

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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
Trial Court Case No. 2010CP4004900

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.; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and 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.; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown - Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., And 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

AMENDED INITIAL BRIEF OF RESPONDENT ATTORNEY GENERAL

ALAN WILSON
Attorney General

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Subject to and without waiving his positions regarding his being dropped as a party to this case (*see*, statement in Argument below), the Attorney General joins in and incorporates by reference the Brief of Respondents of Sweeney, Wingate and Barrow. The Attorney General submits the following additional issue and related argument.

STATEMENT OF ISSUES

1. Appellant fails to support her factual allegations with documents properly before the circuit court.

ARGUMENT

The Attorney General adds the following:

As his Initial Brief and subject to the Order dropping him as a party to this case, pursuant to Rule 208(b)(6), SCACR, the Attorney General joins in and incorporates by reference the Amended Initial Brief of Respondents prepared by Sweeny, Wingate and Barrow, P. A. Before the circuit court granted summary judgment for the Plaintiffs as to Appellant's counterclaim (R. p. * - Order dated June 23, 2017, and filed July 8, 2017), the Court dropped the Attorney General as a party to this case. (Order dated May 31, 2017, and filed June 12, 2017). The Order dropping him is a subject of Appeal 2017-1899, and is included in the Record in that case. The Attorney General preserves and does not waive any arguments that he has regarding his being dropped as a party to this case.

I

APPELLANT FAILS TO SUPPORT HER PURPORTED FACTUAL ALLEGATIONS WITH DOCUMENTS THAT WERE PROPERLY BEFORE THE CIRCUIT COURT OR THAT CONTAINED ADMISSIBLE FACTUAL SUPPORT

The Attorney General does wish to note that Appellant's Amended Brief includes numerous purportedly factual statements and allegations that cite documents containing undocumented arguments of counsel which were filed for purposes other than the orders under appeal. These citations are inconsistent with case law and the purposes of the Appellate court rules. Appellant also references documents that apparently were never filed in circuit court. The following citations are examples but they are not intended to include all errors that may be present in the brief.

Appellant most frequently cites her Supplemental Motion for Order for Limited Lifting of Stay, October 30, 2018 (Motion to Lift Stay). This document contains the caption of Appeal 2017-001899, but was filed in the circuit court case. The Motion contains Appellant's attorney's characterization of the history of numerous events over the years in various cases involving James Brown will and trust matters but without reference to documents filed in court. Appellant cites this document over 50 times in her brief including as the sole citation for at least 18 statements. Appellant's Amended Brief at pp. 4, 11(three times), 12 (twice), 22 n. 6, 23 (twice), 24, n. 8, 26(three times), 28, 34, 38, 42, n. 16, and 46. She filed that Motion after the circuit court had decided the orders under appeal with the exception of her Motion to Alter or Amend the Order granting Plaintiffs' Counterclaim which the court denied on November 26, 2018. Appellant's Motion to Lift Stay was not filed for the purpose of the Motion to Alter or Amend and would not have been appropriate for that purpose as a new unrelated motion. *Hickman v. Hickman*, 301

S.C. 455, 456–57, 392 S.E.2d 481, 482 (Ct. App. 1990)(“A party cannot use Rule 59(e) to present to the court an issue the party could have raised prior to judgment but did not.”) Moreover, the undocumented statements of counsel in the Motion to Lift Stay are not evidence and should not be considered. “Every trial judge knows, as every trial lawyer knows, and every appellate court judge should know, that the statements of counsel in an argument are not evidence but are merely the expression of his individual view” *Harper v. Bolton*, 239 S.C. 541, 562, 124 S.E.2d 54, 64 (1962). The Court’s denial of that Rule 59 Motion to Alter or Amend does not indicate that the Judge relied on the Motion to Lift Stay. Therefore, the Motion to Lift Stay and any statements in Appellant’s brief that rely on it should not be considered on appeal.

Contrary to the above authority, Appellant relies on other documents filed after the Orders under appeal in this case were issued but before her Motion to Alter or Amend was decided and which set forth arguments or statements of counsel which are not evidence. *Hickman* and *Harper, supra*. Her Return opposing Motion of Donsbach to withdraw as counsel of October 29, 2018, contains 27 pages of arguments of counsel, which are not evidence which she cites on pages 4, 9, 10, 11, 14 (twice), 15 (twice), 22, 24 (twice), and 27 of her brief. Among other affidavits, she relies on her own affidavits that she filed after the Orders under appeal were decided. *See, eg.* pp. 3, 15, 16 19 (Affidavit in support of motion to lift stay in appeal 2017-1899). She references her Motion to Alter or Amend Order Dropping the Attorney General (July 19, 2017, pp. 19, 28 (three times)). That Motion contains 52 pages of undocumented statements of counsel with a few quotations from a McMaster deposition and other depositions that do not appear to have been filed with the Richland County Court of Common Pleas with the “Notice of Filing of Original Deposition Transcripts” on October 19, 2017, or otherwise. These documents referenced by

Appellant should not be considered nor should her statements in her brief that rely on them.

In addition to these problems, according to online records for the Richland County Court of Common Pleas¹, several documents cited in the brief do not appear to have been filed with the circuit court at any time. These unfiled documents included the depositions cited in Appellant's brief. Her affidavit in support of Motion to Lift Stay dated November 8, 2017 does not appear to have been filed in circuit court, but she cites it at pages 16 and 19 (twice). She cites letters, but she does not show that they were ever filed with the court or sent to the presiding judge. *See, eg.*, Brief at pp. 5, 15, 16, 17, 19, 22, 25.² Any unfiled documents that are cited in the brief should not be referenced. Rules 208(b)(4), 209(b), 210(c), SCACR; Order, Court of Appeals, July 26, 2019.

This brief does not attempt to catalogue all the problems with Appellant's brief, but what the above references show is that Appellant is unable to provide reliable factual support for her allegations. Undocumented arguments of her attorneys are insufficient. Documents filed after the main orders were decided were not properly before the circuit court. Of course, documents that were never filed cannot be considered. This Court should disregard Appellant's Statement of the Case and Statement of Facts and any of her arguments that rely on references to the above documents that are not properly before this Court.

¹ The Court of Appeals should be able to take judicial notice of the online records. *See, Sloan v. Greenville Cty.*, 380 S.C. 528, 537, 670 S.E.2d 663, 668 (Ct. App. 2009) (“we take judicial notice of our own docket”); Rule 201, S.C. Rules of Evidence.

² She references a letter to Judge Manning dated May 10, 2013, which was directed to him.

CONCLUSION

As set forth above, the Attorney General concurs in the Brief of Respondents and respectfully requests that the Court affirm the Orders on appeal.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT D. COOK
Solicitor General
S.C. Bar No. 1373

J. EMORY SMITH, JR.
Deputy Solicitor General
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BY: 

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

January 8, 2020

THE STATE OF SOUTH CAROLINA
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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.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Amended Initial Brief on

counsel for the other parties by mailing copies to them at the addresses below via the United

States Mail this January 8, 2020:

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January 8, 2020

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The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
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Re: Bauknight v. Pope, Appellate Case No. 2018-002229

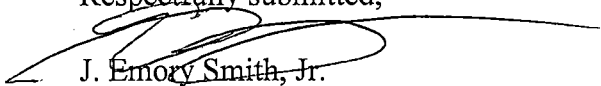
Dear Ms. Kitchings:

Enclosed for filing with your Office is the original Amended Initial Brief of the Attorney General together with a Certificate of Service.

The Attorney General does not have any additional matters to designate for the Record in this case.

Thank you for your assistance.

Respectfully submitted,


J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for the Attorney General

cc: Charles E. Carpenter, Jr., Esquire
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