

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

OCT - 8 2014

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

Appellate Case No. 2014-001896

IN RE:

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

Henry Dargan McMaster;..... Plaintiffs,

v.

Daryl J. Brown, Lindsey Delores 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, Forlando Brown, Tommie 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, 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, Jr., are the Respondents.

REPLY OF PETITIONERS TO RETURN OF DAVID SOJOURNER, JR.
TO PETITION FOR WRIT OF CERTIORARI

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Introduction

A. Background

At the heart of this appeal, one of five related to entertainer James Brown filed since this Court's May 8, 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013)¹, is the role of the circuit court, the Attorney General, and a limited special administrator appointed and paid from funds Brown gave for scholarships for needy students in the announced intention of Respondent Tommie Rae Hynie and attorney Louis Levenson to disregard *Wilson v. Dallas* and reinstate the Attorney General's 2008 settlement. The 2008 settlement proposed to take \$50 million from Brown's "I Feel Good" Foundation; pay about \$20 million of it to attorneys with weak claims; and damage the "I Feel Good" Trust's copyrights by declaring that a nonspouse would be treated as Brown's spouse. [Appendix, pp143-144]

The announcement was made on May 29, just three weeks after the final *Wilson v. Dallas* decision. [Appendix, p. 123] Since then the Attorney General and his trustee Russell Bauknight have continued as co-plaintiffs and continue to share a private attorney with Respondent Tommie Rae and her son, Respondent James B., in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). [Appendix, p. 121]. Mr. Bauknight continues to be trustee for Ms. Hynie as well as the Attorney General.

¹ The Court is asked to take judicial notice, for example, of S. C. Court of Appeals Case No. 2013-001649, Petitioner's Return to a Letter/Motion of October 3, 2014 of Respondent Albert Dallas. Mr. Dallas seeks to be removed as a party to that appeal. Mr. Dallas' claim for a \$6 million PR/Trustee was pending on May 8, 2013 and has never been reviewed as mandated in *Wilson v. Dallas*.

David Bell, who contracted for Respondent Terry Brown to bring the Wingate Suit, continues his unchecked 7-year fraud on state and federal courts designed to acquire the "I Feel Good" Trust's assets for Terry and his son. [Appendix, p. 119, 125]. With the acquiescence of the limited special administrator, David Sojourner, Jr., Mr. Bell is siphoning off Federal Copyright Act termination rights contracts which should already have been secured for the "I Feel Good" Trust to protect its copyrights.

The Attorney General's August 10, 2008 settlement gave more than half of the "I Feel Good" Foundation to a nonwife and fewer than half of Brown's real heirs. In an effort to justify his actions, the Attorney General and his trustee Mr. Bauknight spent four years further damaging the "I Feel Good" Trust and its copyrights with false claims that Respondent Tommie Rae was Brown's wife; that she and Respondent James B. controlled the "I Feel Good" Trust's copyright termination rights; and that Petitioner/heirs and others the Attorney General elected not to favor were not Brown's heirs. [Appendix, pp. 152- 155]

The Attorney General ignored that Brown's estate plan was ironclad and that all of the settling parties had admitted that the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina was Brown's often stated and well known desire. [Appendix, p.379] He ignored that the records show, and all of the Levenson clients knew, that Respondent Tommie Rae was not Brown's spouse and had no right to attempt to terminate Brown's copyrights transfers. [See Toberoff Ltr., 9/23/13, Appendix, p. 63]

He ignored the Copyright Act rights of Petitioners James Curtis and incarcerated son Michael, both seeking DNA testing and heir status confirmation. [Appendix, pp, 69-70, 142.]. He ignored that modest termination rights contracts with Lisa, Brown's daughter from his first marriage, three DNA-proven daughters and Petitioners would protect the "I Feel Good" Foundation's copyrights for decades without the consent of a single party to the Attorney General's agreement. [Appendix, p. 69].

On February 27, 2013 the South Carolina Supreme Court issued its first *Wilson v. Dallas* decision, restoring the dismembered "I Feel Good" Foundation. The Court directed that the Wingate Suit and two FOIA suits which had arisen during the appeal of the Attorney General's settlement be addressed in the first instance. [Appendix, p. 122].

The Attorney General assured the Supreme Court he would seek to be dismissed as a party to the Wingate Suit. He expressed hope that the FOIA matters would be resolved soon. [Petition, Rehearing, AG, 3/16/13,] It did not happen.

B. Contrary to *Wilson v. Dallas*, Respondents Seek to Dismember James Brown's Estate Plan.

On June 13, 2013, two weeks after the announced intention to dismember the "I Feel Good" Trust a second time, the circuit court, without notice or hearing, and ignoring the remand mandate of *Wilson v. Dallas*, issued orders enjoining Petitioner Pope from participating in any James Brown estate or trust cases. The lower court directed that Ms. Pope's unheard motions be removed by the clerk.

The lower court directed the clerk to reject any attempted future filings by Petitioner Pope². [Appendix, pp. 123-124]

In the two months following Mr. Sojourner's October 2013 *ex parte* appointment as SA, his firm was paid \$250,000. [Appendix, p. 104] In that short period Mr. Sojourner sought to terminate the heir status of four DNA-proven heirs – 2/3 of those necessary to protect the "I Feel Good" Trust's copyrights for decades³.

Mr. Sojourner, the Attorney General and Mr. Bauknight have not just failed to comply with the *Wilson v. Dallas* mandate. They are continuing the State's favoritism of Respondent Tommie Rae; denial of Due Process rights to real heirs; dismembering of the "I Feel Good" Foundation; damage to its copyrights; and unwarranted attempts to denigrate anyone who dares to challenge their actions.

As to the active second dismembering of the "I Feel Good" Foundation

² The June 13, 2013 orders are the subject of S.C. Court of Appeals Case No. 2013-001649.

³ While conferred on "heirs," acting by majority, as a matter of federal law, Federal Copyright Act termination rights allow the termination of certain transfers, such as some of those Brown made to music publishing companies, after 35 or 56 years. If a deceased songwriter has a spouse, *as determined under State law*, the spouse's "vote" on termination matters equals that of half of the heirs. See 17 USC §§101,203,304. Thus both the "I Feel Good" Foundation and real heirs who want to uphold the Estate Plan and seek termination rights contracts with the "I Feel Good" Foundation have a substantial property interest in confirming that James Brown died without a spouse and that James B. be required to undergo the same DNA protocol as all other non-presumed heirs.

In addition to confirming that Respondent Tommie Rae was not Brown's spouse and seeking to reach fair termination contract with the least expensive HALF (or half + 1) of Brown's heirs, the "I Feel Good" Trust has available various other strategies to prevent loss of income through heir terminations. Mr. Sojourner, the Attorney General and Mr. Bauknight have ignored them.

and damage to its copyrights Mr. Sojourner says:

Pope may have the noble goal of “prevent[ing] a second dismembering of James Brown’s ‘I Feel Good’ Trust and the copyrights to more than 800 songs Brown gave to the Foundation (see Petition at p. 4) but such desire, regardless of how altruistic, is not a valid ground to be named as a party to any litigation involving the Trust and Estate. [Return, p.4, F.4]

This is not the law. Due Process and the Probate Code require that Petitioners, all heirs or creditors whose economic and property interests directly affected by the determination of whether Tommie Rae and James B, are heirs, have statutory standing to participate in these and all other heirs proceedings Interested Persons. Pope’s statutory status as a creditor with demand for notice is the same. See SCPC § 62-1-201 (20), (23). Petitioners also have constitutional standing. See *Brown v. South Carolina State Bd. of Education*, 301 S.C. 326, 391 S.E. 2d 866 (1990); *League of Women Voters v. Litchfield-by-the-Sea and S.C. Coastal Council*, 305 S.C. 424, 409 S.E. 2d 378 (1991); *Stono River Env’tl. Protection Ass’n. v. South Carolina Dep’t. Of Health and Env’tl. Control*, 305 S.C. 424, 409 S.E. 2d 378 (1991). As the Petition makes clear, Petitioner Pope has the statutory right as a creditor to present the 1999 Will for Probate. And Section 62-7-405 (c), based on her special interest, dedication and knowledge, confers special interest standing on her to enforce the “I Feel Good” Trust as embodied in both the 2000 estate plan and 1999 backup will. S. C. Trust Code Section 62-7-405, which gives “others” in addition to the settlor, the Attorney General and the trustee a right to enforce charitable trusts, is particularly applicable here where others with standing are working against the charitable trust.

This Court should accept the Petition for Certiorari; reverse dismissal by the Court of Appeals; and reverse all orders which are the subject of this Appeal. It should confirm standing of Petitioners to participate fully in all James Brown heirs and testacy proceedings, and to require that all non-presumed alleged heirs, like themselves, be DNA tested. It should find that Petitioner Pope should be appointed GAL as requested. The Court should find that Petitioner Pope qualifies as an "other" to protect the "I Feel Good" Foundation under Section 62-7-405 at least until fiduciaries who will vigorously defend the "I Feel Good" Foundation and protect its copyrights are appointed in accordance with *Wilson v. Dallas* and Brown's documents, and for so long as the 1999 backup will remain in jeopardy.

Response to Mr. Sojourner's Counter-Statement of the Case⁴

On page 1 of the Return Mr. Sojourner asserts that the order depriving DNA-proven and acknowledged daughters La Rhonda and Nicole of their status as heirs was by "consent" and "without prejudice." The alleged consent was signed by an attorney who, of record, had been terminated in May 2013. The consent was signed January 8, 2014, after one of the two former clients was deceased. To suggest that a terminated lawyer may consent to an order undoing the heir status of his former clients, two children of James Brown, when one is deceased, and the heirs status was secured nearly six years earlier through DNA testing and acknowledgment by the Estate, defies all notions of

⁴ Petitioners object to all statements and conclusions contained in Mr. Sojourner's Return unless specifically agreed to herein. They adopt and incorporate their petition for certiorari as additional response to his Return as fully as if set out herein.

fundamental fairness and Due Process. See U.S. Const. amend. XIV § 1 and U.S. Const. amend. V. For Mr. Sojourner to damage the “I Feel Good” Trust by claiming this outrageous order is acceptable, rather acknowledging his error and starting over, is equally troublesome.

On page two Mr. Sojourner asserts Petitioner Pope was not a party to the underlying cases and represents “no one other than herself”.⁵ No Petitioner who is a necessary party but has been improperly enjoined by the circuit court or not served or noticed by Mr. Sojourner, should lose standing by this improper action.

On page two of the Return Mr. Sojourner states that no party with a legal interest in the Estate and Trust has objected to the orders on appeal. Again, most heirs and devisees have simply been excluded. A jailed Petitioner without a GAL, for example, cannot be expected voice a legal objection. He needs a GAL..

In footnote 1, page 2, Mr. Sojourner says that Petitioner Pope's request that orders subsequent to the February 7, 2014 be set aside cannot be addressed because they are “already subject to another appeal pending before this Court. This is not correct.

Arguments

I. Petitioners Have Standing to Protect Brown's Estate Plan and Copyrights, and Participate in All Heirs and Testacy Matters.

On page 7 Mr. Sojourner states that the only issue this Court could properly consider is whether the Court of Appeals erred in dismissing Petitioners'

⁵ The record reflects that Petitioner Pope is the only person, pursuant to S. C. Code § 62-7-405, who has vigorously supported the Brown Estate Plan, while the Attorney General and Mr. Bauknight are ignoring it and serving or aiding those who want to ignore and dismember it.

Notice of Appeal. This Court is not so constrained. It has authority to confirm the right of Petitioner Pope and others under Section 62-7-405 and to reset the course of its important *Wilson v. Dallas* decision which is being ignored by Mr. Sojourner, the circuit court, the Attorney General and Mr. Bauknight. Confirming that Petitioners have standing to participate fully in all James Brown heirs and testacy proceedings is an important step. Confirming Petitioner Pope's standing under 62-7-405 to protect the "I Feel Good" Foundation where Mr. Sojourner, Mr. Bauknight and the Attorney General have not done so is clearly within the scope of this Court's authority before remand. And this Court clearly has the authority to take judicial notice of, and correct, the total disregard for its directive in the first *Wilson v. Dallas* decision regarding the unconstitutional Wingate Suit and FOIA suits.

This Court may take judicial notice that Mr. Bell is siphoning off contract rights which the Estate/"I Feel Good" Trust should have now secured. It may take judicial notice that Mr. Sojourner is both allowing and encouraging this.⁶ It may note that Mr. Sojourner, Mr. Bauknight and the Attorney General are all working against the "I Feel Good" Foundation; aiding Respondent Tommie Rae in dismembering it; and are wasting hundreds of thousands of dollars but refusing

⁶ Mr. Bell's machinations are hard to track. He is still the signatory for Respondent Terry Brown, a co-plaintiff to Tommie Rae, in the Wingate Suit. From there Terry has interfered in a FOIA suit trying to keep the public Wingate Litigation Retention Agreement (and Mr. Bell's signature on it) from being disclosed. Mr. Bell claims he has represented Michael since last fall, but he did not advocate for him in the orders on appeal. [Appendix, pp 9 -19]. In March he appeared for claimed granddaughter Tonya and son Daryl. Since 2010 when he terminated Mr. Levenson, Daryl has repeatedly asked the Attorney General to support the "I Feel Good" Foundation [Appendix, pp. 167-168]

to take the basic, critical steps to protect the Foundation's copyrights, namely :

1. Confirm Brown died without a spouse,
2. Complete DNA-Testing for Non-Presumed Claimed Heirs; and
3. Make Copyright Termination Agreements with ONLY HALF (or half +1) who are the cheapest and who are not challenging the estate plan.

In his initial brief filed December 22, 2010 in *Wilson v. Dallas.*, the Attorney General asserted that treating Respondent Tommie Rae as a spouse benefitted the "I Feel Good" Trust's beneficiaries. [Initial Brief of Respondents, filed 12/22/10, p 34]. It did not. Yet Mr. Sojourner continues on this path by excluding necessary heirs and creditors who would, and do, provide overwhelming information that she is not the wife from the heirs proceeding. And his actions are condoned by the circuit court.

Mr. Sojourner has placed the "I Feel Good" Copyrights at great risk. He has placed the 1999 backup will (almost identical to the 2000 estate plan) which make Brown's estate plan in jeopardy under the 10-year rule. Petitioner heirs have standing both to protect themselves and the "I Feel Good" Foundation from these actions. Yet Mr. Sojourner simply follows Mr. Bauknight's lead at every turn, without regard to his (Mr. Sojourner's) fiduciary duty to protect the copyrights which are about half the value of the "I Feel Good" Foundation. And he ignores that Mr. Bell and others are engaged in prohibited transactions under the IRC and South Carolina Probate Code Section 62-7-405.

III. Novel Questions, Substantial Constitutional Issues and Conflicts

with *Wilson v. Dallas* in the Proposed Second Dismembering of the “I Feel Good” Foundation.

Mr. Sojourner's asserts on pages 3 and 5 that there is nothing significant about this case or the subject appeal; that there are no novel questions of law; and that it “involves the application of settled law...” He asserts that the appealed orders are “interim orders” and “have merely the effect of severing claims and designating initial parties” and of “dismissing the cross-claims of two non-parties.”

The opposite is true. Everything about the James Brown cases since the Attorney General announced his August 10, 2008 intention to take over Brown's private property and put it under State control is significant and novel. Everything involves Substantial constitutional issues. It is clearly “novel” that the lower court has ignored this Court's ruling in *Wilson v. Dallas*.

The claimed “consent’ by the deceased La Rhonda is an example. The Wingate Suit is the first time known to Petitioners that an Attorney General and a nonresident of his State, sharing a single private law firm, have sued two of the State's citizens for tens of millions of dollars in a tort suit to stop a legal appeal (chill their constitutional rights) and obtain money for the nonresident.

The Attorney General's claim, joined by Mr. Bauknight, that all James Brown FOIA cases, wherever and by whomever filed, must be transferred to Richland County; consolidated with the Wingate Suit; and subservient to discovery motions in the Wingate suit is, at best, novel. It has far-reaching and constitutional implications for FOIA; government integrity; and public confidence.

Serious constitutional issues arose where the Attorney General and Mr.

Bauknight as trustee of the McMaster Legacy Trust claimed Robert Buchanan, Jr. and Petitioner Pope committed a federal felony by intentionally overstating the value of Brown's music empire by \$79 million for an improper purpose, then refused to release under FOIA the alleged \$4.7 million appraisal which they claim supports these false, career-threatening claims.

In footnote 3 on page 4 Mr. Sojourner refers to "some vague notion of 'state support for Tommie Rae.'" The State support for Respondent Tommie Rae is not vague. It is real and pervasive. [See Appendix, pp. 152-155]. It has continued for six years. The Attorney General has invoked 6-year-old unconstitutional gag orders to prevent release of documents to protect Tommie Rae. He has violated the reporter's shield law to try to benefit her. He has claimed to this Court with the Levenson clients that she is Brown's spouse. He found out that the Levenson clients knew when they made that statement that it was untrue. [Appendix, pp. 63-64]. He has allowed Mr. Bauknight to leave unchanged the records filed with the IRS which claim Respondent Tommie Rae is Brown's spouse knowing that this is certain to cause problems in Federal Copyright Act litigation for decades.

On page 5, Mr. Sojourner places importance on the circuit court's factual findings. Where Petitioners have been enjoined and excluded from participation they should not be considered important.

On page 5 Mr. Sojourner claims scholarship reserve funds are being used to "prevent Pope...from further interfering in the Estate and Trust." Had Mr. Sojourner and the circuit court not trampled on the rights of heirs, creditors and

others seeking to enforce the "I Feel Good" Trust; had the unconstitutional Wingate Suit been concluded as directed by this Court; and had FOIA not been evaded, no appeals would have been necessary..

On page 6 Mr. Sojourner supports Mr. Bell's claim that Petitioner Michael, incarcerated in California, is not entitled to a GAL. The appealed order, however, shows that Mr. Bell did not protect Michael. A GAL is needed.

Conclusion

Petitioners' standing should be confirmed. Certiorari should be granted. The appealed orders should be reversed and vacated. The matter should be remanded for all Petitioners to be added as parties to the Tommie Rae and James B. matters, and any other heirs or testacy proceedings; served with the Plaintiff(s) complaint; and given full right to respond and participate. Petitioner Pope should be appointed GAL for Petitioners, who are entitled to DNA testing under the Estate's protocol. Petitioner Pope should be found to have standing to protect the "I Feel Good" Foundation, including by seeking probate of the 1999 backup will, under Section 627-405. In accordance with the *Wilson v. Dallas* remand provisions, the Court should direct that the Wingate and FOIA suits be concluded in the first instance.

Respectfully submitted,



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October 8, 2012

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and

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

PROOF OF SERVICE

I certify that on the 8th day of October, 2014, I have served the REPLY OF PETITIONERS TO RETURN OF DAVID SOJOURNER, JR. TO 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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October 8, 2014