

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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Appellate Case No. 2016-001727

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Adele J. Pope,

Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina, and James Brown Legacy Trust, by Russell L. Bauknight, its Trustee,

Respondents.

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**RESPONDENT JAMES BROWN LEGACY TRUST'S RETURN  
TO APPELLANT'S MOTION FOR COSTS**

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SC Court of Appeals

Respondent James Brown Legacy Trust, by Russell L. Bauknight, its Trustee, submits this return in opposition to Appellant Adele Pope's Motion for Costs. Respondent Legacy Trust was the prevailing party in this appeal when the Court upheld its dismissal from this case, and, as such, costs cannot properly be taxed against the Legacy Trust under Rule 222, SCACR.

Appellant's motion seeks payment of costs by the "Respondents" but does not distinguish

between the two respondents to this appeal, one of which that prevailed on appeal (Legacy Trust) and the other that did not (South Carolina Attorney General).<sup>1</sup>

Rule 222, SCACR, addresses costs as follows:

**(a) To Whom Allowed.** Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When 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.

“Notably, it is within this Court’s discretion whether to award fees and costs under Rule 222.” Austin v. Stokes-Craven Holding Corp., 406 S.C. 187, 199, 750 S.E.2d 78, 84 (2013). The current rule reflects the historical practice in which “[t]he prevailing party in the Supreme Court has the right to tax his costs of the appeal, even before final judgment in the cause.” Burnett & Johnson v. Senn, 93 S.C. 316, 76 S.E. 820, 821 (1912).

The Circuit Court’s order on appeal dismissed the Legacy Trust from the litigation on three grounds: 1) the plaintiff/appellant failed to allege facts sufficient to show the Legacy Trust was a public body subject to FOIA; 2) the Legacy Trust was invalidated by the compromise agreement that created it and thus, the Legacy Trust did not exist in light of Wilson v. Dallas, 403 S.C. 411, 743 S.E.2d 746 (2013); 3) the controversy was moot because the plaintiff/appellant was in possession of the only two documents responsive to her FOIA. (R.p. 6-7).

On appeal, this Court affirmed the Circuit Court’s dismissal of the case against the James Brown Legacy Trust on the second ground set forth by the lower court:<sup>2</sup>

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<sup>1</sup> Moreover, Appellant is seeking costs from an entity that this Court has found to no longer exist.

<sup>2</sup> Early in the opinion, this Court stated that “[w]e reverse these orders and remand for an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with this opinion.” It is important to note that there were two separate orders on appeal – one directed to

Based on the foregoing, **we agree that the issuance of the *Wilson* opinion mooted the premise for naming the Legacy Trust as a defendant in this action.** However, rather than dismissing the Legacy Trust as a defendant, the circuit court granted the Legacy Trust's motion to dismiss Pope's complaint based on the court's conclusion that the entire action was moot.<sup>3</sup> *See supra* Section I. Therefore, we reverse this Order. On remand, the circuit court shall issue an order dismissing merely the Legacy Trust as a defendant.

Op. No. 2019-UP-219 (emphasis added). In other words, this Court affirmed the dismissal of the Legacy Trust, albeit on only one of the grounds on which the lower court based its order.<sup>4</sup> Thus, the Legacy Trust, which sustained its dismissal from the case, is actually the prevailing party. The fact that that this Court reversed the Circuit Court's order to reflect that only the Legacy Trust was to be dismissed as party and solely on the second ground only does not render Appellant the prevailing party. The decision here affirmed in part and reversed in part the lower court. Thus, Respondent submits that the Motion for Costs, to the extent directed to the Legacy Trust, should be denied.



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Attorneys for Respondent James Brown  
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Columbia, SC  
April 21, 2020

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the Legacy Trust and one to the State. The circuit court's rulings as to the State were completely reversed, whereas the ruling as to the Legacy Trust was partially affirmed and partially reversed.

<sup>3</sup> The lower court actually dismissed the claims against the Legacy Trust on three separate grounds, not just mootness, and held that "[e]ach ground is sufficient standing alone to grant Legacy Trust's motion to dismiss." R.p. 7.

<sup>4</sup> This Court found that, based on its ruling that the Legacy Trust no longer existed, it did not need to reach the issue of whether the Legacy Trust was subject to FOIA. Thus, this issue was neither affirmed nor reversed.

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case No. 2012-CP-40-350  
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Respondents.

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PROOF OF SERVICE


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I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served **Respondent James Brown Legacy Trust's Return to Appellant's Motion for Costs** upon opposing counsel by emailing and mailing a copy of same, first-class postage prepaid and return address clearly indicated, to opposing counsel as follows:

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\_\_\_\_\_  
Connie W. Grugan

This 22nd day of April, 2020.



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April 22, 2020

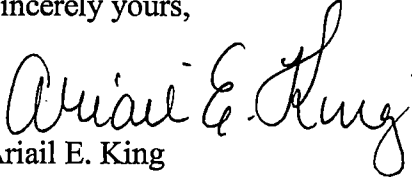
Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Re: Adele J. Pope v. Alan Wilson, and James Brown Legacy Trust  
Appellate Case No. 2016-001727  
Our File No. 11-150

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondent James Brown Legacy Trust's Return to Appellant's Motion for Costs in the above-referenced matter for filing with your office. By copy of this letter, we are hereby serving a copy upon opposing counsel.

Sincerely yours,

  
Ariail E. King

AEK:cg

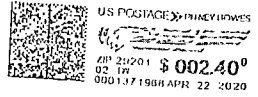
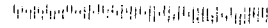
Enclosure

cc: Adam T. Silvernail, Esquire  
J. Emory Smith, Jr., Esquire  
Robert D. Cook, Esquire

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