

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. 2016-001708

Adele J. Pope. Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina Respondent.

RETURN TO MOTION FOR COSTS

Respondent Attorney General opposes this Motion for Costs. Under Rule 222. SCACR, “[w]hen a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.” Costs should be denied here because, as discussed below, the Opinion did not decide all issues remaining in the case, and because Appellant has cluttered her brief with irrelevant issues and argument and included voluminous irrelevant documents in the Record.

In this instance, the Court reversed “and remanded for further proceedings consistent with [its] opinion.” Opinion No. 5657, June 19, 2019. On remand, issues remain to be decided include mootness (see Respondent’s Final Brief, at p. 19) and whether “the specific language of a discovery rule . . . expressly prohibits disclosure of a particular type of record.” Opinion at p. 10. Therefore, the Opinion in this case has not decided the ultimate outcome of

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Opinion at p. 10. Therefore, the Opinion in this case has not decided the ultimate outcome of this suit. Accordingly, Appellant should not be awarded any fees or costs for prevailing on just one issue.

Moreover, Appellant has caused much unnecessary work on appeal by including in her brief irrelevant background and issues that were not reached by the Court of Appeals. *See eg.*, Appellant's Brief at pp. 5 & 6 (background prior to litigation and the FOIA request) Brief at pp. 12, 16, 17 (transfer and consolidation; accusations re other civil litigation) and pp. 17 & 18 (attorney's fees). Her doing so required Respondent to waste time responding to those arguments. *See, eg.*, Respondent's Brief at pp. 14 – 18. This Court found that the question of attorney's fees was premature and that it need not address Appellant's remaining issues. Op. at p. 12.

Moreover, much of the record contains documents completely irrelevant to appeal. Appellant included numerous affidavits that were unnecessary for disposition of the legal issues in this case. See, Record on Appeal at pp. 246 – 345, 349-391. To respond to them, Respondent had to include in the Record his motions to strike the affidavits. R. p p 73-93, 103-108, 134-142. Appellant also included irrelevant motions or documents related thereto. R. pp. 121-125, 392 – 402. Other than a general reference to a transcript, Appellant cited only one page of the 50 pages of transcripts she included in the Record. (Brief of Appellant at pp. 2 & 4) These pages resulting from Appellant's unnecessary designations total 245 pages which is well more than half the Record.

For all of these reasons, Appellant's Motion for Costs should be denied including the attorney's fees and also the printing costs. Even if, *arguendo*, this Court is inclined to award

some fees or costs to Appellant, they should be reduced by more than 50 per cent because of the unnecessary work that Appellant has created for this appeal as well as in Circuit Court.¹

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

December 11, 2019

¹ Although this case has had a protracted history, as discussed in Respondent's brief, the Office of the Attorney General is not responsible as it regularly informed the Circuit Court that its motions were ready to be heard, and Appellant contributed to the delay by her filing of numerous irrelevant documents. Brief of Respondent at p. 16.

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Alan Wilson, in his capacity as Attorney General of South Carolina Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Return of Respondent Attorney General to Motion for Costs upon counsel for Appellant by mailing copies to him at the address below via the United States Mail this December 11, 2019.

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
P.O. Box 7995
Columbia, South Carolina 29202-7995



J. EMORY SMITH, JR.
Deputy Solicitor General
Attorney for Respondent Attorney General

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ALAN WILSON
ATTORNEY GENERAL

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

Re: Pope v. Wilson App. Case No. 2016-001708

Dear Ms. Kitchings:

Enclosed for filing with your Office is the original and six copies of the Return to Motion for Costs together with a certificate of service. Thank you for your assistance.

Respectfully submitted,

J. Emory Smith, Jr.
Deputy Solicitor General

cc: Adam T. Silvernail, Esquire