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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
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.

**MOTION OF ATTORNEY GENERAL TO
STRIKE AMENDED INITIAL BRIEF
AND REQUEST TO STAY BRIEFING**

Attorney General Wilson moves to strike Appellant Pope's Amended Initial Brief because the Brief, as did her earlier brief in this case, violates the Appellate Court Rules and this Court's Order of December 10, 2021, as well as at least four orders of this Court in other cases striking Appellant's filings. See Motion to Dismiss Appeal or Strike Appellant's original Initial Brief at pp. 55 and 6. Appellant's Brief cites matters that do not appear to have been presented to the Court in this case and includes another issue and argument not previously raised in her original brief.

Page 39 of Appellant's Initial Brief cites and discusses several documents from other cases

that do not appear to have been presented to the circuit court in the instant case:

- Return to Motion for Extension, *Wilson v. Dallas*
- Motion to Supplement, *Wilson v. Dallas*
- Complaint, 4900

This Court's Order of December 10 specially stated that "Appellant may not include matters presented to the lower court in related cases where those cases were not consolidated with the instant case." The above documents are referenced in the Amended Brief in violation of that Order. They are not listed in Appellant's Amended Designation of Matter for the Record nor should they have been under this Court's Order. Including these matters also violates the Appellate Court Rules provisions that the Brief be supported by the Record and that the Record not contain matters not presented to the lower court. Rules 208(b)(4), 210(b) and 210(c), SCACR.

The Court should also strike Appellant's reference to a news article from December 13, 2021, which was published while this appeal was pending. Brief at page 40, note, 12. She requests that the Court take judicial notice of the article but doing so is not permissible. "[O]riginal judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable." *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984). A news article published while this appeal was pending and never presented to the Circuit Court does not meet this standard. As stated in *Masters*, "appellate courts, limited to the 'cold' record, cannot be as sensitive to the appropriateness of judicial notice as the trial judge." *Id.* Of course, this document, too, was not presented to the lower court.

Moreover, the Court should also strike the entirety of Argument VI of her brief as it is a new argument not included in her previous initial brief. This argument alleges that the Attorney General's "FOIA noncompliance" has violated the due process rights of Appellant, Robert

Buchanan and other S.C. Citizens. Amended Brief of Appellant at pages 39-41. This argument was not included in Appellant's original initial brief, and was added to the Statement of the Issues in the Amended Brief. Argument VI and the Table of Authorities includes cites to cases and the due process clause that were omitted previously.

The December Order herein granted Respondent's Motion to Strike, and did not authorize Appellant to include new issues and arguments. That Motion specifically stated that any corrections to the Brief should be limited to addressing the errors in the Brief and should not include any new or edited substantive arguments. Appellant has not moved to include new issues and arguments in her brief. For these reasons, her argument VI should be struck along with the above document references and news article that are contained within it.

CONCLUSION

Once again, Appellant appears to have violated the Orders and rules of this Court. Accordingly, and for the foregoing reasons, the Attorney General respectfully requests that this Court strike the above references to documents and a news article and the entirety of Argument VI in which they are contained. He respectfully requests that any corrected brief authorized by this Court be limited to fixing these problems and not present new substantive arguments or exhibits for the record. While the Court considers this Motion, the Attorney General respectfully requests that the time limits for filing his initial brief and designation be stayed and held in abeyance while the stay request is considered.

Respectfully submitted,

ALAN WILSON
Attorney General

[Signature block continued next page]

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s/ J. EMORY SMITH, JR.
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March 2, 2022

ATTORNEYS FOR THE ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Motion to Strike by emailing it to counsel for the Appellant at the email address below this March 2, 2022(Copy of email attached):

Adam T. Silvernail, Esquire
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s/ J. EMORY SMITH, JR.
S.C. Bar No. 5262
Deputy Solicitor General
esmith@scag.gov

Counsel for the Attorney General

Emory Smith

From: Emory Smith
Sent: Wednesday, March 2, 2022 11:57 AM
To: Adam Silvernail
Subject: Pope v. Wilson 2021-00518
Attachments: Motion to Strike for efilng (02912845xD2C78).PDF

Hello, Adam:

Attached is our Motion to Strike Appellant's Amended Initial Brief.

Emory

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