

STATE OF SOUTH CAROLINA
In the Court of Appeals

72171

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-001649

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

v.

Albert H. Dallas and others, Defendants,

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

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

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

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable
Trust u/a/d August 1, 2000, Respondents.

**MOTION AND MEMORANDUM OF APPELLANT TO SUPPLEMENT AND
CLARIFY RECORD; REQUIRE PRODUCTION AND FILING OF UNSEALED
DOCUMENTS; ALLOW FILING OF DISKS; AND FOR RELATED RELIEF**

In response to the Order of the Honorable Paul E. Short, Jr., issued May
8, 2014 in this matter (the "May 8 Order"), Plaintiff moves the Court to require

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SC Court of Appeals

Russell L. Bauknight to produce to Appellant, unsealed, to be made part of the record on appeal ("ROA") in this case, the original or the Estate/2000 Trust's copy of the following documents, with disks, as stated, accepted by the Court:

- a. The so-called Hynie "diary," and typed transcription of same;
- b. The claimed \$4.7 million appraisal of Brown's music empire;
- c. The disk of James Brown's voice tape of 1999;
- d. The disk of the Supreme Court oral arguments in *Wilson v. Dallas*;
- e. The ethics opinion of Prof. Crystal delivered to Jg. Early July 8, 2013;
- f. The Estate's copy of all fee agreements ordered by Judge Early to be produced by the Clerk in 2010, but which are missing from the Clerk's office.
- g. The signed Legacy Trust created by Attorney General Henry McMaster, and all amendments to the Legacy Trust.

Appellant further moves, as a result of Bauknight's continuing attempts to intervene in three separate South Carolina Freedom of Information Act ("FOIA") suits and have them consolidated with Richland County Case 2010-CP-40-4900 (the "Wingate Suit"), that the documents listed below be made a part of the ROA in this appeal, and that the Court take continuing judicial notice of these actions:

A. Richland Cty. Case No. 2013-CP-40-350, filed Aug. 3, 2011, Newberry Cty. ("FOIA #1"):

1. Appraisal of Philpott Ball & Werner dated September 3, 2010;
2. Jan. 20, 2011 email of Sonny Jones, attached as Exhibit A.
3. Ltr. of David Black, Esq., July 15, 2011, attached as Exhibit B.
4. Ltr. of Adam Silvernail to the Honorable L. Casey Manning, May 7, 2014, with attachments, in part attached as Exhibit C.

5. Additional transcripts, pleadings and filings as designated.

B. Richland Cty. Case No. 2010-CP-40-4900, filed Aug. 10, 2011, Newberry Cty. ("FOIA #2 "):

1. FOIA Request of Pope dtd. July 19, 2011, attached as Exhibit D.

2. Wingate Motion to Stay dated April 22, 2014, attached as Exhibit E.

3. Ltr. of Silvernail to Jg.Manning, Dec.5, 2013, attached as Exhibit F.

4. Ltr. of Silvernail to Judge Manning dtd. April 29, 2014, with attached Return and Opposition to Motion to stay.

5. Additional transcripts, pleadings and filings as designated.

C. FOIA Case No. 2012-CP-36-00688, Nby. County (the "Summer FOIA Suit") proposed to be consolidated with the Wingate suit:

1. Motion of Bauknight dated April 16, 2013 to Intervene in the Summer FOIA Suit, attached as Exhibit G;

2. Handwritten notes of Tommie Rae Hynie referenced above;

3. Additional hearings, pleadings and filings as designated.

Appellant further moves that because Bauknight continues to serve as a Plaintiff/Agent for Hynie and other Respondents in the Wingate Suit, that the following documents be made a part of the ROA in this appeal:

Documents Related to Richland Cty. Wingate Suit (a/k/a "Case 4900")

1. Complaint in Wingate Suit dtd. May 19, 2010 in which the named Plaintiffs, as of May 12, 2014, include:

- (a) The Attorney General ("AG") of South Carolina;
- (b) Bauknight on behalf of AG McMaster (Wilson);
- (c) The James Brown Legacy Trust, Bauknight, Trustee;
- (d) The Estate of James Brown, Bauknight PR;
- (e) The 2000 Trust, Bauknight Trustee;
- (f) Bauknight on behalf of Respondent Tommie Rae Hynie;
- (g) Bauknight on behalf of Respondent Terry Brown;
- (h) Bauknight on behalf of Respondent James B., without GAL;

(i) Bauknight on behalf of Deanna Brown Thomas.

2. Other transcripts, pleadings and filings as designated.

Appellant further moves that because of Bauknight's participation in the secret January 2011 amendments to the Legacy Trust and transfer from Terry Brown to Forlando Brown of his entire interest in the Estate of James Brown, the following additional documents be made part of the ROA in this appeal:

Documents Related to Federal District Case No. 3:08-cv-00014-WOB,
(the Forlando Federal Suit):

1. Memorandum Opinion and Order of the Honorable William O. Bertelsman, U.S. District Judge dated March 28, 2014, a portion of which is attached hereto as Exhibit H;
2. Transcript, hearing held March 19, 2014, as designated.
3. Motion Robert L. Buchanan, Jr. dated April 25, 2014 to Alter, Amend, etc. March 28, 2014 Opinion of Judge Bertelsman;
4. Memorandum of Buchanan supporting above motion, dated April 25, 2014, attached as Exhibit I;
5. Such other transcripts and filings as shall be designated.

Appellant further moves for inclusion in the ROA, and for the Court to take judicial notice of, any designated documents contained within the parallel appeals listed below, which relate to James Brown Aiken cases and orders following the June 13 injunction Orders.

1. Appellate Case No. 2013-002582, including the Memorandum Related to Appealability dated December 17, 2013.
2. Appellate Case No. 2014-000794, including Motion to Dismiss Jeanette Mitchell's Motion to be declared an Heir of James Brown, December 2, 2013.
3. Appellate Case No. 2014-000250

With respect to the \$6 million claim of Respondent Albert Dallas, Appellant moves that the ROA be supplemented with designated documents and the letter of William G. Newsome to Appellant dtd. February 3, 2014, attached as Exhibit K.

This motion is supported by the pleadings and records on file in this case and the parallel appeals; the attached and referenced documents; the affidavit of Adele J. Pope filed herewith; and the following memorandum.

MEMORANDUM IN SUPPORT OF MOTION

The three principal Orders which are the subject to this appeal were issued on June 13, 2013 (the "June 13 Orders"), one month after the historic May 8, 2013 decision in *Wilson v. Dallas*, 743 S.E.2d 746 (2013).

Material to this appeal is whether the June 13 Orders, and those issued after its injunction, continue the State action previously carried out by two attorneys general, Wingate and Bauknight to deny Due Process, First Amendment and Equal Protection rights of Appellant, certain heirs of James Brown, the "I Feel Good" Foundation and others seeking to void the State's takeover and dismembering of the "I Feel Good" Foundation and its enforcement.

The June 13 Orders shut Appellant and these persons out of the James Brown Aiken cases, including the selection of Bauknight and his appointee.

Since the first *Wilson v. Dallas* decision of February 27, 2013, the statements of the Attorney General have been conflicting. The Attorney General

declines to take any role in the protection of the "I Feel Good" Trust. But the State/AG's actions have been ambivalent. For more than a year, the Attorney General has allowed both Wingate and Bauknight to remain of record as attorney and agent for the Attorney General, Hynie, her son and others challenging Brown's estate plan.

Making the above documents a part of the record will help sort out the troublesome record of the actions of the State, and Bauknight under color of State authority, briefly set out below.

On February 27, 2013 the S. C. Supreme Court issued the first *Wilson v. Dallas* decision. In addition to voiding the Attorney General's 2008 agreement, the Court expressed concern about the Wingate Suit and the FOIA Suits in which the State/AG was involved. It directed that they be addressed "in the first instance."

In his March 14, 2013 Petition for Rehearing in *Wilson v. Dallas*, the Attorney General said of the FOIA suits, mentioned in the Court's footnote 29:

"We hope to have resolution of this issue in the near future." [Ex.J,p.25.]

As to the Wingate Suit , the Attorney General appeared to claim that the State/AG – which had been a Plaintiff suing Buchanan and Appellant for tens of millions of dollars since May 19, 2010 – was not an authorized Plaintiff. AG Wilson told the Court¹:

"The Attorney General's intent not to bring the action on behalf of the Attorney General's Office is fully demonstrated clearly [sic] by a

¹ This contradicted the Attorney General's position taken in this Court in 2011.

letter, dated, May 18, 2010, to Mr. Bauknight... " [See Ex. N, p. 26]

It was not clear at all. Sr. Assistant AG Sonny Jones had attended hearings as a client of Wingate for years, and had been introduced to Judge Manning by Wingate as a client.

Yet AG Wilson concluded that the "contingent fee agreement" (which he would not release under FOIA) "was between Mr. Bauknight and Mr. Wingate,"

AG Wilson and Bauknight continued to fight release of the Wingate Litigation Agreement under FOIA and in the Wingate Suit. When it was released in late 2013 by an order in the Forlando Federal Suit, it showed:

- a. AG McMaster had never signed the Wingate Litigation Agreement for the State/AG to sue Buchanan and Appellant;
- b. AG McMaster never authorized Bauknight to claim in the Wingate Suit that he was a Plaintiff acting on behalf of the Attorney General of South Carolina;
- c. The Wingate Litigation Agreement was not signed by most plaintiffs, but by David Bell, Esq.; counsel for Hynie; and Louis Levenson, Esq.

AG Wilson's March 2013 Petition for Rehearing also said of the Attorney General's participation in the Wingate Suit:

Appellants Pope and Buchanan enjoy superb reputations throughout the legal community. Appellant Buchanan serves as a part-time federal magistrate judge and is a long time member of the South Carolina Bar. Appellant Pope has, for more than thirty years in South Carolina, been an outstanding attorney in the field of trust and estate matters. She is considered by the legal community to be an exceptional attorney.

After much deliberation, the Attorney General was advised that the statute of limitations was about to expire and that it would be a breach of the Attorney General's own fiduciary duty in protecting charitable trusts if an action was not brought on behalf of the charity. [Emphasis supplied.]

The Attorney General did not say who advised him, but presumably it was one of the signatories to the Wingate Litigation Agreement: Wingate, Bauknight, Levenon, Bell or counsel for Hynie.

The Attorney General then told the Court:

From the standpoint of the Attorney General, in light of this Court's ruling, we no see no need to pursue this action further. We advise the Court, therefore, that we will shortly move to have the Attorney General removed as a party in this action and any further action in this case to protect the charitable beneficiaries be pursued by the new trustee. [Emphasis supplied.]

More than a year later, at the request of his counsel of record, the Attorney General is still a Plaintiff of record in the Wingate Suit; Bauknight is still a Plaintiff on behalf of the Attorney General, Hynie, James B., Terry Brown and Deanna Thomas. All are seeking tens of millions of dollars from Appellant for conducting the *Wilson v. Dallas* appeal. All are subject to counterclaims for abuse of process, and others claims. And a motion to void the \$500,000 settlement of Buchanan's counterclaims is pending.

Bauknight's relationship with James B. is equally troublesome.

On March 25, 2013 James B. expressed deep knowledge of the \$4.7 million appraisal Bauknight said in an August 2013 deposition he had not shown to anyone – not even the Attorney General. James B. told the Supreme Court:

"Appellants' [Buchanan's and Pope's] unprofessional administration stands in stark contrast to Bauknight's professional administration, and reinforces the outrageousness of her fee claim."

"They failed to conduct the due diligence necessary to obtain an appraisal and to create an inventory of assets owned, especially songs and accompanying copyright interests."

And:

... Pope has steadfastly estimated that the Estate's date-of-death value was between \$80 million and \$120 million and supported this position with unsubstantiated conjecture. " p. 10. Footnote 8: "Pope states that her \$2.8 million share of the approximately \$5 million claimed by her and her co-fiduciary was based on a percentage of the estimated value of the estate. Pope Petition at 3. This demonstrates why she wants to continue to insist on a high estate value despite having no reliable authority for her wildly varying estimates.

...Mr. Brown's assets are not in a pot worth \$100 million, ready to be liquidated. Rather, the substantial value to his assets comes from a royalty stream... and any right of the estate to this stream of royalties will soon end because of the termination rights, as discussed in James B.'s Petition for Rehearing. Any valuation of a royalty stream would involve a complicated calculation, including for a value pinned to any particular date, such as the date of death, a present value calculation.

..."Pope raises a second "red herring" argument in support of her claim that the date of death valuation is significantly more than \$4.7 million on the day James Brown died. " [Emphasis supplied.]

James B, like the Attorney General and Bauknight, elect to disregard:

1. A \$42 million 2006 RBS professional valuation of Brown's major royalties in 2006, consistent with formula presented to Judge Early in 2007 to value the Royalties and Publicity Rights. [The Publicity Rights were not valued in the RBS appraisal.]
2. The three \$90 million - \$100 million offers (letters of intent) made by TJBL between October 2007 and March 2008.
3. The I&A filed by Respondent Dallas and PR Bradley on November 15, 2007, valuing the music empire at about \$83 million based on the first TJBL offer.
4. The testimony of Forlando Brown that offers of \$150 million were still available in September 2008, after the McMaster deal;
5. The formula presented to the AG and Court in Nov. 2007 to value

the music empire on the Estate Tax Return as follows:

**Royalties/Publicity Rights = 12 ½- 14 X (Ave. Royalties + ½ Road Revenues)
LESS TIAA Debt**

More than a year later, *today*, Bauknight is the agent for James B. both in the Wingate Suit and in James B's attempt to obtain sanctions against Appellant for exercising her FOIA rights.

The first *Wilson v. Dallas* decision also did not curtail Bauknight's FOIA interference and the Attorney General's acquiescence in that interference.

In April 2013, between the two *Wilson v. Dallas* decisions, Bauknight moved to intervene in a third FOIA Suit. This time he tried to stop or delay the AG's FOIA compliance with various FOIA requests, including both a request for the Wingate Agreement and a the AG's copy of the so-called "Hynie 'diary.'"

In May 2014 Bauknight is still seeking to intervene in the Summer FOIA Suit. [See Exhibit H].

On May 8, 2013 the *Wilson v. Dallas* decision voided Bauknight's fiduciary appointments. Within four days he had secured *ex parte*, pre-remittitur appointments, and used them to interfere with FOIA compliance and prevent the deposition of Hynie and determination that she was not Brown's spouse in the Wingate Suit. On May 12, 2013, Bauknight told Judge Manning:

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 Intervenor 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.]

On May 29, Levenson and Hynie made public their intent to dismember the "I Feel Good" Trust again, by reinstating the McMaster deal. Hearing this, AG Wilson, speaking through Sr. Assistant Jones, announced his intention to withdraw from the Aiken case. He did so promptly. Not like the Wingate Suit.

On May 29 Bauknight used his pre-remittitur *ex parte* appointments to deliver a Notice of Disallowance with Impending Bar, claiming Buchanan and Appellant were not entitled to any commission; that they had improperly valued the assets; and that Buchanan may be required to disgorge the \$500,000 he received to settle his counterclaims in the Wingate Suit.

On June 10 Appellant sued to void the Notice; void the appointment; or remove Bauknight for cause, based on his continued alliance with Hynie and her son, and for other conflicts and failures to account.

On June 13 the June 13 Orders barred Appellant and other from the James Brown Aiken cases.

In August 2013 Bauknight made the following claims in a deposition in the Forlando Federal suit:

- a. That Forlando had done nothing wrong in seeking for 4 years

to enjoin the 2000 Trust until the Cannon trustees returned;

b. That Terry Brown did not transfer his right of first refusal under the McMaster Settlement to Forlando.

Asked whether the *Wilson v. Dallas* appeal had helped the "I Feel Good" Trust, he said:

... 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 it. ...You 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.

At the same deposition Bauknight declared as confidential the \$4.7 million "appraisal." He claimed he had not shown it to anyone.

From August 2013 until today, Bauknight has helped Forlando Brown try to escape payment for the 4-year legal cost to defend against Forlando's frivolous complaint, dismissed in 2012. See, for example, Bauknight's Motion in Opposition to Certification, U. S. Federal Dist. Cas No. 3:08-cv-00014-WOB-JGW, Entry No. 349, filed May 12, 2014. Bauknight's secret collusion with Forlando and Terry

Brown has been particularly troublesome because Bauknight stood silent while Forlando Brown lied to the federal court in 2012 , claiming that he had no assets. Both knew Forlando owned the entire former interest of Terry Brown in the Estate.

Forlando and his counsel have been masters of deception, at the same time telling state and federal courts different stories as to material issues, including:

Forlando/David Bell, Esq.

Terry (for Forlando)/Bell

- | | |
|---|---|
| 1. The \$4.7 million value is "bogus" | 1. The \$4.7 million value is correct. |
| 2. Hynie was not Brown's spouse and knew it. | 2. Hynie was Brown's spouse. |
| 3. Buchanan/Pope's \$84 million value of the music empire was conservative. | 3. The value was a \$79 million overstatement |
| 4. Offers of \$150 million were still available in September 2008 | 4. There were never any offers to buy the music empire. |

When seeking to be part of this appeal, Bauknight failed to disclose that:

- a. Today he serves as Respondent Hynie's agent in the Wingate Suit; and is trying to intervene in three FOIA Suits to protect her.
- b. Today he serves as agent for Respondent James B., with no GAL, in the Wingate Suit and a FOIA Suit.
- c. Today he serves as agent for Respondent Forlando Brown, as assignee and the real party in interest of Respondent Terry Brown, in various suits.
- d. Today he continues to serve as agent for Respondent Terry Brown in the Wingate Suit and in a FOIA Suit.
- e. Today Bauknight is working to help Forlando Brown escape payment of attorneys' fees for his dismissed 4-year injunction suit.

While the May 8 Order accepted Bauknight's argument that someone must speak for the Estate and 2000 Trust in this appeal, Appellant respectfully submits

the relief requested in this motion is necessary for the Court to have an understanding of the irreconcilable conflicts of Mr. Bauknight which the June 13 Orders prevented Appellant from demonstrating at the circuit court level.

Failure to compel Mr. Bauknight to produce the documents requested, and to supplement the ROA, would reward Bauknight for his interference with FOIA suits and his loyalty to Hynie and others who are in direct conflict with James Brown's estate plan. It would likewise aid in continuing the State/AG's trampling on the constitutional rights of Appellant and others who support the "I Feel Good" Trust as embodied in the 1999 and 2000 estate plans. It would deprive them of a fair opportunity to show:

1. The false felony claim against Buchanan and Pope by Bauknight, and formerly the Attorney General, was false.
2. The claimed less-than \$4.7 million valuation of the music empire is false;
3. The claim that Hynie is Brown's spouse has no basis.
4. The claim that Hynie and her son control the termination rights to Brown's 800+ songs under the Federal Copyright Act has no legal or factual basis.
5. The claim that there will be nothing left to the "I Feel Good" Trust in 2023 if the McMaster Settlement is not reinstated has no legal or factual basis.
6. Bauknight, to favor Hynie, ignored the HALF of Brown's heirs, (including Michael, La Rhonda, Jeanette, Lisa, Nicole and possibly James Curtis) not challenging the estate plan – the only persons necessary to protect the "I Feel Good" Trust's royalty copyrights for decades.
7. Allowing Hynie and David Bell, Esq., to usurp the Estate's opportunity to forge termination rights contracts with the HALF of the *real* heirs not challenging the estate plan is

damaging the "I Feel Good" Trust.

The Court by the May 8 Order, has decided that Bauknight will be allowed to speak for the Estate and 2000 Trust in this appeal. Justice requires that the ROA reflect his FOIA interference and relationships with Respondents who are adverse to James Brown's estate plan and "I Feel Good" Trust, especially Respondents Hynie and Forlando Brown. Production of the above documents, and the Court's consideration of the record in the parallel appeals, will help level the playing field for Appellant, individually, and on behalf of others who seek to enforce the "I Feel Good" Trust.

The proper protection of the "I Feel Good" Foundation will be a credit to our State, providing scholarships for needy students for decades.

Respectfully submitted,



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