

THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

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SC Court of Appeals

Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust;
Russell L. Bauknight, Individually, as former *Executor de son tort*, and in every
current and former fiduciary status claimed or held as to the Estate of James
Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

AND:

Robert L. Buchanan, Jr.,.....Interested Party.

INITIAL BRIEF OF APPELLANT ADELE J. POPE

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Apellant, *pro se*

TABLE OF CONTENTS

Table of Authorities iii

Questions Presented..... 1

Statement of the Case 1

Statement of the Facts 22

Argument.....24

 I. Dismissal of most relief sought in the complaint under Rule 12(b) SCRPC should not have been granted because the complaint supports causes of action to remove Bauknight; void his fiduciary appointments; require him to account; appoint an SA/ST for litigation and administration; assess Bauknight individually: void the Disallowance; and grant related relief requested by Appellant. . . 24

 II. The Court's failure to conduct hearings and dismissal of the action to remove Bauknight and grant related relief continue the State's violation of the Due Process and First Amendment rights of Brown's real heirs, Appellant and others, including devisees and beneficiaries, seeking to enforce the "I Feel Good" Trust. 30

 III. In addition to standing as Interested Persons and creditors, Appellant and Buchanan have special interest standing under Section 62-7-405 to enforce the "I Feel Good"Trust and for Appellant to serve as GAL *pro bono publico* for Michael and others, because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule.. . . . 32

Conclusion 33

TABLE OF AUTHORITIES

CASES

<i>Disabato v. S. C. School Assoc. of School Administrators</i> , 404 S.C. 433, 746 S.E.2d 329 (2013)	24
<i>Baird v. Charleston County</i> , 333 S.C. 519, 511 S.E.2d 69 (1999)	25
<i>Stiles v. Onorato</i> , 318 S.C. 297, 457 S.E.2d 601 (1995)	25
<i>Doe v. Marion</i> , 373 S.C. 390, 645 S.E.2d 245 (2007)	25
<i>Wilson v. Dallas</i> , 743 S.E.2d 746 (2013)..2,4,6,7,11,12,14,15,18,19,22,26, 27, 28	
<i>Ex parte Cannon</i> , 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009)	10

STATUTES

S.C. Code Ann. §62-1-201(14)	14
S.C. Code Ann. §62-1-201(23)	33
S.C. Code Ann. §62-1-201(33)	10
S.C. Code Ann. §62-3-108(a)(1)	34
S.C. Code Ann. §62-3-611	29
S.C. Code Ann. §62-7-405	7,13,26,32,33,

RULES

Rule 12(b), <i>South Carolina Rules of Civil Procedure</i>	1,21,24,25
--	------------

OTHER AUTHORITIES

U.S. Const. amend.I.....	1,15,28,30,32
U.S. Const. amend. V	1,25,28,30,32
U.S. Const. amend. XIV § 1	1,25,28,30,32
S.C. Const., art. I, § 3	1,25,28,30,32
Pope, A.J. and Smith, W.J. (2011). <i>Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown “I Feel Good”Trust doesn’t....</i>	
Unpublished manuscript	32
The Aspen Institute (supp. 2013). <i>The artist as philanthropist. strengthening the next generation of artist-endowed foundations</i>	32

QUESTIONS PRESENTED

- I. **Dismissal of most relief sought in the complaint under Rule 12(b) SCRPC should not have been granted because the complaint supports causes of action to remove Bauknight; void his fiduciary appointments; require him to account; appoint an SA/ST for litigation and administration; assess Bauknight individually: void the Disallowance; and grant related relief requested by Appellant.**
- II. **The Court's failure to conduct a hearing and its dismissal of the action to remove Bauknight and grant related relief continue the State's violation of the Due Process and First Amendment rights of Brown's real heirs, Appellant and Others, including devisees and beneficiaries, seeking to enforce the "I Feel Good" Trust.**
- II. **In addition to standing as Interested Persons and creditors, Buchanan and Appellant have special interest standing under Section 62-7-405 to enforce the "I Feel Good" Trust; for Appellant to serve as GAL *pro bono publico* for Michael; to speak for Others others because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule.**

STATEMENT OF THE CASE

Three pending appeals, three FOIA suits and a tort suit where the Attorney General of South Carolina ("State/AG") and the companion of entertainer James Brown share a private lawyer are the legacy of the juggernaut created on August 10, 2008 by a contract between State/AG, Tommie Rae Hynie ("Tommie Rae") and fewer than half of Brown's children, represented by Atlanta attorney Louis Levenson, Esquire.

This is one of the appeals¹.

¹ Appellant appeals an Order dated January 7, 2013 issued under Rule 12(b) SCACR and a Form 4 Order dated January 31, 2014 denying her motion to alter, amend or vacate. [Order 1/31/2014]

That 2008 contract placed the State/AG in control of all of Brown's private property. The AG contracted to remove Robert Buchanan, Jr. and Appellant as Brown's fiduciaries even though he had approved them 11 days earlier. [Ltr. McMaster 7/30/08]

Brown had given his worldwide music empire to his "I Feel Good" Private Foundation to be used solely to education needy students. The Attorney General gave half of the "I Feel Good" Foundation to Tommie Rae and the Levenson clients.

According to the complaint filed June 10, 2013 which is the subject of this appeal, from the \$80 million Brown gave to the "I Feel Good" Trust, the State/AG gave about \$20 million to Tommie Rae. Levenson got about a \$9 million legal fee.

The AG and Tommie Rae assert Tommie Rae got less than \$1.5 million and the "I Feel Good" Trust kept nearly \$3 million. They say Brown's worldwide music empire was worth less than \$4.7 million when he died Christmas Day 2006.

Robert Buchanan, Jr., Appellant and a small team of lawyers required by James Brown's two successive estate plans to vigorously defend against challenges to the estate plan as "an affront to my wishes," did so for five years.²

² The Remittitur in *Wilson v. Dallas* was delivered to the Aiken County Court on May 29, 2013.

When the circuit court approved the AG's 2008 contract, an appeal followed.

In 2009 Buchanan, Appellant, and appellate counsel Tressa Hayes, Esquire, were joined by James B. Richardson, Jr. Richardson served *pro bono publico* as lead appellate counsel for almost four years.

The mission of the small team was to save the "I Feel Good" Trust and the seven \$285,000 education trusts Brown had established for certain designated grandchildren.

Richardson and Hayes were not asked to – nor did they – defend Buchanan and Appellant when the State/AG, Tommie Rae and the AG's appointee, through a private lawyer, sued them for conducting the appeal.

Richardson and Hayes never sought to void 2008 gag orders which Buchanan and Appellant needed – and still need --to defend themselves in the Wingate suit against them.

Richardson and Hayes did not become involved when Tommie Rae and the AG's appointee sought to intervene in three FOIA suit to stop release of public documents. The documents not released included the appraisal the State/AG claimed would prove Brown's worldwide music empire was worth less than \$4.7 million.

That secret appraisal served as the basis for the State/AG's career-threatening claim that Buchanan and Pope had committed the federal felony of intentionally overstating Brown's music empire to the IRS by \$79 million on the

estate tax return in order to get a \$5 million commission. [Ltr. AG]

After destroying Buchanan financially, the juggernaut turned to Appellant³.

On May 8, 2013, at the cost of \$200,000 in legal fees and two careers and reputations, the 2008 contract that would have taken 52 ½% of the "I Feel Good" Trust was voided by the South Carolina Supreme Court. in its decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013).

Under the *Wilson v. Dallas* decision certain matters were remanded to Judge Early, including the appointment of fiduciaries in accordance with Brown's documents. As set out in *Wilson v. Dallas*, Brown's documents require three PR/Trustees.⁴

³ In 2012 the damage to Buchanan's finances from his loyal service to Brown's estate and trust reached a crisis point. Even though Appellant was bearing most of the out-of-pocket cost of the appeal, Buchanan had not been paid the \$500,300 owed him by Brown's estate on May 26, 2009. [Jan. 8 Ord.]

The Honorable Doyet A. Early, III ("Judge Early") had approved that amount, and about \$1.4 million to Appellant under an unappealed 2008 Order which also gave them interest at the legal rate until the amounts were paid. [Jan. 8 Ord.] Before the Estate would pay Buchanan his partial commission, the private attorney and the AG's appointee – wielding the mighty power of the State, and without notifying the Supreme Court – required Buchanan to agree not to file a Petition for Rehearing when the Supreme Court ruled. [Compl. Wing. Mot. Compel Settlement]

That troublesome "settlement", in which the State's legal officer charged with protecting charities forces a trustee in advance to refrain from action that may be necessary to save the charity, is now being challenged as a violation of public policy in Richland County Case 2010-CP-40-4900 (the "Wingate Suit") [Compl. Buchanan ltr.]

4

The November 20, 2007 appointment conferred on Buchanan and Pope all authority and responsibility as if originally appointed by James Brown. With knowledge of the Attorney General, however, they were exempted from the

Three days later, without notice or hearing, Judge Early issued two orders and the Honorable Liz Godard another (the "June 13 Orders"). The extraordinary June 13 Orders removed Appellant and most other supporters of Brown's estate plan from the James Brown Aiken cases.

The June 13 Orders directed the Clerk of Court to remove Appellant's unfiled motions from the public record and not to accept new ones. They set off a series of orders which again threaten the "I Feel Good" Trust.⁵

Bauknight replaced Robert Buchanan, Jr. and Pope as PR/Trustees under the estate plan of entertainer James Brown on May 26, 2009. His appointment

requirement to name a third trustee. Between May 28 and the announcement on August 12, 2008 that a settlement had been reached at an August 10 mediation with Sr. Assistant AG Jones, Louis Levenson, Esq., Tommie Rae and her counsel, Buchanan and Pope were working with AG McMaster to appoint a third trustee the AG suggested. [Emails, Rosen, Jones]. Buchanan and Pope were also working to make one of the three seat a rotating seat for descendants of James Brown.

Under a technical amendment to the "I Feel Good" Trust submitted by Buchanan and Pope to the IRS, and approved, during the determination process, "I Feel Good" Foundation's trustees share ½ of 1% of the value of the Foundation annually. All of James Brown's documents provide for "reasonable compensation."

⁵ The Order of January 17 disallows all relief sought in the Complaint other than "Plaintiff's request for payment of her claim in accordance with the Petition for Allowance of Claim."

A Petition for Allowance on Probate Court Form #373 PC was attached to and made a part of the Complaint as Exhibit 1. It states in part that Appellant seeks:

All amounts Requested in Original Claim and All Relief Requested in Complaint of Which this Petition for Allowance is an Exhibit, all of which is incorporated herein by Reference [Comp. Ex. 1]

was declared void by the *Wilson v. Dallas* decision.

Between May 9 and May 13, 2013 Bauknight secured *ex parte* orders from the Honorable Sue H. Roe, Probate Judge (the "Probate Court"), and Judge Early appointing him special administrator ("SA") and special trustee ("ST").

On May 12, 2013 the law firm of Kenneth Wingate, Esquire ("Wingate"), counsel for the State/AG6, Tommie Rae and Bauknight in numerous capacities in the Wingate Suit, wrote the Honorable L. Casey Manning referencing the first *Wilson v. Dallas* decision which was replaced on May 8 as follows:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

...Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that [the Wingate/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.] [Ltr. Gende 5/12/13]

The referenced February 27, 2013 footnote 29 had said:

29. Although Brown's music rights have been widely reported as being worth up to \$100 million or more at death, Bauknight filed

⁶ Since the first *Wilson v. Dallas* decision, the Wingate Litigation Agreement was released as part of Forlando Brown's federal suit. It shows AG McMaster did not sign the Wingate Agreement. Nor did most of the approximately 15 Plaintiffs. The signatories on the Wingate Agreement, which provides for a 40% contingency for non-charitable plaintiffs, was signed by Bauknight, Levenson, counsel for Tommie Rae and David Bell, Esq. ("Bell") Bell represents Forlando and Terry Brown ("Terry").

documents with the Internal Revenue Service indicating the value of Brown's music empire was only a net of \$4.7 million. The \$4.7 million valuation has been questioned based on the fact that it came at a time when one of Brown's sons, Terry Brown, had joined the compromise upon being given a first right of refusal to purchase the estate assets.

Further, the AG, with Bauknight's knowledge and cooperation, allegedly entered into contingency-fee agreements with outside counsel, Kenneth Wingate to sue Appellant Pope on behalf of the State, Bauknight and others while representing private plaintiffs in the suit. The suit sought damages to Brown's estate allegedly arising during Pope's appointment. Despite FOIA requests, the AG has refused to publicly release all of the documents pertaining to this purported arrangement. These matters should be considered by the circuit court in the first instance and any fees found to be inappropriately incurred should be disgorged and returned to the trust in light of our finding that the compromise is void and the AG has exceeded his authority by, among other things, effectively controlling the charitable trust through the appointment of Bauknight, who serves at the AG's pleasure. [Emphasis supplied]

In May Judge Early sent an email saying that suggestions related to the *Wilson v. Dallas* remand were required to be made by proper motion form, filed by May 25.

Pope filed three motions setting out procedural proposals for the James Brown litigation pending in three counties and federal court. [Mots. (3), Pope]

No other motions were filed.

Among Appellant's requests was to present Brown's 1999 Will for alternate probate under her authority as both a creditor and Other under Section 62-7-405 of the S.C. Trust Code ("SCTC") as a backup to the 2000 estate plan⁷.

⁷ The 1999 Will, like the 2000 estate plan, leaves Brown's entire music empire to the "I Feel Good" Trust.

Since May 2013 Appellant has worked *pro bono publico* to help see that the "I Feel Good" Trust is not dismembered again. Consistent with that, she has offered to serve *pro bono publico* as guardian ad litem ("GAL") for Brown's incarcerated son Michael Deon Brown ("Michael") and other claimed heirs seeking DNA testing under the Peeples DNA Protocol. None contested the estate plan⁸

Judge Early conducted a status conference on May 29. No argument was taken. No record was made of the status conference.

At the status conference Levenson and counsel for Tommie Rae asked that Judge Early go *in camera* and hear why the settlement which took 52 ½% of the assets of Brown's "I Feel Good" Trust should be reinstated.

AG Wilson announced that he was withdrawing from the Aiken Cases.

After the status conference, the Disallowance was delivered to Pope.

The Disallowance made no mention of the approximately \$1.4 million awarded Appellant by Order of Judge Early as partial PR/Trustee commissions for her service and that of her staff through May 26, 2009.⁹

The Disallowance did not specifically mention the \$47,000, with interest

⁸ When the AG's Settlement was reached it interrupted the heirs determination that was being completed under an Order of dated March 8, 2008 in the suit for administration in intestacy filed by Louis Levenson, Esq. ("Levenson") on December 26, 2007 (the "Intestacy Suit").

⁹ The Complaint asserts that this amount was an allowed claim; was approved by Order of Judge Early; and has been earning interest at 8 ¾% since 2009. [Compl., Joint Claim]

from 2009, due and unpaid on Pope's 2007 SA fee under Judge Early's Order.[Claim. Jan. 8 Order]. It did say of the SA fee:

You petitioned the court and obtained an Order ...allowing payment to yourself and Mr. Buchanan of \$317,000, plus costs. This payment may now be subject to disgorgement pursuant to the Supreme Court's opinion in this matter dated May 8, 2013.

The Disallowance purports to disallow Buchanan's right to seek a \$2.1 million commission for his work from November 2007 until May 2013 as set out in the joint claim filed by Buchanan and Pope in July 2009 (the "Joint Claim"). [Jt. Claim]

Of the 100+-page Joint Claim, affidavit and documentation, the Disallowance says:

There is no way that \$4,993,151.00 in fees and commissions could have been legitimately earned. The affidavits you submitted to substantiate your claim describing the hours you spent in these roles confirm this. Further, your claim is based on an overinflated, unsubstantiated and self-serving valuation of the probate estate as of the date of Mr. Brown's death.

The Disallowance says:

This claim is disallowed on the basis that the requested fees and commissions were not earned and therefore are not due and owing, and further that the Estate is entitled to an offset for any damages suffered as a result of any maladministration during your service as Co-Personal Representative and Co-Trustee.

The Disallowance asserts that Buchanan and Appellant only served the

Estate/2000 Trust as PR/Trustees for approximately 18 months.¹⁰

The Disallowance jeopardizes Appellant's and Buchanan's claim for damages and offset against the Estate/2000 Trust shares of Brown's grandson Forlando Brown now pending in federal district court.¹¹

¹⁰ The Complaint asserts Appellant and Buchanan served the Estate and 2000 Trust as fiduciaries for more than 5 years. The first period as Court-appointed PR/Trustee service began on November 20, 2007. From May 26, 2009 until May 8, 2013, during the void appointment of Bauknight, the Complaint asserts Buchanan and Appellant met the definition for PRs under South Carolina Probate Code ("SCPC") Section 62-1-201(33).

¹¹. Forlando brought a frivolous suit against the 2000 Trust, Buchanan and Appellant on January 2, 2008 (the "Forlando Federal Suit"). Forlando sought to enjoin the 2000 Trust from taking any action until David Cannon and his co-trustees were reinstated. See *ex Parte Cannon*, 385 S.C. 643, 685 S.E.2d 814 (Ct. App. 2009).

Claiming to be an impoverished student, but actually owning 39% of an entity seeking to purchase Brown's music empire, Forlando pursued his claims from 2008 until April 2012. The injunction would have paralyzed the 2000 Trust, including preventing it from conducting the *Wilson v. Dallas* appeal.

In 2011 Forlando, who opposed the AG's settlement, secretly obtained the interest of his father Terry in the Brown's estate. The transaction was facilitated both by AG McMaster and AG Wilson.

In the January 2011 assignment Forlando was given Terry's right of first refusal to buy Brown's music empire (the "ROFR"). A contemporaneous amendment to the Legacy Trust/Settlement Entity was signed by AG McMaster, Terry, Levenson and counsel for Tommie Rae. The amendment was prepared by Bauknight's counsel.

The 2011 assignment and amendment allowed Forlando and Bauknight to work on Forlando's selection of a potential purchaser for the assets based on rights given in the AG's Settlement, while telling the federal court he opposed the AG's Settlement.

From 2011 until today Bauknight has fought release under the South Carolina Freedom of Information Act ("FOIA") of the January 2011 Legacy Trust

The Disallowance also threatened Appellant's counterclaims for damages and offset against the Estate/2000 Trust and others in the Wingate Suit.

The Wingate Suit asserts Buchanan and Pope breached their fiduciary duty and committed various breaches of trust , including opposing the AG's Settlement, conducting the *Wilson v. Dallas* appeal; conducting the 2008 Christie's sale; and not accepting a \$100 million 2007 offer to purchase Brown's assets.

The Disallowance also threatens recovery from Bauknight, the Estate/2000 Trust and others for Bauknight's continuing attempts to intevene in two FOIA suits filed in 2011 to prevent release of public documents.

The Disallowance purports to deny payment of approximately \$85,000 due Hayes since 2013. The amount is payable under contract with the

Amendment.

The Terry/Forlando assignment was also not disclosed in the Wingate Suit.

In April 2012 Forlando's federal complaint was dismissed by the Honorable William O. Bertelsman. Forlando told Judge Bertelsman that he had no assets and no expectation of assets from the James Brown litigation unless Terry were deceased.

In April 2013 Judge Bertelsman was advised of the transfer from Terry to Forlando. Buchanan's and Pope's counterclaims for damages and offset of Forlando's Estate/2000 Trust interests are pending.

The January 2008 suit by Forlando asserting Buchanan and Pope would not protect the 2000 Trust caused both of them to incur substantial increases for insurance coverage. When Buchanan and Pope were sued in 2010 by Bauknight, Terry and Tommie Rae for conducting the *Wilson v. Dallas* appeal, Buchanan's and Pope's insurance was terminated and a suit over coverage filed against each of them.[Ltr.Buchanan to Jg. Early, 7/2013, Rep. Pope 7/13]

Estate/2000 Trust for legal services and costs for her service in three appellate matters. [Joint Claim]

Hayes' work included assisting *pro bono publico* lead counsel Richardson in the *Wilson v. Dallas* appeal. It also included briefing and arguing the first appeal of resigned original trustee David Cannon, and briefing the appeal of resigned trustee Albert Dallas. [Joint Claim]

The Disallowance purports to disallow approximately \$110,000 owed James D. Bailey, Esquire under contract with the Estate/2000 Trust. The amount due Bailey had been outstanding since 2009.

Bailey served the Estate/2000 Trust for approximately 18 months in multiple litigation matters, including resolving a number of claims cases; defending the estate plan; and defending against the settlement forged by AG McMaster on August 10, 2008 for a year (the "AG's Settlement").

The Disallowance purports to disallow or threaten disgorgement of the under- \$5,000 fee of expert Harley Ruff, Esquire.

Ruff testified as an expert at the 2009 hearings related to the AG's Settlement. Ruff had not represented the Estate/2000 Trust, but was asked to evaluate the settlement documents in relation to the filed estate tax return. Ruff testified that the form of the Legacy Trust/Settlement Entity created by AG McMaster, with the ROFR given to Terry, threatened the "I Feel Good" Trust's status as private foundation. He calculated that the AG's Settlement would generate millions of dollars in estate taxes; and that the IRS would not be bound

by a “stipulation” that Tommie Rae was Brown’s spouse.

The Disallowance asserts that Buchanan and Pope’s valuation of Brown’s assets was “overinflated, unsubstantiated and self-serving.”

On May 29 Bauknight’s counsel could not say what authority Bauknight had to serve the Disallowance, and did not give Appellant a copy of the *ex parte* SA appointment.

On May 22, 2013 Bauknight prepared an accounting for the estate for 2012. [Accounting]. The accounting shows Bauknight paid \$563,000 from the Estate to Wingate in late 2012 in addition to Wingate’s 40% contingency. Bauknight did not file the accounting until October.

On June 10, 2013 Pope filed the Complaint. It was accompanied by a motion for emergency hearing and an affidavit. [Mot. Aff.]

No hearing was held until the December 3 hearing on Defendants’ motions to dismiss and for sanctions against Pope.

The 63–page Complaint sets out in detail Appellant’s standing to seek the requested relief as a creditor; a claimant with pending counterclaims against the Estate/2000 Trust and Bauknight in other courts; a party with special interest standing under §62-7-405 of the South Carolina Trust Code (“SCTC”); and as an Interested Person. [Comp. p.3].

The relief sought in the Complaint is briefly described as follows:

First Cause of Action: Voiding Appointment, Settlement and Notice and Granting Claims:

The Complaint seeks to void the *ex parte* fiduciary appointments secured

by Bauknight after *Wilson v. Dallas* voided his fiduciary appointments and before the remittitur was handed down; void the Disallowance [Comp pp. 68-70]; void a purported "settlement" with Buchanan in the Wingate Suit in which Wingate and Bauknight claim to act on behalf of the State/AG while also serving as agents for non-residents Tommie Rae, her son and others. [Comp. pp .48, 58-60]

The Complaint asserts that Bauknight's pre-remittitur *ex parte* appointments are void, and, therefore, the Disallowance issued without authority is also void. [Comp.]

Second Cause of Action: Removal and Accounting of Bauknight;
Appointment of SA/ST for Litigation of behalf of Will/2000
Trust & SA/ST for Management under Will/2000 Trust

The Complaint reviews in detail the service of Appellant and Buchanan, with their small team, which helped the Supreme Court restore to Brown's "I Feel Good" Foundation \$50 million the AG's Settlement took from it. [Comp. 11-48] The Complaint then sets out in detail that Bauknight should be removed from any fiduciary positions with respect to Brown's Estate/2000 Trust because less than a month after the *Wilson v. Dallas* decision he is working to help non-heirs, and non-devisees Tommie Rae and her son, with others, to *again* destroy James Brown's plan to leave his worldwide music empire for education of needy students in the "I Feel Good" Trust. The Complaint asserts they do so by fabrications about:

- 1 The status of James Brown's heirs;
2. The value of James Brown's now \$100 million worldwide music empire, which Terry (for whom Brown serves as agent in the Wingate Suit) had a right to buy under the voided settlement and claimed was worth less than \$4.7 million. [See SCPC § 62-1-201(14).]
3. The Federal Copyright Act and their claimed termination rights under the Act.
4. Their importance and Bauknight's – rather than the recognition that Brown's \$100 Million music empire was the result of James Brown's genius and hard work. [Comp., pp 2,49-50, , 60-61.]

The Complaint asserts that Russell has tried to keep in place 2008 gag orders related to the widely-known public contents of Tommie Rae's handwritten notes (the "Hynie 'Dairy' Gag Orders"), even though preventing discussion of the the "diary" damages the "I Feel Good" Trust . [Tommie Rae's attorney has asserted that if Pope and the scores of others who are gagged are allowed to speak about the widely- the known contents of the "diary," discussed for months before the gag orders, it will do irreparable harm to her claims against Brown's estate.¹²]

The Complaint asserts Bauknight has made false allegations about the Christie's sale, which was properly conducted [pp. 7-8]

The Complaint asserts Bauknight, while speaking under color of State law – purporting to be acting "on behalf of" the State/AG – has falsely accused Buchanan of the felony of intentionally overstating Brown's music empire to the IRS by \$79 million for the improper purpose of obtaining a \$5 million commission. It asserts he has done so to help Tommie Rae, her son and other Will/2000 Trust contestants, and to ruin Buchanan's and Pope's careers, causing them to drop the *Wilson v. Dallas* appeal.

The Complaint asserts Bauknight has not properly accounted, his last accounting being for 2011.

¹² A copy of the "diary" was sent to AG McMaster by former PR/Trustee Albert Dallas after the Hynie "diary" Gag Orders directed that all copies be sent to the Clerk of Court. AG Wilson refuses to release the "diary" and a widely-disseminated typed copy under FOIA.

In 2012 AG Wilson and Bauknight, through Wingate, issued a subpoena for the sources and notes of journalist Sue Summer after she reported an interview with a "longtime friend" revealing the "diary" contents. Bauknight and AG Wilson sent Appellant a companion subpoena, apparently seeking to link the two. Pope confirmed that she had never breached the Gag Orders, even though she believed them to be an unconstitutional prior restraint on her first amendment rights [Summer Art. Tr. Hg. 5/22/12].

Both Forlando and Dallas has since spoken openly about the "diary" contents. Appellant has not.

In 2012 AG Wilson and Bauknight supported and joined in vitriolic filings by Tommie Rae's counsel in the lower court and Supreme Court to prevent un gagging Pope. [Mot., Ret., Comp.]

The Complaint asserts that an SA/ST is needed to extricate the Estate/2000 Trust from Bauknight's continued service to Tommie Rae, her son and other Will contestants in 3 FOIA Suits and the Wingate Suit; and because his secret alliance with Forlando damages the 2000 Trust in the Forlando Federal Suit.[Comp. pp. 56 - 60]

The Complaint states that an SA/ST is needed to correct the estate tax return and correct other failures of Bauknight .[Comp., p. 55-56, 49-50]

The Complaint states that Bauknight has condoned and helped cover up the fraud Terry/Forlando Brown committed on the courts. [Compl. Pp. 51-54].

The Complaint asserts other wrongdoing and damage Bauknight has caused the Estate and 2000 Trust, Buchanan and Appellant [Comp. pp. 17-18, 60-61.]

The Complaint asserts that Judge Early's Order of April 8, 2008 directed that any interested person may seek the appointment of one or more SA/STs at any time.

The Complaint asserts Buchanan and Pope's \$84 million value of Brown's music empire on the estate tax return was based on a formula for valuing Brown's rights to more than 800 songs (the "Royalties") and his right to exploit his image and persona (the "Publicity Rights") on the estate tax return. The valuation formula was presented to the Court and AG in 2007 before they became PR/Trustees, and no objection was made to it by anyone. [Comp. pp. 55-56.]¹³

The Complaint asserts Bauknight improperly used estate funds for the benefit of Tommie Rae and her son, neither of whom is an heir or devisee. [Comp. pp. 58-60]

The Complaint asserts Bauknight concealed the existence of Brown's known, DNA-proven children and other children from the courts,

¹³ The formula values the Royalties and Publicity Rights at 12 ½ - 14 times the average of the annual Royalties PLUS ½ Brown's road show revenues.

Brown's Royalties were consistently around \$3 million per year for the 10 years prior to his death. He earned \$18 million in road revenues between 2003 and 2006.

including his daughter Lisa, acknowledged in his divorce settlement from first wife Velma, and incarcerated son Michael, [Comp. pp. 50-51, 60-61] It asserts these misrepresentations damaged the "I Feel Good" Foundation.

The Complaint asserts Bauknight has tried since 2011 to intervene in three FOIA Suits to prevent release of public documents to show that his claimed \$4.7 million value of Brown's music empire was baseless; [Comp. p. 55 -56] Tommie Rae was not Brown's spouse; and that he and Wingate had no authority to sue Buchanan and Pope in the name of the State;

The Complaint asserts Bauknight has worked against the Estate/2000 Trust in other ways. [Comp. pp.48-61]

Third Cause of Action: Leave to Amend After Removal and/or Appointment of SA/ST

The Complaint asserts that because the Disallowance forced Appellant to file suit within 30 days of being served with the Disallowance of the Joint Claim, with Notice of impending bar, Plaintiff should be granted leave to amend after an SA/St is appointed. [Comp. pp. 61-62, 63]

Fourth Cause of Action: Attorneys' Fees

The Complaint asserts that Appellant's action was necessary to protect the proper administration of Brown's estate under the Will and 2000 Trust, and that Bauknight, individually, should pay the costs of the notice, his own defense and the defense of Brown's estate because the Disallowance was made in bad faith to promote Tommie Rae's and his own interests.

Prayer:

The prayer sets out with specificity the relief requested [Comp. p. 62-3]

On June 13, 2013, without notice or hearing Judge Early issued two orders and the Honorable Liz Godard issued another (the June 13 Orders). The June 13 Orders purport to enjoin Pope and Buchanan, and others, from participating in any case related to the James Brown Estate and Trust. They

direct the Clerk of Court to remove Pope's unheard motions from the public record, and not to accept further filings by her. [Ord. dtd. 6/13/13.]

On June 24 the clerk of court, on instructions from Judge Early, declined to file Pope's motion to void, alter or amend the June 13 Orders. She said Judge Early instructed her to accept filings of Pope only in the case filed by Pope on June 10.

When Pope explained the importance of filing the motion in the correct cases, the clerk excused herself to make a call; returned; and allowed the filing.

Since June 13, 2013 Appellant has been enjoined from participating in the *Wilson v. Dallas* remand matters.

On July 8 Bauknight's counsel sent an *ex parte* communication to Judge Early which, according to counsel, contains an ethics opinion asserting that Bauknight and his counsel have no conflict in defending the estate plan of James Brown.

Judge Early and Bauknight have declined to release the *ex parte* email and opinion.

On July 9 Judge Early heard Appellant's motion for reconsideration of the June 13 Orders.

On July 10 the motion for reconsideration of the June 13 Orders was denied in a Form 4 Order. The June 13 Orders are the subject of a separate pending appeal. [Notice]

On July 29, 2013 Bauknight filed a summons and petition for appointment

of himself as PR/Trustee. The Summons was directed to "ALL NECESSARY PARTIES." No parties were named.

After a "hearing" where no examination was allowed, and based on a petition not served on a single heir, devisee or beneficiary, Bauknight was appointed fiduciary under an October 1 order. Brown's estate plan requires three Pr/Trustees. [*Wilson v. Dallas*]

The order came after Bauknight advised the Court he would not serve as PR/Trustee unless he could serve alone. He was appointed before he revealed the 40% contingency he had contracted to pay Wingate. He was appointed before he revealed the \$563,000 2012 payment to Wingate. He was appointed when he had not accounted for 18 months.

On October 10 the Probate Court issued an *ex parte* order appointing as limited SA a person nominated by Bauknight in a petition that was not served on anyone (the "Bauknight Appointee"). The Probate Court hand delivered the Bauknight Appointee Order to an attorney for Bauknight to be served on all Interested Parties. It was not served on anyone.

Since October 2013 Bauknight and the Bauknight Appointee have protected Tommie Rae and denied service, notice and all other rights to incarcerated son Michael and DNA-proven daughters acknowledged by the Estate in 2007.

On December 3 Judge Early heard Bauknight's and the Estate/2000 Trust's (Bauknight) motions to dismiss the Complaint and for sanctions.

Since the June 13 Orders Judge Early has refused to set a hearing requested by Pope on her 2012 motion (and a later motion) to void the 2008 Hynie "diary" Gag Orders.

Judge Early has refused to appoint Appellant *pro bono publico* GAL for Michael, James Curtis and DOE Defendants in the Levenson Intestacy Suit. He has done so despite his May 8, 2008 Order that a determination of intestate heirs should be made in the Levenson Intestacy Suit despite the Estate/2000 Trust's position that Brown had two valid estate plans.

The heirs determination is necessary to protect Brown's Royalties. Only *half* of the heirs are necessary to secure termination rights agreement for the "I Feel Good" Trust for decades. [Private Fdns. Pooh Poohing, Philanthropy] They should be the least expensive half – not those demanding \$25 million from a music empire they have told the Supreme Court is worth \$4.7 million.

On February 7, 2014 Judge Early – with no service on, notice to, or participation of most of Brown's *real* heirs – issued an order which asserts the settling parties are Brown's heirs. [Ord. Feb. 7, 2014]

Once again, Michael (subject to DNA confirmation), Lisa, and DNA-proven and acknowledged daughters La Rhonda, Jeanette and Nicole had no notice of this hearing. La Rhonda had died in December 2013, but her children have the same right she had under the Federal Copyright Act.

Bauknight's Appointee insisted that a hearing on these matters proceed in January despite the death.

James B., who was not born of any marriage or even a claimed marriage -- and who has refused DNA testing under the Peeples DNA Protocol for seven years -- continues through Judge Early's orders since May 8, 2013, to enjoy the special status the State/AG conferred on him in 2008.

Judge Early continues to decline to appoint Appellant GAL for the never-served-but-identified heir Michael, James Curtis and the other DOE Defendants in the Intestacy Suit. He continues to decline to have a hearing on Appellant's application to be appointed.

Bauknight continues to support this damage both to Appellant and to the "I Feel Good" Trust.

Judge Early continues to declined to conduct a hearing to declare void or expired three 2008 gag orders. Bauknight continues to protect Tommie Rae by not seeking a hearing or supporting the ungagging of dozens who know she is not Brown's spouse. [SEE Ltr. of Marc Toberoff to Warner Chappell protesting attempted exercise by Tommie Rae and her son of termination rights on grounds that she is not wife and her son not a son. (Toberoff Ltr.).

On January 7, 2014 Judge Early granted the relief requested in the motions to dismiss to the extent of all claims set forth in the Complaint except "Plaintiff's request for payment of her claim in accordance with the Petition for Allowance of Claim."

On February 4, 2014 Judge Early issued a Form 4 Order denying reconsideration of the Rule 12(b) dismissal. This appeal followed.

STATEMENT OF FACTS¹⁴

The complaint shows that James Brown died December 25, 2006 with no wife; a \$100 million music empire; and two estate plans a year apart that left his worldwide music empire to his "I Feel Good" private foundation.

Fifteen years ago, February 24, 1999, Brown made a tape as he was planning to execute the documents which would set up the "I Feel Good" Trust. He spoke of leaving school in the seventh grade. He made clear he intended to give back to help educate needy students of all races. Multiple tapes were preserved, making it "subject to be checked for any hanky panky." [Voice Tape, 2/24/99]

Brown's then executed *two* almost-identical estate plans over two years. Both gave his music empire to the "I Feel Good" Foundation.

Bolstered by two wills, his actions and his own distinctive voice, Brown's estate plan was ironclad.

Buchanan and Pope properly administered the Estate/2000 Trust until replaced. They fulfilled their *required* duty to protect it during the 4-year *Wilson v. Dallas* appeal.

From early 2009 until today, the Complaint shows that Bauknight has served the interests of Tommie Rae and her son. Those interests are directly contrary to the interests of the "I Feel Good" Trust.

Bauknight has done so, the Complaint shows, by false statements to the

¹⁴ Appellant incorporates the Statement of the Case as part of her Statement of Facts.

Court about the value of the assets; the heirs status of Hynie; and the Federal Copyright Act.

With the backing of the State/AG, and with knowledge of their falsity, Bauknight has made the following false claims for more than three years:

1. That Brown's music empire was worth \$4.7 million;
2. That Buchanan and Pope intentionally overstated Brown's assets to the IRS by \$79 million;
3. That Buchanan and Pope were incompetent and damaged the Estate/2000 Trust.
4. That Tommie Rae was Brown's wife and her child Brown's child;
5. That Tommie Rae and her son control the termination rights under the Federal Copyright Act;
6. That LaRhonda, Nicole, Jeanette, Lisa, and Michael are not heirs. Nor is James Curtis. [Curtis DNA Request]

The Complaint asserts that by 2011 Bauknight knew that Tommie Rae was not Brown's wife and the settlement threatened millions of dollars of unnecessary damage to the "I Feel Good" Trust. He knew that the Estate/2000 Trust could secure the "I Feel Good" Trust's royalty income for decades for a fraction of the \$50 million he proposed to take from "I Feel Good" Trust for Tommie Rae and the settling parties.

But Bauknight did not change course either before or after the May 8 decision.

To stop the truth from being known, Bauknight is still trying to intervene in

3 FOIA suits – two filed by Appellant and another by a journalist. He continues to slander Buchanan and Pope. He continues his improper alliance with Forlando.

In short, the Complaint shows that Bauknight abandoned Brown's estate plan in favor of Tommie Rae, her son and the settling parties. He tried to cause tens of millions of dollars damage to the "I Feel Good" Trust. He is still trying.

Between the Complaint and the December 2013 hearing on the motions to dismiss, Bauknight and Bauknight's Appointee secured a series of rulings and improper and *ex parte* orders intended to crush Buchanan and Pope, as well as most of Brown's real heirs and any beneficiaries who support the estate plan. [Ords. 10/1, 10/10]. They are continuing. [Ord. dtd. 2/7/14]

ARGUMENT

- I. **Dismissal of most relief sought in the complaint under Rule 12(b) SCRPC should not have been granted because the complaint supports causes of action to remove Bauknight; void his fiduciary appointments; require him to account; appoint an SA/ST for litigation and administration; assess Bauknight individually; void the Disallowance; and grant related relief requested by Appellant.**

In considering a motion to dismiss under Rule 12(b) the court must consider the allegations in the complaint to be true. *Disabato v. S. C. School Assoc. of School Administrators*, 404 S.C. 433, 441, 746 S.E.2d 329, 333 (2103).

A court must base its ruling on a Rule 12(b)(6) motion to dismiss solely on the allegations set forth in the complaint, and the court must consider all factual allegations as true *Id.* A Rule 12(b)(6) motion may not be granted if the facts alleged in the Complaint and any inferences drawn therefrom would entitle the

plaintiff to relief on any theory. *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999); *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602-603 (1995). If the factual allegations and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory, then a Rule 12(b)(6) motion should not be granted *Id.* The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 248 (2007).

If a Court considers matters outside the record – as was the case here – the Rule 12(b) motion becomes a summary judgment motion. Rule 12(b), *SCRPC*.

Under either standard -- the Complaint itself or the Complaint with judicial notice -- the Court should not have dismissed any portion of the Complaint. Appellant and Buchanan are entitled to relief on at least one, and often multiple, theories as to all relief sought in the complaint.

a. The Appointments and Disallowance are void.

The pre-remittitur *ex parte* appointments and Disallowance are void under the following simple theory:

1. They violate the Due Process Rights of Appellant, all heirs and all devisees of James Brown. Bauknight's first PR/Trustee appointment became void on May 8. He had no more standing than a man on the street to rush to be appointed *ex parte* without notice to a single heir or devisee. His appointments were not "emergency." They were broad and all-encompassing. They allowed Bauknight to cover his tracks, including the secret \$563,000 payment he made from Estate funds to Wingate in 2012 without telling the AG.

2. They violate Rule 405 SCACR. They were issued without jurisdiction. Pre-remittitur actions taken while the appellate court retains jurisdiction are void.

The Disallowance emanates from one of these void appointments. The later SA appointment, conferred on Bauknight's Appointee, is likewise voidable. Bauknight's pre-remittitur SA appointment referenced in the Disallowance was secured with malice. It was then immediately applied in both the Wingate Suit and with the Disallowance to try to change the outcome in FOIA Suits, the Wingate Suit and the Forlando Federal Suit. In those suits Bauknight was working then – and is working now – with Tommie Rae and against the "I Feel Good" Trust.

Had the lower court conducted a hearing before the December motions to dismiss, it would have heard Bauknight repeat the same, unsupported and vitriolic attacks he and Tommie Rae have made on both Buchanan and Pope – but less now less on Buchanan. He said when asked on August 20, 2013 about their conduct of the *Wilson v. Dallas* appeal:

That's poppycock. Pure speculation from your client [Pope]. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic]. You don't know the value ... She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with itYou

know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

... [Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent Your client didn't even try. Your client didn't know the numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Depos. Bauknight, pp. 104-6, Ltr. AG]

b. Buchanan's "Settlement" can be declared void by either the Aiken Court or the Richland County Court.

The Disallowance attempted to prevent Buchanan from obtaining his fair \$2.1 million PR/Trustee commission for five years of fine service to Brown's \$100 million estate and trust. That service included working with Appellant and their small legal team to put the Supreme Court in a position to restore the \$50 million to the "I Feel Good" Trust the State/AG took and Bauknight still tries to justify.

As with Appellant, that service ruined Buchanan's career and reputation. See *Wilson v. Dallas* decision. [Ltr. of Buchanan to Jg. Early.]

On October 8, 2013 Judge Early openly praised and "double approved" Buchanan's long service. [Tr. 10/8/13]

The only impediment to Buchanan's payment – and the only impediment to his having been reinstated, the complaint asserts, was a fabricated lawsuit brought in the name of the State/AG by Bauknight and Wingate.

The suit was illegal. Neither had authority to act for the State of South Carolina in bringing a tort suit through a private attorney to benefit Tommie Rae and other non-residents against South Carolina citizens.

The payment of \$500,000 of estate funds to secure an advantage for Tommie Rae and Bauknight in the Wingate Suit was not just unconscionable. It was improper. Bauknight and Wingate – purporting to speak for the State’s highest legal office – extracted from Buchanan the promise not to file a Petition for Rehearing in *Wilson v. Dallas*. They did so without notifying the Supreme Court.

Neither the void appointments nor the voidable Disallowance could, or should be, restored or declared moot – as the Court suggests – by the June 13 Orders, or by any action Judge Early took after that date.

The unprecedented June 13 Orders were also issued without notice or hearing.

The additional *ex parte* orders and orders Bauknight and the Bauknight Appointee continue to seek trample on the Due Process, First Amendment and Equal Protection rights of Appellant, Buchanan, and real heirs and devisees. They do not ratify Bauknight’s improper acts .¹⁵

Virtually every order since May 8, 2013 runs roughshod over not only

¹⁵ SEE, for example, the February 7, 2013 Order of Judge Early finding that six people would take if Brown were declared to have died intestate. This extraordinary order ignores more than half of Brown’s real heirs the State/AG and Bauknight tried to coverup and exclude for 4 years. Bauknight has not served a single pleading or allowed a DNA test under the Peoples DNA Protocol since the first *Wilson v. Dallas* decision of February 27, 2013.

From 2008 to May 8, 2013 the State/AG tried to give \$25 Million to Tommie Rae and \$25 million to fewer than half of Brown’s real children when Brown’s copyrights could have been – and still can be – secured for decades with termination rights agreements with any 5 or so of those not challenging the two estate plans.

Appellant's Due Process rights but the rights of heirs, devisees and creditors. They should not be allowed to relate back to cure Bauknight's status when he delivered the Disallowance.

b. Removal of Bauknight for Cause. The Complaint sought to remove Bauknight for cause from all fiduciary positions with respect to the Estate of James Brown and the 2000 Trust. The Complaint sets out multiple reasons. Salient among them is his continued service in the Wingate Suit as agent for Tommie Rae and her son.

Tommie Rae was not Brown's wife. Her son was born before her void ceremony with Brown. He is the only claimed child born in the 22 years between Brown's vasectomy and his death.

Section §62-3-611 provides in relevant part:

SECTION 62-3-611. Petition for removal; cause; procedure.

(a) Upon filing of the petition, the court shall fix a time and place for hearing. Notice shall be given by the petitioner to the personal representative, and to other persons as the court may order. Except as otherwise ordered as provided in Section 62-3-607, after service of the summons and petition upon the personal representative and receipt of notice of removal proceedings, the personal representative shall not act except to account, to correct maladministration, or preserve the estate...

(b) Cause for removal exists when removal would be in the best interests of the estate, or if it is shown that a personal representative or the person seeking his appointment intentionally misrepresented material facts in the proceedings leading to his appointment; or that the personal representative has disregarded an order of the court, has become incapable of discharging the duties of his office, or has mismanaged the estate or failed to perform any duty pertaining to the office...

The Complaint is clear that – at a minimum – there is cause to remove Bauknight because he is serving as agent for two people whose interest is directly adverse to the Estate/2000 Trust. He had mismanaged the Estate by making an unexplained \$563,000 payment to Wingate and concealing it. He has not accounted. He has made knowingly false statements to the courts about the heirs and their rights under the Federal Copyright Act.

The Order of Judge Early dated April 8, 2008 provided that any Interested Person could seek the appointment of one or more SAs or STs. The SCPC also allows such appointment.

Dismissal as to any aspect of the Complaint seeking to void Bauknight's appointment or seeking his removal; an SA/ST; accounting and possible disgorgement was not warranted. Likewise the request that he – not the estate – bear the attorneys' fees and costs of the proceeding was appropriate and should not have been dismissed.

- II. The Court's failure to conduct a hearing and its dismissal of the action to remove Bauknight and grant related relief continue the State's violation of the Due Process and First Amendment rights of Brown's real heirs, Appellant and Others, including devisees and beneficiaries, seeking to enforce the "I Feel Good" Trust.**

The Complaint asserts that Bauknight, Terry, Forlando, and Tommie Rae spent the years from early 2009 until May 8, 2013 making false statements to multiple courts about the value of Brown's assets; Brown's heirs; and the termination rights under the Federal Copyright Act. They did so to take \$50 million from what should be the largest-ever private South Carolina private

foundation dedicated solely to the education of needy students.

Bauknight and Tommie Rae filed – and Forlando continued --scurrilous and false lawsuits against Buchanan and Pope for one reason: Buchanan and Pope were the only people standing in the way of the plan.

The succeeded because the mighty power of the State was not placed at the side of Buchanan, Pope in defense of the “I Feel Good” Trust. It was placed against them.

But for that mighty power, the baseless challenges to Brown’s ironclad estate plan would have been over years ago. The Peoples DNA Protocol would be complete for non-presumed heirs or those challenging the Estate Plan. Termination rights agreements costing \$100,000 or less each year could have been forged with any 5 or 6 of them –not with anyone challenging Brown’s estate plan.

Eighty million dollars and more would be in the “I Feel Good” Trust. Not the \$2.8 million Bauknight told the IRS Brown gave to the “I Feel Good” Foundation.

Judge Early, after hearing the announced intention of Levenson and Tommie Rae to dismember the “I Feel Good” Foundation, has issued extraordinary orders which continue to damage the “I Feel Good” Foundation and punish Appellant and others for daring to continue to try to help enforce the “I Feel Good” charity.

Appellant and Jeffrey Smith are perhaps two of five or fewer experts in the State who have explored the emerging importance to foundations of careful

heirs determinations where the foundation owns royalties or other copyrights.

That expertise is needed to prevent another dismembering of the "I Feel Good" Trust. SEE Pope, A.J. and Smith, W.J. (2011). *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....*; The Aspen Institute (supp. 2013), *The artist as philanthropist. strengthening the next generation of artist-endowed foundations* [Pooh, Artist, Private Fdns.]

Buchanan and Pope both know the value of Brown's assets and the history of the correct valuation.

The dismissal and injunction against Appellant keep her from helping. They prevent her from protecting her career and reputation.

Brown's real, DNA-proven heirs, who were acknowledged by the Estate, suffer the same.

The circuit court, by the dismissal and other orders, is allowing to continue the State's silencing of Appellant and dozens of others. [See Return, Supp, Pope]

Violating the Due Process and First Amendment rights of Appellant, the real heirs and the beneficiaries who have withdrawn their support for the AG's Settlement violates the rights of the thousands of beneficiaries who will enjoy the scholarship from the "I Feel Good" Trust if it is not dismembered again.

- III. **In addition to standing as Interested Persons and creditors, Appellant and Buchanan have special interest standing under Section 62-7-405 to enforce the "I Feel Good" Trust and for Appellant to serve as GAL *pro bono publico* for Michael and others because of their experience; their interest; the Attorney**

General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule.

The Dismissal Order goes to great lengths to determine that Appellant no standing and is not an Interested Person under the SCPC. The conclusion is inconsistent with the SCPC. SCPC §62-1- 201(23) defines them as follows:

"Interested person" includes heirs, devisees, ... creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent. . . 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. [Emphasis supplied]

In addition, the Complaint and record show that Appellant and Buchanan have special interest standing under Section 62-7-405 of the SCTC. They have faithfully served the "I Feel Good" Trust while Bauknight has tried – and continues to try – to destroy it for the benefit of Tommie Rae and others. Appellant's expertise in the probate-copyright interplay is essential to saving the "I Feel Good" Trust. And it is being offered *pro bono publico*.

Since the *Wilson v. Dallas* decision neither Bauknight nor the Bauknight Appointee has asked the Court to proceed with the Peoples DNA Protocol; ungag the scores of people who know about the Hynie "diary;" dismiss Tommie Rae's improperly filed claims; play Brown's voice tape; or admit for alternate probate the 1999 Will. The 1999 Will, the virtual guard at the gate of the "I Feel Good" Foundation, stands in jeopardy of not being able to be probated under the

General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule.

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10-year rule of SCPC § 62-3-108(a) if this continues.

Appellant's expertise is sorely needed because for five years the State/AG and Bauknight simply repeated the false claims of Tommie Rae about the Federal Copyright Act. Even if she had been Brown's spouse, the trustees – and any official protecting the interest of a private charitable foundation-- would have been required by IRS rules to deal at arm's length on this issue.¹⁶

¹⁶ Bauknight's claims to the S.C. Supreme Court about the heirs and the Federal Copyright Act, which went without correction by the State/AG, were simply inaccurate. And by then Mr. Bauknight knew it.

The simple guidelines any charitable foundation such as the "I Feel Good" Foundation must apply to this complex issues are:

1. Deal at arm's length with the Settlor's family. It is a conflict of interest not to do so.
2. To protect the Copyrights/Royalties of an unmarried decedent, you need cooperation of only ½ of the children.
3. If the Copyright donor is dead, use the State Probate Process to identify as many children as can be properly found.
4. DNA test all non-presumed children. You need to know about them even if the Decedent did not acknowledge them.
5. "Split Heirs" – make agreements only with the cheapest and most cooperative half of the children. You want to save money for the charity's mission.
6. Don't create a spouse if there isn't one.
7. Even if there is a spouse, review all Pre-nuptial and other agreements before acting.
8. Many other strategies exist to prevent loss. See, for example: *Nine Ways to Stop Charitable Terminations*. Or *Pooh-Poohing Copyright Law's "Inalienable" Termination Rights*.

A correct heirs determination and support for the 1999 backup will – which Bauknight has not and will not do – were pending in 2008 when the State/AG announced his takeover. Appellant and others have standing to see that they are completed so that the “I Feel Good” Trust will be enforced.

CONCLUSION

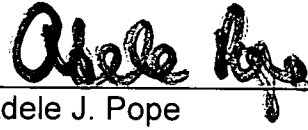
Respondents are attempting to flaunt the directives of the Supreme Court of this State in *Wilson v. Dallas*. As asserted in the Complaint, Appellant is seeking to enforce James Brown’s two estate plans as written. As asserted in the Complaint Buchanan and Pope are the only two persons who have consistently sought to uphold the estate plan. A Rule 12 dismissal is not the vehicle to resolve the issues raised in the Complaint.

The Court’s Order dismissing portions of the relief requested in the Complaint should be vacated. To the extent this Court cannot remove Bauknight because of his irreconcilable conflict by continuing to represent Tommie Rae and James B. in four lawsuits, the matter should be remanded for an immediate hearing.

On August 10, 2008 AG McMaster “gave” Tommie Rae 1/4 of Brown’s “I Feel Good” Trust without considering the Copyright Act. SEEHearing held 8/19 2008, pp. 1, 9-12, 16, 20, 22, 23, 26, 27. By October 25, 2008, he said that the “wife” Tommie Rae had “contributed” her valuable termination rights. See hearing held October 25, 2008 pp. 1, 10-17, 18-33, 35-39, 41-42, 48-49, 51,53-54, 58-67, 70-71, 74-75, 84-85, 88-90, 92.

By then he was “speaking as one” with Tommie Rae. He continued to do so.

Respectfully submitted,

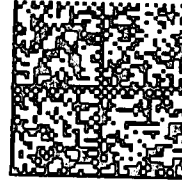
A handwritten signature in black ink, appearing to read "Adele Pope", written over a horizontal line.

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com
SC Bar No. 4501

February 11, 2014

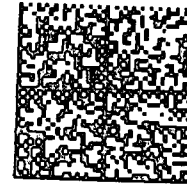
Appellant, *pro se*

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