

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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JUL 29 2014

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

SC Court of Appeals

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.

**REPLY TO RETURN OF ESTATE AND 2000 TRUST (EXTENSION REQUEST)
AND RETURN AND OPPOSITION TO MOTION TO DISMISS AND FOR
SANCTIONS AND SUPPORTING MEMORANDUM**

Appellant files this reply to return to motion for extension and opposes the
motion to dismiss of Russell L. Bauknight, acting for the estate of James Brown
and James Brown 2000 Irrevocable Trust (the "Estate/200 Trust"), as follows:

1. Appellant opposes each and every fact and conclusion set out in the Return and Motion not expressly affirmed herein.
2. Appellant craves reference to, and incorporates, her Motion, for extension and initial brief herein, and asserts that the request was reasonable and there is no basis for this appeal to be dismissed.
3. The June 13 Orders which violated the Due Process and other rights of Appellant, Robert Buchanan, Jr. and all supporters of The James Brown "I Feel Good" Trust were issued just 35 days after the decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013),
4. The action of Appellant to protect herself and others who support the "I Feel Good" Trust where the Attorney General has withdrawn and the trustee Bauknight has an irreconcilable conflict with his fiduciary duty to Tommie Rae Hynie and the Levenson clients bears no relation to the actions of Dr. Cynthia Holmes, and requires thoughtful consideration.
5. No sanctions are appropriate as to Appellant in light of the reasonableness of the request and the importance of this appeal, which affects Appellant's constitutional rights; her reputation, property and liberty; and the future of private philanthropy in South Carolina..
6. Bauknight's has unclean hands, and the motion is made in bad faith to prevent discovery of the material misrepresentations by Bauknight and Respondents Terry Brown and Tommie Rae Hynie to the Supreme Court, which will be more apparent in light of the FOIA Order of the Honorable Eugene C. Griffith, Jr., in Newberry County Case 2012-CP-36-00688.
7. Bauknight, Hynie and Terry Brown began their interference with FOIA rights and delay to cover up their actions in 2011; Bauknight continued the interference and delay between the *Wilson v. Dallas* decisions by attempting to intervene in Case 688, above; and Bauknight last attempted to interfere with FOIA compliance and consolidate FOIA cases with Richland County 2010-CP-40-4900 (the "Wingate Suit") on July 24, 2014, as shown on Exhibit A.
8. Respondents Tommie Rae Hynie, Terry Brown, Forlando Brown, James B., David Cannon and Albert Dallas have not opposed the motion or moved to dismiss this important appeal.
9. Respondents Terry Brown and Forlando Brown have fired David Bell, Esquire, and Matt Bodman, Esquire in all James Brown matters, and their new counsel John Donsbach, Esq. has notified Appellant this week that

he will be making an appearance shortly, and seeking *pro hac vice* status for Scott Kenily, Esquire, so the extension request will coincide with those changes. [The Court is asked to take judicial notice of the motion to withdraw of Bell and Bodman in Appellate Case No. 2013-001649, served July 23, 2014, and responses of Appellants.]

10. All Respondents other than Bauknight have adopted Appellant's statement of the case, which provides substantial support for reversal of the June 13 Orders.

11. No Respondent other than Bauknight has filed a brief herein, or otherwise opposed the reversal of the June 13 Orders.

12. Enjoining Appellant from participating in any James Brown estate or trust case when she was being sued by the Estate/2000 Trust and the Attorney General in the Wingate Suit; seeking attorneys' fee for defending the 4-year frivolous federal suit filed by Forlando Brown and dismissed in 2012; and was seeking to prevent Bauknight, on behalf of the Estate/2000 Trust, from interfering in two FOIA suits was patently a violation of her Due Process Rights, those of Robert Buchanan, Jr. and others.

13. Appellant may be the only appellant because James Curtis, Michael Brown (incarcerated in California), Daryl Brown (who had fired Levenson and asked to support the estate plan) , Lindsey Brown (an adult granddaughter), Janice Brown(an adult granddaughter) and many others affected by the orders in the 14 James Brown cases in which they were issued were not made parties to, or notified of the June 13 Orders.

14. Judicial economy may be served by a single appeal and for the matter to be stayed so that the circuit court and Bauknight and his appointee will not continue to trample on the rights of Appellant, Buchanan, heirs and others supporting the "I Feel Good" Trust, but this Court elected to treat the appeal of orders issued after the June 13 injunction orders separately, and the circuit court elected to proceed.

15. Bauknight improperly characterized the actions of Appellant in protecting herself and others who support the "I Feel Good" Trust as intermeddling, but spent a million dollars in 2013 to advance his interests and those of Tommie Rae, including:

A. Interference in three FOIA Suits;

B. A suit he brought against Buchanan and Pope to stop the *Wilson v. Dallas* appeal, in which he is claiming

to act for the State/AG; (the "Wingate Suit")

C. A suit he forced Appellant to file by serving an improper Notice of Disallowance with impending bar, disallowing already-allowed and Court-approved fees of Appellant and Buchanan, and \$200,000 of proper fees and costs for the 5-year defense of the Estate/2000 Trust against the McMaster Suit. (Aiken Case 2013-CP-02-1337)

D. Aiding Forlando in not paying the legal costs of his 4-year frivolous attempt to enjoin the 2000 Trust from taking any action until the Cannon trustees were reinstated.

16. Mr. Bauknight makes numerous unsupported statements which go far beyond the July 10, 2013 date the form 4 Order denying amendment of the June 13 Orders was issued, but objects to the record which corrects them.

17. Appellant has dedicated her legal time and expertise *pro bono publico* almost full time since May 8, 2013 to help anyone who seeks to enforce The James Brown "I Feel Good" Trust, which today should be about \$91 million; continues to work (with counsel) on the frivolous Forlando federal suit; the two FOIA suits in which Bauknight is intermeddling and preventing FOIA compliance; the Wingate Suit which Bauknight brought against her in 2010; and the suit she was forced to bring as a result of Mr. Bauknight's improper May 29, 2013 disallowance of her allowed, court-approved payments from 2007-2009.

18. While Appellant has worked to help the "I Feel Good" Trust, Mr. Bauknight has remained both fiduciary and agent for Tommie Rae Hynie and for certain clients of Louis Levenson, Esquire ("Levenson") in the Wingate Suit and a FOIA Suit which is consolidated with the Wingate Suit, despite their announced intention on May 29, 2013 to dismember the "I Feel Good" Trust again.

19. It is unremarkable that everyone who seeks to dismember the "I Feel Good" Trust and disregard James Brown's wishes would support Mr. Bauknight and might not support Appellant or anyone who seeks to enforce the "I Feel Good" Foundation. James Brown understood this, and provided for the vigorous defense of his estate plan, which Mr. Bauknight and Mr. Sojourner have denied him.

20. Mr. Bauknight does not deny that the June 13 Orders and the subsequent actions of Mr. Bauknight and his appointee have placed

the 1999 backup will which makes Brown's estate plan ironclad in jeopardy.

21. Mr. Bauknight remains a trustee under the McMaster Legacy Trust, and continues to claim that he is an agent for the Attorney General, even though AG Wilson has said Mr. Bauknight was not authorized to make such representation.

22. Appellant has Due Process, First Amendment, Creditor and other standing and rights, and standing under Section 62-7-405 to defend herself and be properly paid for her service and costs before May 8, 2013, which rights were materially impaired by the June 13 Orders.

23. Appellant has acted appropriately in her own protection from malicious false claims by Bauknight, claiming to speak for the State/AG and (until 2013) the State/AG, including the false claim that Appellant and Robert Buchanan, Jr. committed a federal felony.

24. All Respondents others that Bauknight have agreed with the statement of facts in Appellant's initial brief, which support her claim that the June 13 Orders violate her Due Process and First Amendment Rights, and the Due Process, Equal Protection and First Amendment Rights of others.

25. Appellant enjoyed a three-day weekend vacation with her husband last week, and is leaving for San Francisco for a 6-day vacation Wednesday.

26. Appellant is a sole practitioner. She had not been paid for any of her work as PR/Trustee for James Brown between November 20, 2007 and May 26, 2009, or for the costs of the appeal which resulted in the *Wilson v. Dallas* decision (other than the amount awarded as costs by the Supreme Court).

27. Mr. Bauknight has withheld amounts due Appellant as PR/Trustee and the remainder of her SA fee from 2007 service despite an order of the Honorable Doyet A. Early, III, that they be paid, and despite the fact that the amounts due are earning interest at the legal rate.

28. While Mr. Bauknight withheld even \$47,000 in SA fees, with interest, due Appellant since 2008, he has paid Nexsen Pruet more than \$770,000.00 and the law firm of David Sojourner more than \$250,000.00 (for only 2 months) in 2013.

29. Mr. Bauknight also paid Kenneth Wingate, Esquire, \$563,000.00 in 2012, in addition to his 40% contingency contract.

30. Mr. Bauknight has recently declared that \$500,000.00 of this amount, which was inexplicably returned by the Wingate in 2013, was for legal expenses and expert fees.

31. \$500,000 in expert fees and expenses in addition to a 40% contingency appears extraordinary to attack Buchanan and Appellant in the Wingate Suit when Mr. Bauknight has told the S. C. Supreme Court that Mr. Brown's worldwide music empire was worth less than \$4.7 million when he died.

32. Appellant's dealings Mr. Bauknight have been difficult as a result of his vitriolic attacks, even on the simple matter of payment of the already-court-ordered SA fee for 2007, due Appellant since 2008.

33. On July 2008 the partial summary judgment hearing on that matter had to be delayed when Mr. Bauknight filed a false affidavit claiming that Mr. Buchanan and Appellant had broken the GRAMMY during transport to or from Christie's in 2008.

34. While the claim was false, the hearing had to be delayed to give Mr. Bauknight time to respond to Appellant's necessary motion to strike this false claim, made for the FIRST time 6 years after the GRAMMY was properly withdrawn from the Christie's sale and properly returned for safekeeping to the South Carolina State Museum.

35. Caution was appropriate because Appellant and Mr. Buchanan had already been falsely accused of a matter related to the GRAMMY by the firm of Kilpatrick Stockton, a firm which has been linked in James Brown matters with fired counsel Bell. Bell, working with Cannon and Dallas, has been known for deception and dirty tricks since 2007.

36. A Kilpatrick Stockton lawyer, Robert Potter, Esq. made the false claim (probably mere puffing, but with serious consequences to the "I Feel Good" Foundation) that he successfully forced the GRAMMY to be withdrawn from the 2008 Christie's sale. That statement was simply not correct, but was apparently noted by the S. C. Supreme Court.

37. Mr. Bauknight has had the records for five years which show that the Kilpatrick Stockton claim was incorrect, and that the GRAMMY was properly in the Christie's sale; the sale was approved by three court orders and the Attorney General; and the Grammy was properly withdrawn without penalty despite the urging of Christie's counsel to leave it in the sale. It was withdrawn, not out of fear that the sale was improper, but to avoid a \$5,000+ legal defense of the sale. The GRAMMY, already damaged before it was sent, was safely returned to

the S.C. State Museum for safekeeping in accordance with orders of the Honorable Doyet A. Early, III.

38. Mr. Bauknight and his appointee David Sojourner, Jr. have gone to extraordinary lengths to aid Tommie Rae Hynie; destroy the heir status of Brown's real heirs; and prevent FOIA compliance.

39. The June 13 Orders violate Appellant's First Amendment rights by denying her access to the Courts to have the 2008 gag orders related to the so-called Hynie "diary" declared void or expired.

40. Although Respondents Dallas and Forlando Brown, and the Attorney General have openly violated the Hynie "diary" gag orders, discussing and disseminating copies of Ms. Hynie's handwritten notes, Appellant, out of respect for the court, has requested a hearing to declare the orders void or expired, which Judge Early, based on the June 13 Orders, refuses to conduct.

41. Appellant has recently received a document presented to the Court back from the clerk with a handwritten note from the Clerk that it will not be filed. Such action violates the Due Process rights of Appellant and constitutes unfair conduct of the judicial system.

42. This appeal involves improper State action by the circuit court in the June 13 Order, and under color of State authority by Wingate and Mr. Bauknight, including the lodging of false felony claims against Appellant.

MEMORANDUM SUPPORTING EXTENSION AND OPPOSING DISMISSAL

No Respondent other than Russell L. Bauknight opposes the reasonable extension requested. The extension, in fact, coincides with the firing by Terry and Forlando Brown of Messrs. Bell and Bodman, and the appearance of their new counsel. A *pro hac vice* application is also expected.

Bauknight's continued fiduciary service to Ms. Hynie, his service as agent (without GAL) for her son, and his three-year attempt to prevent FOIA compliance are clear evidence that he seeks dismissal for himself, Ms. Hynie and her son, and not to

benefit the Estate/2000 Trust. As shown on Exhibit A, it is Mr. Bauknight who has intermeddled for three years to delay FOIA compliance which will expose the material misrepresentations he, Respondent Terry Brown and Respondent Hynie made to the Richland County Court in the Wingate Suit, and to the Supreme Court.

Interestingly, the testimony of Respondent Forlando Brown supports the material misrepresentations of Bauknight. He has stated that the \$4.7 million claimed valuation is “bogus;” and Ms. Hynie was not Brown’s spouse, knew it, and begged him to marry her. It was Respondent Forlando Brown who delivered to a journalist the Legacy Trust amendments which showed involvement of Kilpatrick Stockton, the source of the false GRAMMY claim noted by the Supreme Court.

The initial brief of Mr. Bauknight claims there was no fraud. But there was. And more of it is being revealed each day, despite the three-year interference by Mr. Bauknight in three separate FOIA suits, and noncompliance of the Attorney General with FOIA rights of Appellants and others.

Bauknight’s and Tommie Rae’s FOIA Interference is critical.

In the summer of 2011 Mr. Bauknight, through Nexsen Pruet, advised Appellant that if she sought documents from the McMaster Legacy Trust, a trust created by Attorney General Henry McMaster and secretly amended by AG McMaster, Terry Brown, Levenson and counsel for Ms. Hynie in January 2011, he would seek sanctions against her, or take other action. Mr. Bauknight was good for his word.

By the fall of 2011 the Estate/2000 Trust, the McMaster Legacy Trust, and Mr. Bauknight as agent for Tommie Rae, her son, Terry Brown and others, had moved to

intervene in two FOIA suits brought in Newberry County and have them consolidated with the Wingate tort suit the Attorney General now says AG McMaster did not authorize.

In an action which is the first known to Appellant in the State, one of the FOIA cases, in which the Estate/2000 Trust and non-residents Terry and Ms. Hynie seek sanctions against Appellant for exercising her FOIA rights, has been consolidated with the Wingate Suit. And, despite the admonition in the first *Wilson v. Dallas* decision, the consolidated FOIA case has not been heard three years after it was filed.

The second FOIA case has also been transferred to Richland County. During his void 4-year appointment as PR/Trustee, Mr. Bauknight, with lack of candor, told the circuit courts that Richland County was the proper venue for all actions involving the 2000 Trust. Mr. Bauknight, as trustee of the McMaster Legacy Trust, has prevented the Attorney General's release of the \$4.7 million "appraisal" for three years.

In 2012, a journalist covering this extraordinary FOIA non-compliance, and who then became interested in the entire James Brown story, sought documents under FOIA, including the Hynie "diary." Respondents Forlando Brown and Dallas have spoken openly about its damaging contents. Respondent Dallas and Attorney General McMaster communicated about the "diary" in 2009 after the 2008 gag orders, in violation of them unless they were void *ab initio* or expired.

On July 8, 2014, Judge Griffith ordered the Attorney General to comply with the journalist's FOIA requests. On July 24, 2014 Mr. Bauknight continued to try to stop the FOIA compliance, and the release of the Hynie "diary" which will help the

“I Feel Good” Trust and damage Ms. Hynie. [Exhibit A]

The Griffith Order may help release the following public documents Mr. Bauknight, Ms. Hynie and the Attorney General have been able to keep from the public for three years:

1. The AG’s copy of the widely-disseminated Hynie “diary” which Tommie Rae’s own lawyer admits will cause irreparable harm to Bauknight’s claim that she was Brown’s spouse.
2. Copies of the signed McMaster Legacy Trust and amendments, which show the collusion since January 2011 between Bauknight and Forlando.
3. Copies of the Wingate Litigation Retention Agreement which show the AG did not legally authorize Wingate to sue Buchanan and Pope.
4. The \$4.7 million claimed “appraisal” which Bauknight was required by the South Carolina Probate Code to file in May 2011.

On July 27, 2014 *The State* paper reported that Attorney General Wilson has not decided whether to challenge Judge Griffith’s direction that he comply with FOIA and release the documents.

The order of Judge Griffith is relevant to this appeal.

A brief delay to see whether the Attorney General complies with FOIA will promote judicial economy and help Appellant in handling FOIA issue in her Reply brief.

The Record of Fourteen Cases Affected by the June 13 Orders is Massive.

The Estate/2000 Trust’s initial brief claims there was no fraud. It takes positions supporting Hynie. It speaks of the actions of the Estate/2000 Trust during the void appointment of Mr. Bauknight as if they are proper.

In the June 13 Order Judge Early asserts that he considered the entire record of the fourteen cases. Appellant, in her reply brief, must do the same. And she must

review this massive record in light of the void Bauknight appointment. The task requires substantial work, especially in light of emerging facts.

A carefully measured response is critical to Appellant individually – and to the “I Feel Good” Trust.

The matter is complicated by Mr. Bauknight’s 4-year void appointment.

Mr. Bauknight took numerous actions between May 26, 2009 and May 8, 2013 in the name of the Estate/2000 Trust directly adverse to the Will and the “I Feel Good” Foundation. One among them was the claim to Judge Early in May 2012 that he (Judge Early) had already declared Ms. Hynie to be Brown’s spouse. He had not. And even Ms. Hynie’s attorneys agreed with Appellant that he had not.

On September 13, 2012 Ms. Hynie, joined by Mr. Bauknight for the Estate/2000 Trust, but during his void appointment, told the Supreme Court about Appellants request to void the Hynie “diary” gag orders:

“This appeal is an unabashed attack **on Mrs. Tommie Rae Brown, the surviving spouse of James Brown...** And while Pope can use her word processor to change the caption, there is nothing she can do to change the facts establishing Tommie Rae’s marriage to James Brown. ...Pope has inappropriately used her brief...to carry out a back-door challenge to the **family’s** settlement agreement which is the subject of the *Wilson v. Dallas* appeal before the Supreme Court...” [Emphasis supplied]

The effect of these, now that Mr. Bauknight’s appointment has been declared void, must be carefully considered. It is unique.

Mr. Bauknight and Ms. Hynie also claimed:

... Pope clings to *her* frivolous allegation that there was an impediment to the marriage of James and Tommie Rae...

Pope's defense in the Wingate Suit, materially affected by the June 13 Orders, is tied to these allegations by Mr. Bauknight. The matter is further complicated by Mr. Bauknight's continuing fiduciary service to Ms. Hynie.

Treating this matter with care in an appeal where a person seeking to protect the "I Feel Good" Foundation is being attacked by the foundation to aid those attempting to destroy it requires time and thought.

Appellant is Occupied with Suits Against her by Forlando, the Estate/2000 Trust, the Estate/2000 Trust's FOIA Interference and the Improper Bauknight Disallowance.

In addition to this matter, Appellant has a deadline of August 12 for a reply in S. C. Supreme Court Case No. 2014-001279. Appellant continues to seek a FOIA hearing in two pending cases. Appellant continues to seek partial summary judgment in the Wingate Suit that Ms. Hynie was not Brown's spouse.

Appellant is preparing for a discovery hearing on August 25 related to Mr. Bauknight's false GRAMMY affidavit and other non-response to discovery in the suit occasioned by Mr. Bauknight's improper May 29, 2013 disallowance.

In light of these factors, and the emerging FOIA issues, the extension is appropriate and dismissal should not be granted.

The firing of David Bell, Esq., who has defrauded multiple courts, is significant.

It will be important to see whether Respondents Forlando Brown and Terry Brown, with new counsel, will return to the deception they have perpetrated on state and federal courts since late 2007 when represented by David Bell, Esquire and aligned with Respondents Cannon and Dallas.

Since 2011 it has been known that the McMaster decision to give Tommie Rae and fewer than half of Brown's children \$50 million (with \$20+ million going to Levenson, Bell and counsel for Tommie Rae) and declare them heirs where the copyrights could have been protected for about \$100,000 a year with termination rights contracts under the Federal Copyright Act with heirs not contesting the Will, was not a prudent decision.

The false representations to the Supreme Court to justify that bad decision include:

1. There was no estate tax problem because the music empire was worth only \$4.7 million when Brown died.
2. Ms. Hynie is the wife, and she and her son control the Federal Copyright Act termination rights.
3. Mr. Buchanan and Appellant are greedy, incompetent felons.

The false GRAMMY claim began with Forlando and Bell.

Mr. Bauknight has repeated and expanded the false GRAMMY claims even though he has clear records, including photos, to confirm the GRAMMY was damaged before being sent to Christie's. Nobody has made the false GRAMMY damage claim in the six years since the GRAMMY was returned.

Mr. Bauknight's actions, not those of Appellant, have made matters more complex and clogged the courts.

All Respondents except Mr. Bauknight consent to the Statement of the Case.

All respondents other than Mr Bauknight consent to Appellant's statement of the case, including the following facts;

The June 13 Orders, affecting fourteen Aiken County James Brown cases, were

issued without service of a pleading on or notice to at least a dozen necessary parties, including:

...

2. Brown's DNA-proven daughters acknowledged by the Estate in 2007: LaRhonda Pettit; Nicole Parris; and Jeanette M. Bellinger;

3. Brown's daughter Lisa from his first marriage;

4. Brown's incarcerated son Michael and claimed son James Curtis [Both awaiting DNA testing];

...

6. Appellant and other creditors who have demanded notice.

[T]he Wingate Suit, filed May 19, 2010, currently has jurisdiction over material James Brown issues, including:

... 3. Was Tommie Rae Brown's spouse?

The AG/State agreed to join with Tommie Rae and others to :

... use their best efforts to extinguish any other outstanding interests or claims by any potential heir, devisee, or Successor...

On September 27, 2008 Brown's grandson Forlando... testified ... that offers of \$150 million were still available for the music empire.

On November 18 and 19 [2008] [t]he estate tax return was examined in detail. No objection to the \$84 million value was made.

On January 30, 2009 Terry joined the AG's settlement. Terry was given nearly 5% of Brown's assets and a right of first refusal... (the "ROFR").

In March 2009 Buchanan and Pope raised concerns to AG McMaster that Terry and others were seeking to devalue the music empire...

On May 19, 2010, the State/AG, Tommie Rae and others sued Buchanan and Appellant in the Wingate Suit...

On August 27 Tommie Rae and all who had challenged Brown's estate plan in the Levenson Intestacy Suit admitted in the Wingate Suit:

...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated

and well-known desire of James Brown. [Mem. Opp., p.2, 8/27/10]

In January 2011 AG McMaster, Terry and Others amended the Legacy Trust, and Terry's interest in the estate and ROFR were transferred to Forlando.

In April 2011 Wm. Jeffrey Smith and Appellant circulated the draft of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* for review by professionals.

In May, 2011 Bauknight filed an amended I&A asserting the value of Brown's music empire was about \$4.7 million...

On August 3, 2011 Appellant filed a FOIA Suit in Newberry County to obtain:

1. A copy of the Legacy Trust, with amendments, which had sued her in the Wingate Suit; and
2. A copy of Bauknight's \$4.7 million appraisal [Complaint].

On August 10, 2011 Appellant filed a FOIA Suit in Newberry County to obtain a copy of the Wingate Litigation Retention Agreement.

In the fall of 2011 Tommie Rae, Bauknight and other Wingate Suit Plaintiffs moved to intervene in Appellant's FOIA Suits...

On November 1, 2011, Bauknight, through counsel, represented to the Supreme Court:

1. Tommie Rae's elective share claim was a "slam dunk."
 2. Copyright termination rights are "all this case is about."
- ...

By Order dated January 11, 2012 the FOIA Suit seeking the \$4.7 million appraisal was moved to Richland County. The ... motion to consolidate it with the Wingate Suit is pending.

In June 2012 James Curtis wrote Appellant claiming to be Brown's oldest son. He asked to be DNA tested. Appellant notified Bauknight. ..

On July 20, 2012 Dallas gave a sworn statement confirming why the Estate/2000 Trust, during his administration, asserted Tommie Rae was not Brown's spouse.

In 2012 Summer filed a FOIA suit....

In 2012 the ... Bauknight joined Tommie Rae in a motion to dismiss the Gag Orders appeal.

In late 2012, Bauknight secretly paid Wingate \$563,000 from the Estate. This was in addition to Wingate's 40% contingency.

On February 27, 2013, the first *Wilson v. Dallas* opinion was issued. It contained Footnote 29, which said:

29 ...

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...

On March 6, 2013 Appellant met with AG Wilson to discuss concerns.

On March 14, 2013 the State/AG's Petition for Rehearing said of the Wingate Suit:

In this instance, the [AG] was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation 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. [p.25]

On April 18, 2013 Wingate asked Judge Manning to delay any hearing in the Wingate and FOIA Suits. [Ltr. Gende]

On May 8, 2013 the Supreme Court issued the final *Wilson v. Dallas* decision....

Between May 8 and May 12, prior to the Remittitur, Bauknight obtained *ex parte* orders from Judge Early and the Probate Judge naming him SA and ST.

On May 12, 2013 Wingate wrote 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 Interveners 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 17, 2013 Judge Early directed that any *Wilson v. Dallas* remand requests must be made by properly-filed motion by May 25.

No record was made of the May 29, 2013 status conference. Levenson and counsel for Tommie Rae announced their intention to attempt to reinstate the AG's settlement. ..

The AG announced his intention to withdraw from the Aiken cases.

The June 13 Orders, in part:

1. Enjoined Appellant, other fiduciaries and creditors who support the 2000 Estate Plan and backup 1999 Will from participating in the James Brown estate and trust cases;
2. Directed that Appellant's unheard motions be removed from the public record;
3. Directed the Clerk not to accept any filings of Appellant in any case except the case she filed on June 10.

Since June 13 Appellant has made multiple requests for a hearing as to the 2008 Gag Orders.

On August 20, 2013, Bauknight was deposed in the Forlando Federal Suit. When questioned about whether appellant's service in appealing the AG's settlement helped the estate, he stated:

That's poppycock. Pure speculation from your client. 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. [Emphasis supplied.]

In August 2013 Brown's son Daryl launched a website to try to help save Brown's estate plan and the "I Feel Good" Trust.

On October 1, Bauknight and his appointee [Sojourner] were appointed fiduciaries based on a summons and petition not directed to or served on any heirs, devisees or beneficiaries as required by the Probate Code; and after a "hearing" where there was no required notice and those attending were not allowed to examine either Bauknight or his appointee. SEE SCPC §62-3-402 and §62-3-403.

In October 2013 Appellant filed a motion to be named GAL for incarcerated son Michael after seeing that Bauknight's appointee was trying to terminate his interest as an heir without his having been served or allowed to undergo the Peoples DNA Protocol...

On October 10, 2013 Bauknight's appointee [Sojourner] was named limited SA in an *ex parte* probate court order...

On November 18, 2013, the Honorable J. Gregory Wehrman declared that the Wingate Contingency Fee Agreement was a public document..

The Wingate Agreement showed that the..contract was not signed by any Plaintiff other than Bauknight. It was signed by Levenson, Bell and counsel for Tommie Rae.

On January 6, 2014, the Appointee asked the Court to terminate La Rhonda's acknowledged heir status on January 8, 2014, even though she had died in December. [Ltr. Beach 1/6/14].

As of February 19, 2014:

...

2. Appointee has ravaged the rights of Michael, LaRhonda, Lisa, Nicole and Jeanette, Daryl and James Curtis with knowledge, as defined in the Trust Code, of the damage he is doing to the "I Feel Good" Trust's royalty copyrights. [See Mots.Pope.Aff.]

3. Neither Bauknight nor Appointee has asked the Court to dismiss Tommie Rae's claims; lift the 2008 Gag Orders; and complete the People's DNA Protocol;

4. Judge Early has declined to hear Appellant's Motion to be GAL for Michael, and others not challenging the "I Feel Good" Trust.

...

Mr. Bauknight does not dispute these facts admitted by all other Respondents.

They support Appellant's position that the June 13 Orders violated Due Process, Equal Protection and Probate and Trust Code rights of Appellant and others. These complex facts in fourteen cases must be carefully addressed in the reply.

Orders Issued Without Notice or Hearing 35 Days after *Wilson v. Dallas* have nothing to do with Dr. Cynthia Holmes.

Mr. Bauknight and Ms. Hynie have made an unprecedented number of requests for sanctions against Mr. Buchanan and Appellant over the last few years, beginning in January 2011. Additional sanctions threats and requests have followed, including the threat – carried out – related to her FOIA rights. Bell had gloated to the federal court in the Forlando Suit over the success he and Mr. Bauknight have had in permanently damaging Buchanan's and Pope's reputations in the *Wilson v. Dallas* decision.

Mr. Bauknight asks this court to compare the June 13 Orders, issued just 35 days after the *Wilson v. Dallas* decision with no notice or hearing, with the tortured history of Dr. Cynthia Holmes.

This is no case of Dr. Cynthia Holmes. This is a case of two fiduciaries who were properly serving when they were ousted in a State takeover. It is the story of how the mighty power of the State was used and abused by the State/AG, Wingate and Mr. Bauknight. It is the story of how it has been continued by the June 13 Orders and their aftermath.

Bauknight, Terry and Tommie Rae made the known material and false claim that Buchanan and Appellant fabricated a value to get a \$5 million commission on a \$5 million estate. Bell had originated the greedy-seeking-\$5 million claim in 2008. But he then (truthfully) stated the music empire was worth \$100 million. When Terry got a right to buy it, it changed to \$4.7 million..

The *Wilson v. Dallas* decision mandated an inquiry into these matters. It never happened. Instead, the June 13 Orders were issued. They removed the level playing field. They deny Due Process, Equal Protection and First Amendment rights. They promote fraud. They should be reversed.

It will take time to carefully comb the record to Reply. It will take time to research whether Mr. Bauknight's going outside and past the record in virtually all of his filings makes his motion to strike unfair. It will take time to consider whether Mr. Bauknight's late entrance extends the time to consider matters presented to the Court.

Dismissal is not appropriate where all except one respondent have agreed with the statement of the case and not filed opposing briefs. Dismissal is also not

appropriate where, as here, the person speaking for the charity has an irreconcilable conflict, and he and his appointee have placed the 1999 will making the charity ironclad in jeopardy.

Judicial Notice Under Rule 201(c), SCRE is essential to the Record in this Appeal.

In deciding whether Mr. Bauknight's return and motion were in bad faith and intended to harass Appellant, the Court should take judicial notice of his FOIA interference for three years and his refusal to comply with discovery in the Wingate Case since 2010. These acts to benefit Ms. Hynie and her son are undisputed in the record.

The Court should also take judicial notice of the wrangling by Mr. Bauknight in Appellate Case No. 2014-000250 over whether he is personally liable for his improper acts during his four-year void appointment. As that record shows, Mr. Bauknight secured two orders from Judge Early dismissing claims against him, individually under Rule 12(b). Appellant is not opposed to the consolidation of that case with this. Mr. Bauknight suggests that Appellant welcomes multiple appeals. She does not.

Appellant also asks the Court to take judicial notice of Appellate Case No. 2014-000794, which is especially important because it supports the finding that Mr. Bauknight and his appointee Mr. Sojourner have run roughshod over the Due Process rights of Brown's real and presumed heirs NOT challenging Brown's estate plan¹. In doing so they, and the circuit court, are unfairly favoring Ms. Hynie.

¹To date that includes:

1. Daryl; 2. Lisa; 3. La Rhonda ; 4. Nicole; 5. Michael; and 6. Jeanette James Curtis and others are seeking DNA testing, which is being refused by the circuit court's refusal to conduct a hearing.

Other documents which support this Reply and Return, and of which the Court is asked to take judicial notice under Rule 201 (c), SCRE, are the Factual Addendum to Appellant's motion for extension; Appellant's initial brief; and the Petition for Certiorari and the Appendix filed in the Supreme Court as Appellate Case No. 2014-001279; and the Order of Judge Griffith, the filings of Mr. Bauknight, and other filings in Case 2012-CP-36-00688. This is especially important in light of the Attorney General's statement reported in the media on July 27.

The Importance to Appellant and Private Philanthropy Merit careful consideration.

In 2008 the Attorney General declared non-spouse Tommie Rae the spouse of James Brown; gave her 25% of the "I Feel Good" Foundation; and gave Terry a right to buy Brown's music empire at "fair market value." In 2010 the Attorney General sued the two people who were protecting the "I Feel Good" Foundation because someone convinced him he would breach his fiduciary duty as Attorney General if he did not. The Attorney General now says he did not authorize the suit. In 2011 the Attorney General began accusing Mr. Buchanan and Appellant of a federal felony based on a \$4.7 million "appraisal" he now says he never looked at. He says he relied on Mr. Bauknight. In 2012 the Attorney General told the Supreme Court he had considered the Hynie "diary" in his decision to give Ms. Hynie 25% of the "I Feel Good" Trust. But from 2011 until TODAY the "diary" is hidden. And Ms. Hynie and Levenson have vowed to redo the settlement.

A July 8 Order, and the Attorney General's press briefing that he may actually comply with FOIA, the law he is required to enforce, have significant bearing on this and every other James Brown case. Like *Wilson v. Dallas*, this case affects the future of

private philanthropy in South Carolina. And it affects the private property and FOIA rights of Appellant and other citizens.

These matters should be considered by the Court.

The Extension and Denial of Motion to Dismiss will prevent further deception.

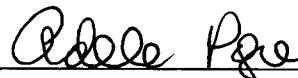
Mr. Bauknight's active deception of the courts began with the fabricated Wingate Suit. It continued with the secret amendment to the Legacy Trust, and Mr. Bauknight's secret alliance with Bell, Terry and Forlando Brown. It continued with three years of FOIA interference while claiming Ms. Hynie was Brown's spouse and the music empire worth \$4.7 million at Brown's death. It continued despite the Supreme Court's request that FOIA matters be addressed in the first instance. It continues today.

A careful reply brief may help stem the damage Mr. Bauknight has caused. The extension and denial of the motion to dismiss and for sanctions will promote justice and allow Appellant her to give her best effort to this important task.

CONCLUSION

Appellant's reasonable request for extension should be granted. The motion of the Estate/2000 Trust to dismiss and for sanctions should be denied.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753
S.C. Bar No. 4501
Attorney for Appellant

July 27, 2013

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)

Susan D. Sumner,)
)
)
Plaintiff,)
)
v.)
)
Alan Wilson, In His Capacity As)
Attorney General for South Carolina,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
THE EIGHTH JUDICIAL CIRCUIT
Civil Action No.: 2012-CP-36-00688

SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF PROPOSED INTERVENOR'S
MOTION TO RECONSIDER

FILED
NEWBERRY COUNTY
2014 JUL 24 AM 10 17
JACKIE S. BOWERS
CLERK OF COURT

Proposed Intervener Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust (hereinafter collectively "the Estate"), by and through the undersigned counsel, hereby submits this Supplemental Memorandum in Support of Proposed Intervenor's Motion To Reconsider. Specifically, this Memorandum addresses the South Carolina Supreme Court's recent holding in *Perry v. Bullock*, Op. No. 27419 (S.C. Sup. Ct. filed July 16, 2014) (Shearhouse Adv. Sh. No. 28 at 116).

In *Perry*, the court examined whether autopsy records are included within the definition of "medical records" provided in S.C. Code § 30-4-20 such that they are exempt from disclosure in response to a Freedom of Information Act ("FOIA") request. *Id.* at 117. While the bulk of the supreme court's opinion is devoted to defining these terms, the court offers a few key insights into the general scope of the FOIA and the role of the courts versus the legislature in determining its reach. First, though acknowledging that the FOIA is to be "liberally construed" to carry out its purpose, the court reiterated that "records which by law are required to be closed to the public are not considered to be made open to the public under the provisions of [the FOIA]." *Id.* at 119 (citing S.C. Code § 30-4-20).

In affirming the trial court's finding that the documents were exempt from disclosure, the *Perry* court also noted that § 30-4-40 allows public bodies the discretion to decline to disclose certain other categories of information. The court ultimately held that it was "compelled here by the plain meaning of the statutory term to conclude that an autopsy report is exempt from the FOIA's disclosure requirement." *Id.* at 121. Finally, and of particular relevance to this case, the court observed that "[a]lthough there may be policy concerns militating against this result, that is a matter for the legislature and not for this Court." *Id.* at 121-22.

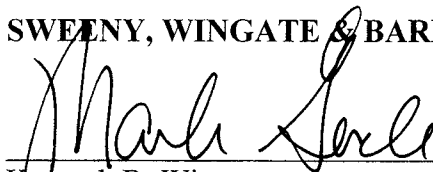
In the instant case, this Court's Order exceeds the plain language of the FOIA by ordering the disclosure of confidential documents in direct contravention of § 30-4-40's exemption from disclosure of "[c]orrespondence or work products of legal counsel for a public body and any other material that would violate attorney-client relationships". As with the "items 'of or relating to the performance of an autopsy'" in *Perry*, public entities have an expressly reserved option to withhold from disclosure material described in § 30-4-40(a)(7) and other sections. This Court's Order is particularly untenable in light of the supreme court's implied affirmation of § 30-4-40's optional disclosure exemptions in *Perry* and its even more pertinent reminder that policy concerns related to under-disclosure are for the legislature's attention, whereas the courts are bound by plain statutory language. As a result of this Court's Order, it is likely that correspondence or work products of legal counsel for a public body and other material that would violate attorney-client relationships will be disclosed in contravention of the FOIA's exemptions and without the Estate having been allowed to intervene to protect its rights.

Given the foregoing, Proposed Intervenor respectfully requests that this Court reconsider its Order in accordance with the Motion to Reconsider filed by the Proposed Intervenor and

allow intervention and argument as to why certain of the FOIA requests should be denied or consolidated with Richland County case 4900.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

Joseph O. Thickens

Sweeney, Wingate & Barrow, P.A.

Post Office Box 12129

Columbia SC 29211

(803) 256-2233

ATTORNEYS FOR PLAINTIFFS

Columbia, South Carolina
July 23, 2014

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

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

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

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.

PROOF OF SERVICE

I certify that on the 27th Day of July, 2014, I have served the REPLY TO RETURN OF ESTATE AND 2000 TRUST (EXTENSION REQUEST) AND RETURN AND OPPOSITION TO MOTION TO DISMISS AND FOR SANCTIONS AND SUPPORTING MEMORANDUM on the parties described below by depositing a copy of same in the United States Mail, postage prepaid, addressed to their

attorneys of record as follows:

David B. Bell, Esquire
Matthew D. Bodman, Esquire
619 Greene Street
Post Office Box 1011
Augusta, Georgia 30903-1101

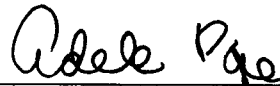
David G. Cannon
P. O. Box 865
Barnwell, SC 29812

Eugene C. Covington, Jr., Esquire
P. O. Box 2343
Greenville, SC 29602

Robert N. Rosen, Esquire
18 Broad Street, Suite 201
Charleston, SC 29401
J. David Black, Esquire

William W. Wilkins, Esquire
Tanya A. Gee, Esquire
J. David Black, Esquire
William G. Newsome, Esquire
PO Drawer 2426
Columbia, South Carolina 29202-2426

Peter Shahid, Jr., Esquire
89 Broad Street
Charleston, South Carolina 29401



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S. C. Bar No. 4501
Pro Se

July 27, 2014

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753

July 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

Re: Wilson v. Dallas
Appellate Case No. 2013-001649

Dear Ms. Kitchings:

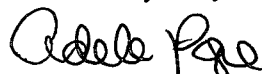
In connection with the above appeal, enclosed please find:

1. An original and seven copies of a REPLY TO RETURN OF ESTATE AND 2000 TRUST (EXTENSION REQUEST) AND RETURN AND OPPOSITION TO MOTION TO DISMISS AND FOR SANCTIONS AND SUPPORTIN MEMORANDUM.
2. An original and seven copies of an Affidavit of Adele J. Pope in support of the Motion.
3. An original and one copy of proofs of service of each.

Kindly return a file-stamped copy of each document in the stamped return envelope provided for your convenience.

Thank you.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*
S.C. Bar No. 4501

cc:
Counsel as shown on proof of service

RECEIVED

JUL 29 2014

SC Court of Appeals

**Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108
803-413-0753**

July 27, 2014

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
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RECEIVED

JUL 29 2014

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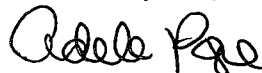
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Thank you.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*
S.C. Bar No. 4501

cc:

Counsel as shown on proof of service

Law Office of Adele J. Pope, P.C.
1228 Walnut Street
Newberry, South Carolina 29108



VK
7-29

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUL 29 2014

SC Court of Appeals