

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

Case No. 2010-CP-40-4900

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 child 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 child 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.

REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE

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Pursuant to Rule 240(f), SCACR, Respondents file this Reply to Appellant's Return and Opposition of Appellant to Motion of Respondents to Strike. In addition, Respondents adopt by reference the Reply of the South Carolina Attorney General to Appellant's filing entitled Return and Memorandum in Opposition to Motion of Attorney General to Strike Amended Initial Brief of Appellant.

I. Appellant failed to correct her Initial Brief and comply with the South Carolina Appellate Court Rules and this Court's Order from July 26, 2019.

Appellant asserts her Amended Initial Brief complies with both the South Carolina Appellate Court Rules ("Rules") and this Court's July 26, 2019 Order granting Respondents' Motion to Strike Appellant's Initial Brief. Rule 208(b)(1)(C), SCACR, provides that the "statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal." Further, "[t]he statement shall not contain contested matters[.]" 208(b)(1)(C), SCACR. Rule 209(b), SCACR, states the Designation of Matter "shall not include any matter . . . which is not relevant to the appeal."

In its Order from July 26, 2019, this Court required Appellant to "serve and file an amended initial brief and an amended designation of matter in compliance with Rules 208 and 209(b) of the South Carolina Appellate Court Rules (SCACR)." Additionally, this Court prohibited Appellant from including in either the Amended Designation of Matter or Amended Initial Brief matters not presented to the circuit court. Order July 26, 2019. Finally, the Court ordered Appellant to "include references to the transcript or other documents properly included in the record on appeal to support all salient facts alleged." *Id.*

Appellant failed to amend both her Initial Brief and Initial Designation of Matters to comply with the Rules or this Court's Order. First, Appellant's Amended Initial Brief is substantially similar to her Initial Brief, to the point it is almost entirely the same. Appellant

wholly failed to amend the content of her Statement of the Case and the Statement of the Facts, both of which included pervasive irrelevant and contested matters. Furthermore, Appellant included additional references and designations, several of which violate the South Carolina Appellate Court Rules and the Court's Order filed on July 26, 2019. Appellant failed to cite only necessary matters in order for the Court to understand her appeal. While Appellant omitted from her Amended Initial Designated Matters much of the "Pleadings" and "Hearings and Transcripts" portions from her Initial Designated Matters, she still frequently cites many of the affidavits, pleadings, and orders originally designated.

Second, Appellant argues Respondent has failed to "connect [the] allegation" that Appellant abandoned issues on appeal to "its stated bases for striking Appellant's amended brief and designation." App. Return and Opp. Of Appellant to Respondents' Motion to Strike at 2-3. An issue is deemed abandoned if an appellant fails to argue it in the body of its brief. *Jinks v. Richland Cnty.*, 355 S.C. 341, fn. 3, 585 S.E.2d 281 (2003) (citing *First Savings Bank v. McLean*, 314 S.C. 361, 444 S.E.2d 513 (1994) (issues not argued in the brief are deemed abandoned and will not be considered on appeal); *Fields v. Fields*, 342 S.C. 182, 536 S.E.2d 684 (Ct. App. 2000) (same)). Once again, Appellant fails to address the vast majority of the Orders filed with the Notice of Appeal. Instead, Appellant makes numerous references to facts, pleadings, and affidavits outside of the Orders filed with the Notice of Appeal and has limited her Amended Initial Brief to address: (1) Judge Manning's Order Denying Motion to Dismiss filed on November 9, 2010 (and Judge Manning's related Order file don January 12, 2011, denying Pope's motion pursuant to Rule 59(e), SCRCF); (2) Judge Early's Order Granting Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims filed on July 8, 2017 (and Judge Early's related Order Denying Defendant/Counter-Claim Plaintiff's Motion to Alter,

Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment filed on November 26, 2018); and (3) purportedly certain Orders dated and/or filed after May 29, 2013. Appellant still failed to make any argument relating to Orders 3-19 and 20-24 included the Notice of Appeal in her Amended Initial Brief.

Third, Appellant asserts her citations to and reliance on her own pleadings and affidavits is appropriate. Rule 208(b)(1)(E), SCACR, provides: "A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contention." Rule 208(b)(4), SCACR, also provides: "The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." Appellant cites Rule 56, SCRCP, as support for her assertion that reliance on her own affidavits and pleadings is appropriate. However, the South Carolina Appellate Court Rules apply to Appellant's Initial Brief. Respondent's Motion to Strike filed on May 24, 2019, which is attached as Exhibit A to Respondent's Motion to Strike, provides numerous instances of Appellant's improper reliance on her own pleadings and affidavits. Resp't Mot. to Strike, Ex. A at 6-10.

Similar to her Initial Brief, Appellant's Amended Initial Brief violates the Rules and this Court's Order from July 26, 2019 because she failed to omit contested matters and statements only supported by her own affidavits and pleadings; as well as include pervasive irrelevant matter and abandon all but three of the Orders in the Notice of Appeal.

II. Appellant's argument regarding SWB's ability to bring this appeal is irrelevant to her appeal and the Motion to Strike.

Appellant's Return includes several sections in which she asserts Respondents lack the ability to file motions on behalf of, or represent, certain parties to this matter. Once again, the

issues on appeal are restricted to: (1) Judge Manning's Order Denying Motion to Dismiss filed on November 9, 2010 (and Judge Manning's related Order file don January 12, 2011, denying Pope's motion pursuant to Rule 59(e), SCRCF); (2) Judge Early's Order Granting Plaintiffs' Motion for Summary Judgment as to Defendant's Counterclaims filed on July 8, 2017 (and Judge Early's related Order Denying Defendant/Counter-Claim Plaintiff's Motion to Alter, Amend, Reconsider and/or Vacate Order Granting Plaintiffs' Motion for Summary Judgment filed on November 26, 2018); and (3) purportedly certain Orders dated and/or filed after May 29, 2013.

Appellant responds to Respondent's Motion to Strike with an inappropriate argument regarding Respondent's ability to represent certain Plaintiffs in this matter. She argues beyond the scope of the appeal and is attempting to litigate the underlying in her appeal. Whether Respondents can represent or "speak on behalf of" certain Plaintiffs is not at issue in this appeal and is irrelevant to Respondent's Motion to Strike.

CONCLUSION

The Court should grant Respondent's Motion to Strike Appellant's Amended Initial Brief. Appellant failed to comply with this Court's Order and her Amended Initial Brief violates Rule 208(b)(1)(C), SCACR. Additionally, Appellant made numerous statements that are either unsupported by any reference to the Record on Appeal or are only self-supported by her pleadings and/or affidavits, and violates Rules 208(b)(1)(E) and 208(b)(4), SCACR. Appellant's self-supporting pleadings and affidavits should be stricken from her Designation to the extent such documents provide the only support for a statement included in the initial brief.

Pursuant to the legal standard concerning matter included in an appeal set forth above in this Motion to Strike and in Respondents Motion to Strike filed on May 24, 2019, all irrelevant

matter included by Appellant in this appeal should be stricken from Appellant's Designation and Amended Initial Brief.

All matter in Appellant's Amended Initial Brief and Designation which was not presented to the lower court in connection with any of the orders in this appeal should be stricken.

In the alternative, pursuant to the legal standard concerning matter included in an appeal set forth above in this Motion to Strike and in Respondents' Motion to Strike filed on May 24, 2019, and Appellant's substantial noncompliance with the Rules, Appellant's appeal should be dismissed pursuant to Rule 260(a), SCACR, and/or Rule 269, SCACR.

Respectfully submitted,



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September 17, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
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The Honorable Doyet A. Early, III, Circuit Court Judge
The Honorable L. Casey Manning, Circuit Court Judge

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Case No. 2010-CP-40-4900

Appeal Tracking 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. 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 child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

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v.

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

Of whom Adele J. Pope is the Appellant.

PROOF OF SERVICE

I certify that I have served the REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE by depositing a copy of it in the United States Mail, postage prepaid, on September 17, 2019, addressed to the following attorneys of record:

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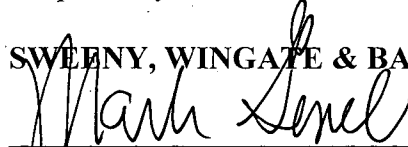
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Respectfully submitted,

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September 17, 2019



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September 17, 2019

Reply to: Main Office

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VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
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SC Court of Appeals

Re: *Russell L. Bauknight, et al. v. Adele J. Pope*
Appellate Case No. 2018-002229
Our File: 4077-7389

Dear Ms. Kitchings:

Enclosed please find the original and six copies of Reply to Appellant's Return to Motion to Strike and Proof of Service in the above-referenced matter. I would appreciate your filing the originals and returning filed copies to me by the courier.

Should you have any questions or concerns, please do not hesitate to give me a call.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

Mark V. Gende

MVG/gpc
Enclosures

cc: Counsel of record (with copies of enclosures)

SWB

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