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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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.

**REPLY TO POPE'S RETURN TO ATTORNEY GENERAL'S MOTION TO BE
DISMISSED FROM APPEAL 2018-2229**

Respondents¹ submit the following Reply to Appellant's Return to Respondent Attorney General's Motion to be Dismissed from the instant appeal. For the following reasons, Respondents assert that the Attorney General's Motion to be Dismissed should be granted. Respondents also write to lodge objection to Appellant's improper factual assertions.

Reply Argument

I. The Attorney General's request to be dismissed should be granted.

Respondents note that it is incontrovertible that this Court affirmed the trial court's dropping of the Attorney General as a party in the underlying action. Bauknight, et al. v. Pope, 2020-UP-216 (S.C. Ct. App., withdrawn, substituted, and refiled Sept. 16, 2020). It is incontrovertible that the South Carolina Supreme Court denied certiorari on this issue. Bauknight, et al. v. Pope, App. Case No. 2020-001383 (Order of S.C. Sup. Ct., filed April 21, 2021). Therefore, this issue has been litigated to the fullest extent allowable under the law and the matter is over. The Attorney General is no longer a party to the underlying case, 2010-CP-40-04900; therefore, the Attorney General need no longer be a party to this appeal.

II. Appellant's arguments in opposition to the Attorney General are unavailing and inaccurate.

In her Return to the Attorney General's Motion to be Dismissed, Appellant includes 16 sections, each purporting to state a reason why the Attorney General should remain. As an initial matter, Respondents note that Appellant's Return is full of inaccurate and/or contested factual assertions, matters outside the record, and inflammatory character attacks directed to

¹ As used herein, "Respondents" refers to all Respondents save the Attorney General's Office, which is separately represented in this appeal. These Respondents are represented by the law firm of Sweeny, Wingate & Barrow, P.A., which Appellant refers to as "Wingate."

Respondents. Respondents object to each of these items, and request to be heard further on these matters in the event the Court so directs.²

Appellant's specific arguments in her Return begin on page 4 of the Return, and are demarcated by bold-font, unnumbered section headings, totaling 16 arguments. For ease of reference, Respondents have assigned letters A through P to these arguments, and rebut each argument in sequence below:

A. There is no violation of any commitment to monitor the Charity.

Respondents note that this Court has held that Respondent Bauknight is perfectly capable of protecting the charitable interests in this case, such that the Attorney General's presence is not needed: "[w]e find the trial court correctly determined that the Attorney General's interest in protecting the charitable beneficiaries was being served by Bauknight as the current trustee and representative." Bauknight, et al. v. Pope, 2020-UP-216 (S.C. Ct. App., withdrawn, substituted, and refiled Sept. 16, 2020). Appellant is incorrect when she asserts that the absence of the Attorney General somehow harms the charitable interests.

B. Appellant's accusations of Respondent Hynie's (Tommie Rae Brown, in the caption, supra), "fraud" are specious.

Appellant's claim that the Attorney General's absence from this appeal will somehow perpetuate "state-sponsored" "fraud" by Respondent Hynie is conclusory, not supported by any facts and, quite frankly, ludicrous on its face; the specious claim bears no further response from Respondents, unless the Court directs otherwise.

C. FOIA issues are of no import in this appeal.

Appellant is incorrect in her attempt to somehow demonstrate that underlying FOIA matters are relevant to this appeal. Those matters are being separately litigated, respectively, in

² See Appendix for an itemization of Respondents' objections.

front of this Court (App. Case No. 2021-00518) and Judge C. Newman (FOIA matter merged but not consolidated with 2010-CP-40-4900; upon information and belief, matters still being briefed for trial court consideration). The FOIA matters have no bearing on this appeal.

D. “Due Process and §1983 Violations” are a red herring.

The Attorney General’s presence is not needed to “unravel” Appellant’s claims of Due Process violations. That matter has been briefed between Appellant and Respondents, and Respondents have taken the position that Appellant has abandoned this argument due to conclusory, inadequate briefing. (Compare Second Am. Final Brief of Appellant, at pp. 47-48, with Final Brief of Respondents, at pp. 43-45.)

Regarding Appellant’s §1983 claim, Respondents note that Appellant has not raised this issue in any forum, including this appeal, prior to the instant Return. Of course, this is improper: “an issue cannot be raised for the first time on appeal.” State v. Cope, 405 S.C. 317, 339, 748 S.E.2d 194, 205 (2013) (quoting Herron v. Century BMW, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2012)).

E. The issues in this Appeal have been briefed by Respondents.

Appellant’s claim that the three issues in the instant Appeal require the Attorney General for adjudication is inaccurate. Respondents have fully briefed in opposition to Appellant’s three stated issues in this Appeal, and, therefore, these matters are before this Court. Respondents incorporate by reference their Final Brief, filed on July 2, 2020.

F. Forlando Brown is not a party to this Appeal.

Candidly, Appellant’s nonsensical contention that there is a nefarious alliance between Forlando Brown and the Attorney General’s Office, and that this alliance somehow necessitates the Attorney General’s continued involvement in this Appeal, is a conspiratorial contention of

the sort that is difficult to follow. Forlando Brown is not a party to this Appeal, and Respondents are at a loss to explain why the actions or inactions of Forlando Brown require the Attorney General to remain in this case.

G. Appellant concedes the point in her recitation of the testimony of former Attorney General McMaster.

Without conceding that Appellant has accurately recited the testimony of former Attorney General Henry McMaster, Respondents note that Appellant's own argument related to this testimony proves Respondents' point. For the sake of argument, Respondents draw the Court's attention to Appellant's contention: "[i]n October 2016 Governor McMaster testified . . . Governor McMaster's testimony should have ended the State/AG's role in Richland 4900." (Appellant's Return, at p. 13.)

Appellant ignores the fact that the Attorney General moved in writing to be dropped as a party in March of 2013, this motion was heard in August of 2016, and was granted via written order in June of 2017. (R. pp. 180-181.) Appellant's claim that "Governor McMaster's testimony should have ended the [AG's] role" in the underlying case ignores the fact that the Attorney General's role was over, for all intents and purposes, by the time Governor McMaster testified. Appellant got what she wished for, and now argues that she did not.

H. Appellant's Estate valuation argument contains disputed matters of fact and misstates the Attorney General's role.

Appellant argues as if her version of the Estate's valuation is an established matter of fact, which of course it is not. Appellant also sets forth a convoluted argument as to how the Attorney General is somehow involved in the Estate's valuation. Respondents note that Respondent Bauknight, a professional fiduciary and the personal representative of the Estate, is a party to this Appeal and will present this matter, to the extent necessary, at a potential future

trial. To the extent relevant and appropriate under the circumstances of the particular forum, Respondent Bauknight is the proper party on issues related to Estate valuation.

I. Appellant misconstrues the testimony of Attorney General Wilson.

Without waiver of position regarding Respondents' interpretation of the testimony of Attorney General Wilson, Respondents note the legal incongruity of Appellant's contention that the Attorney General—which has been dropped as a party to the underlying action—“must address the state actions of the rogue state actors.” (See Appellant's Return, at p. 15.) Respondents object to and deny the self-serving, conclusory, and baseless designation of “rogue state actors.” However, for the sake of argument only, the Attorney General is capable of addressing such a condition, if it existed, without being a party to this appeal.

J. The Attorney General's Status as Represented Party in the underlying action is of no consequence in this Appeal.

Appellant contends that a potential factual dispute regarding whether the Attorney General's Office retained the services of the undersigned law firm somehow means that the Attorney General must remain a party to this Appeal. As noted in Section II.M., infra, the Attorney General's status as a dropped party is the law of the case and therefore this issue is moot.

K. The status of the Legacy Trust was ruled upon by the Supreme Court.

The Legacy Trust was the settlement entity created by the settlement agreement that was reversed by the Supreme Court in Wilson v. Dallas. The Legacy Trust was never funded and never came into existence. The litigation concerning the existence of the Legacy Trust concluded upon the Supreme Court's issuance of the Wilson opinion. Appellant's arguments to the contrary are improper and counter-factual.

L. The Supreme Court's denial of Appellant's Petition for Certiorari in Appellate Case No. 2017-001899 does not support Appellant's position.

As noted above, the Supreme Court denied certiorari to consider this Court's ruling that the trial court properly dropped the Attorney General from the underlying action. See Section I, supra. It defies logic that the Supreme Court's order somehow mitigates in favor of keeping the Attorney General a party to this matter. If this Court or the Supreme Court wanted to keep the Attorney General in the case, the courts would have said so. See also Section II.M., infra.

M. The Order Dropping the Attorney General Should Not be Vacated.

Incredibly, Appellant asks that this Court vacate the order of Judge Early dropping the Attorney General from this case. This Court has affirmed this order, and the Supreme Court has denied certiorari. See Section I, supra. Judge Early's order is the law of the case. See Flexon v. PHC-Jasper, Inc., 413 S.C. 561, 571, 776 S.E.2d 397, 403 (Ct. App. 2015) (quoting Judy v. Martin, 381 S.C. 455, 458, 674 S.E.2d 151, 153 (2009)) (“[u]nder the law-of-the-case doctrine, a party is precluded from relitigating, after an appeal, matters that were either not raised on appeal, but should have been, or raised on appeal, but expressly rejected by the appellate court.”) (emphasis added). Appellant has litigated this issue and lost.

N. Appellant's claim of a “common interest alliance” actually undercuts her argument.

Appellant claims that the “common interest” between the Attorney General and the other Respondents precludes the Attorney General from being dismissed from this appeal. Appellant ignores the fact that the alignment of interest between the Attorney General and Respondent Bauknight with respect to the charitable beneficiaries forms the basis for this Court's prior opinion that the Attorney General should be dropped. See Bauknight, et al. v. Pope, 2020-UP-216 (S.C. Ct. App., withdrawn, substituted, and refiled Sept. 16, 2020) (“[w]e find the trial court correctly determined the Attorney General's interest in protecting the charitable beneficiaries was being served by Bauknight as the current trustee and representative.”) (citing Wilson v. Dallas).

O. Appellant abandons her argument that the Attorney General is responsible for the funds expended in the underlying case.

Appellant's Return has a section entitled "the AG is Responsible for the Tens of Millions Spent in Richland 4900." (Appellant's Return, at p. 23.) Appellant fails to argue or explain this position and has therefore waived it. See, e.g., Fields v. Melrose Ltd. P'Ship, 312 S.C. 102, 106 n.3, 439 S.E.2d 283, 285 n.3 (Ct. App. 1993).

P. Appellant's claim that she is entitled to legal fees is an improper attempt to add to her arguments.

At issue in the instant Appeal is the trial court's granting of summary judgment in Respondents' favor regarding Appellant's counterclaims filed in the underlying action. That matter has been briefed by Respondents. (See Final Brief of Respondents, at pp. 28-43.) Appellant's citation-free contention that removing the Attorney General's Office as a party to this case somehow deprives her of her right to attorneys' fees is simply a back-door attempt to add to the record on the issue of whether the trial court properly granted summary judgment to Respondents regarding Appellant's counterclaims. The briefing on that issue is closed and that matter is before this Court on the merits, and Appellant should not attempt to flood this Court with extraneous, improper arguments. See Ravan v. Greenville County, 315 S.C. 447, 460, 434 S.E.2d 296, 304 (Ct. App. 1993) (a matter outside the record may not form the basis for reversal).

III. Appellant again attempts to interfere in the administration of the Estate of James Brown.

Appellant is under order to refrain from interfering with the resolution of the Estate of James Brown (and Trust) and the Estate of James Brown's daughter, Venisha Brown. See Order of Supreme Court, App. Case No., inter alia, 2013-001649, dated June 10, 2015 ("[w]e caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may

result in contempt charges.”); see also Order of Supreme Court, App. Case No. 2020-000764, dated August 10, 2020 (“[i]f [Pope] fails to conform to these instructions as ordered and takes any further action with respect to any case related to the Estate of James Brown, which includes any proceeding the estate of Venisha Brown, a rule to show cause will be issued. . .”).

Appellant’s desire to have the Attorney General remain in this case is a thinly veiled attempt to re-litigate what has already been decided by the South Carolina trial and appellate courts since Wilson v. Dallas, and Appellant’s opposition to the Attorney General’s exit can be nothing other than an additional attempt to meddle with the winding down of the Estate. For instance, Appellant claims: “[i]t is the Attorney General who should see that the Court’s decision as to the constitutional and other issues in this appeal not be ignored, as happened upon remand to the trial court after the Supreme Court’s decision in Wilson v. Dallas.” (Appellant’s Ret. to Motion of Attorney General to be Dismissed from Appeal, at p. 3 (citation omitted).) This type of statement is exactly what Respondents believe Appellant is enjoined from, because what “happened” after the Wilson remand is, per the Supreme Court, none of Appellant’s business. Respondents—and the Court—should not be subject to voluminous filings and motions from Appellant full of Appellant’s character assaults stemming from Appellant’s objections to Respondents’ attempts to wind down the Estate. Appellant is without standing to act in this fashion.

Conclusion

Respondents assert that this Court’s dropping of the Attorney General as a party to this Appeal is proper and required by this Court’s—and the Supreme Court’s—rulings so far. Appellant’s arguments to the contrary are inaccurate and unavailing. Also, Respondents object to Appellant’s inflammatory “factual” arguments in opposition to the Attorney General being dismissed. Respondents are also informed and believe that Appellant is, yet again, seeking to

meddle in the administration of the Estate of James Brown, in violation of two Supreme Court orders.

Also, dropping of the Attorney General is yet another step towards achieving a conclusion to this litigation, such that the scholarships envisioned by James Brown may become a reality as soon as possible. Appellant's attempt to prolong this appeal, keep the Attorney General in the appeal, and use the appeal to meddle in the affairs of the Brown Estate are delaying the arrival of the day when Mr. Brown's educational scholarship goals can be realized.

Appellant, and her efforts to prolong this litigation,³ are now the primary remaining obstacles to closing Mr. Brown's Estate and beginning to award scholarships, the core purpose of Mr. Brown's estate plan. The Estate has recently entered into a global settlement resolving all outstanding matters relating to Mr. Brown's will and Estate, including the federal litigation referenced on page 22 of Appellant's Return, as well as the disposition of Mr. Brown's personal and household effects. With these matters completely resolved, all that stands in the way of the Estate beginning the distribution of scholarships is the resolution of Mrs. Pope's various actions: (1) her Appeal No. 2019-000362, where the trial court found Mrs. Pope had breached her fiduciary duties to the Estate in multiple ways and is therefore due no fee, (2) the instant appeal, and (3) Richland County Case 4900, which is the case underlying to the instant appeal, seeking damages from Mrs. Pope for her manifold breaches of fiduciary duty during her period of administration of the Estate.

Respectfully submitted,

³ By, among other machinations, seeking to keep the Attorney General in this appeal and previously refusing—at the last moment—to consolidate, at the circuit court level, Case 4900 (The Estate's breach of fiduciary action against Mrs. Pope) and Case 1337 (Mrs. Pope's fee claim against the Estate), so that both cases could have been tried together two years ago.

s/ Mark V. Gende

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July 13, 2021

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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. 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

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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 July 13, 2021 I served **RESPONDENTS' REPLY TO POPE'S RETURN IN OPPOSITION TO THE ATTORNEY GENERAL'S MOTION TO BE DISMISSED**

FROM APPEAL 2018-2229 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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July 13, 2021

Columbia, South Carolina

Appendix

Respondents object to the following statements made by Appellant in her Return to the Attorney General's Motion to be Dismissed from this Appeal, and any such substantially similar statements that may be inadvertently omitted from this list:

1. Respondents are “conceal[ing] public documents.” (See, e.g., Appellant's Ret. to Attorney General's Motion to be Dismissed, at p. 2.)
2. Appellant's alleged breakdown of recovery/cost sharing in Case 4900. (Id. at p. 2, p. 2 n.4.)
3. Appellant's claim that Wingate/Bauknight are “not authorized” to file Case 4900. (Id. at p. 2.)
4. Appellant's claim that the Estate's reported initial valuation was somehow fraudulent. (See, e.g., id. at pp. 2-3.)
5. Appellant's claim that certain Estate and or litigation documents are “state-owned.” (See, e.g., id. at p. 3.)
6. Appellant's claim that Respondents have damaged the “I Feel Good” charity. (Id. at p. 4.)
7. Appellant's self-serving, inaccurate characterization of the correspondence between Sweeny, Wingate & Barrow, P.A. and the Attorney General's Office. (See id. at p. 4.)
8. Appellant's claim that Respondent Bauknight has “misrepresented facts” and obtained “ill-gotten” orders. (Id. at p. 5.)
9. Appellant's back-handed slights directed to Judge Early, Judge C. Newman, and this Court. (See, e.g., id. at pp. 5, 12 n.14, 20.)
10. Appellant's claim that one or more Respondent has a plan to “defy” Wilson v. Dallas. (See, e.g., id. at p. 6.)
11. Appellant's veiled criminal prosecution threat directed to certain Respondents. (Id.)
12. Appellant's claim that Sweeny, Wingate & Barrow, P.A., and Respondents, are “state actors” pursuant to §1983. (Id. at p. 15.)
13. Appellant's baseless and repeated claims that Respondents, along the lines that Respondents have acted with “fraud, misrepresentation, or misconduct,” or have “escaped” the jurisdiction of the courts. (See, e.g., id. at pp. 24-25.)
14. Appellant's inclusion of Exhibits outside the Record on Appeal.

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Subject: Bauknight v. Pope, Appeal no. 2018-2229
Date: Tuesday, July 13, 2021 1:58:00 PM
Attachments: [Respondents' Reply to Pope's Return in Opposition.pdf](#)

Dear counsel:

Attached please find Respondents' Reply to Pope's Return in Opposition to the Attorney General's Motion to be Dismissed from Appeal 2018-2229, which is being filed with the Court of Appeals today.

Sincerely,

Tiffany Nelson



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