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Oct 14 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court Of Common Pleas
Circuit Court Case No. 2012CP4000350

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No.2021-000518

Adele J. Pope.....Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina Respondent.

**REPLY TO RETURN TO MOTION OF ATTORNEY GENERAL TO DISMISS
APPEAL, AND ALTERNATIVE MOTION TO STRIKE INITIAL BRIEF
AND DESIGNATION OF APPELLANT,**

Appellant Pope’s Response to this Petition fails to show that the numerous sections of her Brief are supported by documents in the Record except for three documents noted on the attached Schedule A, previously filed with the Motion to Dismiss or Strike and now updated to address her responses. Pope fails to respond to Schedule B to that Motion identifying the designated items that were not presented to the circuit court other than making general statements that they should all be kept in. Her defense to this Motion relies on absurd arguments that stretch Rule 201(c), SCACR, beyond recognition.

Rule 210(c), SCACR says that “[t]he Record shall not . . . include matter which was not presented to the lower court or tribunal,” and under Rule 208(b), the Brief may only cite to the

Record on Appeal for alleged facts. Accordingly, to be included in the Record a document must be “presented” to the Court by filing it or handing to the Court reporter or Judge as an exhibit in a proceeding. Appellant forges a path off the track of Rule 210(c) by arguing that simply having the same judge hear separate cases or ask questions about their status pulls in all the documents from those cases.¹ That argument is preposterous. This case was never consolidated and simply referring to documents that were never presented is not enough to bring those documents into the Record. The documents must actually be presented to the lower court by filing them or handing them up to the Judge or Court Reporter in a hearing as an exhibit. The documents identified in Schedule B to the Motion or cited in support of Appellant’s Brief and identified in Schedule A, were not presented except as noted in Items 12, 15 and 19 in attached annotated Schedule A. Appellant’s request that this Court take judicial notice of documents filed in other appeals in this Court must be similarly rejected as they were not presented to the circuit court in the instant case. She cannot overcome her citation to documents not presented to the Circuit Court by these unsound arguments not rooted in any reasonable application of Rule 210(c).

As demonstrated in the attached annotations to the Attorney General’s Schedule A, Appellant responds to the Schedule only with generalities, trying to intertwine her various separate cases without showing that documents filed in the other cases were presented to the Court in the instant case. They must have been presented to the circuit court in the instant case to be in the Record on Appeal and referenced in the brief, and they were not. Her current cases are the subject of separate appeals currently or formerly pending in this Court and cited in the Motion, and the

¹¹ She references transcripts of hearing before Judge Newman in the FOIA cases (pp. 4 & 5) but the citations do not match her exhibits. Moreover, the references fail to show that any of the contested documents were before him.

instant case was never consolidated with those cases. *Pope v. Estate of James Brown*, Sup. Ct. Appellate Case No. 2019-00362; *Bauknight v. Pope*, Appellate Case No. 2018-002229; *Bauknight v. Pope*, Appellate Case No. 2017-001899.

Moreover, the unfiled documents are all irrelevant as is most of Appellant's brief. The only issue for her to present on review is whether the circuit court correctly dismissed her appeal due to failure of her FOIA request letter get to the Office of the Attorney General by mail or delivery. She is not permitted to raise other issues now.² Her alleged need for the documents is irrelevant. Her sweeping accusations against any and all who are not in agreement with her are all irrelevant, baseless and offensive. Her astonishingly excessive nearly 500 pages of exhibits, including her 28 page affidavit that largely recites her baseless accusations that she has made over and over again in case after case, hide the simple point of Judge Newman's Order: The Office of the Attorney General never received her Freedom of Information Act request in the instant case, and therefore, had no duty to respond to what it did not have.

Appellant complains that the Motion notes that other unspecified documents may not be compliant, but she overlooks that Schedules A and B to the Motion identify with particularity

²As stated in *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 421–22, 526 S.E.2d 716, 724 (2000):

An appellate court may not, of course, reverse for any reason appearing in the record. The losing party must first try to convince the lower court it is has ruled wrongly and then, if that effort fails, convince the appellate court that the lower court erred. This principle underlies the long-established preservation requirement that the losing party generally must both present his issues and arguments to the lower court and obtain a ruling before an appellate court will review those issues and arguments. *E.g.*, *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995) (appellate court generally will not address an issue unless the issue was raised to and ruled upon by the trial court); *State v. Williams*, 303 S.C. 410, 401 S.E.2d 168 (1991) (same); *Sumter Building & Loan Ass'n v. Winn*, 45 S.C. 381, 23 S.E. 29 (1895) (same).

numerous documents not presented in the instant case below. She contends that we overlooked that some of those documents were in the record, but the attached schedule identifies only 3 such items. The only documents to which the Attorney General has referred that are not in the record are the Appellate Court orders striking Pope's previous filings in other cases and the Order denying certiorari in appeal 2017-001899 expressing the Court's desire "that the extensive litigation in this matter . . . be promptly concluded." In the instant case, she failed to adhere to those orders striking her earlier filings which is why they were cited.

The Attorney General does not address each and every statement in Pope's affidavit rehashing her accusations because of the deadline for this reply and the need to move along this Appeal. Many of her paragraphs refer to alleged statements or events without supporting documentation. However, a few examples stand out.

- On page 10, paragraph 32, of her Affidavit, Pope states that "[b]y January , 2012, the AG had presented to the circuit court in this FOIA suit the full record in Richland 4900 and the full record in the Wingate Contract FOIA suit" (Emphasis as written). This statement is unsupported and is wrong. The Attorney General never filed the full record in those other suits in the instant suit, and this suit was never consolidated with them.
- On pages 18 and 20 (¶86), she characterizes deposition testimony without supporting documentation, and the depositions are not in the record. Her Exhibit Q cited in Paragraph 72 is not about the deposition.
- On page 28 of Paragraph 101, Appellant wrongly states: "[a]s the April 26, 2018 Order in 2017-1899 makes clear, the AG and the Legacy Trust had inextricably intertwined the records of my two 2011 FOIA cases, Richland 4900 and Aiken 1337, and

concealing public documents under FOIA was essential to blaming the plan on Mr. Buchanan and me.” That Order said nothing of the kind. It stated as follows:

The motions to strike are granted. Within thirty days of this order, Appellant shall serve and file an amended initial brief and an amended designation of matter. In the amended designation of matter and 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. Further, Appellant shall not designate or reference any documents filed or presented to the circuit court after this appeal was filed.

To the extent that Respondents are requesting that this court strike documents that were presented to the lower court as part of this case prior to this appeal, the requests are denied.

Exhibits to State’s Motion at 14. To support her viewpoint, Appellant is twisting that Order beyond recognition. Her argument is irrelevant and wrong and should not be permitted.

Appellant’s response to the Motion to Dismiss or Strike perpetuates the numerous errors in her brief and designation and repeats the violation of the Appellate Court rules noted in previous Orders of this Court and attached to the instant Motion. She fails even to respond to Schedule B’s identification of improperly designated matter beyond stating generalities. This path of violation of the Appellate Court rules should be brought to an end. Appellant’s Brief and Designation and her response to this Motion show that she has continued to violate the Rules of this Court despite the clear language of the Appellate Court rules and the prior orders of this Court striking her filings. Her Appeal should be dismissed, or at the least, her brief and designation should be struck.

Respectfully submitted,

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October 14, 2021

ATTORNEYS FOR THE ATTORNEY GENERAL

**SCHEDULE A TO REPLY TO RETURN TO MOTION TO DISMISS APPEAL
OR STRIKE APPELLANT’S INITIAL BRIEF AND DESIGNATION
With Replies to Appellant’s Responses to these Items**

Pope v. Wilson

Appellate Case No.: 2021-000518

**SCHEDULE OF MATTERS IN BRIEF THAT SHOULD BE STRUCK
WITH ANNOTATIONS**

The matters listed below and the associated sentences should be struck as the cited documents do not appear to have been presented to the Circuit Court in the instant case. Those documents are also subject to being struck in Appellant’s Designation of Matter for the Record. In addition to the grounds listed below, these matters are irrelevant to the issues on appeal.

This schedule originally attached to the Motion to Dismiss or Strike is now annotated with replies to Appellant’s response to them on pages 21 – 26 of her affidavit. Although she states that some of the documents were referenced, referencing is not enough. They must be presented to the Court under Rule 210(c), SCACR, by filing them or handing them up to the Court or the Court Reporter as an exhibit. Appellant fails to show that the documents were presented except as to the documents noted in Items, 12, 15 and 19 below.

- 1. Pages 11-12, reference and quote from withdrawn Opinion in *Wilson v. Dallas*.**
[In her Return, Appellant notes that she has previously referenced the withdrawn opinion, but it has not been made an exhibit, and her citation is not to the withdrawn opinion]
- 2. Page 12, citations to and quotes from AG’s Petition for Rehearing in *Wilson v. Dallas*.**
[In her Return, Appellant does not show that the Petition was ever an exhibit]
- 3. Page 17, Reference to Plaintiff’s Motion for Dir. Publicity, *Bauknight v. Appellant case 2010CP4004900*.**
[In her Return, Appellant does not show that the Motion was ever presented to the Court as an exhibit. It was not attached to the Motion to Consolidate this case. The references to attachments to the Motion or the inclusion of a few exhibits does not support including the Motion. She does not identify any filings by the Attorney General of exhibits to the Motion]
- 4. Page 17, Reference to Jake Paine article.**
[Appellant does not shown that the article was ever an exhibit]

5. **Page 17, Affidavit in case 4900.**
[Appellant does not show that the article was ever an exhibit]
6. **Page 18, Exhibit, Motion for Pretrial Publicity**
[Appellant does not show that it was ever an exhibit. See item 3, supra.]
7. **Page 18, Motion to Lift Stay in case 4900 (two references)**
[Appellant does not show that it was ever presented to the Court in this case]
8. **Page 20, Affidavit of Bauknight, Acknowledgment of AG. Order of Judge Manning**
[Appellant does not show that it was ever presented to the Court as an exhibit in this case. The Attorney General did not file the exhibit with the Motion to Consolidate]
9. **Page 20, Motion Designate Complex, case 4900**
[Appellant does not show that it was presented to the Court in the instant case]
10. **Page 21, Motions cited at top of page**
[Appellant does not show that that they were presented to the Court in the instant case]
11. **Page 21, “Wingate contract” vague about which document**
[Appellant does not show that it was presented to the Court in the instant case]
12. **Page 21, Meyers letter 8/5/11 (a different FOIA case)**
[The letter is in the Record but the quoted part is about a different FOIA case]
13. **Page 22, Letter to Meyers, 8/7/11 (different FOIA case)**
[Appellant does not show that it was presented to the Court in the instant case]
14. **Page 22, citations to different FOIA suit.**
[Appellant does not show that the other FOIA suit Complaint was presented to the Court in the instant case]
15. **Pages 22-23, correspondence re different FOIA requests**
[Appellant does not show that the Meyers correspondence cited at the top of page 23 was ever presented to the Court in the instant case, but she is correct that the correspondence cited in the last full paragraph on page 22 is in the Record in this case.]
16. **Page 23, Motion for Guidance**
[Appellant does not show that this document was ever presented to the Court in this case. See items 3 & 6, supra.]

17. Page 23, Letter, Jones to J. Manning

[Appellant does not show that this document was ever presented to the Court in this case. Vague references are not substitutions for actual filing of the document]

18. Page 23, Motion for Sanctions

[Appellant does not show that this document was ever presented to the Court in this case. Vague references are not substitutions for actual filing of the document. The Motion of the AG to strike she cites was not made by the Attorney General and was in a different case.]

19. Page 24, Letters, Williams to Meyers and Meyers to Summer (1/5/12 and 1/20/12)

[Appellant does not address or show that the Summer letter is in the record. She is correct that the Williams letter is in the record.

20. Page 25, Order, case 4900

[Appellant does not show that this document was ever presented to the Court in this case. I believe that no hearing was ever held regarding the consolidation of the instant case with case 4900]

21. Page 25, Motions for Pretrial Publicity and exhibits, Motion to Dismiss, stay and Motion 9/8/12

[Appellant does not show that these documents were ever presented to the Court in this case. See, Items 3, 6 and 17, above]

22. Page 26, Motions 9/8/12 and re Pretrial Publicity

[Appellant does not show that these documents were ever presented to the Court in this case. See, Items 3, 6 and 17, above]

23. Page 27, Motion re Pretrial Publicity

[Appellant does not show that these documents were ever presented to the Court in this case. See, Items 3, 6 and 17, above]

24. Page 27, Depositions

[Appellant's affidavit contends at page 24 of her affidavit that she excerpted the depositions in pages of her Exhibits, but the excerpts do not match the references in her brief, they contain no citation to the pages of the depositions and neither the excerpts nor the depositions themselves were presented to the Court with the Court. In other words, her statements in her brief are unsupported.]

25. Page 28, Order 2013

[Appellant does not show that these documents were ever presented to the Court in this case. Her vague references, including to mediation, do not show that they are in the record in this case]

26. Page 29, Order, FOIA case 4900

[The 4-1-21 Order in the instant case is in the record. Plaintiff mis-cites it as being in case 4900]

27. Page 30, Status Report & “from hearing”

[Appellant does not show that this report was ever presented to the Court in this case. Appellant does not explain her reference to “from hearing.”]

28. Page 30, Motion to Stay, case 4900

[Appellant does not show that this document was ever presented to the Court in this case.]

29. Page 31, Letter Smith to Clerk of Court, Appellate Case 2014-002222

[Appellant does not address this document]

30. Page 31, Email Chain & Mediation Order

[Appellant does not show that these documents were ever presented to the Court in this case.]

31. Page 32, Letter, Smith to Clerk, June 6, 2013

[Appellant does not show that this letter was ever presented to the Court in the instant case.]

32. Pages 32-34, Section g – Entire section on Aiken case 1337, all documents cited are not in the record below in the instant case and are irrelevant to the instant case. Case 1337 is the subject of a currently pending appeal in this Court, *Appellant v. Estate of Brown*, Appellate Case No. 2019-000362.

[Appellant does not show that these documents were ever presented to the Court in the instant case. According to Richland County online records, the Attorney General did not move to consolidate the instant case in 2016. He moved to consolidate the instant case with case 4900 in 2012. The Motion was never granted, and to the best of undersigned counsel’s recollection, was never heard.]

33. Pages 34 – 35, section h – None of the cited documents are in the record below in the instant case and the entire section is irrelevant as it deals with cases 1337 and 4900.

[Appellant does not show that the AG presented the full record of cases 4900 and 1337 in the instant case. She does not show that any of these documents are presented to the Court in the instant case.]

34. Page 36, section j – section is about other FOIA case, 4900. Documents are not in the record in the instant case

[Appellant does not show that any of these documents are presented to the Court in the instant case.]

35. Pages 40 and 41 – discussion of case 4900 contains factual assertions but no citations to matters in the Record below and it is all irrelevant.

[Appellant does not cite nor show that any supporting documents are presented to the Court in the instant case. She does not show relevance other than a conclusory statement.]

36. Page 42, Section IV, first sentence – no citation to the record. Appears to be about case 4900.

[Appellant does not cite nor show that any supporting documents are presented to the Court in the instant case. She does not show relevance other than a reference to unspecified discussion “above.”]

37. Page 43, second and third paragraphs – no citations to record below for purported factual assertions. References are to case 4900.

[Appellant does not show that any of these documents are presented to the Court in the instant case. Does not show relevance other than a conclusory statement.]

Checking the Record on the above documents is difficult given the blizzard of irrelevant affidavits that Appellant has filed in this case most of which were the subject of motions to strike. Nevertheless, all of the citations noted above appear to be to matters not presented to the Court except as noted in Items 12, 15 & 19. They certainly are also irrelevant.

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APPEAL FROM RICHLAND COUNTY
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Circuit Court Case No. 2012CP4000350

The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No.2021-000518

Adele J. Pope.....Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina Appellant.

CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Reply to Return to Motion to Dismiss or Strike with Addendum thereto by emailing it to counsel for the Appellant at the email address below this October 14, 2021(Copy of email attached):

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
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s/ J. EMORY SMITH, JR.
S.C. Bar No. 5262
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Counsel for the Attorney General

Emory Smith

From: Emory Smith
Sent: Thursday, October 14, 2021 5:02 PM
To: Adam Silvernail
Subject: RE: Pope v. Wilson, Appellate Case No. 2021-000518
Attachments: Reply to Return to Motion to Dismiss or Strike (02785940xD2C78).PDF; Schedule A to Reply to Return to Motion to Dismiss (02785922xD2C78).PDF

Good afternoon, Adam. Hope you enjoyed your time off.

Attached is the Attorney General's Reply to the Return to his Motion to Dismiss or Strike and Schedule A thereto.

Emory

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