

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC 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

REPLY TO RETURN OF RUSSELL L. BAUKNIGHT

Appellant responds to the Letter/Return of Russell L. Bauknight ("Bauknight") dated December 23, 2013, received December 29, 2013, to her Memorandum Related to Appealability.

Appellant respectfully asserts that her Memorandum is accurate. It confirms her standing and the appealability of the relevant orders. It confirms that those orders continue the injunction of the now-appealed June 13, 2013 Orders of the Honorable Doyet A. Early, III and the Honorable Liz Godard. It confirms that the appeal should proceed. The orders make permanent findings which expose the \$91 million "I Feel Good" Trust to the second dismembering by persons for whom Bauknight serves as agent -- Tommie Rae Hynie, Louis Levenson, Esq. and Forlando/Terry Brown. The intention to carry out that dismemberment was announced in May 2013, just weeks after the *Wilson v. Dallas* decision.

Appellant submits that many of the claims in the Letter/Return simply are not supported in the 7-year record of more than 20 James Brown cases. Certain specific objections follow.

**Bauknight Does Not Speak for Sojourner, AG Wilson or "Others"
who Support the "I Feel Good" Trust**

Sojourner speaks for himself. Even under the *ex parte* Order which appointed him SA and the ST order stemming from a petition never served on anyone, David Sojourner, Esq. ("Sojourner") is said to be independent of Bauknight. Yet Bauknight purports to reject for Sojourner the *pro bono publico* assistance Appellant has offered him and anyone else working to protect the "I Feel Good" Trust since May 8, 2013.

There are indications he might feel differently, including:

1. Sojourner recently inquired of Appellant about the Peeples DNA Protocol which has been used by all fiduciaries except Bauknight to protect the Estate.
2. Sojourner recently requested a copy of the 2011 Smith/Pope draft article "Private Foundations, Copyright Heirs, and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't ..." which describes how the 2008 settlement proposed to cause an unnecessary loss of \$50+ million to the "I Feel Good" Trust. [The loss was stopped by the *Wilson v. Dallas* decision.]
3. "Private Foundations..." explains how important completing the official Peeples DNA Protocol was – and is – to the protection for the "I Feel Good" Trust's royalties to more than 800 songs.
4. Appellant – one of a handful of people in the State who has examined the relationship between the Federal Copyright Act Termination provisions and state probate law –has offered her time and service *pro bono publico*.
5. Appellant and Sojourner enjoyed mutual respect for years as specialists in Estate Planning, Probate and Trust law and ACTEC members.
6. Sojourner may believe it troublesome to embark on the task of protecting the "I Feel Good" Trust armed only with a *ex parte* SA Order issued without a hearing and a ST appointment issued 2 months after the filing of a petition that was never served on anyone; a hearing that was not noticed to the "necessary parties" who were not identified; and where anyone who did find his way into the "hearing" was not allowed to ask a single question of him or Bauknight.
7. There is reason to believe that Sojourner – if properly appointed and adequately independent from Bauknight – would welcome the *pro bono publico* help of Appellant and other "others " who support the 2000 Will and 1999 backup Will of James Brown, both of which give Brown's \$100 million music empire to the "I Feel Good"Foundation.

Bauknight does not speak for AG Wilson. Bauknight and attorney Kenneth

Wingate, Esq. – while both served as agents for Hynie and her son – claimed from May 19, 2010 until May 2013 that Wingate was the attorney for the State of South Carolina and its attorney general (the "State/AG") and that Bauknight was the agent of the State/AG in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). Although Wingate/Bauknight continue their bitter 2 ½- year fight to prevent FOIA requests in

three FOIA suits – two involving Appellant – each day provides new revelations, including:

- a. Bauknight paid Wingate \$563,000 in 2012 which he concealed from the courts and AG Wilson. This was in addition to the 40% contingency contract.
- b. Wingate/Bauknight had no authority to “settle” with Buchanan on behalf of the State/AG, or extract releases for Hynie and her son with Estate funds.
- c. The State/AG never authorized Wingate to file suit against Buchanan and Appellant in the name of the state, or Bauknight to be its agent.

AG Wilson has withdrawn from the Aiken Cases and asked to be dropped as a party to the Wingate Suit. His letter dated December 23, 2013 in the FOIA matters, attached as Exhibit A, suggests that it may take some time to sort out what the State/AG did or did not authorize Bauknight to do in the past.

What is known now is Bauknight – not the AG or Sojourner – is the only person objecting to the appealability of the orders.

Bauknight Speaks for Challengers to the Estate Plan

Bauknight does speak today as agent for non-heirs and others challenging the estate plan. The Court is asked to take judicial notice that Bauknight is actively involved as the agent for Hynie, her son and others with announced intention to destroy the estate plan and retake the “I Feel Good” Trust. As a result, the Estate/2000 Trust is involved in 3 ongoing FOIA suits where he is trying to prevent release of public documents which will expose the weakness of Hynie claim, the Wingate Agreements and his own less-than \$4.7 million “appraisal” of Brown’s \$100 million music empire.

Bauknight's Interpretation of the *Wilson v. Dallas* Decision.

Bauknight claims that "[i]n *Wilson v. Dallas*, the Supreme Court unequivocally held that Mrs. Pope cannot be involved in any future Estate and Trust matters."

Appellant does not believe the Supreme Court's *voiding* of Bauknight's appointment and affirming the decision of the circuit court to replace Buchanan and Appellant deprived either of anything other than the right to continue as PR/Trustees. Buchanan and Pope did not lose all other rights under the Constitution, Probate Code, Trust Code and general laws, including:

1. The right to serve *pro bono publico* – as Appellant has done since May 8, 2013 -- to assist anyone who is working to enforce the "I Feel Good" Trust;
2. The right to seek special status to enforce the "I Feel Good" Trust as an "other" under the S.C. Trust Code;
3. The right as a creditor under the Probate Code to seek alternate probate of the 1999 Will;
4. The right as an attorney to represent any heir, beneficiary, devisee or other person in a James Brown proceeding where the service is not contrary to their prior fiduciary duty;
5. The right to serve – again, as Appellant did in 2009 – as an expert on any estate, trust and/or probate issues related to the Estate, Wills, 2000 Trust, etc.
6. The right to defend themselves, including in pursuit of counterclaims and offset against Forlando Brown's share of the Estate and 2000 Trust, in the January 2, 2008 suit Forlando brought and pursued for 4 years to enjoin the 2000 Trust from taking any action until David Cannon and Albert Dallas were returned as trustees. [Trial likely in 2014].
7. The right to defend themselves, including in pursuit of counterclaims and offset against Bauknight and/or any estate/2000 Trust beneficiary, Hynie and her son in the Wingate Suit. [Wingate is seeking relief from default as to counterclaims.]
8. The right to negotiate with the State/AG over matters raised by the Wingate/

Bauknight Suit brought in the name of the State/AG and in which Wingate/Bauknight claimed for 3 years to be acting for the State/AG.

9. The right to defend themselves against the false, career-threatening claim of the Estate, through Bauknight, that that they committed the federal felony of overstating James Brown's music empire to the IRS by \$79 million on a sworn Estate Tax Return for an improper purpose where the valuation was correct and consistent with a formula presented to both the Court and Attorney General.

10. The rights to serve as *pro bono publico* GAL for incarcerated son Michael – or any other claimed heir not challenging the estate plan.

11. The right to seek public documents under the S. C. Freedom of Information Act ("FOIA") without interference by Bauknight and the Legacy Trust.

12. The right, as creditor and under "other" status to challenge Bauknight's payment of \$563,000 of Estate Funds to Wingate.

The Orders as a Continuation of the Injunction

Bauknight filed a Petition for Formal Probate on July 29, 2013. It contained a summons which was directed to "All Necessary Parties." Those parties should have included Brown's dozen claimed children and a GAL for the "Doe Defendants." Among them should have been three for whom Appellant has asked to serve as *pro bono publico* GAL – because it will help them and help the "I Feel Good" Trust. It should have included the devisees and beneficiaries under the 2000 and 1999 estate plans. It did not.

A month earlier most supporters of Brown's two estate plans had been enjoined by the June 13 Orders from participation in most Aiken cases. A rehearing was July 9.

35 days later – on September 4 – a "hearing" was held on Bauknight's petition. The same "necessary" parties who were not served with the summons and petition were also not notified of the "hearing." Not a single question was allowed to be asked

of Bauknight by anyone attending. Nobody question was raised that he had not accounted for 20 months. Nobody raised that he had paid \$563,000 to Wingate. Nobody knew about the suit or the hearing.

Appellant knew only because she had been enjoined from participating.

It is not surprising that Appellant is the only person to file an appeal of the orders.

There is no Split Among the Heirs About Whether the Estate Plan Was Valid

Mr. Bauknight claims there is a split among the "Heirs" about whether the estate plan "was validly enacted, or fraudulently procured." A correct statement is: **All** heirs and claimed heirs who ever challenged the Estate Plan have now admitted in filed documents that they spoke to Brown during the last 3 years of his life and that the creation of a charitable trust for education of needy students was his long held and often-stated desire. The Estate/2000 Trust must hold them to these admissions.

The Truth is also that **most** still want to take the \$91 million "I Feel Good" Foundation, even though there is no basis to do so. The Truth is that Bauknight is actively serving today as their agent and the agent for their lawyers who want \$20+ million.

Hearings in Which Only One Side Participates Threaten "False Narrative."

Although Appellant was enjoined from participating and no heir, devisee or beneficiary was given proper notice of the hearing in which no questions could be asked of Mr. Bauknight, he refers to the "factual findings" in the appealed orders. He says "the court praised Mr. Bauknight's service and articulated specific examples."

Then he says:

The circuit court provided those factual findings so that a reviewing court would have the benefit of those factual findings when confronted with "writing" of Mrs. Pope.

It is troublesome to think – as Bauknight suggests – that there was a plan first to exclude Appellant and then – with no right of anyone to appear and cross examine – to provide praise for Mr. Bauknight "so that a reviewing court would have the benefit of those factual finding when confronted with the "writings" of Mrs. Pope."

These claims become even more troublesome when it is known that the second Sojourner appointment was secured *ex parte* from the Probate Court and delivered to counsel for Bauknight without even a pretense of Due Process.

The Bauknight Appointment is Until the Conclusion of All Estate Litigation

The orders appoint Bauknight until the conclusion of all estate litigation. That is final. Rights are destroyed now. By then, the "I Feel Good" Trust may be destroyed again.

Conclusion

The Orders which are the subject of this appeal continue, without Due Process, the injunction begun June 13, 2013. They threaten to dismember – again -- what should be the State's largest-ever private foundation for scholarships for needy students. They are immediately appealable. This appeal deals with the continuation of an injunction. It involves important constitutional concepts and public policy. The appeal should proceed.

Respectfully submitted,

Adele Pope #4501

Adele J. Pope
Attorney for Appellants
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803-413-0753
adele@popelawfirm.com

December 30, 2013

Exhibit A



ALAN WILSON
ATTORNEY GENERAL

December 20, 2013

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
P.O. Box 1898
Columbia, SC 29202-1898

Re: Pope v. Alan Wilson, Attorney General and Bauknight 2012-CP-40-350

Dear Mr. Silvernail:

I am writing you in response to your letter of December 6, 2013, about this case. The specific FOIA requests that are the subject of that case are the following:

1. The final and all drafts, signed and unsigned, of the James Brown Legacy Trust.
2. All correspondence, email and/or other communications between any member of the Office of the . . . Attorney General and Russell L. Bauknight between August 1, 2010, and May 4, 2011 related to the value of the assets of the Estate of James Brown and / or the James Brown 2000 Irrevocable Trust.

My letter is directed to those requests as presented in the original FOIA letter attached to the Complaint. We have previously responded that we have only unsigned Legacy Trust drafts, and that the Office of the Attorney General has no documents responsive to request 2.

You now make the following assertion and request:

Because the language of the Wingate litigation retention agreement makes clear that the files of Sweeney, Wingate & Barrow are subject to the FOIA and belong to the Attorney General, I ask that you review the Wingate files and produce any responsive document contained therein.

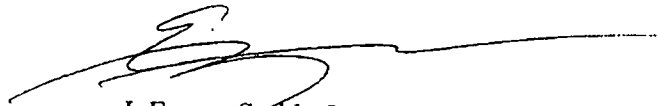
The retention agreement that was recently made public by a federal judge was between Russell Bauknight, and Sweeney, Wingate, and Barrow, P. A. As you know, the Attorney General was not a party to that agreement. *See, Brown v. Pope*, Return & Objection, of Adele Pope, November 29, 2013, p. 4 ("Named Plaintiffs who did not sign Wingate Litigation Retention Agreement authorizing suit include: State/ AG. . . .") (emphasis in original)) Therefore, any documents or

Adam T. Silvernail, Esquire
December 20, 2013
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materials in the files of the Sweeny Wingate firm are not subject to a FOIA request sent to the Office of the Attorney General including the one at issue in the instant case. Further, I note that request 2, *supra*, is directed to correspondence between the OAG and Mr. Bauknight, and as stated above, we have no documents responsive to that request.

Best wishes to you for the holidays.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", with a long horizontal flourish extending to the right.

J. Emory Smith, Jr.
Deputy Solicitor General

cc: Mark V. Gende, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire

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IN RE:

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

PROOF OF SERVICE

I certify that on the 30th day of December, 2013, I have served the REPLY TO RETURN OF RUSSELL L. BAUKNIGHT on Respondents and others as shown below by depositing a copy of same in the United States Mail, postage prepaid, addressed to their attorneys of record as follows:

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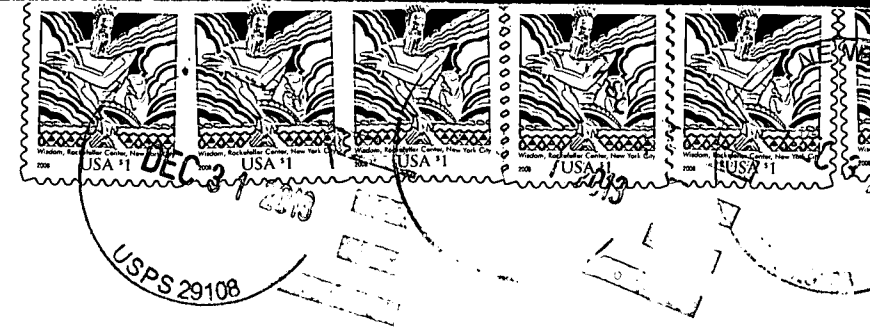
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December 30, 2013

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The Honorable Jenny Abbott Kitchings
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