THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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



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Case No. 2010-CP-40-4900

Appellate Case No. 2018-002229

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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.

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**REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS OR STRIKE AMENDED INITIAL BRIEF OF APPELLANT**

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Appellant's Return and Memorandum in Opposition to Motion of Respondents to Dismiss Appeal or Strike Amended Initial Brief [sic][1] of Appellant ("Appellant's Return") is a continuation of her improper briefing tradition and provides further support to Respondents' motion to dismiss her appeal or strike her Initial Reply Brief. First, Appellant continues her scurrilous attacks on the circuit court, the circuit court judge, and opposing counsel. Second, Appellant continues to employ irrelevant material wholly outside the scope of her appeal, non-responsive to Respondents' motion, and in violation of appellate court rules. Third, Appellant provides unavailing justifications for some of her contemptuous attacks, and fails to respond to others. Fourth, Appellant's arguments as to the Legacy Trust are totally irrelevant to her appeal or the instant motion. Fifth, the wording of Rule 209(a) is mandatory as to filing the designation of matter with the reply brief. Sixth, Appellants failure to file her Initial Reply Brief by a substantial number of days is cumulative evidence of failure to comply with the appellate court rules. And, seventh, Appellant's exhibits should be struck from the record because they are irrelevant and are another attempt to enlarge the record impermissibly.

## I. Appellant continues her scurrilous attacks on the circuit court, the circuit court judge, and opposing counsel.

Appellant doubles down on her accusation that the circuit court, through its judge, lied to the South Carolina Supreme Court by failing to include knowledge that Appellant alleges the circuit court possessed in a report to the Supreme Court. (Appellant's Return, at 13). She also continues to allege that opposing counsel participated in the alleged deception by not correcting the allegedly incorrect statement. (*Id.*) Appellant cites nothing but her self-serving recollections to support her scurrilous allegations. She also accuses the circuit court of "helping the Legacy

[1] Appellant incorrectly titles her return as, Return and Memorandum in Opposition to Motion of Respondents to Dismiss Appeal or Strike *Amended Initial Brief* of Appellant." Respondents' motion is to dismiss her appeal or strike her *initial reply brief*, (emphasis added).

Trust and its beneficiaries." (*Id.* at 15). Numerous additional references to the circuit court's actions throughout Appellant's return are crafted in such a way as to leave the definite impression, if not state outright, that the circuit court was either conspiring with Appellant's opponents or biased against Appellant. (*See Id.* at 15-16).

Additionally, she continues to assert that two opposing parties, one a Respondent, engaged in fraud on the court. (*Id.* at 12). Her allegations are conclusory, self-serving, and not supported by any evidence that is relevant to the instant appeal or motion.

These *ipse dexit* allegations, besides being totally irrelevant to the instant appeal and motion, are unbecoming a member of the Bar and inappropriate for appellant argument.

## II. Appellant continues to employ irrelevant material wholly outside the scope of her appeal, non-responsive to Respondents' motion, and in violation of appellate rules.

Appellant writes at length concerning Freedom of Information Act ("FOIA") cases (Appellant's Return, at 2, 15), alleged statements and discussion with parties and opposing counsel (*Id.* at 2, 4-5, 17-18), alleged statements and discussions with various opposing counsel (*Id.* at 14), depositions that were taken in cases other than Richland Case No. 2010-CP-40-4900 ("Case 4900" or "the underlying action") (*Id.* at 7-10), and other appeals in which she had been involved (*Id.* at 3, 7). All of these are outside the scope of her appeal and are non-responsive to Respondents' motion. The practice of referring to material wholly outside the scope of her appeal is consistent with Appellant's effort to import into the limited issues on appeal virtually all aspects of any case she has ever been involved with relating to the Estate of James Brown. Through this practice, it is clear that Appellant is not merely arguing her appeal, but she is attempting to prejudice the court and the record by impermissibly arguing material not related to her appeal.

Rule 210(c), SCACR, provides that the Record on Appeal shall not include any matter that "was not presented to the lower court." The South Carolina Supreme Court has held that "[i]t would be utterly inappropriate for an appellate court to reverse a trial court's decision in reliance on evidence never submitted to the trial court for its consideration." *Hofer v. St. Clair*, 298 S.C. 503, 513, 381 S.E.2d 736, 742 (1989) (A deed that was "never presented" to referee and "neither received nor considered" by circuit court was recognized as inappropriately before the court on appeal.); *Noorai v. Sch. Dist. of Pickens Cty.*, No. 2014-001282, 2016 WL 1367066, at *1 n.2 (Ct. App. Apr. 6, 2016) ("We considered only the portions of Appellant's deposition that were actually presented to the circuit court."); *Argabright v. Argabright*, 398 S.C. 176, 179, 727 S.E.2d 748, 750 (Ct. App. 2012) (establishing that the appellate court is "bound by the record at trial ..."); *State v. White*, 372 S.C. 364, 387, 642 S.E.2d 607, 619 (Ct. App. 2007), *aff'd but criticized*, 382 S.C. 265, 676 S.E.2d 684 (2009) (statement not presented to lower court could not "properly" be included in record on appeal); *Ffrench v. Ffrench*, No. 2006-UP-079, 2006 WL 7285695, at *2 n.3 (S.C. Ct. App. Feb. 10, 2006) (affidavit given "no efficacy" because it had not been presented to the lower court). To emphasize the importance of including only relevant matter to the appeal, among other things, Rule 269, SCACR, allows "*such sanctions as* the circumstances of the case and *discouragement of like conduct in the future may require*" for an appeal that "is frivolous or taken solely for the purposes of delay, *or is not in compliance with these Rules* (emphasis added)."

### III. Appellant provides unavailing justifications for some of her contemptuous attacks and fails to respond to others.

In their motion, Respondents cite thirteen portions of her briefing that evidence

contemptuous attacks.[2] Appellant addresses only nine of the cited portions, makes an incorrect or partial summation of one of the cited portions, and ignores the balance. (Appellant's Return, at 11-18). Concerning nine portions, Appellant merely restates the allegations in a similarly unfounded, conclusory, self-serving, and contemptuous way, and at the end concludes her contemptuous remarks to be correct. She does not cite to any relevant, admissible record, instead she merely recounts her beliefs about events, conversations, and individuals' motivations. (*Id.*)

Appellant incorrectly addresses the twelfth objectionable portion cited by Respondents by citing only a select portion of the attack and asserting that select portion is a true statement. (*Id.* at 18). In doing so, she ignores, and does not deny, that she contemptuously accused the circuit court of "blaming" and "accusing" her for her actions.

Appellant does not address the fourth, eleventh, or thirteenth objectionable portions cited by Respondents. Respondents assert that she does not defend herself against these contemptuous statements, because the statements are not defensible.

## IV. Appellant's arguments as to the Legacy Trust are totally irrelevant to her appeal or the instant motion.

Appellant imports into her return a conspiracy theory about an entity called the Legacy Trust. (Appellant's Return, at 4-5). The Legacy Trust was a potential entity at the time of the filing of Case 4900, and as such was included as a plaintiff. However, the entity was never realized due to other litigation developments. As Appellant admits in her brief, the Estate has repeatedly represented that the Legacy Trust does not now exist. (*Id.* at 4). Furthermore, we note that Appellant admits that issues related to her mistaken belief in the existence of the Legacy

[2] Respondents cite five contemptuous passages from Appellant's Amended Initial Brief and eight similar passages from her Initial Reply Brief in order to show that her objectionable conduct is not limited to her Initial Reply Brief, thus justifying dismissal of her entire appeal.

Trust are the subject of a separate appeal (*Id.* at 4, n. 3); thus, her recitation of her conspiracy theory is wholly irrelevant to the instant appeal and motion.

## V. The wording of Rule 209(a) is mandatory as to filing the designation of matter with the reply brief and is applicable in this case, because Appellant improperly attempts to pack her brief with material that is not part of the record without including the material in any Designation of Matter.

Respondents agree that Rule 208(a)(3) makes permissive the filing of a reply brief. But Respondents disagree that a designation of matter is not required with the filing of the reply brief, especially in this situation. Appellant admits that Rule 209(a) mandates the filing of a designation of matter with a reply brief. Appellant then cites the treatise, *Appellate Practice in South Carolina,* for the proposition that a designation with a reply brief is permitted but not required. Respondents' position, however, is that because Appellant improperly attempts to pack her brief with irrelevant, undesignated material without including it in any Designation of Matter, she is attempting to enlarge the record on appeal without properly designating the material, thus depriving Respondents of the proper means of objecting to irrelevant inclusions through filing a motion challenging items listed in the Designation of Matter.

Rule 210(c), SCACR, is clear that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." Rule 208(b)(4), SCACR, is equally clear that the Record may only contain "other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged." And Rule 209(b), SCAPC, is unambiguous in stating, "A party shall not include any matter in his Designation which is not relevant to the appeal." Furthermore, the appropriate avenue to challenge irrelevant matter in an appellate brief is to file a motion concerning its inclusion in the Designation. See Rule 208(7), SCRCP. (Jean Hoefer Toal, et al., *Appellate Practice in South Carolina*, 3rd Ed. at 405 (2019) ("The proper mechanism to dispute a Designation is to file a motion.")).

By constantly referring to material outside the record, outside the scope of the appeal, and often outside the scope of the Underlying Action, Appellant is violating the rules of designation. Appellant appears to be motived by the reality that it is more difficult to strike a pleading or dismiss an appeal than to challenge an irrelevant designation. Appellant appears further to be relying on this decreased probability of a successful challenge to impermissibly bloat her briefs with improper matter. This stratagem is impermissible sandbagging. Furthermore, by impermissibly packing the record in her brief, Appellant avoids for herself the burden of moving the court to enlarge the record and the possibility of the court denying her request. Appellant's failure to include a Designation of Matter with her Initial Reply Brief is not an innocent representation that she has no new matter to designate – it is a strategy to pack the record with irrelevant matter and to make such packing more difficult to challenge.

## VI. Appellant's failure to file her Initial Reply Brief by a substantial number of days is cumulative evidence of failure to comply with the appellate court rules.

Appellant admits that her Initial Reply Brief "may have been due earlier than filed," but argues her untimeliness is excusable due to the confusion of the procedure between Respondents and the Attorney General's motions and briefing or because there is no prejudice to Respondents due to her untimeliness. (Appellant's Return, at 18). While a lack of timeliness alone may not be adequate basis to dismiss an appeal or strike a brief, Appellant's lack of timeliness was substantial (52 days) and she sought no extension during that time. When taken in aggregate with all of the other deficiencies noted in Respondents' motion and this reply, Appellant's untimeliness serves as additional evidence of her failure to comply with the appellate court rules, strengthening Respondents' overall argument of her systematic, intentional disregard of the rules, a pattern worthy of dismissing her appeal or striking her Initial Reply Brief.

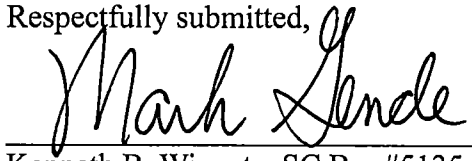
## VII. Appellant's exhibits should be struck from the record because they are irrelevant and are another attempt to enlarge the record impermissibly.

Appellant attaches three deposition excerpts to her return (Exhibits A, B, and C). Each of these are irrelevant to her appeal and to the instant motion. The inclusion of the exhibits is another attempt to enlarge the record, argue irrelevant and contested matters wholly unrelated to the issues on appeal, and prejudice the court against Respondents concerning those issues that are properly before the court, which are extremely limited and clearly enumerated in the Statement of Issues on Appeal in Respondents' Initial Reply Brief.

## Conclusion

Appellant must not be allowed without consequence to continue to abuse the civil court system by disregarding the rules of the appellate court and the oath regarding civil conduct and communications. For the reasons stated above, and for the reasons stated in Respondents' Motion to Dismiss Appellant's Appeal or Strike Her Initial Reply Brief, Respondents respectfully request this Court dismiss Appellant's instant appeal or strike her Amended Initial Reply Brief.

Respectfully submitted,



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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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



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Case No. 2010-CP-40-4900

Appeal Tracking No. 2017-001899

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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.

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**PROOF OF SERVICE**

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I certify that I have served the REPLY TO APPELLANT'S RETURN TO MOTION TO DISMISS OR STRIKE AMENDED INITIAL BRIEF OF APPELLANT by depositing a copy of it in the United States Mail, postage prepaid, on January 24, 2020, addressed to the following attorneys of record:

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Respectfully submitted,

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January 24, 2020

Reply to: Main Office

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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' Reply to Appellant's Return to Motion to Dismiss or Strike Amended Initial Brief of Appellant and Proof of Service regarding the above-referenced matter. I would appreciate your filing the originals and returning filed copies to me by courier.

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

Respectfully,

**SWEENY, WINGATE & BARROW, P.A.**

Mark V. Gende

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

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TO:

**VIA HAND DELIVERY:**
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