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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Supreme Court

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, Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT.

Twenty-three years ago, iconic entertainer James Brown made a voice tape of his wishes and signed the first version of his "I Feel Good" Trust. The following year Brown finalized his ironclad estate plan, leaving his worldwide music empire to the James Brown 2000 Irrevocable Trust (the "2000 Trust"). Robert Buchanan, and Petitioner Adele Pope defended, at great personal and professional cost, Brown's noble estate plan, and this Court saved Brown's charity from "dismemberment" resulting from a 5-year alliance of the Attorney General ("AG"), Tommie Rae Hynie and others James Brown specifically excluded from inheriting his music empire. *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

Nearly a decade later, a panel of the Court of Appeals affirmed a circuit court ruling finding that Buchanan's and Petitioner's work was of no value to Estate and 2000 Trust. Petitioner now asks that this Court grant a writ of certiorari to review and reverse the Court of Appeals' opinion

in *Pope v. Estate of Brown*, 2022-UP-229 (May 25, 2022), and grant the reasonable fee request made prior to trial of this case in 2017.[1]

Summary of Grounds for Granting a Writ of Certiorari and Certification of Counsel

Pursuant to Rule 242(b), certiorari may be granted where a case fits any one of certain listed criteria. This case presents three of those criteria, as it includes novel issues of law, substantial constitutional issues, and an opinion of the Court of Appeals which conflicts with decisions of this Court. The undersigned certifies that a Petition for Rehearing was filed on June 9, 2022 and denied by order dated July 28, 2022.

While the Court of Appeals correctly expressed concern over the circuit court's "re-scrutinizing the 2009 settlement and holding it against" Petitioner, it found that "other parts of the order would stand to support" the circuit court's finding in this equitable matter that Petitioner and Buchanan were entitled to be paid nothing for their almost-6-year service successfully protecting the estate, 2000 Trust, and "I Feel Good" charity of entertainer James Brown.

While the circuit court's misuse of *Wilson* against Petitioner is one of several issues raised in this appeal, the Court of Appeals overlooked the extent to which the circuit court's findings on this issue taint the orders on appeal herein. The Court of Appeals' opinion is in conflict with *Wilson*.

The Court of Appeals overlooked the profound effect the circuit court's criticism of *Wilson* and its full support for the May 29, 2013 announced plan of Hynie to disregard *Wilson* and reinstate

[1] Both Buchanan and Petitioner reduced their fee requests to a fraction of their hourly rates in an effort to end their involvement with the estate of James Brown. Petitioner's $2.1 million offer to settle before trial in 2017 was less than she had earned under the court-approved "time + costs" contract with Respondents by May 26, 2009, plus interest from 2009 as set out in the circuit court's "Payment Order" of January 2008. [R. 2138; 23-26] The offer meant that Petitioner would not be paid for the many hours Petitioner and her staff spent helping *pro bono publico* lead counsel James Richardson, Esq., with the appeal In *Wilson*. [R. 993-9]

the AG's 2008 settlement rejected in *Wilson* had on this case. Respondents' strident and continuing support for Hynie's May 2013 plan was in full view within two months of Hynie's May 29 announcement.[2]

The Court of Appeals' opinion, while citing *Matter of Estate of Kay*, 423 S.C. 476, 816 S.E.2d 542 (2018), is also in conflict with this Court's analysis of that case. *Kay* involved a dispute over personal representative's ("PR") commissions owed to an attorney who acted as PR. The PR sought payment for his services in dealing with certain litigated matters, including his own fee, and two beneficiaries objected. The Supreme Court held:

> Under the Probate Code, when a 'personal representative defends or prosecutes any proceeding in good faith, whether successful or not, he is entitled to receive from the estate his necessary expenses and disbursements including reasonable attorneys' fees incurred.' S.C. Code Ann. § 62-3-720 (2009 & Supp. 2017).

The circuit court made no finding that Buchanan and Petitioner had acted in anything other than good faith, and the Court of Appeals observed:

> Pope is a well-regarded and accomplished lawyer. This is acknowledged by all at various points in the record. It is also clear from the record that Pope worked hard throughout her service in an effort to protect Brown's estate plan, particularly its charitable beneficiaries. There is no doubting she took actions that benefitted the estate.

There was no evidence presented nor any finding that Buchanan and Petitioner acted in bad faith in successfully defending the extraordinary challenges to James Brown's Estate Plan, as well as the numerous other proceedings involving the Estate and/or Trust. Therefore, Petitioner submits that this Court should grant a writ of certiorari to review the Court of Appeals' opinion affirming the circuit court's order denying any payment to Petitioner of PR/Trustee commissions.

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[2] By August 2013, two months after Hynie's announcement, Russell Bauknight had stated his support for the AG's 2008 settlement in a deposition, and claimed that Petitioner was dishonest and had "raped" James Brown's estate. [R. 799; 846;1246] By then Respondents' music manager was working for Hynie's attorneys as well as Respondents. [R. 849; 328]

The Court of Appeals, reviewing the record in this equitable matter, overlooked the overwhelming evidence that since 2010 Respondents and Hynie have used Brown's fortune to retaliate against Buchanan and Petitioner in Richland 4900[3] and to conceal public documents in Richland 4900 and through FOIA intervention. After hearing Hynie's May 29, 2013, plan to disregard the *Wilson* and reinstate the AG's 2008 settlement, the circuit court became increasingly supportive of Respondents' retaliation efforts. [R. 2116-17] By 2017 the circuit court, faced with 34 depositions showing clear evidence of the value of Buchanan's and Petitioner's service and a modest offer to end this matter, joined Respondents and Hynie in their retaliation efforts. The appeal presents the following questions:

1. **Did the Circuit court Err in disregarding Petitioner's $2.1 Million Offer and Admitting a Confidential Offer Made to Hynie, the AG, and other Owner/Successors of the Legacy Trust into Evidence.**

2. **Did the Circuit court Err in Making Findings which Conflict both with its Previous Rulings and Holdings of the this Court in *Wilson v. Dallas.***

3. **Did the Circuit court Err in Accepting and Discarding Respondents' *Ex Parte* Filing of their Litigation Billing Records and Destroying the Records After the Court Received and Reviewed Them.**

4. **Was the January 16, 2019 Order a Result of the Circuit court's Bias Against Petitioner, Related to the *Wilson* Decision.**

5. **Did the Circuit Court Err in Disregarding Deposition Testimony of the Governor, the AG and Other Witnesses and Experts?**

Statement of the Case and Facts

Over 22 years three sets of trustees have served Brown's 2000 Trust. Only the second trustees, Buchanan[4] and Petitioner, fully accounted for their actions, fully disclosed their modest

[3] Richland County Case 2010-CP-40-4900.

[4] To avoid confusion descendants of James Brown are identified herein by first names. Others are identified by last name and abbreviated titles.

litigation costs, reported earnings of more than $5 million a year, and, in addition, properly and efficiently addressed the three serious threats to the existence of Brown's "I Feel Good" charity, namely:

- the $17 million theft, money laundering, and coverup by trustee David Cannon, including the 4- year federal injunction suit filed by an Atlanta law firm to reinstate Cannon and his co-trustee Albert Dallas as Brown's trustees [R. 2464; 1592; 1336; 1397; 1399; 1546-48; 1549];[5]

- the 5-year alliance of the A.G and Hynie, coupled with Richland 4900, filed in 2010 to stop the appeal of the AG's 2008 settlement;[6] and

- the $79 million devaluation of Brown's music empire, which, as of 2011 reduced the "I Feel Good" charity from more than $90 million to about $17 million.[7]

Over more than six years Buchanan and Petitioner Pope's actions were opposed by more than 100 attorneys, including 17 attorneys for Respondents. All supported the coverup of Cannon's theft, Hynie's 2008 settlement with the A.G, or both. [ ]

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[5] *See*. U.S. District Ct. Case No. 3-08-cv-00014-WOB, filed 1/8/08, in which Brown's grandson, a part owner of TJBL, an entity seeking to purchase Brown's music empire for $90 - $102 million, claimed that Buchanan and Pope were illegally appointed as Trustees and sought a federal injunction to enjoin the 2000 Trust from taking any action until Cannon and Dallas were reinstated as Brown's trustee. The suit was filed to force a $100 million sale of the music empire under a "new transaction" that would pay $25 million to Cannon, Dallas, music manager Frank Copsidas, and others and 5% of the deal to the Georgia law firm closing the transaction. [R. 2464; 1659; 1707; 2471; 1108-10]

[6] Richland 4900 was brought by the A.G, Hynie and Russell Bauknight in multiple capacities by the law firm of Kenneth Wingate, Esq. ("Wingate").[R. 2104; 2108] Governor Henry McMaster testified in 2016 that he did not authorize 4900 to be brought in the name of the State/AG. [R. 1315; 2312; 2256] Wingate testified in March 2017 that the AG was still a Wingate client, along with Hynie and Wingate's other private clients. [R. 2410]

[7] Brown and 5 trustees who served between 2000 and 2009 valued Brown's assets at death at about $100 million and the share of the Brown's $5 million annual income and assets Trust going to Brown's charity under the "fractional share" clause of Brown's 2000 Trust at 41/42 of that amount. Trustee Russell Bauknight, Hynie, and others valued the music empire at just under $24 million, and asserted that the charity's share of Brown's income and assets was just over 2/3 (69%). [R. 1267; 1383; 1386] Both reduced the reported value of the music empire by the TIAA debt, which was paid in full in October 2011, just before oral argument in *Wilson v. Dallas.*

James Brown died on Christmas Day 2006, and almost immediately Hynie and certain family members sought to remove the three original Trustees. Buchanan and Petitioner Pope became PR/Trustees in November 2007.[8] Within weeks, Hynie and family members represented by Louis Levenson, Esquire, filed suit to contest the Will and 2000 Trust. By early 2008, the Estate and Trust were involved in multiple lawsuits in multiple state and federal courts.

On January 8, 2008, Judge Early issued the "Payment Order, awarding Buchanan and Pope $317,000 for their service as special administrators on a "time +costs" basis, and approving their agreement to continue to work on the same basis.[9]

In August 2008, then-AG Henry D. McMaster reached an agreement with Hynie and the Levenson clients to dismember James Brown's carefully crafted estate plan by creating a new entity over which the AG and Hynie would have control; transferring all of Brown's assets into the new entity, called the "Legacy Trust", and giving more than half of the ownership of that entity to Hynie, and some of Brown's family. Although Judge Early approved McMaster's settlement, Buchanan and Petitioner fulfilled their duty to protect Brown's intentions by appealing the circuit court's approval of the AG's settlement. Only by virtue of Buchanan's and Petitioner's actions, at great personal and professional expense, was this Court able to review the AG's 2008 settlement, which it found to be a "dismemberment" of Brown's estate plan. *Wilson v. Dallas,* 403 S.C. 411, 743 S.E.2d 746 (2013).

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[8] Buchanan and Pope served as special administrators ("SAs") from March until November 2007. They served as PR/Trustees from November 2007 until May 2009. [R. 1588] They conducted the appeal which became *Wilson v. Dallas* until May 2013.

[9] The circuit court approved the contract of Buchanan and Petitioner with Respondents presented for approval in December 2007. They worked on a time + costs basis. Amounts not paid within 60 days would earn interest at the legal rate. [R. 1785-86] As explained in their joint protective claim filed in July 2009, the time + costs work was done about 70% by Petitioner and her large staff and 30% by Buchanan and his small staff. [R. 430]

Nonetheless, on the day Hynie announced her plan to reinstate the AG's 2008 settlement Respondents notified Petitioner of their intention not to pay a dime of Petitioner's earned fees.[10] Instead, they served her with a Notice of Disallowance of her entire 2009 claim, forcing her to bring the 2013 action which gives rise to this appeal.

In 2019, after denying Petitioner a jury trial, discarding the records of tens of millions of dollars of litigation costs incurred by Respondents since 2009, and rejecting the testimony of a dozen witnesses and experts, including the Governor, the AG and the Solicitor General, the circuit court found that neither Buchanan nor Petitioner was entitled to any payment for their service between November 2007 and May 2013. The circuit court not only overlooked the fact that Buchanan and Petitioner had helped this Court save half of Brown's assets by conducting the *Wilson* appeal, but also found that their successful defense of the estate plan in *Wilson* is a basis for paying them nothing.

In 2022 the Court of Appeals, reviewing the fee matter under the equity standard, affirmed the circuit court's orders and directives which had become increasingly supportive of Hynie's 2013 announced plan to disregard this Court's *Wilson* decision, reinstate the AG's 2008 settlement, and retake control of the James Brown music empire with the AG.[11]

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[10] Buchanan, under intense financial pressure, agreed to accept a total of $550,000 – about what he was paid and owed under the Payment Order, but without interest. *Wilson* had been fully briefed at that time, and Respondents conditioned Buchanan's payment on his agreement not to participate in any petition(s) for rehearing after this Court's decision. [R. 997; 1082]

[11] Levenson joined in the announced plan to disregard *Wilson* and reinstate the AG's 2008 settlement. [R. 1169] He asked Judge Early to go in chambers and hear the reasons why the AG's 2008 settlement should be reinstated. [R. 1247; 3098] The AG's settlement was justified by the incorrect claim that Hynie owned 50% of the termination rights proceeds under Sections 203 and 304 of the U.S. Copyright Act, 17 U.S.C.A. §101 *et seq* to Brown's then-900+ copyrights. (the "termination rights"). The termination rights had grown to only $8.8 million in 2017. [R. 1285; 3090]

The Court of Appeals overlooked the undisputed evidence of Buchanan's and Pope's efficient administration, including the fact that they brought in $7.83 million in 18 months, more than $5 million a year. The Court also overlooked the extraordinary efforts of Buchanan and Petitioner to redress the damages caused by Cannon's $17 million theft, and the challenges they faced to place the Supreme Court in a position to prevent Hynie and those aligned with her from doing more than $50 million damage to Brown's "I Feel Good" charity.

The Court of Appeals failed to address the three threats to the existence and proper operation of Brown's "I Feel Good" charity and 2000 Trust, Brown's sole residuary beneficiary.

The $17 Million Theft, Money Laundering and Forgeries of David Cannon

On January 2, 2008 the Powell Goldstein law firm filed a federal injunction suit seeking to paralyze Brown's 2000 Trust until Cannon and Dallas were reinstated as its trustees. The suit posed a threat to the "I Feel Good" charity until 2012. [R. 364; 394-5]

A week later the circuit court approved the engagement of J. Kendall Few and James R. Gilreath to help seek recovery of the $17 million Cannon had stolen. [R. 30-32] Within three months of the appointment of Buchanan and Petitioner, Few and Gilreath had filed the first of multiple suits in the recovery operation, and the PR/Trustees were working to defeat an additional $10 million in claims filed by Cannon and Dallas. [R. 550; 366; 461; 465; 467; 511-12; 516; 525]

That year Few and Gilreath sued Morgan Stanley. About $10 million of the Cannon theft was from Brown's Morgan Stanley account.[12] A suit was also filed against Phil Farr, CPA, who had helped Cannon understate Brown's $8 million income by millions of dollars each year.

[12] Cannon claimed he had also deposited the "$5 Million Check to Nobody" in Morgan Stanley, but he had actually laundered it through a local bank, using a $5 million check with no payee. Between 2003 and 2006 Cannon had deposited $18 million Brown made from William Morris Agency performance bookings into Cannon's company, Seventh Decade. [R. 78; 2041; 2893]

By May 2009 the $25 million threat of claims by Cannon, Dallas and Copsidas was erased, two of the recovery lawsuits were close to settlement, and the $10 Cannon and Dallas claim suits were ready for summary judgment in favor of Brown's estate. [R. 2676-77; 516] Substantial progress had been made on the recovery of the $17 million theft as Cannon's $1 million turnkey retirement mansion in the Caribbean was being built. [R. 1596]

In June 2009 Respondents began their sabotage of the $17 million Cannon recovery effort, directing Few and Gilreath not to discuss the Cannon suits with Buchanan and Petitioner, who had uncovered the theft. [R. 1836-37; 582] By 2010 Respondents and Hynie had named Cannon, Dallas and Copsidas as their witnesses in Richland 4900. [R. 974; 1278; 1313] In 2011 when Cannon entered an *Alford* plea to some of the takings, Bauknight did not seek restitution or file a victims' statement for the needy students who had lost no less than $15 million from Cannon's theft. [R. 1417; 2536; 2574; 2893] Over four years Respondents' 17-member legal team thwarted, rather than promoted, the effort to recover the $17 million Cannon had stolen from funds devised for needy students.[13] [R. 2904]

The Court of Appeals treated Cannon's $17 million theft as a minor matter resolved before Buchanan and Pope undertook the role of PR/Trustees. That was not the case.

The AG's Five-Year Effort to Control James Brown's Assets with Hynie

Determining that Hynie was not Brown's spouse was routine and important. Whether Brown's assets were worth $24 million or $100 million when the TIAA debt was paid off in 2011, giving nearly a quarter of them to Hynie violated Brown's clear wishes.

[13] The undisputed record of service related to the recovery effort in the Cannon $17 million theft matter was before the circuit court in 2013 when the circuit court "double approved" Buchanan's service and payments in a *Wilson* remand hearing and found no basis for disgorgement. [R. 314; 1345It was before the circuit court, but overlooked at the request of Respondents, in 2014 and 2017 summary judgment hearings in this case.

If Hynie had been Brown's spouse, by 2017 her termination rights would have been worth only $4.4 million according to Respondents' expert Roger Miller. Fourteen years after Brown's death, this Court found that Tommie Rae was not James Brown's spouse, noting that "the inability to determine Brown's heirs has diminished Estate assets." *Brown v. Sojourner,* 430 S.C. 474, 846 S.E.2d 342 (2020). Yet in March 2008 Buchanan and Petitioner had secured a circuit court order to finalize the.heirs determination process under both S.C. law and the Copyright Act. [R. 86-9 R. 1626-27] The heirs determination was halted for five years by the AG's claim that Hynie was an heir. But for Buchanan and Petitioner the AG would have incorrectly determined the heirs to the detriment of the charity.

The Governor, the AG, the Solicitor General, and others confirmed in this case that they had no understanding of Respondents' flawed claims to benefit Hynie made to this Court:

- The AG's 2008 settlement saved taxes.
- 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."
- It was good for Brown's charity to stipulate that Hynie was Brown's spouse.
- Termination rights are all this case is about, and Hynie and her son control them.
- There would be nothing left in the "I Feel Good" charity by 2023 because of termination rights unless the AG's 2008 settlement were upheld. [R. 2537-38; 1323; 1794; 2197]

Hynie's impact was extraordinary. In 2010 Hynie, Respondents, and Wingate began Richland 4900, claiming to act for the State/AG. [R. 861] In 2010 and 2011 they concealed the public litigation agreement which then-AG McMaster had not signed, to avoid dismissal of the suit as unconstitutional. By 2012 they had consolidated one FOIA case with Richland 4900 and were trying to consolidate two more. The effort to conceal evidence that Hynie was not Brown's spouse and Richland 4900 was never legally authorized was extraordinary. The Court of Appeals failed to recognize that the commitment of Respondents to Hynie's May 29, 2013 plan to ignore

the *Wilson* decision ultimately tainted the circuit court's actions, depriving Buchanan and Petitioner of a level playing field and fair compensation.[14]

The Value of the James Brown Estate and "I Feel Good" Charity in 2009

The Court of Appeals overlooked that the service of Buchanan and Petitioner was difficult and benefitted Brown's estate and 2000 Trust whether the value of the James Brown assets was about $24 million or about $100 million in October 2011 when the TIAA debt was paid in full.

What mattered was that they brought in $7.83 million in 18 months of service despite disruptions[15], carefully spent it, and properly accounted for it while defending Brown's estate and 2000 Trust. [R. 324-5; 356; 2756-95; 2800-05; 1722; 1415]

Buchanan and Petitioner brought the TIAA debt, with its high 7.95% interest, down to less that $9.4 million in May 2009 when they were replaced.[16] [R. 1722; 2804]

Buchanan and Pope secured an order in March 2008 to complete a proper determination of heirs; paid $300 for the DNA test for Hynie's son, who was not a presumed heir; and engaged Georgetown Law educated IP attorney Wm. Jeffrey Smith to help establish a plan to address

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[14] In 2010 Hynie's attorney threatened that the AG had hired Wingate would sue Buchanan and Pope if they did not drop the *Wilson v. Dallas,* appeal. AG McMaster did not hire Wingate, and did not know he was a Richland 4900 Plaintiff until after leaving office as AG [R. 973; 1315; 1114]

[15] Hynie disrupted the GreenLight publicity rights contract expected to bring in an additional $1 - $2 million a year for 2 years and approved by entertainment counsel Ray Gonzalez. The AG refused to cooperate with the James Brown 75th Birthday Television Special. [R. 2087-89; 1643]

[16] The TIAA debt was just over $15 million at Brown's death. [R. 1722-23] In 2013 Respondents began claiming that the TIAA debt was $19 million at Brown's death, and $14 million when Bauknight became trustee. [R. 1411] With Buchanan and Petitioner excluded at the request of Hynie and Respondents from most cases, the circuit court adopted this incorrect $14 million claim, and others. The circuit court's status report to the Supreme Court in 2015 describes Brown's estate as being on the "brink of insolvency" in 2009. [R. 993-9] Actually, Respondents failed to sign the GreenLight contract, hired Peter Afterman, and valued the copyrights at $23.7 million, and the "right of publicity" at zero, or near zero. [R. 1441-42] Neither the non-U.S. royalties, about half of Brown's $5 million annual royalties, nor the right of publicity is subject to termination rights. [R. 1428]

termination rights issues by 2012. [R. 1355; 1491-92; 2001] Wallace Lightsey, Esq., Hardin and other experts confirmed that the proper heirs determination was essential to plan for termination rights issues as well as for the proper resolution of the two pending will contests. [R. 2466-7]

In August 2008 the AG asserted the right to stop DNA testing; declare Brown's heirs, intentionally omitting three DNA-proven children; and re-distribute Brown's assets. On May 29, 2013 Hynie proposed to reinstate the AG's 2008 plan, and the Respondents supported her. [R. 2116-17]

The AG's 5-year alliance with Hynie and the federal injunction suit to cover up Cannon's $17 million theft and derail the recovery efforts of Few and Gilreath presented serious and difficult challenges. Challenging the AG's settlement and pursing the Cannon recovery were important whether James Brown's charity was $4 million or $80 million when he died.

Over the last 9 months of their PR/Trustee service, Buchanan and Pope spent 8 days in hearings, two in the federal injunction suit to reinstate Cannon and six in the hearings on the AG's 2008 settlement.

The primary assets of the James Brown's estate were:

- Brown's word-famous image + likeness ("right of publicity")
- Brown's 900 copyrights, now more than 1100
- Brown's 10,000 items of tangible personal property ("TPP")
- the Claim against Cannon and others for the $17 million Cannon had stolen

Valuing James Brown's "I Feel Good" charity correctly at death was important, but not to save estate taxes, because the charity owed none.[17] It mattered only to correctly set the "fractional

[17] Brown's estate plan was carefully designed so that neither the "I Feel Good" Trust nor the education trust for 7 grandchildren would pay estate taxes. The Estate taxes on Brown's household goods were to be paid by the 6 children who got them. {R. 2578-2611]

share" formula tied to Brown's estate tax proceeding. A correct value was also important under the IRS's "Five Percent Rule" for private charities.

Under the fractional share formula of the 2000 Trust, the $84 million value of the music empire meant that the "I Feel Good" charity would get 41/42 of Brown's assets. The $4.7 million value reduced the charity's share from 41/42 to just over 2/3.

As stated in *In re Estate of Howard*, No. M2008-00540-COA-R3-CV (Tenn. App. 7/22/2009), the purpose of a valuation is to get the correct figure. The valuation proposed by Buchanan and Pope before they became PR/Trustees was almost identical to the lay valuation the IRS and the Tennessee court had accepted in that case. The valuation was reasonable and made in good faith.

ARGUMENT

6. The Circuit court Erred in disregarding Petitioner's $2.1 Million Offer and Admitting a Confidential Offer Made to Hynie, the AG, and other Owner/Successors of the Legacy Trust into Evidence.

Petitioner offered to end this case for $2.1 million before and during trial. Petitioner's only demand since early 2017 has been for $1.47 million plus interest as set out in the payment order. Respondents refused to consider the offer. Instead, on the eve of trial, counsel advised Petitioner that neither the circuit court nor James Brown's Estate would consider an offer unless it released Hynie, the Legacy Trust, and a dozen others who sued Buchanan and Petitioner for tens of millions of dollars in Richland 4900, and released the AG in two pending 2011 FOIA suits. [R.2117-2118]

Persuaded by counsel that the court might retaliate if she refused to offer to settle all cases, Petitioner offered a complex proposal to Hynie, the AG and those supporting Hynie to settle for $19 million, $10 million of which would go into charity to begin a guaranteed 10 years of $500,000 annual scholarships. There is no evidence the offer which Petitioner was coerced to make was ever

presented either to Hynie, the AG or other parties to Richland 4900. Instead, months later, Respondents' counsel falsely accused Petitioner of trying to extract $19 million from James Brown's estate. [R. 2114] Not a penny other than $2.1 million was ever requested of Respondents.

Respondents then proposed an order to the circuit court which ignored the twice-made $2.1 million offer, failing to note that Hynie and those aligned with her, not Brown's estate, are the beneficiaries in Richland 4900, even though Respondents have funded Hynie's Richland 4900 quest since 2010. [R. 626; 2113-4 (Complaint, Richland 4900; Tr. p. 2299-2300; Def. Ex. 116)] The circuit court's finding that Petitioner "required Defendants to resolve this case through a trial" was erroneous. [R. 307 (Ord. 1/16/19, p. 16)] Petitioner made an offer in 2012 to let Respondents out of Richland 4900 and have her fee resolved by Judge Early. Respondents refused.

The offer to settle for $2.1 million for 5 years of working to recover $17 million stolen by Cannon and position the Supreme Court to restore $50 million to James Brown's charity, including a 6 -day hearing and the costs of appeal, was reasonable.

The circuit court's admission of the Richland settlement offer and its reliance on the offer in deciding the ultimate issues in this case was error. Under SCRE Rule 408, evidence of offers or acceptances of settlement "is not admissible to prove liability for or invalidity of the claim or its amount." *See also Peoples Federal Savings and Loan Ass'n of South Carolina v. Resources Planning Corp.,* 358 S.C. 460, 596 S.E.2d 51 (2004). Further, its use while ignoring the actual $2.1 million offer was retaliatory on the part of Respondents, who proposed it, and the circuit court who included it in the order.

In its order, the circuit court found that Petitioner had delayed and complicated this case by "unreasonable settlement demands," and it then characterized Petitioner as "demanding $19,000,000" when Petitioner had offered to settle this case for less than 1/8 of that amount. [R.

307 (Ord. 1/16/19, p. 16)] The circuit court failed to consider Petitioner's real offer and refusal of Respondents to make an offer in nine years.

Upon examination by Respondents' counsel, Petitioner clarified the circumstances of the confidential Richland 4900 and FOIA settlement offer, more than half of which would have gone to charity. [R. 2129 (Tr. p. 2378)]

Because the circuit court's order relies on the admission and misapprehension of the offer in reaching its conclusion that Buchanan and Petitioner are entitled to no compensation, the entire order should be reversed.

7. The Circuit court Erred in Making Findings which Conflict both with its Previous Rulings and Holdings of the this Court in *Wilson v. Dallas.*

During Petitioner's and Buchanan's tenure, every detail of the administration of the Estate and 2000 Trust was scrutinized in open court. More than thirty (30) orders were issued, mostly by Judge Early, in the pending cases involving the Estate and 2000 Trust. [R. 2614] Most of the orders were admitted into evidence in this case without objection, and virtually all lend support to the joint claim filed by Petitioner and Buchanan in 2009 which is the subject of this case. [R. 1493-94 (Tr. pp. 45-46)] The circuit court nonetheless disregarded its own rulings made more than eight years earlier on multiple issues in reaching its ultimate conclusion that Buchanan and Petitioner should not be paid no for their fiduciary service.

a. The Christie's Contract and Sale were Approved by the Aiken Court and Affirmed by the AG and Court of Appeals

The Christie's sale in 2008 was a sale of just 350 of more than 10,000 items of Brown's TPP, and was approved by three separate court orders.[18] [R. 1632-34]

[18] In the $4.7 million valuation, Respondents value Brown 10,000 items of personal property at less than $.5 million as of Brown's death, less than the Christie's proceeds of the sale of 350 items. Dallas and grandson Forlando, along with others, have admitted their efforts to chill the sale. A

Planning for the sale began before Petitioner and Buchanan became PR/Trustees, and Christie's was selected after Sotheby's and Julien's had been considered. [R. 53; 96; 146 (Ords. 2/20/08, 4/1/08; 7/14/08)] Judge Early found in February 2008, after a full hearing, that the sale was appropriate in light of the "deplorable condition" and the lack of liquidity in which the Cannon PR/Trustees had left James Brown's estate and 2000 Trust, and the fact that the injunction suit to reinstate Cannon prevented traditional financing. [R. 53; 58; 60 (Ord. 2/20/08)]

In its April 1, 2008 order, the circuit court found that clients of Levenson had interfered with the sale and directed the signing of the contract. [R. 1630-32 (Tr. pp. 182-184)] Neither order related to the Christie's sale was appealed. In July 2008, when Dallas tried to stop the sale, the AG joined Buchanan and Pope in asking that it go forward, and the Court of Appeals ruled with them. [R. 146 (Ord. 7/14/08)]

In its 2019 order, after having found no impropriety in the service of Buchanan in 2013, the circuit court found that "[w]hile this Court approved the Christie's Sale, it did so based upon the recommendation of [Petitioner]." [R. 329 (Ord. 1/16/19, p. 38)] Despite its own 2008 orders *directing* Petitioner and Buchanan to proceed with the Christie's sale, the circuit court found that Petitioner "failed to properly manage the Christie's Sale, and in doing so, breached [their] duty of prudence." [R. 330 (*Id.* at 39)] Petitioner submits that the doctrine of collateral estoppel bars Respondents' ability to relitigate issues, such as the Christie's sale, which have been previously litigated and decided. *See Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that

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false claim about the proper Grammy© withdrawal was planted at an Atlanta law firm in 2011[R. 1408]

the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id*.

It was error for the circuit court to allow Respondents to introduce expert and fact testimony a decade later and to support a finding that conducting the sale the circuit court had *directed* Buchanan and Pope to conduct (on the exact terms his Honor had directed in two detailed orders) was a breach of fiduciary duty.

b. The Circuit court Erroneously Found that Petitioner and Buchanan Improperly Resisted the 2008 Settlement, despite *Wilson v. Dallas* Holding that they were Correct.

The circuit court based its decision that Petitioner and Buchanan are entitled to no compensation for their service, in part, on his finding that Petitioner "inappropriately breached her duty of loyalty by placing her interests in front of the best interests of the Estate and Trust" in opposing the approval of the 2008 settlement agreement brokered by AG McMaster. [R. 333-34 (Ord. 1/16/19, pp. 42-43)]

In *Wilson,* this Court held in no uncertain terms that the 2008 settlement "was not a fair and just resolution of a good faith controversy and that court approval is not appropriate" and that the settlement "subverts" James Brown's stated desires. *Wilson* at 767. The Supreme Court further found that the AG's part in the 2008 settlement "overreache[d] his statutory authority." [*Id.*] All parties to this case were parties to *Wilson* and had the opportunity to fully litigate issues related to the approval of the 2008 settlement. Respondents are therefore collaterally estopped from relitigating that issue, and the circuit court was bound by the rulings of the Supreme Court in *Wilson*. *See Carolina Research, Inc., supra.*

In 2019 the circuit court found that it could not "turn a blind eye" to the alleged benefit that the 2008 settlement bestowed on the Estate and 2000 Trust by ending litigation.[19] It did so while disregarding the testimony of Petitioner and two of her experts, and not considering the expert testimony of Hardin, Lightsey and Smith. The claim that the settlement was beneficial is contrary to the record and to this Court's holding in *Wilson*, which explicitly held:

> Even if a good faith controversy had existed, the remedy more appropriately would have been the reformation of the documents to provide for any monies payable, not the total dismemberment of Brown's carefully-crafted estate plan and its resurrection in a form that grossly distorts his intent. We find the compromise proposed here is fundamentally flawed because the entire proposal is based on an unprecedented misdirection of the AG's authority in estate cases. We also believe that a departure from the testator's intent is not reasonably necessary to protect the beneficiaries' interests because any alleged advantage to them occasioned by the avoidance of further litigation, as propounded by the settling parties, is illusory at best. *Wilson* at 764.

Wilson is not only binding precedent on the circuit court, but also constitutes the law-of-the-case among the parties to this action as to the appropriateness of the AG's settlement. The circuit court thus erred in disregarding *Wilson* and making findings expressly inconsistent therewith. Because its ultimate decision is based, at least in part, on findings inconsistent with *Wilson*, the orders appealed from should be reversed.

c. The Circuit court Found that Petitioner had No Contract, Despite the Same Court's Previous Approval of the Contract.

Petitioner and Buchanan had a valid contract for payment with the Estate and 2000 Trust, which required no court approval. They nonetheless sought approval of the contract, and one of Hynie's lawyers praised their "belt and suspenders" approach. [Tr. pp. 2339-2340] The circuit court issued an order approving the contract and making findings of fact related to the service of

[19] James Brown litigation in which Buchanan and Petitioner have had no part since 2013 continued in State and Federal Courts until at least 2021.

Petitioner and Buchanan up to that date. [R. 23-25 (Ord. 1/8/08, pp. 1-3)] The circuit court found that Petitioner and Buchanan's work had approximately doubled after their appointment as PR/Trustees; that they had successfully submitted the application for recognition of the "I Feel Good" Trust as a tax-exempt charity; and that they were defending the estate plan and conducting other important estate business. [*Id.*] In its status report of 2015 the circuit court confirmed that it found no impropriety in the service of, or payments to, Buchanan, all of whose work was joint with Petitioner. [R. 993-998]

Under the January 8, 2008 order, Petitioner's claim for her unpaid SA fee ($47,972) and payment for her time and costs as PR/Trustee ($1,473,550) was due in May 2009, with interest. Respondents took not action on the claim for 4 years, then disallowed it.

Seven years after the "Disallowance," the circuit court found that Petitioner had no contract with the Respondents, and that Petitioner and Buchanan's service had been of no net benefit to the Estate and 2000 Trust. [R. 351-52 (Ord. 1/16/19, p. 59, 60)]

d. The Circuit court's Finding that Petitioner and Buchanan Improperly Valued James Brown's Assets is in Conflict with its Previous Oral Ruling.

On November 14 and 15, 2007, before becoming PR/Trustees, Petitioner and Buchanan presented their proposal to value the copyrights and right of publicity owned by Brown using a formula which multiplied the pre-death income generated by those assets by 12 ½ -- 14 times. Petitioner and Buchanan made this proposal at the November 15, 2007 hearing, and Judge Early directed that any party objecting to the Estate's using that method on the estate tax return should file objections. No objection was filed, and no further hearing was held on the matter. [R. 1710-27 (Tr. pp. 262-279)]

In fact, at the same November 15 hearing, another party proposed to hire a New York lawyer and an appraiser to conduct a professional valuation of the same assets. Judge Early interjected, "I am not going to hire a New York lawyer. We got enough lawyers now." [R. 1448 (Tr. 11/15/07, p. 309)] His Honor went on to direct: "Mrs. Pope, I want your idea you suggested. You can share it with [counsel for the then-PRs." [*Id.*]

Eleven years later the circuit court stated:

> . . . it is not credible for Mrs. Pope to claim that the above formula, that was not approved by the Court, and was tucked into a Special Administrator filing, served as the basis for her valuation when she later served as the PR . . .
> [R. 341 (Ord. 1/16/19, p. 50)]

The circuit court's 2019 criticism of Petitioner is unfounded. The only items on which estate taxes were to be paid - by six children – were the household goods, which were professionally appraised by Christie's. Because of careful planning, neither the fractional share for Brown's charity nor the trust for the education of seven grandchildren would pay estate taxes. The purpose of a valuation of those items was to create a fair "fraction" for each.

The judge directed in 2007 that a professional *not* be engaged and that the valuation formula was adequate. In 2019 the circuit court overlooked its own order and failed to acknowledge that the IRS had accepted a similar nonprofessional appraisal in the estate of songwriter Harlan Howard, who died in 2002, and that Brown's 2000 Trust owed no estate taxes.

8. **The Circuit court Erred in Accepting and Discarding Respondents' *Ex Parte* Filing of their Litigation Billing Records and Destroying the Records After the Court Received and Reviewed Them.**

On December 15, 2017, the circuit court directed:

> In addition to that, under seal, the confidential -- I want to know the money that the subsequent litigation from the time that Mr. Bauknight was appointed, what the cost of the estate has been for the subsequent litigation, including attorney's fees, expert fees, litigation costs and support personnel through four days of testimony already. That's under seal, but obviously, I want to consider that in -- if I have to

> balance out anything about the duty to defend versus the efficiency to the estate as to whether to continue litigation or to resolve it. [R. 1902 (Tr., p. 1134)]

Petitioner filed a motion to require disclosure of the *ex parte* filing. [R. 1249-58 (Mot. Disclose, 4/5/18; Ex. A)] Thereafter, in chambers, Judge Early indicated that he had reviewed the litigation billing records, but was rescinding his order that they be produced and had discarded the records. [R. 1268 (Mot. Directed Verdict, 6/14/18, p. 11)] Petitioner objected to the circuit court's review and discarding of these documents where they were never presented to Petitioner or placed in the record herein. [R. 1386-87; 1391 (Mot. Alter or Amend, 2/7/19, pp. 75-6, 80)]

A civil litigant's right to due process "encompasses the individual's right to be aware of and refute the evidence against the merits of his case." *Vining v. Runyon*, 99 F.3d 1056, 1057 (11th Cir. 1996) (internal quotation marks omitted). "Although a judge freely may use in camera, *ex parte* examination of evidence to prevent the discovery or use of evidence, consideration of in camera submissions to determine the merits of litigation is allowable only when the submissions involve compelling national security concerns or the statute granting the cause of action specifically provides for in camera resolution of the dispute." *Id*. (internal citations omitted). As the Second Circuit recognized in *U.S. v. Abuhamra*, 389 F.3d 309, 322 (2d Cir. 2004), a "due process concern [is] raised when a court relies on ex parte submissions in resolving an issue that is the subject of an adversarial proceeding." This is because "due process demands that the individual and the government each be afforded the opportunity not only to advance their respective positions but to correct or contradict arguments or evidence offered by the other." *Id.*

Petitioner submits that the orders appealed from should be reversed.

9. The January 16, 2019 Order is a Result of the Circuit court's Bias Against Petitioner, Related to the *Wilson* Decision.

As set out above, the circuit court made extensive findings against its own previous orders and against the Supreme Court's findings in *Wilson* to support its ultimate decision that Buchanan and Petitioner were not entitled to be paid for their services after November 20, 2007.

The circuit court's finding is inconsistent with this Court's explicit holding that the 2008 settlement was a "dismemberment" of James Brown's estate plan and "subvert[ed]" his stated desires, Judge Early nonetheless finds that he "is not required to turn a blind eye" to Respondents' argument that approval of the settlement was in the best interest of the Estate and 2000 Trust. [R. 333 (Ord. 1/16/19, p. 42)] Essentially, the circuit court, at Respondents' request, makes findings which revert to the logic used in its order approving the 2008 settlement – logic which was explicitly rejected by this Court.

In addition, the circuit court includes an entire section in its order entitled "Mrs. Pope Has Engaged in a Pattern of Personal Attacks" finding that "[t]hese disparaging personal attacks grew to include . . . ultimately this Court." [R. 308 (Ord. 1/16/19, p. 17)] The only example given to support the circuit court's conclusion that Petitioner had made a "personal attack" on the circuit court itself was the following quote from Petitioner's trial testimony herein:

> Unfortunately, the Supreme Court's June 10th Order was based on false representations by Judge Early. I don't believe they were intentional, but they were false. Judge Early told the Court he had never heard even a whisper of settlement. The truth is in open court on May 29th of 2009 – 2013, Mr. Medlin and Mr. Levenson had openly, in open court, told Judge Early they wanted to go in-camera and reinstate the very settlement that had just been overturned by remittitur just a day or two earlier. [R. 309 (Ord. 1/16/19, p. 18)]

Although Petitioner did respectfully take the undisputed position that the court had misinformed the Supreme Court in his 2015 Status Report[20], she stated that she believed that to

[20] Respondents' trial attorney was present on May 29, 2013, as were Buchanan and numerous others.

have been unintentional. The court interpreted this as a "personal attack." Then, after having praised the service of Buchanan and Petitioner for years, found various aspects of her testimony not to be credible.

Petitioner does not take lightly her submission of this argument, but the circuit court's harsh tone and findings regarding her service – all of which was joint with Buchanan, and nearly all of which was openly conducted in the court's presence without objections, requires it. [R. 1310-11 (Ltr. Jg. Early to Newsome, 1/7/19)] This express finding, with other rulings, lead to the conclusion that the circuit court was biased against Petitioner and Buchanan.

Additionally, the totality of the circuit court's rulings and orders show that she was deprived of due process. Throughout this case, non-confidential documents were made confidential, stymying Petitioner's ability to pursue her claim. [R. 249-59] As argued above, the case was transferred to the non-jury roster weeks before the start of a day-certain trial which had been scheduled for months. [R. 287-89] The circuit court departed from both the tone and findings in previous orders and rulings; admitted and allowed discussion of Petitioner's confidential settlement offer made to Hynie, the AG and a dozen other FOIA and Richland 4900 parties; and ultimately rendered its order finding, for the first time in more than a decade, that Petitioner was not a credible witness and that her service had been detrimental to the Estate and 2000 Trust.

Read together, it is clear that the circuit court did not offer Petitioner a level playing field in this action and thus deprived her of her right to due process. *See Caperton v. A.T. Massey Coal Co.,* 556 U.S. 868, 876, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009).

10. The Deposition Testimony of the Governor, the AG and Other Witnesses and Experts Was Properly Introduced in Accordance with Pretrial Rulings and Should have Been Considered.

;

The circuit court found in its order that Petitioner had introduced testimony by only herself and W. Steven Johnson on rebuttal. [R. 306] This is in direct conflict with the record and the court's own pretrial ruling which show that Petitioner offered testimony from more than a dozen witnesses by deposition on rebuttal. All were presented in accordance with a pretrial ruling that all Columbia witnesses, as well as others, could testify by deposition designation. The deposition designations were made and presented to opposing counsel, who elected not to counter-designate.

The circuit court's final order, prepared by Respondents, makes no mention of these witnesses or the introduction of their testimony, including expert testimony, on rebuttal. Petitioner made a detailed motion to alter or amend the circuit court's order under Rule 59(e), including presentation of portions of the deposition testimony offered on rebuttal, but the circuit court denied her motion in full. [R. 1312; 353] This issue is thus preserved for review by this court. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996).

The admission of reply testimony is within the sound discretion of the trial court. *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986). "Reply testimony should be limited to rebuttal of matters raised by the defense, rather than to complete the plaintiff's case-in-chief." *State v. Huckabee*, 388 S.C. 232, 242, 694 S.E.2d 781, 786 (Ct.App. 2010). Testimony that is "arguably contradictory and in reply to" that offered by the defense is admissible. *Todd*, 290 S.C. at 214, 349 S.E.2d at 340. *State v. Garris*, 394 S.C. 336, 351, 714 S.E.2d 888, 896 (Ct.App. 2011); *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 438, 319 S.E.2d 695, 700 (1984).

It was error for the circuit court to find that only two witnesses were offered on reply, where testimony from more than a dozen witnesses was presented. Because the deposition testimony offered on reply bears on the ultimate issues decided by the circuit court, Petitioner submits that

the circuit court's orders should be reversed. *See Brown v. Allstate Ins. Co.*, 337 S.C. 499, 523 S.E.2d 807 (Ct.App. 1999).

The circuit court's failure to acknowledge more than a dozen witnesses' testimony and rule on their documents and qualifications of some as experts on reply is also relevant to the circuit court's finding that Petitioner needlessly deposed witnesses who were not used at trial. The circuit court found incorrectly that "…the inescapable conclusion is that this case was extremely expensive, and unnecessarily so, for the Estate and Trust to defend. [R. 306-7 (Ord. 1/16/19, p. 15-16)] Petitioner had deposed all witnesses *pro se* and the record is clear that it was the AG, Respondents and the Richland 4900 Plaintiffs who added to delays and costs in the depositions of the AG's staff, Wingate and Kendall. Because the circuit court discarded the litigation records of Respondents, the record does not show whether the circuit court considered them in its analysis of the ultimate issues in this case.

Conclusion

For the foregoing reasons, Petitioner asks that this Court grant a writ of certiorari to review the Court of Appeals' opinion; reverse the orders on appeal and find that Petitioner is entitled to be fairly paid for her service to the Estate of James Brown and the James Brown 2000 Irrevocable Trust as requested at trial.

Respectfully submitted,

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August 29, 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 the Petition for Writ of Certiorari on all Respondents on the date shown below, by email, addressed as follows:

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August 29, 2022