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Feb 29 2024

SC Court of Appeals

**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 Nos. 2023-001253, 2023-001941 and 2024-_____

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

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Adele J. Pope, Appellant.

**APPELLANT’S RETURN TO RESPONDENTS’ MOTION TO CONSOLIDATE AND
TRANSFER**

In May 2010 the Attorney General of South Carolina¹, Plaintiff Legacy Trust² and more than a dozen private clients of SWB³, a private law firm, sued Robert Buchanan, Esq. (“Buchanan”) and Appellant in “Richland 4900⁴.” SWB was sole counsel to the Attorney General and all Plaintiffs. [Complaint, R. 125]

Now, purportedly based on a request made to the AG under the Freedom of Information Act, Respondents ask this Court to transfer and consolidate other matters into this fully-briefed and expedited appeal. Tellingly, Respondents do not seek to join the AG, who was a party to this case until 2017 and for whom Russell Bauknight continues to act.⁵ The AG has not appeared either to suggest the relief sought by Respondents or to raise any issue regarding the FOIA request. Instead, the Office of the Honorable Alan Wilson, Attorney General, responded timely to Appellant that the AG has and will make available documents responsive to her request.⁶

¹ The Attorney General of South Carolina is referred to herein as the “Attorney General” or “AG,” unless the context requires further distinction.

² Plaintiff Legacy Trust was created in 2008 by the AG, Plaintiff Tommie Rae Hynie Brown (“Hynie”), and clients of Atlanta Attorney Louis Levenson, Esq. (“Levenson”).

³ Sweeny, Wingate and Barrow, P.A.

⁴ Richland County Case No. 2010-CP-40-4900.

⁵ Russell L. Bauknight is captioned as a plaintiff “on behalf of” the AG and others.

⁶ See Exhibit A to Appellant’s *pro se* return to Respondents’ motion in the newly filed Bauknight matter before this Court (Appellate Case No. 2024-____), which Appellant incorporates by reference.

Appellant refers to and incorporates her *pro se* response to this motion, which supplies a more complete history of the AG's involvement in this and related matters.

Respondents' motion presses this Court to accept two falsehoods as truth. First, Respondents assert that Appellant has caused and continues to cause delay in this and related cases. Second, Respondents attempt to legitimize their recent frenzy to end this case by alleging that the continued existence of Respondents' case against Appellant somehow bars James Brown's "I Feel Good" charity from distributing scholarships to the needy and deserving students who Mr. Brown wished to benefit in his estate plan.

As Appellant has addressed in her briefs in this appeal, which she incorporates by reference, the true history of this case is that Respondents sued Appellant and Buchanan in an attempt to force them to drop their appeal which would result in this Court's decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013). When that did not work, Respondents spent more than seven years delaying and avoiding basic discovery, such as Respondents' own depositions. Before discovery was complete, Respondents then secured partial summary judgment and resisted all of Appellant's efforts to move this case toward its conclusion during the pendency of Appellant's appeal. Once the appeal concluded in early 2023, Respondents, instead of proceeding to try their case on the merits, sought and obtained an Order striking Appellant's answer and holding her in default. Appellant, as would any reasonable litigant faced with the sanctions improperly imposed by the circuit court, appealed. When Respondents moved to transfer the appeal to this Court and expedite it, Appellant consented. She complied with the extraordinarily short briefing schedule this Court set without seeking any extensions, and this case is now fully briefed and ready for consideration at this Court's pleasure.

Meanwhile, Respondents have reversed their approach and attempted to barrel forward with discovery, motions practice and even a default damages hearing prior to this Court’s decision of matters fundamentally related to how this case will ultimately be tried. Respondent Russell Bauknight has filed a new action in this Court against Appellant, creating additional litigation, and Respondents now move that that case – not yet accepted by this Court – be consolidated with this fully-briefed appeal and another matter pending in the court of appeals. Appellant is not the cause of delay in this case, and the extensive Record on Appeal herein shows that she never has been the cause of delay.

Respondents’ assertion that this litigation or Appellant somehow bar the James Brown “I Feel Good” charity from distributing scholarships has no basis.⁷ Mr. Bauknight told the Court in 2013 that “the Estate and Trust is now prepared to fund scholarships” [emphasis supplied]⁸ Instead, litigation among the Respondents continued until 2020, when this Court finally determined that Tommie Rae Brown was not James Brown’s surviving spouse. *See In Re Estate of Brown*, 430 S.C. 474, 846 S.E.2d 342 (2020). In its decision, this Court noted:

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.

...

Upon remand, the circuit court shall promptly proceed with the probate of Brown's estate in accordance with his estate plan.

⁷ By Respondents’ logic, either payment on September 1, 2017 directly to Appellant of \$2.1 million, or any appropriate escrow, would have ended all relationship in this case and other cases between the Estate and Trust of James Brown and Appellant, and would have allowed millions of dollars of scholarships to have been paid to needy students for the last 6 years. The James Brown Estate/Trust refused to accept the 2017 and 2018 \$2.1 million offers or to consent to an escrow.

⁸ See Exhibit C to Appellant’s *pro se* return to Respondents’ motion in the newly filed Bauknight matter before this Court (Appellate Case No. 2024-_____), which Appellant incorporates by reference.

Respondents nonetheless now suggest that “Pope has obstructed scholarship to an entire school-aged generation from at least 2009 to the present.” [Motion at 3] This Court is well aware of the litigation (much of it not including Appellant) which has involved James Brown’s Estate and Trust since his 2006 death, and Respondents’ allegation that Appellant has singlehandedly caused 15 years of delay in the “I Feel Good” charity’s scholarships is disingenuous at best.

While the now-resolved will and trust contests, spousal claims and claims by certain of Brown’s children might have hindered the Estate’s ability to fund the “I Feel Good” charity, this case against Appellant does not. Although Respondents (through SWB or other counsel) have alleged to this Court, the court of appeals and the circuit court that the pendency of this case bars the “I Feel Good” charity from funding its scholarship program, they have offered no explanation of how or why. Appellant submits that if the pendency of this case precludes scholarships being made, that is the result of some agreement(s) which do not involve Appellant.

Respondents inappropriately and inaccurately refer to a settlement offer they advanced, which was withdrawn before Appellant could respond to it substantively. Appellant submits that her not accepting Respondents’ take-it-or-leave-it offer within their arbitrary and short response period is evidence of nothing, in addition to being an inappropriate subject for Respondents to address with the Court.

As to the relief requested in Respondents’ motion, Appellant does not object to this Court taking jurisdiction over Appellate Case No. 2023-1941, now pending in the court of appeals. To the extent this Court accepts the recently filed matter brought by Bauknight, Appellant does not object to consolidation of that matter and Case No. 2023-1941 with this case, if it will expedite the

conclusion of all pending matters. Appellant denies that any basis exists for contempt, sanctions or other punitive measures requested in Respondents' motion.

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court take such reasonable actions in the two pending Richland 4900 appeals, the pending appeal in a 2011 FOIA matter, and the recently-filed request for this Court's original jurisdiction as shall bring to a prompt and just ending the lawsuit filed almost 14 years ago by the Attorney General of South Carolina and 16 private plaintiffs against Robert L. Buchanan, Jr. and Appellant.

Respectfully submitted,

s/Adam T. Silvernail

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February 29, 2024

Counsel for Appellant Adele J. Pope

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SC Court of Appeals

**STATE OF SOUTH CAROLINA
In the Court of Appeals**

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

Appellate Case No. 2023-1941

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

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v.

Adele J. Pope, Appellant,

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of Appellant's Petition for Rehearing, with exhibits, and the Affidavit of W. Jeffrey Smith, with exhibits, on Respondents on the date shown below, by emailing a Dropbox link to copies of the same to their counsel, addressed as follows:

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January 5, 2023