

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Nov 05 2020**

APPEAL FROM RICHLAND COUNTY  
Court Of Common Pleas

S.C. SUPREME COURT

The Honorable Doyet A. Early, III, Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge  
Trial Court Case 2010CP4004900

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Appellate Case No. 2020-001383

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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 Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and 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 Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown - Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., And 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 Petitioner

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**RETURN OF ATTORNEY GENERAL IN OPPOSITION  
TO MOTION TO SUPPLEMENT THE RECORD**

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The Attorney General most strongly opposes this motion to supplement the record with documents never presented to the circuit court in this case. Including those documents would be is contrary to the authority below, including the Court of Appeals Order of April 26, 2018, directing Petitioner not to include matters in the Record on Appeal which were not presented to the circuit court.

As Petitioner recognizes, “[f]ew appeals involve the need for a supplemental record.” Toal, Walker, Baker, *Appellate Practice in South Carolina*, 3d ed., p. 417. Petitioner’s Motion is not one of the “few.” Those motions are limited to the addition of matters presented to the circuit court and would not include the documents Petitioner seeks to add. Rules 210(c)(“The Record shall not . . . include matter which was not presented to the lower court or tribunal.”) and 212(a), SCACR. As stated in Toal, “a party may not seek to include material not previously presented to the lower court . . . .” Toal at p. 418, citing Rule 210(c), SCACR, and *Williamsburg Rural Water and Sewer Auth.*, 367 S.C. 566, 627 S.E. 2d 690 (2006)(“Nothing in the appellate court rules permits a party to unilaterally add after-created evidence to the record.”). This Motion to add documents never presented in this case is contrary to this authority and the Court of Appeals Orders referenced below, serves only to delay resolution of this matter further, adds nothing to the issues in the Petition for Certiorari and attempts to add documents that address points of which Petitioner was informed years ago.

Pope seeks to submit documents addressing whether the Office of the Attorney General was represented by the law firm Sweeny, Wingate & Barrow including an April 24, 2013, letter from former Chief Deputy Attorney General John McIntosh stating that the “Office did not employ the firm’s services . . . [and] the Office of the Attorney General has never been a client of [SWB] in this matter.” These documents are hardly “stunning” or “startling” as Plaintiff claims.

She was informed of this position years ago as shown by documents she included in the Record on Appeal in this case. In a Return she filed in this case in 2013, she said that the Attorney General had informed SWB that the firm did not represent the AG's Office. R. V. II, pp. 794 & 795. She also includes in the Record a status report she filed in 2013 with a similar statement. R. V.II, p. 1800. Although she claims that these documents she wishes to add were not produced pursuant to discovery or Freedom of Information Act requests, Petitioner does not identify any such requests for these documents that she seeks to add. Moreover, her 2013 filings show that she was informed of the position of the Attorney General as to its relationship to SWB. She also had ample opportunity to explore questions of representation and did so in her nearly three day long deposition of Sonny Jones, Assistant Deputy Attorney General in 2017 in *Pope v. Estate of James Brown, et al.*, 2013CP0201337 (now appeal 2019-00362), a deposition that she references in her September 17, 2018, response to a Motion to Strike her Reply brief in the Court of Appeals in this case. She also deposed others in the Attorney General's Office as she references in that Return. Therefore, Petitioner cannot claim surprise as to these documents.

The April 23, 2013, letter Petitioner seeks to add was about whether a retainer agreement existed. Regardless of the existence of such an agreement, the Attorney General clearly benefited from representation of SWB of the common interest of the charitable beneficiaries. As stated by Senior Assistant Deputy Attorney General Sonny Jones on the Record in a motion argument made on August 29, 2016, in case 4900 which Plaintiff attended:

so there's no question at this juncture when this case came out that Mr. Bauknight was hiring the Wingate firm. You have to keep in mind also, Your Honor, from what I just said about the law, is we only have one reason to be in this case, and that is to protect the charitable beneficiaries and to protect the charitable trust. Under 62-7-405, the probate code allows the attorney general, a trustee, or a party with a special interest to protect the charitable trust. so when Mr. Bauknight was appointed back in the earlier case by you, we're satisfied with Mr. Bauknight, we're stepping back. In this case when Mr. Bauknight brought the action, Mr. Wingate's firm, they were

representing our interest. They, in effect, were our lawyers. . . . [Exs. pp. E9 -11 (Record case 4900, V. III (cover), pp. 1177 (Transcript Cover) and 1222- 1223, (Tr. pp. 1 & 102, l. 17 – p. 103, l. 8)]

our job is done, Mr. Bauknight is still there, the courts appointed him, got a great firm with Mr. Wingate, he's representing Wingate firm to Mr. Bauknight, our interest, and the charity . so they're our lawyers in effect because they are representing our interest. [Exs. p. 12, (R., V. III, p. 1224 (Tr. p. 104, ll. 12- 18))]

As stated in the Attorney General's brief in this case:

Petitioner cites no authority whatsoever to support her contention that an interest of the Attorney General cannot be represented by private counsel. The Sweeny, Wingate and Barrow firm represents the Plaintiff / Trustee, Russell Bauknight, the Trust and Personal Representative of the Brown Trust and Estate. R. V. I, p. 179 (Complaint, ¶2). As noted, the Attorney General is a party as the protector of the charitable beneficiaries of the Estate and Trust. R. V. I, p. 179 [Complaint, ¶3]. No authority whatsoever holds that the Attorney General cannot be represented by private counsel under such circumstances. She is wrong in stating that the Attorney General brought the suit for the benefit of individuals. He participated only to benefit the charitable beneficiaries.

Brief, pp. 23 & 24. Regardless of a retainer, the Attorney General clearly benefited from representation of SWB of the common interest of the charitable beneficiaries.

The Record in this case has been complete since Petitioner filed the Supplemental Record on Appeal on December 17, 2018, which consisted of a document designated by the Attorney General but omitted. She has been directed at least twice by the Court of Appeals not to designate or reference documents not presented to the circuit court as part of this case prior to the appeals. Order granting motion to strike, (2017-001899), Court of Appeals, April 26, 2018; Order granting motion to strike (Appeal 2018-002229 from same circuit court case), May 21, 2020. (Copies attached in addendum). Rule 210(c), SCACR, is quite clear in stating that “[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal.” Petitioner has filed a five volume, over 220 page Record on Appeal in the instant appeal. Her efforts to add to the already voluminous record with documents never presented to the circuit court or court of appeals should be brought to an end.

## CONCLUSION

As noted above, Petitioner's Motion is not one of the "[f]ew appeals involv[ing] the need for a supplemental record." Toal, Walker, Baker, Appellate Practice in SC, 3d ed., p. 417. It is contrary to the Court of Appeals Orders regarding the record and the Appellate Court rules in seeking to add documents never presented to the circuit court or court of appeals. Petitioner was informed of the position in these documents years ago. The motion serves only to delay this matter, and should be quickly denied; however, *arguendo*, should this Court decide to grant this motion, the Attorney General would respectfully request leave to respond with counter designations. Rule 212, SCACR.<sup>1</sup>

Respectfully submitted,

/s J. EMORY SMITH, JR.

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ATTORNEYS FOR RESPONDENT

ATTORNEY GENERAL

November 5, 2020

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<sup>1</sup> The Attorney General does not designate supplemental materials now under Rule 212(a), SCACR, because Petitioner's Motion falls outside the scope of the Appellate Court rules by seeking to add documents never presented to the circuit court or the court of appeals. Toal, and *Williamsburg, supra*.