

STATE OF SOUTH CAROLINA

In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Case No. 2014-000794 (Order, S.C. Ct. App. filed August 29, 2014)

IN RE:

The Estate of James Brown, a/k/a James Joseph Brown

Henry Dargan McMaster, Plaintiff,*

v.

Daryl J. Brown, Lindsey Dolores Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown, Sydney L., Carrington L., Tonya Brown, Terry Brown, Romunzo Brown, Tommy Rae Hynie Brown, James B., Jeanette Mitchell, Michael Deon Brown, Russell L. Bauknight, Adele Pope, David Sojourner, Lisa Sims, Defendants

Of whom Michael Deon Brown, James Curtis, and Jane Doe and John Doe Numbers I, II, III and IV, by their proposed Guardian *ad Litem*, and Adele Pope, as Creditor/Proponent of Will of James Brown dated June 15, 1999 and on behalf of Others under S.C. Trust Code § 62-7-405, are the Petitioners,

and

James B., Terry Brown, Tommie Rae Hynie Brown and David Sojourner, Respondents.

PETITION FOR WRIT OF CERTIORARI

* Parties are listed as they appear in August 29, 2014 Order.

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INDEX

Certificate of Counsel 1

Questions Presented 2

Introduction 2

Statement of the Case 6

Statement of the Facts 9

Argument 13

I. The Circuit Court Orders Violate *Wilson v. Dallas* and Due Process by Endorsing the Attorney General’s Continued Alliance with Tommie Rae in the Wingate Suit and FOIA Suits and Bauknight’s Interference with FOIA Compliance 13

II. Sojourner’s Destruction of the “I Feel Good” Trust’s Copyrights, Even if Inadvertent, is Unacceptable 17

III. Bell’s Fraud and Siphoning Off of Copyright Termination Rights of the “I Feel Good” Trust Enhance the Need for a GAL for Michael Under Rule 17(c), and for Others 20

IV. Reversal of the Dismissal Order is Appropriate Because the Circuit Court Refused to Conduct a Hearing on Petitioners’ Intervention and Request for a GAL 21

V. The Damage to the Copyrights and Jeopardy to the 1999 Will Under the 10-Year Rule Support Additional Standing for Appellant Pope Under S.C. Code Ann. §62-7-405 22

Conclusion 23

CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on August 29, 2014.

September 5, 2014

Adele J. Pope

QUESTIONS PRESENTED

- I. **Do the Circuit Court Orders Violate *Wilson v. Dallas* and Due Process by Endorsing the Attorney General's Continued Alliance with Tommie Rae in the Wingate Suit and FOIA Suits, And Bauknight's FOIA Interference?**
- II. **Is Sojourner's Destruction of the "I Feel Good" Trust's Copyrights, Even if Inadvertent, Unacceptable?**
- III. **Do Bell's Fraud and the Siphoning Off of Copyright Termination Rights Confirm the Need for a GAL for Michael Under Rule 17 (c), and for Others?**
- IV. **Is Reversal of the Dismissal Order Appropriate Because the Circuit Court Refused to Conduct a Hearing on Petitioners' Intervention and Request for a GAL?**
- V. **Do the Damage to the Copyrights and Jeopardy to the 1999 Will Under the 10-Year Rule Support Additional Standing for Appellant Pope Under S.C. Code Ann. §62-7-405?**

INTRODUCTION

Petitioners ask this Court to reverse the dismissal by the South Carolina Court of Appeals of the appeal of three orders issued by the Honorable Doyet A. Early, III, between December 16, 2013 and February 7, 2014¹ [App., pp. 9-19]

The circuit court orders segregate and determine parties to the heirs claims of Respondents Tommie Rae Hynie ("Tommie Rae") and her son James B. The Tommie Rae and James B. claims materially affect the rights of all Petitioners and entertainer James Brown's "I Feel Good" Trust under the Federal

¹ Petitioners also appealed the Form 4 orders dated February 26, 2014 and March 10, 2014 and all other Orders issued after three Orders issued June 13, 2013 which are the subject of S. C. Court of Appeals Appellate Case No. 2013-001649.

Copyright Act termination provisions.²

The circuit court refused to conduct a hearing on Petitioners' requests to be parties; for the appointment of a guardian *ad litem* ("GAL") for Michael, James Curtis and others not challenging the Brown's estate plan (the "Doe" Defendants).³ [App, p.112]

On motion of Respondent Sojourner, the Court of Appeals dismissed the appeal on the grounds that Petitioners lacked standing. The dismissal asserted Petitioners were not parties aggrieved by the circuit court orders, and noted that the *proposed* GAL was not appointed below. [App., p.2-3]

Petitioner Michael, incarcerated in California, sought to be part of the James Brown cases in 2007. Curtis asserted his status in 2012. [App., p. 141]. The Doe Defendants are additional children who were being identified in 2008 as part of the estate's baseline heirs determination procedure⁴.

Petitioner Pope asserts that she has standing as a creditor and an Interested Person, as well as under Section 62-7405 of the S. C. Trust Code.⁵

Petitioner Pope seeks to serve *pro bono publico* as GAL for Michael,

² 17 U.S.C.A. §§ 203 and 304, the "Copyright Act."

³ Since the filing of the appeal Michael Brown has passed DNA tests.

⁴ See DNA & DIGNITY, App., p. 69.

⁵ In addition to not having been paid for her PR/Trustee service, Pope is being sued for tens of millions of dollars by the Attorney General, Tommie Rae, James B., and the Estate in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"), filed in 2010. Her defense and claims for offset, in part, rest on the position that she and Buchanan properly appealed the Attorney General's settlement, and they owed Tommie Rae no duty because she was not Brown's spouse. They owed James B. no duty because he was not a presumed child and refused to submit to the Estate's official DNA protocol.

James Curtis and the Doe Defendants. To do so is consistent with her desire to protect the "I Feel Good foundation."

Petitioner Pope wishes to use her standing to prevent a second dismembering of James Brown's "I Feel Good" Trust and the copyrights to more than 800 songs Brown gave to the Foundation. This can happen only if the Supreme Court's decision in *Wilson v. Dallas* is ignored and the mighty power of the State is applied to help destroy what should now be a \$90 million foundation for the education of needy students. Dismissal of this appeal by the Court of Appeals advances that second dismembering.

Robert Buchanan, Jr. and Petitioner Pope are the only known parties in the many James Brown cases who have consistently tried to see that James Brown's estate plan be vigorously defended as he directed. Petitioner Pope has been rebuffed in her efforts to have Brown's 1999 backup will, which also leaves Brown's entire music empire to the "I Feel Good" Foundation, submitted for alternate probate. The 1999 will is in jeopardy of being unable to be admitted for probate after December 25, 2016 under SCPC §62-3-108.

The circuit court has simply refused to conduct a hearing on the critical issue of the 1999 Will. [App., p. 112] The clerk refuses to file motions by non-parties. [App., p.134] Even though Respondent Sojourner is charged with protecting the estate plan, he has ignored the 1999 will. He has also ignored the multi-million dollar implications to the "I Feel Good" Foundation of an improper determination that Brown had a spouse when he did not.

Petitioners sought unsuccessfully to obtain a hearing before the circuit

court; have a GAL appointed; oppose the claim of Tommie Rae; and secure for the children Petitioners the same rights as James B. and other claimed heirs to be tested and acknowledged under the estate's DNA Protocol. [App., p. 112]

On May 29, 2013, just three weeks after the Supreme Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (S.C. 2013), Louis Levenson, Esquire, and Tommie Rae publicly announced their intention to reinstate the Attorney General's settlement. Everything the Attorney General, Russell Bauknight and the circuit court have done since then advances that plan.

Petitioners' fundamental rights have been violated for years by improper State action. The remand mandate of *Wilson v. Dallas* has been ignored by the Attorney General, the circuit court and the appointed fiduciaries. The person appointed to protect the noble estate plan of James Brown is working in tandem with the Attorney General to protect Tommie Rae and James B., and to destroy the copyrights which make up about half of the \$90 million which should now be generating millions each year in scholarships for needy students. The "I Feel Good" Trust and the copyrights are in danger of being dismembered again. The 1999 Will is in jeopardy. The basic rights of Petitioners to fundamental fairness continue to be trampled on. Petitioners are aggrieved. They have constitutional, statutory, and special interest standing. The Trust Code provides Petitioner Pope the right to protect the 1999 will and the "I Feel Good" Trust. The issues decided by the circuit court and the dismissal are final as to Petitioners and appealable.

The Court should reverse the order of the Court of Appeals.

Statement of the Case

On August 10, 2008 the Attorney General brokered a settlement which would become the subject of the *Wilson v. Dallas* decision.

Petitioner/children and other DNA-proven and presumed children were not parties to the settlement

On May 26, 2009 the circuit court approved the settlement.

On May 19, 2010 the Attorney General, Tommie Rae, and others sued Buchanan and Petitioner Pope in the Wingate Suit.⁶

In March 2011 the S. C. Court of Appeals dismissed Buchanan's and Pope's challenges to the Wingate Suit as premature.⁷ [App, p. 41]

In 2011 the Estate, Tommie Rae and James B. moved to intervene in a FOIA suit of Petitioner Pope. They had it consolidated with the Wingate Suit.

On February 27, 2013 the Supreme Court issued its first *Wilson v. Dallas* decision. Footnote 29 expressed concern about the FOIA and Wingate Suits.

On March 14, 2013 the Attorney General filed a Petition for Rehearing which said of the FOIA matters:

In this instance, we have released everything in our possession which we legally can release. One document is the subject of a Motion for Protective Order, pending before Judge Manning. ... We hope to have resolution of this issue in the near future. [Ret. Rehearing, p. 25]⁸

⁶Richland County Case 2010-CP-40-4900.

⁷ S.C. Court of Appeals, orders dtd. March 16, 2011, Appeal from Case No. 2010-CP-40-4900.

⁸ The Wingate Litigation Retention Agreement, a public document, was the subject of the Attorney General's own motion for Protective Order.

Of the Wingate Suit, the Attorney General said, in part :

In this instance, the Attorney General was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation throughout the legal community.

... We advise the Court, therefore, that we will shortly move to have the Attorney General removed as a party to this action ... [Pet. Rehearing, pp. 26, 27]

On March 14, 2013 Bauknight filed a Petition for Rehearing.⁹

On March 25, James B. filed a Return to Petition for Rehearing seeking to justify Bauknight's \$4.7 million at-death value [See Ret, pp. 9 - 11]

In April 2013, Bauknight moved to intervene in a FOIA Suit brought by a Newberry journalist, Civil Action No. 2012-CP-36-688. [App., p. 129-131]

On May 8, 2013, the Supreme Court issued its final decision in *Wilson v. Dallas*, giving certain directions for remand. *Id.* at 449-50, 743 S.E.2d at 767-68.

On May 29, 2013 counsel for Tommie Rae and Levenson announced their intention to reinstate the Attorney General's 2008 settlement. The Attorney General announced his intention to withdraw from the Aiken County cases.

On June 13, 2013 Judge Early enjoined Petitioner Pope from participating in any James Brown estate or trust cases; directed her unheard motions to be removed from the public records; and directed the clerk not to file any

⁹ An Affidavit of Peter Afterman with the Petition cited \$6 million that had come into the Estate from music placements and an audit. FOIA violations and Bauknight's accountings make it impossible to evaluate Bauknight's management other than the copyrights. In 2012 he created several new entities which he reports on accountings at \$1. The Attorney General, by FOIA requests, has no documents about these entities.

subsequent motions except in a case filed June 10. Pope appealed¹⁰.

On October 10, 2013 Sojourner was appointed limited special administrator in an *ex parte* order of the probate court. [App., p. 45]

On December 16, 2013 the Tommie Rae and James B. claims were severed into new cases. [App., pp. 18-19]

On January 8, 2014, after La Rhonda's death in later December, the claims of Nicole and La Rhonda were dismissed. [App., pp. 16-17]

On February 7, 2014 an Order Determining parties to the severed Tommie Rae and James B. cases excluded Petitioners. [App., pp. 9-15]

Form 4 orders dismissed Petitioners' motions to alter, amend or vacate the Orders. Petitioners appealed. [App., pp. 5-8]

On April 10, 2014 Sojourner moved to dismiss the appeal. [App., p. 20-27]

On April 17, 2014 Petitioners filed a Return and Opposition to Sojourner's Motion to Dismiss the appeal. [App, p. 30-55]

On June 16, 2014 the Honorable Paul E. Short, Jr. dismissed the appeal. [App., pp. 3-4]

During the appeal David Bell, Esquire, a Georgia attorney who represented Terry Brown, claimed to be Michael's attorney¹¹. [App., pp. 80-81]

On July 21, 2014, Matt Bodman, Esquire, filed a Motion to Withdraw himself and Bell as attorneys of record for Respondent Terry Brown. [App.,

¹⁰ The Court is asked to take judicial notice of briefs filed in Appellate Case No. 2013-001649.

¹¹The appealed orders do not name the parties in the caption..

pp.114-117]

On June 25, 2014 Petitioners filed a Petition for Rehearing. [App, p. 82]

On August 29, 2014 the Petition for Rehearing was denied. [App, p. 1]

Statement of Facts

On August 9, 2008 James Brown's estate plan, backed by Brown's own voice tape and the 1999 will, was ironclad. [App., pp. 37-39]

An official DNA testing program for non-presumed children was being used to identify Brown's heirs under the Copyright Act. [App., p. 39, 65-68]

It was generally known that Tommie Rae was not Brown's spouse. [App., p. 37-39, 63] The creation of a charitable trust for needy students was Brown's well known and often- stated desire.

On July 30, 2008 the Attorney General had approved Buchanan and Petitioner Pope as permanent trustees.¹² [App., pp.89-90]

On August 10, 2008 the Attorney General's settlement dismembered the "I Feel Good" Foundation; damaged the copyrights; and damaged the termination rights of Michael, James B. and half or more of Brown's children. The Attorney General stipulated that Tommie Rae, who was not Brown's spouse, would be considered his spouse for all purposes. James B., not presumed to be a child, was exempted from DNA testing. [App., p. 40]

In 2010 the Attorney General, Tommie Rae, and others sued Buchanan

¹² Buchanan and Pope were working with the Attorney General to appoint a third Trustee. They were also working to set aside a family designated seat as one of the three. They had asked Deanna to be on the Advisory Board in December 2007, but she declined.

and Pope for tens of millions of dollars to stop the *Wilson v. Dallas* appeal.

Buchanan described it as follows:

In the spring of 2010 I was given an ultimatum by the settling parties: dismiss the appeal or be sued. In May 2010 they sued me for \$10,000,000.00 in Case 4900 Richland County. This lawsuit caused, inter alia, my successor professional liability carrier to refuse to renew my coverage and to sue me.¹³

By 2010 Tommie Rae and all will contestants admitted:

...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. [Appendix, p. 38]

From 2011 until today the Attorney General has refused FOIA compliance as to documents important in confirming that Tommie Rae was not Brown's spouse; that the 2008 settlement rested on incorrect claims; and that there is no basis to reinstate the settlement.¹⁴

Petitioners have been excluded from all James Brown proceedings since June 13, 2013. The circuit court has declined to conduct a hearing on 2008 gag orders which will allow dozens of people who know the contents of the so-called Hynie "diary" to speak from it openly. Their requests to participate in the James B. and Tommie Rae claims and have a GAL have not been heard.

Petitioners were not given notice or an opportunity to be heard on the appointment of Bauknight or Sojourner.

¹³ Petitioner Pope also experienced insurance cancellation and other hardships. The allegations by the State against her rendered her useless as an expert or consultant in her field.

¹⁴ The Legacy Trust created and controlled by the Attorney General asserts it is not subject to FOIA.

Petitioners assert that they have a right to refute the claim that Tommie Rae and James B. control Brown's termination rights.

Petitioners assert that on the day of the *Wilson v. Dallas* oral arguments, November 1, 2011, the "I Feel Good" Trust's copyrights could have been protected for decades by modest termination rights agreements with any five or so of Brown's real heirs who were not given anything in the Attorney General's Settlement.

Confirming that Brown died unmarried and offering fair termination rights agreements to the most cooperative half (or half +1) of Brown's properly determined children (or children of deceased children) is good for Petitioners and good for the "I Feel Good" Foundation.

It was and is the duty of the "I Feel Good" Trust (and every private foundation holding copyrights) to protect the charity at least as follows:

1. Don't create a spouse if there is not one.
2. Properly identify all children.
3. Then "Split Heirs" - make termination rights with the cheapest half.
4. Update the Heirs baseline at the deaths of children. [App., p.69]

Wilson v. Dallas, by voiding the settlement and fiduciary appointments of Bauknight, appeared to restore the "I Feel Good" Trust's ability to finish the DNA and Dignity proposal. But the appealed orders place it in danger again.

Instead of recoiling at a second proposal to dismember the "I Feel Good" Trust, the circuit court has embraced it. The Attorney General is advancing it in

the Wingate and FOIA suits.¹⁵ He remains a Co-Plaintiff with Tommie Rae and James B. in the Wingate Suit.

Sojourner is aiding Bell in siphoning off the termination rights contracts that should belong to the "I Feel Good" Trust¹⁶.

The circuit court has declined to conduct a hearing on the appointment of a GAL for Petitioner children. The Clerk has sent back filings, saying that they cannot be filed. [Appendix, p. 134]

On May 12, 2013 the attorney of record for both the Attorney General and the McMaster Legacy Trust¹⁷ told the court in the Wingate Suit:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29 addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without clear definition ... the court no longer puts any primacy or priority on any court hearing these matters. [Emphasis supplied.]

¹⁵ As recently as August 2014, a Newberry journalist who began covering the Attorney General's 2011 FOIA violations has seen Bauknight continue his attempt to intervene in her case and consolidate it with the Wingate Suit. [App., pp. 129-131]

¹⁶ The Court is asked to take judicial notice that while Sojourner was protesting Michael's and James Curtis' participation, 3 three former will challengers – son Daryl, daughter Lisa and possible granddaughter Tonya withdrew their challenges -- and asked the Court to support Brown's estate plan. Including Michael and James Curtis (subject to DNA), there are now at least 8 children who, of record, have abandoned attacks on the "I Feel Good" Trust. *Modest-but-fair termination rights agreements with the most cooperative 5 or 6 who immediately step forward to defend the 2000 and 1999 wills and confirm Brown died without a surviving spouse, is all that is needed to protect the copyrights for decades and bring a swift end to the will/trust litigation.* Petitioners are being excluded from that process. Sojourner, Bauknight and the Attorney General are sabotaging it.

¹⁷ The McMaster Legacy Trust also takes the position that, despite being created by the AG, it is not subject to FOIA.

Argument

I. **The Circuit Court Orders Violate *Wilson v. Dallas* and Due Process by Endorsing the Attorney General's Continued Alliance with Tommie Rae in the Wingate Suit and FOIA Suits, and Bauknight's Interference with FOIA Compliance.**

State action dismembered the "I feel Good" Trust in 2008.

State action in the Wingate Suit sullied the two fiduciaries who were protecting the "I Feel Good" trust. It broke Buchanan financially.

The State's action favoring Tommie Rae and James B. continues to threaten the "I Feel Good" Trust and its copyrights. It continues to damage all Petitioners.

In the Wingate Suit Tommie Rae and the Attorney General claim Buchanan and Pope caused tens of millions of dollars of damages by conducting the *Wilson v. Dallas* appeal; not accepting a \$100 million offer for the music empire; problems with the Christie's sale; and improper valuation of the assets.

The Attorney General has knowledge as defined in S.C. Code Section 62-7-104 (3) that there were valid reasons for not accepting the 2007 \$100 million offer. He asked the Court of Appeals to approve the Christie's sale, with the GRAMMY listed in the catalogue. He was present when the formula for valuing the music empire on the estate tax return, consistent with the reported \$84 million, was presented to Judge Early in 2007. He knows that a 2006 Royal Bank of Scotland professional appraisal of the royalties, about half of the music empire, valued them at \$42 million.

The Attorney General overlooked that it was unjust to sue Buchanan and Pope to try to stop the *Wilson v. Dallas* appeal.

While claiming in the Wingate Suit that Buchanan and Pope should have accepted a \$100 million offer, the Attorney General, Tommie Rae, and their trustee Bauknight claimed in other courts there had never been an offer. They claimed that the value of Brown's music empire was \$4.7 million when Brown died.¹⁸ [App, p. 41] To that they added the the career-threatening claim that Buchanan and Petitioner Pope had intentionally overstated the value of Brown's worldwide music empire on the estate tax return by \$79 million to get a \$5 million fee. To do so would have been a felony. See 26 U.S.C.A. §7206. [App.,p. 151]

Today the Attorney General and his trustee Bauknight continue to make these false claims. [Appendix, p.146-148] And they have asked the circuit court to delay the Wingate Suit and all FOIA suits which will prove that these claims are false for years. [App., p. 156]

Petitioner Pope and others have sought numerous public documents from the Attorney General and the McMaster Legacy Trust under the South Carolina Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. Today, the Attorney General and Bauknight are preventing release of the following, and other, public documents under FOIA:

1. The Wingate Litigation Agreement;

¹⁸ Levenson and Bell both knew the \$4.7 million was incorrect. In depositions in the federal suit, Bell's client Forlando called the \$4.7 million "bogus." He confirmed Buchanan's and Pope's \$84 million was correct but conservative. He said \$150 million offers were available in late 2008. And he was working in 2011 on a possible \$200 million sale. Levenson's client Dr. Yamma Brown reported her version of the meetings with David Cannon and Albert Dallas just after Brown's death in which Yamma and Deanna were offered \$5 million, which was 5% of the \$100 million estate. The 5%/\$5 million offer is discussed at pages 152-3 of *Cold Sweat*, Dr. Brown's recently-released autobiography.

2. The signed McMaster Legacy Trust, and amendments,
3. The widely disseminated handwritten notes of Tommie Rae; and
4. The \$4.7 million appraisal used to support the felony claims. [App., pp. 129-131]

The Attorney General's failure to comply with FOIA benefits Tommie Rae and other parties to the 2008 settlement. It threatens the "I Feel Good" Foundation. It damages Petitioners and others.

Article I, § 3 of the State Constitution provides:

The privileges and immunities of citizens of this State and the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied equal protection of the laws.

Whether an order issued prior to trial is immediately appealable is generally governed by Section 14-3-330 of the South Carolina Code (1979 & Supp. 2010). Our Supreme Court has held:

An order affects a substantial right and is immediately appealable when it "(a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action[.]" Section 14-3-330(2). An order which does not finally end a case or prevent a final judgment from which a party may seek appellate review usually is considered an interlocutory order from which no immediate appeal is allowed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (S.C. 2005) (citing *Tatnall v. Gardner*, 350 S.C. 135, 138, 564 S.E.2d 377, 379 (Ct.App. 2002)).

The Orders appealed from prevent Petitioners' intervention without a hearing or determination of whether they are necessary parties. And they are.

For Petitioners, this *does* discontinue the action and, if these Orders are unappealable, prevent a judgment from which an appeal might be taken. *Id.*

In discussing due process requirements, our Supreme Court has held:

[t]he fundamental requirements of due process under the United States Constitution and the South Carolina Constitution include notice, an opportunity to be heard in a meaningful way, and judicial review." *Harbit v. City of Charleston*, 382 S.C. 383, 393, 675 S.E.2d 776, 781 (Ct.App.2009)

As discussed above, the Court refused to hold a hearing on intervention, and such refusal (along with the Orders appealed from) violated the due process rights of Petitioners. The Attorney General's continued service to Tommie Rae and James B., and his allowing Bauknight to interfere with FOIA, deprives Petitioners of the level playing field to which they are entitled.¹⁹ Denial of their rights damages the "I Feel Good" Trust and its copyrights.

The Due Process²⁰, First Amendment²¹ and Equal Protection²² rights of all Petitioners are being violated by this state support for Tommie Rae.

¹⁹ See also *Theisen v. Theisen*, 676 S.E.2d 133, 382 S.C. 213 (S.C. 2009), which holds:

Due process is violated when a party is denied fundamental fairness. *City of Spartanburg v. Parris*, 251 S.C. 187, 191, 161 S.E.2d 228, 230 (1968). Due process is flexible and calls for such procedural protections as the particular situation demands. *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006). The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner. *S.C. Dep't. of Soc. Servs. v. Beeks*, 325 S.C. 243, 246, 481 S.E.2d 703, 705 (1997).

²⁰ U. S. Const., amend. V; U.S. Const. amend. XIV; S.C. Const., Art. 1, §3.

²¹ U. S. Const., amend . I.

²² U. S. Const., amend. XIV, §1.

II. Sojourner's Destruction of the "I Feel Good" Trust's Copyrights, Even if Inadvertent, is Unacceptable.

Sojourner, the Attorney General and Bauknight are undoing what the Supreme Court did to save the "I Feel Good" Foundation and its copyrights.

In 2011 Bauknight told this Court that copyright terminations were all the James Brown cases are about. He said it was good for the "I Feel Good" Trust to stipulate that Tommie Rae was Brown's spouse²³. He said Tommie Rae and James B. controlled the termination rights under the Copyright Act. He said if they didn't, the Bell and Levenson clients did. He said giving them 52 ½% of the "I Feel Good" Trust to them helped the Foundation.

That was not correct. The 800+ copyrights Brown gave to the "I Feel Good" Trust – about half of his fortune – could have been secured for decades that year with modest termination rights agreements with sons Daryl,²⁴ Petitioner Michael, and daughters Lisa, La Rhonda, Jeanette and Nicole.

\$300 DNA tests could have been given to James Curtis and claimed

²³ Under Section 101 of the Copyright Act a "widow" or "widower" is the surviving spouse under the law of the domicile at the time of his or her death. Thus an incorrect state-law determination that Brown died with a surviving spouse would materially affects all of Brown's children/heirs under the Copyright Act, whether they are recognized in the estate plan or not. It also impacts their children at death. For this reason, counsel for Brown's original trustees, as well as Buchanan and Petitioner Pope, were conducting a careful and complete heirs determination under the March 8, 2008 order, with DNA testing under the official DNA Protocol for non-presumed heirs. For a review of the emerging state/federal issues related to the terms "widow" and "widower," see Deutsch and Schacter, *Gay Right to Terminate*, CARDOZO ARTS & ENTERTAINMENT, Vol.31:275 (2013).

²⁴ Daryl terminated Levenson in 2010 or 2011. He has urged the Attorney General to protect Brown's "I Feel Good" Trust on his website. Daryl's Withdrawal of Challenge to Will was filed in Aiken Case 2008-CP-40-4900 on March 26, 2014.

granddaughter Tonya. If they passed, they might also have been offered modest agreements.

Seven of the eight people who were more than the number needed to protect the "I Feel Good" Foundation's copyright for decades, and who are not challenging the estate plan, were not even part of the Attorney General's settlement.

As the draft article of Jeffrey Smith and Petitioner Pope suggests, a private foundation holding copyrights and properly protecting them must conduct a delicate dance with the heirs. It must first properly determine heirs. Then it must "split heirs," seeking fair-but-arms'- length agreements with the most cooperative (least expensive) half. [App., p. 41]

In the first three months of his appointment Sojourner tried to reverse the heirs status of La Rhonda, Jeanette and Nicole. At the same time, Bell was siphoning off what should have been the Estate/"I Feel Good" Trust's fair agreement with Michael and Tonya by claiming them as clients, but then not protecting them.

This scheme to redo the Attorney General's 2008 settlement, with Bell and others having secret sub-agreements with Michael, Tonya and others to allow Bell, Levenson and lawyers for Tommie Rae to hold onto the \$20 million dollars in legal fees they expected from the Attorney General's settlement, should not be allowed to happen.

Judicial economy and justice are not served when Levenson and Bell are willing to "give" non-spouse Tommie Rae a quarter of the "I Feel Good"

Foundation and call her the spouse if their clients can get another quarter. And the attorneys can keep the \$20 million they brought the Wingate Suit to protect.

This kind of harmony is not good for the "I Feel Good" Foundation.

Sojourner, speaking of a proceeding to determine whether Tommie Rae is the spouse, says "[f]ederal termination rights are entirely separate from the Underlying Actions and are not at issue in this Appeal." [App., pp.] This is simply incorrect.

Sojourner has not complained while the circuit court's order dignified Tommie Rae's and James B's claims, treating them as properly commenced cases when they were not. All were subject to dismissal on May 26, 2009 because they were both procedurally and factually defective. [Appendix, p.]

Both were filed in the wrong court. None had a summons. Nobody was served. These are not small matters themselves. But the larger matter is that Sojourner is helping Tommie Rae to shut out – and silence – those who know she was not Brown's spouse.

Sojourner claims he has helped the "I Feel Good" Foundation by taking away the heir status of DNA-proven daughters, La Rhonda and Nicole. La Rhonda was stripped of her place as a daughter after she died. The "consent" to do this was signed by Sojourner and a lawyer La Rhonda and Nicole had terminated months before La Rhonda died.

The order of February 7, 2014, "Determining Parties" to the Tommie Rae and James B. "cases" is extraordinary. More than half of Brown's known heirs and beneficiaries are excluded. [App., p. 14, 15] The circuit court, after describing

the need to include heirs, devisees, children, creditors and others affected by the outcome, omits them.

Sojourner seeks to eject from the Tommie Rae and James B. proceedings Petitioners and everyone who seeks to protect the estate plan and copyrights.

Sojourner is asking the circuit court to keep in place 2008 gag orders which Tommie Rae admits will do irreparable harm to her claim.

Sojourner is trying to prevent the intervention of Petitioners and this appeal by two James Brown children and the only person who is protecting the 1999 backup will which makes the estate plan ironclad.

Sojourner is severely damaging the "I Feel Good" Foundation and its copyrights. The circuit court is helping him.

The "I Feel Good" Foundation is too important for this roughshod treatment.

III. Bell's Fraud and Siphoning Off of Copyright Termination Rights of the "I Feel Good" Trust Enhance the Need for a GAL for Michael Under Rule 17 (c), and for Others.

Rule 17(c) SCRCP states:

(c) Minor or Incompetent Persons. .. A person imprisoned outside this State shall appear by guardian ad litem in an action by or against him; ...

The circuit court orders show Bell moved to admit Terry to the Tommie Rae Hynie and James B. cases, but not Michael [App., pp.9-10] Yet the circuit court refused to have a hearing for this incarcerated son to have a GAL.

The Court of Appeals noted that Petitioner Pope is not the GAL for Michael and others. She could not be if the circuit court refused to appoint her or even have a hearing.

Pope did not pick Michael out of the air. His former lawyer in California suggested she call him to consider being his attorney. Instead, she applied to be his GAL, *pro bono publico*. After she asked the Court to allow her to be GAL, Michael made an unsolicited call to her from prison to thank her.

Bell has defrauded multiple courts in multiple James Brown cases. [App., pp. 111,119,127] He did not represent Michael's interest in the appealed orders. He represented Terry. [App, p. 9- 11] He is siphoning off the contracts the "I Feel Good" Trust should have made, or now be making, with Michael and others.

Michael has a right to an unconflicted GAL. Other Petitioners need one.

IV. Reversal of the Dismissal Order is Appropriate Because the Circuit Court Refused to Conduct a Hearing on Petitioners' Intervention and Request for a GAL.

On March 8, 2008 Judge Early, with the consent of the Estate/2000 Trust, ordered that the Estate and 2000 Trust should proceed with an heirs determination although there were valid wills. [App. p. 65]

Known claimed children are necessary parties to any heirs proceeding.

By refusing to conduct a hearing or allow these heirs to participate fully in the James B. and Tommie Rae actions, the circuit court has deprived them of the fair notice and hearing which Due Process demands.

As to Petitioner Pope, the circuit court's refusal to allow a hearing on the Hynie "diary" gag order or her right to participate in the Tommie Rae and James B. claims was manifestly unjust. The Attorney General, the Estate, Tommie Rae Hynie and James B. are suing Petitioner for tens of millions of dollars. The

outcome of these cases materially affects her in the Wingate Suit.

All Petitioners have a direct property interest in the James B. and Tommie Rae proceedings. All have a right to have their motions heard.

The circuit court's treatment of Petitioners is unjust. Petitioners are being denied their Due Process, First Amendment and Equal Protection rights. They have constitutional standing, as well as standing as heirs (Michael and James Curtis) and interested persons. S.C. Code Ann. §62-1-201(23).

V. The Damage to the Copyrights and Jeopardy to the 1999 Will Under the 10-Year Rule Support Additional Standing for Appellant Pope Under S.C. Code Ann. §62-7-405.

The State and Bauknight – and now Sojourner – have placed the copyrights and the 1999 backup will which makes Brown's plan to leave his music empire to the "I Feel Good" Foundation ironclad in great jeopardy.

Under SCPC § 62-3-108 the 1999 backup Will, which also leaves the entire music empire to the "I Feel Good" Foundation, must be submitted for probate within ten years of Brown's death on December 25, 2006.

Section 62-7-405 of the South Carolina Trust Code gives the Settlor, the Trustee, Attorney General and "others" a right to enforce charitable trusts. In this case the settlor is deceased, the Attorney General has withdrawn from Aiken County, and the trustee is conflicted by continuing to serve as fiduciary and agent for Tommie Rae and agent for James B.

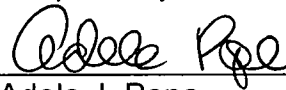
The named fiduciaries in the 1999 Will have not protected it. Protection of the backup will which also leaves the music empire for scholarships for needy

students is of great public importance. Petitioner Pope is entitled to public interest standing²⁵ as well as the statutory standing accorded to “others’ under § 62-7-405. See also Susan N. Gary, *Regulating the Management of Charities: Trust Law, Corporate Law, and Tax Law*, 21 U. Hawaii L. Rev. 593 (1999).

CONCLUSION

The orders of the Court of Appeals dismissing the appeal and circuit court orders should be reversed. The GAL should be appointed as requested, and the matter should be remanded. Petitioners should be determined to have the right to fully participate in the Tommie Rae and James B. proceedings.

Respectfully submitted,



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Attorney for Petitioners

September 5, 2014

²⁵ See, e.g., *Davis v. Richland Cnty. Council*, 372 S.C. 497, 642 S.E.2d 740 (2007)

STATE OF SOUTH CAROLINA

In the Supreme Court

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SEP - 8 2014

S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2014-000794 (Order, S.C. Ct. App. filed August 29, 2014)

IN RE:

The Estate of James Brown, a/k/a James Joseph Brown

Henry Dargan McMaster, Plaintiff,*

v.

Daryl J. Brown, Lindsey Dolores Brown, Vanisha Brown, Larry Brown, Deanna J. Brown Thomas, Jason Brown Lewis, Yamma N. Brown, Sydney L., Carrington L., Tonya Brown, Terry Brown, Romunzo Brown, Tommy Rae Hynie Brown, James B., Jeanette Mitchell, Michael Deon Brown, Russell L. Bauknight, Adele Pope, David Sojourner, Lisa Sims, Defendants

Of whom Michael Deon Brown, James Curtis, and Jane Doe and John Doe Numbers I, II, III and IV, by their proposed Guardian *ad Litem*, and Adele Pope, as Creditor/Proponent of Will of James Brown dated June 15, 1999 and on behalf of Others under S.C. Trust Code § 62-7-405, are the Petitioners,

and

James B., Terry Brown, Tommie Rae Hynie Brown and David Sojourner, Respondents.

PROOF OF SERVICE

I certify that on the 5th day of September, 2014, I have served the PETITION FOR WRIT OF CERTIORARI on Respondents as shown below by

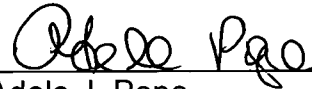
depositing a copy of same in the United States Mail, postage prepaid, addressed to them or their attorneys of record as follows:

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David B. Bell, Esquire
Matthew D. Bodman, Esquire
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September 5, 2014