

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas
Doyet A. Early, III, Circuit Court Judge

Appellate Case No. 2016-001727

Adele J. Pope. Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and
James Brown Legacy Trust, by Russell Bauknight, its Trustee, Respondents.

**RESPONDENT ATTORNEY GENERAL'S RETURN TO
APPELLANT'S PETITION FOR REHEARING**

ALAN WILSON
Attorney General

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S.C. Bar No. 1373

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Deputy Solicitor General
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Counsel for Respondent
Attorney General

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SC Court of Appeals

The Attorney General believes that this litigation should be brought to a close, but opposes Appellant's Petition as a means of doing so.¹ Her Petition should be denied as to the Attorney General because this matter is moot in that she has received all of the documents that are responsive to her Freedom of Information Request, and she does not identify any documents that have not been produced. Further, her Petition should also be denied because it contains lengthy, irrelevant allegations most of which lack citations to appropriate documents in the Record on Appeal which further underscores why this litigation should end.

INTRODUCTION

Appellant's 32 page Petition consists of 25 pages of her alleged version of a history of James Brown events and proceedings in various cases most of which are not supported by citations to the record. Most of the scattering of citations to the record are to Appellant's own numerous affidavits and memoranda that she filed in this proceeding, and they contain hearsay and unsupported statements about the actions of others. *See, eg.* Petition at pp 3-7, 13 & 14. The Attorney General filed motions to strike most of Appellant's affidavits (R. pp. 85-96, 229-232), but the circuit court did not address the motions before dismissing the case altogether. R. p. 9. The Court of Appeals should not rely on the affidavits and memoranda now and should strike Appellant's undocumented statements from her Petition.² Appellant also addresses matters in her separate FOIA case, No. 2016-001708, which are not before this Court

1 The Attorney General has also filed his own Petition for Rehearing which he maintains. Although some of his arguments in this Return may overlap with those in his Petition, this Return is not intended to supplement or reiterate the arguments in his Petition.

2 Because the Petition's numerous pages of allegations and characterizations are also irrelevant to the issues before the Court, the Respondent Attorney General does not attempt to address them herein. His not addressing them does not mean that he agrees with them.

in the instant appeal. *See, eg*, Petition at pp. 12 and 16. Contrary to her allegations of delay as to the Office of the Attorney General, counsel for his Office wrote and emailed the Court multiple times that this FOIA case should be heard. R. pp. 484(letter 3.28.13: “hearing of motions involving the Attorney General should not be stayed and should be heard”), 505(email 5.8.13: “Our position is that the FOIA cases should NOT be held in abeyance and that they should be scheduled as soon as is convenient for the Court”), 513 (email 5.7.14: “We have no objection to a hearing at your Honor’s convenience although, as stated in previous correspondence and filings, we believe that Plaintiff has all documents that could be considered responsive to her FOIA request at issue in this proceeding”), and 515 – 517.

As discussed below, Appellant’s Petition shows no basis for relief against the Attorney General.

**Appellant’s Petition Does Not Request Any Documents
Other Than Those She Has Already Received**

Appellant’s Petition only asks that this Court “direct[] that the AG must fully respond and produce all requested documents leaving only the issue of attorneys’ fees and costs for determination on remand” Petition at pp. 31 & 32. Appellant never once identifies any documents that she claims that the AG has not produced which are responsive to her request. Her brief on appeal contains no legal arguments that the Attorney General did not supply all responsive documents nor does her reply brief respond to his argument that this matter is moot.

Appellant asked for the following documents in a June 30, 2011, letter addressed to the “Custodian of Records of the Office of the Attorney General”:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.

2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

R. p. 26. The Attorney General never received that letter other than as an attachment to the Complaint. Brief of Attorney General at pp. 4, 5 and 18; R. p. 168. Nevertheless, the Attorney General attached to his answer the only document responsive to Request No. 1, an unsigned copy of the Legacy Trust draft. R. pp. 175-193 and 194-209. He did not have documents responsive to Request 2. R. pp. 173, 174 and 257; Brief of Attorney General at p. 6.

Appellant's Petition does not identify any responsive documents that have not been produced. Although her Statement of Facts" in her Brief on Appeal at page 8, states that "the AG did not release the \$4.7 million appraisal; the Legacy Trust documents, or the related documents to support his \$4.7 million claim," the Argument section of her brief contains no legal argument that he had these documents to produce or any others.³ Appellant's Reply Brief did not respond to the Attorney General's mootness argument in his Brief. Therefore, because Appellant has received the only responsive document in the Attorney General's possession, this matter is moot. *Sloan v. Friends of Hunley, Inc.*, 630 S.E.2d 474, 478, 369 S.C. 20, 26 (2006)(case moot when requested documents provided).

3 At the motions hearing in this case in May 2016, Appellant argued that the Attorney General's Office should have produced any documents in the possession of the Sweeny, Wingate and Barrow law firm. R. p. 283, ll, 6 – 25. Appellant never made such a request for documents from that firm in her FOIA letter addressed to the Custodian of Records (R. p. 26) nor did she reference the litigation in that letter. Moreover, Appellant abandoned this circuit court oral argument about the law firm on appeal by not briefing it. *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439 S.E.2d 283, 285 (Ct. App. 1993)(issues not briefed are deemed abandoned).

The Respondent Attorney General strongly supports the Freedom of Information Act, and his Office and his predecessors have a long history of advocating the importance of that law. His position in this case is that he has complied with the law.⁴ He respectfully requests that this Petition be denied.

Respectfully submitted,

ALAN WILSON
Attorney General

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

J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

August 9, 2019

⁴ The Attorney General maintains all defenses to this Petition which are set forth in his Final Brief on Appeal including his additional sustaining ground that the Office of the Attorney never received Appellant's FOIA request by mail or delivery so as to trigger a duty to respond.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Return of the Attorney General to Appellant's Petition for Rehearing upon counsel for the other parties by mailing copies to each of them at the addresses below via the United States Mail this August 9, 2019.

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J. EMORY SMITH, JR.
Deputy Solicitor General



ALAN WILSON
ATTORNEY GENERAL

August 9, 2019

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

Re: Pope v. Wilson Appellate Case No. 2016-001727

Dear Ms. Kitchings:

Enclosed for filing with your Office are the original and six copies of the Attorney General's Return to Appellant's Petition for Rehearing together with a certificate of service. Please confirm filing by stamping the enclosed copy of the Petition.

Thank you for your assistance.

Respectfully submitted,

J. Emory-Smith, Jr.
Deputy Solicitor General

cc: Adam T. Silvermail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
David L. Paavola, Esquire