

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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May 06 2020

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit 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 Bauknight, its Trustee.....Respondents.

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**APPELLANT’S REPLY TO RETURNS OF RESPONDENTS TO MOTION FOR COSTS**

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Pursuant to Rule 222, South Carolina Rules of Appellate Procedure, Appellant Adele J. Pope moved this Court to grant her costs in this appeal. Respondents James Brown Legacy Trust (“Legacy Trust”) and Alan Wilson, as Attorney General (“AG”) have filed separate returns opposing the motion. Appellant replies to the Respondents’ returns as set out below and submits that costs should be granted against one or both Respondents herein.

**Reply to Return of Legacy Trust**

The Legacy Trust’s return is erroneously based on its assertion that Appellant is not the “prevailing party” against the Legacy Trust herein. Rule 222, however, does not base an

award of costs on whether a party is determined to prevail, but rather whether the appeal results in a reversal of the lower court.

Respondent Legacy Trust cites a 1912 South Carolina Supreme Court case for the proposition that the “prevailing party” is entitled to costs, which case predates the enacting of the *South Carolina Rules of Appellate Procedure*. In this case, this Court reversed the lower court’s order, finding that the case was not moot, but directing that the Legacy Trust be dismissed on remand in light of its argument that *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) had “effectively terminated the AG’s involvement in the Legacy Trust” (Op. at 6). *Wilson* was decided more than 18 months after the filing of this FOIA action.

Although the Legacy Trust argues that this Court found that the Legacy Trust did not exist (Return at 2, n. 1), Appellant notes that the Opinion of this Court makes no such finding. It appears that this Court’s agreement with the above-quoted language is the entire basis for its direction that the Legacy Trust be dismissed on remand.

Respondent Legacy Trust participated fully in this appeal and asked this Court to affirm the circuit court fully, including its erroneous dismissal of the case as moot. Appellant was therefore required to brief and support her position, which resulted in this Court’s finding that the circuit court was in error.

Appellant submits that, pursuant to Rule 222, costs should be assessed against both Respondents. The Legacy Trust argues that costs, if granted, should be taxed only to the AG. If this Court declines to assess costs against the Legacy Trust, Appellant submits that all costs set out in her Itemized Statement should be assessed against the AG as discussed below.

## **Reply to Return of AG**

### **Appellant Prevailed in the Reversal of the Lower Court's Orders in this Appeal**

The AG also argues that Appellant should not receive Rule 222 costs because she has not prevailed in “the entire case.” Appellant, however, undisputedly prevailed in reversal of *the judgment from which she appealed*. This is the standard for granting costs under Rule 222.

The circuit court orders from which Appellant appealed dismissed this FOIA case in its entirety, preventing Appellant from being able to litigate any of her claims. This Court's judgment reverses that dismissal and allows Appellant to proceed to final disposition of her claims. Appellant is unaware of any precedent supporting a denial of costs under Rule 222 where an appellant has not prevailed on all ultimate issues in the underlying case, and Respondent cites none.

### **Respondent AG, Not Appellant, Has Caused Unnecessary Work in this FOIA Case**

On page 2 of the return Respondent AG asserts that “Appellant has caused much unnecessary work on appeal by including in her brief irrelevant background and issues.” The response to this assertion is simple. *All* of the work of Respondent AG, and that of Appellant, could have ended before, or at any stage during, this appeal. The only thing necessary to prevent the proliferation of issues and extensive background for this appeal was for the State's official charged with the enforcement of the FOIA to have produced the public sought in this matter by Appellant; ending its pursuit of a finding that the FOIA rights were suspended by the State's civil action against her; and agreeing to pay the attorneys' fees and costs she incurred as a result of the State's refusal to produce public documents.

The background and issues are indeed extensive. The reason for their inclusion in the record, however, is the unprecedented resistance to FOIA compliance by Respondent AG coupled with the extensive involvement of Respondents' private attorney and Respondent's Richland 4900 co-Plaintiffs in FOIA disruption and noncompliance.

In February 2013 the Supreme Court of South Carolina directed Respondent AG to conclude this FOIA suit, and a second FOIA suit, "in the first instance." In May 2013 the Supreme Court in *Wilson v. Dallas* noted the AG's assertions that it planned to do so. Respondents' private Richland 4900 counsel then began a 6-year relentless effort to delay release of the State/Attorney General's public documents under FOIA.

The AG's 2013 production of certain documents responsive to Appellant's 2011 FOIA request did not moot this action, as this Court has found in reversing the lower court. This appeal was necessary to preserve Appellant's FOIA rights, and Respondent AG should be taxed with costs under Rule 222, either alone or jointly with the Legacy Trust.<sup>1</sup>

### **Conclusion**

For the foregoing reasons, Appellant respectfully requests that the Court tax the costs of this appeal in the amount of \$4,326.90 against Respondents. In the event that the Court declines to award costs against both Respondents, Appellant submits that costs should be taxed against Respondent AG herein.

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<sup>1</sup> The undersigned certifies that the only cost incurred in this appeal which was exclusively attributable to the Legacy Trust's participation was the copying and binding of Appellant's Brief in Reply to the Legacy Trust, which cost amounts to \$63.00 of the total \$143.85 itemized cost of printing and binding the reply briefs in Appellant's Itemized Statement of Costs.

Respectfully submitted,

s/Adam T. Silvernail  
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**PROOF OF SERVICE**

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The undersigned counsel for Appellant hereby certifies that the Reply to Returns to Motion for Costs was served on the date shown below by emailing a copy of the document to counsel for each Respondent at the addresses shown below:

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*Counsel for Respondent James Brown Legacy Trust*

May 6, 2020

s/Adam T. Silvernail  
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*Attorney for Appellant*



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**Pope v. Wilson, et al, Case No. 2016-1727**

1 message

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**Adam Silvernail** <adam@silvernaillawfirm.com>

Wed, May 6, 2020 at 4:23 PM

To: "Ariail E. King" <aek@lewisbabcock.com>, "David L. Paavola" <DLP@lewisbabcock.com>, Emory Smith <ESmith@scag.gov>, "Keith M. Babcock" <kmb@lewisbabcock.com>

Cc: Adele Pope <adele@popelawfirm.com>

Counsel:

Attached and served upon you in accordance with Chief Justice Beatty's Order issued March 20, 2020, is the Reply of Appellant to Respondents' Returns to Motion for Costs.

A copy of this email will be provided to the Court with the Proof of Service.

Best,  
Adam

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