

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Apr 27 2020

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. 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.

**RETURN OF ATTORNEY GENERAL TO MOTION TO STRIKE SUPPLEMENTAL
DESIGNATION AND RECORD ON APPEAL and
STAY THE TIME TO FILE FINAL BRIEFS**

Subject to and without waiving his positions regarding his being dropped as a party to this case,¹ the Respondent Attorney General concurs in the Motion to Strike of the other Respondents, except that he takes no position as to the Respondents' request for sanctions. He also joins in the request that the time for filing Final Briefs be stayed.

Motion to Strike

For reasons set forth in the Respondents' Motion, Appellant's Supplemental Designations and Record on Appeal are extraordinary departures from the Appellate Court rules and Orders of this Court. This Court's Order of July 26, 2019, in this case struck Appellant's earlier designation of matter and directed that "the amended designation of matter shall not include matter which was not presented to the circuit court." Exhibit A, attached. This Order was the second time that Appellant's designations have been struck in her recent appeals to this Court. By Order filed April 26, 2018, in case 2017-001899, which granted motions to strike her designations and initial brief in that case, Appellant was directed "not [to] list or reference any orders or other documents that were not presented to the circuit court as part of this case . . . or reference any documents filed or presented to the circuit court after this appeal was filed." Exhibit B, attached. Appellant's Supplemental Designations violate those orders, as well as the Appellate Court rules, by included documents not presented to the circuit court in this case. Her Supplemental Designations contain additional violations of the Appellate Court rules noted in Respondents' Motion such as by including documents in the Record on Appeal that were

¹ 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.

never designated by any party.

Appellant's Supplemental Designations and Record should be struck, and she should be directed to refile a corrected set of designations and record on appeal that comply with the Appellate Court Rules and the above Orders of this Court. Her final briefs should be corrected to the extent that they rely on citations to material struck from the Supplemental Designations and cite page numbers for the current Record that are changed in a corrected Record.

Request for Stay of Filing of Final Brief

The Attorney General's Final Brief would be due April 28, but with the 20 day extension granted by the Supreme Court's Order of March 20, it would be due May 18. The Attorney General joins in the Request for a stay of the filing of the Final Briefs and asks that the time for filing his brief be stayed until 10 days after this Court issues a ruling regarding this Motion and after any filing by Appellant required by any such Order.

For the foregoing reasons, the Attorney General respectfully requests that Respondents' Motion to Strike be granted and that the time for filing his Final Brief be stayed as set forth above.

Respectfully submitted,

ALAN WILSON
Attorney General

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

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
[Signature block continues next page]

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April 27, 2020

ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No.2017-002229

Russell L. Bauknight, etc. et al..... Respondents,

v.

Adele J. Pope,the Appellant.

EXHIBIT A
To Return Of Attorney General To
Motion to Strike

ORDER OF COURT OF APPEALS
July 26, 2019

The South Carolina Court of Appeals

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 children 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 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.

Appellate Case No. 2018-002229

ORDER

Respondents' motion to strike Appellant's initial brief and designation of matter is granted. Within thirty days of this order, Appellant shall serve and file an amended initial brief and an amended designation of matter in compliance with Rules 208 and 209(b) of the South Carolina Appellate Court Rules (SCACR). Specifically, the amended designation of matter shall not include matter which was not presented to the circuit court, and the amended initial brief shall not include references to matter which was not presented to the circuit court. *See* Rule 209(b), SCACR (providing the designation of matter may only include documents and materials which may properly be included in the record on appeal); Rule 210(c), SCACR (providing the record shall not include matter which was not presented to the lower court or tribunal). Further, the amended initial brief shall include references to the transcript or other documents properly included in the record on appeal to support all salient facts alleged. *See* Rule 208(b)(4), SCACR ("The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may properly be included in the Record on Appeal [see Rule 2010(c)] to support the salient facts alleged. . . . In the initial briefs, these references should be . . . by the page of the material referenced."). Within thirty days of service of Appellant's amended initial brief and designation of matter, Respondents shall serve and file their amended initial briefs.




FOR THE COURT

Columbia, South Carolina

FILED

July 26, 2019

cc:

Adam Tremaine Silvernail, Esquire
William Jeffrey Smith, Esquire
Daryl L. Williams, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire
Everett Augustus Kendall, II, Esquire
Clyde H. Jones, Jr., Esquire
J. Emory Smith, Jr., Esquire
Charles E. Carpenter, Jr., Esquire

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appellate Case No.2018-002229

Russell L. Bauknight, etc. et al..... Respondents,

v.

Adele J. Pope,the Appellant.

EXHIBIT B
To Return Of Attorney General To
Motion to Strike

ORDER OF COURT OF APPEALS
April 26, 2018 – Case 2017-001899

The South Carolina Court of Appeals

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,

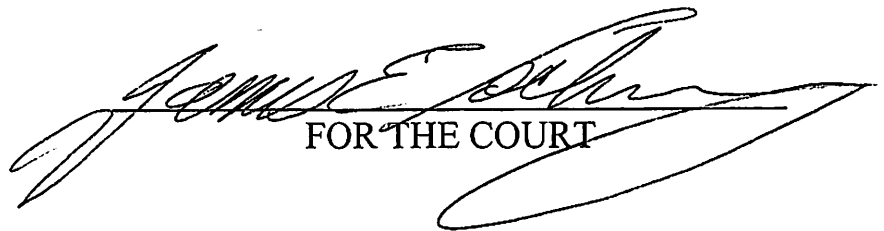
Of whom Adele J. Pope is the Appellant.

Appellate Case No. 2017-001899

ORDER

The motions to strike are granted. Within thirty days of this order, Appellant shall serve and file an amended initial brief and an amended designation of matter. In the amended designation of matter and the amended initial brief, Appellant shall not list or reference any orders or other documents that were not presented to the circuit court as part of this case. Further, Appellant shall not designate or reference any documents filed or presented to the circuit court after this appeal was filed.

To the extent that Respondents are requesting that this court strike documents that were presented to the lower court as part of this case prior to this appeal, the requests are denied.



FOR THE COURT

Columbia, South Carolina

cc:

Kenneth B. Wingate, Esquire
Everett Augustus Kendall, II, Esquire
Mark V. Gende, Esquire
Clyde H. Jones, Jr., Esquire
J. Emory Smith, Jr., Esquire
Adam Tremaine Silvernail, Esquire
Walter Henry Bundy, Jr., Esquire
Michael Brent McDonald, Esquire

FILED

April 26, 2018

THE STATE OF SOUTH CAROLINA
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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 Return to Motion to Strike etc.. by emailing it to counsel for the other parties at the email addresses below this April 27, 2020

(Copy of email attached):

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/s J. EMORY SMITH, JR.
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Deputy Solicitor General
Counsel for the Attorney General
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Emory Smith

From: Emory Smith
Sent: Monday, April 27, 2020 4:02 PM
To: 'Adam Silvernail'; Jeff Smith; Ken B. Wingate; Mark V. Gende; Daryl Williams; Charles Carpenter; 'cgd@swblaw.com'
Subject: Pope v. Bauknight Appellate Case No. 2018-2229
Attachments: Return of AG to Motion to Strike and for Stay for efilng (02266667xD2C78).PDF; Exhibit A - Order striking Pope's Brief and Designation- 7.26.19 for efilng (02266753xD2C78).PDF; Exhibit B - Order Granting Motion to Strike 4.26.18 - Case 1899 for efilng (02266221xD2C78).PDF

Counsel:

Attached is the Attorney General's Return to Motion to Strike w/ Exhibits A & B which I am serving on you now by email. I will next send you a certificate of service w/ this email attached and then efile.

Emory

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