RECEIVED

Sep 19 2023

S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Clifton B. Newman, Circuit Court Judge

Appellate Case No. 2023-001263

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

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, Plaintiffs,

Of whom 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. II; 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

Tommie Rae Brown, individually and on behalf of her minor child, James B. II; 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, are Respondents.

v.

Adele J. Pope, Appellant.

APPELLANT'S BRIEF

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernaillawfirm.com
S.C. Bar No. 80219

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

Counsel for Appellant Adele J. Pope

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

a. The Circuit Court Erred in Sanctioning Appellant for Failing to Withdraw her Petition to Lift Stay when the Petition had been Mooted by this Court's March 28, 2023 Order

b. The Circuit Court was without jurisdiction to hear and decide the motion for sanctions where the Rule 241 stay had not been lifted, and an appeal in this case remained before this Court

c. The Court Erred in Granting Sanctions Against Appellant under Rule 11, SCRCP

d. The Court Erred in Assessing Sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, both Because the Motion was Untimely as to Most Matters Addressed and Because No Evidence was Offered to Support the Finding that Appellant's Filings Warranted Sanctions

e. The Court Erred in Assessing Attorneys' Fees for Past Motions/Petitions, as well as Motions/Petitions Filed in the Court of Appeals and Supreme Court; Assessing Excessive Attorneys' Fees; and Assessing Attorneys' Fees Unrelated to the Motions/Petitions to Lift Stay

f. The Court Erred in Retrospectively Finding that Appellant had been the Cause of Delays in this Case, where 17 Respondents Brought this action, have Repeatedly Sought and Obtained Stays, have Refused to Comply with Discovery, and have Refused to Properly Join the Parties

g. The Court's Order Continues Years of Violations of Appellant's Due Process, First Amendment, 42 U.S.C.A. § 1983 and other Civil Rights

STATEMENT OF THE CASE

On May 19, 2010 the Attorney General of South Carolina[1], the James Brown Legacy Trust ("Legacy Trust"), Tommie Rae Brown ("Tommie Rae") and fourteen additional plaintiffs, all private clients of Sweeny Wingate and Barrow, P.A. ("SWB") sued Robert L. Buchanan ("Buchanan") and Appellant Adele Pope ("Pope") in this tort suit, Richland County Case 2010-CP-40-4900 ("Richland 4900").

The Richland 4900 complaint has never been amended. The AG, Tommie Rae and six other plaintiffs are "Beneficiary Plaintiffs" of the Legacy Trust which was created by a 2008 agreement brokered by the Attorney General (the "AG's 2008 Settlement"). The complaint describes the AG's 2008 Settlement as follows:

> …Following additional litigation in the Aiken County Circuit Court, the Beneficiary Plaintiffs entered into a comprehensive settlement resolving all their disputes and ending litigation between them, which agreement was, after extensive hearing, approved by the Aiken County Circuit Court by an Order entered on May 26, 2009. That Order also removed the Defendants as the substituted Personal Representatives and Trustees. [R. 129]

The complaint asserts that Buchanan and Pope breached their duty to the AG and other Beneficiary Plaintiffs during the 18 months between November 2007 and May 2009 when they served as personal representatives ("PRs") under the will of entertainer James Brown (the "Will") and trustees of the James Brown 2000 Irrevocable Trust (the "2000 Trust") . [Complaint, R. 126-135]

In addition, the never-amended complaint asserts that Buchanan and Pope are liable for damages to the Legacy Trust, which the SWB describes as the "Charitable Trust Settlement Entity," and to its Beneficiary Plaintiffs, because they were appealing the circuit court's approval

[1] "Attorney General" or "AG."

of the AG's 2008 Settlement. [R. 128; 131], The Attorney General and Tommie Rae are more than 2/3 Beneficiary Plaintiffs of the Legacy Trust. [R. 571; 574; 618; 657] Richland 4900 was removed to the court of common pleas. [R. 741]

Buchanan and Pope moved for dismissal of the complaint on ten grounds, including that they owed no duty to plaintiff Legacy Trust or its Beneficiary Plaintiffs and that Richland 4900 is unconstitutional, illegal and improper and violates their Due Process rights because SWB is sole counsel for the State/Attorney General and Respondents, its private clients, who include nonresidents of S.C. and former minor plaintiffs with no guardian *ad litem.* [Mot. Dismiss, R. 136-46; List of Attachments, R. 147]

Subject to the motion to dismiss, Buchanan and Pope moved to change Venue to Aiken County. [R. 1417-22] The Attorney General and Respondents opposed the motion, claiming the case involved two trusts – the Legacy Trust and Brown's 2000 Trust. [1418-1422] The Attorney General and Respondents asserted "[t]his is not a judicial proceeding regarding the Estate of James Brown, the administration of which is in the Aiken County Probate Court." [Pls. Memo in Opp. to Dismiss, R., 1224-6]

Subject to the above motions, the Appellant and Buchanan answered and counterclaimed; denied any wrongdoing [R. 395-435]; denied any duty to the Legacy Trust or its Beneficiary Plaintiffs [R. 395-405]; and sought damages, including for abuse of process and interference with their court-approved agreement with Brown's estate to be paid. [Ans. & CC, R. 421-435]

In November 2010 the AG and Respondents, moved for relief from default after not timely responding to the counterclaims. [R. 428-30; 487-9]

The trial court denied Defendants' motion to dismiss and for change of venue. [R. 1-8]

In January 2011 The Honorable Alan Wilson replaced The Honorable Henry McMaster as Attorney General. [R. 1930]

In May 2011 the writ of prohibition and appeal, sought by Buchanan and Pope challenging Richland 4900 as unconstitutional and a violation of their Due Process rights, was dismissed without prejudice as premature on motion of the AG and Respondents, through SWB. [R. 580; 900; 907; 1987]

On May 18, 2011 a motion to disqualify SWB from representing the Attorney General and enjoin Russell Bauknight ("Bauknight"), trustee of the Legacy Trust, from acting on behalf of the AG in Richland 4900, was filed after Bauknight filed a sworn statement on May 4, 2011 that the at-death value of Brown's music empire was $4.7 million. [R. 434-436; 73; 107]

In 2011 Buchanan and Pope moved to compel document discovery from all plaintiffs and attempted to take depositions of Tommie Rae, former AG General McMaster, and Terry Brown [438-41 (Terry); 442-45 (Tommie Rae); 452-3 (McMaster); 458-60; 471-6] The AG and plaintiffs, through SWB, moved for protective orders and to quash the depositions. [R. 452; 454-5; 456-7; 477-82; 485-6]

An August 2011 James Brown FOIA case seeking the AG's Special Counsel Agreement with SWB was moved to Richland and consolidated with Richland 4900 over Appellant's objection. [R. 483-4]

In February 2012 the AG and Respondents, through SWB, moved to consolidate a second James Brown FOIA case, ("FOIA 350"), also moved from Newberry County, with Richland 4900. [R. 483-4] FOIA 350 seeks an amendment to the Legacy Trust signed by the AG in 2010; and documents related to Bauknight's claimed $4.7 million valuation which the Attorney

General had adopted and was using to falsely accuse Buchanan and Pope of a federal felony. [R. 2270; 581; 571; 2474]

Counsel for the Legacy Trust asserted when the FOIA request was made that if Pope continued to seek the public documents she sought, the Legacy Trust would seek sanctions or file a suit against her. [Ltr. Black to Pope, R. 475-6; 473]

The motion for the AG and Respondents to consolidate FOIA 350 had not been heard when the circuit court dismissed FOIA 350 in 2016. [R. 617; 906] It was remanded to the circuit court but dismissed a second time in 2021, and is now pending as Court of Appeals Case No. 2021-000518. Appellant opposed the consolidation of FOIA 350 with Richland 4900 because of potential delay. [R. 1799-1800; 529]

In April 2012 the AG and Respondents, through SWB, sought protective orders as to the proposed depositions of AG Alan Wilson, plaintiff Daryl Brown, plaintiff Terry Brown and plaintiff Jason Brown-Lewis [R. 132; 496-7; 494-5; 492-3; 490-1]

On May 21, 2012 the AG and Respondents, through SWB, filed a Motion to Enforce Settlement, which related to a settlement reached by Buchanan with the Attorney General and Respondents. [R. 498-509] An order of July 2012 directed that parties to the Buchanan settlement pay their own costs. [*Id.*]

In July 2012 the AG and Respondents, through SWB, filed protective motions related to plaintiff Janise Brown and plaintiff Daryl Brown, and moved for an emergency telephone hearing to prevent the deposition of former James Brown trustee Albert Dallas, a witness for the AG and Respondents. [R. 516-8] The deposition was stopped but Dallas gave a sworn statement. [R. 585]

By Order dated July 5, 2012 the trial court denied the 2011 motion to disqualify SWB from representing the Attorney General and to enjoin Bauknight from acting on behalf of the Attorney General in Richland 4900, and a motion to alter or amend was filed. [R. 966-7]

In August 2012 the AG and Respondents, moved to strike offers to let the Attorney General, the Estate/2000 Trust of James Brown, Venisha Brown and minor beneficiaries of Brown's 2000 Trust out of Richland 4900. [R. 1991; 1166]

In 2012, on motion of the AG and Respondents, through SWB, the trial court ordered that individual plaintiffs were exempted from a mediation and the court directed that no guardian *ad litem* ("GAL") be appointed for the minor plaintiffs or plaintiff Venisha Brown, who was incarcerated. [R. 16-18]

On February 27, 2013, this Court's first, later substituted, decision in *Wilson v. Dallas,* 403 S.C. 411, 743 S.E.2d 746 (2013) discussed Richland 4900, the claimed $4.7 million valuation of Brown's music empire, and the related 2011 FOIA suits at footnote 29.

In March 2013 Appellant opposed motions of the AG and Respondents for protective orders and supplemented her motion to alter or Amend the trial court's order declining to disqualify SWB and enjoin Bauknight from acting on behalf of the State/Attorney General. [R. 864; 950; 1066; 1117-8] Plaintiff also moved for summary judgment as to some of the parties.

On May 8, the Supreme Court's final decision in *Wilson v. Dallas* was handed down, and on May 10, 2013 the Attorney General and Respondents, through SWB, requested that the circuit court stay the FOIA cases and Richland 4900 until all James Brown matters were concluded in Aiken County. [R. 2369]

On May 29, 2013 a status conference on James Brown Aiken matters was held and on June 13, 2013, Buchanan and Pope were excluded from all James Brown Aiken cases except their own fee claims, and the clerk was directed to return any filing of Buchanan or Pope not in their fee claim cases. [Supp Mot 10/30/18, R. 12; 678; Ltr. Knoepfle to Pope, R. 2348]

During the stay, on October 13, 2015, the trial court granted the 2010 motion of the Attorney General and Respondents, through SWB, to set aside entry of default. [R. 19-21; 73] A timely motion to alter or amend was filed. [R. 106]

In February 2016, based on the *de facto* stay, the AG and Respondents, through SWB, filed a Motion for Protective Order and/or to Quash Notice of the deposition of James B. Richardson, Esq., who had served as *pro bono publico* lead counsel in the *Wilson v. Dallas* appeal. [Motion, SWB, 2/18/16; R. 523-5]

On March 2, 2016 the trial court issued an order formalizing the *de facto* stay until "further order of the court." [Order, Jg. Manning, 3/2/16, R. pp. 24-5]

By order dated April 8, 2016 the stay in effect since 2013 was lifted. [R. 27]

In May 2016 SWB withdrew its 2013 motion to be relieved as the Attorney General's counsel and obtained court permission for SWB attorneys to participate in Aiken County Case 2013-CP-02-1337 ("Aiken 1337") depositions of the AG and the AG's staff to protect SWB's client, the AG. [R. 2034-5].

Between May 2016 and May 2017, SWB attorneys were allowed by the trial court to participate in Aiken 1337 depositions of Lt. Gov. McMaster, AG Wilson, Solicitor General Robert Cook, former Chief Deputy AG John McIntosh, Sr. Asst. Havird "Sonny" Jones, Sr. Asst., Creighton Waters, Asst. AG Mary Frances Jowers, and AG auditor Sandra Matthews and motions to lift the stay imposed from September 12, 2017 until 2023 sought to have the sworn testimony

of SWB's asserted clients within the record of Richland 4900, but the AG and Respondents, through SWB, refused all efforts to lift the stay. [R. 718-9]

On May 17, 2016 the AG and Respondents, through SWB, moved for summary judgment that they had no liability as to the counterclaims of Buchanan and Pope. [R. 2481] The motion stated:

> The grounds for this motion are that Defendant Pope's claims are precluded as a matter of law by the doctrine of collateral estoppel by the decision of the South Carolina Supreme Court in Wilson v. Dallas, 403 S.C. 411, 743 S.E. 2d 746 (2013)… [R. 2482]

In 2016 Tommie Rae was deposed. Motions for protective order were filed by her counsel when Tommie Rae was directed not to answer questions about her marriages. [R. 634-7]

By order dated July 25, 2016 the circuit court adopted a scheduling order which stated that Richland 4900 would be tried jointly with or before Aiken 1337. [R. 548-9]

In 2016 an effort was made to prevent the deposition of Attorney General Alan Wilson in Richland 4900 under the *Morgan Rule.* [R. 1513] AG Wilson, without objection, was deposed in Aiken 1337, but efforts to lift the stay to present his sworn testimony to the court have been opposed by the AG and Respondents, through SWB. [Depos. Wilson, R. 1745-56]

In January 2017 the AG, Hynie, the Legacy Trust and others designated nine experts in Richland 4900 and moved, through SWB, to consolidate the discovery of the nine (9) experts, and to stay both cases until an expert schedule could be developed. [R. 34-5; 559-561] Appellant opposed the motion to consolidate because of potential delay, as a trial was set for Aiken 1337 in Richland 4900; and discovery was completed in April 2017. [R. 34-5]

On February 6, 2017, the circuit court denied the motion of the Attorney General and Respondents, through SWB, to consolidate discovery of Richland 4900 with Aiken 1337. [R. 34-5] Appellant opposed the consolidation motion, in part because of potential delay. [R. 34-5]

On March 9, 2017, the circuit court ruled that certain of plaintiff Tommie Rae's objections to her depositions were sustained and some overruled. [R. 42-3] Her deposition has not been reconvened.

On March 9, 2017 the circuit court, on motion of the AG and Respondents, through SWB, ordered a January 17, 2017 affidavit of Appellant be put under seal without review; that "[a]ll further Affidavits filed by the [Pope] will be filed under seal;" and that "[a] determination will be made at the time of trial which Affidavits will be used at the trial of this matter." [Order, Jg. Early, 3//9/17, R. 40-41]

On May 31, 2017 the Attorney General was dropped as a party to Richland 4900 under Rule 21 SCRCP, but the order was not delivered to counsel until July 10, 2017. [R. 46-51**;** 1089]

On September 12, 2017 the order dismissing the Attorney General under Rule 21 was appealed with certain others orders in Appellate Case No. 2017-001899.

On October 24, 2017 Appellant filed a motion to lift stay in Richland 4900. [R. 656-64] Respondents, including Bauknight on behalf of the AG and Legacy Trust, opposed lifting the stay. [R. 702-5; 2372-84]

On November 13, 2017 a hearing was held. [R. 1054-69]

By order dated December 6, 2017 the motion to lift stay was denied. [R. 72-6]

On October 30, 2018 Appellant again moved to lift the stay [R. 667-686] Among other issues, she noted that Venisha Brown was deceased and her estate needed to be substituted, and that Tommie Rae and James Brown II, in a suit filed by some plaintiffs, said that they were residents of London, U.K. and beyond the jurisdiction of the U.S. Courts. [R. 687-96]

SWB opposed the motion and moved to strike certain of Appellant's filings in support of the motion. The circuit court denied the motion to lift stay and declined to strike any of Appellant's filings. [R. 702-4]

In October 2018 Appellate Case No. 2018-2229, appealing the grant of summary judgment as to the counterclaims and certain other orders, was filed.

On January 22, 2019, Appellant moved under Rule 241 to lift the Richland 4900 stay in appeal 2018-002229. [R. 709-22]

By order filed February 26, 2019, the trial court denied Appellant's Rule 241 motion to lift the automatic stay. [Ord. Jg. Early, filed 2/26/19; R. 80-85] The trial court denied the motion of Respondents to strike and for sanctions. [R. 80-85]

In 2020 the Supreme Court assigned Richland 4900 and the two James Brown FOIA cases to the Honorable Clifton Newman.

On June 26, 2020 a hearing was held before Judge Newman. [R. 891; 1088-1110]

In October 2020 the Attorney General released under FOIA various documents, including a fee schedule from Bauknight which had been declared nonconfidential by Judge Early in 2010, but which was missing from the Office of the Clerk of Court for Aiken County when requested; correspondence with SWB and the AG in 2012 and 2013; and an April 24, 2013 letter of the AG to SWB. [R. 2144; 2152; 1945] None of the documents has been produced to Pope under FOIA or in Richland 4900 discovery. [R. 1945]

On April 21, 2021 the Supreme Court denied certiorari in Case No. 2017-001899.

On June 10, 2021 Appellant's counsel filed a status report in preparation for the circuit court status hearing held on June 11 citing the history of the case. [Status Report, 6/10/21, R., 1876-81]

On November 11, 2022 Appellant filed a Petition for Expedited Lifting of Stay with Exhibits A through L in the circuit court.

On November 30, 2022, with the circuit court not having heard or ruled on the November 11, 2022, Appellant filed a similar petition in this Court.

On March 28, 2023 the motion to lift stay was denied by the Supreme Court.

On April 6, 2023 Respondents filed a return opposing lifting of the stay and moving for sanctions against Appellant. [R. 994-1011;]

Before the hearing, Appellant opposed the sanctions request, including by filing affidavits of counsel Charles Carpenter, Esq., Wm. Jeffrey Smith, Esq., and Adam Silvernail, Esq., as well as former Counsel Walter S. Bundy, Esq. [R. 2118-2368]

Carpenter attached a Petition for Certiorari to the U.S. Supreme Court which he prepared, and which outlines problems with both the 2008 settlement, and the 2015 circuit court's decision finding that Tommie Rae was the spouse of James Brown without due understanding of termination rights under the U.S. Copyright Act. [R. 2168-2257] He has since moved to North Carolina for family reasons.[2]

[2] Wm. Jeffrey Smith, a Georgetown Law graduate and former patent examiner, as well as a lifelong music enthusiast, co-authored the draft of *Private Foundation, Copyright Heirs and Musician Millionaires: why the James Brown "I Feel Good" Trust with* Appellant in 2011. [R. 2143-53; 1981-93] *Private Foundations* outlines the double damage done to James Brown's charity by the AG's decision to stipulate that Tommie Rae was James Brown's spouse and to adopt her plan to revalue Brown's music empire to less than $12 million. [R. 1981-93; 2147-8; 2175; 2269; 2298; 2303; 2321]

Adam Silvernail, Esq., was one of the clerks in Appellant's office when Judge Early asked her to serve as an SA to James Brown's estate and is now a seasoned attorney.

Daryl Williams, Esq. was assigned, as was Elizabeth Van Doren Gray, Esq., to the joint representation of Buchanan and Pope in January 2008 when Brown's grandson Forlando Brown, sought to enjoin James Brown's 2000 Trust until the thief David Cannon was reinstated as James

Each of the attorneys, along with Dr. Joseph McDonald and others, testified by affidavit to one or more of Appellant's competence and integrity or the propriety with which Richland 4900 has been conducted since 2010 in light of the vitriolic, career-threatening attacks made by SWB and Bauknight while speaking for S.C.'s highest legal officer.

The deposition testimony of 33 witnesses and experts in Aiken 1337, which the AG, through SWB, sought to consolidate in 2016 and 2017, including that of the Solicitor General, AG Alan Wilson, Wallace Lightsey, Esq., Governor McMaster, Roger Miller, W. Steven Johnson, Esq., James Hardin, Esq., Judge (Retired) Walter Williams, which the AG, through SWB has sought to exclude for six years by opposition to lift the stay, complements the 10 affidavits presented at the sanctions hearing.

On April 14, 2023 a hearing was held by the trial court to consider, among other things, the motions to alter or amend the following orders:

> a. Order of July 5, 2012 declining to disqualify SWB and enjoin Bauknight from acting on behalf of the Attorney General in R4900; and
>
> b. Order of October 20, 2015 granting the 2010 motion of the Attorney General and Respondents to set aside default as to the counterclaims of Buchanan and Pope.

On April 28, 2023, after the hearing, SWB filed an affidavit asserting that it was paid on an hourly fee basis by James Brown's estate to pursue Richland 4900 appeals and appeals related to Richland 4900. [R. 2483-2534]

By order filed May 8, 2023 the trial court denied reconsideration of the 2012 and 2015 orders, finding that the motions by defendant are "fruitless, futile and a waste of time" because "[t]he subject of these two Motions is long moot." [R. 109-20]

Brown's trustee. [R. 519-20; 584; 598; 1057] Williams, like Walter Bundy, Esq., is a seasoned trial attorney.

By order dated May 8, 2023 the trial court granted sanctions against Appellant and struck her answer. Appellant timely moved to alter or amend. [R. 121-2]

On July 18, 2023 the trial court denied the motion to alter, and this appeal followed on August 4, 2023.

By order of the Supreme Court, on motion of Respondents, with the consent of Appellant, this appeal was expedited.

STATEMENT OF THE FACTS[3]

This case was brought against Appellant and Buchanan to intimidate them into abandoning their appeal of the circuit court's approval of the AG's 2008 Settlement Agreement which this Court eventually determined to be a "dismemberment" of James Brown's charitable estate plan. *Wilson*, *supra*. The Plaintiffs in Richland 4900 were 17 individuals and entities, including the South Carolina Attorney General, with vastly diverse and competing, though, as this Court put it "tenuous" and "dubious," claims to the Estate of James Brown and the James Brown 2000 Irrevocable Trust. Brown's "I Feel Good" charity, intended to educate needy and deserving students in South Carolina and Georgia, was to receive virtually all of Brown's assets under his estate plan.

The only thing which bound the Richland 4900 Plaintiffs together was their knowledge that the Attorney General's unauthorized attempt to dismember James Brown's estate plan, for the benefit of more than a dozen private individuals, would not withstand scrutiny by this Court. In March 2010, the Richland 4900 Plaintiffs had threatened to sue Appellant and Buchanan if they did not drop the appeal. [R. 1504; 512; 577; 673; 1440; 1753; 2017-8; 2121] On May 13, 2010,

[33] Appellant incorporates the Statement of the Case into the Statement of the Facts.

this Court, on its own initiative, took jurisdiction of the case which would become *Wilson*. Faced with this Court's impending review of what then-Chief Justice Toal labeled "an unprecedented misdirection of the AG's authority in estate cases," the Richland 4900 Plaintiffs made good on their threat by filing this case.

Rather than bending to this abuse of process, Appellant and Buchanan answered, counterclaimed and attempted to begin discovery in this action. The Richland 4900 Plaintiffs, disappointed that filing this case had not immediately scared Appellant and Buchanan into abandoning their duties to the Estate and Trust, gave minimal discovery responses and stonewalled all attempts by Appellant and Buchanan to conduct depositions. [R. 487]

Buchanan, his practice and finances badly damaged by the Richland 4900 Plaintiffs' retaliations against his ongoing protection of James Brown's charitable intentions, accepted $500,000 in exchange for dropping his counterclaims in this case and contracting not to make further efforts in the *Wilson* case before this Court. [R. 501; 507-8]

From 2012 onward, Appellant alone, at great expense to her career, reputation and finances, maintained the appeal which resulted in this Court reversing the settlement which gave away more than half of what should have been the "I Feel Good" Trust's assets.

SWB, now representing 17 clients whose diverse and conflicting interests could no longer be hidden behind the 2008 settlement, immediately told the circuit court that Richland 4900, as well as two pending FOIA cases, would have to be stayed until all other pending litigation among its clients was resolved. Though the circuit court did not enter an order staying the case until March 2016, SWB repeatedly asserted a stay was in place to avoid discovery and hearings in the case for three (3) years. [R. 716; 1879; 1935; 2138]

On January 13, 2015, Judge Early determined that Tommie Rae was the surviving spouse of James Brown, removing a major impediment to the Richland 4900 Plaintiffs' apparent ability to proceed with SWB as sole counsel. In early 2016, the settlement of will and trust contests brought by certain children of James Brown were settled, and in April 2016, Judge Early lifted the stay in Richland 4900 and directed that "discovery begin anew." Respondents promptly moved for summary judgment on Appellant's counterclaims, asserting that no discovery was necessary. Judge Early agreed, and Respondents resisted all efforts to lift the stay or conduct discovery while the appeals of Judge Early's orders were pending from 2017 until April 2023.

In the meantime, this Court finally determined that Tommie Rae was never James Brown's spouse[4], a decision that never would have materialized if Appellant had not held fast against the efforts of Tommy Rae, the Attorney General, SWB and others to prevent this Court's *Wilson* decision voiding the 2008 settlement which declared Tommie Rae to be Brown's surviving spouse.

Nonetheless, in 2021, Tommie Rae and most or all other Richland 4900 Plaintiffs reached a confidential settlement in a Federal lawsuit.[5] Within months, Brown's assets were sold for a reported $90 million.[6] Because of the secret agreement(s) and lack of public accounting or reporting of the activities of the Estate and Trust, it is unknown what portion of the proceeds of that sale may ever benefit the needy and deserving students for whom James Brown created the "I Feel Good" Trust. Also unknown is how much of the "tens of millions of dollars" in litigation

---

[4] *Brown v. Sojourner (In re Estate of Brown)*, 430 S.C. 474, 846 S.E.2d 342 (2020).

[5] *See* "Dispute over James Brown Estate Largely Ends as Heirs Agree on Plan" Sisario, Ben and Knopper, Steve. *New York Times*, July 15, 2021. https://www.nytimes.com/2021/07/15/arts/music/james-brown-estate-settlement.html (last accessed September 18, 2023).

[6] *See* "After 15 Years of Infighting, James Brown's Estate is Sold," Sisario, Ben and Knopper, Steve. *New York Times,* December 13, 2021. https://www.nytimes.com/2021/12/13/arts/music/james-brown-estate-primary-wave.html (last accessed September 18, 2023).

expenses Bauknight admits to spending has been devoted to 13 years of litigating this lawsuit to recover what Respondents assert are tens of millions of dollars in damages against Appellant, who has never had a net worth sufficient to pay a judgment of that size.

Now again united in their rabid pursuit of Appellant, Respondents in 2023 did not even await the remittitur from this Court to move for sanctions, and the circuit court proceeded to hear and announce its intention to grant sanctions against Appellant before the remittitur came down.

This Court has previously declined to review the dismissal of Appellant's counterclaims and the circuit court's allowing the Attorney General to walk away from this case unscathed, meaning the only remaining claims herein are Respondents' baseless and abusive claims against Appellant. Respondents now ask this Court to place its imprimatur on the circuit court's extraordinary and harsh sanctions, so that Respondents can move forward at break-neck speed after 13 years of delay to avoid proving liability by trying their claims with Appellant in default.

Appellant asks that this Court reverse the circuit court's orders, so that she can reasonably defend herself against Respondents' baseless and abusive claims. Appellant does not ask this Court to declare her a hero of James Brown's charitable intentions, but she does respectfully ask this Court not to allow her to be the victim of Respondents and the Attorney General, against whom she defended Brown's estate plan.

Although numerous briefs and records filed by Appellant[7] set forth extensive detail regarding the history of this case and those that preceded or paralleled it, Appellant sets forth below a concise factual background of matters important to the instant appeal.

[7] Appellant incorporates by reference all briefs she has filed in Appellate Case Nos. 2017-001899 and 2018-2229, as well as all material in the records which was cited in her briefs.

a. Background and Service of Buchanan and Pope as Special Administrators ("SAs")

Entertainer James Brown died on Christmas Day 2006, leaving a $100 million worldwide music empire; no spouse; a dozen or more claimed children from many relationships; and an ironclad Will and 2000 Trust.

In 1999 Brown made a voice tape outlining his desires for his charity. In 2000 he finalized his Will and 2000 Trust which would receive 49/50 of his music empire.[8] Brown had three trustees, one of whom was a thief. [R. 1024; 1228; 2033; 2263; 2286; 1018; 2119] James Brown was also survived by companion Tommie Rae.

In 1997, Tommie Rae concealed her marriage and began a relationship with Brown. Then she married him in 2001, but Brown's trustee Albert Dallas discovered Tommie Rae's bigamy. In 2004 Brown sued Tommie Rae to void the marriage, and she counterclaimed. The suit settled with Tommie Rae's agreement not to claim to be Brown's common law spouse.

[8] If Brown's music empire had been worth $100 million when he died, it would all go into Brown's 2000 Trust. Then 1/50 ($2 million) would be set aside to educate seven specific grandchildren to age 35. The rest, 49/50 ($98 million), would go at death into Brown's "I Feel Good" education Trust for needy students.

The 1/50 would drop back into the "I Feel Good" education charity as the 7 reached 35. There would be no estate taxes on the $100 million, and almost no income taxes.

If Brown's music empire had taken a dramatic downturn in value before Brown's death, leaving it worth only $4 million, the entire music empire would still go into Brown's 2000 Trust. Under the "fractional share" formula, one half (1/2) --$2 million – would still be set aside for the education of the 7 grandchildren to age 35. [R. 1855; 2127; 675] Half of the music empire would go into the "I Feel Good" charity at Brown's death, and the rest would drop back into the "I Feel Good" charity as the 7 reached age 35. [R. 2033; 2119; 349; 350; 670; 676]

With Brown's music empire at $84 million because of Cannon's theft, Buchanan and Pope reported the fraction to be 41/42 to the charity and 1/42 to educate the 7 grandchildren. [R. 1950]

Brown acknowledged only six of his many children; gave them household goods; and excluded them from his music empire and the 2000 Trust. Shortly after Brown's death the six children hired Louis Levenson, Esq. ("Levenson") and agreed to give him $150,000 and 30% of what he could get from Brown's estate for them.

On March 7, 2007 the Honorable Doyet Early ("Judge Early") appointed Buchanan and Pope as special administrators ("SAs") of Brown's estate, a job they did not seek. [R. 760; 807] They had the limited duty of overseeing Brown's trustees and reporting any problems to the court.

In July 2007 Cannon and Dallas obtained documents from Atlanta firm Powell Goldstein ("PG") to move Brown's 2000 Trust from South Carolina to Georgia just as Buchanan and Pope were about to discover Cannon's theft. [R. 1287-94; 1272] The move failed; the first theft was discovered and Cannon resigned. [R. 1408] Then Cannon wired $866,000 to Honduras to build a turnkey retirement mansion on Roatan Island in the Caribbean. [R. 230; 265; 2311; 1019]

Judge Early issued an order making 80 boxes of James Brown' documents public, and within weeks the SAs found the $5 million "check to nobody" Cannon had laundered through a Barnwell bank in 1999.

By November Dallas had resigned when it became clear that he was covering up Cannon's theft while claiming to investigate it. In seven months, Buchanan and Pope had uncovered more than half of the $17 million Cannon had stolen.

Their SA fee of $317,000 was awarded on a "time + costs" basis for Buchanan, Pope and their staffs, Buchanan was paid in 2008. Pope was paid all except $47,972 plus interest. It is being held until Richland 4900 is over but is earning interest.

b. The Service of Buchanan and Pope as PR/Trustee and the Richland 4900 Complaint

The Richland 4900 complaint sets out a view of the facts which was rejected by this Court in *Wilson v. Dallas*, including that Tommie Rae is the spouse of James Brown and should receive a quarter of his charity for termination rights she does not have. [R. 977]. The complaint asserts that Appellant and Buchanan breached their duty to the Legacy Trust Beneficiary Plaintiffs between November 2007 and May 2009, in large part by appealing the 2008 Settlement agreement eventually voided by this Court in *Wilson*. [R. 131]

If the appeal had been stopped, Tommie Rae would have made $1 million a year when Brown's "Pullman Bond" debt was paid off in 2011 and $22 million when Brown' music empire sold in 2021. [R. 742; 868; 2124; 912-3; 1021] Levenson would have made $6 million or more for meritless will contests which had been pending only eight months when AG's 2008 Settlement was reached. [R. 774;1026; 740; 756]

Buchanan and Pope had faithfully served Brown's estate and 2000 Trust; brought in more than $5 million of income a year; reduced Brown's Pullman Bond loan debt from $15 million at his death to $9.4 million and had also accomplished the following:

- Prevented a temporary federal injunction in which Brown's grandson Forlando Brown sought to paralyze Brown's 2000 Trust until the the thief David Cannon was reinstated as Brown's trustee. [R. 1020; 1180; 2020; 2320]

- Prevented Tommie Rae from taking more than $20 million, a quarter of Brown's charity, in exchange for "termination rights' under the U.S. Copyright Act she does not have. [R. 396; 418; 589; 683; 2310]

- Entered into, through entertainment counsel, a contract for James Brown 75th Birthday Television Special which was not funded because the AG refused to approve it.

- Defeated a $31 million S.C. claim of financier David Pullman, along with $3 million other claims. [R. 1192; 2050; 1348; 1379; 1381; 1539; 188; 244; 273]

- Opposed the Attorney General's 2008 Settlement which threatened to dismember

James Brown's "I Feel Good" charity by taking about $50 million from the charity in exchange for termination rights worth less than $4.4 million. [R. 1021-2; 1026; 1038]

- Filed suits against Cannon, Dallas and others to begin recovery of the stolen $17 million. [R. 1501-2; 1374; 1508; 1856; 1866; 1993-4; 2031; 2046; 2049-51]

- Fully accounted and delivered $99 million of assets to Bauknight.

The AG's actions between November 2007 and May 2009 are in sharp contrast to those of Buchanan and Pope and some are described below.

(1) Actions of the Attorney General Related to Cannon's Theft

The Attorney General thwarted efforts to seek counsel to recover Cannon's theft and money laundering, and even appeared on WIS-TV to support James Brown's grandson Forlando Brown in his effort to re-install the thief David Cannon as trustee. [R. 2159; 603]

(2) Actions of the Attorney General Related to Tommie Rae

Like everyone else, the Attorney General had received a copy of Tommie Rae's handwritten notes detailing her bigamy and making clear that she had lied to the Charleston Family Court about her first marriage. [R. 785-6] Instead of using this to protect James Brown's "I Feel Good" Trust against Hynie's claims, the AG concealed the public documents; "stipulated" she would be Brown's spouse; "gave" her a quarter of Brown's "I Feel Good" Trust; and provided that funds from Brown's charity would be used to defeat the claim of anyone who disagreed with Tommie Rae's spousal claims and the AG's 2008 Settlement.

(3) Actions of the Attorney General Related to the Levenson Will Contestants

The AG not only stopped DNA testing for the settling parties, but intentionally omitted from the AG's 2008 Settlement three DNA-proven daughters and a son who was incarcerated in California and seeking DNA testing. Then the AG proposed to give five Levenson clients a quarter of Brown's charity for termination rights proceeds less than $4.4 million.

(4) The Hammond Emails and Interference

In April 2008 a cache of emails from the law firm of terminated tax lawyer William Hammond, showed that the AG's staff had been indoctrinated by Hammond, who claimed that Buchanan and Pope had ousted the innocent Cannon to get the $5 million commission on Brown's $100 million estate. [R. 170] The emails showed that Hammond coached a Sr. Assistant AG on how to attack Buchanan and Pope in hearings.

(5) Failure to Defend Brown's "I Feel Good" Charity

The AG not only failed to protect Brown's "I Feel Good" charity, but affirmatively sought to dismember it, including by concealing Hynie's bigamy admissions.

c. The Attorney General's Special Counsel Agreement with SWB is Not Signed by the AG

From 2010 until 2021 SWB, speaking for the Attorney General, claimed that the AG's Special Counsel Agreement with SWB was the "epitome" of a private document. [R. 478] Nothing could be further from the truth. The AG's Special Counsel Agreement is clear that it is a public document; and that both the State/AG and Wingate are required to comply with FOIA and to notify the AG when they get a FOIA request.

In 2010 Attorney General McMaster did not sign the AG's Special Counsel Agreement. SWB knew this and concealed it for almost a decade while acting for the State/Attorney General. In addition, SWB, acting for the AG concealed evidence of Hynie's bigamy while trying to give her a quarter of a charity the AG had a duty to protect.

The signatories to the SWB agreement, other than SWB, were attorneys Levenson, Bell and an Attorney for Tommie Rae. Bell wanted his client to be able to buy the music empire at an absurdly low value. [R. 1965-5] Tommie Rae wanted $20 million, and her attorneys much of it, for baseless lawsuits. [R. 775] Levenson wanted more than $6 million for baseless claims. [R.

774] The Legacy Trust wanted to stay in power. Each of the signatories to the concealed AG's Special Counsel Agreement with SWB wanted to stop the appeal which became *Wilson v. Dallas*, which was a fundamental threat to their financial motivations.

Second best was what happened: to spend money from James Brown's charity to discredit Buchanan and Pope so viciously and badly that they would not be reinstated even if the AG's 2008 Settlement was voided. Then, just two days after the Supreme Court handed down the remittitur that voided the AG's 2008 Settlement, Levenson and counsel for Tommie Rae announced their plan to reinstate the AG's settlement. [R. 683]

The extraordinary state action by SWB to hide the lack of authority to act for the State/AG is unprecedented and began with the hiding of the AG's Special Counsel Agreement in discovery, then, in 2011 to consolidate a FOIA case, and in 2012 to advise the Attorney General not to comply with his FOIA duties to deliver the AG's Special Counsel Agreement. [R 982-4]

Perhaps SWB's most flagrant State/Attorney General action is the concealing of the April 24, 2013 letter, in which the AG told SWB that there was not then and had *never* been an attorney-client relationship between SWB and the AG. Only in 2020 did the Attorney General, not SWB, release the letter. In the meantime, SWB had not only acted for the State/AG, but claimed Bauknight had the authority, through SWB, to act for the State/AG. To this day, Bauknight, "on behalf of" the AG, is a Plaintiff and Respondent.

In October 2016 when AG McMaster said "Ma'am I did not sue you" to Pope, SWB's mandate was clear. [R. 573] Instead, two SWB attorneys failed to answer correctly or completely in court-ordered depositions in 2017, and then SWB began the vitriolic resistance to efforts to lift the stay that has wasted Brown's charity in order to punish Appellant for appealing the AG's settlement.

For ten years since *Wilson v. Dallas,* both SWB and the Legacy Trust have used stays, along with requests for sanctions, striking and sealing of public documents, and FOIA disruption to prevent release of the unsigned, unauthorized AG's Litigation Retention Agreement with SWB.

d. The Attorney General's False Felony Claim in Richland 4900 and Elsewhere

In 2009 Tommie Rae proposed a massive devaluation of James Brown's music empire to discredit "Bobadele," and in 2010 Bauknight carried it out. [R. 1860]

When Respondents filed Richland 4900 on May 19, 2010, they alleged that Appellant and Buchanan had falsely inflated the value of James Brown's Estate in order to justify a large commission. If true, Appellant and Buchanan would have committed a federal felony in filing the Form 706 Estate Tax Return with a false value. *See* 26 U.S. Code § 7206.

The Legacy Trust and its advisors withheld the existence of the fabricated $4.7 million valuation from the Supreme Court in *Wilson v. Dallas* for eight months, while they falsely accused Buchanan and Pope of a felony, for one reason: the valuation could not withstand scrutiny. Appellant and Buchanan had made more in a year for the Estate than the claimed value. [R. 912-3]

Still, in 2011 Legacy Trust attorneys claimed to the Supreme Court in *Wilson* that Buchanan and Pope were seeking a $5 million commission on Brown's $5 million estate.

By 2012 Legacy Trust lawyers were not only threatening Pope with sanctions for exercising her FOIA rights, but SWB was advising the Attorney General not to comply with his duties as the FOIA enforcer. [R. 982-4]

On February 27, 2013 this Court admonished in footnote 29 of *Wilson v. Dallas* that the FOIA case seeking the $4.7 million valuation be considered in the first instance. A decade later it

has not been. Because of stays and hidden documents, and lack of candor, the claimed $4.7 million valuation documents are on their second FOIA appeal. *See* Appellate Case No. 2021-000518.

The April 24, 2013 letter of the AG compounded the seriousness of SWB's and Bauknight's state action, especially because the AG had made clear that SWB should have disgorged the funds that had been advanced for Richland 4900 through Brown's charity. [R. 918-9]

And Bauknight is still acting for the State/Attorney General, through SWB, when he claims that Buchanan and Pope overstated the value of Brown's assets by $79 million to the IRS to get a big fee, a federal felony.

c. False Claims by the Attorney General and Respondents About Fees

The only fees Buchanan and Pope have sought as PR/Trustees *for six years' service* were a minimum of $.5 million for Buchanan or a maximum of $2.1 million; and minimum of $1.47 million for Pope or maximum of $2.8 million, in the discretion of the court. In 2017 and 2018 Pope offered to settle all of her differences with Brown's Estate/2000 Trust for $2.1 million, including the 33 depositions she had to take to protect herself against Bauknight, who was seeking to dismember Brown's charity again. Bauknight, with his $440-an-hour "probate claims expert" and two other lawyers rejected Pope's fee and started claiming, falsely, to the Courts and to the media that Pope wanted $19 million to settle her claims against James Brown's Estate/2000 Trust. [R. 2117]

The $19 million claim was as false as the felony claim, but Bauknight has nonetheless spent tens of millions of dollars devised to Brown's charity to promote the false claims, as well as to protect Tommie Rae's false claims to a share of James Brown's assets and termination rights. [R. 670; 637 (fn)]

g. The Attorney General and Respondents Obtain Summary Judgment without Facts

In 2017 Solicitor General Robert Cook testified that he did not believe that Appellant was greedy when she came to the Attorney General on March 6, 2013 to urge him to correct IRS filings that claimed that Hynie was Brown's spouse and the $4.7 million claimed value was incorrect. He believed that she was competent and concerned about Brown's "I Feel Good" charity.

The Solicitor General said another thing: that in forty years at the Attorney General's office he had never seen a case like Richland 4900.

One week after the lifting of the 3-year stay (in place since *Wilson v. Dallas*) the Attorney General and Respondents, through SWB, said they were entitled to summary judgment as to the Richland 4900 counterclaims, and that they didn't need any facts. They took the position that this Court's *Wilson* decision automatically entitled the Plaintiffs to tens of millions of dollars in damages against Appellant.

But this Court in *Wilson* had not found that Appellant had breached any duty. Instead, presented with a massive record; warring factions; a mortified Attorney General; Buchanan being contractually restrained from filing a petition for rehearing; and a great deal of misinformation regarding the value of James Brown's assets and the parties' intentions going forward, this Court found that it was not in the best interest of the Estate and Trust for Appellant and Buchanan to be reinstated as fiduciaries. Then-Chief Justice Toal dissented in part to express her view that Appellant and Buchanan should have been reinstated, since they were only replaced pursuant to the now-voided 2008 Settlement Agreement.

f. Attempts to Lift the Stay from September 2017 until February 2019

In Governor McMaster's words to *The New York Times* in 2014, the James Brown estate is "as big a tangle as you've ever seen." Richland 4900 should not have been. It should have been

dismissed in 2010, or if not in 2011, or if not before two FOIA cases got tangled with it in 2012, or certainly by the time SWB read the April 24, 2013 letter of AG Wilson. [R. 918-9]

The vicious effort to prevent lifting of the stay did what it was intended to do. It has rendered issues moot[9] and parties have escaped from the appellate court jurisdiction even though they are plaintiffs.

In March 2017 AG Wilson testified under oath that he had done nothing since 2013 except try to get out of Richland 4900. The same had been true of Appellant Pope since June 10, 2015 when her efforts to persuade anyone who would listen not to allow the announced May 29, 2013 plan of Tommie Rae and Levenson to reinstate the AG's 2008 Settlement were ended.

The first circuit court order denying the lifting of the stay was issued during the Aiken 1337 trial. [R. 72] Despite the circuit court's decision that Tommie Rae was Brown's spouse, belief that the claimed $4.7 million value was correct, and belief that Tommie Rae's claims about termination right were correct, the trial court did not order Appellant's counsel to pay Respondents' attorneys' fees or admonish Appellant, as requested. [R. 76]

Appellant again moved to lift the stay in October 2018, after Respondent Venisha Brown died the month prior. Appellant sought a limited lifting of the stay to allow Venisha's estate to be substituted as a party, as well as protection of Appellant's ability to collect on her counterclaims (dismissed, but subject to the then-pending appeal) by securing assets of Respondents which were subject to a Federal Court action to which Appellant was not a party. [R. 667] Respondents moved

[9] *See* the Order of the Honorable Clifton B. Newman, dated May 8, 2023, finding Appellant's motions to reconsider 2012 and 2015 Orders relieving Respondents from Default and declining to disqualify or enjoin SWB and/or Bauknight from speaking for the State/AG, in which the circuit court determined those long-pending motions to be "fruitless, futile and a waste of time," in light of appellate decisions in the intervening years mooting the issues addressed in those motions.

to strike Appellant's motion and suggested to the circuit court that this Court should hold Appellant in contempt. The circuit court denied the motion to lift stay and the Respondents' motion to strike. [R. 80-85]

g. Motion to Lift the Stay and Additional Sanctions Motions Since 2019

In early 2020, Respondents, despite their bitter opposition to Appellant's motions to lift the stay or proceed with discovery, served Appellant with discovery requests. She moved the circuit court again to lift the stay to deal with discovery issues, as well as to properly join the parties in Richland 4900. [R. 856-73] Respondents opposed the motion, but did not seek sanctions or other relief, likely in light of the motion being prompted by Respondents' attempt to proceed with discovery during the stay. [R. 2468-80]. The circuit court denied the motion.

In October 2020 a cache of correspondence delivered under FOIA to another citizen, which should have been delivered in Richland 4900 discovery, showed that SWB and Bauknight had known for years that they had no authority to act for the State/Attorney General in Richland 4900, but SWB and Bauknight dug in their heels, repeatedly making the false claim to the trial judge and media that Pope was demanding $19 million of Brown's Estate/2000 Trust and was stopping the payments of scholarships to needy students.

In 2021 James Brown's music empire sold for $90 million. Bauknight still claimed to *The New York Times* that it had been worth $4.7 million when Brown died.

In 2022, Appellant moved to lift the stay in light of the release of the 2020 documents by the AG; the reported secret settlement among most or all Respondents; and the reported sale of James Brown's assets for $90 million. [R. 899-917] Respondents did not file a return in the circuit court in 2022.

After the circuit court did not hear or rule on the 2022 motion, Appellant filed a similar motion in this Court, where the petition for certiorari was then pending. Respondents opposed the motion, but did not request any sanctions or other relief. This Court denied the motion by Order dated March 28, 2023, and directed the circuit court to proceed with hearing the petition to lift the stay before it, as well as the long-pending Rule 59(e) motions. This Court also took occasion to condemn Appellant's filings and to indicate that Appellant has been the cause of delay in this case, but did not issue any sanctions against Appellant.

Within days, and before this Court denied the then-pending petition for certiorari, Respondents moved for sanctions against Appellant for her filing of motions to lift the stay since 2018. [R. 994-1011] Appellant filed affidavits of Appellant, as well as her counsel Adam T. Silvernail, Charles E. Carpenter, and W. Jeffrey Smith, all confirming that they had taken all action in this case in good faith and not with the intention of delaying. [R. 2135-2167] Appellant also presented affidavits from Robert L. Buchanan, Jr., Deborah W. Spence, Thomas H. Pope III, W.H. Bundy, Jr., and others confirming that none of the affiants knew Appellant or any of her counsel to ever act unprofessionally, uncivilly or in bad faith. Respondents presented no affidavits or other evidence in support of their motion for sanctions.

As Respondents requested, the circuit court proceeded to hear the pending motions, including the motion for sanctions, before the remittitur was issued from the now-ended appeal. At the hearing, Appellant's counsel noted that the petition lift stay was mooted by this Court's Order and made no argument in favor of lifting the stay. [R. 1116, ll. 11-19] The circuit court also heard lengthy arguments by Respondents' and Appellants' counsel for and against sanctions. At the conclusion of the hearing, the circuit court announced its intention to grant Respondents' request for sanctions. [R. 1170-1]

The circuit court entered its order granting Respondents attorneys' fees of $32,137.50, striking Appellant's answer and holding her in default, by order entered May 8, 2023 – exactly a decade after this Court issued its final decision in *Wilson.*

Standard of Review

When reviewing a judge's order for sanctions, the appellate court takes its own view of the facts. *Father v. S.C. Dep't of Soc. Servs*., 353 S.C. 254, 260–61, 578 S.E.2d 11, 14 (2003). "[W]here the appellate court agrees with the trial court's findings of fact, it reviews the decision to award. sanctions, as well as the terms of those sanctions, under an abuse of discretion standard." Id. at 261, 578 S.E.2d at 14. An abuse of discretion may be found if the trial court's conclusions lack reasonable factual support. *Runyon v. Wright*, 322 S.C. 15, 19, 471 S.E.2d at 162.

Argument

a. The Circuit Court Erred in Sanctioning Appellant for Failing to Withdraw her Petition to Lift Stay when the Petition had been Mooted by this Court's March 28, 2023 Order.

The circuit court incorrectly found that Appellant's argument on April 14, 2023, "[w]ith only slight modifications, [Appellant's] oral argument . . . followed the content of her brief." [R.] The circuit court notes that it would have expected Appellant to withdraw her petition to lift the stay in this Court after the this Court's denial of the petition to lift the stay filed in the then-pending appeal. [R. 110] Appellant's counsel only briefly touched on the motion to lift stay at the hearing before circuit court, indicating that the motion was mooted by the circuit court's setting a hearing on the long pending Rule 59(e) motions pursuant to this Court's March 28, 2023 Order. [R. 1116, ll. 11-19] Appellant submits that withdrawal of her motion was unnecessary, and the circuit court's basing its punitive Order on Appellant not having expressly withdrawn the motion was uncalled for.

Neither Respondents nor the circuit court asked Appellant's counsel to withdraw the already-resolved motion; in fact, Respondents had asked the circuit court to hold a hearing two days after this Court's Order and before Respondents filed their motion for sanctions. [*See* email of A. Hayes to Jg. Newman, dtd. 3/30/23]

The fact that Appellant's counsel had not explicitly withdrawn the resolved petition to lift stay did not cause any delay or hardship to any party; the April 14th hearing was scheduled to hear two Rule 59(e) motions which this Court had twice directed the circuit court to hear and decide. Appellant's counsel did not attempt to have the circuit court consider lifting the stay, and the existence of that resolved petition did not delay, extend or complicate the April 14th hearing. Most of the time spent in that hearing was devoted to the request of the 16 Respondents for sanctions.

b. The Circuit Court was without jurisdiction to hear and decide the motion for sanctions where the Rule 241 stay had not been lifted, and an appeal in this case remained before this Court.

In its March 28, 2023 Order, this Court declined to lift the automatic stay pursuant to Rule 241, SCACR, but directed that the circuit court hear and decide the November 2022 Motion to Lift and the long-pending motions to alter, amend, or vacate orders issued by the Honorable L. Casey Manning in 2012 and 2015. Respondents have argued, and the Honorable Doyet A. Early, III, found that "the automatic stay applies to all matters being litigated in this case." [R. 74-5] At the time Respondents filed their motion for sanctions, as well as at the time of the hearing, Appellate Case No. 2022-1713, Appellant's Petition for a Writ of Certiorari to review the grant of summary judgment on her counterclaims in this case, remained pending before this Court. Respondents did not seek a lifting of the stay, and the circuit court denied Appellant's pending motion to lift the stay. The Court nonetheless proceeded to hear the motion of the 16 Respondents for sanctions and

to announce its decision while this Court still had jurisdiction over all matters in this case other than the three specific motions it directed the Circuit Court to hear and decide.

c. The Court Erred in Granting Sanctions Against Appellant under Rule 11, SCRCP.

"Although Rule 11 allows for the possibility of sanctions against a client, it primarily speaks in terms of an attorney's professional responsibilities." *Kovach v. Whitley,* 437 S.C. 261, 878 S.E.2d 863 (2022). Although Appellant is, as the circuit court noted, an experienced attorney, she has at all times in this case been represented by counsel, one or more of whom has signed every filing made on her behalf. As required by Rule 241, SCACR, Appellant did sign a verification confirming the factual allegations in each petition to lift the stay in this case. Respondents have offered no evidence to challenge the factual statements made in the petitions. The Court has not found and could not find that Appellant has knowingly or intentionally misstated any factual information to the Court, and therefore it is inappropriate to sanction her. *See Russell v. Wachovia*, 370 S.C. 5, 633 S.E.2d 722 (2006).

Further, the Court notes that "[i]t appears from the argument of [Respondents'] counsel and the affidavits provided by Pope, that she has directed the decisions and actions of her counsel, who appear to have taken more of a read-and-sign approach to her filings." [Order, dtd. 5/8/23, p. 9] First, Respondents offered no affidavits or other evidence in connection with their motion for sanctions. Counsel's unsupported argument that Appellant somehow controls four attorneys – with collectively more than a century of practice experience among them – is not evidence. *See, e.g.,* Ralph King Anderson, Jr., South Carolina Requests to Charge-Civil, 2002, § 1-8 ("You may not consider as any evidence statements of counsel made during trial.") Second, it is wholly inaccurate to suggest that there is anything within the affidavits filed by Appellant to support this finding. The affidavits of four of the attorneys who have represented Appellant in this case all

confirm that they have worked as a team and that they have filed each document in good faith and with the belief that the relief requested and/or positions taken were sound. [*See* Affidavits of Bundy, Carpenter, Silvernail and Smith; R. 2118-20; 2163-5; 2135-42; 2143-53]

The Court proceeds to not only award monetary sanctions against Appellant but also strike her answer and declare her in default herein. Our appellate Courts have held that the striking of pleadings, while available as a sanction in some situations, is "harsh medicine that should not be administered lightly." *Karppi v. Greenville Terrazzo Corp., Inc.,* 327 S.C. 538, 489 S.E.2d 679 (Ct.App. 1997). Appellant can find no published case from South Carolina in which a party's pleading was struck under Rule 11, other than an unpublished decision affirming the striking of a pleading which was not signed by South Carolina counsel as required by Rule 11.

Rule 11 provides, in part:

> If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Rule 11 only explicitly provides for striking a party's pleading if it is not signed properly by counsel. The second part of the above-quoted language allows for sanctions if a violation of the Rule occurs, which are only stated to include expenses and attorneys' fees. While it appears that the Rule's list of sanctions is nonexclusive, Appellant can find no indication in South Carolina case law that Rule 11 has ever been used to strike a represented party's pleading, except where no South Carolina counsel properly signed the document. This Court has previously reversed the grant of sanctions where the circuit court "abused [its] discretion in going beyond the conventional

awards of costs and fees." *Ex Parte Bon Secours–St. Francis Xavier Hosp. Inc.*, 393 S.C. 590, 713 S.E.2d 624 (2011).

Finally, the Court erred in assessing monetary sanctions based in part on motions decided years ago, which the Court also considered cumulatively in justifying striking Appellant's answer. "[A] party must file a motion for sanctions pursuant to Rule 11 within a reasonable period of time of discovering the improprieties to comport with the purposes of the rule." *Pee Dee Healthcare, P.A. v. Estate of Thompson*, 418 S.C. 557, 795 S.E.2d 40 (2016). The purpose of Rule 11 sanctions are "not to compensate the prevailing party, but to deter future litigation abuse." *Id.* (citing *Hunter v. Earthgrains Co. Bakery,* 281 F.3d 144, 151 (4th Cir. 2002)). Here, Respondents complain of, and the Court awards sanctions based on, motions/petitions filed and decided in 2018, 2019 and 2020. Respondents never moved[10] for sanctions with regard to any of those proceedings until the instant motion in 2023, and no Court found that any of the previous motions/petitions were frivolous or violated Rule 11.

The language of the Court's Order, which recites a negative view of nearly all of Appellant's participation in this 13-years-running case, strongly indicates that the sanctions awarded are intended to be punitive for a number of past perceived wrongs: "Pope's abusive and frivolous conduct extends to the instant motion, prior motions, and filings in the court of appeals and other courts and cases." [R. 116] Prior to the March 28, 2023 Order of this Court, no filing in this case or any appeal from this case had been labeled as frivolous by any Court, and every filing cited in the circuit court's Order predates the March 28 Order of this Court.

[10] Although Respondents often suggested sanctions or other relief in their filings opposing stays, they never filed a *motion* for sanctions.

It was error for the Court to sanction Appellant under Rule 11, especially as to the striking of her answer, and Appellant respectfully asks that the Court reconsider and vacate its award of sanctions under Rule 11.

d. The Court Erred in Assessing Sanctions under the South Carolina Frivolous Civil Proceedings Sanctions Act, both Because the Motion was Untimely as to Most Matters Addressed and Because No Evidence was Offered to Support the Finding that Appellant's Filings Warranted Sanctions.

The Court additionally based its sanctions on the South Carolina Frivolous Civil Proceedings Sanctions Action, S.C. Code Ann. §15-36-10, et seq. (the "FCPSA"), again finding that multiple previous filings, as well as the instant petition to lift the automatic stay, were frivolous. This was error, both because no request or award of sanctions under the FCPSA had been timely made regarding previous filings and because a preponderance of the evidence does not support the finding that Appellant's filings were frivolous or delayed this case.

Our appellate Courts have held that a motion for sanctions under the FCPSA must be filed within ten (10) days of the entry of a judgment. *Russell,* 370 S.C. at 20, 633 S.E.2d at 730. Every motion/petition to lift stay had been decided more than 10 days prior to Respondents' motion other than the November 2022 petition to lift stay, which Appellant's counsel did not argue or pursue at the April 14, 2023 hearing in light of this Court's disposition of the matter. The Court therefore erred in assessing sanctions based on long-ago decided motions for which Respondents did not timely seek sanctions, including the striking of Appellant's answer based primarily on previous filings.

Further, the FCPSA provides:

> 2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

Respondents offered no affidavit(s), testimony or other evidence in support of their motion, instead relying (as the Court ultimately did) on counsel's argument. Respondents' counsel, without evidentiary support and incorrectly, recast the history of this lawsuit (which Appellant did not bring) portraying Appellant as having abused the system by defending herself against Respondents' claims and attempting to complete discovery which Respondents have thwarted for most of the 13 years this case has been pending.

The Court explicitly based its ruling on the argument of counsel multiple times:

1. "at the hearing counsel for [Respondents] detailed additional examples of similar improper, frivolous, and/or delaying conduct by Pope in Case 4900 and related appeals." [R. 113]

2. "it appears from the argument of [Respondents'] counsel . . . that she has directed the actions of her counsel, who appear to have taken more of a read-and-sign approach." [R. 117]

3. "Counsel for [Respondents] stated at the hearing that in large part, due to [Appellant's] serial, abusive and frivolous actions, the James Brown Estate has not able [sic] to close its litigation matters and begin dispensing scholarships. . . ." [R. 116-7]

As noted above, arguments of counsel are not evidence. Further counsel presented himself as counsel for only one Respondent, rather than for Hynie, the Legacy Trust and all 16 Respondents, many of whom have openly rejected SWB's claims to benefit Hynie. Respondents did not – and could not – present **evidence** to support their argument that Appellant's conduct, rather than their own, has caused this case to go on for 13 years. It is the Attorney General and 16 remaining Respondents who, the record shows, have prevented even basic discovery in this case since 2010 and concealed public documents for more than a decade. The Court therefore could not find by a preponderance of the evidence that Appellant's filings warranted sanctions under the FCPSA. Instead, the only evidence in the record related to this motion were the affidavits presented by Appellant, including the affidavits of Appellant and four of her current and former attorneys, all of whom testified that each of the filings made on behalf of Appellant has been made

in good faith and for proper purposes. There was no evidence – let alone a preponderance of the evidence – to support the Court's finding that Appellant "has shown 'bad faith, willful disobedience or gross indifference'" in her filings. [R. 117]

Instead of requiring Respondents to prove their allegations, the Court improperly placed the burden on Appellant to overcome the improper presumption that the filings of Appellant violated Rule 11 and/or the FCPSA. The Court notes that Appellant "offered no reasonable explanation or justification for her conduct that would allow the court to excuse her actions." [R. 113].

As an initial matter, the Court's statement is incorrect. Appellant offered affidavits of herself and four of her attorneys, all confirming that every filing made on her behalf was made in good faith and without the intention to delay this proceeding. She also offered affidavits of 5 other individuals, all confirming that Appellant and her counsel enjoy reputations for acting honorably, ethically and appropriately.

Beyond being incorrect, the Court's note that Appellant had failed to justify her actions makes clear that the Court placed the burden on Appellant to overcome the Court's intention to sanction her. This is out of line with the law and the Rules, and again displays the Court's bias against Appellant.

Further, the Court bases its imposition of sanctions primarily on its finding that Appellant's "efforts have frustrated and delayed the litigation," despite no evidence having been offered to show that the motions/petitions to lift stay have delayed the resolution of this case. At the time the motion for sanctions was filed and heard, Appellate Case No. 2018-2229 remained pending. The circuit court had previously found that the Rule 241 stay prevented any matter in this case proceeding at the trial level. [R. 72; 86] Respondents have never argued, and no Court has found,

that Appellant's appeal of the dismissal of her counterclaims was frivolous, although the appellate Courts ultimately affirmed the circuit court's ruling. This Court did not deny Appellant's petition for a writ of certiorari until April 18, 2023, at which time this case would have been ready to proceed to trial but for Respondents' motion for sanctions.

e. The Court Erred in Assessing Attorneys' Fees for Past Motions/Petitions, as well as Motions/Petitions Filed in the Court of Appeals and Supreme Court; Assessing Excessive Attorneys' Fees; and Assessing Attorneys' Fees Unrelated to the Motions/Petitions to Lift Stay.

Although 16 Respondents requested sanctions in the form of attorneys' fees and costs in their motion, they presented no affidavit until after the hearing. The affidavit of Mark V. Gende, one of Respondents' counsel, includes a request for a total of $32,137.50 in attorneys' fees and costs and attaches time sheets purporting to justify that amount. [R. 2483-2534] As argued above, Appellant submits that no award of fees or costs is justified, but would show that if the Court does not completely reconsider its award of fees, the amount must be drastically reduced.

The fee affidavit makes three statements which are inconsistent with the pleadings in this case; the April 24, 2013 direction of the Attorney General; an Order of Judge Manning; SWB's Litigation Retention Agreement with the 16 remaining Respondents; and the sworn testimony of Kenneth Wingate, Esq., and Everett Kendall, Esq., when they testified under direction of the Honorable Jean Toal in 2017.

The affidavit states that the James Brown estate is the "lead Plaintiff in Case 4900." This is not correct. The Lead Plaintiff is the Legacy Trust, controlled by Tommie Rae and its trustee. All relief sought in the complaint is for the benefit of the Legacy Trust and its owners, which previously included the Attorney General.

In 2012 Judge Manning directed all 17 Respondents to pay their own attorneys' fees in the settlement with Buchanan.

In April 2013, however, the Attorney General notified SWB that it was no longer participating; would not pay any portion of the Legacy Trust's fees; and that SWB should disgorge all that it had already been paid by James Brown's estate. This increased Tommie Rae's stake in the lead Plaintiff, the Legacy Trust, to 46%, with the other 54% being held by 5 Levenson clients and Terry Brown. SWB's Litigation Retention Agreement and other relevant documents direct that these 7 persons become the real parties in interest if the AG's 2008 Settlement is overturned. Thus, the Legacy Trust is clearly the "lead Plaintiff" in this case.

The affidavit says on page 2: "My firm is compensated by the Estate on an hourly basis for all appellate work stemming from Case 4900." This revelation that James Brown Estate had funded, on an hourly basis the interference with FOIA cases and other appeals that date back to 2015 is not only new, but is entirely inconsistent with the sworn 2017 testimony of attorneys Wingate and Kendall.

In their court-directed depositions, Wingate and Kendall identified the SWB agreement which directs that the 16 remaining Respondents are to pay their costs, and receive all benefits derived from the complaint, in proportion to their interest in the Legacy Trust. To the extent the "appellate work stemming from Case 4900" was being funded by James Brown's estate, in addition to the 40% contract, this information was concealed by SWB's primary partners in their court-ordered depositions.

While the SWB contract does provide for James Brown's estate to advance costs – to be repaid by Tommie Rae, Terry, and some Levenson clients – the Attorney General soundly rejected that proposition in its April 24, 2013 letter to SWB.

To the extent James Brown's estate is advancing costs which Tommie Rae and those of the 15 Respondents who remain aligned with her, such advance is voluntary by the estate; inconsistent

with the direction of the Attorney General; inconsistent with SWB's 40% contingency fee with the 16 remaining Respondents; and should be awarded, if at all, to the Legacy Trust and its 7 owners in relation to their ownership interests.

The lead Plaintiff in this case is the Legacy Trust. No relief is sought in the complaint for James Brown's estate, and it does not pay any of the costs under SWB's Special Counsel Litigation Retention Agreement. The costs sought here are for seven of the 16 Respondents in proportion to their ownership of the Legacy Trust, which is approximately : Tommie Rae 46%, Forlando Brown (son of former owner Terry Brown), 9%, Venisha Brown (deceased) 9%; Yamma, Larry, and Daryl Brown, 9% each; and Deanna Brown-Thomas 9% .

It is noteworthy that all six of the Legacy Trust 9% owners have not only openly rejected the claims of Tommie Rae, but have also already released the Estate of James Brown and its fiduciaries from any claim in public filings. Thus, the only remaining "lead Respondents" appear to be the Legacy Trust and Tommie Rae.

The affidavit continues SWB's pattern since 2010 of asking the court to ignore the fraud of its principal clients Tommie Rae and the Legacy Trust, ignore the complaint, ignore the answer, and punish Buchanan and Pope for challenging Tommie Rae's effort to be declared the spouse of James Brown; take control with the AG of assets Tommie Rae has sworn in this case that James Brown intended for charity; and give a quarter to herself.

As argued above, Respondents' motion for sanctions, and the Court's award of sanctions, was untimely for all but the most recent petition to lift stay. Therefore, if the Court does not completely reconsider and vacate its decision to award monetary sanctions, all fees and costs incurred in connection with the 2018, 2019 and 2020 petitions to lift stay should be removed.

Further, all fees and costs incurred in the appellate Courts may not be taxed as an award of sanctions in the circuit court. Rule 269, SCACR, provides:

> Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, **the appellate court may upon its own motion or that of a party**, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. (Emphasis supplied.)

Respondents never sought sanctions in the Court of Appeals or this Court related to the petitions to lift stay, and, although this Court criticized Appellant's most recent petition, neither Court awarded any sanctions. If Respondents wished to seek sanctions for any filing in the appellate Courts, they were required to timely file a motion in the appellate Court. Instead, they have waited until 2023 to seek a retrospective and punitive award of fees and costs for long-completed proceedings. They have done so with an affidavit which was not examined by the court at the hearing, and which makes material statements inconsistent with SWB's Litigation Agreement, statements of SWB attorneys made under oath, and an opinion of the Attorney General. As previously noted, this is outside the purpose of Rule 11 and outside the timeline for the FCPSA to operate. Thus, any award of fees should not include those incurred in the appellate Courts.

Further, the 16 Respondents include time entries for matters which were not necessary to their defense of the petitions to lift stay. For example, Mr. Gende includes time entries in Exhibit A to his affidavit for filing and defending Respondents' unsuccessful motion to strike Appellant's 2019 petition to lift the stay. This unnecessary motion both delayed consideration of the petition to lift stay and generated unnecessary expense for all parties. In addition, in Exhibit B, Mr. Gende includes a time entry on August 2, 2020 for 2.5 hours of work on a motion to strike one of Appellant's briefs – which is unrelated to the proceedings regarding the lifting of the stay. If any

fees are awarded, they should not include time Respondents' counsel spent on unnecessary and unrelated matters.

Finally, the fees sought by Respondents are excessive. Respondents incorrectly accuse, and the Court incorrectly finds, that Appellant has filed "the same or similar motion[s]" multiple times to lift the stay. As noted in Appellant's filings and arguments related to the petitions/motions, each was filed based on a development or change of circumstances which Appellant and her counsel believed justified reviewing the stay over the 5 years the appeals were pending. These extraordinary events include, but are not limited to, blatant attempts of Respondents Legacy Trust, Tommie Rae Brown and James Brown II, now residents of London, U.K., to escape the jurisdiction of the Courts; the suit by three Respondents against other Respondents; the death of Respondent Venisha Brown, and SWB's refusal to substitute her estate for four years; the Attorney General's 2020 revelation of the April 24, 2013 letter confirming that the Office of the Attorney General had never hired SWB; this Court's ruling that the lead individual Plaintiff in this case for 13 year was never the spouse of James Brown; sanctions motions by Venisha Brown's estate against Levenson, who signed the 40% SWB contract for her; and receipts, releases and waivers by 54% of the owners of the Legacy Trust.

Nonetheless, 16 Respondents have characterized the motions as being wholly duplicative. It is therefore puzzling that Respondents' counsel incurred $1,560 in fees in responding to the 2018 and 2019 motions/petitions, but were somehow compelled to incur $13,740 in responding to the 2020 petition/motion and $13,650 in responding to the 2022 motion/petition. [Aff. Gende, ¶12; R. 2485] If 16 Respondents' assertion that each motion was duplicative of the last is correct, logic would dictate that their efforts in responding to the later motions would simply have required them to update their existing response. Again, Appellant submits that her motions/petitions were filed

based on new developments and changed circumstances, but the 16 Respondents cannot genuinely assert both that each motion was a rehash of the last and that the later motions required dozens of hours of attorney time.

Appellant submits that, in the event the Court does not reverse its decision to award monetary sanctions, the fees should be reduced to remove all unnecessary and/or unrelated time, all time spent in the appellate Courts, and the excessive hours invested in responding to later motions/petitions which the Respondents themselves have characterized as having no substantive differences from the earlier ones.

f. The Court Erred in Retrospectively Finding that Appellant had been the Cause of Delays in this Case, where 17 Respondents Brought this action, have Repeatedly Sought and Obtained Stays, have Refused to Comply with Discovery, and have Refused to Properly Join the Parties.

Seventeen Plaintiffs, including the Attorney General, filed this case on May 19, 2010, at a time when Appellant and Robert L. Buchanan, Jr., were appealing the approval of Respondents' 2008 settlement which dismembered James Brown's estate plan. *See Wilson v. Dallas*, 743 S.E.2d 746 (2013). SWB acted for the State/Attorney General until 2017, and at times after that, with knowledge that the Attorney General had not signed the SWB Special Counsel Litigation Retention Agreement.

SWB was sole counsel of record for all Respondents, including the Attorney General, Russell L. Bauknight on behalf of the Attorney General, Respondent James Brown Legacy Trust, Tommie Rae and other individual Respondents are included as beneficiaries of the Legacy Trust.

From 2010 until 2021 SWB concealed the public contract which was not signed by the Attorney General and which accepted the signatures of attorneys Levenson and Bell to bind 12 Respondents to a 40% contingency fee and a substantial share of the costs. Refusal to reveal the SWB Litigation Agreement and the forays of SWB, the Legacy Trust and Bauknight into multiple

FOIA cases and appeals to prevent its release were unprecedented, as was the attempt to consolidate Case 4900 with at least three FOIA cases and Aiken 1337. All of this caused delay for the primary benefit of Respondents Legacy Trust, Tommie Rae and those aligned with them.

Respondents repeatedly refused to proceed with basic discovery, including the depositions of the Respondents themselves, as shown by the dozens of motions for protective orders they filed in this case in its early years. As a single example, while Attorney General Alan Wilson freely gave his deposition, which was brief and courteous, in Aiken 1337, SWB and the 16 remaining Respondents have fought for years to prevent either the AG's deposition or the admission of his sworn testimony from this Aiken 1337 deposition.

When this Court issued its decision in *Wilson*, all 17 original Richland 4900 Plaintiffs took the position that SWB had a "judicially created conflict," that would require this case to be stayed until all litigation among the Respondents (in which many were adverse to one another) was concluded. [*See* R. 2369-70]. The Legacy Trust has since taken the position in other cases that it does not exist. Respondent Venisha Brown died in 2018, and all former minor Plaintiffs are now adults. Despite all of these developments, Respondents have never sought to amend the complaint or properly join the parties. Instead, Respondents have resisted Appellant's requests that the parties be corrected, including her requests to lift the stay in order to do so.

Respondents successfully obtained a *de facto* stay of the case until it was reassigned to the Honorable Doyet A. Early, III in March 2016. In 2017, Judge Early granted the AG's motion to be dropped as a party, which Appellant appealed. Shortly thereafter, Judge Early also granted summary judgment as to all of Appellant's and Buchanan's counterclaims, which Appellant also appealed. From 2017 forward, Respondents have repeatedly insisted that every aspect of this case was subject to the Rule 241 stay, and no matters could proceed until the appeals were decided.

Respondents never reported to the circuit court, the appellate Courts or Appellant that on April 24, 2013, the AG had given written notice to SWB that it had never represented the AG, despite SWB's having been the AG's counsel of record in this case for years. This letter was discovered via a FOIA release in late 2020, and its existence was one of the bases for Appellant's renewing her motion to lift the stay.

The voluminous record in this case shows that Appellant has **not** attempted to delay its progress, but has acted properly to expedite its conclusion while defending herself against the career-threatening allegations made against her by the AG and 16 Respondents, including Tommie Rae, the Legacy Trust and one Respondent closely associated with the thief David Cannon, who seek tens of millions of dollars of damages against her.

g. The Court's Order Continues Years of Violations of Appellant's Due Process, First Amendment, 42 U.S.C.A. § 1983 and other Civil Rights.

As noted in the above arguments, 16 Respondents, and their counsel have for more than 13 years improperly used the power of the State to intimidate and harass Appellant, her counsel and others who tried to protect James Brown's estate plan. By the time the circuit court was assigned to the case, Tommie Rae and Respondents aligned with her, using the power of the Office of the Attorney General, had set the narrative that Appellant's actions, not their own, were the problem. The Court's Order, accepting Respondents' statements and positions without support, is carrying out the mission of Tommie Rae and 15 other Respondents to hobble Appellant's ability to protect herself in this case. The sanctions motion suggests that it is the intention of Tommie Rae and those of the 15 Respondents aligned with her to use the sanctions motion to prolong Richland 4900 for the life of Appellant, who recently turned 80. This use of State power by a private law firm to ruin the career and reputation of a now-80-year-old lawyer who was one of two fiduciaries who dared

to challenge Tommie Rae's attempt to take control of Brown's charity's assets has gone on needlessly for 13 years.

Among other criticisms, the Court admonishes and cautions Appellant's counsel about future filings, statements Respondents will doubtless use to curtail Appellant's ability to defend herself herein and to intimidate any counsel who dare to represent Appellant against the criminal and career-threatening allegations of Respondents. The Court goes on to strike Appellant's answer and hold her in default, despite her 13-year-old answer having extensively contested liability on all claims and to all Respondents.

The Order violates Appellant's Constitutional Due Process and First Amendment rights, as well as being a result of continuing violations of 42 U.S.C.A. § 1983.

Conclusion

Appellant respectfully submits that this Court should reverse or vacate the Orders of the circuit court assessing sanctions and striking her answer.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully submitted,

s/Adam T. Silvernail

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernaillawfirm.com
S.C. Bar No. 80219

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

September 19, 2023

Counsel for Appellant Adele J. Pope

Certificate of Counsel

The undersigned counsel for Appellant hereby certifies that the Appellant's Brief complies with the requirements of Rule 211(b).

s/Adam T. Silvernail