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



---

**APPEAL FROM AIKEN COUNTY**
**Court of Common Pleas**

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

---

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;**
**Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;**
**Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;**
**Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;**
**Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;**
**Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;**
**Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;**
**Case No. 2009-CP-02-1810;**
**Appellate Case No.2013-002582**

Alan Wilson, in his Capacity as Attorney General of South Carolina; and others, . . . . . Plaintiffs,

v.

Albert H. Dallas and others, .. . . . . Defendants.

Of whom Adele J. Pope, Individually and on behalf of Others under South Carolina Trust Code Section 62-7-405, is the.....Appellant,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

IN RE:

The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000

---

## MEMORANDUM RELATED TO APPEALABILITY

---

For decades entertainer James Brown fought and sued and scrapped to amass his hundred million dollar fortune. For the last twenty years of his life his wish to leave that fortune to The James Brown "I Feel Good" Trust, his private foundation to provide scholarships for needy students, was Brown's widely known and often-stated desire.

For the seven years since Brown died on Christmas Day 2006 about 90 lawyers – ten paid by the taxpayers of South Carolina – and some clients have fought to see that those needy students do not get what Brown wanted them to have. Those seeking to benefit from a 2008 settlement which the S.C. Supreme Court declared void in the May 8, 2013 *Wilson v. Dallas*[1] decision include:

1. Tommie Rae Hynie ("Hynie"), who wants $11+ million;

2. Hynie's attorneys, who want $10+ million;

3. Louis Levenson, Esquire ("Levenson"), who wants $9 million

4. David Bell, Esq. ("Bell") and Powell Goldstein ("PG"), who refuse to disclose what they want or have received;

5. Kenneth Wingate, Esq., who was paid $563,000 in 2012 in a 2010 suit seeking damages from Appellant and Robert Buchanan, Jr. ("Buchanan") for conducting the *Wilson v. Dallas* appeal, and has a 40% contingency to serve Russell Bauknight ("Bauknight")as Hynie's agent and in other capacities.

6. Albert H. Dallas ("Dallas") wants $6 million as a PR/ITrustee commission.

For five years Appellant Buchanan as PR/Trustees, with a small group of lawyers, worked to carry out Brown's wishes. Their work included trying to stop the flood of incorrect representations to multiple courts about the 2008 settlement; the value of Brown's assets; Brown's heirs; and the Federal Copyright Act.

---

[1] *Wilson v. Dallas*, 743 S.E.2d 746 (S.C. 2013)

When they were replaced on May 26, 2009 Buchanan had a $.5 million claim and Appellant a $1.4 million claim for payment .[2] The claims were both allowed under the S. C. Probate Code ("Probate Code") and approved in an unappealed Order of the Honorable Doyet A. Early, III. The Order directed that they receive interest at the legal rate until the amounts were paid.

Two weeks before the August 10, 2008 settlement which became the subject of the *Wlson v. Dallas* appeal, Attorney General Henry McMaster ("AG McMaster") approved Buchanan and Appellant as permanent trustees of the "I Feel Good" Trust.

The legal cost of defending against the now-void 2008 Settlement which would have removed about $50 million from the "I Feel Good" Trust (and damaged its royalties for decades by a false heirs "stipulation") for five years was about $200,000.

James Richardson, Esquire, served *Pro Bono Publico* for four years as lead appellate counsel. James Bailey, Esquire, defended the Estate/2000 Trust against the settlement at the circuit court level for a year. Tressa Hayes, Esquire, while also briefing the Dallas and Cannon appeals, assisted Bailey in 7 days of hearings on the Settlement, and worked with Richardson on the appeal.

---

[2] The discrepancy related to Appellant's somewhat higher hours and much larger staff.

To avoid further litigation at the conclusion of the *Wilson v. Dallas* appeal, in July 2009 Buchanan & Appellant filed an extensive report and affidavit related to their service. For all of their work, no matter how long it took to conclude *Wilson v.Dallas* and the Will/Trust challenges, they proposed a PR/Trustee commission - which for Appellant would now be a cap if based on time – of: Buchanan: $2.1 million; Appellant: $2.8 million. It was based 2/3 on equal responsibility and 1/3 on time.

Buchanan and Appellant also filed their final accounting (subject to the appeal) in June 2009, showing just under $100 million in assets delivered to Bauknight. Appellant spent about 80% of her professional time from November 2007 until May 8, 2013 on James Brown matters. Since May 8 she has offered, *pro bono publico*, to assist anyone who supports saving the "I Feel Good" Trust.

The team was efficient and dedicated.

The costs and commissions requested were within the Chart of "James Brown's Wishes in His 2000 Estate Plan" Buchanan and Appellant presented to Judge Early in March 2009 at hearing on the settlement:

> $7 million in administration and legal costs, including commissions;
>
> $2 Million for the 7 $285,000 Education Trusts for certain grandchildren the Settlement destroyed;
>
> $77.5 Million (now $91 Million) for "I Feel Good" Trust scholarships.[3]

Seven years after Brown's death $91 million of Brown's fortune is now poised to distribute several million dollars in scholarships for needy students studying in South Carolina and Georgia each year.

A claimed justification for the 2008 Settlement was that the $50 million taken from the "I Feel Good" Trust secured termination rights cooperation under the Federal Copyright Act. That cooperation could have been secured from non-settling parties for a fraction of that amount.

In 2009 the Estate/2000 Trust was poised to make fair Copyright Termination agreements with a cooperative half of Brown's real heirs who were not challenging the Estate Plan. This should have continued during the 4-year appeal.

---

[3] When the Charts of "James Brown's Intentions" under the 2000 and 1999 Estate Plans were presented to the Court in March 2009, $13.5 million was allocated to a debt to the NY Teachers ("TIAA") and $77.5 million for "I Feel Good" scholarships for needy students. The TIAA Debt was originally $26 million in 1999 and was paid down with Brown's major royalties. It was about $15 million when Brown died; $13.5 million in March 2009; $11 million when Buchanan and Appellant were replaced; and paid off in late 2011. The former TIAA slice of the pie charts is now added to the $77.5 million.

But in 2009 Bauknight aligned himself with Brown's grandson Forlando,[4] Levenson and Hynie, Brown's companion, all of whom had worked since Brown's death to destroy the "I Feel Good" Trust.

Bauknight continued this alliance even after 2010 when son Daryl asked AG McMaster to abandon the appeal and Hynie – with all who had challenged the Estate Plan – confirmed that they had discussed Brown's estate plan with him during the years prior to his death and that the creation of the "I Feel Good" Trust was the long held and often-stated desire of James Brown. [See Record, Case 2010-CP-40-4900, Wingate Suit.]

The following is a brief overview of events::

| | |
|---|---|
| Dec. 25, 2006 | James Brown dies with no spouse and $100 million fortune. Residue to "I Feel Good" Foundation for needy students. |
| Jan 8, 2007 | Forlando & others agree to pay Levenson 30% + $150,000 To destroy "I Feel Good" Trust. |
| Dec. 26, 2007 | Levenson files suit for "Administration in Intestacy." |
| Jan. 2, 2008 | Forlando/Bell/PG file federal suit to enjoin 2000 Trust. |
| March 2008 | Judge Early orders that Heirs determination is appropriate even though Brown has a valid 2000 Will and valid backup 1999 Will. [Buchahan/Appellant support, to protect Royalty copyrights.] |
| July 30, 2008 | After thorough scrutiny, AG McMaster writes supporting Buchanan and Appellant as permanent trustees of |

[4] Terry Brown and his son Forlando have worked as a team with Bell and PG since 2007, claiming to support the "I Feel Good" Trust but seeking both to dismantle it and acquire the music empire. Forlando sued the 2000 Trust in 2008 to enjoin it from taking any action until the Cannon trustees were reinstated. He claimed Buchanan & Appellant would favor Hynie & Levenson. He claimed they ousted the Cannon Group to get the $5 million commission payable on Brown's $100 million estate. [ The Cannon Group were claiming $15 million in PR/Trustee Commission.] In January 2011 Forlando acquired Terry's interest in the Estate. His name is used herein.

| | |
|---|---|
| | "I Feel Good" Trust. |
| August 10, 2008 | 2008 settlement: contract to replace Buchanan/Pope<br><br>1. Gives Hynie 25% and "stipulates" she was Brown wife.<br><br>2. Gives Levenson clients 25%;<br><br>3. Provides Settling Parties will work to defeat others. |
| May 26, 2009 | Order approves version of 2008 settlement. Jg.Early finds he has not heard claim for removal.<br><br>Settlement destroys rights of real and DNA-proven Heirs, and those awaiting official Peeples DNA Protocol.<br><br>(1) La Rhonda; (2) Nicole; (3) Jeanette; (4) Lisa (1st marriage);(5) Michael (incarcerated CA) (6) James Curtis; and (7+) Doe Defendants (being identified). |
| May 19, 2010 | Bauknight, as agent for Hynie, Hynie's son, Terry Brown & others, files Wingate Suit to stop *Wilson v. Dallas* appeal. |
| 2011 | While suing Buchanan/Appellant for tens of millions of dollars for not accepting $100 Million offer in 2007 (made to PR/Trustee Dallas), Bauknight tells Supreme Court there was no such offer and music empire worth $4.7 million. |
| April 2011 | Smith/Pope DRAFT article explains how false claims about Copyright Termination rights, false stipulation of heirs, and devaluation will destroy "I Feel Good" Trust. Explains how charities should "split heirs" to protect royalties.<br><br>[SEE "Private Foundation, Copyright Heirs and Musical Millionaires: Why the James Brown 'I Feel Good" Trust doesn't.." [Draft 4/11, Aff.Ex.B] |
| 2011 - 2012 | Bauknight claims Buchanan/Pope intentionally overstated music empire to IRS by $79 million to get $5 million commission. Not True, but if so would be a felony under 26 U.S.C. § 7206.<br><br>Bauknight says $84 million value had no basis. Fails to inform Court that Valuation Formua for IP (Royalties & Publicity Rights) on Estate Tax Return presented to Jg. |

Early, AG & others in motion and hearing November 15, 2007. No objections.

2011 — Wingate/ Bauknight/Hynie move to intervene in 2 FOIA Suits to prevent release of public documents, including:

1. Bauknight's music empire appraisal

2. Wingate Litigation Retention Agreement

2011 - 2013 Bell takes opposite positions at same time for Terry/Forlando:

| **Bell for Terry** | **Bell/ Forlando** |
|---|---|
| Hynie is Brown's spouse | Hynie is not Brown's spouse & knew it. |
| Hynie's elective share is "slam dunk" | Hynie has no claim |
| Hynie's son is a son of Brown | Hynie's son is not. Impossible. Names reputed father. |
| Music empire $4.7 million | Music Empire $100 million |
| No offers | $100 million offers (at least) available. |
| Should enforce 2008 Gag Orders to protect Hynie | Discusses Hynie's "diary" in violation of Gag Orders. |

2012 — Bauknight/Wingate violate Shield law until AG Wilson asks them to withdraw subpoena for journalist's sources and notes.

May 18, 2012 — Wingate/Bauknight - Questionable Buchanan "settlement"

2012 — Bauknight/Wingate/Hynie seek to intervene in 3rd FOIA Suit (of journalist) to prevent release of public documents.

Nov., Dec. 2012 — Bauknight – without notice to AG – pays Wingate $563,000 to keep fighting deposition of Hynie, FOIA suits.

May 8, 2013 — Final *Wilson v. Dallas* decision.

May 8 - Dec.17, 2013 — Bauknight procures at least four *ex parte* orders and presents *ex parte* ethics opinion to court;

Continues as agent for Hynie, Hynie's son and

| | |
|---|---|
| | Forlando/Terry in Wingate Suit. |
| | Bauknight & Sojourner procure appointments without serving Summons and Petitions on anyone; No notice of hearing to most heirs, devisees & Interested parties. Appellant & Others who support 2000 and 1999 Estate Plans banned from participation by June 13 Orders. |
| | Bauknight supports Forlando in Federal Suit. |
| | Bauknight continues to interfere with FOIA rights in 3 FOIA suits. |
| May 29, 2013 | Levenson and Hynie announce intention to re-do 2008 settlement |
| August 20, 2013 | Bauknight announces intention to re-do 2008 settlement. |
| October 1, 2013 | Bauknight/Sojourner appointments. Order not served on Appellant and most Interested Parties. |
| October 8, 2013 | Bauknight discloses $563,000 Wingate payment. |
| October 10, 2013 | *Ex Parte* Jg. Roe Order appoints Sojourner. Hand delivered to Bauknight's counsel for mailing to Interested Parties. Not mailed to most. |

Based on the above facts and additional facts in the affidavit which is filed herewith as an appendix, and as set out below, the October 1, 2013 Order and denial of reconsideration are subject to an immediate appeal.

## Argument

### 1. Applicable Law

Under S.C. Code Section 14-3-330 appeals may be taken from:

> ... (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final

judgments in such actions...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, ... or (c) strikes out an answer or any part thereof or any pleading in any action;

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas... continuing... an injunction...

The Order of the Honorable Doyet A. Early, III dated October 1, 2013 and the subsequent order denying reconsideration which are the subject of this appeal are immediately appealable for multiple reasons. They are final orders. They continue an injunction in place since June 13, 2013 against most supporters of the two valid estate plans of James Brown. They prevent a judgment that the 1999 Will – not an intestacy – is the proper outcome in the unlikely event that Brown's 2000 Will and Trust are set aside. They make sweeping findings which determine pending actions. And they strike out pleadings which at least half of James Brown's heirs, devisees and beneficiaries were, through violation of their constitutional rights, not given notice or an opportunity to file.

**2. The Appointment Order is Final Despite its Title**

The Orders which are the subject of this appeal are final. The relief sought in the defective petitions which were not served on anyone prior to the hearing has been granted. Section 62-3-107 of the South Carolina Probate Code ("Probate Code") states in pertinent part:

SECTION 62-3-107.

... (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment. [Emphasis supplied]

The relief sought has been granted. The appointments are final. Bauknight has been given " full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business matters related thereto..."

The "Court will revisit ...upon the conclusion of all Estate litigation" In other words: when everything is over.

An Order in a nearly-7-year old estate which appoints a fiduciary to serve until all estate litigation is concluded is as final as an order can be. The Probate Code provides that the proceeding commenced by Bauknight for the two appointments has been concluded "by an order making... the appointment." The October 1 Order is a final order. To title it "Interim" does not change the facts.

As a final order, it is appealable.

### 3. Orders Which Continue Judge Early's June 13 Injunction Against Appellant and Others are Immediately Appealable

Appellant has multiple bases for standing to participate in all James Brown cases now pending in Aiken County, including:

1. Appellant is a Creditor Appellant has not been paid for the six years she devoted about 80% of her professional time to protecting James Brown's Estate/2000 Trust and "I Feel Good" Trust, including her allowed and court-approved claim.

2. Appellant has Special Status Under §62-7-405. Appellant has devoted time, effort and study to protect the "I Feel Good" Trust. AG Wilson has withdrawn

from its protection. Bauknight has declared his intention to dismantle it – again. Appellant is qualified as an "Other" and willing to serve *pro bono publico.*

3. Appellant has a Counterclaim with Proposed Offset against Bauknight as agent for Terry, Hynie and others in the 2010 Wingate Suit brought by Bauknight.
The Wingate Suit counterclaims assert Hynie was not Brown's spouse and Appellant and Buchanan never owed her any duty. Appellant has a direct property interest in making sure the Aiken court does not reach a different conclusion in a hearing from which she has been banned from participation.

4. Appellant has a counterclaim in the Forlando Suit. Appellant and Buchanan have counterclaims for offset against the shares of Forlando in the 2000 Trust and the former share of Terry in the Estate which Forlando now owns.

5. In Case 2013-CP-02-1337. Bauknight, claiming authority under a pre-remittitur *ex parte* Order, served Appellant on May 29,2013 with a Notice of Disallowance. Bauknight purported to disallow allowed and court-approved claims of Buchanan and Appellant and pending claims of Hayes and Bailey. The Disallowance was wholly unnecessary. It repeated the false claim that Appellant and Buchanan had improperly valued the assets with no basis. Under the Probate Code Appellant was forced to file suit, which she did.

Without notice or hearing, on June 13, 2013 Judge Early and the Honorable Liz Godard, Clerk of Court, issued three orders (the "June 13 Orders"). The June 13 Orders enjoined Buchanan, Appellant and others from participating in James Brown cases, and direct the Clerk of Court to remove Appellant's unheard motions from the public files. Judge Early also directed the Clerk not to accept filings by Appellant.

Article I, § 3 of the State Constitution provides:

> The privileges and immunities of citizens of this State and the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

The extraordinary injunction against Appellant and others, coupled with a direction that removes her filings from the public record and directs that she not be allowed to file documents when she is being sued by the Estate/2000 Trust through

Bauknight clearly deprives Appellant of property without due process of law.

The October 1 Order and denial of reconsideration continue that injunction. Under Section 14-3-330 (4) they are immediately appealable.

**4. The Orders Finally Determined Rights of Heirs, Devisees and Interested Persons in a Proceeding Improperly Commenced Where No Summons or Petition was Served.**

The Orders which are the subject of this appeal finally determine the rights of Brown's heirs, devisees, beneficiaries under the 2000 Estate Plan, Beneficiaries under the 1999 Estate Plan and Others who want the "I Feel Good" Trust properly enforced and its $91 million dollars dedicated to scholarships for needy students.

They did so without evidence that a single heir, devisee or Interested Person was served with the Summons and Petitions which purportedly commenced this now-final proceeding.

On July 29, 2013 Bauknight filed:

1. The Bauknight Application/Petition for Formal Apointment of a Successor Personal Representative and Trustee, with "Summons" described below. There are no named Plaintiffs or Defendants. Bauknight bases his "standing and priority" on "his status as a creditor of this Estate for proper fiduciary commissions and his status as the currently serving Special Administrator ...and Special Trustee."

2. The Bauknight Summons is directed to "All Necessary Parties." No parties are named. It lists the Circuit Court as the Court; contains two circuit court numbers: 2008-CP-02-1647 and 2009-CP-02-1810. It also contains the probate court number for Brown's estate.

3. The Sojourner SA Petition lists Attorney General Alan Wilson ("AG Wilson"), Daryl Brown, Deanna Thomas and others as Petitioners in the caption. Bauknight is, however, designated as the petitioner in the body. Among the named Petitioners are 4 adults – minors when their grandfather died – who have never been parties to any Aiken County Case. The Court cited is the Probate Court, but the filing is in the Circuit Court. Bauknight asks that Sojourner be

appointed Limited Special Administrator solely "for the limited purpose of defending the Estate against the claims made in the "1647 Cases", with specific authorization to retain his law firm to represent him. A footnote says:

> The 1647 Cases consist of the Will and Trust challenges, the elective share matter, the omitted spouse matter, and the omitted child matter. Mr. Sojourner will have complete authority over, and be responsible for, these limited matters until final resolution of the listed matters.

An affidavit of Sojourner is attached, with a list of his qualifications.

4. The Sojourner ST Petition contains the same names of AG Wilson and others as petitioners; and cites that it is (On Removal From Probate Court). Bauknight seeks appointment of Sojourner as limited ST over the same matters.

Section 62-1-304 of the Probate Code governs how these proceedings should have been commenced. It says:

> SECTION 62-1-304. South Carolina Rules of Civil Procedure govern formal proceedings.
>
> The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court and other rules of procedure in this title govern formal proceedings pursuant to this title. A formal proceeding is a "civil action" as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

The purpose of the rule is to provide constitutionally adequate notice of the commencement of an action to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit. See *McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994) (*per curiam)* for a discussion of the importance of service of the summons in commencement of the proceeding.

Bauknight's petition attaches a summons and then ignores the service requirements of SCRCP. None of the Bauknight Summons and Petition or the

Sojourner Petitions appears to have been served on anyone. Basic Due Process was denied. The notice required under the Probate Code to all Heirs, Devisees and those who have demanded notice was disregarded.

Placing a required Summons on a Petition; directing it to all necessary parties; not even designating who those parties are; and then not serving either the summons or petition does not afford Due Process. It does not give the Court jurisdiction over the case.

The circuit court hearing was held just over a month after the Petitions were filed. There was a complete absence of Due Process by failure of service and failure of notice.

The rights of Heirs, devisees and Interested Persons as to the entire proceeding have been finally determined before they are even informed of the proceeding in a legally acceptable manner. Immediate appeal of the orders granting the relief requested in the non-served petitions is appropriate.

For this reason alone, immediate appeal is appropriate and reversal required.

**5. The Numerous "findings" from the "hearing" Deny Due Process**

As a result of the June 13 Orders, Judge Early refused to allow Appellant, Buchanan and Others who support the "I Feel Good" Trust to participate in the September 4 and September 11 hearings. Even those who "participated" were not allowed to ask any questions of Bauknight or Sojourner.

Due Process is denied where the Court conducts a "hearing" which is not a hearing. The constitutional right to due process contemplates a meaningful opportunity to be heard. That opportunity was denied when Appellant and others were barred from

participating and the Court refused even those allowed to attend the right to question Bauknight or Sojourner.

Due Process rights of Appellant, Brown's Heirs, Devisees and other Interested Parties were denied when the Court then Court simply adopted, without question or examination," the self-serving puffing – and misstatements – of Bauknight.

The damage was compounded when the October 1 Order was presented to Judge Roe without notice to anyone. In an October 10 *ex parte* order Judge Roe dispensed with a hearing; made extraordinary findings about the good works of Bauknight and his counsel; and appointed Sojourner Special Administrator. Then Bauknight's lawyer was handed a copy of the *ex parte* Judge Roe Order to mail to Interested Parties – which he did not do as to a majority of them.

The findings concluded a number of issues. They Orders sweepingly praised Bauknight and approved his simultaneous service as PR under a Will and agent for Hynie, Deanna Brown and others who are challenging the Will. The Orders, by not even noting that Bauknight had not accounted for 18 months, approved Bauknight's concealed 2012 $563,000 payment to attorney Ken Wingate, Esquire. It approved Bauknight's favoring Hynie's son, who refuses DNA testing, over three heirs who have been DNA-proven and acknowledged under the Estate's official Peeples DNA Protocol. It approved Bauknight's refusal to allow DNA testing and a guardian *ad litem* for Michael Brown, incarcerated in California.

The October 1 Order then found that these heirs, devisees and beneficiaries and other interested persons had received proper notice of the proceeding– purporting to bind them.

The October 1 Order affected multiple substantial rights. It determines the action and prevents a judgment from which an appeal might be taken. The findings and conclusions are in large part inaccurate. As a single example, it is clear that Bauknight would have placed Hynie and her son – for whom he still serves as a fiduciary – in control of Brown's Copyright Act termination elections. Then, having conferred on Hynie a status to which she clearly was not entitled under the facts or law, he would have paid her nearly $25 million of the "I Feel Good" Trust's assets to get it back.

On May 26, 2009 when Judge Early issued his Order approving the 2008 settlement, there was absolutely no impediment to Bauknight's continuing the official Peeples DNA Protocol for Michael, James Curtis and other Heirs excluded from the settlement.

While the appeal was pending, Bauknight could have secured – for as little as $10,000 each per year and the recognition they deserved – indefinite Termination Rights cooperation from any 5 or so of :

> 1. LaRhonda; 2. Nicole; 3. Lisa; 4. Jeanette and - subject to passing the Peeples DNA Protocol which they requested - 5. Michael and 6. James Curtis; and possibly 7. Doe Defendants.

A dose of dignity and fair dealing with these real heirs – no matter what the outcome in *Wilson v. Dallas* – was both fair and the right thing to do for the "I Feel Good" Trust.

The Order's unbridled praise of Bauknight and his attorneys finally determines – with no basis – material issues about royalties and the rights of these real heirs of James Brown.

All of the "findings" damage and finally determine issues affecting Appellant's and Buchanan's property rights, those of the real heirs, and those of beneficiaries of the 2000 and 1999 estate plans who support James Brown's right to give his $100 million fortune solely to education.

**6. The Court's Appointment of One PR/Trustee Violates *Wilson v. Dallas***

The *Wilson v. Dallas* decision made clear that fiduciaries must be appointed in accordance with Brown's documents. Brown's Will and the 2000 Trust require three PRs and 3 Trustees. There is no basis for the Court's finding that

> [t]he addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

There are many reasons why this is not correct. Just one is that Appellant, since May 8, 2013, has offered to help *pro bono publico* anyone, including new trustees, working to protect the "I Feel Good" Trust and its Copyrights.

Another is that Levenson, Bell and counsel for Hynie – not the Plaintiffs – authorized the fabricated Wingate Suit. This was learned in the fall of 2013 after a federal judge directed release of the public Wingate Litigation Agreement which Wingate, Hynie and Bauknight had fought to conceal for years by FOIA intervention.

Hynie, Bell and Levenson wanted one thing: $30 million or more of the $100 million Brown gave for scholarships for needy students. Clients were forgotten. The "I Feel Good" Trust Bauknight claimed he was serving was forgotten. Most "Plaintiffs" in the Wingate Suit did not even know the suit was being filed. Lawyers, not Plaintiffs,

signed the Wingate 40% contingency contract.

Then Levenson, Bell and Hynie's lawyers sent Bauknight – who went in the name of the Estate/2000 Trust while serving Hynie – into three FOIA suits.

Two reasonable trustees might stop this outrage. Two reasonable trustees might say Wingate must disgorge the $563,000 because he got it while in default as to counterclaims and caused his own problems by entering three FOIA suits for Plaintiffs he had never met.

The unsupported findings about propriety of Bauknight and his counsel are material and finally determine in Bauknight's favor – and to the detriment of the Estate/2000 Trust and Others who support it – that Bauknight and the Court may disregard the *Wilson v. Dallas* remand. For this reason, the orders are immediately appealable.

### 7. Bauknight's Securing of the void *ex parte* Jg. Roe Order and Other *Ex Parte* Actions Were Improper

Since May 8, 2013, Bauknight – committed to undoing the *Wilson v. Dallas* decision and still serving Hynie and her son – has obtained at least four *ex parte* orders. He has refused to share a secret ethics opinion of Professor Nathan Crystal he sent to Judge Early the night before a hearing in which Appellant was seeking reconsideration of the June 13 Orders. He has blatantly disregarded the basic requirement of fairness to heirs, devisees and beneficiaries.

Heirs and beneficiaries have reason to expect to be protected in the Probate Court. The extraordinary October 10 Order of the Honorable Sue H. Rose was procured by Bauknight with a Summons or Complaint not sent to anyone. It was

obtained without notice to a single interested person. It was obtained without a hearing. The extraordinary Order declares that no hearing was necessary. [See Aff. Ex. A] While the Court appointed Sojourner, the action appears to have been driven by Bauknight. The *ex parte* Judge Roe Order makes expansive findings about the propriety of Bauknight's action and those of his counsel.

After being issued on October 10, 2013 the *ex parte* Judge Roe Order was not mailed to Interested Persons. The Clerk's Notice of Mailing shows that it was hand delivered by the Clerk to Mr. Bauknight's lawyer to notify the Interested Parties of the Order. Most were not notified. Appellant discovered it in the records in mid-December 2013. Heirs Jeanette, La Rhonda and Nicole received no notice.

No "Other" who seeks to enforce the "I Feel Good" Trust, and no real heir, is safe, if actions such as these are allowed to continue.

The constitutional issues and Due Process violations of the October 1 Order were compounded as Judge Roe "adopted," with no basis and no hearing , the "findings" of Jg. Early's October 1 Order from a hearing that was not really a hearing.

These Orders, procured by a fiduciary of the "I Feel Good" Trust who has made public his intention to dismantle it, finally determine rights; deny basic Due Process; are immediately appealable; and should be vacated.

**8. Due Process Violations and Refusal to Appoint a GAL for the Incarcerated Michael Brown are Immediately Appealable**

Michael Brown has been incarcerated in California and seeking to be part of the James Brown proceedings for 6 years. He has asked for DNA testing. He was not made a party to Levenson's December 2007 suit seeking an "Administration in

Intestacy" despite Levenson's knowledge of Michael's support by Brown during minority and Michael's requests.

The Due Process violations as to all others are exacerbated by Bauknight's and Sojourner's attempts to prevent the appointment of a GAL for Michael. Rule 17(c) SCRCP is clear:

> (c) Minor or Incompetent Persons. .. A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; .. . [Emphasis supplied.]

Because Michael was both an heir seeking DNA confirmation and a person who had demanded notice, the actions purportedly commenced by Bauknight for the formal appointment of Bauknight and Sojourner was an action against Michael. Sections 62-3-414 provides in pertinent part:

> SECTION 62-3-414. Formal proceedings concerning appointment of personal representative.
>
> (a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative.... if an issue concerning the testacy of the decedent is or may be involved, is governed by Section 62-3-402, as well as by this section. . .
>
> (b) After service of the summons and petition to interested persons, ... the court shall determine who is entitled to appointment under Section 62-3-203...SECTION 62-3-301. Informal probate or appointment proceedings; application; contents.

In addition, the Bauknight Petition was required to name Brown's heirs. The Petition was required to state:

...

> (ii) . . .the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are

minors so far as known or ascertainable with reasonable diligence by the applicant...

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding concerning the decedent that may have been filed in this State or elsewhere;...[Emphasis supplied.]

Bauknight had actual notice that Michael was incarcerated in Folsom Prison in California. To emphasize how final and damaging this abuse of Michael's Due Process rights was, just days after his appointment to protect the estate plan.Sojourner filed a motion to declared that Michael was not an heir. He asked the Court to make this determination without Michael's being served or made a party to any James Brown case despite 6 years of attempts.

Adding Michael and appointing a GAL for him was not just necessary. It was good for the "I Feel Good" Trust.

Bauknight's treatment of Michael is particularly egregious where Bauknight continues to serve in the Wingate Suit for Hynie's child, the only person claimed to have been fathered by Brown in the 22 years between Brown's vasectomy and his death. Hynie's child has refused DNA testing under the Peeples DNA Protocol for the same 6 years Michael, incarcerated, has been seeking it.

The purpose of Rule 4 SCRCP is to provide notice of the commencement of an action and "to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit, 295 N.C. 81, 243 S.E.2d 756, 758 [311 N.C. 542] (1978).

The intentional disregard for Michael and other heirs violated their fundamental constitutional and statutory rights, including Michael's right to be protected by a GAL. They are immediately appealable.

**9. The Announced Plan of Bauknight to Dismember The "I Feel Good" Trust Again**

Just 3 weeks after the *Wilson v. Dallas* decision Hynie's counsel and Levenson – having lost about $19 million in fees by the decision, announced their intention to re-do the settlement. By August 20, 2013 Bauknight had joined the chorus, saying he was going to follow the "roadmap" the Supreme Court gave him to redo the settlement "to a T."

In the 6 months since the decision Bauknight has rushed to re-destroy the "I Feel Good" Trust, and the Courts have helped, including:

1. Two broad, pre-remittitur *ex parte* orders gave Bauknight broad authority, even to ratify his own acts, when he had not accounted for 18 months.

2. June 13 Orders of the Honorable Doyet A. Early, III ("Jg. Early") enjoin Appellant, Buchanan, former fiduciaries and other Interested Persons from questioning Bauknight.

3. Jg. Early, in June 13 Orders and his directions, stifles all criticism of Bauknight and all protection for the "I Feel Good" Trust.

4. The *ex parte* Judge Roe Order of October 10 is unprecedented.

These actions are both unusual and damaging to a charitable trust that is not being protected by the Attorney General. Because the only "Other" who is trying to protect it was banned from participation, Due Process again demands an immediate appeal.

**10. The Right of Appellant and Others to Nominate Was Substantial.**

In an extensive but incorrect analysis of Section §62-3-203, the court on pages 14 and 15 of the Order concludes that Bauknight has statutory priority to serve. The Court – by refusing to allow proper participation at the hearing -- failed to note that

Buchanan and Appellant, prior to their replacement, appointed former Warner Music executive Ray Gonzalez and distinguished attorney Ronald Stanley, Esq. as their successors. The nominations were filed of record prior to the May 26, 2009 Order.

In addition, on May 26, 2009 when the now-void settlement was approved, a distinguished Advisory Board existed. Within the records delivered to Bauknight but not revealed to the Court is correspondence from these carefully-selected and dedicated individuals. All opposed the 2008 settlement.

One of the Advisory Board, Dr. Leonard McIntyre, then Interim President of S. C. State University, was instrumental in helping protect thousand of items of James Brown memorabilia. S. C. State held a James Brown Exhibit at the Stanback Museum and Planetarium curated by director Ellen Zisholtz.

All of the above have the highest priority under § 62-3-2913(a), namely they are:

> ... (1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will.

The Court's findings violate the *Wilson v. Dallas* remand and should be reversed.

**10. Refusing to Address the Less than $4.7 Million Claim Violates Due Process**

By banning Buchanan, Pope, Dallas and others from participating in the "hearing" held on September 4 and refusing to allow anyone to question Bauknight or Sojourner, the Court violated the Due Process rights of Appellant and all "Others" for whom Appellant speaks to know:

1. Will the "I Feel Good" Trust distribute several million dollars each year under the IRC 5% Rule or about $200,000 according to Bauknight?

2. Does Bauknight's claim of a marital deduction as to Hynie in the Estate Tax Proceeding need to be corrected along with the claimed $4.7 Million value of the music empire?

3. Does the Estate Tax Return need to be corrected to show the "I Feel Good" Trust got about $82 million, and received a corresponding $82 million Estate Tax deduction on the Estate Tax Return – not the less-than $3 million as reported by Bauknight?

4. Did Buchanan and Pope commit a federal felony by valuing Brown's music empire at about $84 million consistent with a court-approved formula and offers?

5. Or was the approximately $100 million (less the TIAA Debt) value produced by the IP formula, every fiduciary other than Bauknight and most family members correct?

6. Isn't it true that it makes no sense to value a music empire that has had $3 million in annual Royalties for a decade and earned $18 million between 2003 and 2006 at less than $4.7 million on December 25, 2006?

7. Isn't it true the the "appraisal" Bauknight has hidden since 2010 – and now asserts he did not even show to the S.C. Attorney General -- should have been filed in the Probate Court?

Bauknight has fought bitterly for two years in federal court, 3 FOIA suits and the Wingate Suit to prevent anyone from seeking the "appraisal" he asserts will demonstrate that Buchanan and Appellant overstated Brown's music empire by $79 million. He now claims that he did not even show it to the Attorney General. He claims it must remain under "lock and key." He ignores Section 62-3-708 of the Probate Code which says:

> SECTION 62-3-708. Duty of personal representative; supplementary inventory.
>
> If ... the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisement showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information. [Emphasis supplied.]

Bauknight used a less-than $4.7 million "appraisal" to accuse Buchanan and Appellant of a felony. He made the false claim that their $84 million valuation claim had no basis. He did so with knowledge, as defined in the Trust Code, that the $84 million was consistent with a court-presented valuation formula.

The failure of the Court to allow exploration of this critical area, followed by praise for Bauknight, "involved the merits." It finally determines some substantial part of some cause of action or defense in the case. See *Neeltec Enter., Inc. v. Long*, 391 S.C. 177, 178, 705 S.E.2d 57, 58 (S.C.App. 2011). The Orders are appealable because the Court made a final finding that Bauknight was qualified when he was not – damaging Appellant, the "I Feel Good" Trust and heirs.

**11. Due Process and Thoughtful Protection of the "I Feel Good" Trust is the Overarching Goal**

As the draft 2011 Article of Smith and Pope makes clear, protection of Brown's Royalties, which make up about $50 million of the $100 million music empire Brown gave to the "I Feel Good" Trust, will require a delicate and thoughtful balance over the next 4 - 7 decades. Brown's Royalties have consistently generated $3 million or more per year for more than a decade. Added to revenue from exploitation of the Publicity Rights, they provide hope and promise for needy students for a century or more if properly managed.

Both the October 1 Order, and the *ex parte* Judge Roe Order discussed below – with no support either in the record or fact – declare:

> The overarching goal of this Court is to create an atmosphere where the prompt resolution of the various contested claims and a final resolution of the Estate and Trust matters can occur without compromising the

positive gains achieved since this Court issued its May 26, 2009 Order.

When the October 1 Order was issued, Bauknight had not accounted for 18 months. When he did file an inadequate accounting for 2012 – days after the October 1 Order –it showed he had disbursed $563,000 (in addition to a 40% contingency) to the Wingate Firm to continue his suit to derail the Wilson v. Dallas appeal and interfere with FOIA compliance.

Paying more than half a million for Wingate to protect Hynie; prevent her deposition and interfere with FOIA rights of S. C. citizens is not "positive." Rushing again to re-do a settlement which took $50 million from the "I Feel Good" Trust is not positive. Denying the Due Process rights of the heirs from whom copyright termination cooperation can be acquired most efficiently, and who are not contesting the Estate Plan, is not positive.

The orders are appealable to correct these fundamental problems.

**12. Failure to Notify Beneficiaries Whose Education Funds are Withheld By Bauknight Supports Immediate Appeal**

Three now-adult beneficiaries of the 2000 Trust – Lindsey Brown, Janise Brown, and Jason Brown - have never been made parties to any James Brown Aiken case. Bauknight knew they were beneficiaries. As to Lindsey and Janise, Bauknight knew their father Daryl had fired Levenson and launched a campaign to save James Brown's estate plan. Bauknight knew Lindsey and Janise needed their $285,000 education benefits, and their was no reason not to pay them .

Bauknight has refused to pay these education benefits. And Bauknight did not serve them with Petitions which materially and finally determine their right to ask the

Court to appoint a fiduciary who will follow Brown's Will and 2000 Trust and pay for their education.

The orders in this appeal are final and adverse to them. But they have not been given Due Process notice of the existence of the case or a right to protect themselves.

**13. The Failure to Serve the Orders on Interested Persons Violated Due Process**

The Due Process Rights of real heirs of James Brown have been repeatedly violated since May 8, 2013 in ways that may damage them and their children with respect to their rights as Brown's heirs under the Federal Copyright Act. And they don't even know it.

Appellant, an experienced probate practitioner, can barely ferret out the orders which Bauknight refuses to send. The October 25 Order denying Appellant's Motion to Alter or Amend was not provided until she saw it listed in public records. Appellant found the October 10 Judge Roe Order almost accidentally two months later on December 13, 2013.

In light of the June 13 Orders, immediate appeal is the only appropriate method to address these repeated Due Process and statutory violations.

**14. The Incorrect Finding that All Interested Parties Were Notified is Material**

Page 14 of the October 1 Order, as a Conclusion of Law, finds:

> All of the interested parties have been notified of the request for applications to serve as Personal Representative of the Estate and Trustee of the Trust, and have been given an opportunity to nominate a candidate and oppose the applications filed by the Applicants.

Section 62 -1- 201 (20 ) of the Probate Code defines Interested Persons:

..(20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

More than half of the Interested Persons entitled to be served, respond, and then be given notice of a hearing to determine whether Bauknight and Sojourner were appointed in accordance with James Brown's Will and 2000 Trust had no notice of the petitions and no opportunity to be heard. There is no basis for the material finding to the contrary in the Orders.

**Conclusion**

For the reasons set out herein, the Orders which are the subject of this appeal are immediately appealable and the appeal should proceed.

Respectfully submitted,

Adele Pope #4501

Adele J. Pope
Attorney for Appellants
1228 Walnut Street
Newberry, South Carolina 29018
803-413-0753
adele@popelawfirm.com

December 17, 2013