

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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Dec 01 2020

SC 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. 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 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. 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 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 the Appellant.

RESPONDENTS' REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE

Respondents¹ submit the following Reply to Appellant’s Return to Respondents’ Motion to Strike. For the following reasons, Respondents assert that the Motion to Strike—an accompanying relief—should be granted.

Reply Argument

I. Respondents seek to preserve the integrity of the Record.

Appellant Pope states that “Wingate’s² motion appears to be based [sic] the longstanding desire of Wingate and certain Respondents to silence Appellant.” Pope misunderstands the purpose of the Motion to Strike. Respondents are not trying to “silence” Pope. Rather, Respondents are objecting to Pope’s repeated attempts to bloat the Record on Appeal in this case (which is already four volumes, having been reduced from five by this Court in recognition of Pope’s rules-violating inclusion of over 100 improper documents). Pope’s “Motion for Judicial Notice” is comprised of 13 pages of “argument” and numerous exhibits and sub-exhibits, bringing the total document length to 103 pages.

Respondents have the right to have this appeal decided on the merits of their legal arguments and the contents of the Record on Appeal. Respondents should not be subject to a “Motion for Judicial Notice” that amounts to nothing more than Pope’s self-serving manifesto.

II. Appellant’s Motion for Judicial Notice is “frivolous” as that term is used by *Preservation Society*.

Pope cites to the recently decided case of *Preservation Society of Charleston v. S.C. Dep’t. of Health and Envntml. Contr.*, S.C. Sup. Ct. Op. No. 27949 (February 19, 2020) and its construction of the word “frivolous” as that term is used in the South Carolina Frivolous

¹ As used herein, “Respondents” refers to all Respondents save the Attorney General’s Office, which is separately represented in this appeal.

² Appellant refers to Respondents’ counsel as “Wingate.” Respondents are represented by the law firm of Sweeny, Wingate & Barrow, P.A.

Proceedings Sanctions Act (S.C. Code Ann. § 15-36-10 *et seq.*). According to *Preservation Society*, a frivolous motion is one that is baseless from the perspective of “a reasonable attorney presented with the same circumstances.” *Preservation Society, supra* (citing S.C. Code Ann. § 15-36-10(A)(4)(a)(iv)). If that is the standard that should be applied to a motion made pursuant to Rule 269, SCACR, then *Preservation Society* supports Respondents’ position, not Pope’s.

In Respondents’ Return and Motion to Strike, Respondents cite extensively to the authoritative case on the issue of appellate judicial notice, *Masters v. Rodgers Development Group*, 238 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984). In *Masters*, this Court made clear that appellate judicial notice is limited to those items which are “indisputable.” 238 S.C. at 256, 321 S.E.2d at 197. Pope seeks judicial notice of her self-serving interpretation of 90 pages of exhibits and sub-exhibits. As set forth in Respondents’ Return, Respondents contest Pope’s characterization of all of these items. Undoubtedly, Pope knows that Respondents contests her arguments. Indeed, the underlying case has been contested since 2010 and has already been the subject of several pre-trial appeals, including this appeal. Yet Pope, through her attorneys, claims that these items are the proper subject of appellate judicial notice. Pope’s contention would not be made by any reasonable attorney. When Pope’s Motion is compared to the rule from *Masters*, Pope’s Motion is revealed to be frivolous on its face, as the term “frivolous” is construed by *Preservation Society*. No reasonable attorney would believe it appropriate to submit for appellate judicial notice a contested interpretation of allegedly “newly released” documents not contained in the record on appeal. No reasonable attorney would ignore the rule from *Masters*. Pope’s Motion for Judicial Notice violates Rule 269, SCACR and *Preservation Society*.

III. Appellant incorrectly characterizes her history of rules violations, including violations related to improper attempts to bloat the Record on Appeal.

Pope claims that there have been “few instances” in which her appellate filings have been stricken, and that these instances are related to “clerical errors and/or determining what matter was presented.” (Appellant’s Ret. to Mot. Strike, at p. 3.) Pope is downplaying the amount of cautionary orders she has received from this Court and the Supreme Court related to her defective filings, *including several filings that were stricken due to containing matters outside of the record*. In this appeal alone, Pope has had to file 2 Initial Briefs, 2 Designations of Matter, 2 Records on Appeal, and at least 2 Final Briefs. (See Sources cited, Respondents’ Ret. to Mot. Judicial Notice and Respondents’ Mot. Strike, at p. 10 n. 6.) Therefore, it is clear that this “Motion for Judicial Notice” is yet another impermissible attempt by Appellant to bloat the record, and she has been repeatedly rebuked during her previous attempts to do so. Respondents respectfully assert that enough is enough.

IV. Respondents’ requested relief is authorized by the Rules and appropriate for the facts of this case.

Pope states that “[SWB’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 Respondents do not like.” (Appellant’s Ret. to Mot. Strike, at p. 4.) Pope ignores the fact this Court and the Supreme Court have issued many orders proscribing Appellant’s conduct, including 2 injunctions from the South Carolina Supreme Court directed to Appellant to order her to cease filings in cases in which she does not have standing. See Order of the Supreme Court, lead Case No. 2009-142286; Order of the Supreme Court, Case No. 2020-00764. In light of Pope’s litigation history, and the clear frivolity of her Motion for Judicial Notice, it is clear that Respondents’ requested relief is appropriate and tailored to this particular case. Indeed, Rule 269, SCACR authorizes an appellate court to impose upon frivolous filers “such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.” Judged

against this standard, Respondents' requested relief is imminently reasonable. Respondents request that the Motion for Judicial Notice be stricken from the filings. Respondents request reasonable attorneys' fees for having to respond to this frivolous motion. Finally, Respondents request that the Court prohibit Appellant from future filings that seek to improperly bloat the voluminous Record on Appeal in this case. All of this relief is authorized by a plain reading of Rule 269.

Conclusion

For the foregoing reasons, Respondents respectfully request that the Court grant the Motion to Strike, award attorneys' fees, and enjoin Appellant from future filings of this nature.

Respectfully submitted,

s/ Mark V. Gende

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v.

Adele J. Pope, and Robert L. Buchanan, Jr., Defendants,

Of whom Adele J. Pope is the Appellant.

PROOF OF SERVICE

I certify that on December 2, 2020 I served **RESPONDENTS' REPLY TO RETURN TO MOTION TO STRIKE** by depositing a copy of it in the United States Mail, postage prepaid, and by e-mailing a copy of the same, to the following attorneys of record:

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December 1, 2020

Columbia, South Carolina

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Subject: Bauknight v. Pope; Appellate Case No. 2018-002229
Date: Tuesday, December 01, 2020 3:04:00 PM
Attachments: [Respondents' Reply to Appellant's Return to Motion to Strike.pdf](#)

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SC Court of Appeals

Counsel:

Attached please find Respondents' Reply to Appellant's Return to Motion to Strike, which is being e-filed with the South Carolina Court of Appeals today.

Sincerely,
Gloria Coberly



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