

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
Appellate Case No. 2014-00250

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.

AMENDED INITIAL BRIEF OF APPELLANT ADELE J. POPE

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Apellant, *pro se*

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SC Court of Appeals

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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 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

This action was commenced with the filing on June 10, 2013 in Aiken County Probate Court, and service, of a summons and complaint seeking to remove Respondent Russell L. Bauknight as a fiduciary under the will of entertainer James Brown and the James Brown 2000 Irrevocable Trust (the "2000 Trust"). [Comp., p. 62-62]

The complaint also seeks to void Bauknight's fiduciary appointments secured after the May 8, 2013 decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013), and before the remittitur was issued, as well as to void a notice of disallowance with impending bar (the "Disallowance") delivered to Appellant on

May 29, 2013. [Comp. pp. 62-63]

The complaint seeks an order for payment to Robert L. Buchanan, Jr. and Appellant of the full amount of their claim, including the amount allowed and awarded them by order of the Honorable Doyet A. Early, III, dated January 8, 2008, with interest at 8 3/4% [Comp., p 63]

Finally, the complaint seeks to require Bauknight to account and be assessed individually for any improper payments, and asks the court to appoint a special administrator and special trustee ("SA/ST") for litigation and administration in areas where the complaint asserts Bauknight has a conflict. [Comp., p 63]

A copy of the May 29 Disallowance was filed with the complaint.[Comp., Ex. 2] The Disallowance says in part:

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.

And:

This claim was filed jointly with Robert L. Buchanan... 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. [Disallowance]

A Form 373PC, Petition for Allowance of Claim, was attached to the

complaint. The Petition 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]

Accompanying the complaint were a motion and memorandum seeking an expedited hearing on Appellant's request to remove Bauknight and require him to account. [Mot., Memo.]

An Affidavit supporting request for emergency appointment of litigation SA/ST and expedited appointment of administration SA/ST dated June 9, 2013 was also served. [Aff., dtd. 6/9/13]

By *sua sponte* order of the Honorable Sue H. Roe, the complaint was removed to the circuit court of Aiken County. It was assigned case no. 2013-CP-02-1337 ("Case 1337")

On June 13, 2013, without notice or a hearing, the Honorable Doyet A. Early, III, Circuit Judge ("Judge Early"), and the Honorable Liz Godard, Clerk of Court issued three orders (the "June 13 Orders") related to a number of James Brown cases. [Ords. dtd. 6/13/13]

The June 13 Orders, now on appeal, contained directives related both to Appellant and Case 1337.¹ They prevented Appellant, Buchanan and others from participating in subsequent matters in Aiken County James Brown cases. [Ords. Dtd. 6/13/13]

Between June 10 and December 3, 2013, Judge Early did not respond to

¹The June 13 Orders, now the subject of Appellate Case No. 2013-1649?,

Appellant's requests for a hearing on the Bauknight motions, or certain other hearing requests.

On July 9, 2013 Appellant was allowed to appear at a hearing seeking to alter, amend or void the June 13 Orders. [Hg., 7/9/13, pp. 1-34]. Reconsideration was denied orally at the hearing, and by form order the following day.

On July 10, 2013 Bauknight, individually, served a Notice of Motion and Rule 12 Motion to Dismiss, or in the Alternative for a More Definite Statement. [Mot., Bknight]. The Estate and 2000 Trust, through Bauknight, filed a similar motion. [Mot., Estate/Tr.]

In October 2013 the Attorney General withdrew from Aiken County James Brown cases, after announcing his intention to do so on May 29. [Ord. dtd.]

A hearing on the motions to dismiss was held on December 3, 2013. Both the Estate and 2000 Trust and Bauknight sought to dismiss; obtain sanctions against Appellant; and require her to pay the legal fees for filing the Complaint. [Hg. 12/3/13, p.8, 12,28]

By order dated January 17, 2014, Judge Early dismissed under Rule 12(b) SCACR all causes of action "other than Plaintiff's request for payment of her claim in accordance with the Petition for Allowance of Claims."

On January 24, 2014 Appellant served a Motion to Alter or Amend and/or Reconsider and Vacate the January 7, 2014 Order. [Mot. Amend.]

The motion was denied by form Order of Judge Early dated January 31, 2014 and filed February 4, 2014.

The notice of appeal was served on February 7, 2014.

An initial brief and designation of matter to be included in the record on appeal were filed on February 11, 2011.

Respondents moved to dismiss the appeal, and Appellant responded by return dated March 16, 2014.

The amended initial brief and accompanying designation are filed pursuant to the Order of the Honorable Paul E. Short, Jr. dated May 6, 2014.

The amount in question is in excess of \$2 million.

STATEMENT OF FACTS²

The complaint in this action asserts that it responds to the Disallowance and is filed to protect the noble estate plan of James Brown to leave his entire \$100 million worldwide music empire to the "I Feel Good" Private Foundation to provide scholarships for needy students. [Comp., p.1] Appellant has worked *pro bono publico* since May 8, 2013 to serve that end. [Hg. 12/3/13, p. 1, 22]

The complaint asserts multiple bases for standing to bring this case, including Plaintiff's status as a creditor under the January 8, 2008, order of the Honorable Doyet A. Early, III ("Judge Early") by which she and Robert Buchanan, Jr. are entitled to a liquidated amount, with interest, including for her unpaid service in 2007 as special administrator ("SA") and later. [Tr. pp 15-19, Comp. pp. 63]. The complaint asserts Appellant's special interest status under S.C.

² Appellant incorporates the Statement of the Case as part of her Statement of Facts.

Trust Code § 62-7-405 (c) as an “other” seeking to enforce the “I Feel Good” Trust. [Comp. p. 4]. Appellant also asserts standing as an Interested Person and creditor because she is being sued by the Estate and 2000 Trust, and has counterclaims for damages and offset against them and others in Richland County Case 2010-CP-40-4900 (“Case 4900”). And she has claims for offset against the estate and 2000 Trust in the “Forlando Federal Suit” in which she and Buchanan were sued by a beneficiary, along with the 2000 Trust, in 2008. [Comp.,p.3]

The complaint asserts the necessity of a special administrator and special trustee SA/ST. [Comp., p. 4]

The complaint alleges 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 to be used solely to help educate needy students. [Comp., pp. 1, 5-6,8-10, 26,38-40,41,] It alleges that Buchanan and Pope served as special administrators of the Estate from March 7, 2007 until November 20, 2007. [Complaint pp 11-12]. It alleges they then properly administered the Estate/2000 Trust from November 20, 2007 until May 26, 2009. [Comp. pp. 12-44] They then protected Brown’s estate plan and The James Brown “I Feel Good” Trust during the 4-year *Wilson v. Dallas* appeal. The complaint alleges that the South Carolina Supreme Court restored \$50 million to the “I Feel Good” Trust in its decision. [Comp. pp. 45 - 57, Hg., 12/3/13,]

From early 2009 until today, the complaint alleges Bauknight has served the interests of Tommie Rae and her son and aided Forlando Brown in his fraud on multiple courts. The complaint alleges that the interests of these three are directly contrary to the interests of the "I Feel Good" Trust.[Compl. pp. 27-29, 35, 41,44, 45-47, 48 - 61, 63.]

Bauknight has done so, the Complaint alleges, by false statements to the Court about the value of the assets; the heirs status of Hynie; and the Federal Copyright Act. [Comp. pp. 48- 53.]

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

1. That Brown's music empire was worth \$4.7 million; [Comp. pp. 48-49, 61]
2. That Buchanan and Pope intentionally overstated Brown's assets to the IRS by \$79 million; [Comp., p.50,61, Hg, 12/3/13, p. 50]
3. That Buchanan and Pope were incompetent and damaged the Estate/2000 Trust. [Comp., p. 51-52]
4. That Tommie Rae was Brown's wife and her child Brown's child; [Comp. p. pp. 50-51, 60, 61]
5. That Tommie Rae and her son controlled the termination right under the Federal Copyright Act; [Comp. p.38-39,40]
6. That La Rhonda, Nicole, Jeanette, Lisa, and Michael were not heirs. [Comp. pp. 6, 10, 60-61]

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 its Royalties 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. [Compl., pp. 6, 8-10, 34,38,45,50-51,61.]

But Bauknight, the complaint alleges, did not change courses either before or after the May 8 decision. [Comp. p.61]

The complaint alleges Bauknight is still trying to intervene in FOIA suits to help Hynie. [Comp. p. 57] He continues to slander Buchanan and Pope. He continues his improper alliance with Forlando. [Comp., pp. 51-55]

In short, the Complaint alleges that Bauknight abandoned Brown's estate plan for Hynie, her son and the settling parties. He tried to cause tens of millions of dollars damage to the "I Feel Good" Trust. It alleges he is still trying, and that an SA/ST working on behalf of Brown's Will and 2000 Trust would be able to sort out the damage. [Compl., p. 35-36]

The complaint asserts that Appellant has never been adverse to the estate or 2000 Trust, but when Bauknight brought the egregious Case 4900 she and Buchanan were forced to counterclaim. The complaint asks for leave to amend after the appointment of an SA/ST to handle Case 4900 and the FOIA cases because of Bauknight's conflicts as agent for Hynie and her son in Case 4900 and the FOIA cases. [Comp. pp. 61-62].

Beginning three days after the complaint was filed on June 10, 2013 Appellant and most of Brown's real heirs and beneficiaries who support the

estate plan were prevented by the June 13 Orders from participating in the Bauknight appointments or other matters³.

At the December 3 hearing Appellant advised the Court that she had worked *pro bono publico* since May 8, 2013 to try to help the "I Feel Good" Trust. [Tr., Hg. 12/3/13, p. 15]

In the January 7 Order, filed January 17, 2014, Judge Early took judicial notice of the June 13 Orders which were issued with no notice to Appellant, heirs, devisees or beneficiaries of the 2000 Trust; and with no hearing.

In her Motion to Alter or Amend the January 7 Order, Appellant noted that Judge Early had taken judicial notice of certain matters in his Order. Because he had declined to conduct the hearing required by Sections 62-3-607(b) and 62-3-611 of the South Carolina Probate Code ("SCPC"), Appellant asked Judge Early to take judicial notice of additional and continuing wrongdoing and conflicts of Bauknight which would have been raised had the required hearing been held. [mot. dtd. 1/24/14, pp. 1-67]

³ The Court is asked to take judicial notice of the initial brief of Appellant, and the motion and memorandum to supplement and clarify the record dated May 12, 2014 in the appeal of the June 13 Orders, Appellate Case No. 2013-1649.

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 any 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 circuit court should not have dismissed any portion of the complaint. Appellant and Buchanan are entitled to all requested relief on at least one, and often multiple, theories as to all relief sought in the complaint.

a. The Appointments and Disallowance are void.

Bauknight's pre-remittitur *ex parte* appointments are void under the following theories:

1. They violate the Due Process Rights of Appellant, all heirs and all devisees of James Brown who support the estate plan. Bauknight's fiduciary appointments were declared *void* by the Supreme Court on May 8, 2013. He had no more standing than a man on the street to rush to obtain an *ex parte* appointment prior to the remittitur. Further, his service as agent for non-devisees Hynie and her son in Case 4900 was a direct conflict. There was no emergency. The *Wilson v. Dallas* decision had established the procedure to follow on remand.

2. They violate Rule 405 SCACR. The *ex parte* orders were issued without jurisdiction. Pre-remittitur actions taken while the appellate court retains jurisdiction over the matter, like those where the federal court has not released its jurisdiction, are void. *Bunkum v. Manor Props.*, 321 S.C. 95, 98-99, 467 S.E. 2d 758, 760 (Ct. App. 1966); *Martin v. Paradise Cove*, 348 S.C. 379, 559 S.E.2d 348 (Ct. App. 2001); *Limehouse v. Hulsey*, 404 S.C. 93,744 S.E.2d 566(2013); *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 438 S.E. 2d 250 (1993).

The Disallowance was issued by Bauknight under claimed authority of the void special administrator order obtained while the Supreme Court had jurisdiction over the matter of Bauknight's fiduciary appointments related to James Brown, and had declared them to be void. The Disallowance should likewise be declared void.

The Disallowance was unnecessary. It attempted to change the outcome

of the pending Case 4900 which the Estate and Trust had brought against Appellant and Buchanan in Richland County. It attempted to undo an already allowed and court-approved award to Buchanan and Pope⁴. As shown in the Motion to Alter or Amend, it helped conceal a \$563,000 payment to the law firm of Kenneth Wingate, Esquire, and other acts of Bauknight from scrutiny under the *Wilson v. Dallas* remand. [Mot. Al, p.19].

The Disallowance related in large measure to already-allowed and court-approved claims. It was issued without jurisdiction and in an attempt to change the outcome in FOIA Suits, the Wingate Suit and the Forlando Federal Suit. In those lawsuits Bauknight is serving as agent for Tommie Rae, her son and Terry and Forlando Brown – all of whom seek to destroy the “I Feel Good” Trust - *again*. [Complaint, pp.Comp. p. pp. 50-51, 60, 61, Mot. Alt., p. 41.]

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 voiding the “settlement” in Case 4900 and receiving his fair \$2.1 million PR/Trustee commission for five years of fine service to Brown’s \$100 million music empire. [Disallowance]. That service included working with Appellant and their small legal team to put the Supreme Court in a position to restore \$50 million to the “I Feel

⁴ On October 8, 2013, at a hearing as to which Appellant did not receive notice, Judge Early “double-approved” Buchanan’s \$500,000 he had been paid to release to his counterclaims against Hynie and others in Case 4900; confirmed Buchanan would not have to disgorge anything; and praised his work. He did not preclude the voiding of his Case 4900 “settlement.” All of the work which Judge Early praised was joint with Appellant. [Tr. Hg. 10/8/13]

Good” Trust a settlement proposed to take. [Tr. Hearing 12/3/13, pp. 19-21]

The complaint alleges that on May 18, 2012 Bauknight had moved to compel a Case 4900 settlement with Buchanan under the false claim that he was speaking for the Attorney General. He was not.

Because Bauknight’s own fiduciary service was declared void, *Wilson v. Dallas* left open for remand the question of who – if anyone – met the definition of personal representative during the 4-year *Wilson v. Dallas* appeal. Under Section 62-1-201 (33):

(33) "Personal representative" includes executor, administrator, successor personal representative, special administrator, and persons who perform substantially the same function under the law governing their status. "General personal representative" excludes special administrator.

While removed on May 26, 2009, Buchanan, during the 4-year void appoint of Bauknight, performed the important function of of a personal representative -- protecting the estate plan. At the same time, Bauknight was bringing Case 4900 to stop the *Wilson v. Dallas* appeal and give Hynie and her son a quarter of Brown’s assets. [Mot. Alt, pp.52-53] He was aiding Forlando Brown in an attempt to acquire Brown’s music empire at a vastly undervalued price which Forlando confirmed to be wrong. [Mot. Alt, pp. 59-63] And he was intervening in FOIA suits on behalf of Hynie and Terry Brown to stop release of public documents to show the defects in the settlement. [Mot., Alt, p.28 -30]

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 shows -- was the fabricated Case 4900 lawsuit brought in the name of the State/AG by Bauknight and Wingate.

The complaint alleges the suit was illegal. [Compl., p. 61]. Neither Wingate nor Bauknight had authority to act for the State of South Carolina in bringing a tort suit for Tommie Rae and other non-residents against its citizens.

The complaint alleges that payment of \$500,000 of estate funds so that Bob would release his claim against the Attorney General, Tommie Rae and Bauknight in the Wingate Suit was not just unconscionable. It was illegal. 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*.

Neither Bauknight's void pre-remittitur appointments nor the voidable Disallowance could, or should be, restored or declared moot – as the Court suggests – by the June 13 Orders. Nor should they be revived by orders after June 13, 2013 which violate Appellant's Due Process and First Amendment rights, and those of others.

The unprecedented June 13 Orders enjoined Buchanan and Pope; directed that Pope's filed motions not be heard; and directed the clerk not to accept Appellant's filings in more than a dozen cases. All this was done without notice or hearing. [Ord. June 13]

Additional *ex parte* orders and orders which trample on the Due Process,

First Amendment and Equal Protection rights of Appellant and heirs, devisees and others should not be allowed to ratify or conceal Bauknight's improper acts.

There has been no cure for Bauknight's void 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 and FOIA suits as agent for Tommie Rae and her son. [Comp. pp. 35 -36, 46-61]

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 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.

The Complaint asserts that Bauknight, Terry and 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. [Comp., p. 49] They did so to take \$50 million from what should be the largest-ever South Carolina private foundation dedicated solely to providing scholarships for needy students.

The also 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 to acquire the assets of the “I Feel Good” Foundation for themselves.. [Comp. pp. 27- 31, Mot. Alt, pp. 58-59]

They succeeded because the might power of the State was not placed at the side of Buchanan, Pope and the “I Feel Good” Trust. It was placed against them.

But for this mighty power baseless challenges to the estate plan might have been over years ago. The Peeples 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. [Mot. Alt, pp. 46-52, 56, 64]

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

The motion to amend asked Judge Early to consider that Appellant and Jeffrey Smith were among the first in the State to acquire expertise in the emerging need for private foundations and other charities to take early steps in the probate process to manage and control their royalties and other copyrights for the longest time for the benefit of the charity. [Mot. Am., p. 9] The complaint

shows their expertise was demonstrated in the draft article *Private Foundations, Copyright Heirs and Musical Millionaires: Why the James Brown "I Feel Good" Trust doesn't...* [Mot. Am., pp. 9, 50].

The Dismissal Order of Judge Early allows Bauknight – still serving as agent for Hynie and her son – to summarily reject the facts about the value of Brown's music empire; Brown's heirs; and the Federal Copyright Act. [See, for example, Bauknight's statement on August 23, 2013, in the Forlando Federal Suit., Mot. Alt, p. 28]. The State, by the June 13 Orders, the Dismissal Order and others, endorses these actions. The complaint alleges that Buchanan and Appellant both know the value of Brown's assets and the history of the correct valuation. [Comp. pp. 49, 55-56]

The dismissal follows the unprecedented June 13 Orders, and joins others which prevent them, and everyone who is trying to protect the "I Feel Good" Trust, from participation the Aiken County cases. Judge Early, without notice or hearing, has directed that Appellant's motion be removed from the public records. Subsequent motions cannot be filed. [Ord. 6/13/13]

Brown's real, DNA-proven heirs, who were acknowledged by the Estate, were not served or noticed. This is true even though they have higher rights than Hynie and her son. [Comp. pp. 8-11, Mot. Am, pp. 46]

Judge Early allows Bauknight to continue to silence Appellant and dozens of others by refusing to have a hearing on a 2012 motion to void his 2008 gag orders. [Email Pope to Jg. Early, 7/9/13] He had declined to conduct a hearing on the need for a GAL for Brown's son, incarcerated in California, who has been

seeking DNA testing since 2007.

The Orders violate the Due Process and First Amendment rights of Appellant, real heirs and others who oppose the Attorney General's settlement and takeover of Brown's private foundation. It violates the Due Process rights of Appellant and the thousands of beneficiaries who will enjoy scholarships 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 has no standing and is not an Interested Person under the SCPC. The conclusion is incorrect. SCPC §62-1- 201 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.

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 can be critical to saving the "I Feel Good" Trust. And it is being offered *pro bono publico*. Further, it is being done after the Attorney General has announced his withdrawal from the protection of the "I Feel Good" Trust, and an order has been entered confirming his withdrawal. [Hg. 7/2/13, p. 44.,Ord. AG]

The "I Feel Good" Trust is in great jeopardy because most of those the Trust Code allows to enforce it are unavailable or not doing so. The Settlor is deceased. The trustee is serving as agent for the McMaster Legacy Trust, Hynie and others in a lawsuit brought to stop the *Wilson v. Dallas* appeal, all of whom are adverse to the "I Feel Good" Trust. The Attorney General has withdrawn from protecting the "I Feel Good" Trust with knowledge of Bauknight's conflicted positions. The "others" under Section 62-7-405 are needed. As a creditor Appellant has standing to submit the 1999 backup will for probate. She also should have special interest standing as an other. This backup will, also leaving Brown's entire music empire to the "I Feel Good" Trust for scholarships, is critical to the proper defense of the estate plan. And it is in jeopardy of becoming void under the 10-year rule of SCPC § 62-3-301(a)(1)(vii).

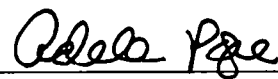
With Appellant's special knowledge, special interest and *pro bono publico* service, Bauknight continues to challenge her standing as an Interested Person; a creditor; and an "Other" under § 62-7-405. And the order agrees. The Court should confirm that Appellant has standing under Section 62-7-405 as well as as an Interested Person, creditor, and counterclaimant in Case 4900 and the Forlando Suit.

A correct heirs determination and support for the 1999 backup will were pending in 2008 when the Attorney General announced his takeover of Brown's assets. Bauknight has abandoned both critical projects and is in service to Hynie. Appellant and others have special interest standing to see that these matters are completed so that the "I Feel Good" Trust will be safe.

CONCLUSION

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 multiple lawsuits, the matter should be remanded for an immediate hearing and proceedings on all other matters raised in the complaint.

Respectfully submitted,

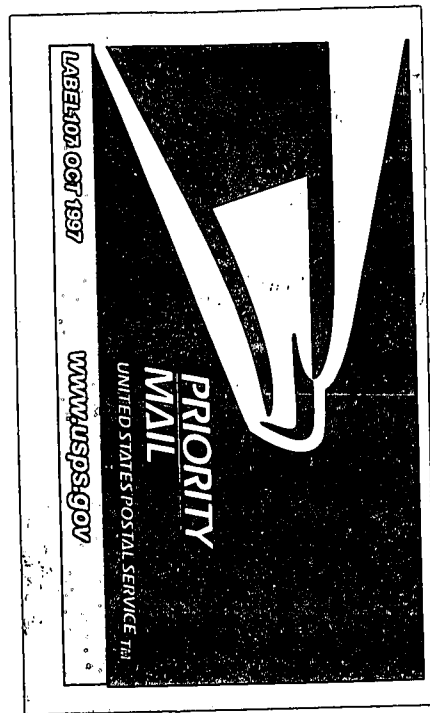


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May 20, 2014

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SC Court of Appeals



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