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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Court of Appeals Case No.: 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. and Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown, Respondents.

v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is the Petitioner.

PETITION FOR WRIT OF CERTIORARI

CERTIFICATION OF COUNSEL

The undersigned counsel for Petitioner Adele J. Pope ("Petitioner") certifies that a timely Petition for Rehearing was filed in the Court of Appeals, and that Petition was finally denied by the Court of Appeals by Order dated November 7, 2022.

QUESTIONS PRESENTED FOR REVIEW

I. Whether the 2010 complaint in Richland 4900[1] should have been dismissed where SWB[2], a private law firm, served as sole counsel for the Attorney General[3] and seventeen private clients; seeks tort damages for the owner-beneficiaries of the Legacy Trust[4]; concealed the Attorney General's unsigned public Special Counsel Litigation Retention Agreement with SWB from 2010 until 2021; and concealed the April 24, 2013 letter of the Attorney General and other evidence confirming that SWB was never hired by the Office of the Attorney General, including in court-ordered depositions of SWB attorneys in 2017.

II. Whether Respondents, including the Legacy Trust and its beneficiary-owners are entitled to summary judgment as to the counterclaims of Buchanan and Petitioner where there is undisputed evidence all participated in the Section 62-1-106 violations of Tommie Rae Hynie[5] which damaged Buchanan and Petitioner; all participated in the coverup of the $17 million theft and money laundering of former trustee David Cannon; all participated in Hynie's conspiracy to devalue the worldwide music empire of entertainer James Brown by $79 million to damage Buchanan and Petitioner; and Richland 4900 was brought to try to stop the appeal which became *Wilson v. Dallas* and continued since May 2013 to disregard *Wilson v. Dallas* to carry out Hynie's plan to reinstate the Attorney General's 2008 settlement.

III. Whether the panel should have affirmed summary judgment to Respondents as to the counterclaims before considering the issues remanded by the Court of Appeals in 2019 and 2020; where the parties were not properly joined; and discovery was incomplete.

IV. Whether panel should have affirmed summary judgment to Respondents as to the counterclaims where the circuit court failed to consider the issues on appeal, including whether SWB should be disqualified and Bauknight should be enjoined from acting on behalf of the Attorney General.

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[1] "Richland 4900" refers to Richland County Case 2010-CP-40-4900.
[2] "SWB" refers to Sweeny, Wingate and Barrow, PA.
[3] "Attorney General" or "AG" refers to the Attorney General of South Carolina.
[4] "Legacy Trust" refers to Respondent James Brown Legacy Trust.
[5] To avoid confusion family members of James Brown are generally referred to by first names.

STATEMENT OF THE CASE

I. FACTS OF THE CASE

a. Background facts

In August 2000 entertainer James Brown finalized his estate plan leaving the bulk of his fortune to his "I Feel Good" Trust to educate needy students. [R. 260][6] With Brown when he signed his last will and created the James Brown 2000 Irrevocable Trust were companion Tommie Rae Hynie, daughter Venisha, two attorneys, and a thief. [R. 260]

The thief, David Cannon, and attorney Albert Dallas became two of Brown's three trustees. [R. 263] In 2007 all three trustees resigned and were replaced by Robert Buchanan and Petitioner Adele Pope. [R. 504]

Brown died on Christmas Day 2006, and Buchanan and Pope were appointed special administrators ("SAs") in March 2007. [R. 235, 278]

By the end of 2007 the SAs had uncovered $17 million Cannon had stolen from funds devised to Brown's "I Feel Good" charity, including the "$5 million check to nobody" Cannon had laundered through a local bank. [R. 487, 1728] By then Cannon, Dallas and Brown's young grandson Forlando, aided by Georgia law firms, were helping Cannon cover up the theft. [R. 1280]

By February 2008 the first suit against Cannon, Dallas and those who had helped conceal the theft was filed, and several more were filed in the first half of 2008. [R. 1177-8]

The Cannon group had already launched a legal and media campaign to discredit Buchanan and Pope and rehabilitate Cannon which would last until Cannon's death in 2018. [R. 1721-3]

[6] See *Wilson v. Dallas,* 403 S.C. 411, 743 S.C.2d 746 (2013), which contains a detailed factual background related to the estate plan of James Brown and the AG's 2008 settlement.

Cannon and Dallas were also pushing to conclude a $100 million sale of Brown's music empire that would cover up Cannon's theft and reap another $10 million for the resigned trustees and claiming that the circuit court had done a "hatchet job" on the innocent Cannon, and that Buchanan and Pope had ousted the Cannon trustees to get the $5 million commission payable on Brown's $100 million estate. [R. 1296]

The Attorney General entered the James Brown litigation in October 2007. [R. 1-2]

In January 2008 Forlando filed U.S. District. Court case 3-08-cv-00014-WOB, asking the federal court to enjoin Brown's 2000 Trust from taking any action until Cannon and Dallas were reinstated. [R. 1306; 1288] He was represented by one of the Georgia law firms which had helped Cannon and Dallas try to move the 2000 Trust and "I Feel Good" charity out of S.C. in 2007 as the SAs were about to discover the first $900,000 of Cannon's theft. [R. 1300-1]

From January until July 2008 the AG sided with the Cannon trustees, helping them disrupt every aspect of the operation of Brown's music empire. [R. 1305-6]

In February 2008, even though Cannon's forgeries, money laundering and other fraud had been fully documented, the Attorney General appeared on WIS-TV to support Forlando's efforts to reinstate Cannon and Dallas. [R. 578]

Buchanan and Pope began efforts to meet with the AG, and with the help of a prominent philanthropist they secured a meeting for late May 2008. [R. 866]

The PR/Trustees explained to the Attorney General the damage the alliance of the AG's staff with Cannon and Dallas was doing to Brown's "I Feel Good" charity in their efforts to recover the $17 million stolen from funds devised to Brown's "I Feel Good" charity. [R. 1296]

The Attorney General and PR/Trustees agreed to work together to appoint a third trustee chosen by the AG.[R. 265] In July 2008, just days before a sale of a small portion of Brown's

approximately 10,000 items of tangible personal property, Dallas filed a motion with the Court of Appeals claiming that the sale was illegal. [R. 318, 668] For the first time, the AG sided with Brown's fiduciaries and the sale was approved. [R. 668]

On July 30, 2008 the Attorney General wrote to confirm his support for the PR/Trustees and for their plan to proceed with the selection of a third trustee. [R. 1308]

Thirteen days later one of Hynie's attorneys told the PR/Trustees to "stand down" and stop administering the estate. [R. 1323] On August 10, 2008 the Attorney General brokered a settlement that proposed to do more damage to Brown's "I Feel Good" charity than Cannon's theft. [R. 289-92, 326-34]

The AG's 2008 settlement put Hynie and the AG in 75% management control of Brown's music empire through Respondent Legacy Trust, but with the AG having effective control through the right to remove and replace trustee Russell Bauknight at will. [R. 908] The AG purported to declare Brown's heirs under the U.S. Copyright Act, 17 U.S.C.A. § 101 *et seq.*, and to make Hynie the surviving spouse. [R. 1485] Then the AG proposed to give Hynie about $1 million a year and a quarter of Brown's music empire for half of the "termination rights[7]" under Sections 203 and 304 of the Act. she and her son had assigned to the Legacy Trust. [*Id.*] Venisha and four other Levenson clients were given the same deal. [*Id.*]

In September 2008 Brown's estate tax return valued Brown's music empire at $84 million, $99 million less Brown's $15 million debt to TIAA. [R. 1510] The same week Forlando, who had been given an interest in TJBL, the group which made the $100 million offer in 2007, testified in his lawsuit that offers of $150 million were available. [R. 222, 1727]

[7] As used herein "termination rights" refers both to the right of heirs to claw back certain U.S. royalties after 35 or 56 years, and also the proceeds to be received by those rights.

Forlando's testimony was consistent with the AG's own experts. [R. 1728] At the time "frothy" investors were willing to pay 15–20 times royalties ($5 million) a year for "solid gold" music catalogues such as that of James Brown. [R. 1728, 759] The TJBL investors had valued Brown's right of publicity at $40 million or more. [R. 1728]

In January 2009 Terry Brown, Forlando's father, became part of the AG's 2008 settlement and was given a right of first refusal to buy James Brown's music empire. [R. 635]

On May 26, 2009, on recommendation of Bauknight, trustee of the Legacy Trust, the circuit court approved the AG's 2008 settlement. [R. 928] The court replaced the PR/Trustees with Bauknight, who asserted he had no conflict. [R. 1001]

Buchanan and Pope immediately delivered $99 million of assets and 145 boxes of public James Brown documents to Bauknight. [R. 453, 1002] By July 2009 they had fully accounted and filed a protective claim for the approximately $2 million they had earned under their court-approved fee agreement with Brown's Estate before being replaced. [R. 3-6, 669]

In August 2009 one of Hynie's attorneys proposed a massive devaluation of Brown's music empire to discredit "Bobadele." [R. 669] It was carried out by Peter Afterman in 2010. [R. 753, 999]

In March 2010 one of Hynie's attorneys threatened that a Sr. Asst. AG had hired the private law firm of Kenneth Wingate, Esq., SWB, and that the AG would sue if the replaced trustees did not drop their appeal of the AG's 2008 settlement. [R. 1672, 958]

The AG rejected a settlement offer and Richland 4900 was filed. [R. 215-28]

b. Facts Related to the AG's Special Counsel Agreement and the Richland 4900 Complaint

On May 18, 2010 the AG's Special Counsel Litigation Retention Agreement with SWB (the "SWB Agreement") was signed, but not by the Attorney General. [R. 1002] The SWB

Agreement was signed by Bauknight and three attorneys seeking to stop the appeal of the AG's 2008 settlement. [R. 921]

The private SWB clients would pay a 40% contingency. [R. 960] The AG's contingency fee was 23% or less, with 10% going to the AG's office. [R. 988] Bauknight agreed to advance costs from Brown's estate. [R. 1313] The "Beneficiary Plaintiffs" would repay the costs in relation to their ownership, with the AG holding 47.5% and Hynie holding 23.75%. [R. 1313, 1409]

The Richland 4900 complaint, which has never been amended, seeks damages for the Beneficiary Plaintiffs of the Legacy Trust. [R. 215-28]

c. Facts Related to the First Richland 4900 Appeal (2011)

Buchanan and Pope moved to dismiss the Richland 4900 complaint on ten grounds, including that it was unconstitutional for SWB to be sole counsel for the State/AG while seeking tort damages primarily for SWB's private clients. [R. 231 - 241]

Subject to their motion to dismiss, they answered and counterclaimed for abuse of process, civil conspiracy, and other causes of action. [R. 388-94] SWB failed to timely respond to the counterclaims, and the Attorney General and others moved for relief from default.[8] [R. 484-637]

The position of the AG and Bauknight on behalf of the AG since 2010 has been:

> Pursuant to the Settlement Agreement the estate plan of James Brown was revised to create a "Settlement Entity[9]" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides that "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter called the "Charitable Trust") shall be created an/or maintained and shall be valid and enforceable. [R. 1313]

[8] The only evidence supporting the request for relief from default was an affidavit of Wingate confirming that SWB received the answer and counterclaim, and two pages from a sworn statement of Dallas. [R. 623-28] The motion for relief from default was granted. [R. 143-5]

[9] The Legacy Trust is alternately known as the "Settlement Entity." [R. 1409]

Governor McMaster did not know he was a Richland 4900 plaintiff until after leaving office as AG in January 2011.[10] [R. 863, 916]

The AG and others opposed the motion to dismiss; confirmed that the Legacy Trust was managed in Richland County; and allowed a Sr. Asst. AG to be introduced at the hearing as one of SWB's many clients. [R. 869]

The circuit court denied the motions to dismiss and a motion to change venue. [R. 91-106]

From January until May 2011 Buchanan and Pope asked the Court of Appeals to consider a writ of prohibition and early appeal of Richland 4900 to address whether Richland 4900 was a violation of their Due Process rights. [R. 870, 108] They asserted that Richland 4900 was an unauthorized, illegal and unconstitutional state action. [*Id.*]

On Motion of the Attorney General and others, the writ of prohibition and appeal were dismissed without prejudice . [R. 107-9]

d. Facts Related to Richland 4900 FOIA Appeal (2016 – 2019)

In 2016 Governor McMaster stated emphatically under oath to Pope: "Ma'am , I did not sue you," [R. 863]

Since 2011 the AG's office had falsely accused Buchanan and Pope of overstating the value of Brown's music empire by $79 million to get an almost-$5 million commission on Brown's $5 million estate. [R. 871, 879, 918, 922, 929, 942, 966, 971, 1734]

AG McMaster had never seen the Peter Afterman $4.7 million valuation of Brown's music empire which had been produced at the request of Hynie's attorney in 2009. [R. 971] Nor had

[10] The Honorable Alan Wilson became AG in January 2011.

anyone on the staff of either AG McMaster or AG Wilson seen the claimed $4.7 million valuation. [*Id.*]

In September 2010 the Peter Afterman $4.7 million valuation arrived, but the Attorney General and others did not disclose it to the *Wilson v. Dallas* Court for eight months. [R. 869]

In October 2010 the AG and others named Cannon and Dallas as Richland 4900 witnesses. [R. 1454-5] Cannon was under indictment and the AG's office was handling Cannon's case. [R. 912, 1351]

In December 2010 a secret Legacy Trust amendment allowed Terry to begin due diligence on the purchase of Brown's music empire which had just been valued at $4.7 million. [R. 1698-9]

In May 2011 the Attorney General disclosed the Afterman $4.7 million valuation, but did not file it in the Probate Court (as required), or with the Supreme Court. [R. 413] In December 2022 it is still under lock and key.

For 11 years, the Attorney General has claimed that Brown's "I Feel Good" charity was not $80 million, required under the IRS "Five Percent Rule" to pay nearly $4 million a year in scholarships, but a $4 million (or smaller) charity required to pay 1/20 that amount.

In 2011, as soon as the $4.7 million valuation was revealed, a motion to disqualify SWB as counsel and to enjoin Bauknight from acting on behalf of the Attorney General in Richland 4900 was filed. [R. 412-5] The motion asserted that the two could not speak for the AG while acting as fiduciaries for Terry, who sought to acquire Brown's assets for less than 1/10 its value.[11] [R. 412-5]

[11] *See Private Foundations, Copyright Heirs and Musical Millionaires; why the James Brown "I Feel Good" Trust doesn't…* addressing the damage by the combined devaluation and Hynie's spousal claim. [R. 1477-88]

The motion to disqualify SWB and enjoin Bauknight was denied. [R. 123-4]

From 2011 until 2022 the AG, Bauknight and Hynie used the Afterman $4.7 million and the false felony claim to advance Hynie's incorrect value and termination rights claims. The AG's expert actually valued the copyrights at $75 - $100 million and the termination rights of all of Brown's heirs at only $8.8 million.[12] [Appellant's Reply Brief to Respondents, p. 9]

From 2011 until 2022 the Attorney General and others concealed critical and important public documents showing evidence of now undisputed facts, including that Hynie was not Brown's spouse; that the Afterman $4.7 million valuation was fabricated at Hynie's behest; that the termination rights claims made by Hynie were incorrect; and that Richland 4900 was never legally authorized. [R. 578, 637, 666, 888, 897]

In 2012 two 2011 Newberry County FOIA cases were moved by the Attorney General to Richland County, and one consolidated with Richland 4900. [R. 907]

In 2012 the AG and others filed 100 media articles and public posts showing the ferocity with which the AG and others resisted the release of public James Brown documents.[13] That year SWB advised the AG not release the SWB Agreement under FOIA.[14] *See* Exhibit 2-B to Motion to Expedite, filed in this case on November 5, 2020.

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[12] Hynie's termination rights were zero, while the termination rights of three DNA-proven daughters and incarcerated son Michael were worth about $2.5 million. [Appellant's Reply Brief to Respondents, p. 9]

[13] *AG asked to turn over James Brown Documents (SC)* [R.558-559]; *Goliaths Roar in James Brown FOIA Suit* [R. 564-565]; *AG Wilson asked Judge to Conceal Diaries* [R.588-589];

[14] In 2012 the circuit court held a hearing on the 2010 motion of the Attorney General and all Respondents to be relieved from default, and the motion was granted.

In February 2013 Footnote 29 of the first, later substituted, *Wilson v. Dallas* decision references the FOIA cases and Richland 4900. [R. 885]

In March 2013, after Petitioner and her counsel met with the AG, Chief Deputy John McIntosh and the Solicitor General, the Attorney General told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases shortly. [R. 1006]

On April 24, 2013, the AG, through Chief Deputy McIntosh, wrote SWB to confirm that the AG had never hired SWB in Richland 4900; had no attorney-client relationship with SWB; would not pay any portion of SWB's fee; and that SWB would have to disgorge the funds Brown's Trust had advanced in Richland 4900 if *Wilson v. Dallas* remained unchanged. *See* Exhibit 2-B to Motion to Expedite, filed in this case on November 5, 2020.

With the AG removed as a stakeholder, SWB and Bauknight continued Richland 4900 for the next nine years using the power and prestige of the Office of AG, but acting solely for Hynie, who holds a 46% stake, and to whitewash Cannon and Dallas for the benefit of Forlando,

The Attorney General, Bauknight and SWB never produced the critical April 24, 2013 letter to SWB to Buchanan or Pope in Forlando's federal suit, Richland 4900, or under FOIA. Nor was it produced under a journalist's 2014 FOIA order. It was released to a journalist under FOIA by the AG in 2020. *See* Motion to Expedite, filed in this case on November 5, 2020

In May 2013 the AG helped reinstate Bauknight as Brown's fiduciary and the AG and others sought and obtained a three-year *de facto* stay in Richland 4900 and the FOIA cases. [R. 147-8, 1739]

On May 29, 2013 a Sr. Asst. AG, Bauknight and two Legacy Trust attorneys were present when counsel for Hynie and Louis Levenson, Esq., announced their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. [R., 141 -148; 152 -1 58; 161 – 171]

On June 13, 2013, the circuit court, at the request of Hynie, Levenson, and Bauknight at the May 29 hearing, banned Buchanan and Pope from participating in any James Brown cases except their own fee cases. [R. 866] This was the first of more than 50 orders and directives which supported Hynie's May 29, 2013 announced plan to reinstate the AG's 2008 settlement.

By August 2013 Peter Afterman was helping Hynie siphon off U.S. royalties devised to Brown's "I Feel Good" charity and Bauknight, under oath, called Pope dishonest and claimed Pope had "raped" James Brown's estate. [R. 1008; 918, 933, 943]

By January 2015 all individual Respondents except Hynie, her son and Bauknight had publicly repudiated the AG's 2008 settlement and asserted that Hynie was not Brown's spouse and held no termination rights. [R. 1016-27] Yet SWB and Bauknight, speaking for those clients and the AG, continued to conceal Hynie's bigamy admissions first made public in 2007. [R. 587, 684]

In a May 2015 status report the circuit court failed to recall and report to the Supreme Court the May 29, 2013 announced plan of Hynie and Levenson to reinstate the AG's 2008 settlement. [R. 1543-5] The status report contained other oversights, including a mistaken belief that Pope's unpaid $47,972 SA fee claim was for $2 million. [*Id.*]

In 2016 Richland 4900 and the two FOIA cases were assigned to the Honorable Doyet A. Early, III, and Bauknight signed an affidavit saying that the Legacy Trust never existed. [R. 150]

In July 2016 both FOIA cases were dismissed, and Petitioner appealed. [R. 152, 155]

In 2019 the two FOIA cases were reversed and remanded, and by 2021 the circuit court directed SWB and the Attorney General to release the AG's public SWB Agreement. *See* Order dtd. 4/1/21, Case No. 2010-CP-40-4900 (Consolidated FOIA case). Also in 2019, at the request of Bauknight, the circuit court held that Brown's music empire was worth $4.7 million when he

died. [App. Reply Brief to Respondents, dtd. July 6, 2020, in this case; Appellate Case No. 2019-000362; Appellate Case No. 2022-1195] The circuit court also held, at Bauknight's request, that Buchanan and Pope had breached their fiduciary duty to Brown's Estate/2000 Trust by opposing the AG's 2008 settlement, and that the AG's 2008 settlement was good for Brown's charity. [*Id.*]

In 2019 Afterman, who created the $4.7 million valuation and had worked for Hynie and Bauknight since 2013, repeated the incorrect claim that termination rights were worth tens of million of dollars to support Hynie's spousal claim in this Court. *See* Motion to Expedite, dtd. November 5, 2020, Ex. 2-A.

In 2020 this Court declared that Hynie was not Brown's spouse. *Brown v. Sojourner*, S.C. Sup.Ct. Op. No. 27982 (June 17, 2020).

In 2021 *The New York Times* reported a $90 million sale of Brown's music empire which had been in progress for four years, and Bauknight claimed that Richland 4900 and Pope's fee claim, which she was willing to settle for less than $1.47 million plus interest since 2009, were the reason James Brown "I Feel Good" scholarships have not been paid in the 15 years since Brown died.

In 2022 financier David Pullman filed an "Amended" $11.5 million claim against Brown's estate even though the $31 million claim he sought to amend had been dismissed in 2008, and Pullman had not appealed.[15]

[15] The Court is asked to take judicial notice that in 2022, Pullman's claim was filed in Aiken County Case No. 2007-CP-02-0122. The Amended Claim appears to relate to fraudulent claims made by Cannon or Dallas in 2007.

When Pullman's $31 million claim was dismissed, his then-counsel James Drennan, Esq., agreed, and the court found, the Pullman's sole remedy against Brown's estate was the suit which was filed by Brown and pending before he died. [R. 82] Pullman did not seek reconsideration or appeal the ruling.

In December 2022 SWB, Bauknight and the Attorney General have not produced the documents related to the $79 million devaluation of Brown's music empire from $84 million to $4.7 million, and a second FOIA appeal is pending.

The Attorney General claims he never received the 2011 FOIA request.[16]

e. Facts Related to the Attempted Aiken 1337 consolidation and Rule 21 Dismissal

In 2012 Petitioner served offers of judgment to allow both the Attorney General and Respondent Estate/2000 Trust to be let out of Richland 4900. [R. 500-1; 508-11] The offers were rejected and filed, and a motion to strike them made. [500-1]

From 2013 until June 10, 2015 Petitioner repeatedly urged the AG not to allow Hynie and Levenson to reinstate the AG's 2008 settlement as announced in May 2013. [R. 1529-32]

In 2016 SWB withdrew its motion to be relieved as counsel for the AG. That year the AG sought twice to consolidate Richland 4900 discovery with discovery in "Aiken 1337," Petitioner's fee case. [R. 159-60, 172-3, 1689-95] The cases were not consolidated, but SWB, to protect its client the AG, was allowed to participate in depositions of the Attorney General and staff.

In late 2016 the Attorney General and Bauknight jointly named nine experts with Bauknight in Richland 4900 and Aiken 1337. [R. 172-3]

In October 2016 now-Governor Henry McMaster stated emphatically under oath that he never authorized SWB to bring Richland 4900 in the name of the State/AG and had never authorized Bauknight to speak "on behalf of" the Attorney General. [R. 863-4] His statement was

[16] See Ct. of Appeals Case Nos. 2016-1708, 2016-1727 and 2021-000518 for a more detailed statement of the facts and relationship of the 2011 FOIA requests to Richland 4900.

supported by the concealed April 24, 2013 letter and the unsigned SWB Special Counsel Agreement.

In March 2017 the Honorable Jean Hoefer Toal, in the circuit court, denied the motions to quash of two SWB attorneys and required them to testify about the Attorney General's commencement and continuation of Richland 4900 until 2017. [R. 187]

Wingate testified that he was hired by AG McMaster and knew of no change in SWB's Richland 4900 clients since 2010 except the change of AG from McMaster to Wilson.

In 2016 the AG was simultaneously seeking to consolidate a FOIA case with Richland 4900; dismiss two FOIA cases; obtain summary judgment as to the counterclaims of Buchanan and Pope; and be dismissed as a party under Rule 21, all without proper joinder of the parties and without benefit of fair discovery. [R. 711-26; 860-913; 914-940]

By May 2017 33 witnesses and experts, including seven of the AG's experts, had been deposed in Aiken 1337. and *all* supported both the position of Buchanan and Pope in Richland 4900 and Pope's $2.1 million settlement offer in Aiken 1337.[17]

The Attorney General, Bauknight and Hynie said the undisputed facts in the 33 depositions from Aiken 1337 and undisputed facts about Hynie's bigamy should not be considered in the summary judgment, dismissal or FOIA matters.[18]

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[17] Those deposed include the Governor, Chief Deputy McIntosh, Solicitor General Robert Cook, Sr. Asst. AG Jones, and Sr. Asst. AG Waters who worked on the Cannon criminal matter, James Hardin, Steven Johnson, Wallace Lightsey, Judge (Retired) Walter Williams, Roger Miller, Nathan Crystal, Ellison Thomas, CPA, Mark Hobbs, CPA, William Sellars, CPA, and R.B. Alexander. [R. 749-859]

[18] In a brief *Wilson v. Dallas* remand hearing in 2013 the circuit court "double approved" all monies paid to Buchanan and praised his service, all of which was joint with Pope. [R. 721]

By September 2017 the AG had been dismissed as a party under Rule 21 and Petitioner appealed.[19] [R. 180-85; 204-5] For five years the Attorney General and others opposed all efforts to lift the stay. [R. 206-10]

f. Facts Related to the Appeal of the Summary Judgment as to the Counterclaims

In 2018 the circuit court, without hearing motions to correct the parties dating back to 2011, granted summary judgment as to the counterclaims of Buchanan and Petitioner to the dismissed Attorney General; the claimed non-existent Legacy Trust; the nonspouse Hynie; and all other Respondents without considering the undisputed public record or the 33 depositions in a case the AG sought to consolidated. [R. 188-203; 914-40] The circuit court, at the request of the AG, Hynie and others, based its ruling solely on *Wilson v. Dallas.* [R. 188-203]

Petitioner filed this fourth pretrial appeal in December 2018.[20]

Before the summary judgment ruling the same circuit court had discarded tens of millions of dollars of litigation records spent by James Brown's claimed $4.7 million music empire, and the AG, SWB and Bauknight were all concealing Bauknight's fee schedule, as well other evidence.[21]

[19] Case No. 2017-001899. Petitioner also appealed the circuit court's denial of a 2011 motion to disqualify Bauknight and enjoin Bauknight from speaking on behalf of the AG.

[20] Petitioner also appealed numerous other circuit court orders and rulings which advanced Hynie's May 29, 2013 announced plan to reinstate the AG's 2008 settlement, including a 2017 order sealing an affidavit of Pope without review, and directing that all of Pope's future affidavits be filed under seal for consideration at trial. [R. 176-7]

[21] See Exhibit 2-I to Motion to Expedite, dtd. October 14, 2019 in this case, which is Bauknight's 2008 Fee Schedule. After the 2021 sale, Bauknight's compensation would appear to exceed $800,000 *per year*.

g. Undisputed Facts Revealed on Appeal and the Panel's Decision

During the pendency of the 2016, the 2017 and 2018 appeals, Petitioner and her counsel were met with multiple motions to strike, efforts to dismiss the appeals, and a lack of cooperation by SWB, the Attorney General, and Brown's Estate/2000 Trust. *See, e.g.,* Return to Motion to Strike Appellant's Final Brief, filed August 13, 2020 in this case.

Efforts to lift the stay which has been in place since 2017, even to correct the parties, were met with strong resistance made by the Attorney General, Bauknight acting for the AG, or both. [R. 206-10] The result was that Richland 4900 has been stayed for more than eight years, and Pope, at age 79, faces a trial against her funded by James Brown's charity she sought for six years to protect.

The Attorney General, after being dropped as a party, helped by allowing Bauknight to speak on behalf of the State/AG, and concealing the April 24, 2013 letter and Bauknight's fee schedule which would help explain how the tens of millions of dollars have been spent. [R. 1740] Bauknight withheld Petitioner's $47,972 SA fee, and even paid nearly $100,000 into the court, as it grew to $119,000 after being awarded in three court orders. Bauknight said Richland 4900 and Petitioner's fee claim are "companion cases." *See* Appellate Case No. 2021-00160.

In 2021 Larry Mestel, founder of Primary Wave, which purchased Brown's music empire and Beech Island mansion for a reported $90 million, told *The New York Times:*

> James Brown was one of the greatest musical entertainers of all time, and one of the greatest legends of the music business…That fits what we do like a glove.

The *New York Times* also quoted Bauknight as saying scholarships cannot be paid until Richland 4900 and Petitioner's fee claim are settled.[22]

ARGUMENT

I. The 2010 complaint in Richland 4900 should have been dismissed where SWB, a private law firm, served as sole counsel for the Attorney General and seventeen private clients; seeks tort damages for the Beneficiary Plaintiffs of the Legacy Trust; concealed the Attorney General's unsigned public Special Counsel Litigation Retention Agreement with SWB from 2010 until 2021; and concealed the April 24, 2013 letter of the Attorney General confirming that SWB was never hired by the Office of the Attorney General, including in court-ordered depositions in 2017.

The court of appeals' opinion found that the denial of Petitioner and Buchanan's 2010 motion to dismiss was "not immediately appealable," but did not address its own caselaw that such an order can be reviewed on appeal where a final order is before the court. *See Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*, 368 S.C. 342, 371, 628 S.E.2d 902, 918 (Ct. App. 2006). The court of appeals' opinion is further in conflict with this Court's decision in *Edge v. State Farm Mut. Auto. Ins. Co.*, 623 S.E.2d 387, 366 S.C. 511 (2005), which holds, "[a]n order that is not directly appealable may be considered if there is an appealable issue before the court." This conflict justifies granting certiorari under Rule 242(b), especially in light of the novel and constitutional issues posed by the Attorney General's bringing this suit through private contingency-fee counsel shared with private individuals and entities.

Petitioner and Buchanan moved in 2010 to dismiss Respondents' case, setting out the following ten bases for dismissal:

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[22] Sisario, Ben and Knopper, Steve, "After Years of Infighting, James Brown's Estate is Sold," *New York Times*, December 13, 2021. https://www.nytimes.com/2021/12/13/arts/music/james-brown-estate-primary-wave.html (last accessed October 5, 2022).

1. Beneficiary Plaintiffs failed to comply with S.C. Code Ann. §15-36-100 when claiming alleged negligence of attorneys.

2. Another action was pending between the parties.

3. The alleged wrongful acts had previously been approved by orders of the Aiken Court which Beneficiary Plaintiffs did not appeal.

4. The allegations in the complaint far exceeded the AG's statutory and constitutional authority to act, violating Due Process rights of Petitioner and Buchanan.

5. Private counsel SWB exceeded its statutory and constitutional authority.

6. Beneficiary Plaintiffs failed to join indispensable parties and appoint GALs.

7. Claims asserted against Buchanan and Petitioner were barred by the 1-year applicable statute of limitations.

8. Respondents lacked standing under the will and 2000 Trust to bring the action, either because they are non-beneficiaries or as a result of their violating the *In Terrorem* clauses, or both.

9. Richland 4900 was brought for the benefit of the Respondent Legacy Trust and for its beneficiaries, and Buchanan and Appellant never served as trustees of the Legacy Trust or had any fiduciary duty or obligation to the Legacy Trust or its beneficiaries.

10. South Carolina Code Ann. §33-56-180 bars recovery because Buchanan and Appellant were acting within the scope of their authority as agents for the James Brown "I Feel Good" Trust, a 501(c)(3) private foundation. [R. 231-272]

The circuit court should have granted the motion to dismiss in 2010. Petitioner sought review of the circuit court's order denying the motion in 2011, also seeking a writ of prohibition from the court of appeals. The court of appeals dismissed the appeal as premature and found that it could not consider a writ of prohibition without a pending appeal. [R. 107] More than a decade later, the court of appeals erred in finding it could not review the circuit court's refusal to dismiss this illegal lawsuit even with an undisputedly appealable order before it.

This Court held in *Brown v. Sojourner*, S.C. Sup.Ct. Op. No. 27982 (June 17, 2020):

The ongoing litigation since Brown's passing has thwarted his expressed wish that

> his estate be used for educational purposes, a fact confirmed by the parties in this case, who acknowledged that no scholarships have been paid for students to date, a point we find both extraordinary and lamentable.
> . . .
> . . . [T]he circuit court shall promptly proceed with the probate of Brown's estate in accordance with his estate plan.

This Court's observations and directives, as well as the principles of judicial economy[23], support this Court's reviewing the circuit court's denial of Petitioner's 2010 motion to dismiss.

The novel and constitutional issues involving the Attorney General and SWB justified dismissal in 2010, and that substantive review is necessary and appropriate for the reasons this Court applied in *Edge*, *supra,* and the other cases cited.

II. Respondents, including the Legacy Trust and its beneficiary-owners are not entitled to summary judgment as to the counterclaims of Buchanan and Petitioner where there is undisputed evidence all participated in the Section 62-1-106 violations of Tommie Rae Hynie which damaged Buchanan and Petitioner; all participated in the coverup of the $17 million theft and money laundering of former trustee David Cannon; all participated in Hynie's conspiracy to devalue the worldwide music empire of entertainer James Brown by $79 million to damage Buchanan and Petitioner; and Richland 4900 was brought to try to stop the appeal which became *Wilson v. Dallas* and continued since May 2013 to disregard *Wilson v. Dallas* to carry out Hynie's plan to reinstate the Attorney General's 2008 settlement.

This appeal centers on the granting of Respondents' motion for summary judgment, which was based solely on Respondents' interpretation of this Court's *Wilson* decision. In their Revised Memorandum Supporting Summary Judgment, Respondents told the circuit court, "[t]o

[23] *See Morris v. Anderson County*, 349 S.C. 607, 610-11, 564 S.E.2d 649, 651 (2002) (holding that the appellate court may consider an unappealable order along with an appealable issue where such a ruling will avoid unnecessary litigation); *Pitts v. Jackson Nat'l Life Ins. Co.,* 352 S.C. 319, 338, 574 S.E.2d 502, 511-12 (Ct. App. 2002) (entertaining an appeal from a denial of summary judgment because it was so closely connected with other issues properly before the court).

emphasize, the grounds for this motion are found solely in the Wilson v. Dallas opinion, and are based on the contention that Wilson v. Dallas conclusively establishes facts which preclude [Petitioner's] counterclaims as a matter of law." [R. 1587-1603]

The circuit court agreed that this Court's opinion in *Wilson* was all it needed to review, finding "[Petitioner's] counterclaims are barred by collateral estoppel based on the Supreme Court's holding in Wilson v. Dallas." [R. 203]. The court of appeals adopted the circuit court's finding. Both were based on a single paragraph from this Court's decision in *Wilson*, in which this Court noted some of the allegations Respondents made against Pope and Buchanan and concluded, "[t]hese actions and the extreme discord between the parties convince us that [Pope and Buchanan's] continued service is not in the best interest of the estate." *Wilson* at 448-449, 743 S.E.2d at 766-767.

The court of appeals found that this short passage barred any claim Pope or Buchanan could have had for damages based on the filing of this case, despite that fact that this Court made *no* findings about the filing of this case and, further, made no finding that Pope and Buchanan had caused any damage to any Respondent. Petitioner submits that the court of appeals' opinion is therefore in conflict with this Court's holding in *Wilson*.

The court of appeals completely overlooked Petitioner's correct argument that this case was brought improperly to stop the appeal which resulted in this Court's *Wilson* decision, and this Court made no findings about the propriety of the filing of Richland 4900 in its *Wilson* decision. Petitioner has set out clearly her argument that various Respondents have violated S.C. Code Ann. §62-1-106 by making fraudulent statements to this Court, the court of appeals and the circuit court in a successful effort to damage Pope and Buchanan. *See* Brief of Appellant and Reply Brief of Appellant, Appellate Case No. 2017-2229.

No filings from Richland 4900 were in the *Wilson* record, although this Court acknowledged its awareness of Richland 4900 in Footnote 30 of its decision:

> We note the AG and/or Bauknight have allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate, for Wingate to sue Appellants on behalf of the State, Bauknight, and others while also representing private plaintiffs in the suit. We are aware that a suit has been filed in Richland County seeking damages to Brown's estate allegedly arising during Appellants' service as fiduciaries. Despite FOIA requests, the AG had refused to publicly release all of the documents pertaining to this reported arrangement. However, the AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now withdrawing as a party in that lawsuit and his office will maintain a monitoring role.

The issues noted by this Court in *Wilson* were among those raised in Petitioner's 2010 motion to dismiss, as well as her 2011 appeal and petition for writ of prohibition, which the court of appeals found to be premature. In the years since, it has become known that the then-Attorney General did *not* authorize this suit; that the Special Counsel Litigation Retention Agreement was unsigned; and that the Attorney General in 2013 notified SWB that it was not counsel for the Attorney General in this case. *See* Exhibit 1-F to Appellant's Motion to Expedite, dtd. October 14, 2019 in this case. This Court has recently held that matters related to the Attorney General's ability to engage private contingency-fee counsel rise to the level of giving a nonprofit public importance standing to bring an action regarding the State's payment of private contingency-fee counsel. *See South Carolina Public Interest Foundation v. Wilson*, Appellate Case No. 2021-00343 (Op. No. 28112, September 24, 2022). This action by a private law firm, brought in the name of the State without authorization and based on an *unsigned* Special Counsel Litigation Retention Agreement, is extraordinary and should be reviewed by this Court before another decade of litigation.

Petitioner raised constitutional and other issues related to the Attorney General's bringing of this case through private contingency-fee counsel shared with private individuals and entities in 2010, 2011 and has continuously raised and preserved these issues in the intervening decade of litigation. The novel legal issues related to the Attorney General's participation and representation in this case are novel and further justify this Court's review of the matter under Rule 242(b).

III. Whether the panel should have affirmed summary judgment to Respondents as to the counterclaims where the parties were not properly joined; and discovery was incomplete.

This case presents the novel issue of the circuit court's having found that all matters were stayed under Rule 241, but nonetheless entered the final summary judgment order prior to the case being remanded. The circuit court in this case finalized the grant of summary judgment on November 25, 2018, more than a year after Petitioner had appealed a final order dropping the Attorney General as a party to this case. *See* Appellate Case No. 2017-1899, Notice of Appeal filed September 12, 2017. Petitioner promptly moved to lift the Rule 241 automatic stay to proceed with discovery and other important matters. The circuit court denied the motion on December 6, 2017, finding that the "orders on appeal here are wide-ranging, [affecting] both the inclusion/exclusion of parties to the suit and to the right of the attorneys to represent those parties." [R. 206-210]

Nevertheless, the circuit court proceeded to deny Petitioner's motion (made in July 2017) to alter or amend the summary judgment order on November 25, 2018, despite its finding that a broad stay was in place in this case. Based on the circuit court's own finding, it was without jurisdiction to proceed with denying Petitioner's motion to alter. *See Tillman v. Oakes,* 398 S.C. 245, 728 S.E.2d 45 (Ct.App. 2012).

Additionally, at the time summary judgment was granted, discovery remained incomplete. Although this case had been pending for more than seven years at the time summary judgment was granted, the discovery process had been extraordinarily slow, with the first deposition taking place over two years after commencement of the case. As outlined in Petitioner's Brief below, each step of the discovery process had been hindered by Respondents' repeated attempts to delay and avoid discovery. *See* Brief of Appellant, pp. 41-43. The court of appeals cited a lack of evidence supporting Petitioner's counterclaims in affirming summary judgment but failed to consider Petitioner's argument that summary judgment was premature because she had not been given a full and fair opportunity to complete discovery. *See Baughman v. American Tel. and Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

This issue is novel, where both the circuit court and the court of appeals found that no evidence was necessary to grant summary judgment based on collateral estoppel, but the court of appeals based its opinion in part on a lack of evidence to support the counterclaims.

IV. The panel should not have affirmed summary judgment to Respondents as to the counterclaims where the circuit court failed to consider the issues on appeal, including whether SWB should be disqualified and Bauknight should be enjoined from acting on behalf of the Attorney General.

While this appeal was pending, the court of appeals affirmed another order of the circuit court. *See* Appellate Case No. 2017-1899. The court of appeals dismissed the appeal of certain other orders in which the circuit court had denied Petitioner's motion to disqualify private law firm SWB and enjoin Bauknight from acting on behalf of the Attorney General. The court of appeals found these orders to be interlocutory, because motions to alter or amend them (which had been pending for years) had not been decided by the circuit court. In declining to grant a writ of certiorari in that matter, this Court noted, "the motions pending before [the circuit court] may now

be resolved so that the extensive litigation in this matter may be concluded." [Order, dtd. April 21, 2021] The pending motions have not been heard or decided since this Court's Order remanding them.

The issues addressed in the pending motions are novel and constitutional, and the outcomes of those motions may shed light on or affect the issues in this appeal.

Conclusion

Petitioner respectfully submits that a writ of certiorari should be granted on all of the issues set out herein, so that this Court may consider and reverse the orders on appeal.

Respectfully submitted,

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