

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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Nov 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
Trial Court Case 2010CP4004900

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.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 children, 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 children, 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.

**RETURN OF ATTORNEY GENERAL TO MOTION FOR JUDICIAL NOTICE
AND EXPEDITED CONSIDERATION**

Subject to and without waiving his positions regarding his being dropped as a party to this case,¹ the Attorney General submits this Return in opposition to Appellant's Motions. Appellant's styles her Motion as one for judicial notice, but it is in effect one to supplement the Record. Neither is appropriate for reasons set forth in the Return of Sweeny Wingate and Barrow for the other Respondents. The Attorney General concurs in the legal arguments in that Return and notes the following.

Appellant attaches and seeks judicial notice of documents never presented to the circuit court prior to the appeal in this case including documents from Appeal 2020-000967, to which the Attorney General is not a party. Her doing so is a blatant violation of the Appellate Court rules, and the order of this Court of May 21, 2020 ("Appellant is reminded the record on appeal may not include any matter not presented to the lower court."). Appellant also references and characterizes, without citations, testimony in depositions in other cases which are outside the record in this case in violation of the Rules and Order of this Court. *See*, Motion at page 8; Order, Appeal 2017-001899 (April 26, 2018)("In the . . . amended initial brief, Appellant shall not list or reference any orders or other documents that were not presented to the circuit court as part of this case."). Her arguments in her Motion essentially attempt to add supplemental briefing to this case contrary to the Appellate Court rules. *See, eg.*, Motion pp 9 -12; Rule 208, SCACR.

¹ Before the circuit court granted summary judgment for the Plaintiffs as to Appellant's counterclaim (R. p. 188 - Order dated June 23, 2017, and filed July 8, 2017), the lower court dropped the Attorney General as a party to this case. R. p. 180 (Order dated May 31, 2017, and filed June 12, 2017). The Order dropping him is a subject of Appeal 2017-1899(Petition for Cert. pending, 2020-001383), and is included in the Record in that case. The Attorney General preserves and does not waive any arguments that he has regarding his being dropped as a party to this case.

The Attorney General does not see a need to expedite consideration of this appeal, but he certainly does not object to this Court's consideration of this appeal at whatever time is convenient for the Court. The briefs and record have been filed, and Appellants efforts to bring in additional documents are contrary to the Appellate Court rules and the Orders of this Court.

The Attorney General respectfully requests that this Court deny this Motion for Judicial Notice or strike it as requested by SWB for the other Respondents. The Attorney General does not request attorney's fees.

Respectfully submitted,

/s J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General

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ATTORNEYS FOR RESPONDENT
ATTORNEY GENERAL

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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. 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.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Return to Motion for Judicial Notice, etc., by emailing it to counsel for the other parties at the email addresses below this

November 20, 2020 (Copy of email attached):

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November 20, 2020

Emory Smith

From: Emory Smith
Sent: Friday, November 20, 2020 11:41 AM
To: 'Adam Silvernail'; 'Mark V. Gende'
Cc: 'Charles Carpenter'; 'Jeff Smith'; 'Daryl Williams'; 'Ken B. Wingate'; Aaron J. Hayes (AJH@swblaw.com)
Subject: RE: Bauknight v. Pope; Appellate Case No. 2018-02229
Attachments: Return of AG to Motion for Judicial Notice, etc. for efilng (02433193xD2C78).PDF

Counsel:

Attached and hereby served upon you is the Attorney General's Return to Appellant's Motion for Judicial Notice, etc.

Emory

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