

STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM AIKEN COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Doyet A. Early, III Circuit Court Judge

Case No.2013-002582 (Order, S.C. Ct. App., filed May 22, 2004)

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Petitioner certifies that the Petition for Rehearing was made and finally ruled upon by the Court of Appeals on May 22, 2014.



Adele J. Pope

June 13, 2014

QUESTIONS PRESENTED

- I. **Should dismissal of the appeal be reversed because the Bauknight Appointment Order is final and appealable; Petitioner is aggrieved; and Petitioner has standing to appeal?**
- II. **Do Bauknight's irreconcilable conflicts, including serving as Agent for Tommie Rae, preclude his serving as PR or Trustee?**
- III. **Did the Court's appointment of one PR/Trustee violate *Wilson v. Dallas*?**

INTRODUCTION

Petitioner asks this Court to reverse the decision of the South Carolina Court of Appeals dismissing her appeal of the order of the Honorable Doyet A. Early, III, dated October 1, 2013 appointing Russell L. Bauknight to serve as sole fiduciary under the will and 2000 Trust of entertainer James Brown ("PR/Trustee")¹.

Petitioner asks this Court to find that the appointment order is final and immediately appealable; she has standing; and she is aggrieved by the order.

Petitioner and Robert Buchanan, Jr. as Brown's PR/Trustees. Their replacement by the circuit court was affirmed in this Court's decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

During the pendency of the *Wilson v. Dallas* appeal, Buchanan and Petitioner were sued for ten million dollars or more by the Attorney General of South Carolina ("AG") and Bauknight acting on behalf of the AG, Tommie Rae

¹ Petitioner also appeals the form 4 Order which denied reconsideration of the October 3, 2013 order.

Hynie ("Tommie Rae") and others in Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). The law firm of Kenneth Wingate, Esquire ("Wingate") is sole plaintiffs' counsel in the Wingate Suit.

Since 2011 the AG and Bauknight have succeeded in having two Newberry County suits filed by Petitioner under the South Carolina Freedom of Information Act ("FOIA") moved to Richland County. One has been consolidated with the Wingate Suit. Another awaits a consolidation hearing.

The AG and Bauknight are seeking to have the unrelated FOIA of a journalist transferred to Richland County and consolidated with the Wingate Suit. [Appendix, p. 157]

Petitioner is a creditor of Brown's estate. Since May 8, 2013 she has served *pro bono publico* to help anyone interested in enforcing the "I Feel Good" Foundation. [Appendix, pp. 68, 70-71]

Petitioner was enjoined from participating in the Bauknight appointment proceeding by orders issued *sua sponte* without notice or hearing on June 13, 2013, by the Honorable Doyet A. Early, III. The June 13 orders, failing to note that Petitioner is being sued by the Estate and 2000 Trust directed that *Wilson v. Dallas* prevents Petitioner from participating in any James Brown trust or estate case. [Appendix, pp. 173-74]. s being sued by the Estate and Trust in the Wingate Suit.

The appointment order was granted based on a petition not served on anyone, and after a hearing at which only the circuit court posed questions. No examination was made of the FOIA cases and Wingate Suit. Bauknight's

continued service as fiduciary and agent for Tommie Rae was not mentioned. [Appendix, pp. 161-62, 164]. What appears to have been an unauthorized 4-year claim that Bauknight is acting for the State/AG was not addressed.

The appointment order praises both Bauknight and his attorneys for their accomplishments; appoints Bauknight sole PR/Trustee; and designates his appointee to perform certain tasks.

The appointment order damages Petitioner. It places the "I Feel Good" Trust in great jeopardy. The implications of the appointment order threaten private philanthropy in South Carolina.

Statement of the Case

On May 8, 2013 the South Carolina Supreme Court decision in *Wilson v. Dallas* voided a 2008 settlement reached by the AG which dismembered James Brown's "I Feel Good" Foundation.

The Court voided the appointment of Bauknight. It directed the circuit court, upon proper application, to appoint fiduciaries to oversee these matters in accordance with the provisions of Brown's estate and trust, and to evaluate the propriety of all fees related to the case. *Id.* at 449-50, 743 S.E.2d at 767-68.

At a status conference held May 29, 2013 counsel for Tommie Rae and attorney Louis Levenson, Esquire ("Levenson") announced their intention to reinstate the Attorney General's 2008 settlement. The AG announced his intention to withdraw from the Aiken County cases.

On June 13, 2013 the circuit court *sua sponte* issued orders enjoining

Petitioner from participating in James Brown estate and trust cases².

The circuit court's June 13 orders directed that Petitioner's unheard motions be removed from the public record, and that the clerk not accept future filings. [Appendix, pp. 113, 126, 127]

On July 29, 2013 Bauknight filed a petition to be sole PR/Trustee. He asked for a limited appointment of David Sojourner. [Appendix, p. 9]

The petition failed to name heirs, beneficiaries or creditors with proper demands for notice. The petition was not served on anyone. [Appendix, p. 50]

On September 4, Bauknight presented his petition to the circuit court. No questions were allowed to be asked by those attending. [Appendix, p. 10]

On October 3, the Bauknight appointment order was filed. [Appendix, p. 8] The order did not name the parties. [Appendix, p. 8]

On December 9, 2013, after denial of her timely motion to alter or amend by Form 4 order, Petitioner served an amended notice of appeal of the orders.

The appeal was filed with an appeal of the June 13 injunction orders, Appellate Case No. 2014-001649. It was treated by the Court as a different case.

On December 12, 2013 Petitioner sought direction as to the parties to the appeal because the appealed orders did not name parties. [Appendix, p. 36]

On December 23, 2013, Petitioner filed a memorandum related to appealability and an affidavit in support of the motion. [Appendix, pp. 39, 67]

² The June 13 orders did not address the Wingate Suit which the AG and Bauknight in multiple capacities against Petitioner and Buchanan in 2010; two FOIA suits in which Bauknight was seeking to intervene; or the "Forlando Federal Suit" brought by Forlando Brown on January 2, 2008 to enjoin the 2000 Trust until Respondents Cannon and Dallas were reinstated.

On January 30, 2014 Petitioner served a reply to the letter/return of Mr. Sojourner to her memorandum related to appealability. [Appendix, p. 103]

On January 30, 2014 the Honorable Paul E. Short, Jr. issued an order dismissing the appeal. [Appendix, p. 3]

On February 12, 2014 Appellant served a petition for rehearing; a memorandum seeking abeyance; and an affidavit. [Appendix, pp. 125, 132, 140]

On February 24, Bauknight filed returns to the rehearing and abeyance motions. [Appendix, pp. 142, 150]

On February 28, 2014 Petitioner replied. [Appendix, pp. 153, 189]

By Order dated May 22, 2014, Judge Short, for the Court, denied Petitioner's Petition for Rehearing. [Appendix, p. 1]

Statement of Facts

On August 9, 2008 the estate plan of James Brown was ironclad. It was even confirmed in his own voice tape. [Appendix, pp. 40, 117, 167]

An official DNA testing program for non-presumed children was being used to identify Brown's heirs under the Federal Copyright Act. The estate was working to have termination rights agreements with the most cooperative half of Brown's children not challenging his estate plan. This would secure the "I Feel Good" Trust's 800+ copyrights for decades. [Appendix, pp. 204, 205]

All of Brown's acknowledged children and his fiduciaries were on record confirming Brown was not married at his death. This position was supported by complete records of the legal wrangling between Brown and Tommie Rae after Brown discovered she was married when they conducted a 2001 ceremony.

On July 30, 2008 the AG had written Petitioner and Buchanan to approve their permanent service as Trustees. The AG never challenged them as PRs.

On August 10, 2008 the AG reached a settlement, set out in detail in *Wilson v. Dallas*.

Tommie Rae and her son were declared to be Brown's heirs. At least half of Brown's children were excluded from the AG's 2008 settlement.

The AG contracted with Tommie Rae and others:

...that a joint motion or other pleading will be filed seeking the removal of Mr. Robert Buchanan and Ms. Adele Pope as Personal Representatives of the Estate of James Brown and as Trustees of the August 1, 2000 Irrevocable Trust of James Brown, deceased and will mutually agree upon persons to appoint as successor representatives of the estate and trust... [Appendix, p. 160]

On January 30, 2009 Terry joined the AG's settlement and acquired a right of first refusal ("ROFR") to buy the estate assets. [Appendix, p. 161]

On January 30, 2009 Bauknight asked the circuit court to approve the settlement. [Appendix, p. 160]

On May 26, 2009 the circuit court approved the AG's settlement. Buchanan and Pope were replaced. Bauknight, in addition to being trustee of the AG's Legacy Trust, became PR/Trustee.

The Advisory Board was not consulted. Buchanan's and Pope's nomination of former Warner Music executive Ray Gonzalez and distinguished attorney Ronald Stanley as their successors was not considered.

Buchanan and Petitioner, as required by Brown's documents, appealed.³

There was simply no legal or factual support for giving Tommie Rae about \$11 million or her attorneys about \$10 million. Nor was there any reason to give 25% of the "I Feel Good" Trust assets to the Levenson clients, with about \$9 million going to Levenson. [Appendix, pp. 166-67]

All who challenged Brown's estate plan have confirmed:

...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, pp. 166-67]

Terry's ROFR posed another problem: the threat of devaluation by the "family" to acquire the music empire from the "I Feel Good" Trust.

On May 19, 2010 three lawyers expecting about \$20 million from the AG's settlement, with Bauknight, secretly signed a 40% contingency fee contract authorizing the Wingate Suit.

On May 19, 2010 the AG and Bauknight sued Buchanan and Petitioner in the Wingate Suit. Buchanan later described to the circuit court how the Wingate Suit, unwarranted attacks and no pay damaged him:

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.

As I was and am the sole breadwinner in my household, through the years

³ The 5-year legal cost of protecting the estate plan, including for the seven days of circuit court hearings, was about, \$200,000. Their own involvement and the *pro bono publico* service of lead appellate counsel James B. Richardson, Jr. helped reduce costs down. [Appendix, p.]

I utilized assets which my wife and I owned jointly, to supplement the lost earnings...

In January 2011 the AG amended the Legacy Trust. Terry transferred his estate interest and ROFR to Forlando. [Appendix, pp. 166-67]

In March 2011 the Court of Appeals dismissed as premature an appeal by Buchanan and Petitioner challenging Wingate's serving as sole attorney for the State/AG and Tommie Rae.

In April 2011 a draft professional article, *Private Foundations, Copyright Heirs and Musical Millionaires: or Why the James Brown "I Feel Good" Trust doesn't...*, outlined the devastation of the "I Feel Good" Trust's copyrights calling a non-wife a wife and giving Terry the ROFR. [Appendix, p.83]

In May 2011 Bauknight and the AG asked the Supreme Court to supplement the record on appeal ("ROA") in the *Wilson v. Dallas* appeal with a \$4.7 million value for Brown's music empire and \$.5 million for his tangible personal property.⁴ Previous fiduciaries, under oath valued the music empire at about \$84 million. The Court declined. [Appendix, p. 114]

In 2011 the AG and Bauknight began to accuse Buchanan and Petitioner of the federal felony of intentionally overstating the value of Brown's music empire by \$79 million to the IRS on the estate tax return for the improper purpose

⁴This reduced the value to less than 1/15 the valued reported by Petitioner under oath to the IRS, and changed it from the \$100 million less \$15 million TIAA debt reported by Respondent Dallas on the original I&A.

Bauknight did not file the appraisal supporting the amended I&A as required by the South Carolina Probate Code ("SCPC").

of obtaining a \$5 million commission. [Appendix, p. 62] If true, this false claim could have ended their careers⁵.

The AG and Bauknight claimed there was no support for the \$84 million value. [Appendix, p. 197] The \$84 million was consistent with a valuation formula presented to the Circuit Court by Buchanan and Petitioner in 2007 before their appointment and before any challenges to the Will. Neither the AG nor anyone opposed the formula. [Appendix, pp. 61-63]

The AG and Bauknight told the Court there was never an offer to buy Brown's music empire. At the same time they were suing Buchanan and Petitioner for not accepting a \$100 million offer.⁶ [Appendix, pp. 61-63]

Bauknight claims his \$4.7 million is the first professional appraisal. But a professional 2006 Royal Bank of Scotland ("RBS") appraisal had valued the royalties alone at about at about \$42 million. The royalties are about half the value of the music empire. [Appendix, p. 197-98]

In August 2011 Petitioner filed FOIA #1 and FOIA #2 in Newberry County.

Bauknight moved to intervene in both FOIA #1 and FOIA #2. Bauknight and the AG had both FOIA suits transferred to Richland County.

FOIA #1 is awaiting a hearing on consolidation with the Wingate Suit FOIA

⁵ On June 12, 2014 Petitioner learned that the AG claims he never saw the \$4.7 million appraisal which allegedly supported these false felony claims which are being continued by Bauknight as claimed agent for the AG. He relied solely on Bauknight.

⁶ The 2007 \$100 million offer was actually made to Buchanan's and Petitioner's predecessors, including Respondent Dallas.

#2 has been consolidated. The result: no FOIA compliance.⁷

On November 1, 2011 Bauknight, through counsel, told the Court that Tommie Rae's elective share claim was a "slam dunk." He said Tommie Rae and her son controlled the Federal Copyright Act termination rights.

In April 2012 Forlando's injunction suit against the 2000 Trust was dismissed. Counterclaims continue. Concealing the ROFR and estate share from

⁷ Petitioner asks the Court to take judicial notice of Newberry County Case No. 2012-CP-36-00688 where the AG and Bauknight seek to consolidate a FOIA suit by a Newberry journalist who began covering James Brown cases shortly after FOIA #1 was filed. The AG told the Court on June 11, 2014:

The signed Legacy Trust and Amendments

..we do not have nor have we ever had any copy or original Legacy Trust other than, as I noted in Court, the unsigned drafts.
[But See Appendix, p. 30 for Legacy Trust amendment of January 2011, signed by the Attorney General.]

Of Tommie Rae's widely-distributed and discussed writings, the AG said:

The Tommie Rae Hynie Brown diaries

The only issue about the Brown diaries pertinent to the instant suit is whether they are subject to disclosure. They are not. They are subject to an Aiken County Order referenced multiple times. That Order forbids dissemination of the diaries.

As to the \$4.7 million appraisal which the AG used as the basis of career-threatening felony claims against Buchanan and Petitioner, the AG said:

The \$4.7 million appraisal and related documents

Plaintiff complains that the OAG says it does not have the appraisal while referencing it in Court documents. The reference to the appraisal was based upon a representation of Russell Bauknight, a fiduciary. The OAG has never seen the appraisal and does not have it.

[Ltr. of Alan Wilson, AG, J. Emory Smith, Jr. Deputy Solicitor General, to Hon. Eugene C. Griffith, dtd. June 11, 2014, p. 2]

Terry, Forlando told the court he had no funds to pay the Trust's legal costs of his suit and no expectation from the Brown estate unless his father were deceased.

Bauknight knew Forlando owned the ROFR, but failed to tell the Court.

In July 2012 Bauknight paid Buchanan \$500,000 from Brown's estate to release Tommie Rae, the AGand others from his counterclaims in the Wingate Suit.

In late 2012 Bauknight paid Wingate \$560,000+, in addition to the 40% contingency. He did not disclose this until after the appointment order.

After July 2012, Bauknight and the AGdirected their attacks only at Petitioner, even though all acts of Buchanan and Petitioner were joint.

On February 27, 2013 the first *Wilson v. Dallas* opinion was issued. Footnote 29 of the opinion raised questions about the Wingate Suit and FOIA.

Footnote 29 was not in the substituted May 8, 2013 decision.

On May 12 Bauknight 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.]

Bauknight, still claiming to speak for the AGand Tommie Rae, asked to delay the FOIA suits and Wingate Suit until the conclusion of all Aiken County litigation. Tommie Rae's deposition had been noticed, a summary judgment that she was not Brown's wife was ready to be heard.

On May 29 Tommie Rae and Levenson announced their intention to

reinstate the 2008 settlement.

On July 29 Bauknight filed his petition seeking to be sole PR/Trustee.

On August 20, 2013 Bauknight was deposed in the Forlando Federal Suit.

Asked if Petitioner helped the estate by the *Wilson v. Dallas* appeal, he said:

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.] [Appendix, p. 119]

On September 4 Bauknight presented his petition to the circuit court. He was not asked about his failure to account for 18 months; his service as agent and fiduciary for Tommie Rae; his service to Levenson in the Wingate Suit; his attempts to intervene in three FOIA suits ; his service as trustee of the Attorney General's Legacy Trust; or his claim to speak for the State/AG.

Public documents Bauknight seeks to keep from FOIA disclosure include:

1. The Wingate Litigation Agreement;

2. The signed Legacy Trust, and amendments, [a Wingate Suit plaintiff];
3. The widely disseminated handwritten notes of Tommie Rae;
4. The \$4.7 million appraisal used to support the felony claims;

Had Bauknight accounted or filed the appraisal as required, the circuit court would have known about the \$560,000+ he paid to Wingate in 2012.

On September 23 attorney Marc Toberoff questioned the estate's agent's helping Tommie Rae file copyright termination notices when she is not the spouse and her son not a son. [Appendix, p. 206]

In an order filed October 3, 2013 the circuit court denigrated the service of Buchanan and Petitioner; praised, with no support in the record, the service of Bauknight and his attorneys; incorrectly found all Interested Persons had been noticed; failed to comply with the *Wilson v. Dallas* remand instructions; and took no note of Bauknight's troubling 4-year claim to speak for the Attorney General.

On October 8, 2013 the circuit court "double approved" Buchanan's \$500,000 payment, leaving open the possibility of voiding the Wingate Settlement.

On October 10, 2013 the probate court dispensed with any hearing and signed an *ex parte* order appointing Sojourner. [Appendix, p. 76]

On October 16, the *ex parte* order was hand delivered to one of Bauknight's attorneys for service on all Interested Persons. [Appendix, p. 82] It was not served on anyone.

Every act since October 2013 by Bauknight or his appointee has damaged the "I Feel Good" Trust; helped to destroy the "I Feel Good" Trust's

copyrights in favor of Tommie Rae; and helped defeat the interests of Petitioner; at least HALF of Brown's real heirs; and all others who seek to save the "I Feel Good" Trust from a second dismemberment.

Argument

- I. Dismissal of the appeal should be reversed because the Bauknight Appointment Order is final and appealable; Petitioner is aggrieved; and Petitioner has standing to appeal.**

Petitioner incorporates herein each argument contained in her appealability memorandum and supporting documents. [Appendix, pp. 39-66, 67-95] She supplements that as set out herein.

- a. The Appointment Order is Appealable Under Applicable Law.**

Under S.C. Code Section 14-3-330 appeals may be taken from:

... (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions...

(2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, ...

(3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and

(4) An interlocutory order or decree in a court of common pleas... continuing... an injunction...

The Bauknight Appointment Order and the form 4 order ("Orders") are immediately appealable for multiple reasons. They are final orders. They continue an injunction. They are without jurisdiction because Due Process was

violated. They have placed the property rights of Petitioner and others in immediate jeopardy. They make sweeping findings which have no support in law or the record. They praise Bauknight for violating public policy and the FOIA.

b. The Appointment Order is Final Despite its Title.

Section 62-3-107 of the SCPC states in pertinent part:

SECTION 62-3-107.

... (4) a proceeding for appointment of a personal representative is concluded by an order making or declining the appointment.
[Emphasis supplied]

The relief sought by Bauknight has been granted. Bauknight has been given “full, absolute, and exclusive authority to carry out the Estate’s administration and the Trust’s administration, and all business matters related thereto... Revisiting this authority “...upon the conclusion of all Estate litigation” means when everything is over.

The title does not define the order. It is final.

c. The Orders Determine Rights and Deny Due Process Rights

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.

The circuit court orders deny the State and Federal Due Process rights of Petitioner and all others who are not challenging Brown’s estate plan. Both the procedure and the orders fail to meet even minimal standards of fairness. The summons and petition were not served. There was no proper notice. No

examination was allowed. The court ignored violations of FOIA and even Bauknight's improper claim to speak on behalf of the Attorney General.

The court's refusal to conduct a hearing or appoint a GAL for incarcerated son Michael was also manifestly unjust. 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 exclusion of Petitioner, Michael and others from the proceeding violated Equal Protection rights. The failure of the circuit court to allow exploration the \$4.7 million claimed value and FOIA interference, followed by an order which praised Bauknight and his lawyers, "involved the merits." and trampled on Probate Code and Due Process rights. The 2008 Gag Orders still violate First Amendment rights. The order finally determined substantial parts of causes of action or defenses. See *Neeltec Enter., Inc. v. Long*, 391 S.C. 177, 178, 705 S.E.2d 57, 58 (S.C.App. 2011).

The Orders are appealable because the Court made a final finding that Bauknight was qualified when he was not – damaging Petitioner, the "I Feel Good" Foundation, and real heirs. They are appealable because the circuit court, in its haste, has denied Petitioner and others Due Process, Equal Protection and First Amendment rights.

d. The Orders Finally Determine Rights of Petitioner, and other Heirs, Devisees and Interested Persons in a Proceeding Improperly Commenced Where No Summons or Petition was Served.

Section 62-1-304 of the Probate Code in part says:

SECTION 62-1-304. South Carolina Rules of Civil Procedure govern formal proceedings.

The South Carolina Rules of Civil Procedure (SCRCP) adopted for the circuit court ...govern formal proceedings ... A formal proceeding is a "civil action" as defined in Rule 2, SCRCP, and must be commenced as provided in Rule 3, SCRCP.

The purpose of the rule is to provide constitutionally adequate notice of the commencement of an action to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit. See *McLain v. Ingram*, 314 S.C. 359, 444 S.E.2d 512 (1994) (*per curiam*). The required summons was never served. No action was commenced. The Court's jurisdiction over required parties was never obtained. Due Process was not met. Immediate appeal is appropriate.

The action purportedly commenced by Bauknight for the formal appointment was an action against Michael. Section 62-3-414 provides in part:

SECTION 62-3-414. Formal proceedings concerning appointment of personal representative.

(a) A formal proceeding for adjudication regarding the priority or....
...is governed by Section 62-3-402, as well as by this section. . .

(b) After service of the summons and petition to interested persons,
... the court shall determine...under Section 62-3-203...

The Bauknight Petition was also required to state:

...
(ii) . . .names and addresses of ... children, heirs ..known or ascertainable with reasonable diligence by the applicant...

(v) a statement indicating whether the applicant has received a demand for notice, or is aware of a demand for notice of any probate or appointment proceeding ...[Emphasis supplied.]

The circuit court found these requirements were met when they were not.

Jurisdiction fails. Subject matter jurisdiction can be raised at any time and by any means. *Hammer v. Hammer*, 399 S.C. 100, 730 S.E.2d 874 (S.C.App. 2012).

e. The Right of Petitioner to Nominate Was Substantial.

In an extensive but incorrect analysis of Section §62-3-203, the court on pages 14 and 15 of the Order concludes that Bauknight has statutory priority to serve. He did not. Brown's Will deprives challengers of standing to nominate.

The circuit court incorrectly found that there was no Advisory Board. Gonzalez and Stanley have highest priority. Failing that, the Advisory Board has such authority. Under § 62-3-203(a), they are:

... (1) the person with priority as determined by a probated will, including a person nominated by a power conferred in a will.

Petitioner has higher priority as a creditor seeking alternate probate of the 1999 will to nominate than Bauknight to serve as an agent for will contestants.

f. The Incorrect Finding that All Interested Parties Were Notified is Material.

Page 14 of the October 1 Order, as a Conclusion of Law, finds:

All of the interested parties have been notified of the request for applications ... and have been given an opportunity to nominate a candidate and oppose the applications...

Section 62 -1- 201 (23) of the Probate Code defines Interested

Persons:

..(20) "Interested person" includes heirs, devisees, children, spouses, creditors, ..having a property right in or claim against a trust estate..which may be affected by the proceeding...

The finding regarding notice is a material incorrect error of fact and law.

g. Petitioner Has Standing to Appeal.

Petitioner has multiple bases for standing to participate in this case, including:

1. Petitioner is a Creditor Petitioner has not been paid for six years.
2. Petitioner has Special Status Under §62-7-405. Petitioner has devoted time, effort and study to protect the "I Feel Good" Trust. The AG has withdrawn. The settlor is deceased. The trustee has irreconcilable conflicts. The 1999 will is in immediate jeopardy under the 10-year rule. This is the purpose for which Section 62-7-405 was intended.
3. Petitioner and Buchanan have Public Interest Standing. Saving \$91 million for scholarships from a second state takeover is a matter of public importance.
4. Petitioner has Counterclaims with Proposed Offset in the Wingate Tort Suit and the Forlando Federal Suit.

The facts set out above make clear that Petitioner is aggrieved. Her property, profession and even liability even liberty are at stake.

II. Bauknight's irreconcilable conflicts, including serving as agent for Tommie Rae, preclude his serving as PR or Trustee.

Bauknight cannot support Brown's estate plan and remain an agent for Tommie Rae and her son. Needed adjustment in estate tax proceeding are an example:

A. Bauknight claimed Tommie Rae was the spouse. This damages the "I Feel Good" Trust's copyright in federal cases. corrected.

B. Bauknight's claimed less than \$3 million going to the "I Feel Good" Trust – instead of the correct \$80 million – will distort the required payments to needy students under IRS guidelines.

The AG has recently stated correctly that no man is above the law.

Bauknight has acted above the law since May 2010. He has done so while

claiming to speak for the State's chief prosecutor, the public official charged with the enforcement of FOIA, and the public official charged with the protection of charities.

These and other issues prevent appointment.

III. The Court's appointment of one PR/Trustee violates *Wilson v. Dallas*.

a. Disregard for *Wilson v. Dallas* damages Petitioner and Threatens the "I Feel Good" Trust.

The circuit court order disregards *Wilson v. Dallas* with the finding that one trustee is appropriate. The record does not support this claimed efficiency.

Bauknight paid Wingate \$560,000+ in 2012. This was more than than the 5-year defense of the estate plan. In the last two months of 2013, Sojourner's firm was paid more than \$250,000 for fighting the heirs status of three DNA-proven and acknowledged daughters and an incarcerated son the AG didn't elect to include in his settlement. And Petitioner.

The facts are undisputed: The copyrights can and should be protected by confirming that Brown had no spouse and making copyright termination agreements with the most cooperative HALF (or half + 1) of Brown's heirs who are not challenging the estate plan. That probably means 5 or 6 of: Jeanette, the daughters of La Rhonda, Michael (incarcerated), Lisa, Nicole and Daryl. [Appendix, p. 129] It could also include, if they pass the Peeples DNA Protocol: Tommie Rae's son, granddaughter Tonya (father deceased), James Curtis or others. [Appendix, p. 129]

Bauknight and Sojourner are both working – at a rate of more than a

million dollars a year – to keep this from happening. And Bauknight is the agent for Tommie Rae and her son.

With knowledge that it is helping Tommie Rae and damaging the “I Feel Good” Foundation, both Bauknight and his agent are allowing Bell and Tommie Rae to siphon off the termination rights contracts the Estate should have had by 2011 with Michael and others. There is but one purpose for this: a second dismembering of the “I Feel Good” Foundation and a repeat of the same false claims about the value of Brown’s music empire, the heirs and the Federal Copyright Act.

Apparently to insure that they not support Brown’s noble estate plan, Bauknight is withholding their \$285,000 education funds of seven grandchildren until all litigation is complete – even though they need it now. And the circuit court is praising him this.

The proof that Tommie Rae is not Brown’s spouse is clear. It is now a matter of record through the admissions of all children, including DNA-proven children; all fiduciaries except Bauknight; and the so-called Hynie “diary.” Every party to this appeal knows the contents of the Hynie “diary” which was publicly discussed for months and properly disseminated by Wayne Byrd, Esquire, counsel for Respondent Dallas. But Bauknight has asked the Wingate Suit court to delay her deposition and summary judgment for what may be years.

b. Judicial notice, unsealing of \$4.7 million appraisal which served as the basis of false felony claims, and expansion of the record in light of the Attorney General’s June 12, 2014 statement that OAG has never seen \$4.7 million appraisal.

On June 12, 2014 Petitioner learned that the AG told the Court in one of the three FOIA cases in which Bauknight seeks to intervene and stop FOIA compliance that the AG ("OAG") had never had possession of a signed copy of the Legacy Trust or an amendment. Yet a copy of the 2011 Amendment signed by AG McMaster and distributed by Sr. Assistant Jones was already at pages the 181 to 184 of the Appendix.

The AG also said that the OAG had never seen the \$4.7 million Bauknight appraisal used to accuse Buchanan and Petitioner of a federal felony and run them out of a position they were performing properly.

Forlando Brown's attorney recently told the federal court that the humiliation of the *Wilson v. Dallas* decision will be a permanent stain on Buchanan's and Petitioner's careers. That is true. To claim a \$5 million commission on a \$5 million estate would have been unfair.

But Brown's estate was not a \$5 million estate. It was a \$100 million estate. The misrepresentation to this Court was based either on a fabricated appraisal or false information provided by Bauknight. It should now come to light.

Under Rule 201(d) of the Rules of Evidence, Petitioner requests that this Court take judicial notice of the ROA in *Wilson v. Dallas*, the Wingate Suit, the Hynie "diary" appeal dismissed in 2013, and the three FOIA Suits. The Court is also asked to take judicial notice of the Aiken circuit court action since the *Wilson v. Dallas* decision, and the filings by Bauknight and Forlando since May 8, 2013 in Federal District Court Case No. 3:08-cv-00014-WOB-JGB.

Many false statements have been made. The facts about the \$4.7 million

appraisal alone show:

The first evidence of the extraordinary undervaluation came from a claim by AG Havird Jones in the summer of 2010. Jones told the *Wilson v. Dallas* Court that Bauknight had reviewed a draft appraisal showing Brown's assets at less than \$12 million.

[On August 30, 2010 Jones appeared as a "client" in a Wingate Suit hearing where Wingate discussed a 2007 \$100 million offer to buy the Brown assets. See Appendix, p. 122-124.]

The Jones/Bauknight revelation about the \$12 million prompted Smith and Pope to write their April 2011 *Private Foundations*. [Appendix, p 83.]

The following month, May 2011, the AG and Bauknight asked to supplement the ROA with \$4.7 million value.

The false felony claims began at the same time, and continue.

In September 2013 in the Forlando Case Bauknight said he had never shown the \$4.7 million appraisal to anyone. But Tommie Rae's son showed knowled of it in his Petition for Rehearing in 2013 in *Wilson v. Dallas*.

On June 12, 2013 the told Judge Griffith:

1. The AG never had a copy of the 2011 amendment to the Legacy Trust signed by McMaster. [Appendix, p. 181-184]
2. The AG had not seen a copy of the \$4.7 million appraisal.

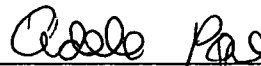
These new revelations about the \$4.7 million and the continued work of Bauknight and his appointee to help Tommie Rae, merit reversal of the dismissal order and an expanded record, to include FOIA compliance.

CONCLUSION

The orders of the Court of Appeals dismissing the appeal should be reversed. The appeal should proceed with a complete record, including the unsealed \$4.7 million appraisal, Hynie "diary" and others documents withheld

through Bauknight's attempted FOIA interventions. The Court should find, without remand, that Bauknight's irreconcilable conflicts prevent his appointment and that of his appointee.

Respectfully submitted,



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June 13, 2014

STATE OF SOUTH CAROLINA
In the Supreme Court

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JUN 13 2014
S.C. Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

Case No.2013-002582 (Order, S.C. Ct. App., filed May 22, 2004)

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

PROOF OF SERVICE

I certify that on the 13th day of June, 2014, I have served the PETITION FOR
WRIT OF CERTIORI on Respondents and others as shown below by hand delivery
or by depositing a copy of same in the United States Mail, postage prepaid,
addressed to their attorneys of record as follows:

ATTORNEYS OF RECORD FOR RESPONDENTS AND OTHERS:

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

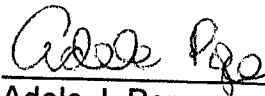
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Petitioner, *pro se*

June 13, 2014

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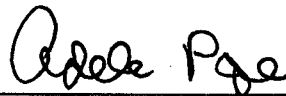
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