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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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.

**REPLY TO RETURN TO
MOTION OF ATTORNEY GENERAL TO
STRIKE AMENDED INITIAL BRIEF**

Appellant fails to rebut the Motion to Strike for the reasons discussed below.

She amazingly accuses Respondent of “fail[ing] to carefully review the Record,” when she is the party at fault in not designating any of the documents for the Record, one of which was not even presented below and is merely quoted in part in another document. She also fails to show that the news article published while this appeal was pending is entitled to judicial notice. Moreover, the entire argument section in which these citations are contained should be struck as new matter not properly included in an amended brief.

Each of these documents is briefly addressed below including the one for which Appellant

request judicial notice.

A. Motion to Supplement Record on Appeal, *Wilson v. Dallas*

Appellant admits that she failed to designate this document for the Record in the instant appeal. It is not even named in the list of documents on the public index for this case on the judicial records website but is an unnamed attachment to one of her numerous filings in this case.

B. Return to Motion for Extension, *Wilson v. Dallas*

Appellant admits that this Return was not presented to the Circuit Court and not designated. Instead, she said she included quotes from the Return in other filings below, but she does not include the same quotes in her brief nor does she refer to the documents in which they are contained. This citation and the related sentence should be struck.

C. Complaint, 4900

Appellant failed to designate this document for the record. Appellant's convoluted explanation does appear to show that the document is included in the on-line list of filings in the instant case, but only as an unnamed attachment.

D. 2021 Article

This article is cited in a footnote to support an allegation that the value of James Brown's assets are of public importance today. According to the footnote, the article references the sale of James Brown's music catalog. That information was not presented to the Circuit Court, and Appellant provides no authority to support her assertion that judicial notice should be taken. Consideration of the article is barred by the authority cited by the State in its motion which Appellant does not rebut. *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 256, 321 S.E.2d 194, 197 (Ct. App. 1984)("[O]riginal judicial notice of adjudicative facts at the appellate level should be limited to matters which are indisputable . . . appellate courts, limited to the 'cold' record, cannot

be as sensitive to the appropriateness of judicial notice as the trial judge.”) *Id.*

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. The instructions were to “serve and file an amended initial brief that shall not include references to the stricken matters.” Appellant did not move to include new issues and arguments in her brief.

Appellant suggests that the argument was necessary to present a complete and coherent brief, and that she had mentioned due process in her original brief. These arguments are specious. The original brief’s passing, short references to the terms “due process” related to other cases such as *Bauknight v. Pope*, 2010CP1004900. She did not cite the due process clause in her Table of Authorities. Argument VI is, instead, a three page argument about due process focused on this appeal. It is a new argument with a new issue in her brief, and it is completely unnecessary to comply with the Order striking the original brief. The term “due process” is not even referenced in her Complaint in this case. Appellant’s including Argument VI is an inappropriate use of the privilege of being permitted to file an amended brief. It is neither contemplated by the Order striking her brief nor the Appellate Court rules. As noted, she did not move to include the new argument in her amended brief.

Appellant refers to Respondent’s “frequent efforts to edit Appellant’s filings by way of repeated motions to strike.” Those motions have been made due to Appellant’s repeated failures to follow the Appellate Court rules, and at least five of the Motions have been granted included the Motion to Strike Appellant’s original initial brief in the instant case. *See also*, Exhibits to Motion to Strike original initial brief, pp. 10-17. These problems are of Appellant’s making and should not be countenanced as to this most recent brief. She should be directed to file a second amended brief that deletes Argument VI and the related issue in the Statement of Issues with no further edits.

Respectfully submitted,

ALAN WILSON
Attorney General

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s/ J. EMORY SMITH, JR.
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ATTORNEYS FOR THE ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I hereby certify that I have served the Attorney General's Reply to Return to Motion to Strike by emailing it to counsel for the Appellant at the email address below this March 18, 2022(Copy of email attached):

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail
adam@silvernailfirm.com

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: Friday, March 18, 2022 11:25 AM
To: Adam Silvernail
Subject: RE: Pope v. Wilson, Appellate Case No. 2021-00518
Attachments: Reply to Return to Motion to Strike Amended Initial Brief for e-filing (02928306xD2C78).PDF

Adam:

Attached is the Attorney General's Reply to your Return to his Motion to Strike.

Have a nice weekend.

Emory

J. Emory Smith, Jr.
Deputy Solicitor General
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P.O. Box 11549
Columbia, SC 29211
803-734-3642 Direct

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