

STATE OF SOUTH CAROLINA
In the Court of Appeals

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AUG 16 2019
SC Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit 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.

**APPELLANT'S REPLY TO JAMES BROWN LEGACY TRUST'S RETURN TO
PETITION FOR REHEARING**

Adam T. Silvermail (Bar No. 80219)
Law Office of Adam T. Silvermail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvermaillawfirm.com

Counsel for Appellant

Appellant submits this reply to the return on the James Brown Legacy Trust (“Legacy Trust”) to her Petition for Rehearing in this matter.

As an initial matter, Appellant submits that the facts set out in her Petition were properly cited and found in the record. Because the Legacy Trust identifies no specific fact(s) which are alleged to be outside the record, Appellant does not undertake to reiterate or rehash the facts, but does incorporate her Petition herein where relevant.

The Legacy Trust’s argument against rehearing appears to be two-fold. First, that this Court should not reach the question of whether the Legacy Trust is a public body under the FOIA and, second, that the Attorney General’s production of documents moot’s the Legacy Trust’s obligation to do so. Appellant respectfully submits that both of the Legacy Trust’s arguments are erroneous.

The matter of whether the Legacy Trust is a public body for FOIA purposes was fully briefed by Appellant and the Legacy Trust. *See* Appellant’s brief at 15-20, Brief of Legacy Trust at 5-10. As set out in Appellant’s Petition for Rehearing, this Court made a finding, without specific analysis, that *Wilson v. Dallas* negated the need for the Legacy Trust as a party. That finding did overlook or misapprehend that the Court had before it and fully briefed the question of whether the Legacy Trust was a public body and, if so, whether it’s status had changed after *Wilson*. In either event, the Legacy Trust’s current or historical status as a public body affects Appellant’s right to a full response under the FOIA. Appellant incorporates her arguments made in the Petition for Rehearing on this matter and submits that this Court should grant her Petition on that ground.

As to the Legacy Trust’s argument that the AG’s production of documents somehow relieves another public body of producing documents, Appellant is unable to find any statutory or case law which limits any person’s FOIA rights by what that person has or may obtain from

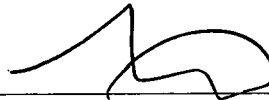
another source. By the Legacy Trust's logic, persons seeking information under the FOIA would be burdened with demonstrating that they do not already have the documents which might be produced and/or being forced to attempt FOIA requests from other bodies before getting a response from the body in question. Both of these possibilities fly in the face of the FOIA's stated purposes – allowing the speedy and inexpensive production of public documents and information. *See* S.C. Code Ann. §30-4-15.

Should it turn out that the Legacy Trust has only documents identical to those already in Appellant's possession, there is information to be gained from knowing that. Under the FOIA, however, she remains entitled to a response from any public body to which she has directed a proper FOIA request.

Conclusion

For the foregoing reasons and those set forth in her Petition for Rehearing herein, Appellant respectfully moves this Court to grant a rehearing on the points above or, alternatively, to substitute this Court's June 19, 2019 opinion with one which finds the Legacy Trust to be a public body under the FOIA and directs that it fully respond to the FOIA request and produce all requested documents, and remand the matter for a final determination of attorneys' fees and costs.

Respectfully submitted,



Adam T. Silvernail (Bar No. 80219)
Law Office of Adam T. Silvernail, LLC
1905 Marion Street (29201)
Post Office Box 7995
Columbia, South Carolina 29202-7995
(803) 779-1770
adam@silvernailfirm.com

Counsel for Appellant

August 16, 2019

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PROOF OF SERVICE

I certify that I have served the Reply to Return of James Brown Legacy Trust to Petition for rehearing on all Respondents by mailing a copy of same on August 16, 2019, addressed to his attorney of record as follows:

J. Emory Smith, Jr., Esquire
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Counsel for Respondent Attorney General

Keith M. Babcock, Esquire
Ariail E. King, Esquire
David L. Paavola
Lewis & Babcock, LLP
P.O. Box 11208
Columbia, South Carolina 29211
Counsel for Respondent James Brown Legacy Trust



Adam T. Silvernail