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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the 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

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 CONSOLIDATED RETURN TO SWEENEY, WINGATE & BARROW,
P.A.'S MOTION TO STRIKE APPELLANT'S AMENDED [FINAL] BRIEF AND FOR
OTHER RELIEF AND PETITION FOR RULE TO SHOW CAUSE**

Appellant Adele J. Pope (“Appellant”) opposes the motion filed by Sweeny, Wingate & Barrow, P.A. (“Wingate”) to strike Appellant’s Amended [Final] Brief, renewed motion to dismiss, and motion for costs and fees, as well as the contemporaneously filed Petition for Rule to Show Cause.¹ Once again, Respondents seek harsh sanctions based on completely fabricated allegations that Appellant and/or her counsel have intentionally broken the governing Rules and/or intentionally violated this Court’s Order. As set out below, the missing citations in the Amended Brief were simple oversights, which could have been easily corrected prior to its filing. For the reasons set forth herein, and based on the Affidavits filed herewith, the Motion should be denied in its entirety, and no Rule to Show Cause should be issued.

Wingate’s previous motion to strike (which is attached to and referenced in its most recent filing), 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).” (August 7, 2020 Motion at 2). Appellant incorporates her response of August 13, 2020, which is on file in this Court.

As to the omissions cited by Wingate in its most recent motion, Appellant responds to each as follows, using Wingate’s “Chart 1” numbering:

A5 – The omitted citation noted was intentional, and it was an appropriate correction of a typographical error in the initial brief. The sentence refers to *Wilson v. Dallas*, which supports the fact stated therein. The undersigned believes that the inclusion of a citation (notably to a document dated four years before the fact alleged occurred) in the initial Brief was a typographical error, and appropriately removed it. The document noted in the initial Brief is not within the record and could not be cited to.

¹ Because Wingate’s motion and petition build on one another and are based on the same allegations, Appellant files this consolidated response to more efficiently address both filings.

A7 – Appellant² did in fact correct the citations here to point to the place in the Record where the document referred to in the initial Brief appears. Ostensibly, Wingate takes issue with the omission of the citation at the end of the paragraph. Appellant notes, however that the next line was corrected to the same reference in the Amended Brief, and it is consistent with the undersigned’s understanding of Rule 204(b)(4) that a citation is not required at the end of each sentence, but to “support the salient facts alleged.” The Amended Brief complies with this rule, and the omission of the redundant citation was a proper correction of a typographical error as contemplated in Rule 211(b).

A8 – The citation in the initial Brief was to two documents which were not included in the Record; as a result, no citation to the record could be included in the final brief. Omitting this citation was in compliance with the changes allowed and required under Rule 211(b).

A9 – Same as A8, above.

A18 (partial) – The reference to the cited deposition was properly updated in the Amended Brief, but the email cited twice was not included in the Record and was therefore properly omitted under Rule 211(b).

A28 (partial) – The undersigned has again reviewed the Wingate Chart 1 and the Amended Brief and believes that all proper citations to the Record for references made in the initial Brief are included.

A31, A32 and A33 – The undersigned acknowledges that the changes noted in Wingate’s Chart 1 were not fixed in the Amended Brief. As set out in the Affidavit filed herewith, Appellant’s counsel was apparently working from an incomplete copy of Chart 1 in making final revisions to the Brief and is filing a proposed Brief herewith containing the citations noted in this section of Chart 1.

Appellant maintains that Wingate’s motion is baseless as to all but the last of these alleged changes. As to the final three entries on Wingate Chart 1, the undersigned has discovered in reviewing Wingate’s most recent motions against the Amended Brief that the copy of Chart 1 he used in working on the Amended Brief is missing pages 8 and 9, which were either inadvertently collated onto another document or failed to print. Because page 7 of Chart 1 only includes half a page of entries, it was not obvious that the undersigned’s copy of Wingate Chart 1 was incomplete.

² “Appellant,” as used herein, is primarily in reference to Appellant’s counsel Adam T. Silvernail. As set out herein and in the Affidavit of Adam T. Silvernail filed herewith, all of the actions Wingate complains of were carried out by the undersigned without meaningful involvement from his client.

Appellant must note that her counsel's initial email to Wingate (attached as Exhibit B to Wingate's motion) provided the Amended Brief to Wingate a day before its planned filing; specifically noted that a handful of citations in the initial Brief were to documents which were not included in the Record and therefore could not be made to cite to Record pages; and invited Wingate to note any issues which were overlooked. As evidenced by the above discussion of the issues Wingate now raises via motion (on which it, in turn, bases its Petition for a Rule to Show Cause), a professional response from Wingate could have avoided the elaborate motions practice in which it has elected to engage.

Wingate unintelligibly asserts that Appellant's offering a pre-filing review of the Amended Brief to Wingate -- and then proceeding with filing the Brief after Wingate's curt refusal -- somehow displays Appellant's and/or her counsel's "intent not to comply" with the Rules or this Court's August 21, 2020 Order. While Wingate fails to make any sort of logical connection between Appellant's alleged intent and actual conduct, its absurd assertion appears intended to hide the complete lack of evidence supporting its incorrect statement that Appellant's "actions are no accident or inadvertence."

Given that the final three sets of changes set out in Chart I were overlooked, Appellant files herewith a corrected brief addressing those issues.³ Appellant asks that this corrected Brief be accepted as filed, so that Wingate's repeated and wasteful motions practice will come to an end. Appellant further submits that, with the correction of the omitted items addressed in the corrective Brief, Wingate's motion should be denied in full.

³ Out of an abundance of caution, Appellant has also reinserted the extraneous citation of which Wingate appears to complain in Wingate Chart I, item A7.

AS TO THE PETITION FOR RULE TO SHOW CAUSE

As set forth above, most of the “issues” addressed in Wingate’s motion to strike are not issues at all, but are allowed under the applicable Rules. Those few oversights addressed on pages 8 and 9 of Wingate Chart 1 were just that, as set out above and confirmed in the Affidavit of Adam T. Silvernail filed herewith. To the extent those oversights fail to comply with this Court’s August 21, 2020 Order, the noncompliance was unintentional, harmless and has been corrected in the Corrective Brief filed herewith.

Wingate thoroughly sets forth the controlling law on contempt, but fails to advance any cognizable evidence of willful or intentional violations of any Rule or Order. Wingate has thus failed to advance “a prima facie case for contempt.” *Ex parte Cannon*, 385 S.C. 643, 660, 685 S.E.2d 814 (2009) (quoting *Miller v. Miller*, 375 S.C. 443, 454, 652 S.E.2d 754, 760 (Ct.App. 2007)). As Wingate notes, “civil contempt must be proven by clear and convincing evidence...” *Cannon*, supra, at 661, 685 S.E.2d at 824 (citing *Poston v. Poston*, 331 S.C. 106, 113, 502 S.E.2d 86, 89 (1998)).

Although Wingate does attach an attorney’s verification that its allegations are “true to the best of [his] knowledge, information and belief,” the facts set forth in the Petition are entirely premised on the illogical idea that Appellant’s counsel providing the Amended Brief to Wingate prior to filing it (and specifically bringing Wingate’s attention to certain matters addressed in its previous motion for which no Record citation could be made) displays intent to violate Rule 211(b) and/or this Court’s Order. In fact, the undersigned’s initial email to Wingate indicates counsel’s genuine belief that all matters had been appropriately addressed pursuant to this Court’s August 21, 2020 Order.

Despite Wingate’s failure to make a *prima facie* case for contempt, Appellant submits

that the affidavits of Adam T. Silvernail, Charles E. Carpenter, Jr., Daryl L. Williams, Thomas H. Pope III and W. Jeffrey Smith, filed herewith, meet any burden on Appellant to overcome the allegations of contempt. Silvernail's affidavit shows clearly that the omission was unintentional. Pope's Affidavit confirms that she had no direct involvement in the preparation of the erroneous brief and had no intent that the brief be submitted incorrectly. The other affidavits, some given by extraordinarily experienced appellate lawyers, make clear that the errors in the Amended Brief, while not desirable, are not unusual in a case with such a large record and complicated history.

Of the nine (9) alleged failures to comply, Appellant has demonstrated above that six (6) of those were not violative of any Rule and/or *were* corrected in the Amended Brief. The remaining three were an unfortunate but inadvertent oversight and have been corrected in the Brief filed herewith.

Because Wingate has failed to demonstrate any cognizable grounds for a finding of contempt, and because neither Appellant nor her counsel has willfully or intentionally violated any Rule or Order, Appellant submits that the Petition for Rule to Show Cause should be denied.

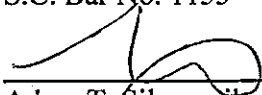
CONCLUSION

For the reasons set forth above and in the Affidavits filed herewith, Appellant respectfully asks that the Court deny the motion to dismiss her appeal or strike any of her filings in its entirety, deny the petition for a rule to show cause, and accept her Corrected Final Brief as filed herewith.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

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September 25, 2020

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PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of each of the following:

1. Appellant's Consolidated Return to Motion to Strike and Petition for Rule to Show Cause;
2. Affidavit of Adam T. Silvernail;
3. Affidavit of Charles E. Carpenter, Jr., with Exhibits;
4. Affidavit of Thomas H. Pope III;
5. Affidavit of Daryl L. Williams;
6. Affidavit of Adele J. Pope, with Exhibits; and
7. Appellant's Corrected Final Brief

on all Respondents on the date shown below, by hand-delivering a copy of the same to their counsel, addressed as follows:

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September 25, 2020