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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas

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The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge
Trial Court Case No. 2010CP4004900

Court of Appeals

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

FINAL BRIEF OF RESPONDENT ATTORNEY GENERAL

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STATEMENT OF ISSUES

1. Whether Appellant has abandoned any challenge to the Circuit Court's finding of immunity of the Attorney General by failing to argue the issue in her brief, whether his immunity is now the law of the case, and whether she is precluded from arguing immunity in her reply brief.
2. Whether the Circuit Court properly dropped the Attorney General as a party to this case for reasons that include his no longer being needed as a party and his immunity from the counterclaims in this case?
3. Whether the Circuit Court properly barred Appellant from taking the Attorney General's deposition under the *Morgan* rule and similar authority?
4. Whether the Circuit Court properly set aside the entry of default and properly found that the Attorney General was never in default when he is not subject to being held in default under Rule 55(e), and *arguendo*, even if he were, good cause existed for relieving him of default?
5. Whether the Circuit Court properly denied the Motion to Disqualify Sweeny, Wingate and Barrow and whether that issue is moot at this time?
6. Whether Appellant's Statement of Issues fails to comply with the Appellate Court rules by consisting only of broad, general questions?
7. Whether Appellant's Brief fails to comply with the Appellate Court rules in that it includes irrelevant arguments and references irrelevant documents?

STATEMENT OF THE CASE

This action was filed initially in Probate Court on May 19, 2010. R. V. I, p. 178 (Complaint, p. 1). The Plaintiffs were the Court appointed trustee and personal representative,

Russell Bauknight, and “Beneficiary Plaintiffs” of the Trust and Estate of the late singer James Brown including Henry McMaster in his capacity then as Attorney General. *Id.*, p. V.I, p. 179, ¶3). The Complaint alleged that the Attorney General had intervened in other Circuit Court actions to represent the interests of the charitable beneficiaries of the Brown Trust. *Id.*, p. 181. The Complaint alleged causes of action against Appellant and Defendant Pope for breach of trust and negligence as personal representatives and trustees of the Will and Trust. *Id.* at pp. 182 - 188. They had been appointed by the Court on August 10, 2007 when the former representatives and trustees resigned, and they were removed by the Court on May 26, 2009. *Id.* at pp. 181-182, ¶¶ 14 & 15. That 2009 Order also approved a settlement among the Beneficiary Plaintiffs ending litigation between them. The Supreme Court later set aside the settlement, but affirmed the removal of Pope from her fiduciary roles for cause. *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746 (2013).

On September 30, 2010, Appellant and Defendant Buchanan filed an Answer and Counterclaim. R. V. I, p. 337. The Counterclaims were for abuse of process for allegedly bringing this action for the ulterior purpose of forcing them to abandon or dismiss their appeal of the May 26, 2009 Order approving the settlement, and civil conspiracy to further their own interests and harm the Defendants. *Id.* Appellant and Mr. Buchanan also alleged “cause[s] of action” for intentional interference with Contract and violation of S.C. Code Ann. §62-1-106. The Respondents filed an Answer to the Counterclaim dated November 16, 2010. R. V. I, p. 380. They also filed a November 26, 2010, Motion to Lift the Entry of Default as to the Counterclaim along with an affidavit of Ken Wingate dated November 16, 2010, and a Memorandum dated April 11, 2012. R, V. I, pp. 373 & 376, and R. V. IV, p. 1666. The Honorable Casey Manning granted

that Motion and set aside the default by Order dated October 13, 2015. R. V. I, p. 51. Following a hearing in 2012, by Order dated July 5, 2015, Judge Manning had also denied Appellant's Motion to Disqualify Sweeney Wingate and Barrow from representing the Attorney General. R. p. V. I, p. 59; *see also*, Memorandum in Opposition to that Motion to Disqualify dated April 11, 2012. R. V. IV, p. 1673.

On March 25, 2013, the Attorney General filed a Motion to be Dropped as a Party. R. p. V. II, p. 790. The Motion stated that it was based upon the May 18, 2010, letter from Attorney General McMaster to Russell Bauknight confirming that Bauknight would be retaining the firm of Sweeney, Wingate and Barrow to bring this action against Appellant and Mr. Buchanan on behalf of the beneficiaries of the Estate and Trust including the charitable interests. *Id.* at p. 800. The letter noted that the Office of the Attorney General has a duty to protect charitable trusts. Also attached to the Motion was the Attorney General's Petition for Rehearing in *Wilson v. Dallas* which stated his intent to withdraw from this suit. R. V. II, pp. 791 and 874. The Supreme Court noted in its Opinion in that case that "the AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now withdrawing as a party in that lawsuit and his office will maintain a monitoring role." *Wilson v. Dallas*, 743 S.E.2d at 767. The Motion was not heard by the Court until 2016.

On March 24, 2016, the Supreme Court issued an Order in this case giving the Honorable Doyet Early "exclusive jurisdiction to hear and dispose" of it. R. V. I, p. 46.

On August 11, 2016, the Attorney General filed a notice of special appearance for the purpose of arguing and handling all matters related to the 2013 Motion to be Dropped. R. V. II, p. 861. He attached to that Notice a October 4, 2007, Order in various Brown actions, allowing the

Attorney General's intervention to protect the interests of the beneficiaries of any charitable trust created by the Brown Will and Trust, and the Order of Judge Early of October 30, 2013, allowing the Attorney General to withdraw from those suits. R. V. II, pp. 864 and 866. The 2013 withdrawal Order stated that withdrawal was appropriate in light of the *Wilson* opinion, the appointment of Bauknight as Special Trustee and Special Administrator, and "the Attorney General's desire, pursuant to his statutory and common law authority, to have a monitoring role in this matter." *Id.* at p. 866.

Following argument of the Motion to be Dropped on August 29, 2016, the Attorney General filed a Supplemental Memorandum in Support of that Motion dated April 3, 2017, (R. V. V, p. 2088) and a Reply to Plaintiff's Return dated April 7, 2017 (R. V. II, p. 964). The Supplemental Memorandum and Reply contended that the Attorney General was absolutely protected by prosecutorial / quasi-judicial immunity from suit as to the counterclaims herein. Judge Early granted that Motion by Order dated May 31, 2017, (R. V. I, p. 19) because "there is no need for the Attorney General to remain in this action, [and] he is also immune from suit by the counterclaims." *Id.*, p. 23. Appellant moved for reconsideration under Rule 59, SCRCP on July 19, 2017, and the Attorney General submitted a letter to Judge Early in return to the Motion dated July 26, 2017. R. V. V, p. 2097. Judge Early denied that Rule 59 Motion by Order filed August 7, 2017. R. V. I. p. 1.

Before the Attorney General was dropped as a party, Appellant noticed his deposition. The Attorney General moved for a protective order on July 18, 2016, and filed a memorandum in support of that motion dated August 26, 2016. The Motion and Memorandum contended that the deposition would be an undue burden because he was not Attorney General when this suit was

initiated, because all or most questions he might be asked would be subject to attorney client and work product privileges and the deposition would be likely to be time consuming and interfere with his handling of the duties of his Constitutional Office. R. V. II, p. 856; V. V, p. 2059. The Memorandum contended that these grounds fit with the often called *Morgan* rule that limits the taking of depositions of high ranking government officials. *United States v. Morgan*, 313 U.S. 409, 422 (1941). R. V. V, p. 2060. The Motion was argued on August 29, 2016, and the Court granted the Motion by Order dated September 21, 2016, for reasons that included the application of the *Morgan* rule and its progeny.

ARGUMENT

SUMMARY

This appeal presents narrow legal issues regarding only four decisions of the Circuit Court, one of which includes the denial of a Motion to Alter or Amend. Those Orders were all properly decided.

The Attorney General was properly dropped from suit because his interest in protecting the charitable beneficiaries was being served by the current trustee and representative, Russell Bauknight. The counterclaim against him is barred by his absolute immunity from suit, and Appellant has abandoned any challenge to the immunity finding. The law authorizes the Attorney General to take action to protect the interests of charitable beneficiaries, as he did here without being subject to suit for his actions.

Judge Early also properly issued a protective order barring the taking of the Attorney General's deposition. General Wilson took Office after this suit was brought. To take his deposition now given his limited direct knowledge, would be a violation of the *Morgan* rule,

supra, protecting high ranking public officials from depositions absent a showing of extraordinary circumstances which the Appellant has not met.

Counsel for the other Respondents will address the Orders finding no default by the Attorney General and relieving the other parties from default and refusing to disqualify Sweeny, Wingate and Barrow from representing the Attorney General. Respondent Attorney General concurs in the legal arguments in those Respondents' brief and also addresses below that the Attorney General was never in default and that the disqualification issue is moot at this time.

Appellant clouds her brief with numerous errors which will be discussed throughout this brief. Her statement of the issues contains statements that are too broad. Her Statement of Facts and her brief rely on documents that are irrelevant and are frequently based upon her own undocumented statements and rhetoric^{1, 2, 3} "Every trial judge knows, as every trial lawyer

¹ The Court of Appeals granted the Attorney General's Motion to Strike Appellant's initial brief and directed that she not designate or reference documents that were not presented to the circuit court as part of the instant case or documents that were presented or filed after this appeal was taken. Order of Court of Appeals filed April 26, 2018. The Court denied any request to strike documents that were presented to the lower court as part of this case prior to this appeal. The Attorney General did not move to strike Appellant's amended brief because it appeared to comply with the Court's Order of April 26, but notified the Court that it would address irrelevancy in his initial brief. (Motion for Extension).

² For example, Appellant cites at least eight times in her brief a 111 page William Smith document that was filed after the orders under appeal were issued except for the order denying the Rule 59, SCRCF, Motion to Alter or Amend the Order Dropping the Attorney General as a party. The Smith document is irrelevant, quotes from depositions in cases other than this one, and 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. That summary judgment order is not under appeal (Rule 210(b) and Appellate Practice). Furthermore, Appellant may not rely on this affidavit when it was not presented to the Circuit Court until she filed her Rule 59 motion. "A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not." *Hickman v. Hickman*, 301 S.C. 455, 456-57, 392 S.E.2d 481, 482 (Ct. App. 1990). For these reasons, the William Smith affidavit should be disregarded.

knows, and every appellate court judge should know, that the statements of counsel in an argument are not evidence but are merely the expression of his individual view” *Harper v. Bolton*, 239 S.C. 541, 562, 124 S.E.2d 54, 64 (1962). This case, instead, presents simple legal issues which should be decided without reference to Appellant’s emphasis on the irrelevant and her own undocumented statements.

I

**THE CIRCUIT COURT PROPERLY DROPPED
THE ATTORNEY GENERAL AS A PARTY**

A

The Circuit Court Properly Exercised Its Discretion to Drop the Attorney General

Judge Early summarized his conclusion in his Order of May 31, 2017, as follows:

The Attorney General moved to be dropped as a party pursuant to Rule 21, SCRPC, which states that “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” The Attorney General’s Motion to be Dropped is consistent with Rule 21 and the language in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Following the South Carolina Supreme Court’s decision in *Wilson v. Dallas*, 2013 WL 697042 (filed February 27, 2013)[Footnote 2 at omitted], the Attorney General filed a Petition for Rehearing wherein he advised the Supreme Court that he would shortly be moving to have himself removed as a party to the 4900 case and that any further action in the case to protect the charitable beneficiaries could be pursued by the new Trustee. *See* Petition for Rehearing, page 26-27 [R. V. II, pp. 899 & 900]. The Supreme Court acknowledged the Attorney General’s desire to withdraw in its opinion of May 2013, stating as follows in footnote 30: “[T]he AG has recently informed this Court, in petitions filed after this Court’s initial opinion, that he is now withdrawing as a party in that lawsuit and his office will maintain a monitoring role.” The Attorney General’s role in this matter is to protect the charitable beneficiaries, and with the appointment of Russell Bauknight (Bauknight), as the trustee, that is being handled to the satisfaction of the Attorney General. Accordingly, there is no need for the Attorney General to remain in this action. He is also immune from suit by the

3 In another example, Appellant cites her own undocumented statements in her July 19, 2017, Motion to Alter or Amend the Order dropping the Attorney General. That Motion, as noted in the Letter return to Judge Early (R. V. V, p. 2097), was filled with irrelevant matter.

counterclaims as set forth later in this order.

R. V. I, pp. 20 and 21 (Order at pp. 2 & 3). Appellant sets forth no authority showing error in the circuit court's decision to drop the Attorney General as a party.

Rule 21, SCRCF, expressly provides that “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” Motions under this rule, as in this motion to be dropped, are addressed to the court’s discretion. *Farmer v. CAGC Ins. Co.*, No. 2016-000192, 2018 WL 2325027, at *3 (S.C. Ct. App. May 23, 2018) (“A motion to dismiss a party under Rule 21, SCRCF, is addressed to the court’s discretion.”). The circuit court properly exercised its discretion here, and Appellant has offered no authority on which Judge Early’s decision should be reversed.^{4, 5}

The Circuit Court further explained its decision as follows:

As the Supreme Court explained in *Wilson v. Dallas*, “[I]t is axiomatic that a trustee is always under the direction and guidance of the court. . . .” (*Id.* (citing *Kingdom v. Saxbe*,

4 Appellant cites *Mendelsohn v. Whitfield*, 312 S.C. 17, 21, 430 S.E.2d 524, 527 (Ct. App. 1993), *aff’d in part as modified*, 312 S.C. 226, 439 S.E.2d 845 (1994) as noting that the Rule addresses misjoinder and nonjoinder which it does, but a closing argument was what was at issue and the Rule, of course, did not apply to that issue. Rule 21 broadly states, that “[p]arties may be dropped” and the comment to the Rule states that “Rule 21 empowers the court to add or drop parties as may be appropriate.” The circuit court properly took such action here.

5 In this absence of legal authority contrary to the circuit court’s decision, most of Appellant’s citations are to rhetoric and unsupported testimonial statements in her memoranda (*Harper, supra*) and motions as to unrelated matters such as mediation and a FOIA case consolidated with this one. She cites repeatedly, her statements in her July 13, 2017, Motion to Alter or Amend the Judge’s Order granting summary judgment to the Plaintiffs as to her counterclaim. That Rule 59 Motion was also filed long after the Motion to Drop was filed and argued and for the purpose of an Order that is not the subject of this appeal. See R. V. I, p. 3 (Order granting summary judgment). She cites to a Motion filed by Plaintiffs as to Pre-Trial publicity and a paper she wrote, *Private Foundations*, neither of which were cited to the Court regarding the Motion to be Dropped. The Court should disregard all of these statements in the brief that are based upon irrelevant or unsupported documents. *Harper, supra*.

161 N.E.2d 461, 466 (Ohio, Ashtabula County Prob. Ct. 1958)). In addition to the Attorney General, it is also appropriate for an individual Trustee to protect the charitable trust, as explained in S.C. Code Ann. § 62-7-405. Because of the actions of Bauknight, who is under the direction and guidance of the Court, there is no need for the Attorney General to be involved. In *Wilson v. Dallas*, the Court explained that “[a]lthough the AG certainly has duties in regards to charitable trusts, if he believed Appellants, as trustees, were not good stewards, the remedy would be to seek their removal and replacement.” The Attorney General has no concerns with the appointment of Bauknight and believes that the charitable beneficiaries will be protected while he is trustee.

Shortly after the Supreme Court’s ruling, in addition to filing this Motion and consistent with what he informed the Court, the Attorney General sought to withdraw from several other Brown matters. This Court then issued an Order Withdrawing Attorney General dated October 30, 2013. In that Order, the Court explained that allowing the Attorney General to withdraw is appropriate, in light of *Wilson v. Dallas*; the appointment of Bauknight as Special Trustee by Order dated June 13, 2013; the appointment of Bauknight as Special Administrator dated June 13, 2013; and the Attorney General’s desire, pursuant to his statutory and common law authority, to have a monitoring role of the cases. Pursuant to this Order, the Attorney General withdrew from the following James Brown cases: 2007-CP-02-122, 2008-CP-02-1647, 2008-CP-02-872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810. I find the same reasoning applies in the present case and the Attorney General should be allowed to be dropped as a party.

This is a civil case, with causes of action including breach of fiduciary duty, breach of trust, and negligence. The Attorney General is a Plaintiff in the action to protect the interests of the charitable beneficiaries. Because Bauknight, as Trustee, is protecting these same interests, there is no need for the Attorney General to be a party and allowing him to be dropped will not prejudice any other Plaintiff.

R. Vol I, pp. 22 & 23 (Order at pp. 4 & 5). Therefore, because he found that the Attorney General was no longer needed as a party, Judge Early properly dismissed him.

B

Appellant Has Abandoned Any Challenge To The Court’s Dropping The Attorney General On The Ground Of Immunity, Immunity Is Now The Law Of The Case And Appellant Is Barred From Addressing Immunity In Reply

Appellant fails to address immunity in her brief. The Court specifically found that “the Attorney General's being a counterclaim defendant does not preclude his being dropped as a party

because he is immune from suit as to those counterclaims for reasons set forth in his Supplemental Memorandum submitted herein.” R. V. I, p. I, p.23 pp. (Order at p. 5; Supplemental Memorandum(R. V. V, p. 2088); V. II, p. 964.); Reply to Supplemental Return to Motion to Be Dropped).⁶ Plaintiff never refers to this ground in her argument regarding the Order dropping her as a party. She only mentions the point in passing, without counterargument, in her argument regarding default. Appellant’s Brief at page 16, note 8. This ground of immunity is a key to the Judge’s decision.

The Supreme Court and this Court have made quite clear that failure to argue a ground on appeal abandons it. *See, eg, Woodson v. DLI Properties, LLC*, 406 S.C. 517, 529, 753 S.E.2d 428, 434 (2014);⁷ *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993)(“Failure to argue is an abandonment of the issue and precludes consideration on appeal. S.C.A.C.R. Rules 207(b)(1)(B), (D) and 210(b).”). Therefore, the immunity of the Attorney General is now the law of the case. *Dreher v. S.C. Dep’t of Health & Envtl. Control*, 412 S.C. 244, 250, 772 S.E.2d 505, 508 (2015)(“Thus, should the appealing party fail to raise all of the grounds upon which a lower court’s decision was based, those unappealed findings—whether correct or not—become the law of the case.”). Furthermore, Appellant may not argue this ground in reply because “[i]t is well settled appellants may not make new arguments for reversal in their reply brief.” *State v.*

⁶ Without waiving this abandonment defense, the Attorney General cites his Memorandum and Reply.

⁷ “We find Petitioners have abandoned the negligent misrepresentation claim by failing to set forth an argument on the issue in their brief. See Rule 208(b), SCACR (stating that, for appellate review of an issue to occur, the issue must be set forth in a statement and argument); *Biales v. Young*, 315 S.C. 166, 168, 432 S.E.2d 482, 484 (1993) (stating that a party’s failure to argue an issue constitutes abandonment of the issue and precludes consideration on appeal).” *Woodson, supra*.

Hewins, 409 S.C. 93, 118, 760 S.E.2d 814, 827 (2014).

C

Subject To And Without Waiving The Abandonment Argument, The Attorney General Is Absolutely Immune From The Counterclaims Against Him

Subject to the above abandonment / law of the case argument, case law has extended the immunity of Attorneys General to civil actions undertaken by them such as enforcement of the charities laws here and would bar the counterclaims that Appellant has brought against him in this action. The Attorney General is given specific enforcement authority as to public charities in the State including breaches of trust. S.C. Code Ann. §1-7-130. He is absolutely immune from the counterclaims against him. Judge Early cited the cases discussed below and *Williams v. Condon*, 347 S.C. 227, 250, 553 S.E.2d 496, 509, (Ct. App.,2001)(absolute immunity of prosecutor /quasi-judicial immunity) for the application of immunity. R. V. I, pp. 23 & 24 (Order at 5 & 6).

Butz v. Economou, 438 U.S. 478, 516 (1978) is a basis for the numerous cases extending immunity beyond criminal prosecutions. The United States Supreme Court held that those officials who are responsible for the decision to initiate or continue a proceeding subject to agency adjudication are entitled to absolute immunity from damages liability for their parts in that decision. Applying *Butz* and other authority, the Fourth Circuit Court of Appeals in *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4 ,1989) held that “Virginia State social workers are absolutely immune from liability resulting from their decision to file a removal

petition.” See also, *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999).⁸

Mathis v. McDonough, 2014 WL 3894133, at *11 (D.Md.,2014) outlined much of the authority for applying absolute immunity outside of criminal prosecutions and found the Maryland Attorney General, a Maryland Assistant Attorney General and the Maryland Secretary of State absolutely immune for a TRO motion regarding production and distribution of a primary election campaign sample ballot. Citing *Butz*, *Vosburg* and *Ostrzenski*. the District Court held that “courts have found absolute immunity to apply to advocates in a number of other contexts beyond traditional criminal prosecutions, including where government attorneys pursue civil enforcement actions analogous to the proceeding at issue” As stated by *Mathis*:

In other instances, the Fourth Circuit and district courts within this Circuit have extended absolute immunity outside the context of traditional criminal prosecutions. See, e.g., *Pak v. Ridgell*, 2011 WL 3320197, at *7 (D.Md. Aug. 1, 2011) (concluding that “bar counsel prosecutors are afforded absolute immunity for conduct performed in a judicial capacity”), aff’d, 476 F. App’x 750 (4th Cir.2012), cert. denied, — U.S. —, 133 S.Ct. 1279 (2013); *Hunter v. Virginia State Bar*, 786 F.Supp.2d 1107, 1112 (E.D.Va.2011) (extending prosecutorial immunity to an assistant bar counsel); see also *Ostrzenski v. Seigel*, 177 F.3d 245, 250 (4th Cir.1999).

Courts outside the Fourth Circuit have reached similar conclusions, including in cases involving either assistant state attorneys general, civil enforcement actions, or both. See, e.g., *Skinner v. Govorchin*, 463 F.3d 518, 525 (6th Cir.2006) (extending absolute immunity to state assistant attorney general); *Fry v. Melaragna*, 939 F.2d 832, 837–38 (9th Cir.1991) (stating that “the principles outlined in *Butz* should a fortiori apply to the government attorney’s initiation and handling of civil litigation in a state or federal court” and extending absolute immunity to IRS attorneys who initiated civil tax litigation); *Murphy v. Morris*, 849 F.2d 1101, 1005 (8th Cir.1988) (extending absolute immunity to “the advocacy functions of a state assistant attorney general defending state officials” in civil litigation); *Barrett v. United States*, 798 F.2d 565, 571–73 (2d Cir.1986) (extending absolute immunity to state assistant attorney general in connection with defense of a civil suit);

⁸ “In sum, a physician requested by the Board to conduct a peer review performs a function analogous to a prosecutor reviewing evidence to determine whether charges should be brought. As such, absolute immunity is necessary to foster an atmosphere in which the peer reviewer can exercise his professional judgment without fear of retaliation.” *Ostrzenski*.

Dukes v. Pappas, 2010 WL 571779, at *8–9 (E.D.Pa. Feb. 17, 2010) (extending absolute immunity to Maryland assistant attorney general regarding conduct pertaining to civil enforcement action brought against plaintiff).

2014 WL 3894133, at *13 (D.Md.,2014).

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163–64 (S.D.Miss.,1990) is directly on point in finding absolute immunity of the Attorney General and a Special Assistant Attorney General from Plaintiff's suit against them for initiating a state civil action seeking to enjoin bingo games conducted by Plaintiffs.

Absolute immunity is afforded those charged with the civil enforcement of state laws. The attorney general is, under Mississippi law, the chief legal officer and adviser for the state, both civil and criminal and is charged with managing all litigation on behalf of the state.... He shall have the powers of the attorney general at *1164 common law and is given the sole power to bring or defend a lawsuit on behalf of a state agency, the subject matter of which is of statewide interest. Miss.Code Ann. § 7–5–1 (1972). At common law, the state attorney general was vested with “the right to institute, conduct and maintain all suits necessary for the enforcement of the laws of the state, the preservation of order and protection of public rights.” *Capitol Stages, Inc. v. State of Mississippi*, 157 Miss. 576, 128 So. 759, 763 (1930) (citing 2 R.C.L. §§ 4 and 5, at 915–17). The state court action was, therefore, a civil enforcement proceeding of the type for which absolute immunity applies.

* * *

Thus, regardless of their motivation in bringing the action, so long as defendants were performing a prosecutorial function, they enjoy absolute immunity from plaintiffs' claims relative to the civil proceeding. And in the court's view, it is manifest that in proceeding with the civil litigation before the chancery court, Moore and Warren were acting in their prosecutorial capacities on behalf of the state.

Metro Charities, Inc. v. Moore, 748 F.Supp. 1156, 1163–64 (S.D.Miss.,1990)

In *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div. 1,1996), the Court applied absolute prosecutorial immunity to claims against the Attorney General for abuse of process and malicious prosecution for civil actions taken

against the Plaintiff as to an adult care facility. See also, *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997) (“absolute immunity [extends] to government attorneys in their conduct of civil litigation as well”).

These cases make clear that immunity applies to the Attorney General as to the counterclaims against him. In addition, Judge Early further found:

Immunity is an affirmative defense under South Carolina case law, but as discussed in the Attorney's General's Reply to Plaintiffs Memorandum [R. V. II, p. 966], cases indicate that it may be covered by the affirmative defense of failure to state a claim or cause of action or raised in a later pleading after the answer. See, *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007); *Ramsey v. City of Forest Park*, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App., 1992); *Baker v. Sudo*, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist., 1987).

R. V. I, p. 23, fn. 4. The Attorney General raised the defense of failure to state a claim in his Answer to the counterclaims in 2010, R. V. I, p. 382.

Under the above authority from the United States Supreme Court, the Fourth Circuit Court of Appeals and numerous other courts, absolute immunity clearly extends to the Attorney General in this action so as to bar the counterclaims against him. Judge Early properly dropped the Attorney General as a party to this case.

II

THE CIRCUIT COURT PROPERLY GRANTED THE ATTORNEY GENERAL'S MOTION FOR PROTECTIVE ORDER AS TO THE TAKING OF HIS DEPOSITION

The circuit court granted Attorney General Wilson's Motion for Protective Order (R. V. II, p. 856) based upon his application of the *Morgan (supra)* rule. R. p. V. I, p. 33 (Order of September 21, 2016). The *Morgan* rule is well recognized by the Federal Courts and other states that have considered it. Under that rule or related authority, depositions should not be taken of

high ranking government officials unless the party noticing the deposition shows that the information sought is essential, that it is not obtainable elsewhere, and that the deposition of the official would not interfere with his government responsibilities. See discussion below. Appellant cannot make such a showing for a deposition of the Attorney General for these reasons. The Attorney General did not witness the events that are the subject of the Complaint nor did he make the decision to institute suit. Questions related to the continuation of the suit since he took Office would be barred by attorney client and work product privileges. Therefore, a deposition of the Attorney General would be an unproductive, time consuming exercise that would be an undue burden on him in his execution of his responsibilities as a State Constitutional Officer.

The *Morgan* rule is based on a United States Supreme Court decision (*United States v. Morgan*, 313 U.S. 409, 422 (1941)), that is widely accepted throughout the Federal Courts, including the Fourth Circuit Court of Appeals, and has been adopted by a number of states. See below. As stated 27 years ago by the Supreme Court of Vermont, “[t]he federal courts have uniformly held that a highly-placed executive branch governmental official should not be called upon personally to give testimony by deposition, at least unless a clear showing is made that such a proceeding is essential to prevent prejudice or injustice to the party requesting it. The few states that have had occasion to reach this question have adopted this standard as well.” *Monti v. State*, 563 A.2d 629, 631, 151 Vt. 609, 611-12 (Vt.,1989) (emphasis added).

Although apparently not all of the Federal cases have based the *Morgan* rule on Rule 26(c), FRCP, our State court rule is similar, and the Circuit Court found that it was empowered to apply the rule based upon the undue burden that the deposition would impose on the Attorney General.

R. V. I, p. 35 (Order at p. 3). The *Morgan* doctrine is certainly consistent with our Supreme Court's decision applying a similar rule to the testimony of judges.

The modern trend of courts [is of] not allowing a judge to testify regarding a case in which he previously presided unless the testimony is: 1) critical; and 2) can be obtained by no other means. See *United States v. Dowdy*, 440 F.Supp. 894 (W.D.Va.1977); *Commonwealth v. Ellis*, 10 Mass. L. Rptr. 333 (Mass.1999) available at 1999 WL 855196; *State ex rel. Carroll v. Junker*, 79 Wash.2d 12, 482 P.2d 775 (Wash.1971); *Helmbrecht v. St. Paul Ins. Co.*, 117 Wis.2d 74, 343 N.W.2d 132 (Wis.Ct.App.1983) . . .

In re Whetstone, 580 S.E.2d 447, 448, 354 S.C. 213, 216 (2003).

The *Morgan* rule and its progeny and related cases discussed below apply similar requirements for the showing of "extraordinary circumstances" (*Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211–12 (C.A.4,1991) before being authorized to depose a high ranking official such as the Attorney General. The Rule makes clear that the burden is on the party seeking the deposition to make such a showing. At a minimum, the Defendant must show that the testimony is "critical" (*Whetstone, supra*), "can be obtained by no other means" (*Id.*), and will not interfere with his other responsibilities (*McNamee v. Massachusetts*, 2013 WL 1285483, at *3 (D.Mass.,2013), *infra*). As stated in *McNamee*, a deposition will not be allowed unless the party seeking the testimony shows that " (1) the information sought is essential (not merely relevant) to the case, (2) the information sought is not obtainable elsewhere, and (3) provision of the testimony will not interfere with the official's government responsibilities. . . ."

Appellant does not contest that the *Morgan* rule would be followed in this State. Instead, she argues that *Whetstone* is distinguishable because a "neutral" judge was involved, but the point of the *Whetstone* decision is that it applies a similar rule which is that the testimony must be critical and not obtainable by other means. The Circuit Court found *Whetstone* to be consistent and noted

that the *Morgan* rule, its progeny and related cases have been applied in numerous jurisdictions.⁹

R. V. I, p. 35 (Order at p. 3).

Appellant cannot show extraordinary circumstances to justify the taking of Attorney General Wilson's deposition. The information sought is not "essential" or "critical," under the first criteria, *supra*, because Attorney General Wilson did not take Office until the year after this suit was brought, and he lacks personal knowledge of the circumstances when this action was initiated. Appellant cannot show that "the information sought is not obtainable elsewhere" under the second criteria. She has taken the deposition of former Attorney General McMaster who was

⁹ The circuit court cited the following cases and noted that the Attorney General's Memorandum includes lengthy quotations from them (R. V. I, p. 36, fn. 1 (Order at 4)):

Bogan v. City of Boston, 489 F.3d 417, 423-24 (C.A.1 (Mass.),2007)(deposition of Defendant mayor); *Franklin Sav. Ass'n v. Ryan*, 922 F.2d 209, 211-12 (C.A.4,1991)(deposition of Director of Defendant Office of Thrift Savings); *In re McCarthy*, 636 Fed.Appx. 142, 143 (C.A.4,2015)(Deposition of EPA Administrator in suit against EPA); *In re U.S.*, 197 F.3d 310, 313-14 (C.A.8,1999) (deposition of Attorney General Reno in a Federal prosecution). *In re F.D.I.C.*, 58 F.3d 1055, 1060- 1062 (C.A.5 (Tex.),1995)(Depositions of three FDIC directors in action in which the FDIC was not a party but deposition had already been quashed of them in an action in which the FDIC was a party); *McNamee v. Massachusetts*, 2013 WL 1285483, at *3 (D.Mass.,2013)(deposition of former chief of staff of legislator); *U.S. v. Northside Realty Associates, Inc.*, 324 F.Supp. 287, 295 (D.C.Ga. 1971) (deposition of Attorney General in suit initiated by him on behalf of United States); *Hyland v. Smollok*, 349 A.2d 541, 543, 137 N.J.Super. 456, 460 (N.J.Super.A.D. 1975)(deposition of Plaintiff New Jersey Attorney General); *Johnson v. Clark*, 21 A.3d 199, 210, 199 Md.App. 305, 323 (Md.App.,2011)(deposition of county executive of county defendant); *State, Dept. of Health and Rehabilitative Services v. Brooke*, 573 So.2d 363, 371 (Fla.App. 1 Dist.,1991)(Deposition sought of Secretary of Defendant Department of Health and Rehabilitative Services); *Department of Agriculture and Consumer Services v. Broward County*, 810 So.2d 1056, 1058 (Fla.App. 1 Dist.,2002)(Deposition of agency head in challenge to agency rule); *State ex rel. Paige v. Canady*, 475 S.E.2d 154, 160, 197 W.Va. 154, 160-162 (W.Va.,1996)(deposition of Secretary / Tax Commissioner in FOIA action apparently against him); *State Board of Pharmacy v. Superior Court*, 78 Cal.App.3d 641, 644-45 (Cal.App.1.Dist)(deposition of California Attorney General regarding appropriate attorney's fees to be awarded against a state agency and the impact of the case).

holding Office when this suit was brought, and she has also taken the depositions of Senior Assistant Deputy Attorney General Sonny Jones and Assistant Deputy Mary Frances Jowers in a related case. R. V. I, p. 5 (Order at p. 5). In the same summer that she sought to depose the Attorney General, she served on the Attorney General requests to admit the authenticity of documents, interrogatories and production requests in this case. *Id.* For these reasons, Defendant cannot show that the information sought “can be obtained by no other means” (*Whetstone*). She also cannot show that the “provision of the testimony will not interfere with the [the Attorney General’s] government responsibilities . . .” (*McNamee*). The Jones and Jowers depositions took nearly five days and the questioning of former Attorney General McMaster took nearly four hours. *Id.* Given that all or most questions would be subject to objection as going to privileged matter, the deposition would be very unproductive and an undue burden.

Appellant contends that *Morgan* and its progeny are distinguishable because the Attorney General has “assumed [a] direct, personal role.” To support her allegations, she relies on rhetoric and undocumented testimonial statements in her memoranda and her motions as to unrelated matters such as mediation, rather than facts and case law to support her position. She repeatedly cites her own statements from her lengthy July 19, 2017, Motion to Alter or Amend the Order dropping the Attorney General as a party which was filed long after Judge Early had granted the Motion for a Protective Order. She even cites repeatedly, her statements in her July 13, 2017, Motion to Alter or Amend the Judge’s Order granting Summary Judgment to the Plaintiffs as to her counterclaim which was also filed long after the Protective Order was issued and for the

purpose of the Summary Judgment Order that is not the subject of this appeal.¹⁰ She also relies on other irrelevant documents and unsupported statements such as Mediation related documents. The Court should disregard all of these statements in the brief that are based upon irrelevant or unsupported documents. *Harper, supra*.

Appellant contends that the Attorney General is an important witness because “today” he has “control” of the Legacy Trust, which is completely wrong. (Appellant’s Brief at page 21). The Supreme Court invalidated over five years ago the settlement agreement under which the parties were “to create” the Legacy Trust. *Wilson v. Dallas, supra*, 743 S.E.2d at 752. No record of any executed Legacy Trust is filed in this case nor does evidence in the record demonstrate that the Trust was ever executed. Appellant further contends that she needs the Attorney General to explain litigation decisions in this case, but she has deposed the staff lawyers assigned to this case as it proceeded in circuit court. *Supra*.

Cases make clear that agency heads are not subject to being deposed simply because their Offices are involved in litigation. As stated as to a Federal agency: “[a]gency leaders often send and receive correspondence relative to their actions. Their official conduct frequently affects—sometimes adversely—the property rights of private parties. This does not of itself subject them to the burdens of litigation discovery.” *In re F.D.I.C., supra*, note 9. 58 F.3d 1055, at 1062 (depositions of three FDIC directors in action in which the FDIC was not a party but deposition had already been quashed of them in an action in which the FDIC was a party).

¹⁰ Because Appellant cites from her Motion to Alter or Amend the Order granting the Motion for Summary Judgment as to Appellant’s counterclaim, the Attorney General has designated that Order of Judge Early Granting Summary Judgment to Respondents subject to his objection to her citation to the Motion to Alter or Amend R. V. I, p. 3.

Regarding the deposition of Plaintiff New Jersey Attorney General, *Hyland v. Smollok, supra*, at 349 A.2d 543, opined:

[I]t is our view the Attorney General and Director of the Division of Criminal Justice, as well as other high-level government officials, should not be deposed, absent a showing of first-hand knowledge or direct involvement in the events giving rise to an action, or absent a showing that such deposition is essential to prevent injustice. *Wirtz v. Local 30, International Union of Operating Engineers*, 34 F.R.D. 13 (S.D.N.Y.1963); *Cf. Virgo Corporation v. Paiewonsky*, 39 F.R.D. 9 (D.C.Virgin Islands, 1966).

... Clearly, information concerning previous cases brought under the Removal Act which defendant contends is relevant to his defense of selective enforcement, may be obtained from other representatives of the Attorney General's Office. The rationale of the trial judge that since Hyland is the plaintiff he is subject to being deposed ignores the fact that the Attorney General is suing solely in a representative capacity under N.J.S.A. 2A:81—17.2a4.

As to former United States Attorney General Janet Reno, the Court of Appeals for the Eighth Circuit held as follows:

Lee must therefore establish at a minimum that the Attorney General and the Deputy Attorney General possess information essential to his case which is not obtainable from another source. *Kessler*, 985 F.2d at 512-13; see also *In re FDIC*, 58 F.3d at 1062. This means both that the discovery sought is relevant and necessary and that it cannot otherwise be obtained. *Kessler*, 985 F.2d at 512-13. Without establishing this foundation, “exceptional circumstances” cannot be shown sufficient to justify a subpoena. *See id.* . . .

In re U.S., 197 F.3d 310, 313-14 (C.A.8,1999). As stated regarding the California Attorney General:

If the head of a government agency were subject to having his deposition taken concerning any litigation affecting his agency or any litigation between private parties which may indirectly involve some activity of the agency, we would find that the heads of government departments and members of the President's Cabinet would be spending their time giving depositions and would have no opportunity to perform their functions. [¶] ... It would be oppressive and vexatious to require [the head of a government agency] to submit to an interrogation that might last for several hours and that would, of course, disturb government business.” (*Capitol Vending Co. v. Baker* (D.D.C. 1964) 36 F.R.D. 45, 46.)

State Board of Pharmacy v. Superior Court, 78 Cal.App.3d 641, 644-45 (Cal. App.1. Dist.)(1978)(issuing mandate to quash the subpoena of the Attorney General).

Appellant has failed to show that the deposition of the Attorney General is essential under the above authority much less a clear abuse of discretion by the Circuit Court judge which is necessary for his decision to be reversed.

A trial court's rulings in matters related to discovery generally will not be disturbed on appeal in the absence of a clear abuse of discretion. *Dunn v. Dunn*, 298 S.C. 499, 381 S.E.2d 734 (1989); *Creighton v. Coligny Plaza Ltd. P'ship*, 334 S.C. 96, 512 S.E.2d 510 (Ct.App.1998). An abuse of discretion occurs when the trial court's order is controlled by an error of law or when there is no evidentiary support for the trial court's factual conclusions. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009).

Fairchild v. S.C. Dep't of Transp., 398 S.C. 90, 108, 727 S.E.2d 407, 416 (2012). Appellant has pointed to no error of law and no absence of evidentiary support for the Court's ruling. In fact, the Court's Order is well supported as follows:

The Defendant has not shown extraordinary circumstances to justify the taking of Attorney General Wilson's deposition. The information sought is not "essential" or "critical," under the first criteria, *supra*, because Attorney General Wilson did not take Office until the year after this suit was brought and lacks personal knowledge of the circumstances when this action was initiated. Defendant points to steps in the litigation of this case since then, but those matters involve the progression of the litigation rather than the evidence upon which the case is based. The Defendant has not shown that "the information sought is not obtainable elsewhere" under the second criteria. She has taken the deposition of former Attorney General McMaster who was holding Office when this suit was brought, and she has also taken the depositions of Senior Assistant Deputy Attorney General Sonny Jones and Assistant Deputy Mary Frances Jowers in a related case. This summer, she has served on the Attorney General requests to admit the authenticity of documents, interrogatories and production requests in this case. For these reasons, Defendant cannot show that the information sought "can be obtained by no other means" (*Whetstone*). She also cannot show that the "provision of the testimony will not interfere with the [the Attorney General's] government responsibilities . . ." (*McNamee*). The Jones and Jowers depositions took nearly five days and the questioning of former Attorney General McMaster took nearly four hours. Given that all or most questions would be subject to objection as going to privileged matter about litigation decisions, the

deposition would be very unproductive and an undue burden. Under the *Morgan* rule all of these criteria must be met before a deposition of a high ranking official can be taken, and Defendant has not satisfied any of the criteria.

R. V. I, p. 37 (Order at p. 5).

The *Morgan* rule and its progeny and related cases protect against depositions of high-ranking public officials except under extraordinary circumstances not present here. The deposition of the Attorney General would be an undue burden for this reason and those others noted above. Therefore, the Circuit Court did not abuse his discretion in issuing a protective order barring the taking of the deposition of Attorney General Wilson in this case. Judge Early's decision should be affirmed.

III

THE ATTORNEY GENERAL WAS NOT IN DEFAULT

The circuit court found that the Attorney General was never in default under Rule 55(e); SCRCP. R. V. I, p. 53. That Rule states as follows: "No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof . . . and who did not subsequently make appearance in the action unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Appellant fails to cite or address this Rule and says only that the Attorney General must abide by the Rules of Civil Procedure. She misses the point. The Attorney General, as a party, is subject to the Rules of Civil Procedure, but the court properly found that the Attorney General was not in default. The circuit court also found that, even without Rule 55(e), the Attorney General would be relieved from default under Rule 55(a) as were the other Respondents, because they were "otherwise defend[ing]" this matter by "actively contesting Appellant's motions to dismiss and change venue . . .". R. V. I, p. 52. For this

reason, and the other legal arguments presented by counsel for the other Respondents, in which the Attorney General concurs, the Order should be affirmed.

IV

THE CIRCUIT COURT PROPERLY DENIED APPELLANT'S MOTION TO DISQUALIFY SWEENEY, WINGATE AND BARROW FROM REPRESENTING THE ATTORNEY GENERAL, AND THE ISSUE IS MOOT AT THIS TIME

This argument is essentially moot. The Attorney General is representing himself on this appeal, and represented himself in circuit court as to the Orders dropping him as a party and barring the taking of his deposition. As stated in *S.C. Ret. Sys. Inv. Comm'n v. Loftis*, 402 S.C. 382, 384, 741 S.E.2d 757, 758–59 (2013):

A case is moot where a judgment rendered by the Court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the Court. *Ex parte Doe*, 393 S.C. 147, 151, 711 S.E.2d 892, 894 (2011)(quoting *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006)); *Sloan v. Greenville Cnty.*, 361 S.C. 568, 572, 606 S.E.2d 464, 467 (2004). Where there is no actual controversy, this Court will not decide moot or academic questions. *Sloan v. Friends of the Hunley*, *id.* at 26, 630 S.E.2d at 477.

Because the Wingate firm is not representing the Attorney General as to the matters at issue on appeal, this matter is moot at this time. The Court denied this Motion on July 12, 2012, after having considered the memoranda of the parties and oral argument. R. V. I, p. 59. Because the Sweeney, Wingate and Barrow firm handled that Motion in Circuit Court, the Attorney General concurs in their legal arguments in their brief for the other Respondents. Nevertheless, Appellant's argument contains a number of errors that we note below.

Appellant cites no authority whatsoever to support her contention that an interest of the Attorney General cannot be represented by private counsel. The Sweeney, Wingate and Barrow

firm represents the Plaintiff/ Trustee, Russell Bauknight, the Trust and Personal Representative of the Brown Trust and Estate. R. V. I, p. 179 (Complaint, ¶2). As noted, the Attorney General is a party as the protector of the charitable beneficiaries of the Estate and Trust. R. V. I, p. 179 [Complaint, ¶3]. No authority whatsoever holds that the Attorney General cannot be represented by private counsel under such circumstances. She is wrong in stating that the Attorney General brought the suit for the benefit of individuals. He participated only to benefit the charitable beneficiaries.

Plaintiff also is not correct that the Attorney General will receive 10% of the legal fees payable to Respondents' counsel related to the charity. He will not. Nothing in the record supports her erroneous allegation other than her own undocumented statements made five years after the Court denied her Motion to Disqualify. (Citing her Motion to Alter or Amend the Order dropping the Attorney General as a party.).

Appellant has provided no authority for reversing the Order denying her motion. The Order should be affirmed.

V

**APPELLANT'S STATEMENT OF THE ISSUES
IS NON-COMPLIANT WITH THE APPELLATE COURT RULES**

Rule 208(b)(1)(B), SCACR, states that "[t]he statement [of the issues] shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court." Therefore, this Court should disregard Appellant's overly broad statement of the issues.

CONCLUSION

The Orders at issue are focused on narrow legal issues. Appellant fails to engage those issues and instead, clouds her brief with rhetoric and references to irrelevant documents and statements without supporting documentation. The circuit court properly decided all of these Orders, and they should be affirmed.

Respectfully submitted,

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BY: 

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

January 4, 2019

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

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SC Court of Appeals

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,

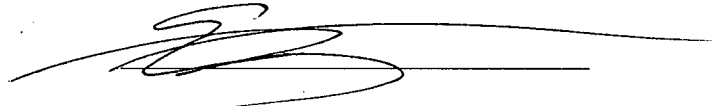
v.

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

Of whom Adele J. Pope is the Appellant Appellant.

RULE 211(b) CERTIFICATE

I hereby certify that the State's Final Brief complies with Rule 211(b), SCACR.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right.

J. EMORY SMITH, JR.
Deputy Solicitor General
Attorney for the Attorney General

January 7, 2019