

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

Nov 23 2020

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.

**APPELLANT'S RETURN TO MOTION OF SWEENEY, WINGATE & BARROW, P.A.
TO STRIKE**

Appellant Adele J. Pope (“Appellant”) submits this return to the motion of Sweeny, Wingate & Barrow, P.A. (“Wingate”) to strike, for attorneys’ fees and for an extraordinary injunction, set out as part of its Return to Appellant’s Motion for Judicial Notice and other relief.¹ For the reasons set forth below, Appellant submits that Wingate’s motion should be denied in its entirety.

SUMMARY OF APPELLANT’S POSITION

Wingate’s motion appears to be based the longstanding desire of Wingate and certain Respondents to silence Appellant. Wingate’s extraordinary “request” that this Court enjoin Appellant from “additional filings of this sort” and that they be awarded attorneys’ fees is a continuation of their pattern of seeking to have Appellant punished for appealing an order which dismembered James Brown’s Estate Plan and defending herself in this case, which Wingate filed a decade ago on behalf of the AG and seventeen private Plaintiffs. This Court has declined to grant any of Wingate’s numerous motions, suggestions and requests that this Court take unjustified punitive measures against Appellant, and she respectfully submits that Wingate is again not entitled to any such relief.

ARGUMENT

I. Appellant’s Motion is Proper, and the Motion to Strike is Based on Wingate’s Continuing Desire to Keep Material Information from this Court.

Wingate, referring to its arguments against Appellant’s motion, goes on to label it “egregious” and asks this Court to consider the motion “frivolous” as a basis for Wingate’s motion to strike the document. (Return at 10). Wingate cites to Rule 269, but does not offer any contextual

¹ The South Carolina Attorney General, in its separate return to Appellant’s motion, references Wingate’s motion to strike without asking for affirmative relief. To the extent the Attorney General’s Return is interpreted to seek affirmative relief, Appellant submits this return in opposition to it as well.

analysis other than its arguments for denying the motion. In effect, it appears that Wingate seeks to have the motion stricken from the record on the same basis it seeks to have the motion denied. This is inadequate. The S.C. Supreme Court has recently considered the issue of an allegedly frivolous motion² in *Preservation Society of Charleston v. S.C. Dept. of Health*, S.C. Sup.Ct. Op. No. 27949 (February 19, 2020). The Court in that case found that in order for a motion to be frivolous, it had to advance a legal argument that “a reasonable attorney presented with the same circumstances” would believe to have no basis and/or be filed solely for the purpose of delay. The Court proceeded to find that the motion at issue in that case was not frivolous, even though it was unsuccessful and found to be based on a flawed legal argument. *Id.*

Appellant is represented in this case by counsel who collectively have extensive experience in litigation and appeals, and they believe not only that the motion is not frivolous, but that it should be granted. The documents released by the AG for the first time in October 2020, which prompted Appellant’s motion, are extraordinary and important.

Although Wingate cites previous Orders from this Court in this and other cases as support for Wingate’s assertion that Appellant has previously violated the Rules, Appellant submits that the few instances in which this Court has struck one of her filings, it was the result of clerical errors and/or determining what matter was presented as part of the voluminous record below.

II. Wingate Inappropriately asks this Court to Grant Extraordinary and Uncalled for Relief against Appellant without any Basis.

Without making any substantive argument, Wingate asks this Court to issue “an Order . . . enjoining Appellant from future filings of this sort.” This request is supported only by a citation

² Although this case involved an issue under the S.C. Frivolous Proceedings Sanctions Act, Appellant submits that the discussion of what amounts to a “frivolous motion” would apply to any consideration of whether a filing is frivolous.

to Rule 269, which confirms this Court’s power generally to discourage frivolous filings, and *In re Maxton*, 325 S.C. 3, 478 S.E.2d 679 (1996). In addition to Wingate offering no context for these citations, both are expressly tied to filings determined to be “frivolous.” As argued above and as apparent from the motion itself, Appellant has not made a frivolous filing. Instead, Wingate’s request for punitive relief is a continuation of Respondents’ repeated attempts to have various Courts sanction, enjoin and otherwise silence Appellant from saying anything that Respondents do not like.

Appellant notes that *Maxton* is both entirely distinguishable from this case and *does not provide for the relief Wingate seeks*. In *Maxton*, the Supreme Court limited filings made by an incarcerated litigant by requiring him to supply an affidavit of his belief that any further filings had merit. The Court also required Maxton to submit the required filing fee with any future filings. It did *not* enjoin Maxton, who had filed dozens of redundant petitions seeking relief in the Supreme Court’s original jurisdiction, from making further filings. Appellant’s motion filed in this case, which has involved novel legal issues since its 2010 filing, bears no factual resemblance to the conduct addressed in *Maxton*.

Wingate’s motion is a continuation of its unfortunate and inappropriate pattern of seeking punitive relief from this and other Courts based on Appellant’s proper filings defending herself, including prosecuting appeals. Appellant refers to the Affidavits of Charles E. Carpenter, Jr., Daryl L. Williams and Adam T. Silvernail, filed on September 25, 2020 in response to one of Wingate’s previous motions for punitive relief against Appellant herein. They further outline the history of Wingate’s filings and those of certain Respondents through other counsel.

CONCLUSION

For the reasons set forth above and in the Affidavits previously filed by Appellant's counsel, Appellant respectfully asks that the Court deny the motion to strike her filing, award Respondents attorneys' fees and/or enjoin Appellant as requested by Wingate.

Respectfully submitted,

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v.

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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 the following:

1. Reply to Return of Sweeny, Wingate and Barrow to Motion for Judicial Notice;
2. Reply to Return of AG to Motion for Judicial Notice; and
3. Return to Motion of Sweeny, Wingate and Barrow to Strike

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

Kenneth B. Wingate
Mark V. Gende
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Telephone: (803) 256-2253
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Counsel for Respondents

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
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Counsel for Respondent Attorney General

s/Adam T. Silvernail
Counsel for Appellant

November 23, 2020



Adam Silvernail <adam@silvernailfirm.com>

Bauknight, et al v. Pope, Appellate Case No. 2018-2229

1 message

Adam Silvernail <adam@silvernailfirm.com>

Mon, Nov 23, 2020 at 1:01 PM

To: "Ken B. Wingate" <kbw@swblaw.com>, "Mark V. Gende" <MVG@swblaw.com>, Emory Smith <ESmith@scag.gov>
Cc: Charles Carpenter <charlie@carpenterappeals.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>, Adele Pope <adele@popelawfirm.com>

Counsel:

Attached and served upon you are two Replies to Returns to Motion for Judicial Notice, along with our Return to the Motion to Strike.

A copy of this email will be filed with the Proof of Service.

Adam

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Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)





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803/779-1770

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4 attachments

-  **Pope 2229 Appeal Return to MTS.pdf**
160K
-  **Pope 2229 POS Replies JN and Return MTS.pdf**
93K
-  **Pope 2229 Reply to Return of AG re Judicial Notice.pdf**
177K
-  **Pope 2229 Appeal Reply to Return of SWB re Judicial Notice.pdf**
178K