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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.

RESPONDENTS' MOTION TO DISMISS APPELLANT'S APPEAL, OR IN THE ALTERNATIVE, TO STRIKE APPELLANT'S INITIAL REPLY BRIEF

Russell Bauknight, as Personal Representative and Trustee of the Estate of James Brown and the James Brown 2000 Irrevocable Trust, and the other Respondents, (excluding the Attorney General, who is separately responding in this appeal) move to dismiss Appellant Adele J. Pope's ("Appellant") appeal, or in the alternative, to strike Appellant's Initial Reply Brief filed on November 5, 2019.

Appellant's repeated use of contemptuous language to describe the actions of the circuit court, the judge of the circuit court, the Attorney General, opposing counsel and Respondents, as well as other failures to comply with the appellate rules, provide sufficient grounds for this Court to dismiss the appeal in its entirety. Alternatively, should the Court determine dismissal is not appropriate, Appellant's Initial Reply Brief should be stricken.

STANDARD OF REVIEW

An appeal "is a matter of grace and is not an inherent or vested right." *McCullough v. McCullough*, 242 S.C. 108, 110, 130 S.E.2d 77, 78 (1963). Appellants must follow the appellate court rules in order to perfect their appeal. *Id.*; *see also Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992) ("It is incumbent upon counsel to provide material that complies with the [South Carolina Appellate Court] Rules and facilitates appellate review.")

Pursuant to Rule 260, SCACR, dismissal is a proper sanction when an appellant "has failed to comply with the requirements of these Rules," dismissal for failure to comply with the requirements of the rules may be entered by the clerk, and such order of dismissal will "have the same force and effect as an order of the appellate court." *See Wise v. S.C. Dept. of Corrections*, 372 S.C. 173, 174, 642 S.E.2d 551, 551 (2007) ("Whenever it appears that an appellant has failed to comply with the requirements of the SCACR, an order of dismissal shall be issued."); *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004) ("An appellant's failure to comply with the

procedural rules for appeal deprives the court of appellate jurisdiction but not of subject matter jurisdiction."); *Forest Dunes Assoc. v. Club Carib, Inc.*, 301 S.C. 87, 88, 390 S.E.2d 368, 369 (Ct. App. 1990) ("Because we find all of the remaining exceptions do not comply with [former] Supreme Court Rule 4, § 6, we dismiss the appeal."); *Tinsley v. Ervin Co.*, 264 S.C. 487, 494, 216 S.E.2d 170, 173 (1975) ("This court would be fully justified in dismissing the entire appeal for failure to comply with the Supreme Court rules."); *Diamond v. Powell*, 271 S.C. 183, 184, 246 S.E.2d 233, 234 (1978) ("Accordingly, the appeal is dismissed for failure to comply with Rule 8, Section 2 of the Rules of this Court"); *FCX Cooperative Service, Inc. v. Bryant*, 242 S.C. 511, 514, 131 S.E.2d 702, 703 (1963) ("Manifestly, appellant has violated both the letter and spirit of these rules to such an extent as to unduly burden opposing counsel and the court . . . . We would be justified in granting [respondent's] motion to dismiss."); *Wade v. Couch*, 32 S.C. 583, 10 S.E. 1103 (1890) (dismissing appeal for failing to follow Supreme Court Rules).

In accordance with the South Carolina Appellate Court Rules, all lawyers licensed within the State subscribe to the Lawyer's Oath before their admission to practice law. *See* Rule 402(h)(3), SCACR. Importantly, a civility clause is contained within the Lawyer's Oath, asking lawyers to "pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications" to opposing parties and their counsel. *Id.* In interpreting the civility clause, the South Carolina Supreme Court has made its policy considerations clear:

> This Court has stated that a lawyer "must act in a dignified and professional manner, with proper respect for the parties, witnesses, opposing counsel, and for the Court. When a lawyer fails to conduct himself appropriately, he brings into question the integrity of the judicial system, and, as well, disserves his client." *In re Goude*, 296 S.C. 510, 512, 374 S.E.2d 496, 497 (1988).

In re Anonymous Member of South Carolina Bar, 392 S.C. 328, 334, 709 S.E.2d 633, 636 (2011). In a separate opinion, the Supreme Court echoed these same concerns:

> Moreover, an attorney may not, as a means of gaining a strategic advantage, engage in degrading and insulting conduct that departs from the standards of civility and professionalism required of all attorneys. *See In re Golden*, 329 S.C. 335, 341, 496 S.E.2d 619, 622 (1998) (determining the attorney's conduct in questioning a witness by using sarcasm, unnecessary combativeness, threatening words, and intimidation served no legitimate purpose other than to embarrass, delay, or burden another person and, even if the witness was being uncooperative, it would not justify the attorney's insulting conduct, which was found to have "completely departed from the standards of our profession" as well as "basic notions of decency and civility").

In re White, 391 S.C. 581, 588, 707 S.E.2d 411, 415 (2011).

ARGUMENT

Dismissal of Appellant's appeal is proper because she repeatedly uses comtemptuous language to characterize the actions of her opponents and the circuit court. If dismissal is not appropriate, then striking Appeallant's Initial Reply Brief is appropriate for her contemptuous characterizations and for her failures to comply with the appellate court rules.

I. Dismissal of Appellant's Appeal is Proper.

A. Appellant Repeatedly Uses Contemptuous and Scurrilous Language to Characterize the Actions of the Circuit Court, the Judge of the Circuit Court, the Attorney General, Opposing Lawyers, and the Respondents.

Dismissal of Appellant's appeal is appropriate because Appellant uses contemptuous and scurrilous language to characterize the actions of the circuit court, the judge of the circuit court, the Attorney General, opposing lawyers, and Respondents.

Throughout her filings, Appellant accuses the circuit court, the judge of the circuit court, the Attorney General, opposing lawyers, and Respondents of unethical conduct and wrongdoing of the basest sort and makes contemptuous, disparaging, demeaning comments about their motivations and the propriety of their actions. Her demeaning comments are conclusory and without foundation. To allow Appellant to continue to perpetrate her meritless diatribes into the appellate court's record would be a disservice to the reputations of those whom she attacks and to the reputation of the

South Carolina judicial system as a whole. While opposing parties may be subject to criticism, even harsh criticism, as an expected component of litigation, when the criticism to which one is subjected degenerates into meritless recriminations, such treatment is unexpected, unacceptable, and should not be tolerated by this Court.

Most recently, in her Amended Initial Brief and Initial Reply Brief, Appellant made the following contemptuous accusations against the circuit court, judge of the circuit court, the Attorney General, opposing lawyers, and Respondents:

- Bauknight "... was working on a devaluation of Brown's famous image and likeness to zero, or near zero as of Brown's death." (Amended Initial Brief at 22).

- "... Forlando and Terry have repeatedly defrauded the Court ...." (Amended Initial Brief at 47).

- "... Respondents all secreted from the Court the SWB contract and made false statements about its contents." (Amended Initial Brief at 47).

- "... Afterman assisted Tommie Rae in siphoning off copyrights belonging to the 2000 Trust." (Amended Initial Brief at 49).

- Accusing the circuit court of misleading the Supreme Court, Appellant states that the "Circuit Court declined to advise Supreme Court of the announced intention to reinstate the 2008 settlement." (Amended Initial Brief at 49).

- "Tommie Rae and more than ten Respondents announced to Judge Early in open court their intention to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement." (Initial Reply Brief at 13).

- Forlando conducted "fraud and dirty tricks including filing false grievances against Levenson in two states; helping Dallas disrupt the Christie's sale in 2008; and planting the false Grammy© story in 2011 which as noted by the Supreme Court in *Wilson v. Dallas* in 2013." (Initial Reply Brief at 14).

- "In addition, Respondents actively worked to prevent the circuit court from reviewing documents, and the circuit court has actively worked since May 2013 to help reinstate the AG's 2008 settlement." (Initial Reply Brief at 17).

- The AG, Tommie Rae and Bauknight "conspired to devalue Brown's copyrights" in order to discredit Appellants and accuse Appellants of being greedy felons. (Initial Reply Brief at 20).

- "The AG and circuit [court] went along, doing nothing to stop Tommie Rae from siphoning off royalties that should have gone to the 'I Feel Good' Trust." (Initial Reply Brief at 21).

- Appellant specifically accuses Judge Early and the Attorney General of increased "retaliation" in March 2016. (Initial Reply Brief at 24).

- Appellant continues to disparage the circuit court by stating that the court "blamed" Appellant for not accepting a settlement and "accused" her for "wanting $2 million for a $47,972 unpaid SA claim and $19 million for a $2.1 million claim for 5 ½ years' service." (Initial Reply Brief at 24-25).

- Appellant ends her Initial Reply Brief by stating: "The January 2019 order is the culmination of six years of retaliation and denial of Due Process by the circuit court." (Initial Reply Brief at 25).

The tenor or her Initial Reply Brief is contemptuous and disparaging to the circuit court, judge of the circuit court, the Attorney General, opposing lawyers and Respondents. Appellant's repeated insults go beyond the scope of her appeal, are wholly inappropriate, and are not fitting under the South Carolina Supreme Court's Civility Oath.

Furthermore, Appellant's comments do not address the merits of her appeal, which is whether the circuit court abused its discretion in denying her Motion to Dismiss and granting Respondents' Motion for Summary Judgment. Instead, she repeatedly claims that Respondents, the Attorney General, and the circuit court have been actively conspiring to devalue the Estate of James Brown, cover up their activities both privately and publically, defraud the courts, and deny her due process rights. None of which is true, and none of which is relevant to her instant appeal.

Because Appellant's Initial Reply Brief and her Initial Brief are laden with unprofessional, disparaging, and scurrilous commentary that is conclusory, unfounded, and meritless, serving only

to attempt to gain a litigation advantage through attacks on her opponents, and do not advance her arguments, Appellant's appeal is fatally flawed and should be dismissed.

B. Appellant has Failed to Comply with the Appellate Court Rules As Noted in Section II of this Motion.

As additional grounds for dismissal, Respondents incorporate all of the arguments made in Section II, below.

II. In the Alternative, this Court Should Strike Appellant's Initial Reply Brief.

If the Court determines dismissal of Appellant's Appeal is not appropriate, then the Court should strike Appellant's Initial Reply Brief, because of the reasons stated in Section I of this motion and because Appellant: (A) extensively argues irrelevant matters not related to her appeal, (B) failed to timely file her Initial Reply Brief as to Respondents, and (C) failed to include a designation of matter with her initial reply brief.

A. Appellant Extensively Argues Irrelevant Matters.

The Court will consider only matters included in the Record on Appeal. Rule 208(b), SCACR. Further, the Record on Appeal may not be expanded to include matters not presented to the lower court. Rule 210, SCACR.

Appellant spends almost half of her Initial Reply Brief (pages 1 to 11, that is, 11 out of her 25 pages) arguing about her position in Case Number 2013-CP-02-1337 ("Case 1337"). Case 1337 is Appellant's fee claim case against the Estate of James Brown in which she sought payment of her fees for fiduciary services, which the Estate denied. The case was tried before a judge and resulted in an order finding that the Estate did not owe Appellant a fee because she was found to have violated her fiduciary duty to the estate in numerous ways. However, Case 1337 is not before this Court in this appeal. Case 1337 is currently pending on a separate appeal, App. Case No. 2019-000362.

Appellant alleges that Respondents opened the door to her discussion of Case 1337, because Respondents referenced the final order of Case 1337 in a footnote in Respondents' Initial Brief. Appellant characterizes this footnote as Respondents, "ask[ing] this Court to increase the record in this appeal with a non-final January 16, 2019 order of the Honorable Doyet A. Early, III, as well as the trial testimony, in [Case 1337.]" (App. Initial Reply Brief at 2). However, that characterization has no merit. Nowhere in Respondents' Brief do they make a request to increase the record on appeal to include the court's order, let alone the trial testimony of Case 1337. What Respondents did in their Initial Brief was to include a footnote reference to the content of the final order of Case 1337 (Respondents' Initial Brief, p. 32 at footnote 2). That Respondents did not intend to open the door or enlarge the record on appeal is evidenced by the fact that the Respondents made no such request (for the order or for the trial testimony) and that the Case 1337 final order was not included in Respondent's designation of matter.

Therefore, Case 1337 is not before the Court and any of Appellant's argument relating to Case 1337 may not be considered. *See Wachovia Bank N.A. v. Coffey*, 389 S.C. 68, 74 n.1, 698 S.E.2d 244, 247 n.1 (Ct. App. 2010) (determining that the Court would not review Wachovia's argument regarding a defense that was not pled in its Answer because the Answer was not part of the Record on Appeal). Furthermore, Appellant's summaries of alleged testimony in Case 1337 are self-serving, conclusory narrations of what she contends the testimony should have shown and have no legitimate bearing on her current appeal.

Spending nearly half of her Initial Reply Brief arguing a contested matter that is on separate appeal and is not part of the record of this appeal violates the appellate court rules, including Rule 208(4), SCACR.

Additionally, Appellant fails to cite to the record throughout her Initial Reply Brief. There appear to be only three attempts to cite to the proper record for this appeal in Appellant's entire Initial Reply Brief (see pages 3, 15 and 23). The vast bulk of Appellant's brief refers to matters outside the record on appeal and even outside the underlying Case 4900.

B. Appellant Failed to Timely File Her Initial Reply Brief.

Appellant filed her Initial Reply Brief significantly late. Pursuant to Rule 208(a)(3), SCACR, an appellant is permitted to file a reply brief within ten (10) days after service of respondent's brief. The time limits imposed by the Appellate Court Rules are not stayed "[u]nless otherwise provided by the Rules or provided by the appellate court." Rule 240, SCACR.

On July 26, 2019, this Court Ordered Appellant to amend her Initial Brief and Designation of Matter to comply with Rules 208 and 209(b) of the South Carolina Appellate Court Rules. Appellant filed her Amended Initial Brief on August 5, 2019. Respondents filed their Amended Initial Brief on September 4, 2019. Pursuant to Rule 208(a)(3), SCACR, Appellant had ten (10) days after service of Respondents' Amended Initial Brief to file her Initial Reply Brief. Appellant failed to comply with the rule and did not file her Initial Reply Brief until November 5, 2019, fifty-two (52) days after it was due.

There is no justification for Appellant's failure to comply with the deadline to file her initial reply brief. Appellant did not seek a stay or extension of the deadline, and the Court did not enter any stay or extension on behalf of the Appellant. The only relevant order effecting the briefing schedule is an order granted to the Attorney General until January 9, 2020 for the filing of his Initial Brief, which would establish the time for Appellant to reply to the Attorney General's briefing only. Also on September 4, 2019, Respondents filed a second motion to strike Appellant's initial brief, which was not ruled upon until November 5, 2019. However, the rules are clear that no motion,

except motions to dismiss an appeal or to relieve counsel, stay the time limits under the Appellate Court Rules (Rule 204(b), SCACR).

C. Appellant Failed to Include a Designation of Matter with Her Initial Reply Brief.

Rule 209(a), SCACR, requires Appellant to designate matters to be included at the same time she serves a reply brief. The Designation of Matter "must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be included in the Record of Appeal." Rule 209(b), SCACR. Appellant failed to file a Designation of Matter to be included on appeal along with her Initial Reply Brief.

CONCLUSION

Therefore, Respondents respectfully request the Court enter an order dismissing Appellant's appeal, or in the alternative, an order striking her Initial Reply Brief and directing that she file an amended initial reply brief that remedies the defects discussed in this motion.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.

Kenneth B. Wingate, S.C. Bar No. 8004
Mark V. Gende, S.C. Bar No. 72835
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
kbw@swblaw.com
mvg@swblaw.com
Attorneys for Respondents

Columbia, South Carolina

January 8, 2020

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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And

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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 Respondents' Motion to Dismiss Appellant's Appeal, or in the Alternative, to Strike Appellant's Initial Reply Brief by depositing a copy of it in the United States mail, postage prepaid, on January 8, 2020, addressed to the following attorneys of record:

W. H. Bundy, Jr., Esq.
M. Brent McDonald, Esq.
Bundy McDonald, LLC
1516 Old Trolley Road, 2nd Floor
Summerville, SC 29485

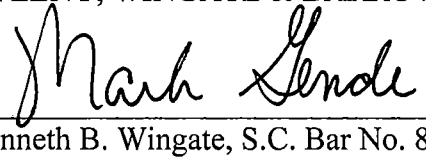
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, SC 29202

Attorneys for the Appellant

The Honorable Alan Wilson, Attorney General
Robert D. Cook, Esquire, Solicitor General
J. Emory Smith, Jr., Esquire
Office of the Attorney General
1000 Assembly Street
Columbia, SC 29201

Attorneys for Respondent Attorney General

SWEENY, WINGATE & BARROW, P.A.



Kenneth B. Wingate, S.C. Bar No. 8004
Mark V. Gende, S.C. Bar No. 72835
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street (29201)
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233
kbw@swblaw.com
mvg@swblaw.com
Attorneys for Respondents

January 8, 2020

S·W·B

SWEENY WINGATE & BARROW P.A.

January 8, 2020

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x7121
mvg@swblaw.com

VIA HAND DELIVERY

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

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 Respondents' Motion to Dismiss Appellant's Appeal, or in the Alternative, to Strike Appellant's Initial Reply Brief and a 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,

SWEENY, WINGATE & BARROW, P.A.

Mark V. Gende

MVG/gpc
Enclosures
cc: Counsel of record (with copies of enclosures)