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SEP 25 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals
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

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 IN SUPPORT OF APPELLANT'S OPPOSITION
TO RESPONDENTS' MOTION TO STRIKE OR DISMISS
APPELLANT'S BRIEF**

1. I am an active practicing lawyer and have been a member in good standing of the South Carolina Bar since November 1974 (Bar No. 4508). My resume is attached as Exhibit A.
2. My practice is almost 100% litigation and I have been counsel in at least 25 appeals to the South Carolina Court of Appeals and the South Carolina Supreme Court over the last 40 plus years. I have also represented appellants and respondents in cases on appeal to the United States Court of Appeals for the Fourth Circuit.
3. I am familiar with the fact that in complex cases where the record on appeal is voluminous there can be, and oftentimes are, instances where designations and counter-designations are confusing and tedious and preparing a Final Brief with accurate citations is fraught with the potential for error.
4. As counsel for an appellant, I have always done my best to include in the record the correct and complete matters designated by counsel for the parties. I have also attempted to prepare my Final Brief with a view towards having accurate citations to the Record on Appeal. However, I estimate that I have been counsel for appellants in four or five cases where my efforts fell short. In those instances, I have had to prepare new revised volumes (or correct the volumes) of the record on appeal and/or have had to refile my final brief. When my "errors" were identified by opposing counsel or the court, I readily corrected them. I do not recall a single incident when opposing counsel considered my errors as intentional or aggressively moved to strike my brief or my appeal.
5. I am familiar with the Rules of Professional Conduct, and for the last at least 30 years, I have represented lawyers/respondents at the Office of Disciplinary Counsel (and its predecessor the Commission on Lawyer Grievances).
6. Not related to the James Brown litigation, I have worked on legal matters with Adam Silvernail (Appellant's counsel) on several occasions over the last five or six years and I have found him to be highly competent and totally professional as a practicing lawyer. Adam was recognized as a "Rising Star" in South Carolina by Super Lawyers in 2019. His work is thorough and diligent and he is highly ethical.
7. I have read the Respondents' Motion to Strike Appellant's Amended Final Brief and to Dismiss same, as well as their Petition for a Rule to Show Cause seeking to hold Appellant Adele Pope in contempt and to award sanctions against her.
8. I have also reviewed Appellant's Consolidated Return to Sweeny Wingate's Motion to Strike and Dismiss and to Petition for Rule to Show Cause prepared by Mr. Silvernail dated September 25, 2020, together with his affidavit.

9. The Respondents' filings are stunningly harsh and, as explained by Mr. Silvernail, overstated and/or incorrect. It is true that there were oversights by counsel in the inclusion or omission of certain case cites or cites to the Record on Appeal. He has fully explained these matters in his affidavit (he was deathly ill and out of the office for many months).
10. One of the primary reasons that there were some deficiencies in Mr. Silvernail's citations in the Final Brief was because at the time he was working on this he was in the recovery stage of a serious health emergency (Acute Lymphoblastic Leukemia and stem-cell transplant) which resulted in his utilizing a non-final draft of the Initial Brief to create the Final Brief. (Silvernail Affidavit, Para. 19-24). Further, he was only able to work 10 hours per week during this time. (Silvernail Affidavit, Para. 23).
11. By way of context, Appellant's counsel was dealing with a Record that is voluminous (over 2,300 pages), and which spans a period of over 12 years.
12. Respondents allege that counsel for Appellant's actions were intentional. In my experience, Mr. Silvernail's integrity has never been challenged, and should not be here. Many so-called "mistakes" with citations were clearly inadvertent, as they did not necessarily benefit Appellant's position – e.g., A-3 through A-9, A-12 through A-19 on Respondents' chart referenced "citation removed" in Final Brief. It would not be to Appellants' advantage not to include these cites. These (as well as omissions referenced in A-19 through A30) are oversights by counsel for Appellant that he certainly wants to include in the Final Brief and is doing so.
13. In my 45 years of appellate practice, I have never encountered a filing such as Respondents' Motion to Dismiss Appeal and Petition for Contempt. In the few cases where I have made inadvertent or incorrect citations, where brought to my attention, I have discussed these with opposing counsel and made whatever revisions were necessary. No motions have been filed.
14. It is the customary practice in South Carolina that errors or omissions in a Record on Appeal or in a Final Brief are addressed by a phone call from opposing counsel where these matters are resolved by counsel. Respondent's counsel did not do so here.
15. There appears to be a pattern here. As identified in the Silvernail Affidavit, the Wingate Firm has filed sanctions motions against Appellant multiple times (none successful). (Silvernail Affidavit, Para. 14-15).

16. It is a matter of record that Appellant during her service as personal representative and trustee of the James Brown estate took positions contrary to Respondents herein as follows:

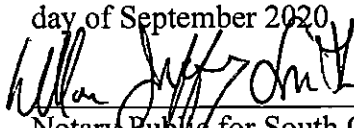
- a. She challenged and appealed the "settlement" initiated by the Attorney General, Hynie, and certain heirs in 2008 to divide up the estate assets contrary to the stated terms of the Will of James Brown that left the preponderance of his Estate to a Trust to educate poor children of South Carolina and Georgia; and,
- b. She asserted in opposition to the settlement that Tommie Rae Hynie was not the wife of James Brown.

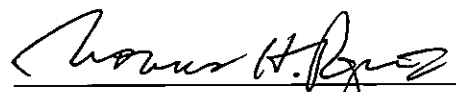
17. Appellant's positions on both issue were vindicated by the South Carolina Supreme Court in two separate rulings:

- a. In Wilson v. Dallas, 403 S.C. 411, 743 S.E. 2d 746 (2013), the South Carolina Supreme Court agreed with Appellant and reversed the lower court's order approving the settlement because the "settlement" constituted a dismemberment of the wishes of James Brown's will, the Attorney General's intervention was improper, and the evidence did not support that the agreement was just and reasonable.
- b. In Brown v. Sojourner, S.C. Supreme Court Opinion No. 27982 (filed June 17, 2020), the Supreme Court reversed the lower court order granting summary judgment for respondents on the issue of Tommie Rae Hynie being Brown's wife. It ruled that as a matter of law, Tommie Rae Hynie was not the surviving spouse of James Brown and directed the estate be probated in accordance with Brown's Will.

The effect of these two Supreme Court opinions was to eviscerate the claims of respondents. It can be inferred that the respondents' acrimonious filings spring from their animosity, as they are a dramatic departure from the customary practice with which I am familiar.

18. It would be a sad commentary about our profession if sanctions or contempt motions were to ever become an acceptable "litigation tactic." I have had plenty of cases which have been heated and even acrimonious; however; I have never sought contempt or sanctions against counsel. It has been said that "if opposing counsel ever file a sanctions motion against you, they are desperate."

SWORN to before me this 25
day of September 2020)
)
(L. S.)
Notary Public for South Carolina
My commission expires: 2/27/2027


Thomas H. Pope III

Thomas H. Pope III

Member

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Practice Areas	Trials in all federal and state courts; Personal Injury; Wrongful Death; Products Liability; Business Litigation; Professional Negligence; Condemnation; Attorney Disciplinary Matters; Class Actions.
Peer Review	AV Preeminent Rating by Martindale Hubbell.
Education	University of South Carolina, J.D., 1974, University of the South, B.A., 1968; Admitted to Practice, South Carolina, 1974
Memberships	<ul style="list-style-type: none">▪ Fellow, American College of Trial Lawyers (1995-Present; Chair, South Carolina Chapter 2015-17)▪ American Board of Trial Advocates (Advocate; President, South Carolina Chapter, 2005)▪ Listed in South Carolina Super Lawyers (2008-Present)▪ Newberry County Bar (President, 1984)▪ American Bar Association (Member, Litigation Section)▪ South Carolina Bar; South Carolina Trial Lawyers Association▪ The Association of Trial Lawyers of America▪ Fourth Circuit Judicial Conference (Permanent Member)
Military	Lt. j.g., USNR, 1968-1971; Officer in Charge, Swift Boat (PCF 102) Mekong Delta, VietNam (1969-1970)
Other	South Carolina Board of Bar Examiners, 2006-2014; South Carolina Senate, Member, 1984-1992; Joint Judicial Screening Committee, Chairman, 1991-1992; South Carolina Bar Judicial Qualifications Committee, Chair 1992-1993; University of the South, Member, Board of Trustees, 1999-2002; Certified Mediator and Arbitrator.
Litigation Experience	products liability; breach of fiduciary duty; class actions; auto and truck collisions; professional negligence; business torts; eminent domain; wrongful death; defamation; environmental; employment; and general litigation. Awarded The Jeter E. Rhodes, Jr. Trial Lawyer of the Year in February 2018 by the South Carolina Chapter of America Board of Trial Advocates.

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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 Respondents

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Robert D. Cook, Solicitor General
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Telephone: (803) 734-3680
esmith@scag.gov

Counsel for Respondent Attorney General



Adam T. Silvernail
Counsel for Appellant

September 25, 2020