

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Aug 20 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

Case No. 2010-CP-40-4900

Appellate Case No. 2018-02229

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.

**REPLY TO APPELLANT’S RETURN TO RESPONDENTS’
MOTION TO STRIKE**

Respondents¹ submit this Reply to Appellant’s Return to Respondents’ Motion to Strike [Appellant’s] Final Brief and for Other Relief. For the following reasons, the Court should grant Respondents’ Motion to Strike [Appellant’s] Final Brief and For Other Relief (hereinafter the “Motion to Strike”).

Introduction

Appellant does not deny the 33 alterations between Appellant’s Amended Initial Brief and her Final Brief. Rather, Appellant argues the 33 alterations should be excused for various reasons including Appellant’s counsel’s medical condition. While Respondents sympathize with the medical issues counsel experienced primarily in 2017-2018 (to the best of our knowledge, as discussed below), Appellant’s Return does not provide adequate justification for the 33 alterations in her Final Brief. Specifically, (1) the precise nature of Appellant’s alterations to her Final Brief belies an “accidental” explanation, (2) the 33 alterations occurred in 2020, not 2018 or 2019, (3) the Supreme Court’s August 10, 2020 Order vindicates the basis of Respondents’ Motion to Strike, (4) Respondents have credible evidence of Appellant’s improper intentions to attempt to return to a position in the Estate of James Brown, (5) the 33 alterations constitute a violation of Rule 211(b), SCACR, and (6) Appellant’s history of rules violations in this appeal is gravely excessive and must be put to an end. Respondents address each issue in turn.

Argument

1. The precise nature of Appellant’s alterations to her Final Brief belies an “accidental” explanation.

¹ As used herein, “Respondents” refers to all Respondents other than the Attorney General, which has been the undersigned firm’s scope of representation in all filings in this appeal.

Appellant’s primary defense to this Motion to Strike is that the alterations are “inadvertent omissions.” (*See* Appellant’s Ret. to Mot. to Strike and for Other Relief, at p. 2.) Charts 1 and 2, attached to Respondent’s Motion to Strike, show that 16 of the 33 alterations remove or sublimate information concerning Appellant’s conflicts with the Estate of Venisha Brown and/or information arguably placing Appellant in violation of a June 10, 2015 Order of the Supreme Court (see below). The main allegation in Respondents’ Motion to Strike is Appellant’s systematic removal of citations to “the Supplemental Motion” of Appellant, filed on October 30, 2018 in Case 4900, leaving only obscure references.

While the Supplemental Motion is still cited in the Final Brief, even after the 33 alterations, it has been made to be well-concealed and easy to pass over. A reader of Appellant’s Amended Initial Brief must constantly refer to the Supplemental Motion to understand that brief, but a reader of the Final Brief need not even glance at it, and we argue, is discouraged from doing so.² *This* is Respondents’ contention: not that Appellant has removed every possible reference to the Supplemental Motion, but that Appellant is cleverly and systematically altering her Final Brief to deflect attention away from the very problematic Supplemental Motion, because the Supplemental Motion, and other documents, became very problematic for her beginning in early 2020 when the Supreme Court began to consider her possible violation of its June 2010 order barring her involvement with the Estate of James Brown.

² In her Amended Initial Brief, Appellant considered the Supplemental Motion so important that she gave it a special abbreviation. (*See* Amended Initial Brief of Appellant, at p. 1 n. 1.) In her Final Brief, the Supplemental Motion is curiously removed from the list of special abbreviations. (*See* Final Brief of Appellant, at p. 1 n. 1.) Apparently, Appellant wishes this Court to believe this, also, was an accident.

Appellant's Final Brief is tailored to downplay both her conflict with the Venisha Brown Estate and her conduct that constitutes a potential violation of the Supreme Court's Order. Appellant's alterations to her Final Brief are far too specific to be accidental. It seems more than convenient that the specific, systematic and thematically related alterations (including the wholesale removal of two paragraphs of text and the alteration and/or removal of 25 citations) are merely editing accidents resulting from sharing the file between multiple attorneys or the result of inadvertently retrieving an incorrect computer file (*See* Appellant's Ret. to Mot. to Strike and for Other Relief, at p. 4.) These alterations have the hallmarks of being deliberate and recent.

2. The 33 Alterations occurred in 2020, not 2018 or 2019.

Appellant seeks to attribute the 33 alterations to her Final Brief to a medical condition experienced by one of her attorneys in 2018.³ Respondents are sympathetic with the medical situation of this attorney, understand he has experienced a very serious health condition, and even accept that he may have continuing issues related to his illness, although we have not been made aware of any continuing issues. Counsel for Respondents have always been ready to accommodate opposing counsel in all matters related to his medical condition, if made aware of such issues.

However, counsel's medical condition does not explain the 33 alterations in Appellant's Final Brief, because the timeline of his condition is inconsistent with the date of the altered Final Brief at issue in this motion. Appellant asserts that her attorney was dealing with the medical issue in August of 2019, when her Amended Initial Brief was

³ It is significant to note that Appellant has been represented by five law firms in this Appeal, four of which signed the Amended Initial Brief and the Final Brief.

filed. However, the Amended Final Brief is not at issue in this Motion. It is the altered Final Brief that is the subject of the Motion, and that brief was filed on July 6, 2020.

Appellant submits a curious Affidavit in support of her Return to the Motion to Strike in which she—not her attorney—sets forth the timeline of her attorney’s illness. Why she needs to speak for him is not clear. Appellant’s affidavit states that the illness began in early 2018, included a transplant in mid-2018, and required recovery “for about a year.” (See Aff. of Appellant in Opp. to Mot. to Strike and for Other Relief, at ¶ 6.) Thus, mid-2019, would be the outside timeframe for recovery. However, Appellant’s timeline of her attorney’s illness does not explain the 33 alterations in her Final Brief of July 2020 and does not even speak to the most significant time, which is July 2020.

Appellant filed her notice of appeal on December 17, 2018. On the same day Appellant moved for an extension of time to file her initial brief. Counsel with the health issue signed both filings. The motion for an extension was not based upon any health concerns, but rather was based on *Appellant’s and her counsel’s desire to continue litigating Case 4900 during the pendency of the instant appeal.* (See Mot. for Extension of Time, attached hereto as **Exhibit A**.) From these filings, it does not appear that Appellant or her counsel were laboring under any health disability but instead were litigating as normal. Furthermore, on October 30, 2018 Appellant and her counsel filed the Supplemental Motion to Lift Stay in Case 4900 in hopes that the court would grant it, allowing her to both litigate concerning Venisha Brown and prosecute this appeal at the same time. (See *id.* at p.2.) Additionally, by no later than December of 2018, Appellant and her counsel’s litigation activities appeared to show that Appellant’s counsel was beyond any disability related to his illness and ready to proceed with all matters related to Case

4900. See email exchanges, collectively attached hereto as **Exhibit B**. Finally, the altered Final Brief at issue in this motion was not produced until July of 2020. Thus, Appellant’s timeline does not support counsel’s health concerns being a contributing factor to the 33 alterations in her Final Brief.

Respondents have no desire to expose to public discussion a health issue experienced by opposing counsel. However, Respondents must point out to this Court that the objective facts do not match Appellant’s attempt to explain away her altered Final Brief by attributing the alterations to complications from a medical condition experienced by one of her attorneys when the timeframe does not justify the explanation.

3. The Supreme Court’s August 10, 2020 Order vindicates the basis of Respondents’ Motion to Strike.

Appellant claims this Motion to Strike is based on a “fictitious ‘long-standing history of conflict [between Appellant and Venisha Brown].” (Appellant’s Ret. to Mot. To Strike and For Other Relief, at p. 2.) Appellant seeks to use an August 10, 2020 Order of the Supreme Court, attached as **Exhibit C**, as a shield against this Motion to Strike. Appellant’s argument is misplaced, and the Supreme Court’s Order is actually a sword that pierces her Return.

In her Return, Appellant argues that Respondents’ arguments in their Motion to Strike “ha[ve] been negated and mooted by the Supreme Court’s August 10, 2020 Order...” (Appellant’s Ret. to Mot. Strike Appellant’s Final Brief at p. 2.) Appellant’s assertion is incorrect. In its Order, the Supreme Court stated “[w]e decline to issue a rule to show cause *at this time* and *hold that request in abeyance* pending [Appellant’s] future compliance with this order and our order dated June 10, 2015.” (Order dated August 10, 2010, filed in Appellate Case No. 2020-000764 (emphasis added).) The Supreme Court’s Order

highlights Respondents’ contention that Appellant’s attempt to become the personal representative of the Estate of Venisha Brown is a serious problem:

We direct [Appellant Pope] to cease all attempts to become involved in the estate of Venisha Brown. In addition to having no standing in appeals or actions involving the Estate and Trust of James Brown, we find [Appellant Pope] has no standing in any proceeding related to the estate of Venisha Brown. We further find that because Venisha Brown’s estate is engaged in litigation against [Appellant Pope], [her] attempt to become the personal representative of the estate may involve a conflict of interest. [citations omitted.] *If [Appellant Pope] fails to conform to these instructions as ordered and takes any further action with respect to any case related to the Estate of James Brown, which includes any proceeding in the estate of Venisha Brown, a rule to show cause will be issued...*

Exhibit A at pp. 1-2 (emphasis added).

Though the August 10, 2020 Order does not yet hold Appellant in contempt, it expressly proscribes her conduct with respect to the Venisha Brown Estate, thereby vindicating Respondents’ position in the instant Motion to Strike.

4. Respondents have credible evidence of Appellant’s improper intentions to attempt to return to a position in the Estate of James Brown.

Appellant states in her Return that “[Respondents’ counsel] has recently begun attempts 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.” (Appellant’s Ret. to Mot. to Strike and for Other Relief, at p. 2.) Appellant makes this argument in an attempt to characterize Respondents’ Motion to Strike as the product of a baseless conspiracy theory.

Appellant’s filings speak for themselves on this issue. In a sister appeal, (Appellate Case No. 2017-001899), Appellant opposes Respondents’ basic request to this Court to correct a scrivener’s error in the final opinion that named Appellant as “personal representative under the will of James Brown and trustee of James Brown’s 2000

Irrevocable Trust.” Op. No. 2020-UP-216, filed July 15, 2020 in App. Case No. 2017-001899; *see also* Respondent’s Mot. to Correct Scrivener’s Error, filed July 21, 2020 in App. Case No. 2017-001899; Appellant’s Ret. and Opp. to Respondent’s Mot. Related to Asserted Scrivener’s Error, filed July 30, 2020 in App. Case No. 2017-001899. Appellant’s reason for opposing the Motion to Correct Scrivener’s Error is her assertion that, as of the May 2010 filing of 2010-CP-46-04900, *she was the personal representative of the Estate of James Brown*. (See Appellant’s Ret. and Opp. to Respondent’s Mot. Related to Asserted Scrivener’s Error, *supra*, at pp. 3-5.) Her patently wrong argument contradicts the ruling of the South Carolina Supreme Court in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), upholding the *May 26, 2009 for-cause removal of Appellant* from her fiduciary positions. *Wilson* at 447-48, 743 S.E.2d at 766.

Further, in her Final Brief at issue in this Motion, Appellant claims that her removal as a James Brown Estate fiduciary was never even considered by the circuit court order that ultimately resulted in the opinion in *Wilson v. Dallas*. (See Appellant’s Final Brief at p. 38 n. 15 (“The lower Court’s Order Approving Settlement Agreement specifically noted that the ‘court ha[d] not heard the [removal action] pending the settlement approval.’”)). This footnote serves no other purpose than to be a back-door argument that the *Wilson v. Dallas* holding concerning Appellant’s removal is invalid, and that she should still be recognized as a James Brown Estate fiduciary.

Respondents point out Appellant’s self-characterization of her perceived fiduciary status not because her statements have any basis in law, but because Appellant’s seeding the record with such statements adds credibility to Respondents’ argument that the alterations to her Final Brief are not mere typographical errors or mistakes or prior versions,

but rather are intentional, systematic, and improper actions related to her longstanding belief concerning her perceived status within the Estate of James Brown.

5. The 33 alterations are gross violations of Rule 211(b), SCACR.

Appellant attempts to downplay Respondents' position on the Motion to Strike, arguing that "none of the inadvertent omissions from the final Brief has any meaningful effect on the arguments made or the facts recited." (Appellant's Ret. to Mot. To Strike Appellant's Final Brief, at p. 4.) Respondents refer the Court to Chart 1, filed as an exhibit to the Motion to Strike and for Other Relief. Chart 1 is a side-by-side comparison of the two versions of the brief, and it highlights the nature and extent of the alterations, including the specific material that has been altered, added, and/or removed in violation of Rule 211(b). There are at least 33 alterations, two of which involve paragraphs that were removed in their entirety. (See Charts 1 and 2, attached to the instant Motion to Strike.)

Further, Appellant's contention misapprehends the purpose of Rule 211(b). Rule 211(b) allows for correction of obvious typographical errors and the revision of citations to reflect the record on appeal. See Rule 211(b)(1) and (2), SCACR. "No other changes may be made." Rule 211(b)(2), SCACR. The purpose is self-evident: identical briefs are required to allow a respondent to fairly meet the contents of an appellant's brief. A respondent must base his initial brief on the initial brief filed by an appellant. If an appellant then files an altered final brief, the respondent has submitted an initial brief that has not had a chance to fairly rebut the content of the appellant's altered final brief. The careful respondent, bound by Rule 211(b) himself, must then submit a final brief that matches the respondent's own initial brief. Therefore, the appellant has succeeded in

“sandbagging”⁴ the respondent by submitting filings to which the respondent was unable to respond.

Respondents assert this scenario is exactly what has happened in this case. Appellant filed her Amended Initial Brief on August 5, 2019, without the 33 alterations. In response, Respondents filed their Amended Initial Brief on September 4, 2019 without responding to the 33 alterations because they had not yet been made. Respondents then filed their Final Brief on July 2, 2020. Appellant filed her altered Final Brief on July 6, 2020, with the 33 alterations. Respondents were prejudiced *per se* upon receipt of Appellant’s altered Final Brief. Had Respondents known that the final version of Appellant’s brief would contain large portions of unsubstantiated recitations (*see, e.g.*, Appellant’s Final Brief at pp. 42, 44-45), Respondents would have had the opportunity to craft a more extensive argument against these citation-less statements. Rule 211(b) is expressly designed to prevent this type of bait-and-switch gamesmanship.

6. Appellant’s history of rules violations is gravely excessive and must be ended.

Appellant has already had her first Initial Brief and her first bound Record on Appeal stricken from this case. Appellant now attributes all of her conduct in this altered Final Brief to inadvertence and/or neglect, and requests one more chance to file an “amended final brief.” (Appellant’s Ret. to Mot. to Strike Final Brief, at p. 4.) If the Court were to grant such a request, it would mean that Appellant has been given the opportunity of two Initial Briefs, two Records on Appeal, and two Final Briefs. Appellant has violated

⁴ “Sandbag” - *intransitive verb*: to hide the truth about oneself so as to gain an advantage over another. Merriam-Webster. <https://www.merriam-webster.com/dictionary/sandbag>, accessed Aug. 18, 2020.

too many rules too many times with too few consequences, and her disregard for the Rules of Appellate procedure, opposing counsel, and this Court should be brought to an end.

Conclusion

While Respondents understand that innocent errors and inadvertent omissions happen at times to all Appellate advocates, in this case Appellant's alterations to her Final Brief are no accident. These alterations follow a pattern and were executed with a purpose. Appellant's Final Brief is a gross and stark violation of Rule 211(b). Appellant's various attempts to justify her 33 alterations lack plausibility and merit. Respondents ask this Court to put an end to the abusive litigation practices that Appellant has utilized in this appeal. Respondents respectfully request this Court grant the Motion to Strike and for Other Relief.

Respectfully submitted,

s/ Mark V. Gende

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ATTORNEYS FOR RESPONDENTS

Columbia, South Carolina

August 20, 2020

Exhibit A

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

DEC 17 2018

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning
SOUTH CAROLINA COURT OF APPEALS

Appellate Case No.: 2017-001899

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 Appellant

MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF (Supplemental)

Comes now counsel for Appellant who respectfully moves this Court for an order granting a forty (40) day extension of time in which to file the initial brief in this supplemental appeal. This would make Appellant's initial brief in this supplemental appeal due on February 27, 2019.

The grounds for this request are that a supplemental motion to lift stay for limited purposes was filed in the Circuit Court in October 2018; has not yet been heard by the Circuit Court; and may affect the content of the initial brief. In addition, Respondent Venisha Brown died intestate on September 19, 2018, a resident of Aiken County, South Carolina. A petition was filed on November 6, 2013 by her half-sibling, Respondent Deanna Brown Thomas, seeking to be named as Personal Representative of the Estate of Venisha Brown. As of December 12, 2018, no Interested Persons had been served.

This motion is based on the public records for the Probate Court for Aiken County; the pending supplement motion to lift stay pending in the Circuit Court; and the following memorandum.

MEMORANDUM IN SUPPORT OF EXTENSION TO FILE BRIEF

More than 8 years ago, Appellant and Robert Buchanan, Jr. were sued by Venisha Brown and others in this case, known as "Richland 4900." (R.pp 176-188) Buchanan and Appellant counterclaimed against Venisha Brown and others for abuse of process, civil conspiracy, intentional interference with their contract with respondent Estate/2000 Trust of James Brown to be paid; and violations of South Carolina Probate Code Section 62-1-104. (R. pp. 337-370)

In 2015, Venisha Brown and others were relieved from default as to the counterclaims in Richland 4900. (R.pp. 52-53) Thereafter, on or about August 1, 2016, Venisha Brown served

Termination notices in an effort to secure a share of the U.S. Royalties to 246 copyrights of her father James Brown under Sections 203 and/or 304 of the U.S. Copyright Act, 17 U.S.C. 101, *et seq.* These Termination Rights proceeds which Venisha Brown tried to secure for herself had been transferred by Venisha Brown to respondent James Brown Legacy Trust in 2009, in exchange for a 4.79% interest in Respondent Legacy Trust.

Venisha Brown and Respondent Legacy Trust had a vested interest in these U.S royalties to 246 copyrights on September 17, 2017 when the appeal of her relief from default as to the Buchanan/Pope counterclaims was filed.

In December 2017, the Honorable Doyet A. Early III declined Appellant's request to lift the stay imposed by this appeal in its entirety.

In October 2018, Appellant moved before the Circuit Court for a Supplemental Order lifting the stay for limited purposes, including substituting a properly-appointed Personal Representative of the Estate of Venisha Brown. Counsel for the deceased Venisha Brown, and Russell Bauknight on behalf of Venisha Brown, moved to strike the motion, which has not been scheduled to be heard by the Circuit Court.

On November 26, 2018, the Circuit Court issued its Order denying appellant's Motion to Alter and/or Amend and vacate a 2017 order granting Venisha Brown and others relief from default as to the Counterclaims of Mr. Buchanan and Appellant. The original Summary Judgment was the subject of reconsideration when this appeal was filed.

As a result of the November 26, 2018 Order, Appellant has filed a supplemental appeal of the two summary judgment orders, as well as a number of additional orders, which will be the subject of the supplemental initial brief to be filed.

The requested extension may be adequate for the Circuit Court to issue its ruling on the supplemental motion to lift stay, or if the Circuit Court fails to rule, for the presentation of the motion to this Court. These rulings may have a material impact on the brief of Appellant, and, on information and belief, the Estate of Venisha Brown is likewise unable to present a proper response until she has a properly appointed fiduciary.

The problems associated with the Estate of Venisha Brown's inability to participate in this appeal are exacerbated by the fact that Venisha Brown was incarcerated and unavailable during much of the time since she sued Mr. Buchanan and Appellant, and efforts of appellant and Mr. Buchanan to secure a Guardian *ad Litem* were unsuccessful.

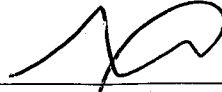
CONCLUSION

Appellant and counsel wish to conclude this pre-trial appeal at the earliest possible time but matters related to the death of Venisha Brown; securing her assets; and correcting parties; however, make a brief extension request necessary. The Court is respectfully requested to grant an extension to file a Supplemental Initial Brief until February 27, 2019.

Respectfully submitted,

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Attorneys for the Appellant

December 17, 2018

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED
DEC 17 2018
SC Court of Appeals

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable L. Casey Manning

Appellate Case No.: 2017-001899

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 Appellant

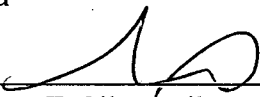
PROOF OF SERVICE (Motion for Extension)

I certify that on December 17, 2018, I have served the MOTION FOR EXTENSION OF TIME TO FILE INITIAL BRIEF (Supplemental) by hand delivery on counsel listed below:

<p>Kenneth B. Wingate, Esquire Mark V. Gende, Esquire Joseph O. Thickens, Esquire Sweeny, Wingate & Barrow, P.A. 1515 Lady Street Columbia, SC 29201</p>	<p>The Honorable Alan Wilson Attorney General Robert D. Cook, Esquire Solicitor General J. Emory Smith, Jr., Esquire Office of the Attorney General 1000 Assembly Street Columbia, South Carolina 29201</p>
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Attorneys for the Appellant

Exhibit B

Mark V. Gende

From: Adam Silvernail <adam@silvernailfirm.com>
Sent: Wednesday, November 28, 2018 11:43 AM
To: Daryl Williams
Cc: Mark V. Gende; Rett Kendall
Subject: Re: ALPS Corporation v. Estate of James Brown, et al. 2009-CP-02-2407

All:

It appears that earlier this year Mark had suggested Richard Hinson to mediate. Like Daryl, I do not have previous experience with him, but we could stick with that idea. Otherwise, I have participated in several successful mediations with Carlos Gibbons -- although it has been a while, he has usually was easy to schedule with.

Mark, let me know your preference and whether you would like for me or your staff to reach out to the proposed mediator for availability. I expect to be fairly flexible in the next several weeks.

Adam

On Mon, Nov 19, 2018 at 12:19 PM Daryl Williams <dwilliams@gertzandmoore.com> wrote:
re: the \$5,000 offer. Never in writing, but doesn't matter since it was rejected. My recollection was that it was clearly a nuisance value offer. Maybe things have changed on that front. Or were you implying that any offer would be lower now?

My two favorite mediators are Biff Sowell and Rib Braithwaite, both clearly conflicted. Adam, do you have any ideas?

I can't imagine there's anything you don't know, but how about thinking about what discovery you want to take? Of course, we need to remind Judge Early of the pending motion, and there's always the chance its resolution would generate yet another appeal for you to deal with. I suggest we run on a double track and try to schedule a mediation at the same time we deal with discovery, hoping for a February trial date.

Daryl

On Mon, Nov 19, 2018 at 11:46 AM Mark V. Gende <MVG@swblaw.com> wrote:

Daryl:

I don't recall the \$5,000 offer. I may be forgetting something. Do you have any documentation of that?

Of course, the hiatus since the hearing was due to Adam's health. I am assuming he is now able to return to litigating this matter.

Before we would agree to place it on the trial roster, we would want to have the mediation. After the mediation, if unsuccessful, we would want our motion ruled upon. Then, some discovery may be necessary. So I don't see this getting to trail before Judge Early is off the bench.

What names would you suggest as possible mediators?

Mark V. Gende, Esq.

Sweeny, Wingate, & Barrow, PA

1515 Lady Street

Columbia, South Carolina 29201

803.256.2233 – Phone

803.256.9177 – Facsimilie

From: Daryl Williams <dwilliams@gertzandmoore.com>

Sent: Monday, November 19, 2018 11:31 AM

To: Mark V. Gende <MVG@swblaw.com>; Adam T. Silvernail <adam@silvernailfirm.com>

Subject: ALPS Corporation v. Estate of James Brown, et al. 2009-CP-02-2407

Mark,

My recollection of the status of the ALPS claim case following the last hearing , now almost a year ago, was that the parties were urged to discuss settlement and/or mediate the claim. Also, as I recall, the defendants offered a \$5,000 and took the position that they were not going to be moved from that figure come hell or high water, so that mediation was a useless exercise.

In light of Judge Early's announced retirement, ALPS would like to explore a meaningful mediation again and, if unsuccessful attempt to have the case placed on a trial roster before his retirement. I recognize your summary judgment motion remains under advisement, and of curse that wil have to be dealt with.

At any rate, I would like to contact Judge Early after Thanksgiving to request the case be placed on a trial roster. Please let me know if the defendants are willingly to meaningfully mediate the case.

Thank you and best wishes for a happy Thanksgiving.

Daryl

--

Daryl L. Williams
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Columbia, SC 29202
Telephone: [803-252-1524](tel:803-252-1524)

IRS Circular 230 disclosure: To ensure compliance with requirements imposed by the IRS, we inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding any penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to any other party any transaction(s) or tax related matter(s) that may be addressed herein.

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--

Law Office of Adam T. Silvernail, LLC
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Post Office Box 7995
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803/779-1770

Mark V. Gende

From: Early, Doyet A. <dearlyj@sccourts.org>
Sent: Tuesday, December 11, 2018 3:43 PM
To: Mark V. Gende
Cc: Early, Doyet A. Law Clerk (); Adam T. Silvernail; Daryl Williams
Subject: Re: ALPS v. Estate and Trust of James Brown through Russell Bauknight 2009-CP-02-2407

I am going to issue an order for mediation to be held before the end of the year. You can either agree on one or I will select one. Please advise by noon this Friday. DAE

Sent from my iPad

On Dec 11, 2018, at 3:01 PM, Mark V. Gende <MVG@swblaw.com<mailto:MVG@swblaw.com>> wrote:

Judge Early:

I believe Mr. William's request is premature. Your direction was for mediation to occur, which was delayed due to Mr. Silvernail's health. Since that is now apparently not a concern, we will work toward setting the mediation.

If the mediation is not successful, there remains the need for you to rule on our motion for summary judgment, which you are holding in abeyance.

Also, no depositions have been taken, so there would need to be some discovery prior to trial.

Thank you for your consideration.

Mark Gende

Mark V. Gende, Esq.
Sweeny, Wingate, & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201
803.256.2233 – Phone
803.256.9177 – Facsimilie

From: Daryl Williams <dwilliams@gertzandmoore.com<mailto:dwilliams@gertzandmoore.com>>
Sent: Monday, December 10, 2018 11:58 AM
To: Early, Doyet A. <dearlyj@sccourts.org<mailto:dearlyj@sccourts.org>>; Early, Doyet A. Law Clerk (Martha S. Dennis) <dearlylc@sccourts.org<mailto:dearlylc@sccourts.org>>; Mark V. Gende <MVG@swblaw.com<mailto:MVG@swblaw.com>>; Adam T. Silvernail <adam@silvernailfirm.com<mailto:adam@silvernailfirm.com>>
Subject: ALPS v. Estate and Trust of James Brown through Russell Bauknight 2009-CP-02-2407

Dear Judge Early,

The referenced matter is the action by Mrs. Pope's malpractice carrier to recover its expenses and legal fees paid in connection with her defense of third party claims brought against her in connection with her role as one of the PR/Trustees of the Brown Estate and Trust.

You heard a summary judgment motion filed by the Defendant, Mr. Bauknight in his fiduciary capacities some time ago. Mr. Silvernail and I recall that you directed the parties to mediate. Unfortunately that was shortly before Mr. Silvernail's illness and has not occurred.,

We have indicated to Mr. Gende, counsel to Mr. Bauknight, our willingness to mediate at this time, even to the point of agreeing to use his first choice of mediator. There has been no further progress in scheduling the mediation.

I am writing not so much to seek help with the mediation issue as to ask if there is any chance that you might be able to schedule a trial of this matter before your retirement. I believe a good faith estimate of the time for trial is 1 1/2 to 2 days.

We appreciate your consideration of this request.

Daryl L. Williams

--

Daryl L. Williams
Gertz & Moore, LLP.
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# Exhibit C

# The Supreme Court of South Carolina

In the Matter of Adele Jeffords Pope, Respondent.

Appellate Case No. 2020-000764

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## ORDER


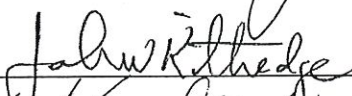



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The Honorable Clifton Newman presided over a hearing on a petition by Deanna Brown-Thomas seeking to be appointed personal representative of the estate of her sister, Venisha Brown, both daughters of James Brown. Respondent answered the petition as a creditor, and subsequently filed several motions, including a motion to have herself named as the personal representative of Venisha Brown's estate. Counsel for Deanna Brown-Thomas moved to hold Respondent in contempt of this Court's order dated June 10, 2015. In that order, this Court prohibited Respondent from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, in which she clearly has no standing, and cautioned Respondent that continued attempts to involve herself in the resolution of the Estate and Trust of James Brown may result in contempt charges. Judge Newman did not rule on the motion for contempt, but asked this Court to determine whether Respondent's action seeking to have herself named as personal representative of Venisha Brown's estate violates this Court's order dated June 10, 2015.

Upon request from the Clerk of Court, Mark V. Gende, counsel for Venisha Brown's estate, provided the Court with an affidavit to support the request for a finding of contempt. *See Toyota of Florence, Inc. v. Lynch*, 314 S.C. 257, 267, 442 S.E.2d 611, 617 (1994) (stating charges of constructive contempt are brought by a rule to show cause which must be based upon an affidavit or verified petition). This affidavit asserts that Respondent's actions are in violation of the June 10, 2015 order.

We decline to issue a rule to show cause at this time and hold that request in abeyance pending Respondent's future compliance with this order and our order dated June 10, 2015. We direct Respondent to cease all attempts to become involved in the estate of Venisha Brown. In addition to having no standing in

appeals or actions involving the Estate and Trust of James Brown, we find Petitioner has no standing in any proceeding related to the estate of Venisha Brown. We further find that because Venisha Brown's estate is engaged in litigation against Respondent, Respondent's attempt to become the personal representative of the estate 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 a personal interest of the lawyer."). If Respondent fails to conform to these instructions as ordered and takes any further action with respect to any case related to the Estate of James Brown, which includes any proceeding in the estate of Venisha Brown, a rule to show cause will be issued, and any and all violations of the orders of this Court will be considered as grounds for holding her in contempt.

|                                                                                      |      |
|--------------------------------------------------------------------------------------|------|
|    | C.J. |
|   | J.   |
|  | J.   |
|  | J.   |
|  | J.   |

Columbia, South Carolina  
August 10, 2020

cc: Joyce Farr Cheeks, Esquire  
Eddy L. Lane, Esquire  
Mark V. Gende, Esquire  
Adele Jeffords Pope, Esquire  
The Honorable Clifton Newman

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

**Aug 20 2020**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable Doyet A. Early, III, Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge

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Case No. 2010-CP-40-4900

Appellate Case No. 2018-02229

---

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.

---

**PROOF OF SERVICE**

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I certify that on August 20, 2020 I served a copy of Reply to Appellant's Return to Respondents' Motion to Strike by depositing a copy of it in the United States Mail, postage prepaid, and by e-mailing a copy of the same, to the following attorneys of record:

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**Attorneys for Respondent  
Attorney General**

s/ Mark V. Gende  
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[kbw@swblaw.com](mailto:kbw@swblaw.com)

August 20, 2020

Columbia, South Carolina

**From:** [Gloria Coberly](#)  
**To:** [Charles Carpenter](#); "[adam@silvernaillawfirm.com](mailto:adam@silvernaillawfirm.com)"; [Jeff Smith](#); [Daryl Williams](#); "[esmith@scag.gov](mailto:esmith@scag.gov)"; "[sjones@scag.gov](mailto:sjones@scag.gov)"  
**Cc:** [Mark V. Gende](#); [Ken B. Wingate](#)  
**Subject:** Bauknight v. Pope; Appellate Case No. 2018-02229; Our File 4077-7389  
**Date:** Thursday, August 20, 2020 4:25:00 PM  
**Attachments:** [Reply to Appellant's Return to Respondents' Motion to Strike.pdf](#)  
[Ex A Motion for Extension of Time.pdf](#)  
[Ex B Email Exchange.pdf](#)  
[Ex C Order of the Supreme Court.pdf](#)

---

Dear Counsel:

Attached please find a Reply to Appellant's Return to Respondents' Motion to Strike (and exhibits), which is being filed with the Court of Appeals today.

Sincerely,  
Gloria Coberly



Gloria P. Coberly | *Legal Assistant to Mark V. Gende and William A. Neinast*  
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**SC Court of Appeals**

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