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Jun 27 2022
SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No. 2019-000362

Adele J. Pope, Appellant

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Defendants

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APPELLANT'S REPLY TO RETURN TO MOTION TO SUPPLEMENT THE RECORD OR TAKE JUDICIAL NOTICE

Appellant responds to the Return of Respondents, the estate and trust of entertainer James Brown ("James Brown Estate"[1]), opposing the Court's consideration, either by a supplement to the record or judicial notice, of a December 2021 *New York Times* article reporting the $90 million sale of Mr. Brown's worldwide music empire, and the record in Appellate Case No. 2020-000967, an appeal from this case, "Aiken 1337," which was dismissed as this appeal was pending.

The James Brown Estate asserts that the request was untimely, that the documents are not appropriate for consideration by the Court, and even that Appellant seeks to have the Court draw improper inferences from the documents. That is not the case.

[1] Because the Will of James Brown and The James Brown 2000 Irrevocable Trust form a unified estate plan, Appellant refers to both Respondents as the "James Brown Estate," unless the context requires otherwise.

This extraordinary case involves a 2009 joint fee claim of Robert Buchanan, Jr. ("Buchanan") and Appellant for approximately $2 million, plus interest, for their faithful service to the James Brown Estate, including preventing bigamist Tommie Rae Hynie ("Hynie") from taking a quarter of its assets. The 2009 claim contained full documentation, including daily time records and verified expert opinions of James Hardin III, Esq. ("Hardin") and W. Steven Johnson, Esq. ("Johnson").

It is now undisputed Hynie is a bigamist who defrauded James Brown for 8 years and has made material false statements to multiple courts dealing with James Brown Estate for 15 years.

It is undisputed that Hynie's concealed bigamy, false claims to multiple courts, and vitriolic false claims made against Buchanan and Pope in the "Wingate Suit,"[2] and the support for Hynie's claims by the circuit court and the James Brown Estate, have continuously impacted the 2009 joint claim and Aiken 1337 since each was filed.

The Disallowance which forced Appellant to file Aiken 1337 was served on May 29, 2013, just after Hynie's counsel and Louis Levenson, Esq. ("Levenson"), announced to the Honorable Doyet A. Early, III ("Judge Early"), their plan to ignore the Supreme Court's *Wilson v. Dallas* decision and reinstate a 2008 settlement deal brokered by the Attorney General of South Carolina ("AG") the Supreme Court of South Carolina had voided three weeks earlier on May 8.

Just over two months after Hynie's May 29, 2013 announcement to Judge Early, the music manager for the James Brown Estate was already advising Hynie's attorneys as Hynie filed public claims to siphon off U.S. royalties from Brown's "I Feel Good" charity with the U.S. Copyright Office. At the same time, the Estate's fiduciary, Russell Bauknight ("Bauknight") was claiming

[2] Richland County Case 2010-CP-40-4900, also known as "Case 4900" and "Richland 4900."

that Appellant was untruthful and had "raped" the James Brown Estate.

Between Hynie's May 29, 2013 announced plan to disregard *Wilson v. Dallas* and the final January 2019 order on appeal, the James Brown Estate sought, and the circuit court granted, more than twenty orders and directives which advanced Hynie's efforts to reinstate the AG's 2008 settlement and retaliate against Buchanan and Appellant in the Wingate Suit. In the Wingate Suit Hynie and Legacy Trust owners claim Buchanan and Appellant are liable to them for conducting the *Wilson v. Dallas* appeal, and for not accepting a $100 million offer for Brown's music empire made in 2007.

The James Brown Estate, Hynie and others also claim in the Wingate Suit that Buchanan and Appellant committed the federal felony of telling the IRS that Brown's music empire was worth $84 million to get a $5 million commission on what they claim was James Brown's $5 million estate when he died. They ignore that Buchanan and Appellant brought in more than $5 million a year when they were fiduciaries for the Estate.

This case and appeal are extraordinary because the James Brown Estate remained loyal to Hynie's May 29 plan despite representations by Bauknight to the Supreme Court two months earlier that he would abide by James Brown's estate plan if reinstated. It is extraordinary because the James Brown Estate has been continuously aligned with Hynie and working for the benefit of Hynie and Legacy Trust owner/successors to whom Buchanan and Appellant never owed a duty since May 29, 2013. [*See*, for example: Final Brief of Respondents, S.C. Ct. Appeals, Case No. 2017-001899, filed 1/19/2019] Judicial estoppel "precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation." *Hayne Fed. Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997). Yet the circuit court, on notice of this commitment

to Hynie, failed to provide Appellant with an unconflicted fiduciary to resolve her 2009 claim back in 2013.

Instead, since Hynie's May 29, 2013 announcement both the James Brown Estate and the circuit court have used the joint fee claim, resolved as to Buchanan in a 15-minute hearing, to advance Hynie's plan to reinstate the AG's 2008 settlement and blame the damage on Buchanan and Appellant in the Wingate Suit.

As set out below and in the record, Appellant does not ask the Court to infer anything from the documents it is asked to review other that what is irrefutable. The James Estate reportedly sold for $90 million. The James Brown Estate, to aid Hynie and other Legacy Trust owners in the Wingate Suit, has withheld $47,972 of Appellant's money from Appellant for 12 years, despite judgments which have allowed it to double, and with no accounting.

In 2020 it claimed this fee case and the Wingate Suit were "companion cases," and secured an order to withhold Appellant's assets for what may be another 12 years, infecting a circuit court judge new to the James Brown Estate with the vitriolic false claims Hynie and those aligned with her, including Respondents, have advanced since 2010.

Appellant's $47,972 is now over $100,000 and earning interest at $9,000 a year, but the James Brown Estate refuses to pay her.

It is undisputed that the money being held is Appellant's money and also that Appellant has not received a penny for her service to the James Brown Estate between November 2007 and May 8, 2013 except the partial cost award from the Supreme Court in *Wilson v. Dallas* which the James Brown Estate paid for Hynie and others.

It undisputed that, but for the 6-year effort of Buchanan and Appellant, including their 4-

year appeal with *pro bono publico* lead counsel James Richardson, Esq. ("Richardson"), Hynie would have taken nearly a quarter of James Brown's "I Feel Good" education charity in 2008 in exchange for half of her U.S. Copyright Act termination rights proceeds which have a value of zero.

The facts that the estate's intellectual property has reportedly been sold for $90 million and that $100,000+ of Appellant's money is being withheld by Respondents, and that Respondents claim the right to continue to hold Appellant's $47,972 and interest, are irrefutable.

The documents the Court is asked to review place in sharper focus the extraordinary effort, and result, of the six-year service of Buchanan and Appellant to the James Brown Estate and the James Brown "I Feel Good" education charity. These documents make it easier to see that the panel overlooked how damaging the inappropriate bias of the James Brown Estate and circuit court in favor of Hynie was to Buchanan and Appellant in the orders and directives on appeal in this case. They show how damaging it will continue to be, giving further aid to Hynie in her fraud. They should be considered.

Background Facts

Hynie is a bigamist. She was never the spouse of James Brown. *See Brown v. Sojourner (In re Brown),* 430 S.C. 474, 846 S.E.2d 342 (S.C. 2020). Hynie defrauded James Brown for 8 years before his death on Christmas Day 2006, and has defrauded multiple courts in the 15 ½ years since James Brown died.

Hynie's mode of operation was simple: 1. Make false claims, as necessary; 2. Conceal or discard documents which provide evidence that your claims are false; 3. Call everyone who disagrees with you a liar, a thief, or both; and 4. Get someone else to pay for the damage you cause.

In 1999 when James Brown and financier David Pullman valued Brown's music empire at $100 million, Hynie was already defrauding Brown, concealing her marriage. *Brown* at 480, 846 S.E.2d at 345.

Hynie admitted her bigamy in handwritten notes which became public in 2007. [R. 1313, 1433, 3026] By then Hynie had filed three lawsuits, claiming more than half of the James Brown Estate as Brown's "spouse." [R. 1598, 1801]

In 2007 the James Brown Estate claimed Hynie was a bigamist and that her son, not a presumed heir, should take a $300 DNA test. [R. 1598, 1801-3] Hynie disagreed and called the Estate's fiduciaries liars and thieves. [Oral Argument, *Wilson v. Dallas*] One fiduciary, David Cannon, was a thief, [R. 1644-5] Hynie claimed that the James Brown Estate might try to sell James Brown's $100 million "book of music" for $20 million just to get big commission.

In December 2007, one month after Buchanan and Appellant became fiduciaries of the James Brown Estate, Hynie filed two more lawsuits, seeking to void James Brown's Will and 2000 Trust. [R. 1598] Hynie had been with Brown when he signed them. [R. 1741]

Buchanan and Appellant moved to dismiss all of Hynie's suits because she was not the surviving spouse of James Brown, and because James Brown's Will and Trust demanded that they vigorously defend against all challenges to Brown's estate plan, direct and indirect. [R. 2578-2586]

In March 2008 Hynie secured from the circuit court an *ex parte* order preventing circulation or discussion of her public handwritten bigamy admissions until "further order of the court." [R. 65] Buchanan, Appellant and scores of others had already seen the handwritten bigamy admissions.

In August 2008 the AG, defrauded by Hynie's false claims, agreed to give Hynie a quarter

of the James Brown Estate and "I Feel Good" charity and take control of Brown's music empire with Hynie. [R. 2711-14]

Buchanan and Appellant filed about 50 documents trying to stop the AG from giving Hynie what they claimed was about $20 million, with about $9 million for her attorneys in exchange for half of the U.S. Copyright Act termination rights of Hynie, which were worth zero, and those of her son who refused a paid-for DNA $300 DNA test.

In January 2009 Terry Brown, who was part of TJBL, which was trying to buy the James Brown Estate assets for $92- $102 million, joined the AG's 2008 settlement.

In May 2009 Judge Early was persuaded by the AG and Bauknight, a CPA, that the AG's 2008 settlement was good for the James Brown Estate and "I Feel Good" charity. He approved the AG's 2008 settlement and replaced Buchanan and Appellant with Bauknight. *See Wilson, supra.*

From May 2009 until May 2013 Buchanan, Appellant, and *pro bono* attorney Richardson, assisted by Tressa Hayes, Esq., were the only people opposing the plan of the AG to give Hynie $1 million a year and nearly a quarter of the "I Feel Good" charity and slightly more to Terry Brown and the Levenson will contestants.

By July 2009 Buchanan and Appellant had perfected their "time + costs" claim through May 26, 2009, with the expert opinions of Hardin and Johnson. Of the $2 million, Buchanan was entitled to about $500,000 and Appellant about $1.5 million. [R. 356-625]

The James Brown Estate (Bauknight) had hired a dozen attorneys at $375 - $500 an hour, but declined to pay Buchanan's and Appellant's $2 million, even though it was earning interest under Judge Early's March 2008 order at the legal rate. [R. 734, 736, 737-40]

In 2009 Hynie's counsel proposed a massive devaluation of the James Brown Estate to

discredit "Bobadele." [R. 1118; 1386] The James Brown Estate, with aid from Peter Afterman, carried out the devaluation.

In the spring of 2010 Hynie's attorney threatened Buchanan's attorney Elizabeth Van Doren Gray, Esq., with a lawsuit by the AG if they did not drop their appeal of the AG's 2008 settlement. He said a Sr. Asst. AG had hired the private law firm of Kenneth Wingate, Esq., (collectively "Wingate"). [R. 1127]

In May 2010 Hynie, the James Brown Estate, and others sued Buchanan and Appellant in the Wingate Suit, seeking tens of millions of dollars for Hynie and other Legacy Trust owners. The majority of the millions sought would go 23.75% to Hynie and 47.5% to the AG's (new) charity, with the first $2 million going to Levenson clients. [R. 626-638]

Buchanan and Appellant never owed a fiduciary duty to Hynie, the Legacy Trust, the AG's (new) charity, or to those for whom Wingate was seeking damages. *See Bennett v. Estate of Kelly*, S.C. Sup.Ct. Op. No. 28099 (June 15, 2022) (Personal representatives have fiduciary duties *to beneficiaries* of Estates.)

Now-Governor Henry McMaster, then AG, did not authorize Wingate to sue in the name of the State/AG. [R. 1315] Wingate, Hynie and the James Brown Estate concealed the public Wingate Special Counsel Agreement, claiming it was the "epitome" of a private document. Bauknight acted "on behalf of" the AG in the Wingate Suit. [See Final Brief of Respondents, filed 1/19/19, Ct. Appeals Case No. 2017-001899, p. 29 for Respondents' discussion of these actions.]

In 2010 Richardson told the Court of Appeals in *Wilson v. Dallas* that his *pro bono publico* service as lead appellate counsel in the appeal of the AG's 2008 settlement was extremely important because about Fifty Million Dollars in James Brown "I Feel Good" Trust scholarships

were at stake.

In August 2010 Hynie, the James Brown Estate and others claimed that Richardson's statements were false. They said he was not serving *pro bono* and that $50 million was not at stake. They said a "professional appraisal" expected within a few weeks would show that Brown's Estate and Trust were worth less than $12 million when he died. [*See* Return to Appellants' Request for Extension, pp. 4-5, *Wilson v. Dallas*, dtd. 8/23/10]

In December 2010 Hynie, the James Brown Estate and others filed a joint brief in *Wilson v. Dallas*, but did not disclose the claimed $4.7 million value. Emails confirm Hynie and the James Brown Estate knew that the claimed $4.7 million value was very important to the *Wilson v. Dallas* appeal, but decided to present it to the Supreme Court at "a time of our choosing." [R. 1036-7]

In March 2011 Hynie and the James Brown estate did not notify the Supreme Court of the claimed $4.7 million value when a supplement to the record in *Wilson v. Dallas* was filed.

On May 2, 2011 Hynie, the James Brown Estate and others filed their joint final brief in *Wilson v. Dallas.*

On May 6, 2011 Hynie and the James Brown Estate, with others, revealed the $4.7 million valuation they had received the previous September to Supreme Court, and asked to supplement the record in *Wilson v. Dallas* with the claimed fact that Brown's worldwide music empire was worth less than $4.7 million when he died. [R. 1173-84]

Hynie and the James Brown Estate claimed, incorrectly that documents they produced "proved" that the AG's settlement saved taxes. It did not. [*Id.*]

Because of the "fractional share" clause in Brown's Trust, Bauknight's $4.7 million

valuation shifted $1 million a year of income, and nearly 1/3 of the assets out of the "I Feel Good" Trust and over to a taxable Trust for 6 James Brown family members. [R. 1185-92] This resulted in tens of thousands of dollars of unnecessary income taxes being due each year, in addition to the loss of scholarship money. It was not corrected by the decision in *Wilson v. Dallas.*

On November 1, 2011 the James Brown Estate told the Supreme Court in *Wilson v. Dallas* oral argument:

- the James Brown's Estate and Trust had no corpus to speak of;
- Nobody was trying to buy the James Brown assets;
- Hynie's elective share claim was a "slamdunk;"
- Termination rights were all the case was about; and
- There would be nothing left in the "I Feel Good" charity by 2023 because of termination rights unless the Attorney General's settlement were upheld.

In October 2012 Hynie was exempted from attending the Wingate Suit mediation, but issued a public post claiming that Appellant had stolen from the James Brown Estate, and that the Wingate Suit mediation was to get rid of Appellant.

In March 2013 Appellant and Adam Silvernail, Esq., met with AG Wilson, the Chief Deputy and Solicitor General Robert Cook to discuss the damage caused by Bauknight's $4.7 million valuation and the claim to the IRS that Hynie was the spouse of James Brown. [R. 776]

On May 8, 2013 the Supreme Court issued its final decision in *Wilson v. Dallas*, voiding the AG's 2008 settlement as a dismemberment of James Brown's estate plan. Bauknight's fiduciary role with the James Brown Estate was voided, but he was allowed to re-apply.

Including the Wingate Suit lawyers, more than thirty lawyers had opposed the efforts of Buchanan, Appellant, Richardson and Hayes to keep the AG from giving Hynie and claimed family members more than half of the James Brown Estate's assets.

On May 29, 2013 Judge Early held a status hearing regarding the *Wilson v. Dallas* remand which was attended by Bauknight and two attorneys for the James Brown Estate, including William Newsome, Esq. ("Newsome"), a "probate claims expert."

At the May 29 status hearing, Hynie's attorney and Levenson announced to the circuit court their plan to ignore the Supreme Court's *Wilson v. Dallas* decision and reinstate the AG's 2008 settlement. [R. 976-977]

Hynie's counsel claimed that "Mrs. Brown" had given up a lot to join the AG's 2008 settlement, and might be less generous if the settlement were not promptly reinstated. Levenson said he had withheld information in 2009 that would show the Will was invalid, and asked to go in chambers to discuss them, but Judge Early declined. [R. 790-792]

When the hearing ended, Newsome served Appellant with the "Disallowance" which forced her to file Aiken 1337. The Disallowance repeated the false claim that the $84 million valuation Buchanan and Appellant had assigned to Brown's music empire was self serving and "overinflated." [R. 731; 1784-85]

On June 10, 2013 Appellant filed Aiken 1337 to obtain her share of the joint claim, the $1.5 million, with interest, costs of the *Wilson v. Dallas* appeal which Appellant had paid out of pocket, and a discretionary amount, with the total claim not to exceed $2.8 million. [R. 666-730]

The 50+ page complaint in Case 1337 outlined Bauknight's alliance with Hynie and how much damage that alliance and the claimed $4.7 million had done to the James Brown Estate and charity. Appellant asked for a special fiduciary not aligned with Hynie to resolve her fee claim. [*Id.*]

On June 13, 2013, the circuit court segregated Aiken 1337 and directed that Buchanan and

Appellant could not participate in any case except each in his or her own claim. The circuit court directed the Aiken Clerk to return without filing anything filed by Buchanan or Appellant in any other James Brown case. [R. 216-218]

In August 2013 Peter Afterman helped Hynie file public "Tommie Rae Terminations" with the U.S. Copyright Office seeking to take U.S. royalties to about 200 copyrights devised to the "I Feel Good" charity between 2015 and 2023, and Bauknight claimed Appellant was dishonest and had "raped" the James Brown Estate.

In October 2013 Judge Early "double approved" all of the funds Buchanan had been paid; found no disgorgement appropriate; praised Buchanan's service, all of which was joint with Appellant; and left open the possibility of Buchanan's re-entry into the Wingate Suit as to counterclaims against parties other than the James Brown Estate. [R. 853; 863; 1435]

Judge Early directed Newsome to submit an order outlining his ruling, but no order was ever issued.

In 2014 the circuit court declined to appoint a special fiduciary to hear Appellant's fee claim; and issued a Form 4 order denying Appellant's summary judgment motion for the approximately $1.5 million, with interest. [R. 242]

In 2014, as Appellant tried to persuade the James Brown Estate not to allow Hynie to carry our her announced plan, Respondents told this Court on February 24, 2014 in Case No. 2013-002582:

> Her role in this litigation is over. Mr. Bauknight urges this Court to deny the petition for rehearing and send a message to Ms. Pope that any future attempts to insert herself in this litigation will not be tolerated. [Ret. Petition,, Feb. 24, 2014, Case No. 2013—002582]

Bauknight and the James Brown Estate repeatedly assured the Supreme Court that he and Mr. Sojourner were defending James Brown's estate plan, but the James Brown Estate's music manager was helping Hynie with a $6 million deal to siphon off U.S. royalties from Brown's "I Feel Good" charity.

In January 2015 the circuit court declared Hynie to be the surviving spouse of James Brown, and a number of Brown's children opposed and appealed the ruling. *See Brown, supra.*

The day after the Hynie spousal ruling the circuit court, *sua sponte,* signed an order requiring Aiken 1337 to be mediated with the Wingate Suit, the tort suit filed by Hynie and others in 2010. [R. 243]

In February 2015 the circuit court issued a rule to show cause why a journalist should not be held in contempt for re-publishing Hynie's public bigamy admissions, but the Supreme Court declined to enforce the circuit court's 2008 ex parte gag order to punish the journalist. Hynie's public handwritten bigamy admissions returned to the public, but Hynie's lawyer did not restore the originals to the James Brown Estate.

After the Hynie summary judgment order, the Supreme Court asked the lower court to present all of its orders since *Wilson v. Dallas,* then requested a status report.

On May 8, 2015 the circuit court filed its status report which contained a number of material errors, some of which were pointed out by DNA-proven children of James Brown. The status report praised Bauknight, and stated:

- Buchanan "settled the case against him for $500,000," rather than that he was paid $500,000 [R. 997]

- That the circuit court believed Appellant's $47,972 SA fee was "in excess of $2,000,000 . . . for service through May 26, 2007 [sic]." [R. 998]

- That the circuit court believed Appellant "claim[ed] approximately $5,000,000 in fees." [R. 998]

- That Bauknight had brought James Brown's estate from the "brink of insolvency." [R. 996]

The circuit court failed to report Hynie's and Levenson's public May 29, 2013 announced plan to ignore *Wilson v. Dallas* and reinstate the AG's 2008 settlement. Instead, the circuit court stated:

> The Order requesting this status report inquired whether any proposed settlement agreement had been submitted for court approval. The answer is an unequivocal no. No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of any proposed settlement. [R. 998]

Although others criticized the status report, Buchanan and Appellant, through Richardson, were not asked by the Court to respond, and did not.

On June 10, 2015, the Supreme Court admonished Appellant not to be involved in any James Brown Estate case in which she did not have standing, bringing to an abrupt end her 2-year effort to try to stop the announced plan of Hynie and Levenson to reinstate the AG's 2008 settlement.

The Supreme Court's June 10, 2015 order advanced Hynie's plan, supported by the James Brown Estate, to disregard the Supreme Court's *Wilson v. Dallas* decision; reinstate the AG's 2008 settlement; and blame the damage on Buchanan and Appellant in the Wingate Suit.

In 2015 the James Brown Estate supported an order relieving Hynie, the Legacy Trust, and its owners from default as to the counterclaims of Buchanan and Appellant in the Wingate Suit. [See Final Brief of Respondents, 1/19/19, Case No. 2017-001899]

In 2016 Wingate withdrew its motion to be relieved as the AG's counsel in the Wingate

Suit and continued to act for the AG despite testimony of Governor McMaster that he did not authorize Wingate to bring the 2010 suit in the name of the State/AG and the April 24, 2013 letter confirming that fact, and that the AG was not going to pay its claimed 47.5% of the Special Counsel Agreement, or anything, to Wingate.

In 2016 the circuit court awarded the attorney and GAL for Hynie's son $700,000 for litigation fees, even though he had refused a paid-for $300 DNA test in 2008 and was not a presumed child.

In 2016 Hynie and the James Brown Estate, with others, tried to consolidate the Wingate Suit and Aiken 1337, but the request was denied. Then Hynie and the James Brown Estate named the same 9 experts in the two cases.

The 9 experts were told that Hynie was the spouse of James Brown. They were not asked to value the James Brown Estate, either at death or at the time. The only valuation requested was by Roger Miller, an expert in the valuation of termination rights of all heirs. Miller valued the termination rights in 2017 at $8.8 million for all heirs, but confirmed he left the determination of heirs to the lawyers.

In October 2016 now-Governor McMaster stated emphatically under oath in this case that he had not authorized Wingate to sue Buchanan and Appellant in the name of the State/AG, or Bauknight to act "on behalf of" the Attorney General. He stated to Appellant, "Ma'am, I did not sue you." In 2017, however, when ordered to testify at a deposition in this case, Wingate claimed that the Governor had authorized him.

Wingate identified a copy of the AG's Special Counsel Agreement, claiming that a letter authorizing Bauknight to file the suit confirmed his position.

In January 2017 Appellant opposed a second effort of Hynie and the James Brown estate to consolidate Aiken 1337 with the Wingate Suit, and more than 30 depositions were taken by April 2017 which supported the claim of Buchanan and Appellant, supported since 2009 by experts Hardin and Johnson.

In January 2017 Judge (Retired) Walter Williams, a philanthropist, former IRS lawyer, and member of the original advisory board to the James Brown "I Feel Good" Trust, explained that in 2007 he valued Brown's assets conservatively at $100 million.

In March 2017 Roger Miller, an expert for Hynie and the James Brown Estate, refuted their incorrect claims to the Supreme Court, and supported those of Buchanan and Appellant by confirming that "frothy" investors were willing to pay 15 – 20 times annual royalties for "solid gold" music catalogues such as James Brown's when he died, and since. This set the value of the copyrights alone at $60 million to $80 million at Brown's death, and even higher when Buchanan and Appellant were replaced. [R. 1395-96; 1922-23]

Miller explained how the copyrights held their value even in the sharp economic downturn in 2008. [R. 1260] Miller confirmed that termination rights will never apply to the non-U.S. half of the "I Feel Good" charity's royalties, and that 10 years after Brown's death the value of all termination rights of all heirs – not just the parties to the Attorney General's 2008 settlement – was just $8.8 million. [R. 1340] Miller's testimony and $8.8 million value for the termination rights proceeds 10 years after Brown's death supported the position of Buchanan and Appellant that Hynie's termination rights had always been zero, and the termination rights of the settling parties less than 5% of the value of the James Brown Estate.

In March 2017 Dr. Terry Cox had little memory but confirmed that in 2007 he relied on

TJBL's outside investors to value James Brown's image + likeness (right of publicity) at $40 - $50 million. [R. 1300-01]

In March 2017 Jonas Herbsman, Esq., testified that Brown was a seminal figure in the music world, but Herbsman knew nothing about termination rights litigation, or any litigation.

In April 2016 Tax Expert Hardin testified that a fiduciary who values an estate at $4.7 million should be limited to that value on his compensation, and that the factors used by Buchanan and Appellant to value James Brown's music empire at $99 million less the $15 million debt, $84 million. were those traditionally used by professional appraisers.

The correct value was important for James Brown under the IRS's "Five Percent Rule." At $80 million the "I Feel Good" Trust would provide close to $4 million of scholarships every year. At the $2.8 million reported by the James Brown Estate to the IRS, scholarships would be $150,000 a year or less. *See* 26 U.S. Code §4942.

In 2017 the circuit court, at the request of the James Brown Estate, denied summary judgment, with support from 30 depositions, awarding only Appellant's $47,972, with interest. [R. 285-286]

Bauknight testified at trial that he had no idea of the value of the James Brown assets, only that he had $8 million in the bank. [R. 1848-9]

The circuit court's reviewing, then discarding of the records of tens of millions of dollars in litigation costs spent since May 2009 deprived Buchanan and Appellant of a level playing field to evaluate how the James Brown Estate could claim that Buchanan and Pope had acted improperly when it had only $8 million in the bank 7 years after the TIAA debt was paid.

In 2019 the circuit court adopted just what the James Brown Estate asked it to say: that

Buchanan and Appellant had damaged the James Brown Estate by keeping Hynie and the Levenson clients from taking more than half of the charity; that the music empire was worth less than $4.7 million when Brown died; and that Appellant – who tried to settle this case for $2.1 million both before and during trial – demanded $19 million to settle. [R. 292-352]

The circuit court took another step. It asked the James Brown estate to find instances of what they considered to be inappropriate personal attacks by Appellant. [R. 1310-1311] The circuit court overlooked that Hynie had called Appellant a thief and a "rat"; Bauknight had called her a liar and claimed she "raped" the James Brown Estate [R. 799]; and Buchanan and Appellant had been denigrated for a decade in multiple and inappropriate ways.

The circuit court ruling carried out Hynie's plan, endorsed by the James Brown Estate, to reinstate the AG's settlement and denigrate and falsely accuse Buchanan and Appellant, and even James Richardson, for daring to disagree with Hynie's plan.

Three days later, the James Brown Estate and Hynie jointly urged this Court to let Hynie and the Levenson will contestants out of default in the Wingate Suit, even though Hynie now held a 46% stake, and Levenson clients held almost the same. In support of Hynie and the private Legacy Trust owners, the James Brown Estate told this Court on page 29 of the Final Brief:

> Plaintiffs' counsel speak for the Plaintiffs, both governmental and individual, in this litigation. Furthermore, Mr. Bauknight is simply the court-appointed successor trustee to two charitable trusts, trusts in which the Attorney General has an interest that arises as a matter of law. As such, the relationship between Mr. Bauknight, the Attorney General's office, and Plaintiffs' counsel in this case is simply patterned according to the appropriate statutory scheme for enforcing charitable trusts. *See* S.C. Code Ann. § 62-7-405 (c)… [Brief, p. 29]

The Brief, in its entirety, states in Respondents' own words the story of the commitment of Respondents to Hynie's May 29, 2013 plan, and the conclusion states:

> In light of the arguments above, Respondents request this Court to hold that the circuit court did not abuse its discretion when granting the motion to set aside entry of default as to Respondents and to hold that the circuit court did not err when it denied Appellant's motion to disqualify Sweeny, Wingate & Barrow from representing the Office of the Attorney General and enjoining Mr. Russel Bauknight from purportedly speaking for the Attorney General. [Brief, p. 29]

In 2019 and 2020 the James Brown Estate continued to support Hynie's spousal claims and effort to reinstate the AG's 2008 settlement and use the Wingate Suit to blame the damage on Buchanan and Appellant. In 2017 Solicitor General Cook, while praising the dedication of Appellant to James Brown's "I Feel Good" Trust, said that in 40 years with the AG's office he had never seen a case like the Wingate Suit, and it had gotten worse. [R. 1317] Among the extraordinary features were:

- On February 1, 2019 the Supreme Court accepted Cert. on Hynie's spousal case.

- Wingate claimed to represent all 17 plaintiffs, including the AG, despite the fact that Levenson signed the 40% contingency for 11 plaintiffs and Governor McMaster did not hire Wingate.

- Wingate had never added four adults, former minors, grandson Forlando Brown, or the Estate of deceased Venisha Brown.

- Wingate, Hynie and the James Brown Estate began claiming that the Wingate Suit involved a breach of fiduciary duty by Buchanan and Appellant to the James Brown Estate, not what the complaint said: that the claimed duty was to Hynie, the Legacy Trust and other Legacy Trust owners, to whom Buchanan and Appellant owed no duty. [*See,* e.g., Respondents' Brief in this case, p. 9]

- The primary Wingate Suit plaintiff, the Legacy Trust, even though it told this Court in 2019 it was a charitable trust, claimed it no longer existed. [*See* Final Brief of Respondents, p. 29, 1/19/19, Case No. 2017 -001899]

- Hynie and the James Brown Estate had been able to delay almost all discovery in the Wingate Suit since Hynie's May 29, 2013 announced plan.

- On June 17, 2020 the Supreme Court declared Hynie to be a bigamist. *See Brown, supra.*

While this appeal was pending, however, Wingate and lawyers for the James Brown Estate went to extraordinary lengths, as they had since 2009, to damage Buchanan and Appellant and not pay them even a penny until they were silenced.

When Appellant requested her $47,972, with interest under Judge Early's orders of 2008, 2017 and 2019, the James Brown Estate did not pay it. Instead, while this appeal was pending, the James Brown Estate paid about $98,000 of Appellant's money into the Aiken Clerk of Court, then asked the Honorable Clifton Newman ("Judge Newman") to approve of what it had done, and stop the accrual of interest on Appellant's money until Hynie concluded the Wingate Suit. *See* this Court's file in Appellate Case No. 2020-000967.

On May 12, 2020, speaking for Hynie and the James Brown Estate, Wingate wrote the Clerk of the Supreme Court of South Carolina further denigrating Appellant. That letter is on file in appellate Case no. 2018-1990.

Attached to Wingate's letter was the Offer of Judgment Appellant had delivered to Venisha Brown back in 2012, which proposed to let Venisha out of the Wingate Suit. The James Brown Estate and Hynie, through Wingate, suggested this was intermeddling in the James Brown Estate in 2020. [*Id.*]

A month later the Supreme Court said Hynie was not the wife. *Brown, supra.* Two years later the James Brown Estate and Aiken Clerk, with no accounting, are holding Appellant's $100,000+ and its interest of about $9,000 a year. The James Brown Estate says that despite this Court's ruling Appellant may not ever have her $47,972 if it does not suit Hynie.

By the time the circuit court signed the January 2019 order proposed by the James Brown

Estate, only the circuit court, Wingate, Hynie and the James Brown Estate were claiming that Hynie was the spouse of James. [*See* Final Brief of Respondents, 1/19/19, Case No. 2017-001899, and referenced documents.]

Most former Levenson clients were openly claiming in State or Federal Courts that Hynie was a bigamist, and that she and agents for the James Brown Estate had engaged in a $6 million "backroom" deal with the fiduciaries for the James Brown Estate over just 5 of Brown's 1100 copyrights. [*See Brown, supra;* R. 1291]

Days after the circuit court's order stating that Buchanan and Appellant had breached their fiduciary duty by appealing the AGs settlement, and that the only credible evidence at trial was that Brown's music empire was worth less than $4.7 million, on February 1, 2019, the Supreme Court granted certiorari to review the circuit court's finding that Hynie was James Brown's spouse.

Argument

I. The Motion to Supplement was timely.

Respondents argue that the Motion is untimely, but cite no Rule, law or other authority in support of their argument. The Motion was timely made; Appellant only knew that seeking the supplementation of the record and/or judicial notice of the matters addressed in the Motion would be necessary after review of this Court's Opinion. Appellant is aware of the limited circumstances in which an appellate court should take notice (by judicial notice or by allowing a supplement to the record on appeal) of matter not presented to the lower court. *See Masters v. Rodgers Dev. Grp*., 283 S.C. 251, 256, 321 S.E.2d 194, 197(Ct. App. 1984). Rather than further delaying this case, which had been pending for nearly a decade (on a claim which has been pending for nearly 13 years), Appellant elected not to ask for the relief set out in the Motion prior to this

Court's issuing its opinion. However, upon review of this Court's Opinion, Appellant realized that proper judicial notice or supplementation would aid the Court in understanding matters addressed in Appellant's Petition for rehearing.

Further, Appellant notes that Respondents were among the Respondents in *Wilson* who sought to supplement the record in that case with evidence of a claimed $4.7 million "professional appraisal" secured 8 months earlier (but not the appraisal itself). The James Brown Estate, and others had made a strategic decision to withhold this documentation from the *Wilson* Court for months. Yet they asked the Court to accept the "facts" that the undisclosed valuation "proved" that Buchanan, Appellant and Richardson had misstated facts to the Court; that the AG's 2008 settlement was good for Brown's charity; and that the AG's 2008 settlement saved taxes. [R. 1036-7]

II. Although the matters referred to in the Motion were not presented to the lower court, they are appropriate for review or consideration by this Court on appeal.

Appellant could not have presented to the lower court the matters which are the subject of her Motion to Supplement, since the news article was published in December 2021 and Appellate Case No. 2020-00967 was filed in 2020, after the entry of the lower court orders which are the subject of this case.[3]

Because taking notice of and/or supplementing the record in this equitable matter with the matters addressed in the Motion would help this Court correct the issues on appeal inthis 13-year-old claim. Appellant submits that the relief sought in the Motion should be considered. *See CSX*

[3] Appellant notes, however, that many of the documents and proceedings leading up to the appeal in Case 2020-000967 *were* a part of the record below and on appeal in this case.

Transp. Inc. v. City of Garden City, 235 F.3d 1325 (11th Cir. 2000) (noting "the inherent equitable power to allow supplementation of the appellate record if it is in the interests of justice."); *see also In re AOV Indus. Inc.,* 797 F.2d 1004, 1012 (D.C.Cir. 1986) ("Normally, of course, [courts] are not required to consider evidence presented for the first time on appeal [but] [i]t is within the discretion of the court, however, to make limited exceptions to this rule when 'injustice might otherwise result'" (internal citations omitted)).

Because this Court's Opinion appears to be based on findings in the lower court's January 16, 2019 order, which itself was based on years of the Respondents, Hynie and others misleading the lower court, consideration of the matters addressed in the Motion will avoid injustice in this case.

III. Judicial notice is proper and warranted.

Respondents correctly note that "original 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, 255, 321 S.E.2d 194,195 (Ct. App. 1984). Respondents go on to supply inferences which Respondents believe Appellant intends this Court to draw from the *New York Times* article which is addressed in the Motion. Appellant did not suggest to this Court any inferences to be taken from the article; she simply asks that the Court take judicial notice of or allow the article to be added to the record herein. Respondents nonetheless continue their long history of speculating that Appellant has some unstated and nefarious intent in her filings. Appellant has no such intent, and has not asked this Court to find that any statement made in the article can be taken as adjudicative fact. As set out in the Motion, however, Appellant believes that consideration of the article would assist this Court in reaching a just result in this case. This

Court, if notice is taken or the article becomes a part of the record, will no doubt consider the article only to the appropriate extent under the law, and Appellant need not mastermind the Court's consideration.

Likewise, as to the record in Case No. 2020-000967, Appellant asks this Court simply to take notice of "the record," being this Court's own file on this second appeal from Case 1337, wherein appellant sought review of an Order directing that $47,972 (now over $100,000 with interest continuing to accrue) of Appellant's money be held indefinitely pending the outcome of Richland 4900. [Motion at 1] Appellant again does not attempt to instruct the Court on how it should consider any matter that might be encompassed in the record of Case 967, but assumes that the Court will properly consider the matter if it grants the Motion in whole or in part.

The panel's decision affirming the circuit court will support the damage to Buchanan's and Pope's careers and reputation by Hynie's false felony claims lodged on behalf of the State for 11 years in the Wingate Suit . It rewards Respondents in their support for Hynie. It is undisputed that they do not plan to return Appellant's money to her until a time of Hynie's choosing.

The documents the court is asked to consider support these irrefutable facts .

Conclusion

For the foregoing reasons, as well as those set out in her Motion, Appellant respectfully asks that this Court grant her Motion to Supplement the Record or take Judicial Notice.

Respectfully submitted,

s/Adam T. Silvernail

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June 27, 2022

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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No. 2019-000362

Adele J. Pope, Appellant,

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Respondents.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of Reply to Return to Motion to Supplement or for Judicial Notice on all Respondents on the date shown below, by emailing a copy to their counsel, addressed as follows:

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June 27, 2022