

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

Appellate Case No. 2019-000362

RECEIVED
OCT 28 2019
SC Court of Appeals

Adele J. Pope,Appellant,

v.

Estate of James Brown and The James Brown 2000
Irrevocable Trust,Respondents.

**REPLY IN SUPPORT OF MOTION TO STRIKE
INITIAL BRIEF AND DESIGNATION OF
MATTER TO THE RECORD ON APPEAL**

Russell Bauknight, as Personal Representative and Trustee of Respondents, the Estate of James Brown and the James Brown 2000 Irrevocable Trust, hereby submits this reply in support of Respondents' Motion to Strike Appellant Adele J. Pope's Initial Brief of Appellant ("Initial Brief") and Designation of Matter To Be Included In The Record On Appeal ("Designation"), and in response to Pope's Return to the Motion.

ARGUMENT

Despite the numerous lawsuits surrounding the Estate and Trust and the lengthy procedural history of this action (the "1337 action"), the trial of this case concerned only

one cause of action: Pope's claim for payment of commissions and fees allegedly owed to her for her work as a Co-Personal Representative and Co-Trustee ("PR/Trustee") of the Estate and Trust.¹ Pope admits this. (Return, at 2, 8). Pope also acknowledges that the circuit court denied her claim following a trial involving the testimony of numerous fact and expert witnesses, as well as substantial documentary evidence, regarding her performance as co-PR/Trustee. (Return at 2, 6; *see* Order (Jan. 16, 2019), at 14-15). The circuit court's 60-page order denying Pope's claim meticulously cites the testimony, exhibits, court orders, and court filings on which it based its decision.

As explained in Respondents' Motion to Strike, Pope's designations of matter to the record on appeal stray widely from the bounds of Rule 209(b), SCACR (prohibiting designation of "any matter ... which is not relevant to the appeal") and Rule 210(c), SCACR (providing that the record on appeal "shall not ... include matter which was not presented to the lower court or tribunal"). Among other problems, Pope has designated orders and filings from multiple cases. These designations do not clearly identify which order or filing belongs to which case, nor do they provide any indication that orders and filings from other cases were actually presented to the circuit court in *this* case.

¹ Pope's complaint challenged not just the disallowance of her claim, but also sought to void Mr. Bauknight's appointment as PR/Trustee, Mr. Bauknight's removal, an accounting of Mr. Bauknight's administration of the Estate and Trust, and the appointment of a new special administrator. The circuit court dismissed all claims other than Pope's fee claim, primarily on the grounds that Pope lacked standing to assert the other claims raised. (Order (Jan. 16, 2019) at 11-12). The South Carolina Supreme Court affirmed the dismissal on June 10, 2015, the same day it entered an order "admonish[ing] Mrs. Pope to cease her interference with the Estate and Trust." (*Id.* at 13).

Some of the factual assertions in Pope's initial brief are supported by references to the trial transcript or trial exhibits.² However, numerous factual assertions are supported only by citation to Pope's 133-page Motion to Alter or Amend. *See* Appellant's Initial Brief at 15-16, 19, 27-31. The Motion to Alter or Amend consists of 413 numbered paragraphs, each asserting that the circuit court "overlooked or misapprehended" certain alleged facts, virtually none of which is supported by reference to testimony or exhibits presented at trial. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.").³

There is no question that the record in this case is extensive. Respondents submit, however, that the large record necessitates that the parties be *more* precise in their designations, not less. It is not this Court's responsibility, nor is it Respondents', to verify Pope's compliance with Rules 208(b)(4), 209(b), and 210(c), SCACR, particularly given that this Court has, on at least three prior occasions, admonished Pope for failing to comply with these Rules. *See* **Exhibit A**, Order in Appellate Case No. 2018-002229 (July 26, 2019) (striking brief and designation of matter because they referenced orders and documents not presented to the circuit court); **Exhibit B**, Order in Appellate Case No.

² Not all materials cited in Pope's initial brief are designated to the record on appeal. *Compare, e.g.,* Appellant's Initial Br. at 18, 31 (citing transcript pp. 336 and 337), *with* Appellant's Designation of Matter to the Record on Appeal at 4 (omitting these transcript pages from the designations). These are surely innocent oversights, but they nevertheless are suggestive of the hazards of overbroad designations to the record on appeal.

³ This Court has recently admonished Pope for failing to comply with Rule 208(b)(4). *See* **Exhibit A**, Order in Appellate Case No. 2018-002229 (July 26, 2019) (striking initial brief and designations of matter and ordering "that the amended initial brief shall include references to the transcript or other documents properly included in the record on appeal to support all salient facts alleged.").

2017-001899 (Apr. 26, 2018) (striking brief and designation of matter because they referenced orders and documents not presented to the circuit court and documents filed or presented to the circuit court after the notice of appeal was filed); Exhibit C, Order in Appellate Case No. 2014-000250 (May 8, 2014) (striking designation of matter on the grounds that it included materials not relevant to the appeal).

Pope contends that Respondents' Motion is an improper attempt to preclude her from "address[ing] the extensive factual history" of this case. (Return, at 1). Respondents do not dispute that the history of the various disputes concerning the Estate and Trust, as recited in the circuit court's Order, are pertinent background information to the issues on appeal. But it is evident from her Initial Brief and Designations that Pope is not merely reciting this history. Rather, she persists in her attempts to *relitigate* long-settled matters, despite the Supreme Court's clear admonition that she must stop doing so. Motion, Ex. 1 (Order in Appellate Case Nos. 2013-001649, 2014-000250, 2014-001279, and 2009-142286 (June 10, 2015) ("Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, such as the above actions, in which she clearly has no standing. We caution Pope that *continued attempts to involve herself in the resolution of the Estate and Trust may result in contempt charges.*" (emphasis added)).

CONCLUSION

For the foregoing reasons, Respondents ask the Court to enter an order striking Popes Initial Brief and Designations, and directing her to file amended versions that demonstrably comply with the South Carolina Appellate Court Rules.

Signatures on next page.

Respectfully submitted,



J. David Black, SC Bar No. 68499
Kirsten E. Small, SC Bar No. 75681
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, South Carolina 29201
(803) 771-8900
dblack@nexsenpruet.com
ksmall@nexsenpruet.com

*Attorneys for Russell L. Bauknight as Personal
Representative of Respondent the James Brown
Estate and as Trustee of Respondent the James
Brown 2000 Irrevocable Trust*

October 28, 2019

EXHIBIT A

The South Carolina Court of Appeals

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.

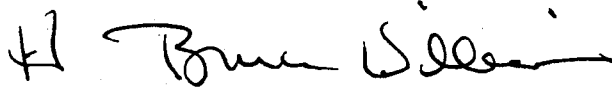
Adele J. Pope and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Appellant.

Appellate Case No. 2018-002229

ORDER

Respondents' motion to strike Appellant's initial brief and designation of matter is granted. Within thirty days of this order, Appellant shall 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). Specifically, the amended designation of matter shall not include matter which was not presented to the circuit court, and the amended initial brief shall not include references to matter which was not presented to the circuit court. *See* Rule 209(b), SCACR (providing the designation of matter may only include documents and materials which may properly be included in the record on appeal); Rule 210(c), SCACR (providing the record shall not include matter which was not presented to the lower court or tribunal). Further, the amended initial brief shall include references to the transcript or other documents properly included in the record on appeal to support all salient facts alleged. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. . . . In the initial briefs, these references should be . . . by the page of the material referenced."). Within thirty days of service of Appellant's amended initial brief and designation of matter, Respondents shall serve and file their amended initial briefs.



FOR THE COURT

Columbia, South Carolina

FILED

July 26, 2019

cc:

Adam Tremaine Silvermail, Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Everett Augustus Kendall, II, Esquire
Clyde H. Jones, Jr., Esquire
J. Emory Smith, Jr., Esquire
Charles E. Carpenter, Jr., Esquire

EXHIBIT B

The South Carolina Court of Appeals

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.

Appellate Case No. 2017-001899

ORDER

The motions to strike are granted. Within thirty days of this order, Appellant shall serve and file an amended initial brief and an amended designation of matter. In the amended designation of matter and the amended initial brief, Appellant shall not list or reference any orders or other documents that were not presented to the circuit court as part of this case. Further, Appellant shall not designate or reference any documents filed or presented to the circuit court after this appeal was filed.

To the extent that Respondents are requesting that this court strike documents that were presented to the lower court as part of this case prior to this appeal, the requests are denied.

FOR THE COURT

Columbia, South Carolina

cc:

Kenneth B. Wingate, Esquire
Everett Augustus Kendall, II, Esquire
Mark V. Gende, Esquire
Clyde H. Jones, Jr., Esquire
J. Emory Smith, Jr., Esquire
Adam Tremaine Silvernail, Esquire
Walter Henry Bundy, Jr., Esquire
Michael Brent McDonald, Esquire

FILED

April 26, 2018

EXHIBIT C

The South Carolina Court of Appeals

Adele J. Pope, Appellant,

v.

Estate of James Brown, Deceased; The James Brown
2000 Irrevocable Trust; Russell L. Bauknight,
Individually, as former Executor de son tort, and in every
current and former fiduciary status claimed or held as to
the Estate of James Brown and The James Brown 2000
Irrevocable Trust, Respondents,

And Robert L. Buchanan, Jr., Interested Party.

Appellate Case No. 2014-000250

ORDER

Respondents have filed a motion to dismiss this appeal. After careful consideration, Respondents' motion is denied. However, Appellant's designation of matter is stricken because it does not comply with the South Carolina Appellate Court Rules. *See* Rule 209(b), SCACR (noting the designation of matter may not include anything which is not relevant to the appeal). Appellant shall serve and file an amended designation of matter that only designates matters that were presented to the circuit court and are relevant to the circuit court's January 7, 2014 order within fifteen days of this order. Additionally, Appellant shall also serve and file an amended initial brief that only references matters relevant to the circuit court's January 7, 2014 order within fifteen days of this order.


FOR THE COURT

FILED
5/8/14

Columbia, South Carolina

cc:

Adele J. Pope

Frederick A. Crawford, Esquire

William George Newsome, III, Esquire

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

Appellate Case No. 2019-000362

RECEIVED
OCT 28 2019
SC Court of Appeals

Adele J. PopeAppellant,

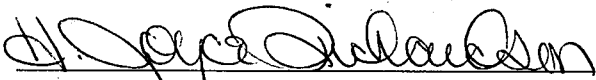
v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust.....Respondents.

PROOF OF SERVICE

I certify that on October 28, 2019, I served a copy of **Reply In Support Of Motion To Strike Initial Brief And Designation Of Matter To The Record On Appeal** addressed as follows and notified opposing counsel of this service via hand-delivery and electronic mail as follows:

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
1905 Marion Street
Columbia, South Carolina 29201
adam@silvernaillawfirm.com


H. Joyce Richardson
NEXSEN PRUET, LLC

J. David Black
Member
Admitted in SC, DC

October 28, 2019

VIA HAND-DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED
OCT 28 2019
SC Court of Appeals

RE: Adele J. Pope v. Estate of James Brown and The James Brown 2000 Irrevocable Trust / Appellate Case No. 2019-000362

Dear Ms Kitchings:


Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

Enclosed for filing with the Court is an original and seven copies of the **Reply In Support Of Motion To Strike Initial Brief And Designation Of Matter To The Record On Appeal** in the above-referenced matter. Please return a clocked copy to me via our courier.

By copy of this letter and as evidenced by the attached Proof Of Service, we are serving counsel of record with a copy of the above Reply.

Thank you for your assistance in this matter.

Very truly yours,


J. David Black

JDB/hjr

Enclosures

cc w/encl.: Adam J. Silvernail, Esquire - adam@silvernaillaw.com
and Hand-Delivery