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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.

AFFIDAVIT OF ADAM T. SILVERNAIL

PERSONALLY APPEARED BEFORE ME Adam T. Silvernail, who being duly sworn, deposes and says:

1. I am over the age of eighteen (18), competent to testify and give this affidavit of my own personal knowledge.

2. I am a member of the South Carolina Bar, having been admitted in November 2010, and I am one of the attorneys for Appellant Adele J. Pope in this appeal.

3. In addition, I represent or have represented Mrs. Pope in multiple other matters in this Court and the Circuit Court which relate to the Estate and 2000 Trust of the late James Brown.

4. I was admitted to the Bar in November 2010, and I joined Mrs. Pope's existing counsel in representing her at that time. The lawsuit underlying this appeal (known as "Richland 4900") had been pending for about six months.

5. From its inception, Richland 4900 has been extraordinarily slow and difficult, with Sweeney, Wingate and Barrow, P.C., the Plaintiffs' counsel, filing dozens of motions to delay and avoid basic discovery. Simple matters like beginning to depose the dozen-plus Plaintiffs took years¹, and Plaintiffs have never meaningfully responded to requests for production of documents.

6. At its commencement, this case was the first instance of the South Carolina Attorney General and private plaintiffs joining together, represented solely by a single private law firm, to sue two South Carolina citizens for money damages. To date, I have never become aware of a similar case anywhere in the Country. We sought early on to have this case dismissed and/or have private counsel Wingate enjoined from representing the AG and private plaintiffs in this tort suit, but the Circuit Court declined to do so. This Court declined to review the matters as premature and dismissed our Petition for Writ of Prohibition as a result of its declining to take the appeal.

¹ Although this case was filed in May 2010, the first Plaintiffs' depositions were not completed until late 2012, after months of effort on our part to secure them. To put in perspective the level of difficulty of making those depositions happen, I note that in December 2012 Mrs. Pope had to listen by phone from a storage closet in the hospital where her daughter was being treated for a life-threatening brain tumor discovered just the day before the deposition of Daryl Brown. We knew that any necessary rescheduling of that deposition would delay this case for months more. Most of the Plaintiffs' depositions were taken in 2017, and some are yet to be taken.

7. During the course of this case, Plaintiffs have repeatedly moved for protective Orders regarding depositions and document production. Most of these motions have never been heard, ostensibly due to Plaintiffs securing multiple actual or constructive stays of the case; the assignment and reassignment of this case to three (3) different Circuit Court judges; and the sheer volume of motions filed. To be clear, we have filed numerous motions to compel depositions and discovery, as well as a number of substantive motions, primarily attempting to narrow and dispose of issues in this case via partial summary judgment; most of these have also gone unheard.

8. In addition to this case, I represent or have represented Mrs. Pope in two FOIA cases (collectively involving Plaintiffs AG and Legacy Trust, and in one of which Wingate sought to intervene on behalf of his private clients for the explicit purpose of ensuring the AG did not release public documents); a Federal Court case (in which Plaintiff Bauknight was involved, represented by Nexsen Pruet, LLC); and Aiken County Case No. 2013-CP-02-1337, which is Mrs. Pope's action against the Estate and 2000 Trust of James Brown for payment related to her service as Special Administrator, Personal Representative and Trustee of the Estate of James Brown and James Brown 2000 Irrevocable Trust (in which Plaintiff Bauknight is represented by Nexsen Pruet, LLC).

9. Although the cases in which I have represented Mrs. Pope have continuously constituted a meaningful portion of my practice, I have represented diverse clients in various civil actions (often concerning estates, trusts, fiduciary duties and/or property) in the Probate and Circuit Courts in more than a dozen counties, as well as this Court, the South Carolina Supreme Court, the Federal District Court and the United States Court of Appeals for the Fourth Circuit.

10. I began my practice as a sole practitioner and, other than approximately a year and a half at a small firm in 2014-2016, have been a sole practitioner for my entire career. Having no

in-house colleagues for day-to-day guidance has left me deeply appreciative of a handful of lawyers who were generous with their time and knowledge early in my career, as well as countless lawyers who have kindly, gladly answered questions or given thoughtful input on various issues. My family has no other lawyers, and I had no association with the profession prior to law school, other than having worked as a staff member in Mrs. Pope's office. Nonetheless, the Bar has been a welcoming, supportive and collaborative community.

11. Because this and the related cases were among the first I worked on in my practice, I am thankful that my mentors were there to make clear that the conduct of this litigation was not representative of how we practice law. In addition to the fact that this case was brought against two practicing South Carolina lawyers, each with long and exceptional careers, masses of procedural motions and "gotcha" litigation have plagued it from its inception.

12. When I had been practicing for about a year, the Wingate firm moved for sanctions against Mrs. Pope and me in a FOIA case we filed against the AG. The Wingate firm had sought to intervene for the express purpose of keeping the AG from releasing its contract with the Wingate firm. When we pointed out that the FOIA statute provided that interfering with the FOIA rights of a third party was a misdemeanor, the Wingate firm alleged that I had violated Rule 4.5 of the Rules of Professional Conduct. Rule 4.5 prohibits leveraging threats of criminal prosecution in order to better one's position in civil litigation, but we had threatened nothing and sought to gain no advantage – only to properly vindicate Mrs. Pope's FOIA rights. The motions to intervene and for sanctions were never heard and were either withdrawn or abandoned by the Wingate firm.

13. That motion was startling to receive at that point in my practice. I take very seriously my obligations to the Court, my clients, my colleagues and third parties. I was fortunate to learn a great deal about those obligations and how to mind them from Mrs. Pope during my time

on her staff and as her attorney.

14. Unfortunately, moving for sanctions, suggesting my conduct or my client's was sanctionable, and/or moving to strike based on allegations of false statements or noncompliance with governing rules would quickly become quotidian in this and the other James-Brown-related cases in which I have represented Mrs. Pope. Dozens of such motions have been filed in the lower Courts and in this Court. To date, no sanctions have ever been granted against Mrs. Pope or me in any case where I represent her. A minority of the motions to strike have been granted to correct procedural issues, but the other relief (such as dismissal, attorneys' fees or other sanctions) usually sought in those motions has been denied.

15. I note that I have never been subject to a motion for sanctions or a motion to strike a document for noncompliance with the Rules outside of cases involving the Wingate firm and/or Nexsen Pruet, LLC as counsel for Plaintiff Bauknight.

16. The background above is, I believe, useful context for the Wingate firm's most recent motions. As noted in our return, I acknowledge that an oversight led to the last three sections of citations listed in Wingate Chart 1 not being corrected in our Amended Brief. I now know that this was a result of my printed copy of Chart 1 missing its last two pages. To be clear, I am certain this was a result of my own collating or printing error, and I take full responsibility for the inadvertent error.

17. I am compelled to give this affidavit in light of the Wingate firm's seeking to hold Mrs. Pope in contempt for what amounts to an embarrassing (to me) but easily corrected error.

18. In the previous motion to strike our Brief, the Wingate firm alleged Mrs. Pope and her counsel had undertaken an intentional and nefarious scheme to somehow manipulate this Court's thinking by omission of certain citations to a document in the Record which the Wingate

firm posits to be somehow damaging. Notably, the Brief as filed still included numerous references to that very document.

19. In our response, I noted truthfully that Mrs. Pope had no direct involvement in the preparation or filing of the final Brief; that the omissions were inadvertent on my part; and that we were glad to file an amended Brief to correct them. Upon review, it became clear that I had utilized a non-final draft of the initial Brief to create the final, and that was why the content differed.

20. In our response, which I signed under the applicable Rules governing attorneys' candor with the Court and honesty among one another, I noted that the initial Brief was filed in mid-2019, when I was still very much in the midst of recovering from Acute Lymphoblastic Leukemia (ALL) and a therapeutic stem-cell transplant which treated it. As a result, by mid-2019 I was just beginning to spend any meaningful time practicing law; our filings were thus being circulated among client and multiple attorneys prior to my final review and filing.

21. From 2011-late 2017, I had consistently been the attorney on Mrs. Pope's team primarily responsible for drafting, finalizing, serving and filing documents with input and participation from the other attorneys and Mrs. Pope. In late 2017, I began experiencing health issues, and in January 2018, I was unexpectedly admitted to the hospital in dire shape and diagnosed with ALL. The treatment for ALL is intense, with a multi-chemotherapy regimen requiring more than a week per month of inpatient hospital stays. I did those treatments through June 2018, after which I was admitted to MUSC for a stem-cell transplant. At the time of my diagnosis, I had a very active and full solo practice (with no staff), and my health crisis caused an immediate professional crisis for my numerous active litigation files. The first few months of my illness and treatment were devoted to resolving a few matters that were in their final stages and working with clients to locate replacement counsel for the rest. Mrs. Pope had to immediately

refocus her attorneys to take on the day-to-day management this and her other cases (one of which was mid-trial at the time), where I had traditionally been available and relied upon among our team for many aspects of the litigation. As a result of her extra work and that of my current and former co-counsel, I did not have to withdraw from representing her.

22. For the stem-cell transplant, one is admitted to the hospital for several days of full-body irradiation, followed by several days of very intense chemotherapy. The goal is to completely kill off the patient's bone marrow (which produces our blood cells, including those which constitute our primary immune system) to make room for the transplanted stem cells to take foot and, hopefully, replace the cancerous bone marrow with that of the healthy donor.

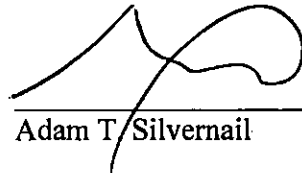
23. I spent a month in the hospital at MUSC and was required to live in Charleston near MUSC for another three months. While I have been fortunate that my recovery was relatively uncomplicated, returning to "normal" life is slow for any transplant patient. While I was back in Columbia during 2019, I had appointments at MUSC between weekly and monthly (depending on how things were going) during that year and suffered great fatigue and continuing medication adjustments. My initial return to practicing law was an oral argument before this Court in February 2019, followed by two others during the remainder of the year and one or two Circuit Court hearings during that period. In August 2019, when the initial brief was filed in this case, I was working approximately 10 hours per week at most. Today, I continue to take immunosuppressants and several other drugs to manage my immature immune system. I still go to MUSC at least monthly to monitor my recovery and manage chronic graft-versus-host disease, which results from transplants. I do not currently have a full-time law practice, although I have been able to resume taking on some cases.

24. The medical detail above is not something I relish addressing in a Court filing or

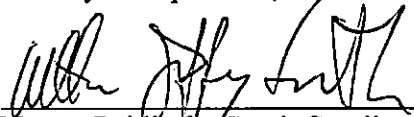
relying on to explain my error, but the Wingate firm's Reply to our previous return suggests that I was untruthful with the Court in my explanation for the error. I submit this affidavit to assure the Wingate firm and this Court of my candor.

25. Because it has never been my experience to have another attorney suggest that I was untruthful or intentionally shirked any Order or Rule, I again affirm that none of the oversights complained of was intentional. In fact, I had hoped to ensure the Wingate firm's satisfaction by providing a draft of our Amended Brief prior to filing for their review. Instead of noting my oversight – which could have and would have been corrected easily prior to filing – the Wingate firm ascribed some unintelligible ill-intent to my effort at collaboration and instead filed the instant motion and petition to punish Mrs. Pope for what was an inadvertent oversight.

FURTHER DEPONENT SAYETH NOT.


Adam T. Silvernail

SWORN TO BEFORE ME THIS
25th day of September, 2020.


Notary Public for South Carolina
My Commission expires: 2/27/2027

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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 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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Counsel for Appellant

September 25, 2020