email to Mrs. Pope's counsel attempting to secure agreement to reschedule the depositions of Lindsey Delores Brown and Janise Vanisha Brown for a mutually agreeable time, and informing the Defendant that Venisha Brown was believed to be incarcerated or otherwise unable to attend the noticed deposition.

The parties did not reach an agreement on rescheduling the depositions, and on August 15, 2016, Plaintiffs filed Motions for Protective Orders as to the depositions.

On August 16th and 18th, Mrs. Pope's counsel and Plaintiffs' counsel had email exchanges in which Mrs. Pope's counsel indicated he was going forward with Lindsey and Janise Vanisha's depositions, and Plaintiffs' counsel pointed out that motions for protective order had been filed and on that basis the depositions should not go forward as the witnesses would not be present.

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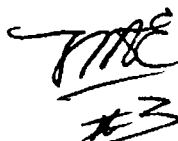
On August 18th, counsel for Mrs. Pope deposed The Honorable Mr. Henry McMaster, who was one of the individuals noticed by Mrs. Pope on June 23rd. This deposition took place at the office of counsel for Mrs. Pope. At the conclusion of that deposition, the court reporter and/or videographer inquired of counsel for Mrs. Pope whether the depositions of Lindsey and Janise Vanisha set for the next day in the same location were going forward. Mrs. Pope's counsel indicated they would.

On August 19, 2016, counsel for Ms. Pope, knowing that the witnesses would not be present, knowing a motion for protective order had been filed, and having corresponded several times with Plaintiffs' counsel about the situation, nonetheless had a court reporter and/or videographer present at the times noticed, to make a record of the witnesses' non-appearance. The depositions were noticed for and held at counsel for Mrs. Pope's own office.

Defendant now seeks costs and attorney's fees for the witnesses not appearing.

This Court has separately ruled on the matters at issue in the Plaintiffs' motions for protective orders and Defendant's motion to compel regarding the depositions of Janise Vanisha and Lindsey, and thus the only issue addressed in this Order is the Defendant's request for sanctions as to those two depositions.

The imposition of sanctions is entrusted to the sound discretion of the trial judge under Rule 37 of the South Carolina Rules of Civil Procedure. *Halverson v. Yawn*, 328 S.C. 618, 620, 493 S.E.2d 883, 884 (Ct. App. 1997). It is again noted that issues related to the scheduling of the subject depositions have been addressed by the Court by separate Order compelling certain Plaintiffs to appear for depositions on particular dates. It is further noted that the Court has directed the parties to establish a protocol to be followed moving forward in this case regarding future depositions, which provides for administration and enforcement by the Court as necessary.

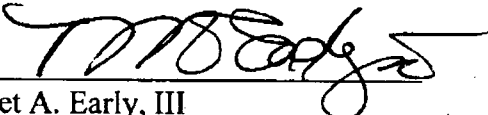
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Ultimately, the Court concludes that sanctions are not warranted at this time because Plaintiffs' counsel communicated timely and provided reasonable notice that the depositions would not proceed as noticed and appropriately filed motions for protective orders prior to the scheduled date of the depositions. Accordingly, counsel for the defendants had adequate time to cancel the court reporter's and videographer's appearances. Moreover, defense counsel's physical attendance at the deposition was not burdensome as the depositions occurred at counsel's own office. Accordingly, the Court finds that an award of attorney's fees and costs is not warranted in connection with this matter.

Therefore, it is ORDERED that Defendant's motion for sanctions is hereby DENIED.

IT IS SO ORDERED.

Sept 13, 2016



Doyet A. Early, III
Presiding Judge