

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

RECEIVED
MAY 24 2019
SC Court of Appeals

Appellate Case No.2018-002229

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 children, 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 children, Sydney L. and Carrington L.; 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.

**MOTION OF ATTORNEY GENERAL TO STRIKE APPELLANT'S INITIAL BRIEF
AND DESIGNATION OF MATTER FOR THE RECORD**

Subject to the Order dropping the Attorney General as a party to the case¹, the Attorney General moves to strike Appellant's Initial Brief and Designation of Matter for the Record because they include matters not presented to the Circuit Court in this case and because the brief references matters of an alleged factual nature without documenting a source for the statements. The Attorney General joins in and incorporates by reference the Respondents' Motion to Strike prepared by Sweeny, Wingate and Barrow, and in particular, notes the following matters.

Appellant repeatedly cites a November 8, 2017, 26 page affidavit that she filed in the Court of Appeals in support of her motion to lift stay. *See, eg.*, Initial Brief at pp. 15, 19, 21, 22, 23 & 26. This affidavit does not appear to have been filed in the Circuit Court, and therefore, would not have been before that Court when the Orders under appeal were considered. As stated in Rule 210(c), "[t]he Record shall not. . . include matter which was not presented to the lower court or tribunal. . . ." Appellant also cites to a December 17, 2018 affidavit she filed in the Court of Appeals in support of Supplemental Motion to Lift Stay for limited purposes. *See, eg.*, Initial Brief at pp. 22, 24 & 27. Although she filed that 2018 affidavit in the Circuit Court, it was for purposes of the Motion to Lift Stay after she filed her Notice of Appeal of the Orders under appeal. Therefore, both the 2017 and 2018 affidavits should be struck from Appellant's Designation (Items 110 and 127) and Initial Brief along with any statements in the brief relying on them because the affidavits were "not presented to the lower court" as to the matters under appeal. Rule 210(c).

¹ Before the circuit court granted summary judgment for the Plaintiffs as to Appellant's counterclaim (R. p. * - Order dated June 23, 2017, and filed July 8, 2017), the Court dropped the Attorney General as a party to this case. (Order dated May 31, 2017, and filed June 12, 2017). The Order dropping him is a subject of Appeal 2017-1899, and is included in the Record in that case. The Attorney preserves and does not waive any arguments he made regarding his being dropped as a party to this case.

Appellant's Brief makes numerous references to letters and emails without showing that they were ever filed with the Circuit Court as exhibits or otherwise. *See, eg.*, pp. 16, 17, 19, 21 and 22). The Designations do not indicate that they were filed as exhibits. *See, eg.* Designation #'s 37, 38, 39, 48, 49 and 62. If they were not filed, they cannot be considered on appeal, and the statements in the brief relying on unfiled documents should be struck. Rule 210(c). Counsel for the Attorney General should not have to sift through the voluminous filings in this case to determine if the documents were ever filed.

Appellant's brief makes numerous accusations that are unsupported by any reference to the Record. *See eg.*, pp. 45-48. Her doing so violates Rule 208(b)(4), SCACR, which states 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 to support the salient facts alleged."

CONCLUSION

For these reasons, the Attorney General respectfully requests that the above referenced parts of Appellant's Initial Brief and Designation be struck and that any corrected brief or designation subsequently filed be limited to fixing these problems and not present new substantive arguments or exhibits for the record.

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

BY: 

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

May 24, 2019

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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 children, Sydney L. and Carrington L.; 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.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Motion to Strike and Initial

Brief on counsel for the other parties by mailing copies to them at the addresses below via the
United States Mail this May 24, 2019:

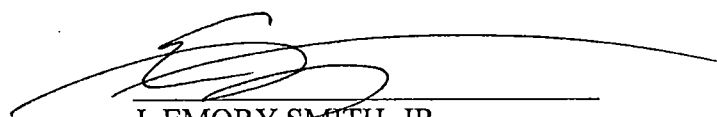
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S.C. Bar No. 5262
Counsel for the Attorney General



ALAN WILSON
ATTORNEY GENERAL

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

Re: Bauknight v. Pope, Appellate Case No. 2018-002229
Initial Brief and Motion to Strike

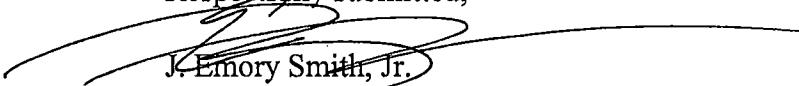
Dear Ms. Kitchings:

Enclosed for filing with your Office is the original and six copies of the Attorney General's Motion to Strike Appellant's Initial Brief and Designation, and his Initial Brief joining in the brief of Respondents together with a certificate of service.

The Attorney General does not have any additional matters to designate for the Record in this case.

Thank you for your assistance.

Respectfully submitted,


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

cc: Charles E. Carpenter, Jr., Esquire
Adam T. Silvernail, Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Everett A. Kendall, II, Esquire