

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. 2016-001727

Adele J. Pope. Appellant,

v.

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

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 an order dismissing the Legacy Trust as a defendant and for further proceedings consistent with [its] opinion.” Opinion No. 2019-UP-219, June 19, 2019. On remand, issues remain to be decided include:

1. “[T]he AG’s compliance with Pope’s FOIA request” (Opinion).

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2. The Office of the Attorney General never received Appellant's FOIA request by mail or delivery so as to trigger a duty to respond under FOIA. Brief of Attorney General at p. 18
3. The documents requested in the Freedom of Information Act request of the Attorney General were the subject of pending Motions in the main part of case 2010-CP-4900, and therefore under the control of the Circuit Court in that case. See, R. V. I, p. 33 (Exhibit D to Complaint, ¶2b); R. p. 66, ¶ 3 (Motion to Compel,); R. pp. 70-78 (Motion for Protective Order and exhibits D & E thereto); Final brief of Attorney General at pp. 5, 6, 8, & 20.

Accordingly, the Opinion in this case has not decided the final outcome of this suit. The Attorney General, we believe, should ultimately prevail. Accordingly, Appellant should not be awarded any fees or costs when issues remain to be decided in this case which will ultimately determine whether she is entitled to judgment in the Circuit Court.

Moreover, Appellant has caused much unnecessary work on appeal by including in her brief pages of irrelevant background and issues. *See eg.*, Appellant's Brief at pp. 4-9 (almost entirely irrelevant background in Statement of the Facts including other litigation prior to and after the FOIA request); Brief at pp. 24 & 25 (transfer and consolidation; accusations re other civil litigation) and p. 25 (attorney's fees). Her doing so required Respondent Attorney General to spend time responding to those arguments. *See, eg.*, Respondent's Brief at pp. 7, 16-17. This Court found that the question of attorney's fees was premature and that it need not address Appellant's remaining issues. Opinion at p. 12.

Much of the voluminous, two volume, over 500 page record contains documents completely irrelevant to appeal. Appellant included 98 pages of affidavits that were unnecessary for disposition of the legal issues in this case. See, Record on Appeal, Vol. II at pp. 299 – 353, 368-410. To respond to them, Respondent Attorney General had to include in the Record his motions to strike the affidavits in addition to those Appellant had included All of which totaled 22 pages. R. pp. 85-102, 229-232. Appellant also included 63 pages of irrelevant motions or documents related thereto. R. pp. 103-134, 441-449 (Brief in Opposition to Motion to Consolidate necessitating the designation of the Motion by this Respondent), pp. 215-228 (Motion to Stay and Status Report), 266 – 273 (transcript from 2012 hearing regarding consolidation and venue transfer). These 183 pages resulting from Appellant’s unnecessary designations are well more than one third of the Record. In addition, the Record include 88 pages of documents pertaining to the Respondent Legacy Trust against which Appellant did not prevail in this appeal and for which the Attorney General should not have to pay. R., pp. 5-8, 79-84, 262-265, 411-440, 436-440, 450-472, 485-496, 519-522. The total of these irrelevant and Legacy Trust pages are 271 which is more than one-half of the record in this case. Under Rule 222(c), “[a] party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record”

For all of these reasons, Appellant’s Motion for Costs should be denied including the attorney’s fees and 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

remaining issues and the unnecessary work that Appellant has created for this appeal as well as in Circuit Court.¹

Respectfully submitted,

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Attorney General

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s/ J. EMORY SMITH, JR.
Deputy Solicitor General
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April 24, 2020

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

¹ Although this case has had a protracted history, as discussed in the Attorney General'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 Attorney General at p. 16.

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Return of the Attorney General to Appellant's Motion for Costs upon counsel for the other parties by emailing it to them at the email addresses below today, April 24, 2020 (copy of email attached):

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Emory Smith

From: Emory Smith
Sent: Friday, April 24, 2020 9:58 AM
To: 'Adam Silvernail'; 'kmb@lewisbabcock.com'; 'aek@lewisbabcock.com';
'dlp@lewisbabcock.com'
Subject: Pope v. Wilson and Legacy Trust
Attachments: Return of Attorney General to Motion for Costs (02264974xD2C78).PDF

Good morning, counsel:

Attached is the return of the Attorney General to Appellant's Motion for Costs which I am serving upon you by email. I will next send you the certificate of service w/ this email attached and then efile the Return.

Hope that all of you stay well.

Emory

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