

STATE OF SOUTH CAROLINA
In the Supreme Court

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AUG 11 2014

S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No. 2014-001279

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

v.

Albert H. Dallas and others, Defendants.

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

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

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

IN RE:

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

REPLY TO RETURN OF BAUKNIGHT TO
PETITION FOR WRIT OF CERTIORARI

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I. Introduction

Petitioner submits this reply to the return of Russell L. Bauknight to her petition for certiorari¹. Petitioner requests that this Honorable Court accept her petition; reverse the dismissal of her appeal by the Court of Appeals; and reverse the October 1, 2013 order of the Honorable Doyet A. Early, III appointing Russell L. Bauknight sole fiduciary under the estate plan of entertainer James Brown, and his appointee as limited special trustee(the "Appointment Order").

Bauknight is the sole Respondent to file a return to the petition. He does, however, continue to serve as agent and fiduciary for Respondents Tommie Rae Hynie ("Tommie Rae") and Respondent Terry Brown ("Terry") in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). Bauknight also serves in that case as agent for four clients of Louis Levenson, Esquire ("Levenson") who are challenging Brown's estate plan.

On May 29, 2013 counsel for Tommie Rae and Levenson announced their intention to reinstate the 2008 settlement voided by this Court three weeks earlier in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

On page 8 of the return Bauknight invites the Court to review "what has happened after remand ordered in *Wilson v. Dallas*." As set out herein, that review will show that Bauknight continues to act for Tommie Rae and the Levenson clients in their attempt to destroy the "I Feel Good" Foundation. He continues to act for and with the Attorney General ("AG") in the Wingate and

¹ Petitioner refutes each statement and conclusion of Bauknight's return not consented to herein. She adopts and incorporates her petition and her appealability memorandum [Appendix, pp. 39-66].

FOIA suits to secrete documents which he and the AG should be using to protect the "I Feel Good" Foundation. Since 2012 Bauknight has spared no expense – from funds Brown left for scholarships – to crush Petitioner for daring to continue to challenge this State takeover of a private foundation protected by two successive wills.

Hearing the plan of Tommie Rae and Levenson, the AG announced his intention to withdraw from the Aiken cases. He remains as Tommie Rae's co-plaintiff in the Wingate Suit, and Bauknight remains as his agent and as trustee of the McMaster Legacy Trust, also a Plaintiff.

On June 13, 2013 Judge Early, without notice or hearing, advanced the Levenson/Tommie Rae plan by issuing orders enjoining Petitioner and Robert Buchanan, Jr. from participating in any James Brown estate or trust case. The June 13 Orders overlooked that they had been sued by the Estate and 2000 Trust in 2010 for tens of millions of dollars; that they were sued in 2008 by Respondent Forlando Brown in an effort to return Respondents Cannon and Dallas as trustees; and that the Estate was seeking to intervene in two still-pending FOIA suits brought by Petitioner in 2011.

Petitioner was not just enjoined from participation. Petitioner's unfiled motions were directed to be removed from the public record, and the clerk was directed not to accept any motions she filed.

A review shows that Bauknight began a secret collusion with David Bell, Esquire, Forlando's attorney who has defrauded state and federal courts for seven years, in May 2010. In 2010 the two secretly signed the 40% contract to

authorize the Wingate Suit for Terry, who was part of the McMaster settlement.

Forlando, Bell's other client, told the federal court he opposed the settlement.

A review shows that Bauknight was so pleased by this Court's attention to the false GRAMMY claim made by Bell, aided by Kilpatrick Stockton, that he fabricated his own, new false GRAMMY claims in an affidavit filed August 3, 2014 in Judge Early's court.

A review shows that the AG and Bauknight are working feverishly to prevent the release under FOIA of the public documents which will show that the \$4.7 million value claim was material and false and that Tommie Rae was not Brown's spouse and she and the settling parties knew it.

A review shows that the obsession to crush Buchanan and Petitioner became so great that the Attorney General falsely accused Buchanan and Petitioner of the felony of overstating Brown's assets to the IRS by \$79 million to get a \$5 million fee. He did so without even looking at Bauknight's sham "appraisal."

A review shows that the circuit court and State/AG are allowing Bauknight to continue these actions under the claim of State Authority and by FOIA interference. And the circuit court's June 13 Orders and Appointment Order have denied Petitioner, half of Brown's heirs and anyone who dares to challenge this second dismembering an even playing field.

Some of these matters are discussed below. The Court is also asked to take judicial notice of Court of Appeals Case Nos. 2013-001649, 2013-00250 and 2013-000794.

II. Petitioner is a Necessary Party With Standing to Appeal.

A. Petitioner is a Necessary Party Under the SCPC.

Bauknight claims on page 14 of the return that Petitioner is not a party. This is incorrect. Petitioner is a necessary party who was required both to be identified in the Bauknight petition for formal appointment and served with the summons and complaint. See SCPC § 62-3-402. Bauknight's intentional refusal to identify and serve either Petitioner, a creditor with proper demand for notice in place, or more than half of Brown's heirs, in his *verified* petition does not deprive them of standing as parties. It demonstrates only that it is appropriate to acknowledge their standing as necessary parties and consider Bauknight's material and intentional misstatement in refusing to appoint him.

B. The Circuit Court's Failure to Comply With *Wilson v. Dallas*; Bauknight's Wrongdoing; the Attorney General's remaining as a Co-Plaintiff with Tommie Rae in the Wingate Suit; and the Attorney General's Refusal to Comply with FOIA Regarding the \$4.7 Million Claimed Value and Tommie Rae's Status Enhance Petitioner's Section 62-7-405, Public Interest and Constitutional Standing.

Among the things Bauknight failed to note in his update on pages 8-12 of the return was that he continues to sue Petitioner as claimed agent for the State/AG; trustee of AG's McMaster's Legacy Trust; and as agent for Tommie Rae in the Wingate Suit. Bauknight has asked the Richland County Court to stay this illegal suit, and the FOIA suit he and the AG had consolidated with it, until all matters in Aiken County are concluded. The AG has acquiesced in these requests.

At the heart this FOIA non-compliance and defiance of *Wilson v. Dallas*

is the fabricated \$4.7 million "appraisal" which the AG used for two years to accuse Buchanan and Petitioner of a career-threatening federal felony. Petitioner requested it under FOIA after the Wingate Suit plaintiffs refused to release it in discovery. The AG and Bauknight both now say it cannot be produced under FOIA because the AG never saw it².

Ten attorneys paid by taxpayers of South Carolina and fifteen or more Bauknight is paying with "I Feel Good" Trust funds are being used to crush any opposition to this second dismembering of Brown's "I Feel Good" Foundation.

After four years the effort to crush Buchanan succeeded. But the AG would not allow him to be paid until he had extracted a secret promise that he would not file a petition for rehearing in *Wilson v. Dallas*. Then Bauknight and the AG told this Court Buchanan and Petitioner were at odds. They never were. Buchanan simply could not bear the cost of the attacks any longer.

The \$2 million spent in a year on this campaign, which this court directed be reviewed, has never been reviewed.

It has recently come to light, that Bauknight, coached by counsel for Tommie Rae, takes the position that Brown's \$40 million Publicity Rights have no value. Bauknight today refuses to tell the IRS that Tommie Rae was not Brown's spouse. The AG refuses to look at the Bauknight "appraisal" and *require* that the IRS filings during Bauknight's void appointment be corrected.

² The AG also told this Court in March 2013 that his predecessor had not authorized Wingate to sue in the name of the State/AG. But AG McMaster had answered interrogatories in the Wingate Suit before leaving office. The AG told this Court he would move to be dropped as a party to the Wingate Suit. But Wingate, the AG's attorney of record, asked that the AG's motion be stayed for what may be years.

The 1999 backup will and voice tape that make Brown's estate plan ironclad are being hidden. In July 2014 Bauknight moved to strike them from the record in the June 13 Orders appeal. He told the Court they were not relevant to the appeal. As to the 1999 will, Bauknight said:

“This will pre-dates the Will being probated and has never been filed below. .”

Section 62-7-405 and Public Interest standing are designed for what is happening here. The Trust Code gives “others” a right to protect charities where the traditional actors are not protecting them. Brown is dead. The trustee is working against the “I Feel Good” Foundation. And the AG is helping him. The standing of Petitioner and others to enforce the “I Feel Good” Trust under Section 405 and Public Interest principles in these extraordinary circumstances should be acknowledged.

III. Actions of the AG, the Circuit Court and Bauknight Since Remand

Since May 8, 2013 the AG, the circuit court and Bauknight have ignored Due Process and the remand mandate of this Court in *Wilson v. Dallas*. Some examples follow.

A. FOIA Interference and Non Compliance

Within two days of the *Wilson v. Dallas*³ Bauknight had asked that both the Wingate Suit and FOIA compliance in two 2011 FOIA suits be stayed until all Aiken County matters were concluded. Since then there has been no FOIA compliance.

³ 403 S.C. 411, 743 S.E.2d 746 (2013)

The AG and Bauknight do not limit their FOIA interference and noncompliance to Petitioner. Today Bauknight is spending more of the money Brown gave to needy students to prevent a journalist's FOIA compliance order. He wants the order overturned and the journalist's FOIA suit consolidated with the Wingate Suit. He wants to stop release of the following public documents:

1. The \$4.7 million appraisal;
2. The McMaster Legacy Trust and the secret 2011 amendment;
3. The Wingate Litigation Retention Agreement;
4. The Hynie "diary" the AG reviewed in 2008 before giving Tommie Rae 25% of the "I Feel Good" assets.

B. The Attorney General as Wingate Co-Plaintiff with Tommie Rae .

As stated above, the AG continues to lend the mighty hand of the State/AG and the McMaster Legacy Trust in the Wingate Suit.

C. The June 13 Orders Deny Due Process and Other Rights 4

The June 13 Orders are unprecedented. The circuit court reads *Wilson v. Dallas* as stripping Buchanan and Petitioner of any right to protect themselves from the State-sponsored attacks in the Wingate Suit. They purport to prevent them from showing that the false felony claim was false. They purport to prevent them from showing, for example, that a Royal Bank of Scotland 2006 professional appraisal valued Brown's royalties at \$42 million and Bauknight's claim that the \$40 million Publicity Rights have no value is simply false.

The June 13 Orders purport to strip Petitioner of being a lawyer, GAL, fact

⁴ The Court is asked to take judicial note of the filings in S. C. Court of Appeals Case No. 2013-001649, the appeal of the June 13 Orders.

or expert witness in any James Brown cases.

As a result of his June 13 Orders, Judge Early also refuses to conduct a hearing on his unconstitutional 2008 gag orders. Petitioner's First Amendment rights are being violated because she is threatened with legal action if she discusses what she, two attorneys general and scores of others know about the so-called Hynie "diary" contents. And the AG is using these patently unconstitutional 6-year-old gag orders to refuse FOIA compliance.

In short the State, the AG and Bauknight are using millions of dollars Brown gave for needy students and the mighty power of the State to, again, try to destroy the "I Feel Good" Foundation and anyone who dares to challenge them. And the circuit court's Appointment Order and June 13 Orders are helping them.

IV. Novel and Constitutional Questions Meet Standards for Certiorari

On pages 12 and 13 Bauknight asserts that the petition does not meet the standards of a petition for certiorari. He is incorrect. Some of the novel and substantial constitutional issues presented by the Appointment Order are:

- a. Has the circuit court violated Petitioner's First Amendment and Due Process rights by refusing to conduct a hearing to void the 2008 gag order where she is being jointly sued by Tommie Rae and the State/AG?
- b. Is the Wingate Suit illegal, unconstitutional or both, where Wingate is sole attorney for the AG, nonresident Tommie Rae, and others?
- c. Did Bauknight violate the Due Process rights of Petitioner and Buchanan in the Wingate Suit by claiming to speak for the State/AG?
- d. Did the AG lack candor with the Court in 2013 when he claimed the AG did not authorize Wingate to sue in the name of the State/AG?
- e. Are the Due Process rights of Petitioner violated by the consolidation of her 2011 Newberry FOIA suit with the Wingate Suit?

- f. Did the circuit court violate Petitioner's Due Process rights by enjoining Petitioner, without notice or hearing, from participating in any James Brown trust or estate case?
- g. Do Petitioner and Buchanan have the right to defend themselves by showing that the \$4.7 million value was fraudulent and their \$84 million value was correct?
- h. Have the Attorney General and Bauknight used FOIA interference and FOIA non-compliance to violate Petitioner's Due Process and First Amendment rights?
- i. Do Appellant and Buchanan have a right to show that the GRAMMY issue in *Wilson v. Dallas* decision was the product of fraud of David Bell, Esquire, with the aid (possibly inadvertent) of Kilpatrick Stockton?
- j. Do Appellant and Buchanan have a right to challenge Bauknight's new, 2014, false GRAMMY claim that they damaged the (fully insured) GRAMMY in transit six years ago?
- k. Did the Attorney General violate the Due Process Rights of Buchanan and Petitioner by accusing them of a career-threatening felony of intentional overstatement of Brown's assets to the IRS by \$79 million without reviewing the Bauknight appraisal on which the false claim was based?
- l. In light of *Gignilliat*, 385 S.C. 452, 684 SE 2d 756 (2009) and its predecessors were the Attorney General and Bauknight reckless in relying on Tommie Rae's counsel for the position that Brown's \$40+ million publicity rights could not be devised and/or had no value?
- m. Did Bauknight intentionally or recklessly understate the value of Brown's worldwide music empire by claiming Brown's gift to the "I Feel Good" Foundation was only about \$3 million – not \$80 million?
- n. Are the Attorney General and Bauknight using FOIA intervention and FOIA noncompliance to prevent the Court and public from finding out that Tommie Rae was not Brown's spouse?
- o. Does the *Wilson v. Dallas* decision violate Due Process and other rights of Buchanan and Pope – attorneys – if it is interpreted to prohibit their representing clients, serving as GAL, and/or serving as fact or expert witnesses in any James Brown case matter?
- p. Should this Court declare Sojourner's October 10, 2013 *ex parte*

p. Should this Court declare Sojourner's October 10, 2013 *ex parte* limited SA appointment by the probate court void *ab initio*?

q. Did the circuit court violate Due Process rights of Appellant and other Interested Persons by allowing the Bauknight appointment to proceed without proper joinder or service?

r. Did Bauknight's failure to serve Appellant and other required parties with his petition violate Due Process rights of Appellant and others?

s. Should Petitioner, with expertise in the interrelationship between State probate law and the federal copyright act termination rights provisions, have the right to help enforce the "I Feel Good" Trust under § 62-7-405 *pro bono publico* where the AG has withdrawn from the Aiken cases?

t. Are Bauknight and Sojourner allowing Bell and Levenson to siphon off the right (and obligation) of the Estate/"I Feel Good" Trust to reach fair termination rights agreements with the least expensive HALF (or half + 1) of Brown's children to protect the \$3+ million annual income stream of the "I Feel Good" Foundation for decades?

u. Should Bauknight's appointment be denied because he intentionally omitted heirs and devisees from his verified petition?

v. Does Bauknight's continued fiduciary service to Tommie Rae, James B. and Levenson clients challenging the estate plan constitute an irreconcilable conflict preventing his service as PR/Trustee under the Will/2000 Trust?

w. Does the circuit court's acquiescence in Bauknight's insistence that he be sole PR/Trustee violate Brown's document and the *Wilson v. Dallas* remand directions?

x. Does the circuit court's appointment of Bauknight without reviewing the \$2 million he paid to his law firm, the Sojourner law firm and Wingate in one year, and his reporting of major estate assets at \$1 on accountings require reversal and remand?

y. Did the circuit court err in appointing Bauknight without holding a hearing on, or asking him about, the pending complaint seeking to void his *ex parte* appointments or remove him?

z. Does Bauknight's having participated in and/or condoned the fraud of Terry Brown and David Bell on state and federal courts since 2010 constitute grounds not to appoint or to remove him?

aa. Does Bauknight's fiduciary service to Hynie and service as agent for Hynie and her son 18 months after the first *Wilson v. Dallas* decision constitute grounds for failure to appoint or removal?

ab. Should the circuit court have allowed complete examination of Brown's claimed \$4.7 million value claim?

ac. Is the circuit court continuing its violation of the Due Process and First Amendment Rights of Petitioner with all orders after the June 13 Orders?

ad. Is the Attorney General continuing to violate Petitioner's Due Process rights by remaining a party to the Wingate Suit and allowing Bauknight to continue as the AG's agent and agent for Tommie Rae?

ae. Is the McMaster Legacy Trust exempt from FOIA?

af. Does the circuit court's direction to the clerk not to accept Petitioner's filings and to remove her filings from the public record violate her Due Process rights?

ag. Is the circuit court's direction to remove Petitioner's unheard motions unconstitutional?

V. Everything in James Brown Cases is Significant and Unprecedented.

On page 1 Bauknight incorrectly claims that there is nothing significant about this case. Everything that has happened since August 2008 is significant.

VI. Update on Bauknight's Conflicts and Disloyalty

Bauknight claims on pages 6 and 18 that he is loyal and does not have a conflict. The following examples show that his conflicts increase each day:

A. Bauknight's New false GRAMMY Claim.

On July 3, 2014, Bauknight filed an affidavit in circuit court which made the false claim that Buchanan and Petitioner had damaged the (fully insured) GRAMMY in transit. Bauknight appears to have been impressed with the

success of Bell's false claims, with the aid of Kilpatrick Stockton, about the GRAMMY withdrawal. Petitioner has moved to strike the false affidavit.

B. Bauknight Prevents the Court of Appeals From Considering the 1999 Will and James Brown's voice Tape.

That motion to strike these important documents is telling.

C. Bauknight Refuses Even 2007 SA Payments to Petitioner

Bauknight has refused to pay Petitioner any portion of what she is due under the January 8, 2008 Order of Judge Early. He does so despite Judge Early's approval of all acts of Buchanan after considering the entire record. He knows all acts of Buchanan and Petitioner were joint.

Bauknight told Judge Early last month he cannot pay Petitioner even the court-ordered \$47,000 with interest for her SA work in 2007 until the Wingate Suit is over. But he can pay his own lawyers \$770,00 in 2013.

D. Bauknight's Collusion with Bell, who has Defrauded the Courts for Seven Years

Bauknight and David Bell, Esquire have been engaged in secret dealings since they signed the Wingate Agreement in 2010. Bauknight has aided Bell and Forlando in Federal Case No. 3:08-cv-00014-WOB where he told the federal court Forlando has done nothing wrong. The Court is asked to take judicial notice of Forlando's and Bell's years of fraud on that court to benefit the Cannon trustees.

E. Bauknight Refuses to Correct IRS Filings Claiming Tommie Rae is Spouse.

Nearly eighteen months after *Wilson v. Dallas* Bauknight refuses to tell

the IRS that Tommie Rae is not Brown's spouse. This will cause estoppel problems for years. And the AG refuses to investigate.

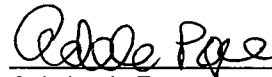
Conclusion

Before the ink was dry on this Court's important *Wilson v. Dallas* decision, Bauknight, Tommie Rae and Levenson were at work to undo it. The circuit court aided them with the June 13 Orders and the Appointment Order which is the subject of this appeal. The AG remained in Wingate and fought FOIA compliance.

The "I Feel Good" Foundation deserves better.

Petitioner's standing should be confirmed. Certiorari should be granted. The dismissal should be reversed. The Appointment Order should be reversed remanded with instructions to conform to Due Process, the SCPC and this Court's decision in *Wilson v. Dallas*.

Respectfully submitted,



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PROOF OF SERVICE

I certify that on the 11TH day of August, 2014, I have served the REPLY TO
RETURN OF BAUKNIGHT TO PETITION FOR WRIT OF CERTIORARI in the
above matter on Respondents as shown below by depositing a copy of same in the
United States Mail, postage prepaid, addressed to their attorneys of record as
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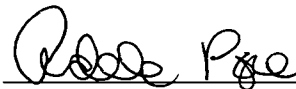
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