

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
SEP 04 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 AMENDED
INITIAL BRIEF AND DESIGNATION OF MATTER FOR THE RECORD
AND STAY THE TIME FOR FILING HIS BRIEF AND DESIGNATION**

Subject to the Order dropping the Attorney General as a party to the case¹, the Attorney General moves to strike Appellant's Amended Initial Brief and Amended Designation of Matter for the Record because they include matters not presented to the Circuit Court in this case. Therefore, that Brief and Designation do not comply with the Appellate Court rules, and this Court's Order of July 26, 2019. Although Respondent Attorney General has drafted his amended initial brief, we believe that filing it after this Motion to Strike is decided would better serve judicial economy. Therefore, he asks that the time for filing his initial brief be stayed or held in abeyance while this Motion to Strike is decided.²

Several documents cited in the brief or contained in the Designation of Matter for the Record do not appear to have been filed with the circuit court at any time. These apparently unfiled documents included the depositions cited in Appellant's Amended brief and / or her Amended Designation. See, eg, Brief at page 27, Amended Designation, p. 5, Item No. 106 (McMaster deposition); p. 6, Item No.'s, 127, 130, 132, 135. According to the Richland County online public records index and Clerk's Office staff, the referenced Notice of Filing at Item 127 does not include any copies of depositions. Appellant's affidavit in support of Motion to Lift Stay dated November 8, 2017, also does not appear to have been filed in circuit court, but she cites it at pages 16 and 19 (twice), and includes it in her Amended Designation at p. 6, Item No.

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.

² On August 29, 2019, Respondent Attorney General submitted a request for an extension of time until September 9 to file his amended brief and designation that are currently due on September 4. He respectfully asks that the instant Motion stay both deadlines of September 4 and 9 while this Motion is decided.

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Appellant cites letters and designates some, including correspondence preceding this suit, but she does not show that they were ever filed with the court or mailed to the Judge and filing is not readily apparent on the Richland public index . *See, eg.*, Amended Brief at pp. 5, 15, 16, 17, 19, 22, 25; Designations, Items , 6, 7, 37, 39, 40, 48, 49, 74. If the letters were never filed with the Clerk's Office or mailed to the presiding Judge, they should be removed from the record.

Any unfiled documents that are cited in the brief or designated should not be referenced or included in the Record. Rules 208(b), 209(b), 210(c), SCACR; Order, Court of Appeals, July 26, 2019. Because of the volume of Appellant's Amended Initial Brief (50 pp) and Designations (7 pp) and the above identified errors, Appellant should be directed to verify that each cited or designated document was filed with the Court, and if not, the citations and designations should be removed. Appellant should be directed to file a second amended initial brief and second amended designation with these corrections and no new citations, designations or other edits or additions to the brief.

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. He respectfully requests that the time for filing his amended initial brief and designation be stayed or held in abeyance while this motion is decided. He plans to address in his brief, other matters in Appellant's brief that appear to be inconsistent with case law and the purposes of the Appellate Court rules.

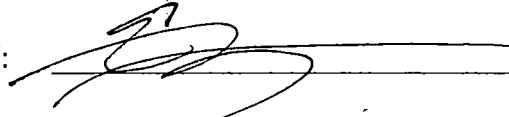
Respectfully submitted,

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

September 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
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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 Appellant's

Amended Initial Brief and Designation on counsel for the other parties by mailing copies to them
at the addresses below via the United States Mail this September 4, 2019:

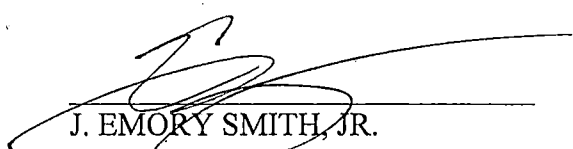
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J. EMORY SMITH, JR.
Deputy Solicitor General
S.C. Bar No. 5262
Counsel for the Attorney General



ALAN WILSON
ATTORNEY GENERAL

September 4, 2019

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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

Dear Ms. Kitchings:

Enclosed for filing with your Office is the original and six copies of the Motion of Respondent Attorney General to Strike Appellant's Amended Initial Brief and Designation together with a Certificate of Service.

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 Mark V. Gende, Esquire
Adam T. Silvernail, Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire