

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

Aug 13 2020

SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

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 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.; 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 Appellant.

APPELLANT'S RETURN TO SWEENEY, WINGATE & BARROW, P.A.'S MOTION TO STRIKE APPELLANT'S FINAL BRIEF AND FOR OTHER RELIEF

Appellant Adele J. Pope (“Appellant”) opposes the motion filed by Sweeny, Wingate & Barrow, P.A. (“Wingate”)¹ to strike Appellant’s final brief “and for other relief.” This motion is the latest in a pattern of various Respondents and/or their counsel of ascribing imaginative but incorrect attempt to Appellant’s filings, where no such intent exists or could be gleaned by any reasonable reader.

Wingate’s motion, while alleging its basis to be technical violations of Rule 211(b), SCACR, focuses its mass on a fictitious “long-standing history of conflict [between Appellant and] Ms. Venisha Brown (now deceased).” (Motion at 2). Wingate has recently begun attempts in multiple Courts to ascribe to Appellant an intricate scheme by which Appellant would somehow take over the Estate and Trust of James Brown as a result of her prosecution and defense of the cases to which she is a party. *See*, particularly, the letter and affidavit of Mark V. Gende, Esq., filed with the S.C. Supreme Court, wherein Mr. Gende seeks to have the Supreme Court hold Appellant in contempt of a June 2015 Order for, among other alleged actions, appearing and defending a Petition related to Venisha Brown’s Estate with which Appellant was served.² (On file herein as Exhibit I to Appellant’s pending Petition to Lift Automatic Stay)

Appellant notes that Wingate’s overall suggestion, while baseless and erroneous, that certain inadvertent omissions from the final Brief herein were intended to somehow affect Mr. Gende’s request to the Supreme Court that Appellant be held in contempt has been negated and mooted by the Supreme Court’s August 10, 2020 Order declining to issue a Rule to Show Cause

¹ The motion is filed by Wingate on behalf of “Respondents,” who include the Attorney General and Tommie Rae Brown, a 47.5% owner of Plaintiff James Brown Legacy Trust. Wingate notes in one instance that “Respondents, other than the Attorney General” have reviewed her Briefs, but nonetheless submits the motion on behalf of “Respondents” without caveat.

² Appellant has properly filed a Statement of Creditor’s Claim against Venisha Brown’s Estate, as required by the Probate Code to protect Appellant’s ability to collect against Venisha’s Estate if she succeeds on the counterclaims which are at issue in this appeal.

to Appellant regarding alleged contempt of its 2015 Order. Nonetheless, given the serious and unfounded allegations Wingate makes in its motion, Appellant responds fully below.

In the instant motion, Wingate painstakingly attempts to connect the inadvertent omissions (discussed fully below) of certain citations in Appellant’s final Brief to an alleged “long-standing conflict” between Appellant and Venisha Brown. Notably, as of 2016, Wingate was unable to locate or communicate with Venisha, and as a result it could not produce her for a properly noticed deposition in this case. [R. 746-749]. Further, Wingate continues to represent Tommie Rae Brown as a Plaintiff/Respondent in this case, despite the fact that Tommie Rae has recently been found by the S.C. Supreme Court not to be the surviving spouse of James Brown *in a case in which attorneys representing Venisha and two other Wingate clients litigated against Tommie Rae on that issue. See Brown v. Sojourner*, S.C. Sup. Ct. Op. No. 27982 (June 17, 2020).³

Most of Wingate’s 13-page motion is devoted to pointing out every inadvertent omission of a final citation (many of which were redundant and included with additional citations to support the same fact) to the Record pages containing the Supplemental Motion to Lift Stay, dated October 30, 2018, with additional brief mention of two paragraphs which were omitted from the final brief. While Wingate tirelessly attempts to attribute every single inconsistency between the initial Amended Brief and the final Brief, it offers no evidence whatsoever to connect *any* of the omissions to Appellant’s intent or any organized litigation strategy.

Indeed, the undersigned can and does herby confirm that the actual reason for the slight differences between the Briefs is far less fascinating. Appellant herself had no involvement

³ The undersigned notes that the addition of this citation to the final Brief was to replace a reference in the draft from which he was working to “Appellate Case No. 2018-1990,” the tracking number for the case which resulted in this opinion. As discussed more fully below, this difference may have been the result of counsel working from a non-final draft of the initial Amended Brief.

whatsoever in finalizing or filing of the final Briefs herein, which was accomplished solely by the undersigned.

Counsel notes that the initial Amended Brief herein was filed in August 2019, at a time when he was still recovering from a stem-cell transplant to treat leukemia and was working only a few hours per week. Because of that, drafts of the brief had been shuttled around to multiple counsel for revisions, and the undersigned may have finalized the brief from his office, his home office or an office of other counsel. Sensitive to that, the undersigned compared the last draft he could locate to the filed initial Amended Brief before creating the final Brief and believed he had located the Word document which had previously been published to the Court.

In reviewing Wingate's filing, it appears that counsel was mistaken and may have been working from a previous draft. The undersigned certifies to this Court that no portion of the Brief was intentionally removed.

Wingate's tortured reading of the inadvertent omissions as an organized scheme to remove references to the Supplemental Motion to Lift Stay is obviated by the fact that the final Brief, as filed, contains more than a dozen references to that document, which is fully duplicated in the Record herein.

Further, none of the inadvertent omissions from the final Brief has any meaningful effect on the arguments made or the facts recited.

CONCLUSION

For the reasons set forth above and in the Affidavit of Appellant filed herewith, Appellant respectfully asks that the Court deny the motion to dismiss her appeal or strike any of her filings, but allow, if desired by the Court, an amended Final Brief with the inadvertently omitted citations included.

Respectfully submitted,

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Counsel for Appellant Adele J. Pope

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**AFFIDAVIT OF ADELE J. POPE IN OPPOSITION TO MOTION
TO STRIKE FINAL BRIEF AND FOR OTHER RELIEF**

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn deposes and says:

1. This affidavit is based on my own personal knowledge, and I am over 21 years old.

2. I have reviewed the August 7, 2020 motion of the law firm of Sweeny, Wingate and Barrow, P.A. ("SWB").

3. I emphatically deny that I had any motivation in connection with the filing of the final brief in this matter on July 6, 2020 other than to assist my counsel, if needed, with assuring that it complied with applicable rules.

4. I was unaware of any changes in the citations, as set out in the motion, until the motion was filed, and do not believe any of my counsel were aware of them.

5. Based on More than forty years of practice as an attorney, and my conversation with my counsel about the citations, it appears to me that Respondents' objections could have been addressed and easily remedied by a call to Mr. Silvernail, or another attorney in this case, a month ago.

6. Mr. Silvernail was diagnosed with leukemia in early 2018 and underwent a life-threatening transplant in mid-2018. His illness, treatment and recovery from the transplant removed him from his representation for about a year, and much happens in "Richland 4900" each year.

7. SWB's concerns about the Estate of Venisha Brown have been resolved in an Order of the Supreme Court dated August 10, 2020 which acknowledges that Mark Gende, Esq., who made the request for a contempt rule to show cause, is the attorney for the Estate of Venisha Brown; does not hold me in contempt of the Supreme Court;

holds Mr. Gende's request in abeyance; but directs that I not be involved in the Estate of Venisha Brown, as well as the Estate of James Brown.

8. The Supreme Court's August 10, 2020 Order finds that my attempt, as a creditor, to be appointed personal representative,

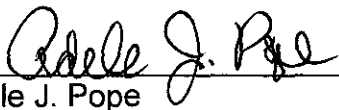
"...may involve a conflict of interest. See Rule 1.7(a)(1), (2), RPC, Rule 407, SCACR (providing "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (1) the representation of one client will be directly adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by the personal interest of the lawyer.")

9. I will, of course, fully comply with the Court's August 10, 2020 order, as I have with the June 10, 2015 Order.

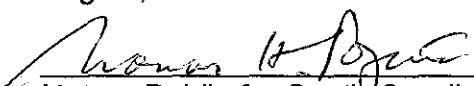
10. Out of an abundance of caution I advise the Court that I received the August 10, 2020 Order at approximately 4:30 p.m. on August 12, 2020, and that earlier that day a document in this case had been mailed for filing.

11. While I do not believe it would have been a violation of the Order even if my counsel or I had received it, I want to make clear that at the time the August 10, 2020 filing was deposited in the post office box neither my counsel nor I had notice that there was a letter from the Supreme Court to be picked up, or of the August 10, 2020 order.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME This 13th Day of
August, 2020

 (LS)
Notary Public for South Carolina
My Commission expires: 8-28-2022

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Of whom Adele J. Pope is Appellant.

Proof of Service

The undersigned counsel for Appellant certifies that he has served a copy of the Return to Respondents' Motion to Strike and for other relief and Affidavit of Adele J. Pope all

Respondents on the date shown below, by emailing the same to their counsel, addressed as follows:

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Mark V. Gende
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Counsel for Respondent Attorney General

s/Adam T. Silvernail
Counsel for Appellant

August 13, 2020



Adam Silvernail <adam@silvernaillawfirm.com>

Bauknight v. Pope, Appellate Case No. 2018-2229

1 message

Adam Silvernail <adam@silvernaillawfirm.com>

Thu, Aug 13, 2020 at 2:10 PM

To: "Ken B. Wingate" <kbw@swblaw.com>, "Mark V. Gende" <MVG@swblaw.com>, Emory Smith <ESmith@scag.gov>

Cc: Charles Carpenter <charlie@carpenterappeals.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>, Adele Pope <adele@popelawfirm.com>

Counsel:

Attached and served upon you is our Return to the Motion to Strike, with Affidavit and Proof of Service. This document, along with a copy of this email, is being e-filed today.

Adam

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Law Office of Adam T. Silvernail, LLC

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Pope 4900 Appeal Return SWB MTS .pdf

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