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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Clifton Newman, Circuit Judge

Appellate Case No.: 2021-00518

Adele J. Pope.....Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina,….....Respondent.

PETITION FOR REHEARING

By unpublished Opinion No. 2024-UP-160, the Panel affirmed the circuit court's 2021 dismissal of this 2011 Freedom of Information Act case. Pursuant to Rule 221, Appellant submits that the Panel's decision should be reversed; the South Carolina Attorney General should be directed to respond to Appellant's June 30, 2011 FOIA request; and the matter should be remanded for the sole purpose of determining the amount of attorney's fees and costs due Appellant under the FOIA.

Background

In 2014 now-Governor Henry McMaster told the *New York Times* that the James Brown estate litigation was "as big a tangle as you've ever seen." McMaster left office as

the state's chief prosecutor, enforcer of the FOIA, and protector of funds dedicated to charity, in January 2011. He was succeeded by AG Alan Wilson.

Governor McMaster did not know that eight months before he left office his civil staff, without his permission, had authorized the law firm of Kenneth Wingate, Esq., ("Wingate") to sue Robert Buchanan and Adele Pope in AG McMaster's name because they dared to protect the "I Feel Good" education charity of iconic entertainer James Brown by appealing a 2008 settlement brokered by the AG.

AG McMaster could not have foreseen when he left office as AG that the unauthorized Wingate Suit being pursued in his name would be going on 14 years after it was filed; that Wingate had, without authority, acted for both AG McMaster and AG Wilson for more than ten years while claiming to speak for the State/AG in a tort suit designed to destroy reputations and careers of two South Carolina attorneys.

Neither AG McMaster nor AG Wilson could have foreseen as AG McMaster left office and AG Wilson took office in 2011 that AG McMaster's chosen trustee, Russell Bauknight, and Peter Afterman, music manager for the "Legacy Trust" AG McMaster had created in the 2008 Settlement Agreement, had just produced s claimed "professional valuation" of James Brown's worldwide music empire in which Bauknight and Afterman claimed – and the Attorney General would claim for 13 years – that James Brown's worldwide music empire was worth only $4.7 million when he died on Christmas Day 2006, and James Brown's "I Feel Good" charity only $4 million.

In 2007 AG McMaster's staff was told by the tax attorney representing James Brown's estate that James Brown's estate and 2000 Trust were worth $100 million.

Brown's trustees Alfred Bradley and Albert Dallas had filed a sworn Inventory & Appraisement ("I&A") reporting the $100 million value, based on an offer made by TJBL, an Atlanta investment group.

In 2008 AG McMaster himself had appeared on WIS-TV with Brown's grandson Forlando Brown to tout the vast value of James Brown's estate and "I Feel Good" charity, especially Brown's image + likeness (right of publicity). AG McMaster told the statewide audience that there was so much money there that he did not believe that the litigation costs would make a dent in it. That year Forlando Brown had testified under oath that offers of $150 million for Brown's music empire were available, and the Brown's andAG's own experts agreed. A 2006 professional appraisal by the Royal Bank of Scotland of the revenue stream of 850 copyrights, and the fact that Brown's royalties were $5 million or more a year, supported Brown's claim. Buchanan and Pope valued the music empire at $99 million, less the $15 million TIAA debt, which would be paid off in 2011, when the "I Feel Good" charity was projected to be $95 million.

Neither AG McMaster nor AG Wilson could have believed that by May 2011, without showing AG Wilson Bauknight's claimed $4.7 million valuation, the Office of the Attorney General was claiming to the Supreme Court of South Carolina that Buchanan and Pope had overstated the value of James Brown's assets to the IRS by $79 million to get a $5 million commission on what the AG claimed was James Brown's $5 million estate, a federal felony.

Neither would have believed that Buchanan and Pope tried for months to get the AG, the Legacy Trust and Bauknight to produce the $4.7 million valuation documents,

then Pope made a FOIA request for the $4.7 million valuation documents and the FOIA custodian said she did not get the request. Pope tried again, but the AG's FOIA lawyers said they did not have the $4.7 million valuation and nobody in the Office of the AG had seen it.

Neither would have believed that even though the Supreme Court admonished that the FOIA suits be considered by the circuit court in the first instance, in 2013, the Attorney General, through Wingate, told the circuit court that the Supreme Court placed no importance on ending the FOIA cases, and the AG and Legacy Trust obtained a 3-year stay of both the Wingate Suit, where the $4.7 million was sought in discovery, and this 2011 FOIA case. The stay ended in 2016.

Neither would have believed that when the FOIA judge the Summer FOIA case directed the AG to produce or designate on a confidentiality list all documents responsive to the 2012 FOIA request held by the AG or Wingate and used in the Wingate Suit, the FOIA counsel of AG Wilson withheld a large number of public documents, including the $4.7 million valuation; the public handwritten admissions of Tomirae Hynie that her marriage ceremony with James Brown was bigamous; and the April 24, 2013 letter of AG Wilson (Chief Deputy McIntosh) confirming that the Office of the AG had never hired Wingate to bring the Wingate Suit; that the Office of the AG never had an attorney client privilege with Wingate; that the AG would not pay any portion of the Wingate fee; and that if *Wilson v. Dallas* remained the same, Wingate should disgorge the money advanced by Bauknight to Wingate for the Wingate Suit.

In 2011, when this FOIA case, which appears to be the longest-running state FOIA case in the U.S. was filed, it would have been hard to foresee that the AG, Legacy Trust, Bauknight and a dozen other Richland 4900 plaintiffs would seeks and obtain a copy of the $4.7 million valuation from Pope in 2017, which had been delivered to Pope by Bauknight in 2016; disseminate the $4.7 million valuation to some or all of Wingate's 17 Wingate Suit plaintiffs; and take no steps under Attachments A, B, or C of the extant confidentiality orders to declare the $4.7 million valuation confidential; assure that everyone who looked at it agreed to the confidentiality; and kept a record of every person who saw it. Or that after ignoring all confidentiality protocols, they would claim from 2017 to 2024 that nobody in the Office of the AG had ever seen the $4.7 million valuation.

In 2011 it would have been hard for the two AGs, or anyone, to believe that the AG would refused to produce the $4.7 million valuation used to accuse Pope of a crime; obtain the document from Pope herself; conceal it until 2024 in the second FOIA appeal of the $4.7 million valuation FOIA case; claim the $4.7 million valuation held by numerous AG staff for 6 years was confidential under a 2008 order; seek sanctions against Pope for challenging that representation; and they be prosecuting Pope for alleged criminal contempt for having made the FOIA request for the $4.7 million valuation the AG's office said for 13 years it did not have.

On May 8, 2024 a panel of the Court of Appeals had before it the above facts and clear evidence that a small number of members of the Office of AG Wilson had coordinated with Bauknight and Wingate to violate the Due Process, FOIA and First Amendment rights of Appellant and other S.C. citizens seeking the $4.7 million valuation documents and other

public James Brown documents being improperly withheld. The sole ground for the dismissal was that the Office of the AG claimed it did not receive the FOIA request in 2011, but the record showed that Appellant had made three FOIA requests that year, before the affidavit of the FOIA staff member denying the request was received.

The panel's unpublished opinion should be reversed. The AG should be directed to deliver all documents requested. under the 2011 FOIA request from the time of the request until the time of the ruling. The matter should be remanded for determination of attorney's fees.

As stated herein, and in Appellant's briefs and the AG's admissions in both of the FOIA appeals of this case, which are incorporated herein, Petitioner respectfully submits that the panel not only overlooked the briefs and admissions, but misapprehended the letter and spirit of the FOIA and the fact that the state's enforcer of the FOIA should set an example of compliance, and not a 13-year history of evasion, lack of candor with the courts, and gamesmanship**.**

Summary of Facts Overlooked or Misapprehended by the Panel

In May 2009 145 boxes of public James Brown documents confirmed that James Brown died with $100 million or more of assets; a $15 million Pullman bond debt; no spouse; and at least a dozen claimed children from at least nine relationships.

In May 2010 the AG's Special Counsel Litigation Retention Agreement with Wingate was signed by Bauknight, an attorney for Hynie and three other attorneys representing parties to the AG's 2008 Settlement. They agreed to the following:

> **F. Public Records**
> Any material, date, files, discs, or documents created, produced or gathered by

> Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment shall be considered property of the State of South Carolina. Special Counsel Agrees to adhere to South Carolina Freedom of Information Act, South Carolina Code of laws, § 30-4-10 et seq…

On May 19 the Attorney General, through Wingate, and others, sued Buchanan and Pope for the benefit of the Legacy Trust in the Wingate Suit.

In August 2010 the AG, Bauknight and Legacy Trust attorneys told the *Wilson v. Dallas* Court that an appraisal expected in a few weeks would show that Jamess Brown's assets were worth less than $12 million when he died.

In September 2010 Bauknight's $4.7 million valuation arrived, but the AG and others agreed to withhold it from the Supreme Court for 8 months.

In May 2011 the AG and Legacy Trust owners asked the Supreme Court to supplement the ROA in *Wilson v. Dallas* to show that James Brown's worldwide music empire was worth only $4.7 million at his death, based on the concealed Bauknight $4.7 valuation. The AG, Bauknight and others began falsely accusing Buchanan and Pope of the federal felony of overstating the value of Brown's assets by $79 million to the IRS to get a $5M commission on Brown's $5M estate.

On June 30, 2011, Appellant sent a FOIA request for documents related to the $4.7 million valuation to the AG, the Legacy Trust, and Wingate, as counsel for both.

In August 2011, after the AG, Bauknight, the Legacy Trust, and others refused to release the $4.7 million valuation documents in Wingate Suit discovery or under FOIA, this FOIA suit was filed.

In 2012 Wingate advised the AG not to comply with his FOIA obligations, but the letter was not produced under discovery or FOIA requests of any citizen until 2020. In

2012 the AG and Legacy Trust also moved both of Pope's FOIA suits from Newberry to Richland County; consolidated one with the Wingate Suit; and moved to consolidate this FOIA case with the Wingate tort suit.

In 2013 the Supreme Court admonished in its first, later substituted *Wilson v. Dallas* decision that the circuit court should consider the FOIA matters in the first instance. On April 24, 2013, AG Wilson notified Wingate that the Office of the OAG had never hired Wingate; had no attorney-client privilege; would not pay; and that Wingate should disgorge costs advanced by Bauknight.

Over the next 11 years, the AG's staff, Bauknight, the Legacy Trust, Wingate and Levenson refused to produce documents under FOIA or in discovery in the Wingate Suit, while continuing to make the false claim – based solely on the concealed $4.7 million valuation – that Buchanan and Pope had committed a federal felony. They sought multiple sanctions. Bauknight paid Wingate attorneys as much as $350/hr for appeals related to the Wingate Suit, in addition to a 40% contingency.

In March 2024 the AG, who had claimed in FOIA and discovery requests he never had the $4.7 million valuation, admitted in this second FOIA appeal that the AG had the appraisal since at least 2017, but claimed it was confidential. The AG did not suggest that it had signed any confidentiality agreement, and the AG does not know how, when or from whom it obtained the document, except that it was scanned in 2017.

Argument

The Panel erred in affirming the circuit court's dismissal on the sole basis that the AG claims not to have received the FOIA request in 2011.

Although the Opinion notes that the FOIA request was sent to Wingate, the AG's attorney, on June 30, 2011, the Panel nonetheless affirmed the dismissal on the AG's claim that it did not receive the document from Appellant. The FOIA contains no specific process for transmitting a request for public documents to public bodies. Instead, the FOIA simply states that a "public body, upon written request for records made under this chapter, shall" timely make its response. *See* S.C. Code Ann. §30-4-30(c). Here, it is undisputed that the AG got the request directly no later than August 2011, when it was served with the complaint in this action. Further, the AG's counsel had received the request on June 30, 2011, and the letter of AG Meyers (quoted in the Opinion) makes clear that the AG was aware of the request before it was served with the complaint herein.

It is unjust and against the letter and the spirit of the FOIA to dismiss this case after nearly 13 years based on the AG's claim it did not receive the original mailed request. As the Panel noted at oral argument, this case was before this Court once before, and the matter was remanded for the specific purpose of having the AG identify a specific rule which it believed justified the refusal to respond to Appellant's FOIA requests. The AG did not do so, and the circuit court proceeded with dismissing the case on another ground which was presented and argued before this Court prior to this Court's 2019 decision.

The Panel erred in overlooking the fact that the AG has been in possession of this FOIA request for more than a dozen years and has never attempted to make a response. It is clear from the history of this case, as well as from Appellant's later FOIA requests, that redelivery of the June 30, 2011 FOIA request would have resulted in the AG's refusal to properly respond to Appellant's request. Respectfully, Appellant submits that the Panel's

decision reward's the AG's 12-year effort to thwart Appellant's FOIA rights. As the Panel acknowledged at oral argument, the AG has jumped from one defense to another, getting the case dismissed on other grounds previously, then abandoning those grounds when this Court remanded the matter with the specific instruction that the AG present a more specific defense to the circuit court.

Meanwhile, Appellant has incurred substantial attorney's fees and costs over 12+ years and two appeals, all generated by the AG's refusal to simply respond to the FOIA request. The AG should not be rewarded for burying the intent of the FOIA – allowing citizens access to public records – into various technical defenses. Public bodies should be encouraged to err on the side of openness; Appellant submits that the Opinion encourages public bodies to litigate fully before responding to requests.

The question in this case should not be "why did Appellant not resubmit her request," because she did. The question should be, "why did the public body not respond to the request for more than 12 years?"

Conclusion

For the foregoing reasons, Appellant submits that this Court should rehear and/or reconsider the Opinion. The AG should be directed to produce all public records responsive to the June 30, 2011 FOIA request, and the matter should be remanded for the determination of the amount of attorney's fees and costs due Appellant.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned counsel for Appellant hereby certifies that the Petition for Rehearing was served on the date shown below by emailing a copy of the document to counsel for each Respondent at the addresses shown below:

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May 22, 2024

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