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STATE OF SOUTH CAROLINA
In the Supreme Court

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

APPENDIX

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The South Carolina Court of Appeals

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 Appellant,

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

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

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

Appellate Case No. 2013-002582

ORDER

Appellant has filed a petition for rehearing from this Court's January 30, 2014 order, dismissing this appeal because Appellant lacked standing and the underlying order was not immediately appealable. After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of

law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.¹

Paul E. Shortz, Jr. J.

John O. Seath J.

Jasper M. Arneton A. J.

Columbia, South Carolina

cc:

Adele J. Pope
Albert P. Shahid, Jr., Esquire
David B. Bell, Esquire
Matthew Day Bodman, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
Burl F. Williams, Esquire
David G. Cannon

FILED
5/22/14

¹ Appellant has also filed a motion to hold this appeal in abeyance. Because the petition for rehearing is denied, this Court declines to act on the motion to hold this appeal in abeyance.

The South Carolina Court of Appeals

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-
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And Terry Brown, Forlando Brown, James B., David G.
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In Re: The Estate of James Brown and The James Brown
2000 Irrevocable Trust u/a/d August 1, 2000.

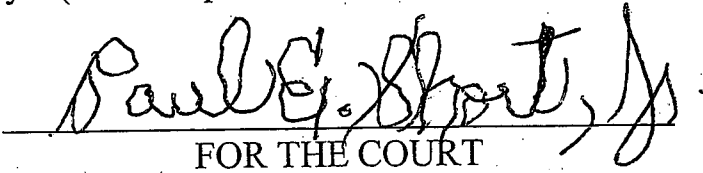
Appellate Case No. 2013-002582

ORDER

Appellant has filed a notice of appeal from an interim order of Judge Doyet A. Early III.¹ Because "[o]nly a *party aggrieved* by an order, judgment, sentence or

¹ The interim order appointed Russell L. Bauknight as the personal representative of the estate of James Brown and trustee of the James Brown August 1, 2000 irrevocable trust agreement. Additionally, the order appointed David C. Sojourner as the limited special trustee for the sole purpose of defending the trust in will and trust challenges. The order also established the temporary nature of the

decision may appeal" and an appeal may only be taken "as provided by law[] from final judgment, appealable order or decision," this appeal is dismissed. See Rule 201, SCACR (emphasis added); see also *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 106 (1979) ("An appeal filed by one who has ceased to be a party to a suit is a mere nullity." (internal quotation marks and citation omitted)).


FOR THE COURT

Columbia, South Carolina

cc:

Adele J. Pope
Albert P. Shahid, Jr., Esquire
David B. Bell, Esquire
Matthew Day Bodman, Esquire
Eugene C. Covington, Jr., Esquire
Robert N. Rosen, Esquire
William W. Wilkins, Esquire
J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
Burl F. Williams, Esquire
David G. Cannon

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1/30/14

appointments, stating fiduciary appointments would be revisited upon the conclusion of estate litigation.

STATE OF SOUTH CAROLINA
COUNTY OF Aiken
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-02-1647, 2009-CP-02-1810

In re: Estate of James Brown A/K/A James Joseph Brown

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☒ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Adele J. Pope's Motion to Reconsider, Vacate, Alter or Amend Order Dated October 1, 2013 is DENIED. 10/25/13

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.
Additional Information for the Clerk :

Liz Godard
C.C.P. & G.S.
Anita Knoepfle / *ak*
Deputy Clerk

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

W. C. Early Jr.
Circuit Court Judge

036
Judge Code

10/23/13
Date

For Clerk of Court Office Use Only

This judgment was entered on 10-25-13, and a copy mailed first class or placed in the appropriate attorney's box on 10-25-13, to attorneys of record or to parties (when appearing pro se) as follows:

Clyde H. Jones Jr. PO Box 11549 Columbia, SC 29211

Fred Lewis Kingsmore Jr. PO Drawer 2426 Columbia, SC 29202-2426

William George Newsome III PO Drawer 2426 Columbia, SC 29202-2426

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by edkncepple

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on 10-25-13, and a copy mailed first class or placed in the appropriate attorney's box on 10-25-13, to attorneys of record or to parties (when appearing pro se) as follows:

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Robert N. Rosen 18 Broad St. Ste. 201 Charleston, SC 29401

Albert P. Shahid Jr. 89 Broad St. Charleston, SC 29401

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David Bell 619 Greene Street Augusta, GA 30901

James Mixon Griffin PO Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by [Signature]

Court Reporter

Liz Godard - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN THE COURT OF COMMON PLEAS

CASE NOS. 2008-CP-02-1647-*filed here*
2009-CP-02-1810
2007-ES-02-0056

IN RE:

**THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN**

INTERIM ORDER

10-3-13

Liz Haddad

Anita Knoche

4:30
Deputy Clerk

This matter comes before me on applications for appointment filed by, or on behalf of, five individuals (hereinafter, the "Applicants") seeking appointment as Personal Representative of the Estate of James Brown (the "Estate") and Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust"). The Court has also received an application for appointment of Limited Special Administrator of the Estate and Limited Special Trustee of the Trust.

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded this Court's May 26, 2009 Order confirming the James Brown Estate and Trust Settlement Agreement. The Opinion reversed the compromise agreement, affirmed this Court's May 26, 2009, removal of the prior fiduciaries Mrs. Pope and Mr. Buchanan, and vacated Mr. Bauknight's fiduciary appointments made in conjunction with the compromise agreement. The Supreme Court further remanded to this Court the question of who shall serve as fiduciaries of the Estate and Trust. In its Opinion, the Court instructed this Court, "upon proper application, [to] appoint fiduciaries to oversee . . . matters in accordance with the provisions for succession outlined in Brown's trust

JAE
7/1

and estate documents.”

On May 29, 2013, this Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). Mr. Bauknight was ordered, in the interim, to continue to oversee the orderly administrative and fiduciary duties of the Estate and Trust as Special Administrator and Special Trustee, which he has done in a professional manner. Mr. Bauknight has continuously served in a fiduciary capacity for the Estate and Trust since May 26, 2009 and there has been no lapse in his authority or fiduciary service.

A. The Applicants

This Court received a total of six applications, each of varying form. The following identifies the Applicants and summarizes the form of the applications received:

- (1) **Mr. Russell L. Bauknight** – by Petition for Formal Appointment of Successor Personal Representative and Trustee filed with this Court on July 29, 2013 (attached as Exhibit 1)
- (2) **David C. Sojourner, Jr.** – by Petition for Formal Appointment as Limited Special Administrator filed with the Aiken County Probate Court and this Court on July 29, 2013, and Petition for Formal Appointment as Limited Special Trustee filed with this Court on July 29, 2013 (attached as Exhibits 2A and 2B)
- (3) **Judge Neal W. Dickert** – by letter of recommendation delivered on his behalf to this Court by David B. Bell on July 17, 2013 (attached as Exhibit 3)
- (4) **Mr. Scott Keniley** – by letter delivered to and filed with this Court on July 24, 2013 (attached as Exhibit 4)
- (5) **Dr. W.M. Grooms, CPA** – by letter filed with this Court on July 24, 2013 (attached as Exhibit 5)
- (6) **Rev. Larry Fryer** – by e-mail delivered on August 12, 2013 (attached as Exhibit 6).

WAC
#2

B. In Court Examination of the Applicants

On September 4, 2013, this Court conducted a hearing to receive testimony and answer questions posed by the Court from the Applicant parties. A transcript of the hearing is attached to this Order as Exhibit 7. All of the Applicants appeared at the September 4, 2013 hearing, except Rev. Fryer. On September 11, 2013, this Court reconvened the hearing to receive the testimony of Rev. Fryer. A transcript of that subsequent hearing is attached to this Order as Exhibit 8. At the conclusion of the September 4, 2013 hearing, this Court gave the Applicants ten (10) days to file written opposition to any of the Applicants.

FINDINGS OF FACT

As an initial matter, this Court wishes to express its gratitude to those Applicants who graciously volunteered to serve the Estate and Trust, as well as the State of South Carolina as a whole. Their willingness to assist the Estate and Trust in these matters is greatly appreciated by the Court.

As noted, the Supreme Court remanded the appointment of fiduciaries of the Estate and Trust to the sound discretion of this Court. This Court has carefully reviewed the Will and Trust, all applications and memoranda filed on behalf of, and in opposition to, the Applicants, and has considered the testimony provided by the Applicants. James Brown passed away nearly seven years ago on December 25, 2006. These factual findings and this Interim Order are made cognizant of the age of this matter and in an effort to expedite the efficient administration of the Estate and Trust. The overarching goal of this Court is to create an atmosphere where the prompt resolution of the various contested claims and a final resolution of Estate and Trust matters can occur without compromising the positive gains achieved since this Court issued its May 26, 2009 Order.

7008E
#3

Based on the foregoing, this Court finds:

1. Russell L. Bauknight has continuously served as a fiduciary to the Estate and Trust, both in his roles as Personal Representative and Trustee, and his continuing roles as Special Administrator and Special Trustee, with general fiduciary powers, since May 26, 2009. In that time, he and his counsel have protected the interests of the Estate and Trust in an effective and skillful manner, to wit:

(a) Notwithstanding the fact that he inherited the Estate on the verge of insolvency, with less than \$13,000 in the Estate's bank account, Mr. Bauknight oversaw the repayment of over \$14 Million on the Pullman bond debt seven years ahead of schedule.

(b) Mr. Bauknight engaged Mr. Peter Afterman to lead the marketing of intellectual property of the Estate. The Court notes that Mr. Afterman is a widely-respected Grammy Award winning music manager who also markets the music of the Rolling Stones. Mr. Afterman has been instrumental in marketing the intellectual property of the Estate. Mr. Bauknight hired Mr. Afterman on a deferred-pay basis so that he received payment 15 months after he began work for the Estate.

(c) Mr. Bauknight negotiated an arrangement with Universal Music to set up a fully-staffed division to assist in the marketing of Mr. Brown's music without charge to the Estate or Trust.

(d) Mr. Bauknight secured a deal launching the James Brown YouTube channel.

(e) Mr. Bauknight has recovered the domain name JamesBrown.com, which, prior to its recovery, had been held by an unrelated party for at least a decade. The Court understands that securing this domain name is part of a larger plan to market merchandise related to James Brown and otherwise promote the Estate's business interests and Mr. Brown's legacy. Mr. Bauknight convinced Universal Music to build the JamesBrown.com website without charge to the Estate or

Trust.

(f) Mr. Bauknight secured a deal for a documentary on the life of James Brown, to be directed and produced by the world renowned musician and entertainer Mick Jagger. The Court understands that this project has already received funding of over two million dollars, which is extraordinary for a documentary.

(g) Mr. Bauknight secured a deal with *Imagine Pictures* (the production company of Ron Howard and Brian Grazer) and *Jagged Productions* (the production company of Mick Jagger) for the production of a movie on the life of James Brown, to be released in late 2014, directed by Tate Taylor, most recently of the movie, *The Help*, and starring Chadwick Boseman, most recently of the Jackie Robinson biopic, 42.

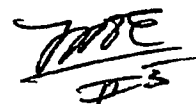
(h) Mr. Bauknight is in the process of negotiating a live tribute tour featuring the music of James Brown.

(i) Mr. Bauknight engaged Mr. Steve Gibson at the Grand Ole Opry in Nashville, Tennessee, to lead the digitization of video and audio tapes of James Brown so that it can be preserved for commercial purposes. This project began over a year ago, and will preserve valuable audio and video tapes of James Brown that are in danger of deterioration.

(j) Mr. Bauknight has initiated discussions with a renowned Broadway producer for the creation of a Broadway production based on the music of James Brown.

(k) Mr. Bauknight has overseen and continues to oversee the repair and restoration of Mr. Brown's iconic Beech Island home and the remaining personal property in the home, which was in a state of disrepair and deterioration when Mr. Bauknight first began his fiduciary service to the Estate and Trust.

(l) Mr. Bauknight has negotiated a deal to restore Mr. Brown's remaining personal

Handwritten signature and initials, possibly "JME" and "HS", in dark ink.

possessions found in a state of disrepair at his Beech Island home.

(m) Mr. Bauknight has resolved most of the creditor's claims against the Estate and has worked diligently with his counsel to move the remaining claim matters forward in an efficient and expeditious manner.

(n) Mr. Bauknight has resolved the Estate matters with the Internal Revenue Service and various state taxing authorities, and has filed all income tax returns for James Brown and the Estate and Trust for all periods, both during his tenure as Personal Representative and during the tenure of the prior fiduciaries, who failed to file any income tax returns.

(o) Mr. Bauknight has successfully resolved a number of IRS audits, including the audit of the estate tax return, which resulted in a refund due from the IRS to the Estate.

(p) Mr. Bauknight hired an investment banking firm on a deferred-pay basis to value the intellectual property of the Estate. The IRS royalty valuation experts examined the valuation report during the audit of the estate tax return and agreed with it.

(q) Mr. Bauknight has established a reserve to fund scholarships for deserving students under James Brown's charitable education trust and created a reserve to pay the educational expenses of Mr. Brown's grandchildren. These reserves have presently grown to over \$1 Million due to the foresight and planning of Mr. Bauknight, and those and future funds will be immediately available when the current litigation is concluded.

(r) Mr. Bauknight successfully terminated engagements for royalty audits entered into by the prior personal representatives, which were based on a 20% contingency fee arrangement, and negotiated more financially favorable fixed-fee arrangements with new royalty auditors. These new agreements will save the Estate approximately \$140,000 on the first audit and significant sums in the future.

(s) Mr. Bauknight has retained attorneys and accountants to represent the Estate and Trust on a deferred-pay basis, which has allowed the Estate and Trust to move forward with administration, while continuing to build and develop the capital required to administer an estate and trust of this size and complexity.

(t) Mr. Bauknight, through his professional contacts, retained other professionals necessary for administration on a deferred-pay or financially beneficial basis.

(u) Mr. Bauknight, in an effort to allow the Estate and Trust to meet all of its obligations and to provide reserves for scholarship funding, has agreed to defer his fiduciary fees and has not yet received any payment from the Estate and Trust for over four years of fiduciary service.

(v) Mr. Bauknight has overseen the successful review and approval of music clearances involving the commercial use of music, including a Super bowl commercial for Volkswagen using the song "*Get Up Offa That Thing*", a Chanel perfume commercial using the song "*It's a Man's Man's Man's World*", and multi-sport Gatorade commercials using the song "*Super Bad*."

(w) Mr. Bauknight and his representatives have successfully represented the Estate in the public arena in a professional manner, promoting James Brown's image and likeness, as well as the activities of the Estate through interviews and media opportunities.

2. When Mr. Bauknight was appointed to serve as Personal Representative there was less than \$13,000 in the Estate bank account and there was no consistent source of revenue to the Estate and Trust. Additionally, there were tens of thousands of dollars in bills due and owing as of the date of his appointment, and tens of millions of claims filed against the Estate. Since that time, Mr. Bauknight has assembled an outstanding team of advisors, attorneys, accountants, and other professionals to establish and secure sources of income, pay off debt, and settle claims, placing the Estate on solid financial footing. Additionally, those advisors and attorneys have

responded to both probate and non-probate claims against the Estate, in both state and federal court throughout the United States (the District Court of California, the Ninth Circuit Court of Appeals, the District Court of Illinois, and the Seventh Circuit Court of Appeals), and have successfully represented the Estate in a professional, efficient, and productive manner.

3. During the more than four years that he has overseen and managed the Estate and Trust, Mr. Bauknight has developed a unique and highly-specialized understanding of the business of the Estate and Trust, its litigation, revenue streams, and liabilities. Given the complexities of the Estate and Trust, there is a need for continuity in the knowledge base for all of the ongoing litigation and business of the Estate and Trust, and Mr. Bauknight and the team he has assembled provide that continuity.

4. The Estate is presently defending against \$10 Million in fee claims filed against it by the previous personal representatives. Adding more personal representatives and trustees, at this time, could detrimentally increase the personal representative and trustee fee burden to the Estate and Trust. The addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire the institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

5. This Court finds that Mr. Bauknight's significant fiduciary experience, including his prior professional administration of numerous estates and trusts, including a larger estate valued at over \$150 Million, uniquely qualifies him for the job of Personal Representative of the Estate and Trustee of the Trust.

6. The Court is mindful of the ongoing litigation being pursued by Messrs. Kendall Few and Jim Gilreath on behalf of the Estate against former professionals that James Brown

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hired to help manage his music empire. Messrs. Few and Gilreath have already reached confidential settlements with certain defendants. The Court firmly believes that it is in the best interests of the Estate for that litigation to continue unimpeded. Mr. Bauknight has formed a positive working relationship with his counsel, understands and is deeply involved in the litigation. The Court is concerned that adding more personal representatives and trustees to manage the Estate and Trust (and its litigation) could increase the fiduciary fee burden (discussed above at Paragraph 4) and hamper, through multiple decision makers, the conduct of this litigation.

7. Respondents Deanna Brown Thomas, Yamma N. Brown, Vanisha Brown and Larry Brown are each devisees under the Will and each has nominated Mr. Bauknight to serve as Personal Representative of the Estate in their stead.

8. The Court is aware that certain Applicant parties have raised the issue of whether a conflict of interest exists with respect to Mr. Bauknight's continued role as fiduciary of the Estate and Trust in the ongoing spousal elective share matter, the omitted spouse matter, the omitted child matter, and the legal challenges to the validity of the will and trust that were involved in the settlement agreement (collectively, the "Will and Trust Challenges"). In reviewing the Applicant party challenges, it is important to pause and underscore that the Opinion unequivocally provided that Mr. Bauknight could be re-appointed as fiduciary. The Court does not believe that a conflict of interest exists. Mr. Bauknight was bound, as a fiduciary, to follow the prior settlement agreement. That settlement agreement has now been overturned. Accordingly, Mr. Bauknight has a fiduciary duty and must defend the Will and Trust against all challenges.

Mr. Bauknight has testified that he has no conflict of interest and that he is willing and

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capable of fully defending Mr. Brown's Estate plan. This Court has weighed that testimony and finds that neither Mr. Bauknight, nor his counsel, has any conflict of interest that would prevent them from vigorously defending or prosecuting actions on behalf of the Estate and Trust. Mr. Bauknight and his counsel have done an outstanding job prosecuting and defending dozens of legal actions throughout the past four and one-half years. This Court commends Mr. Bauknight and his counsel for the outstanding results they have obtained for the Estate and Trust.

While this Court finds that no conflict of interest exists, out of an abundance of caution and in order to avoid any appearance of impropriety, and to promote the efficient and speedy administration of the Estate and Trust, this Court finds that it is prudent to appoint an independent individual to serve as Limited Special Trustee and as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Trust and the Estate against the claims made in the Will and Trust Challenges.

9. David C. Sojourner, Jr. has been practicing in the area of estate and gift planning and probate administration for more than twenty-six years, and is certified as a specialist in estate planning and probate law and tax law by the South Carolina Supreme Court. Since 2001, Mr. Sojourner has been selected as a member of the American College of Trust and Estate Counsel, and has had specialty training in mediation of issues related to estates, including family disputes. Additionally, Mr. Sojourner has served as a fiduciary in the past and has counseled clients on their obligations and duties in a position as fiduciary. Mr. Sojourner has agreed to serve, so long as his role is limited to defending the Will and Trust Challenges on behalf of the Estate and Trust and his law firm of Adams and Reece LLP can represent him in that role. Given his experience, in addition to the resources of a 300-attorney law firm, Mr. Sojourner is well-suited to serve in the role as Limited Special Trustee and Limited Special Administrator.

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10. This Court appreciates the willingness of the Applicants who have offered to serve as Personal Representative of this Estate and commends them on their exemplary credentials. Specifically, this Court recognizes Judge Dickert's long and distinguished career both in civil practice and judicial service to the State of Georgia; Dr. Grooms' training as a Certified Public Accountant, in addition to his familiarity with bankruptcy issues and consistent service to the courts as expert witness in tax and accounting matters; Mr. Keniley's experience in the entertainment industry and familiarity with protection of intellectual property; and Rev. Fryer's longstanding service to the community both individually and as Pastor to Trinity C.M.E. Church.

11. This Court is mindful of the practical administrative problems the Estate and Trust have encountered as a result of the history of the prior and multiple fiduciary appointments. In an effort to avoid the recurrence of such problems, the Court finds that at this time, it is in the best interests of the Estate and Trust to leave Mr. Bauknight's appointments as Special Trustee and Special Administrator with general fiduciary authority undisturbed. Those appointments shall continue until further order of the Court.

12. The Court is mindful of the substantial claims, both satisfied and outstanding, of prior fiduciaries and their attorneys, accountants, and other advisors, as well as the fact that fees and commissions are still owed to the current fiduciary and his advisors. This Court is convinced that, given the extensive, complex and continuing litigation, including specifically the litigation involving allegations of fiduciary misconduct, the appointment of multiple fiduciaries at this time will inevitably involve the retention of multiple additional attorneys to advise the newly-appointed fiduciaries. I find that it is simply not practicable for the Estate and Trust to bear the additional cost and expense associated with multiple additional fiduciaries and their

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separate attorneys and other professional advisors at this important time. For these and other reasons this Court has noted, I find it is in the best interests of the Estate and Trust that a single fiduciary continue to administer and manage the business of the Estate and Trust until it is demonstrated that the Estate and Trust can satisfy the tremendous liabilities already created by the service of the many prior fiduciaries and their professional advisors.

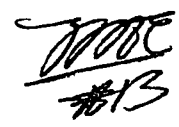
13. The tumultuous history of the Estate and Trust and the litigation surrounding the same, juxtaposed to the list of Mr. Bauknight's accomplishments detailed above, leaves this Court with the firm factual conclusion that it is in the best interests of the Estate and Trust for Mr. Bauknight to serve, in the interim, as the sole Personal Representative and sole Trustee. The Court's factual conclusion is also driven by recognition of the considerable expense that the Estate and Trust will incur from the appointment of additional personal representatives and trustees, at this time. Moreover, the Court notes the need for consistent and streamlined administration of the Estate and Trust during this critical time frame.

14. Mr. Brown passed away nearly seven years ago. The Court uses the language—*this critical time frame*—because that is where the Estate and Trust find themselves. As detailed above, under Mr. Bauknight's leadership, the Estate and Trust are poised to launch a series of public events (the documentary, the life story movie, etc.) that should re-catapult James Brown and his musical legacy onto the world stage. These actions should have a tremendous positive impact to the Estate and Trust, both in terms of good will and financial gain. In turn, these actions should greatly benefit Mr. Brown's testamentary plan for scholarships for children in financial need through increased funding of the scholarship reserves.

Because the Estate and Trust are at a critical time frame, the Court is reluctant to interrupt these gains. Overlaying the Court's concern is the existence of the Will and Trust Challenges.

Certain family members of James Brown are presently challenging the validity of the Will and Trust, and in doing so are, in part, challenging the validity of the requirement that three individuals serve as Personal Representative and Trustee. Since James Brown's death, the Estate and Trust have been overseen by only one set of three Personal Representatives and Trustees—Dallas (who sought to evade the jurisdiction of this Court by moving the situs of the Trust to Georgia and has since filed for bankruptcy), Cannon (who entered an *Alford* plea to felony indictments charging him with fraudulently taking over \$8 Million of James Brown's money), and Bradley (now deceased). Each of these men resigned from their positions, under a cloud, after information and documents were discovered that questioned the motive and faithfulness of their fiduciary service (these three fiduciaries also intended to charge Mr. Brown's Estate "administrative fees" up to 50% of the Estate's income). Because the Will and Trust are presently subject to litigation, I find that at this pivotal time, it is in the best interests of the Estate and Trust to maintain a single fiduciary to oversee the administration and management of the Estate and Trust. The Court underscores the point that this is an interim decision.

15. During this crucial time frame, the Court firmly believes that it is in the best interests of the Estate and Trust for Mr. Bauknight to continue to oversee the administration and management of the Estate and Trust, while Mr. Sojourner defends the Estate plan. Upon the conclusion of all Estate litigation, this Court will revisit this interim determination. Accordingly, I find that it is in the best interests of the Estate and Trust that, on an interim basis, Mr. Bauknight be appointed as the Personal Representative of the Estate and Trustee of the Trust, and that Mr. Sojourner be appointed as the Limited Special Trustee and Limited Special Administrator to oversee the Will and Trust Challenges. Mr. Sojourner is hereby ordered to draft and present a scheduling order to this Court within the next fourteen days setting forth proposed

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discovery, deposition, and dispositive motion deadlines so that the Will and Trust Challenges may be expeditiously set for trial.

CONCLUSIONS OF LAW

1. I find that this Court has jurisdiction to hear this matter and that venue is proper. All of the interested parties have been notified of the request for applications to serve as Personal Representative of the Estate and Trustee of the Trust, and have been given an opportunity both to nominate a candidate and oppose the applications filed by the Applicants.

2. The Opinion, which is the law governing this case, requires this Court to, "upon proper application, appoint fiduciaries to oversee . . . matters in accordance with the provisions for succession outlined in Brown's trust and estate documents." *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013). Furthermore, this Court "may consider . . . whether [Mr.] Bauknight should be appointed to fill a fiduciary position." *Id.* at 449, 743 S.E.2d at 767.

3. The South Carolina Probate Code provides that in order to acquire the powers and undertake the duties and liabilities of a personal representative of a decedent, a person first must be appointed by order of the court. S.C. Code Ann. § 62-3-103 (1976). S.C. Code Ann. § 62-3-203(a) delineates the order of priority with respect to the appointment of a successor personal representative:

- (1) the person with priority as determined by a probated will including a person nominated by a power conferred in a will;
- (2) the surviving spouse of the decedent who is a devisee of the decedent;
- (3) other devisees of the decedent;
- (4) the surviving spouse of the decedent;
- (5) other heirs of the decedent regardless of whether the decedent died intestate and determined as if the decedent died intestate;
- (6) forty-five days after the death of the decedent, any creditor; and
- (7) four months after the death of the decedent, upon application by the South Carolina Department of Revenue, a person suitable to the court.

WBC
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Unless a contrary intent is expressed in the will, subsection (a)(8) allows "a person with priority under subsection (a) [to] nominate another" person. That nominee "shall have the same priority as the person making the nomination." *Id.* Additionally, although lack of priority is not a bar to appointment, according to S.C. Code Ann. § 62-3-203(d), before appointing one without priority, the Court must determine that those having priority, although given notice of the proceedings, have failed to request appointment or to nominate another for appointment, and that administration is necessary.

In this case, subsection (a)(1) does not apply because the personal representatives named in the Will all have resigned and have not named successor personal representatives. Moreover, there is no "advisory board" currently in effect, as referenced in the Will and Trust. Subsection (a)(2) is inapplicable because, notwithstanding her claim to be surviving spouse, Tommie Rae Hynie Brown is not a devisee under the Will. Therefore, the highest priority of appointment rests with other devisees of the decedent under subsection (a)(3). Respondents Deanna Brown Thomas, Yamma N. Brown, Vanisha Brown and Larry Brown each are devisees under the Will, and each are allowed to nominate an individual to serve as Personal Representative of the Estate under subsection (a)(8). Because those devisees have nominated Mr. Bauknight for appointment, and there have been no other nominations by any other devisee, Mr. Bauknight has the highest priority under the terms of S.C. Code Ann. § 62-3-203. Because this Court is appointing the Applicant with the highest statutory priority for appointment as Personal Representative of the Estate, S.C. Code Ann. § 62-3-203(d) is inapplicable to the case at bar.

Based on the foregoing, I find and conclude that among all the applications filed in this matter, Mr. Bauknight has the highest statutory priority to serve as Personal Representative of the Estate under S.C. Code Ann. § 62-3-203.

WBE
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4. S.C. Code Ann. § 62-3-414(a) outlines the fourteen requirements of a formal and proper application for appointment. According to that section, a petition must provide (1) a description of the question relating to qualification of the personal representative which is to be resolved, and also must contain the statements required by S.C. Code Ann. § 62-3-301(a)(1). Those statements, which (2) *must be certified* by the applicant to be accurate and complete to the best of his knowledge and belief, S.C. Code Ann. § 62-3-301(a), may either be incorporated into the petition or adopted from a prior filing, and shall include: (3) A statement of the interest of the applicant; (4) Decedent's name; (5) Decedent's date of death; (6) Decedent's age; (7) Decedent's county and state of domicile at time of death; (8) Names and addresses of the spouse, children, heirs and devisees; (9) The ages of any children, heirs, or devisees who are minors so far as known or ascertainable with reasonable diligence; (10) A statement showing venue, if the decedent was not domiciled in the State at the time of his death; (11) A statement identifying and indicating the address of any personal representative of the decedent appointed in this State or elsewhere whose appointment has not been terminated; (12) 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 concerning the decedent that may have been filed in this State or elsewhere; and (13) A statement that the time limit for appointment has not expired. S.C. Code Ann. § 62-3-301(a)(1).

Additionally, in 2010, S.C. Code Ann. § 62-3-414(b) was amended to clarify that *both* "a summons and petition are required to commence a formal proceeding, including a formal proceeding concerning appointment of a personal representative as referred to in [S.C. Code Ann. § 62-3-414]." South Carolina Reporter's Comments (2010 Revision), S.C. Code Ann. § 62-3-414. Thus, the applicant also must (14) serve the petition, *along with a summons*, on all

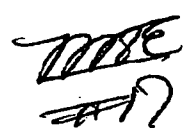
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interested persons, including all persons interested in the administration of the estate as successors, any previously appointed personal representative, and any person having or claiming priority for appointment as a personal representative. S.C. Code Ann. § 62-3-414(b).

The application filed by Mr. Dickert is defective because it was filed not by him, but by letter of recommendation from Mr. Bell. Therefore, it was not certified by Mr. Dickert to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-414(b). Additionally, while the application of Mr. Dickert did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, his application was not served, along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b).

The application filed by Mr. Grooms is defective because, while it did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, his application was not served, along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b). Additionally, it was not certified by Mr. Grooms to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

The application filed by Mr. Keniley is defective because, while the application did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, although the application was served on this Court, it was not served along with a summons, on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b). Additionally, it was not

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certified by Mr. Keniley to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

Finally, the application filed by Rev. Fryer is defective because, while the application did contain the decedent's name, it did not contain any of the other information required, either in the application or by adoption, under S.C. Code Ann. § 62-3-301(a). Moreover, the application was not served along with a summons on all interested parties of the Estate, as required by S.C. Code Ann. § 62-3-414(b), but instead was e-mailed after the July 29, 2013 deadline set by this Court. Additionally, it was not certified by Rev. Fryer to be accurate and complete to the best of his knowledge and belief, as required by S.C. Code Ann. § 62-3-301(a). Finally, the application did not contain a description of the question relating to qualification of the personal representative which is to be resolved, as required by S.C. Code Ann. § 62-3-414(a).

Based on the foregoing, I find and conclude that only Mr. Bauknight has met the statutory requirements of filing a "proper application" for appointment of Personal Representative of the Estate and Trustee of the Trust as required by the Opinion and this Court's June 13, 2013 Order.

5. Based upon the applications filed and testimony received in the hearings held on September 4 and 11, 2013, I find that no applicant for Personal Representative and Trustee had any previous experience serving as a fiduciary of any Estate or Trust, other than Mr. Bauknight and Mr. Grooms. In addition, no applicant other than Mr. Bauknight has experience serving as a fiduciary in any matter as complex as the James Brown Estate and Trust, or in any matter involving the music industry. Additionally, this Court takes note that Mr. Grooms has filed with

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this Court, subsequent to his testimony, a letter supporting the appointment of Mr. Bauknight as Personal Representative and Trustee.

6. Based upon my nearly seven years of experience with these matters as they have appeared before this Court, and after careful review of the Will and Trust, all applications filed by the Applicants, the testimony proffered by all Applicants, and the party objections filed in opposition to the Applicants, I find, as a matter of law and fact, that it is in the best interests of the Estate and Trust at this time to appoint Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust. Moreover, given the considerable expense to the Estate and Trust that the appointment at this time, of additional personal representatives and trustees would entail, as well as the need for consistent and streamlined administration of the Estate and Trust during this critical time frame, I find that it is in the best interests of the Estate and Trust to appoint Mr. Bauknight as the sole Personal Representative of the Estate and sole Trustee of the Trust on an interim basis. Mr. Bauknight is well-qualified and willing to serve in these fiduciary capacities. At this pivotal time, I find that to interrupt Mr. Bauknight's continuing professional administration of the Estate and Trust would not be in the best interests of the Estate, the Trust, or the beneficiaries and potential beneficiaries. I find that it is simply not practicable to appoint additional fiduciaries at this time when the Estate lacks the funds to pay the claims of prior fiduciaries and their legal counsel and is currently unable to pay the current fiduciary and his legal counsel. However, as noted above, this interim appointment will be revisited by this Court at the conclusion of all Estate litigation.

7. In addition, and in order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds that it is in the best interests of the Estate and Trust for Mr. David C. Sojourner, Jr. to be appointed as Limited Special

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Trustee and Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Trust and the Estate against the claims made in the Will and Trust Challenges until final resolution thereof. This interim appointment is made with the requirement that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity, and will retain Adams and Reese LLP to represent him in the Will and Trust Challenges.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. Russell L. Bauknight is hereby appointed as the Personal Representative of the Estate and Trustee of the Trust effective immediately, with full, absolute, and exclusive authority to carry out the Estate's administration and the Trust's administration, and all business and matters related thereto, and shall specifically have the authority and power to act on behalf of, and bind, the Estate and the Trust for all purposes, except as limited by the appointment of the Limited Special Trustee and Limited Special Administrator described below.

2. David C. Sojourner is appointed as Limited Special Trustee for the sole, exclusive, and specific purpose of defending the Trust in the Will and Trust Challenges, until final resolution thereof, and is authorized to retain Adams and Reese LLP to represent him in such matters.

3. Mr. Sojourner is ordered to draft and present a scheduling order to this Court within the next fourteen days setting forth proposed discovery, deposition, and dispositive motion deadlines so that the Will and Trust Challenges may be expeditiously set for trial.

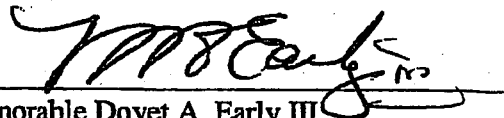
4. Mr. Bauknight's prior appointments as Special Trustee and Special Administrator, with general fiduciary authority, shall remain undisturbed until further order of the Court.

5. No bond is required to be posted in connection with these appointments.

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6. This Interim Order is temporary. The Court will revisit the appointment of fiduciaries upon the conclusion of all Estate litigation.

IT IS SO ORDERED.


The Honorable Doyet A. Early III


~~September~~ 1, 2013.

Bamberg, South Carolina

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;

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

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

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

AND:

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

IN RE:

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

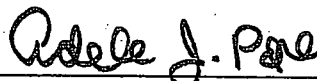
SUPPLEMENTAL NOTICE OF APPEAL

Appellant appeals the following additional Orders in the above matter:

1. Order of the Honorable Doyet A. Early, III dated October 1, 2013, received
2. Order of the Honorable Doyet A. Early, III dated October 25, 2013

Notice of the entry of the Order denying reconsideration was received by appellant on November 13, 2013 as shown on email attached to the Order.

A copy of each of said Orders is attached hereto and made part of this Notice of Appeal.



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Email: adele@popelawfirm.com

Appellant, *Pro Se*

December 5, 2013

Other Parties and Counsel of Record :

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David C. Sojourner, Jr., Esquire
Adams and Reese, LLP
1501 Main Street, 5th Floor
Columbia, South Carolina 29201

From: "Early, Doyet A. Law Clerk \Cassie M. Weathersbee\)" <dearlylc@sccourts.org>
To: "Knoepfle, Anita;Knoepfle, Anita" <aknoepfle@aikencountysc.gov;aknoepfle@aikencountysc.gov>
Cc: ""Adele Pope" " <adele@popelawfirm.com>
Subject: Fwd: Denial of Motion for Reconsideration
Date: 11/13/2013 12:00:27 PM

Anita: See below. Please provide Ms. Pope with the below requested items. Thank you, Cassie Weathersbee Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90 Bamberg, SC 29003 Telephone: 803.245.4004 Fax: 803.245.2983 dearlylc@sccourts.org<mailto:dearlylc@sccourts.org> Begin forwarded message: From: "Early, Doyet A." <dearlyj@sccourts.org<mailto:dearlyj@sccourts.org>> Subject: Fwd: Denial of Motion for Reconsideration Date: November 13, 2013 11:56:03 AM EST To: "Early, Doyet A. Law Clerk (Cassie M. Weathersbee)" <dearlylc@sccourts.org<mailto:dearlylc@sccourts.org>> Sent from my iPad Begin forwarded message: From: Adele Pope <adele@popelawfirm.com<mailto:adele@popelawfirm.com>> Date: November 13, 2013 at 10:09:40 AM EST To: <dearlyj@sccourts.org<mailto:dearlyj@sccourts.org>> Cc: <fkingsmore@nexsenpruet.com<mailto:fkingsmore@nexsenpruet.com>>, <scott@k5law.com<mailto:scott@k5law.com>>, <"dsojourner@ellislawhome.comdearlylc<mailto:dsojourner@ellislawhome.comdearlylc>"@sccourt.org<http://sccourt.org/>> Subject: Denial of Motion for Reconsideration November 13, 2013 Dear Judge Early: I learned this morning that an order denying my motion related to the appointment of Mr. Bauknight and Mr. Sojourner was denied while I was out of the Country. I was also advised that the motion of Mr. Kenily was denied at about the same time. To date, I have not received notice or a copy of either. Could the Court kindly provide me with a copy of both, either by email or hard copy. Thank you, Adele Pope copies as shown .

From: "Knoepfle, Anita" <AKnoepfle@aikencountysc.gov>
To: "adele@popelawfirm.com" <adele@popelawfirm.com>
Subject:
Date: 11/13/2013 12:16:17 PM

Ms. Pope..please find attached a copy of the Form 4 order which was filed on 10.25.13.

Thanks,
Anita

From: "Early, Doyet A. Law Clerk \ (Cassie M. Weathersbee\)" <dearlylc@sccourts.org>
To: "Knoepfle, Anita; Knoepfle, Anita" <aknoepfle@aikencountysc.gov; aknoepfle@aikencountysc.gov>
Cc: ""Adele Pope" " <adele@popelawfirm.com>
Subject: Fwd: Denial of Motion for Reconsideration
Date: 11/13/2013 12:00:27 PM

Anita: See below. Please provide Ms. Pope with the below requested items. Thank you, Cassie Weathersbee Law Clerk to the Honorable D.A. Early, III The Circuit Court of the 2nd Judicial Circuit PO Box 90 Bamberg, SC 29003 Telephone: 803.245.4004 Fax: 803.245.2983 dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>> Begin forwarded message: From: "Early, Doyet A." <dearlyj@sccourts.org<<mailto:dearlyj@sccourts.org>>> Subject: Fwd: Denial of Motion for Reconsideration Date: November 13, 2013 11:56:03 AM EST To: "Early, Doyet A. Law Clerk (Cassie M. Weathersbee)" <dearlylc@sccourts.org<<mailto:dearlylc@sccourts.org>>> Sent from my iPad Begin forwarded message: From: Adele Pope <adele@popelawfirm.com<<mailto:adele@popelawfirm.com>>> Date: November 13, 2013 at 10:09:40 AM EST To: <dearlyj@sccourts.org<<mailto:dearlyj@sccourts.org>>> Cc: <fkingsmore@nexsenpruet.com<<mailto:fkingsmore@nexsenpruet.com>>>, <scott@k5law.com<<mailto:scott@k5law.com>>>, <"dsojourner@ellislawhome.comdearlylc@sccourts.org<[mailto:dsojourner@ellislawhome.com">mailto:dsojourner@ellislawhome.com](mailto:dsojourner@ellislawhome.com)dearlylc@sccourts.org>"@sccourt.org<<http://sccourt.org/>>> Subject: Denial of Motion for Reconsideration November 13, 2013 Dear Judge Early: I learned this morning that an order denying my motion related to the appointment of Mr. Bauknight and Mr. Sojourner was denied while I was out of the Country. I was also advised that the motion of Mr. Kenily was denied at about the same time. To date, I have not received notice or a copy of either. Could the Court kindly provide me with a copy of both, either by email or hard copy. Thank you, Adele Pope copies as shown .

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

December 12, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

Re: Wilson and Others v. Dallas and Others, Adele J. Pope...Appellant
AND Terry Brown and Others, Respondents AND Alan Wilson and
Others Additional Interested Persons
Aiken County Case No. 2007-CP-02-0122; Case No. 2008-CP-02-
0872; Case No. 2008-CP-02-0322; Case No. 2010-CP-02-
0721; Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

This letter supplements my letter of yesterday responding to your letter of December 9 (copy enclosed). I wanted to make sure that Court Administration and all appropriate counsel and parties were aware of my communication.

Since the Case is being assigned a separate Appellate Case number, and not part of a pending appeal, I would appreciate some assistance with the date the Initial Brief is due and the proper caption.

The original summons, apparently with two petitions, was filed in the Aiken County Circuit Court on July 29, 2013. It references an Application/Petition for Successor Personal Representative and Trustee "in this action." The summons contains circuit court Case Numbers 2008-CP-02-1647 and 2009-CP-02-1810, as well as the General Probate Number of the Estate of James Brown, 2007-ES-02-0056.

The summons is directed to "ALL NECESSARY PARTIES" but does not name either plaintiffs or defendants. The accompanying petitions designate ALAN M. WILSON, in his capacity as the Attorney General of the State of South Carolina, with others, as the petitioners, but were generated by Fred L. Kingsmore, Esquire and others of Nexsen Pruet, LLC. Mr. Kingsmore and counsel do not designate their clients in the petitions, but have appeared for Russell L. Bauknight in other James Brown matters.

Ltr. to The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
December 12, 2013
Page 2

So far as I can tell, there is no evidence of service of the summons and petitions on anyone within the record.

The October 1, 2013 circuit court order which is the subject of this appeal does not designate plaintiffs or defendants. It contains the same three case numbers as are shown in the summons.

The Clerk's Form 4 judgment entry related to the October 1 Order, filed October 3, designates the Plaintiff as Henry Dargan McMaster and Defendants as Daryl, Lindsey, Janise, Vanisha, Larry, Deanna, Jason, and Yamma Brown, with Sydney L. (a minor). It appears to have been circulated to the Office of Attorney General Wilson, Matthew D. Bodman, Esq., various member of Nexsen Pruet, LLC, William J. Barr, Esq., Robert Rosen, Esq., Louis Levenson, Esq., and David Bell, Esq.

The Form 4 Order of the Honorable Doyet A. Early, III, dated October 23, 2013, states that "Adele J. Pope's Motion to Reconsider, Vacate, Alter or Amend Order Dated October 1, 2013 is DENIED." The October 23 Order does not name Plaintiffs or Defendants. It deletes the Probate Court Estate Number from the caption.

The distribution list of the October 23 Order appears to be identical to the distribution list of the October 1 Order, but the name of James M. Griffin, Esquire, is noted on that Order. [It was stricken from the earlier distribution list.]

I wish to notify the Court that I learned this week from the public file that Mr. Griffin moved before the filing of my notice of appeal to be relieved as counsel to two daughters of James Brown – La Rhonda Pettit and Cinnamon Nicole Parris. Mr. Griffin asked the Court to issue an order granting them sufficient time to obtain new counsel.

So far as I know Mr. Griffin's motion has not been heard or ruled on.

Finally, when I requested and received a copy of the Orders on November 13, 2013, I also received a copy of the transcript of both hearings from the Clerk. For that reason, it appears that ordering a transcript is not necessary because I now have the transcript; it was provided to the above parties as indicated; and it is part of the public record.

I would appreciate the Court's guidance as to the following questions:

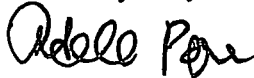
1. What is the correct caption for this appeal?
2. Particularly, should Mr. Bauknight and Mr. Sojourner be named?
3. Is my initial brief due 30 days from the December 6 filing, or at

Ltr. to The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
December 12, 2013
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a later time?

Thank you for your help.

Yours very truly,



Adele J. Pope
Appellant, *Pro Se*

Enclosure: Your letter of December 9, 2013

cc:

The Honorable Rosalyn W. Frierson, Director of Court Administration
The Honorable Alan Wilson
David C. Sojourner, Esq.
Fred L. Kingsmore, Esq.
Louis Levenson, Esq.
James M. Griffin, Esq.
William J. Barr, Esq.
David G. Cannon,
Eugene C. Covington, Esq.
Robert N. Rosen, Esq.
Peter Shahid, Jr., Esq.
Matthew D. Bodman, Esquire
David B. Bell, Esquire
Robert L. Buchanan, Jr., Esquire

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

December 13, 2013

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1205 Pendleton Street
Columbia, South Carolina 29201

RECEIVED

DEC 16 2013

SC Court of Appeals

Re: Wilson and Others v. Dallas and Others,
Aiken County Case No. 2008-CP-02-1647 and others
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

I write with another question regarding the above case, and possibly another.

My initial brief and designation of matter to be included in the record on appeal ("ROA") will likely reference statements made on behalf of certain parties to the South Carolina Supreme Court in oral arguments in Case 2008-CP-02-1647. They may also contain references to oral arguments in appeals from Case 2007-CP-02-0122.

As I understand, the Supreme Court began publishing voice recordings of oral arguments fairly recently. The oral arguments I plan to cite occurred in 2011 or later.

I was advised by the Supreme Court Clerk's office yesterday that the Supreme Court does not publish transcripts of these voice recordings. I asked if a proper citation and inclusion in the ROA could be made by supplying counsel and the Court with a copy of the recording for the ROA and a citation approximately as follows:

Statement of John Doe, Counsel for Respondent Richard Roe,
Oral Argument, S. C. Sup. Ct., Monday, Day, 2011,
[Case citation], Min. 10 - 13.

The Clerk's office suggested that I direct my inquiry to you since the appeal for which I seek guidance is pending in the S. C. Court of Appeals.

Thank you very much for your help with this matter which is new to me.

Yours very truly,


Adele J. Pope

cc: Counsel and/or Parties of Record

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

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

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No. 2013-002582**

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.....Appellant,

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

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

IN RE:

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

MEMORANDUM RELATED TO APPEALABILITY

For decades entertainer James Brown fought and sued and scrapped to amass his hundred million dollar fortune. For the last twenty years of his life his wish to leave that fortune to The James Brown "I Feel Good" Trust, his private foundation to provide scholarships for needy students, was Brown's widely known and often-stated desire.

For the seven years since Brown died on Christmas Day 2006 about 90 lawyers – ten paid by the taxpayers of South Carolina – and some clients have fought to see that those needy students do not get what Brown wanted them to have. Those seeking to benefit from a 2008 settlement which the S.C. Supreme Court declared void in the May 8, 2013 *Wilson v. Dallas*¹ decision include:

1. Tommie Rae Hynie ("Hynie"), who wants \$11+ million;
2. Hynie's attorneys, who want \$10+ million;
3. Louis Levenson, Esquire ("Levenson"), who wants \$9 million
4. David Bell, Esq. ("Bell") and Powell Goldstein ("PG"), who refuse to disclose what they want or have received;
5. Kenneth Wingate, Esq., who was paid \$563,000 in 2012 in a 2010 suit seeking damages from Appellant and Robert Buchanan, Jr. ("Buchanan") for conducting the *Wilson v. Dallas* appeal, and has a 40% contingency to serve Russell Bauknight ("Bauknight") as Hynie's agent and in other capacities.
6. Albert H. Dallas ("Dallas") wants \$6 million as a PR/Trustee commission.

For five years Appellant Buchanan as PR/Trustees, with a small group of lawyers, worked to carry out Brown's wishes. Their work included trying to stop the flood of incorrect representations to multiple courts about the 2008 settlement; the value of Brown's assets; Brown's heirs; and the Federal Copyright Act.

¹ *Wilson v. Dallas*, 743 S.E.2d 746 (S.C. 2013)

When they were replaced on May 26, 2009 Buchanan had a \$.5 million claim and Appellant a \$1.4 million claim for payment.² The claims were both allowed under the S. C. Probate Code ("Probate Code") and approved in an unappealed Order of the Honorable Doyet A. Early, III. The Order directed that they receive interest at the legal rate until the amounts were paid.

Two weeks before the August 10, 2008 settlement which became the subject of the *Wilson v. Dallas* appeal, Attorney General Henry McMaster ("AG McMaster") approved Buchanan and Appellant as permanent trustees of the "I Feel Good" Trust.

The legal cost of defending against the now-void 2008 Settlement which would have removed about \$50 million from the "I Feel Good" Trust (and damaged its royalties for decades by a false heirs "stipulation") for five years was about \$200,000.

James Richardson, Esquire, served *Pro Bono Publico* for four years as lead appellate counsel. James Bailey, Esquire, defended the Estate/2000 Trust against the settlement at the circuit court level for a year. Tressa Hayes, Esquire, while also briefing the Dallas and Cannon appeals, assisted Bailey in 7 days of hearings on the Settlement, and worked with Richardson on the appeal.

² The discrepancy related to Appellant's somewhat higher hours and much larger staff.

To avoid further litigation at the conclusion of the *Wilson v. Dallas* appeal, in July 2009 Buchanan & Appellant filed an extensive report and affidavit related to their service. For all of their work, no matter how long it took to conclude *Wilson v. Dallas* and the Will/Trust challenges, they proposed a PR/Trustee commission - which for Appellant would now be a cap if based on time - of: Buchanan: \$2.1 million; Appellant: \$2.8 million. It was based 2/3 on equal responsibility and 1/3 on time.

Buchanan and Appellant also filed their final accounting (subject to the appeal) in June 2009, showing just under \$100 million in assets delivered to Bauknight. Appellant spent about 80% of her professional time from November 2007 until May 8, 2013 on James Brown matters. Since May 8 she has offered, *pro bono publico*, to assist anyone who supports saving the "I Feel Good" Trust.

The team was efficient and dedicated.

The costs and commissions requested were within the Chart of "James Brown's Wishes in His 2000 Estate Plan" Buchanan and Appellant presented to Judge Early in March 2009 at hearing on the settlement:

\$7 million in administration and legal costs, including commissions;

\$2 Million for the 7 \$285,000 Education Trusts for certain grandchildren the Settlement destroyed;

\$77.5 Million (now \$91 Million) for "I Feel Good" Trust scholarships.³

Seven years after Brown's death \$91 million of Brown's fortune is now poised to distribute several million dollars in scholarships for needy students studying in South Carolina and Georgia each year.

A claimed justification for the 2008 Settlement was that the \$50 million taken from the "I Feel Good" Trust secured termination rights cooperation under the Federal Copyright Act. That cooperation could have been secured from non-settling parties for a fraction of that amount.

In 2009 the Estate/2000 Trust was poised to make fair Copyright Termination agreements with a cooperative half of Brown's real heirs who were not challenging the Estate Plan. This should have continued during the 4-year appeal.

³ When the Charts of "James Brown's Intentions" under the 2000 and 1999 Estate Plans were presented to the Court in March 2009, \$13.5 million was allocated to a debt to the NY Teachers ("TIAA") and \$77.5 million for "I Feel Good" scholarships for needy students. The TIAA Debt was originally \$26 million in 1999 and was paid down with Brown's major royalties. It was about \$15 million when Brown died; \$13.5 million in March 2009; \$11 million when Buchanan and Appellant were replaced; and paid off in late 2011. The former TIAA slice of the pie charts is now added to the \$77.5 million.

But in 2009 Bauknight aligned himself with Brown's grandson Forlando,⁴ Levenson and Hynie, Brown's companion, all of whom had worked since Brown's death to destroy the "I Feel Good" Trust.

Bauknight continued this alliance even after 2010 when son Daryl asked AG McMaster to abandon the appeal and Hynie – with all who had challenged the Estate Plan – confirmed that they had discussed Brown's estate plan with him during the years prior to his death and that the creation of the "I Feel Good" Trust was the long held and often-stated desire of James Brown. [See Record, Case 2010-CP-40-4900, Wingate Suit.]

The following is a brief overview of events::

Dec. 25, 2006	James Brown dies with no spouse and \$100 million fortune. Residue to "I Feel Good" Foundation for needy students.
Jan 8, 2007	Forlando & others agree to pay Levenson 30% + \$150,000 To destroy "I Feel Good" Trust.
Dec. 26, 2007	Levenson files suit for "Administration in Intestacy."
Jan. 2, 2008	Forlando/Bell/PG file federal suit to enjoin 2000 Trust.
March 2008	Judge Early orders that Heirs determination is appropriate <u>even though Brown has a valid 2000 Will and valid backup 1999 Will.</u> [Buchanan/Appellant support, to protect Royalty copyrights.]
July 30, 2008	After thorough scrutiny, AG McMaster writes supporting Buchanan and Appellant as permanent trustees of

⁴ Terry Brown and his son Forlando have worked as a team with Bell and PG since 2007, claiming to support the "I Feel Good" Trust but seeking both to dismantle it and acquire the music empire. Forlando sued the 2000 Trust in 2008 to enjoin it from taking any action until the Cannon trustees were reinstated. He claimed Buchanan & Appellant would favor Hynie & Levenson. He claimed they ousted the Cannon Group to get the \$5 million commission payable on Brown's \$100 million estate. [The Cannon Group were claiming \$15 million in PR/Trustee Commission.] In January 2011 Forlando acquired Terry's interest in the Estate. His name is used herein.

"I Feel Good" Trust.

- August 10, 2008** 2008 settlement: contract to replace Buchanan/Pope
1. Gives Hynie 25% and "stipulates" she was Brown wife.
 2. Gives Levenson clients 25%;
 3. Provides Settling Parties will work to defeat others.
- May 26, 2009** Order approves version of 2008 settlement. Jg. Early finds he has not heard claim for removal.
- Settlement destroys rights of real and DNA-proven Heirs, and those awaiting official Peoples DNA Protocol.
- (1) La Rhonda; (2) Nicole; (3) Jeanette; (4) Lisa (1st marriage); (5) Michael (incarcerated CA) (6) James Curtis; and (7+) Doe Defendants (being identified).
- May 19, 2010** Bauknight, as agent for Hynie, Hynie's son, Terry Brown & others, files Wingate Suit to stop *Wilson v. Dallas* appeal.
- 2011** While suing Buchanan/Appellant for tens of millions of dollars for not accepting \$100 Million offer in 2007 (made to PR/Trustee Dallas), Bauknight tells Supreme Court there was no such offer and music empire worth \$4.7 million.
- April 2011** Smith/Pope DRAFT article explains how false claims about Copyright Termination rights, false stipulation of heirs, and devaluation will destroy "I Feel Good" Trust. Explains how charities should "split heirs" to protect royalties.
- [SEE "Private Foundation, Copyright Heirs and Musical Millionaires: Why the James Brown 'I Feel Good' Trust doesn't.." [Draft 4/11, Aff.Ex.B]
- 2011 - 2012** Bauknight claims Buchanan/Pope intentionally overstated music empire to IRS by \$79 million to get \$5 million commission. Not True, but if so. would be a felony under 26 U.S.C. § 7206.
- Bauknight says \$84 million value had no basis. Fails to inform Court that Valuation Formula for IP (Royalties & Publicity Rights) on Estate Tax Return presented to Jg.

Early, AG & others in motion and hearing November 15, 2007. No objections.

2011

Wingate/ Bauknight/Hynie move to intervene in 2 FOIA Suits to prevent release of public documents, including:

1. Bauknight's music empire appraisal
2. Wingate Litigation Retention Agreement

2011 - 2013 Bell takes opposite positions at same time for Terry/Forlando:

Bell for Terry

Hynie is Brown's spouse
Hynie's elective share is "slam dunk"
Hynie's son is a son of Brown

Music empire \$4.7 million
No offers
Should enforce 2008 Gag Orders to protect Hynie

Bell/ Forlando

Hynie is not Brown's spouse & knew it.
Hynie has no claim
Hynie's son is not. Impossible. Names reputed father.
Music Empire \$100 million
\$100 million offers (at least) available.
Discusses Hynie's "diary" in violation of Gag Orders.

2012

Bauknight/Wingate violate Shield law until AG Wilson asks them to withdraw subpoena for journalist's sources and notes.

May 18, 2012

Wingate/Bauknight - Questionable Buchanan "settlement"

2012

Bauknight/Wingate/Hynie seek to intervene in 3rd FOIA Suit (of journalist) to prevent release of public documents.

Nov., Dec. 2012

Bauknight – without notice to AG – pays Wingate \$563,000 to keep fighting deposition of Hynie, FOIA suits.

May 8, 2013

Final *Wilson v. Dallas* decision.

May 8 - Dec.17, 2013

Bauknight procures at least four *ex parte* orders and presents *ex parte* ethics opinion to court;

Continues as agent for Hynie, Hynie's son and

Forlando/Terry in Wingate Suit.

Bauknight & Sojourner procure appointments without serving Summons and Petitions on anyone; No notice of hearing to most heirs, devisees & Interested parties. Appellant & Others who support 2000 and 1999 Estate Plans banned from participation by June 13 Orders.

Bauknight supports Forlando in Federal Suit.

Bauknight continues to interfere with FOIA rights in 3 FOIA suits.

May 29, 2013

Levenson and Hynie announce intention to re-do 2008 settlement

August 20, 2013

Bauknight announces intention to re-do 2008 settlement.

October 1, 2013

Bauknight/Sojourner appointments. Order not served on Appellant and most Interested Parties.

October 8, 2013

Bauknight discloses \$563,000 Wingate payment.

October 10, 2013

***Ex Parte* Jg. Roe Order appoints Sojourner. Hand delivered to Bauknight's counsel for mailing to Interested Parties. Not mailed to most.**

Based on the above facts and additional facts in the affidavit which is filed herewith as an appendix, and as set out below, the October 1, 2013 Order and denial of reconsideration are subject to an immediate appeal.

Argument

1. 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, ... or (c) strikes out an answer or any part thereof or any pleading in any 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 Order of the Honorable Doyet A. Early, III dated October 1, 2013 and the subsequent order denying reconsideration which are the subject of this appeal are immediately appealable for multiple reasons. They are final orders. They continue an injunction in place since June 13, 2013 against most supporters of the two valid estate plans of James Brown. They prevent a judgment that the 1999 Will – not an intestacy – is the proper outcome in the unlikely event that Brown's 2000 Will and Trust are set aside. They make sweeping findings which determine pending actions. And they strike out pleadings which at least half of James Brown's heirs, devisees and beneficiaries were, through violation of their constitutional rights, not given notice or an opportunity to file.

2. The Appointment Order is Final Despite its Title

The Orders which are the subject of this appeal are final. The relief sought in the defective petitions which were not served on anyone prior to the hearing has been granted. Section 62-3-107 of the South Carolina Probate Code ("Probate Code") 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 has been granted. The appointments are final. 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..."

The "Court will revisit ...upon the conclusion of all Estate litigation" In other words: when everything is over.

An Order in a nearly-7-year old estate which appoints a fiduciary to serve until all estate litigation is concluded is as final as an order can be. The Probate Code provides that the proceeding commenced by Bauknight for the two appointments has been concluded "by an order making... the appointment." The October 1 Order is a final order. To title it "Interim" does not change the facts.

As a final order, it is appealable.

3. Orders Which Continue Judge Early's June 13 Injunction Against Appellant and Others are Immediately Appealable

Appellant has multiple bases for standing to participate in all James Brown cases now pending in Aiken County, including:

1. Appellant is a Creditor Appellant has not been paid for the six years she devoted about 80% of her professional time to protecting James Brown's Estate/2000 Trust and "I Feel Good" Trust, including her allowed and court-approved claim.

2. Appellant has Special Status Under §62-7-405. Appellant has devoted time, effort and study to protect the "I Feel Good" Trust. AG Wilson has withdrawn

from its protection. Bauknight has declared his intention to dismantle it – again. Appellant is qualified as an “Other” and willing to serve *pro bono publico*.

3. Appellant has a Counterclaim with Proposed Offset against Bauknight as agent for Terry, Hynie and others in the 2010 Wingate Suit brought by Bauknight.

The Wingate Suit counterclaims assert Hynie was not Brown’s spouse and Appellant and Buchanan never owed her any duty. Appellant has a direct property interest in making sure the Aiken court does not reach a different conclusion in a hearing from which she has been banned from participation.

4. Appellant has a counterclaim in the Forlando Suit. Appellant and Buchanan have counterclaims for offset against the shares of Forlando in the 2000 Trust and the former share of Terry in the Estate which Forlando now owns.

5. In Case 2013-CP-02-1337. Bauknight, claiming authority under a pre-remititur *ex parte* Order, served Appellant on May 29, 2013 with a Notice of Disallowance. Bauknight purported to disallow allowed and court-approved claims of Buchanan and Appellant and pending claims of Hayes and Bailey. The Disallowance was wholly unnecessary. It repeated the false claim that Appellant and Buchanan had improperly valued the assets with no basis. Under the Probate Code Appellant was forced to file suit, which she did.

Without notice or hearing, on June 13, 2013 Judge Early and the Honorable Liz Godard, Clerk of Court, issued three orders (the “June 13 Orders”). The June 13 Orders enjoined Buchanan, Appellant and others from participating in James Brown cases, and direct the Clerk of Court to remove Appellant’s unheard motions from the public files. Judge Early also directed the Clerk not to accept filings by Appellant.

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 extraordinary injunction against Appellant and others, coupled with a direction that removes her filings from the public record and directs that she not be allowed to file documents when she is being sued by the Estate/2000 Trust through

Bauknight clearly deprives Appellant of property without due process of law.

The October 1 Order and denial of reconsideration continue that injunction.

Under Section 14-3-330 (4) they are immediately appealable.

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

The Orders which are the subject of this appeal finally determine the rights of Brown's heirs, devisees, beneficiaries under the 2000 Estate Plan, Beneficiaries under the 1999 Estate Plan and Others who want the "I Feel Good" Trust properly enforced and its \$91 million dollars dedicated to scholarships for needy students.

They did so without evidence that a single heir, devisee or Interested Person was served with the Summons and Petitions which purportedly commenced this now-final proceeding.

On July 29, 2013 Bauknight filed:

1. The Bauknight Application/Petition for Formal Apointment of a Successor Personal Representative and Trustee, with "Summons" described below. There are no named Plaintiffs or Defendants. Bauknight bases his "standing and priority" on "his status as a creditor of this Estate for proper fiduciary commissions and his status as the currently serving Special Administrator ...and Special Trustee."
2. The Bauknight Summons is directed to "All Necessary Parties." No parties are named. It lists the Circuit Court as the Court; contains two circuit court numbers: 2008-CP-02-1647 and 2009-CP-02-1810. It also contains the probate court number for Brown's estate.
3. The Sojourner SA Petition lists Attorney General Alan Wilson ("AG Wilson"), Daryl Brown, Deanna Thomas and others as Petitioners in the caption. Bauknight is, however, designated as the petitioner in the body. Among the named Petitioners are 4 adults – minors when their grandfather died – who have never been parties to any Alken County Case. The Court cited is the Probate Court, but the filing is in the Circuit Court. Bauknight asks that Sojourner be

appointed Limited Special Administrator solely "for the limited purpose of defending the Estate against the claims made in the "1647 Cases", with specific authorization to retain his law firm to represent him. A footnote says:

The 1647 Cases consist of the Will and Trust challenges, the elective share matter, the omitted spouse matter, and the omitted child matter. Mr. Sojourner will have complete authority over, and be responsible for, these limited matters until final resolution of the listed matters.

An affidavit of Sojourner is attached, with a list of his qualifications.

4. The Sojourner ST Petition contains the same names of AG Wilson and others as petitioners; cites that it is (On Removal From Probate Court) Bauknight seeks appointment of Sojourner as limited ST over the same matters.

Section 62-1-304 of the Probate Code governs how these proceeding should have been commenced. It 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 and other rules of procedure in this title govern formal proceedings pursuant to this title. 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*) for a discussion of the importance of service of the summons in commencement of the proceeding.

Bauknight's petition attaches a summons and then ignores the service requirements of SCRCP. None of the Bauknight Summons and Petition or the

Sojourner Petitions appears to have been served on anyone. Basic Due Process was denied. The notice required under the Probate Code to all Heirs, Devisees and those who have demanded notice was disregarded.

Placing a required Summons on a Petition; directing it to all necessary parties; not even designating who those parties are; and then not serving either the summons or petition does not afford Due Process. It does not give the Court jurisdiction over the case.

The circuit court hearing was held just over a month after the Petitions were filed. There was a complete absence of Due Process by failure of service and failure of notice.

The rights of Heirs, devisees and Interested Persons as to the entire proceeding have been finally determined before they are even informed of the proceeding in a legally acceptable manner. Immediate appeal of the orders granting the relief requested in the non-served petitions is appropriate.

For this reason alone, immediate appeal is appropriate and reversal required.

5. The Numerous "findings" from the "hearing" Deny Due Process

As a result of the June 13 Orders, Judge Early refused to allow Appellant, Buchanan and Others who support the "I Feel Good" Trust to participate in the September 4 and September 11 hearings. Even those who "participated" were not allowed to ask any questions of Bauknight or Sojourner.

Due Process is denied where the Court conducts a "hearing" which is not a hearing. The constitutional right to due process contemplates a meaningful opportunity to be heard. That opportunity was denied when Appellant and others were barred from

participating and the Court refused even those allowed to attend the right to question Bauknight or Sojourner.

Due Process rights of Appellant, Brown's Heirs, Devisees and other Interested Parties were denied when the Court then Court simply adopted, without question or examination," the self-serving puffing – and misstatements – of Bauknight.

The damage was compounded when the October 1 Order was presented to Judge Roe without notice to anyone. In an October 10 *ex parte* order Judge Roe dispensed with a hearing; made extraordinary findings about the good works of Bauknight and his counsel; and appointed Sojourner Special Administrator. Then Bauknight's lawyer was handed a copy of the *ex parte* Judge Roe Order to mail to Interested Parties – which he did not do as to a majority of them.

The findings concluded a number of issues. They Orders sweepingly praised Bauknight and approved his simultaneous service as PR under a Will and agent for Hynie, Deanna Brown and others who are challenging the Will. The Orders, by not even noting that Bauknight had not accounted for 18 months, approved Bauknight's concealed 2012 \$563,000 payment to attorney Ken Wingate, Esquire. It approved Bauknight's favoring Hynie's son, who refuses DNA testing, over three heirs who have been DNA-proven and acknowledged under the Estate's official Peoples DNA Protocol. It approved Bauknight's refusal to allow DNA testing and a guardian *ad litem* for Michael Brown, incarcerated in California.

The October 1 Order then found that these heirs, devisees and beneficiaries and other interested persons had received proper notice of the proceeding– purporting to bind them.

The October 1 Order affected multiple substantial rights. It determines the action and prevents a judgment from which an appeal might be taken. The findings and conclusions are in large part inaccurate. As a single example, it is clear that Bauknight would have placed Hynie and her son – for whom he still serves as a fiduciary – in control of Brown's Copyright Act termination elections. Then, having conferred on Hynie a status to which she clearly was not entitled under the facts or law, he would have paid her nearly \$25 million of the "I Feel Good" Trust's assets to get it back.

On May 26, 2009 when Judge Early issued his Order approving the 2008 settlement, there was absolutely no impediment to Bauknight's continuing the official Peebles DNA Protocol for Michael, James Curtis and other Heirs excluded from the settlement.

While the appeal was pending, Bauknight could have secured – for as little as \$10,000 each per year and the recognition they deserved – indefinite Termination Rights cooperation from any 5 or so of :

1. LaRhonda; 2. Nicole; 3. Lisa; 4. Jeanette and - subject to passing the Peebles DNA Protocol which they requested - 5. Michael and 6. James Curtis; and possibly 7. Doe Defendants.

A dose of dignity and fair dealing with these real heirs – no matter what the outcome in *Wilson v. Dallas* – was both fair and the right thing to do for the "I Feel Good" Trust.

The Order's unbridled praise of Bauknight and his attorneys finally determines – with no basis – material issues about royalties and the rights of these real heirs of James Brown.

All of the "findings" damage and finally determine issues affecting Appellant's and Buchanan's property rights, those of the real heirs, and those of beneficiaries of the 2000 and 1999 estate plans who support James Brown's right to give his \$100 million fortune solely to education.

6. The Court's Appointment of One PR/Trustee Violates *Wilson v. Dallas*

The *Wilson v. Dallas* decision made clear that fiduciaries must be appointed in accordance with Brown's documents. Brown's Will and the 2000 Trust require three PRs and 3 Trustees. There is no basis for the Court's finding that

[t]he addition of more personal representatives and trustees (and their inevitable separate counsel) would require each to spend a significant amount of time to acquire institutional knowledge that Mr. Bauknight has developed during his more than four years of service to the Estate and Trust.

There are many reasons why this is not correct. Just one is that Appellant, since May 8, 2013, has offered to help *pro bono publico anyone*, including new trustees, working to protect the "I Feel Good" Trust and its Copyrights.

Another is that Levenson, Bell and counsel for Hynie – not the Plaintiffs – authorized the fabricated Wingate Suit. This was learned in the fall of 2013 after a federal judge directed release of the public Wingate Litigation Agreement which Wingate, Hynie and Bauknight had fought to conceal for years by FOIA intervention.

Hynie, Bell and Levenson wanted one thing: \$30 million or more of the \$100 million Brown gave for scholarships for needy students. Clients were forgotten. The "I Feel Good" Trust Bauknight claimed he was serving was forgotten. Most "Plaintiffs" in the Wingate Suit did not even know the suit was being filed. Lawyers, not Plaintiffs,

signed the Wingate 40% contingency contract.

Then Levenson, Bell and Hynie's lawyers sent Bauknight – who went in the name of the Estate/2000 Trust while serving Hynie – into three FOIA suits.

Two reasonable trustees might stop this outrage. Two reasonable trustees might say Wingate must disgorge the \$563,000 because he got it while in default as to counterclaims and caused his own problems by entering three FOIA suits for Plaintiffs he had never met.

The unsupported findings about propriety of Bauknight and his counsel are material and finally determine in Bauknight's favor – and to the detriment of the Estate/2000 Trust and Others who support it – that Bauknight and the Court may disregard the *Wilson v. Dallas* remand. For this reason, the orders are immediately appealable.

7. Bauknight's Securing of the void *ex parte* Jg. Roe Order and Other *Ex Parte* Actions Were Improper

Since May 8, 2013, Bauknight – committed to undoing the *Wilson v. Dallas* decision and still serving Hynie and her son – has obtained at least four *ex parte* orders. He has refused to share a secret ethics opinion of Professor Nathan Crystal he sent to Judge Early the night before a hearing in which Appellant was seeking reconsideration of the June 13 Orders. He has blatantly disregarded the basic requirement of fairness to heirs, devisees and beneficiaries.

Heirs and beneficiaries have reason to expect to be protected in the Probate Court. The extraordinary October 10 Order of the Honorable Sue H. Rose was procured by Bauknight with a Summons or Complaint not sent to anyone. It was

obtained without notice to a single interested person. It was obtained without a hearing. The extraordinary Order declares that no hearing was necessary. [See Aff. Ex. A] While the Court appointed Sojourner, the action appears to have been driven by Bauknight. The *ex parte* Judge Roe Order makes expansive findings about the propriety of Bauknight's action and those of his counsel.

After being issued on October 10, 2013 the *ex parte* Judge Roe Order was not mailed to Interested Persons. The Clerk's Notice of Mailing shows that it was hand delivered by the Clerk to Mr. Bauknight's lawyer to notify the Interested Parties of the Order. Most were not notified. Appellant discovered it in the records in mid-December 2013. Heirs Jeanette, La Rhonda and Nicole received no notice.

No "Other" who seeks to enforce the "I Feel Good" Trust, and no real heir, is safe, if actions such as these are allowed to continue.

The constitutional issues and Due Process violations of the October 1 Order were compounded as Judge Roe "adopted," with no basis and no hearing, the "findings" of Jg. Early's October 1 Order from a hearing that was not really a hearing.

These Orders, procured by a fiduciary of the "I Feel Good" Trust who has made public his intention to dismantle it, finally determine rights; deny basic Due Process; are immediately appealable; and should be vacated.

8. Due Process Violations and Refusal to Appoint a GAL for the Incarcerated Michael Brown are Immediately Appealable

Michael Brown has been incarcerated in California and seeking to be part of the James Brown proceedings for 6 years. He has asked for DNA testing. He was not made a party to Levenson's December 2007 suit seeking an "Administration in

Intestacy" despite Levenson's knowledge of Michael's support by Brown during minority and Michael's requests.

The Due Process violations as to all others are exacerbated by Bauknight's and Sojourner's attempts to prevent the appointment of a GAL for Michael. Rule 17(c) SCRPC is clear:

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

Because Michael was both an heir seeking DNA confirmation and a person who had demanded notice, the actions purportedly commenced by Bauknight for the formal appointment of Bauknight and Sojourner was an action against Michael. Sections 62-3-414 provides in pertinent part:

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

(a) A formal proceeding for adjudication regarding the priority or qualification of one who is an applicant for appointment as a personal representative.... if an issue concerning the testacy of the decedent is or may be involved, 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 who is entitled to appointment under Section 62-3-203...SECTION 62-3-301. Informal probate or appointment proceedings; application; contents.

In addition, the Bauknight Petition was required to name Brown's heirs. The Petition was required to state:

...

(ii) . . .the names and addresses of the spouse, children, heirs (regardless of whether the decedent died intestate and determined as if the decedent died intestate) and devisees, and the ages of any who are

minors so far as 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 concerning the decedent that may have been filed in this State or elsewhere;...[Emphasis supplied.]

Bauknight had actual notice that Michael was incarcerated in Folsom Prison in California. To emphasize how final and damaging this abuse of Michael's Due Process rights was, just days after his appointment to protect the estate plan Sojourner filed a motion to declared that Michael was not an heir. He asked the Court to make this determination without Michael's being served or made a party to any James Brown case despite 6 years of attempts.

Adding Michael and appointing a GAL for him was not just necessary. It was good for the "I Feel Good" Trust.

Bauknight's treatment of Michael is particularly egregious where Bauknight continues to serve in the Wingate Suit for Hynie's child, the only person claimed to have been fathered by Brown in the 22 years between Brown's vasectomy and his death. Hynie's child has refused DNA testing under the Peeples DNA Protocol for the same 6 years Michael, incarcerated, has been seeking it.

The purpose of Rule 4 SCRCF is to provide notice of the commencement of an action and "to provide a ritual that marks the court's assertion of jurisdiction over the lawsuit, 295 N.C. 81, 243 S.E.2d 756, 758 [311 N.C. 542] (1978).

The intentional disregard for Michael and other heirs violated their fundamental constitutional and statutory rights, including Michael's right to be protected by a GAL. They are immediately appealable.

9. The Announced Plan of Bauknight to Dismember The "I Feel Good" Trust Again

Just 3 weeks after the *Wilson v. Dallas* decision Hynie's counsel and Levenson – having lost about \$19 million in fees by the decision, announced their intention to re-do the settlement. By August 20, 2013 Bauknight had joined the chorus, saying he was going to follow the "roadmap" the Supreme Court gave him to redo the settlement "to a T."

In the 6 months since the decision Bauknight has rushed to re-destroy the "I Feel Good" Trust, and the Courts have helped, including:

1. Two broad, pre-remittitur *ex parte* orders gave Bauknight broad authority, even to ratify his own acts, when he had not accounted for 18 months.
2. June 13 Orders of the Honorable Doyet A. Early, III ("Jg. Early") enjoin Appellant, Buchanan, former fiduciaries and other Interested Persons from questioning Bauknight.
3. Jg. Early, in June 13 Orders and his directions, stifles all criticism of Bauknight and all protection for the "I Feel Good" Trust.
4. The *ex parte* Judge Roe Order of October 10 is unprecedented.

These actions are both unusual and damaging to a charitable trust that is not being protected by the Attorney General. Because the only "Other" who is trying to protect it was banned from participation, Due Process again demands an immediate appeal.

10. The Right of Appellant and Others 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. The Court – by refusing to allow proper participation at the hearing -- failed to note that

Buchanan and Appellant, prior to their replacement, appointed former Warner Music executive Ray Gonzalez and distinguished attorney Ronald Stanley, Esq. as their successors. The nominations were filed of record prior to the May 26, 2009 Order.

In addition, on May 26, 2009 when the now-void settlement was approved, a distinguished Advisory Board existed. Within the records delivered to Bauknight but not revealed to the Court is correspondence from these carefully-selected and dedicated individuals. All opposed the 2008 settlement.

One of the Advisory Board, Dr. Leonard McIntyre, then Interim President of S. C. State University, was instrumental in helping protect thousand of items of James Brown memorabilia. S. C. State held a James Brown Exhibit at the Stanback Museum and Planetarium curated by director Ellen Zisholtz.

All of the above have the highest priority under § 62-3-2913(a), namely they are:

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

The Court's findings violate the *Wilson v. Dallas* remand and should be reversed.

10. Refusing to Address the Less than \$4.7 Million Claim Violates Due Process

By banning Buchanan, Pope, Dallas and others from participating in the "hearing" held on September 4 and refusing to allow anyone to question Bauknight or Sojourner, the Court violated the Due Process rights of Appellant and all "Others" for whom Appellant speaks to know:

1. Will the "I Feel Good" Trust distribute several million dollars each year under the IRC 5% Rule or about \$200,000 according to Bauknight?
2. Does Bauknight's claim of a marital deduction as to Hynie in the Estate Tax Proceeding need to be corrected along with the claimed \$4.7 Million value of the music empire?

3. Does the Estate Tax Return need to be corrected to show the "I Feel Good" Trust got about \$82 million, and received a corresponding \$82 million Estate Tax deduction on the Estate Tax Return – not the less-than \$3 million as reported by Bauknight?
4. Did Buchanan and Pope commit a federal felony by valuing Brown's music empire at about \$84 million consistent with a court-approved formula and offers?
5. Or was the approximately \$100 million (less the TIAA Debt) value produced by the IP formula, every fiduciary other than Bauknight and most family members correct?
6. Isn't it true that it makes no sense to value a music empire that has had \$3 million in annual Royalties for a decade and earned \$18 million between 2003 and 2006 at less than \$4.7 million on December 25, 2006?
7. Isn't it true the the "appraisal" Bauknight has hidden since 2010 – and now asserts he did not even show to the S.C. Attorney General -- should have been filed in the Probate Court?

Bauknight has fought bitterly for two years in federal court, 3 FOIA suits and the Wingate Suit to prevent anyone from seeking the "appraisal" he asserts will demonstrate that Buchanan and Appellant overstated Brown's music empire by \$79 million. He now claims that he did not even show it to the Attorney General. He claims it must remain under "lock and key." He ignores Section 62-3-708 of the Probate Code which says:

SECTION 62-3-708. Duty of personal representative; supplementary inventory.

If ... the personal representative learns that the value or description indicated in the original inventory for any item is erroneous or misleading, he shall make a supplementary inventory or appraisal showing the market value as of the date of the decedent's death of the new item or the revised market value or descriptions, and the appraisers or other data relied upon, if any, and file it with the court, and furnish copies thereof or information thereof to persons who receive the original inventory, and to persons interested in the new information. [Emphasis supplied.]

Bauknight used a less-than \$4.7 million "appraisal" to accuse Buchanan and Appellant of a felony. He made the false claim that their \$84 million valuation claim had no basis. He did so with knowledge, as defined in the Trust Code, that the \$84 million was consistent with a court-presented valuation formula.

The failure of the Court to allow exploration of this critical area, followed by praise for Bauknight, "involved the merits." It finally determines some substantial part of some cause of action or defense in the case. 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 Appellant, the "I Feel Good" Trust and heirs.

11. Due Process and Thoughtful Protection of the "I Feel Good" Trust is the Overarching Goal

As the draft 2011 Article of Smith and Pope makes clear, protection of Brown's Royalties, which make up about \$50 million of the \$100 million music empire Brown gave to the "I Feel Good" Trust, will require a delicate and thoughtful balance over the next 4 - 7 decades. Brown's Royalties have consistently generated \$3 million or more per year for more than a decade. Added to revenue from exploitation of the Publicity Rights, they provide hope and promise for needy students for a century or more if properly managed.

Both the October 1 Order, and the *ex parte* Judge Roe Order discussed below – with no support either in the record or fact – declare:

The overarching goal of this Court is to create an atmosphere where the prompt resolution of the various contested claims and a final resolution of the Estate and Trust matters can occur without compromising the

positive gains achieved since this Court issued its May 26, 2009 Order.

When the October 1 Order was issued, Bauknight had not accounted for 18 months. When he did file an inadequate accounting for 2012 – days after the October 1 Order – it showed he had disbursed \$563,000 (in addition to a 40% contingency) to the Wingate Firm to continue his suit to derail the Wilson v. Dallas appeal and interfere with FOIA compliance.

Paying more than half a million for Wingate to protect Hynie; prevent her deposition and interfere with FOIA rights of S. C. citizens is not "positive." Rushing again to re-do a settlement which took \$50 million from the "I Feel Good" Trust is not positive. Denying the Due Process rights of the heirs from whom copyright termination cooperation can be acquired most efficiently, and who are not contesting the Estate Plan, is not positive.

The orders are appealable to correct these fundamental problems.

**12. Failure to Notify Beneficiaries Whose Education Funds are Withheld
By Bauknight Supports Immediate Appeal**

Three now-adult beneficiaries of the 2000 Trust – Lindsey Brown, Janise Brown, and Jason Brown - have never been made parties to any James Brown Aiken case. Bauknight knew they were beneficiaries. As to Lindsey and Janise, Bauknight knew their father Daryl had fired Levenson and launched a campaign to save James Brown's estate plan. Bauknight knew Lindsey and Janise needed their \$285,000 education benefits, and their was no reason not to pay them.

Bauknight has refused to pay these education benefits. And Bauknight did not serve them with Petitions which materially and finally determine their right to ask the

Court to appoint a fiduciary who will follow Brown's Will and 2000 Trust and pay for their education.

The orders in this appeal are final and adverse to them. But they have not been given Due Process notice of the existence of the case or a right to protect themselves.

13. The Failure to Serve the Orders on Interested Persons Violated Due Process

The Due Process Rights of real heirs of James Brown have been repeatedly violated since May 8, 2013 in ways that may damage them and their children with respect to their rights as Brown's heirs under the Federal Copyright Act. And they don't even know it.

Appellant, an experienced probate practitioner, can barely ferret out the orders which Bauknight refuses to send. The October 25 Order denying Appellant's Motion to Alter or Amend was not provided until she saw it listed in public records. Appellant found the October 10 Judge Roe Order almost accidentally two months later on December 13, 2013.

In light of the June 13 Orders, immediate appeal is the only appropriate method to address these repeated Due Process and statutory violations.

14. 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 to serve as Personal Representative of the Estate and Trustee of the Trust, and have been given an opportunity to nominate a candidate and oppose the applications filed by the Applicants.

Section 62 -1- 201 (20) of the Probate Code defines Interested Persons:

..(20) "Interested person" includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding.

More than half of the Interested Persons entitled to be served, respond, and then be given notice of a hearing to determine whether Bauknight and Sojourner were appointed in accordance with James Brown's Will and 2000 Trust had no notice of the petitions and no opportunity to be heard. There is no basis for the material finding to the contrary in the Orders.

Conclusion

For the reasons set out herein, the Orders which are the subject of this appeal are immediately appealable and the appeal should proceed.

Respectfully submitted,

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December 17, 2013

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

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

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No. 2013-002582**

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.....Appellant,

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

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

IN RE:

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

AFFIDAVIT OF ADELE J. POPE IN SUPPORT

MEMORANDUM RELATED TO APPEALABILITY

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who, being duly sworn, deposes and says:

1. I am informed and believe that David C. Sojourner is one of the finest trust and estate lawyers in the state. I believe, however, that Mr. Sojourner has been placed in the same position Robert L. Buchanan, Jr. and I were placed in from August 12, 2008 until May 8, 2013:

A. Go along with Russell Bauknight, Tommie Rae Hynie, Forlando Brown and David Bell, Esquire; or

B. Face lawsuits, fabricated claims and humiliation.

2. James Richardson, Esquire served *pro bono publico* for four years to put the South Carolina Supreme Court in a position to restore \$50 million to The James Brown "I Feel Good" Trust. It did so on May 8, 2013.

3. Since May 8 I have dedicated almost all of my professional time *pro bono publico* to make sure the \$91 million now ready to be used for scholarships for needy students stay in the "I Feel Good" Trust.

4. I am informed and believe that I have special interest and expertise as an "Other" to enforce the "I Feel Good" Trust under S.C. Trust Code § 62-7-405 because:

a. The service is without pay and benefits the "I Feel Good" Trust.

b. AG Wilson has withdrawn from the James Brown Aiken cases and moved to be dropped as a party to the Richland County "Wingate Suit" where Russell Bauknight still serves as agent for Tommie Rae Hynie and her son.

c. Louis Levenson, Esq. announced on May 29, 2009 an intention

to reinstate the 2008 settlement which would pay him about \$9 million from the "I Feel Good" Trust. He did so even though all of his clients now admit that Brown wanted to establish the "I Feel Good" Trust.

d. Hynie's counsel announced on May 29 and intention to reinstate the 2008 settlement, which would have paid him about \$10 million from the "I Feel Good" Trust and Hynie \$11+ million.

e. Mr. Bauknight announced on August 20, 2013 his intention to reinstate the 2008 settlement.

f. James Brown's backup 1999 Will – which, like the 2000 Will, leaves Brown's entire music empire to the "I Feel Good" Trust – is in jeopardy of becoming void on December 25, 2016 under the S.C. Probate Code's 10-year rule and Mr. Bauknight is not protecting it.

5. I accept that the South Carolina Supreme Court, with incomplete information about our service, chose to replace Robert Buchanan, Jr. and me in the *Wilson v. Dallas* decision and make strong statements about us.

6. James Richardson, Esquire, who served *pro bono publico* for 4 years to protect the "I Feel Good" Trust, was never asked to – nor did he – raise a hand to protect Mr. Buchanan and me, individually in the appeal.

7. The job of our small team was to put the S.C. Supreme Court in a position to restore \$50 million to the "I Feel Good" Trust. Fortunately, it did so.

8. With Mr. Richardson's *pro bono publico* service as lead appellate counsel, the cost of 5 years of defense – including seven days of hearing in the circuit court – was about \$200,000.

9. I do not believe that the *Wilson v. Dallas* decision:

a. Deprives me of my rights under the S. C. Freedom of Information Act ("FOIA");

b. Deprives me of my rights to participate in all James Brown hearings

which threaten my property rights under my allowed and court-approved \$1.4 million claim, with interest at the legal rate since 2009,

- c. Deprives me of a right acting *pro bono publico*, to serve the "I Feel Good" Trust in any capacity other than trustee, including as an expert on Probate/Copyright issues and as an "Other" under S.C. Trust Code § 62-7-405 with both special interest and special knowledge.
- d. Deprives me of all customary rights accorded any creditor who has not been paid, as I have not been.
- e. Deprives me of my right to answer, counterclaim and obtain offset from Terry Brown, Hynie, or Mr. Bauknight as their agent, where they sued Mr. Buchanan and me in 2010 in Richland County (the "Wingate Suit") for tens of millions of dollars to stop the *Wilson v. Dallas* appeal.
- f. Deprives me of the right to urge the Aiken County Court to stay the Aiken proceedings and complete the Wingate Suit – where the issue of whether Hynie is Brown's spouse will be ready for a merits determination as soon as her deposition is concluded.
- g. Deprives Mr. Buchanan and me of our right to seek judgment and offset in the Federal Court against the Estate and 2000 Trust shares of Terry and Forlando Brown in the frivolous suit brought by David Bell, Esq. and Powell Goldstein ("PG") on January 2, 2008 to enjoin the 2000 Trust from taking any action until the Cannon Trustees were reinstated; and continued for 4 years until the Complaint was dismissed in 2012.
- h. Deprives Brown's real heirs – whose identity under the Peeples DNA Protocol is inexpensive to determine and beneficial to the "I Feel Good" Trust – and their children of their rights under S.C. Law or the Federal Copyright Act in the pending Levenson suit seeking an "Administration in Intestacy."
- i. Deprives these real heirs — and the "I Feel Good" Trust – of the right under the March 2008 Order of the Honorable Doyet A. Early, III, to proceed with an Heirs Determination even though James Brown had a valid 2000 Will and a valid backup 1999 Will.
- i. Allows Mr. Bauknight to ignore real heirs while serving as agent for the only person claiming to be a child of James Brown born in the 22 years between Brown's vasectomy and his death, who refuses DNA testing under the Estate's official Peeples DNA protocol.

k. Prevents Brown's son Michael, incarcerated in California and seeking DNA testing since 2007, from having a guardian *ad litem* ("GAL") and being made a necessary party to the Levenson Suit .

l. Precludes my *pro bono publico* service as GAL for Michael, James Curtis and the Doe Defendants, whose proper identification will help protect the "I Feel Good" Trust.

m. Precludes my protection of my own property interest, and those of the "I Feel Good" Trust under Orders issued without proper service, notice or hearing, including the October 1 Order now on appeal and the void (and undisclosed) *ex parte* October 10, 2013 Order of the Honorable Sue H. Roe, attached as Exhibit A. [This order was never served on most Interested Persons. I found it by accident last week.]

10. I am happy that I am in a position to serve *pro bono publico* for as long as it takes to help insure that needy students will enjoy the magnificent gift James Brown left to them.

11. I believe that I am fully qualified to do so, and have special knowledge.

12. My probate court experience and knowledge about James Brown's decades of music, with study, have allowed me to come to understand the relationship between State Probate Law and Federal Copyright Act Termination provisions which will be important in future decades for charities which hold royalties and other copyrights.

13. Academics claim, and I believe, that only a handful of entertainment attorneys – and few estate/trust attorneys – understand this emerging area of practice as it relates to the overlap of the two specialties.

14. As the attached draft article Jeffrey Smith and I circulated in April 2011 for review by professionals demonstrates, this is an important and emerging area of the law for private foundations. [Exhibit B]

15. Mr. Smith is the former president of the Clemson Philosophy Club; a music

enthusiast; a graduate of Georgetown Law Center; a former patent examiner; and a resident of my hometown of Newberry.

16. Out of respect for the Court, Mr. Smith and I did not finalize or officially publish "Private Foundations, ..." while the *Wilson v. Dallas* appeal was pending.

17. We did, however, file it in the Wingate Suit and Aiken County to help refute the unfounded claim that Mr. Buchanan and I had intentionally overstated the assets.

18. Right after the first *Wilson v. Dallas* decision in February 2013, I asked to meet with Attorney General Wilson, and he and his staff met with me.

19. While AG Wilson was very polite, he did not accept my suggestion to:

- a. Quietly replace Mr. Bauknight;
- b. Correct the \$4.7 million value and claimed Marital Deduction on the Estate Tax Return (which may impair scholarship distributions for years.)
- c. Ask the Court to reinstate Mr. Buchanan and me, with Mr. Buchanan to resign immediately – as he wished to do.
- d. According to our filed appointment of successors and the Will/2000 Trust, appoint Ronald Stanley, Esq., and former Warner Music Executive Ray Gonzalez. I would serve only until the Will challenges and Hynie claim ended.
- e. If possible, a permanent family seat on the "I Feel Good" Foundation would be held, on a rotating basis, by descendant of James Brown.

20. While he did not adopt my suggestion, AG Wilson did call personally to tell me the State/AG was seeking to be dropped as a party to the Wingate Suit. He notified the S.C. Supreme Court of this.

21. I do not believe that there is any basis for AG Wilson to oppose an "Other" working *pro bono publico* to protect the "I Feel Good" private foundation where the Settlor is dead, the AG has withdrawn, the "Other" has special interest and expertise,

and the Trustee is openly committed to reinstating a settlement which will take \$50 million from the charity.

22. For two years Mr. Bauknight – purporting to speak for AG Wilson – accused Mr. Buchanan and me of intentionally overstating Brown's worldwide music empire by \$79 million for the improper purpose of obtaining a \$5 million PR/Trustee commission.

23. 18 U.S. C. §7206, as I read it, makes overstating the value on a sworn estate tax return by more than 15 times for an improper purpose a felony.

24. I believe I have the right to participate in any proceeding where this, and other, career-threatening false claims are made against me, or Mr. Bauknight is lauded for his proper handling of the Estate/2000 Trust. I was denied that right as to the Orders which are the subject of this appeal by Judge Early's June 13 Orders enjoining me from participating in the hearing and directing the Court not to accept any filings by me.

25. The Petitions resulting in the appointment orders – which orders made findings about the propriety of the service of both Mr. Bauknight and his counsel — were not served on any of the following:

- a. Creditors Buchahan, Pope, Hayes, Bailey, Dallas
- b. DNA-proven Heirs of James Brown acknowledged by the Estate/2000 Trust after the passed the Peebles DNA Protocol:
 - (1) La Rhonda; (2) Jeanette; (3) Nicole
- c. Child of Brown's first marriage: (4) Lisa
- d. Child of James Brown who has launched a national campaign to save the "I Feel Good" Trust:
 - (5) Daryl Brown;

e. Claimed children of James Brown requesting and awaiting DNA testing under the Peoples Dna Protocol who have not yet been been DNA tested or made parties to Case 2008-CP-02-0872 which requests an "Administration in Intestacy", even though Mr. Bauknight has known of their requests for years.

(6) Michael Deon Brown (Incarcerated in California); (7) James Curtis

f. The Advisory Board of the James Brown 2000 Irrevocable Trust.

g. Ronald Stanley, Esq. and Ray Gonzalez, Esq., the named successors in documents on file in Aiken County.

h. Anyone to protect the 1999 Will in the unlikely event that the 2000 Will is set aside in the Levenson Suit.

i. All "Others" who want to protect the "I Feel Good" Trust.

26. Mr. Buchanan and I, in our official capacity, offered the 1999 Will for alternate probate in the Levenson Suit. Ten years after Mr. Brown's death – on December 25, 2016 – the 1999 Will cannot be offered for probate unless someone continues to protect it under our filing.

27. The 1999 Will, like the 2000 Will, is one of four documents executed over 2 years that make Brown's estate plan ironclad.

28. In the June 13, 2013 Orders, subject to a separate appeal, Judge Early enjoined Mr. Buchanan and me from participation in actions which directly affect us; directed the Clerk to remove my unheard motions from the public records; and directed her not to accept future filings.

29. I believe that Judge Early's actions in those orders and in the hearing held on September 4 orders on appeal violate my Due Process Rights.

30. The Orders make a material incorrect finding that all Interested Persons had

proper notice. This is simply not the case. They did not even get the pleadings.

31. I believed that the Orders are immediately appealable because they are a final determination despite the title; they constitute an injunction; they were issued without Due Process based on Petitions that were never served; they involve the merits because unsupported findings about Bauknight and his counsel finally determine substantial parts of pending James Brown Aiken cases. They also finally place Brown's backup 1999 estate plan in permanent jeopardy under the 10-year rule and adversely and finally deny and determine some of the rights of Brown's real heirs, including an incarcerated one.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this 17th day
of December, 2013


Notary Public for South Carolina
My commission expires: 10/23/2022

(L.S.)

10.11.2013 Exhibit A
L. H. Rice
J.C.C.P. & S.S.
300
Anita Knopfle
Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE PROBATE COURT
STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

CASE NO. 2007-ES-02-005
CASE NO. 2008-CP-02-164

IN RE:

THE ESTATE OF JAMES BROWN
A/K/A JAMES JOSEPH BROWN

INTERIM ORDER
APPOINTING LIMITED
SPECIAL ADMINISTRATOR

THIS IS TO CERTIFY THAT THE FOREGOING IS A TRUE AND
CORRECT COPY OF THE ORIGINAL ON FILE IN THIS COURT
WITNESS MY HAND AND SEAL OF THE COURT THIS 10th
DAY of October A.D. 2013
Sue H. Rice
JUDGE OF PROBATE FOR AIKEN COUNTY S.C.
BY: D. Davis
CLERK

This matter comes before the Probate Court on Petition for the Appointment of Limited Special Administrator, whereby this Court is requested pursuant to applicable South Carolina law, including but not limited to S.C. Code Ann. § 62-3-614 and S.C. Code Ann. § 62-3-617, to appoint David C. Sojourner, Jr. as Limited Special Administrator of the Estate of James Brown (the "Estate"). Mr. Sojourner has been appointed by Order of the Aiken County Circuit Court dated October 1, 2013 (hereafter the "Circuit Court Order") as Limited Special Trustee of the James Brown August 1, 2000 Irrevocable Trust Agreement (the "Trust").

BACKGROUND

In *Wilson v. Dallas*, 403 S.C. 411, 450, 743 S.E.2d 746, 768 (2013) (the "Opinion"), the South Carolina Supreme Court affirmed in part, reversed in part, and remanded the Circuit Court's May 26, 2009 Order regarding the Estate and Trust. On May 29, 2013, the Circuit Court held a status conference concerning the Opinion and, by Order dated June 13, 2013, required all applications of those interested in serving as fiduciaries of the Estate and Trust to be made within 45 days of the date of that Order (July 29, 2013). On September 4 and 11, 2013, the Circuit Court conducted a hearing to receive testimony from all applicants for fiduciary positions in the Estate and the Trust. Mr. Sojourner appeared at the September 4, 2013 hearing before the Circuit Court

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Filed: 10-10-2013
Sue H. Rice
Judge of Probate
By: D. Davis

and provided testimony. Russell L. Bauknight, having filed the Petition of Appointment of Limited Special Administrator, also provided testimony at the September 4, 2013 hearing.

After conducting the hearing, the Circuit Court appointed Russell L. Bauknight as Personal Representative of the Estate and Trustee of the Trust by its Order dated October 1, 2013. The Circuit Court, by the same Order, appointed David C. Sojourner, Jr. as Limited Special Trustee of the Trust.

This Court takes Judicial Notice of the proceedings before the Circuit Court, as provided in the transcripts of record, along with the record of testimony, and hereby adopts and incorporates the findings and conclusions of the Circuit Court. All proper parties were provided the opportunity to object and be heard at the Circuit Court hearing. This Court incorporates the record of the Circuit Court hearing in this Order and relies thereon in order to further promote judicial economy and to avoid the cost and inefficiencies of conducting a second hearing with the same parties and the same issues.

FINDINGS OF FACT

This Court has carefully reviewed the Will, the Petition for Appointment of Limited Special Administrator filed on behalf of Mr. Sojourner, all related filings, and has considered the testimony provided by Mr. Sojourner, Mr. Bauknight and others in the hearing on September 4, 2013. James Brown passed away nearly seven years ago on December 25, 2006. These factual findings and this Interim Order are all made in an effort to expedite the efficient administration of the Estate, based on the overarching goal of creating an atmosphere in which a prompt resolution of the various contested claims and a final resolution of Estate matters can occur.

This Court incorporates and adopts the findings of fact of the Circuit Court's Order dated October 1, 2013, and specifically finds:

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1. Russell L. Bauknight has continuously served as a fiduciary to the Estate, both in his role as Personal Representative since May 26, 2009 and his continuing role as Special Administrator, with general fiduciary powers, since August 6, 2009, and there has been no lapse in his authority or fiduciary service since appointment.

2. This Court is aware that certain parties have raised the issue of whether a conflict of interest exists with respect to Mr. Bauknight's continued role as fiduciary of the Estate in the ongoing spousal elective share matter, the omitted spouse matter, the omitted child matter, and the legal challenges to the validity of the Will and Trust that were involved in the settlement agreement (collectively, the "Will and Trust Challenges"). This Court does not believe that a conflict of interest exists. Mr. Bauknight has testified that he has no conflict of interest and that he is willing and capable of fully defending Mr. Brown's Estate plan. This Court has weighed that testimony and finds along with the Circuit Court that neither Mr. Bauknight, nor his counsel, has any conflict of interest that would prevent them from vigorously defending or prosecuting actions on behalf of the Estate and Trust. While this Court finds that no conflict of interest exists, out of an abundance of caution and in order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds that it is prudent to appoint an individual to serve as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof.

3. David C. Sojourner, Jr. has been practicing in the area of estate and gift planning and probate administration for more than twenty-six years, and is certified as a specialist in estate planning and probate law and in tax law by the South Carolina Supreme Court. Since 2001, Mr. Sojourner has been selected as a member of the American College of Trust and Estate Counsel.

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and has had specialty training in mediation of issues related to estates, including family disputes. Additionally, Mr. Sojourner has served as a fiduciary in the past and has counseled clients on their obligations and duties in a position as fiduciary. Mr. Sojourner has agreed to serve, so long as his role is limited to defending the Will and Trust Challenges on behalf of the Estate and his law firm of Adams and Reece LLP can represent him in that role. Given his experience, in addition to the resources of a 300-attorney law firm, Mr. Sojourner is well-suited to serve in the role as Limited Special Administrator.

4. Appointing a Limited Special Administrator to defend the Estate against the claims made in the Will and Trust Challenges provides structured and efficient administration, complies with sound judicial economy, and allows Mr. Bauknight the ability to manage all other aspects of estate administration.

5. At this time, this Court finds that it is in the best interests of the Estate, while Mr. Bauknight continues to serve as Personal Representative and oversees the Estate administration, that Mr. Sojourner be appointed as the Limited Special Administrator to oversee the Will and Trust Challenges and to defend the Estate plan against the claims made in the Will and Trust Challenges, and that he serve in such capacity until the conclusion of the litigation involved in the Will and Trust Challenges.

6. This Court is mindful of the practical administration problems the Estate has encountered as a result of the history of the prior and multiple fiduciary appointments. In an effort to avoid the recurrence of such problems, this Court finds, at this time, it in the best interests of the Estate to leave Mr. Bauknight's appointment as Special Administrator with general fiduciary authority undisturbed. That appointment shall continue until further order of the Court.

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CONCLUSIONS OF LAW

This Court incorporates and adopts the conclusions of law contained in the Circuit Court's Order dated October 1, 2013, and specifically concludes as follows:

1. I find that this Court has jurisdiction to hear this matter and that venue is proper. All of the interested parties have been notified of the Petition for Appointment of Limited Special Administrator of the Estate and have been given an opportunity to oppose the petition filed on behalf of Mr. Sojourner.

2. S.C. Code Ann. § 62-3-614 provides that a special administrator may be appointed upon a finding, after notice and hearing, that appointment is necessary to preserve the estate or to secure its proper administration. S.C. Code Ann. § 62-3-617 provides that a special administrator so appointed has the power of a general personal representative except as limited in the order and specifically states that the appointment may be for a specified time, to perform particular acts, or on any other terms as the court may direct.

3. After careful review of the Will and Trust, the Petition for Appointment of Limited Special Administrator, the testimony proffered by Mr. Sojourner and others in the hearing on September 4, 2013, I find that the appointment of a Limited Special Administrator of the Estate at this time is necessary in order to adequately protect and preserve the Estate, and secure the Estate's proper administration.

4. In order to avoid any appearance of impropriety and to promote the efficient and speedy administration of the Estate, this Court finds it in the best interests of the Estate for Mr. David C. Sojourner, Jr. to be appointed as Limited Special Administrator solely, specifically, and exclusively for the purpose of defending the Estate against the claims made in the Will and Trust Challenges until final resolution thereof. This interim appointment is made with the requirement

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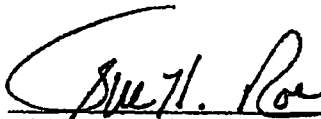
that Mr. Sojourner, in his limited capacity, shall remain independent from Mr. Bauknight, shall act with sole and absolute authority in his limited capacity, and will retain Adams and Reese LLP to represent him in the Will and Trust Challenges. Mr. Sojourner is well-qualified and willing to serve as Limited Special Administrator of the Estate.

IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED:

1. David C. Sojourner, Jr. is appointed as Limited Special Administrator for the Estate for the sole, exclusive, and specific purpose of defending the Estate in the Will and Trust Challenges, until final resolution thereof, and is authorized to retain Adams and Reese LLP to represent him in such matters.
2. Russell L. Bauknight's prior appointment as Special Administrator, with general fiduciary authority, shall remain undisturbed until further order of the court.
3. No bond is required to be posted in connection with these appointments.
4. This interim Order is temporary. The Court's appointment of David C. Sojourner, Jr. as Limited Special Administrator will be revisited upon conclusion of all Estate litigation involved in the Will and Trust Challenges.

AND IT IS SO ORDERED.

October 10th, 2013.
Aiken, South Carolina



The Honorable Sue H. Roe
Aiken County Probate Judge

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STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF AIKEN

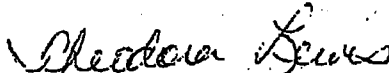
IN RE: THE ESTATE OF
JAMES BROWN

CASE NO.: 2007ES02-0056

CERTIFICATE OF MAILING

I, Theodora Lewis, Clerk of Probate Court, certify that on the 16th day of October, 2013 a
certified copy of the foregoing Order was hand delivered to the following attorney, to be served
on all interested parties:

Fred L. Kingsmore, Esq.
Attorney at Law
P.O. Box 2426
Columbia, SC 29202-2426



THEODORA LEWIS

**Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith¹

©²
2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Will; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Aloose⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back some of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs—in limited instances—may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves.⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private

foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of each copyright for the longest reasonable time.

⁷ (Give it up) Turn it Aloose was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

¹¹ The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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termination before 2016 -- ten years after Brown's death. [See
Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the Real Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full -- 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

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A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 2. Then had a marriage ceremony with Brown although she was already married;
 3. Separated from Brown in 2003 when he discovered she was married;
 4. Obtained an annulment of her previous marriage in March 2004;
 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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That changed on August 10, 2008.

"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

On January 30, 2009, three weeks after his appointment—with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal—the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation — the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status—a gift not from Brown but from the AG—that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise \$200 million for the purchase of the James Brown assets.

²⁵ In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

NEXSEN | PRUET

J. David Black
Member
Business Litigation
Admitted in SC

December 23, 2013

RECEIVED

DEC 28 2013

SC Court of Appeals

Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

Re: *Wilson v. Dallas, et al.*,
Appellate Case No. 2013-002582

Dear Ms. Kitchings:

The James Brown Estate and Trust submit this letter in response to the memorandum of appealability filed by Adele J. Pope ("Mrs. Pope"). Contrary to the assertions found in that memorandum, the subject appeal must be dismissed because: (1) Mrs. Pope does not have legal standing to pursue the appeal and has no legal interest in this matter. *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 1065 (1979) ("An appeal filed by one who has ceased to be a party to a suit is a mere nullity."); *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002) ("A party cannot appeal from a decision which does not affect his or her interest . . ."); and (2) the order is not appealable because it is temporary in nature, and none of the exceptions of S.C. Code. Ann. § 14-3-330 apply.

Charleston
Charlotte
Columbia
Greensboro
Greenville
Hilton Head
Myrtle Beach
Raleigh

I. Background

The order that is the subject of this appeal addresses the temporary appointment of fiduciaries to oversee the James Brown Estate and Trust (the "Appointment Order"). The Appointment Order follows directly from the Supreme Court's decision in *Dallas v. Wilson*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Appointment Order installed Russell L. Bauknight as the *interim* Personal Representative and Trustee of the James Brown Estate and Trust. The interim appointment will be revisited at the conclusion of the litigation over the validity of the Will and Trust documents. The Appointment Order also installed David C. Sojourner as the *interim* Special Administrator and Special Trustee, with authority to oversee

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the Estate and Trust's defense of claims challenging the validity of the Will and Trust documents. Both Messrs. Bauknight and Sojourner owe fiduciary duties to the Estate and Trust, and both have an unflinching obligation to zealously defend the estate plan crafted by the late James Brown. Messrs. Bauknight and Sojourner are not aligned with any of the parties seeking to invalidate James Brown's estate plan. To be very clear, Messrs. Bauknight and Sojourner are working, and are steadfastly committed, to uphold the late James Brown's estate plan against all challenges.

In her memorandum, Mrs. Pope complains that she was not involved in any of the below appointment proceedings; she generally argues that the failure to include her violates notions of due process. These arguments are meritless. Mrs. Pope was not involved in the below proceedings because she is not a party to any of the James Brown Estate and Trust matters. In *Dallas v. Wilson*, the Supreme Court unequivocally held that Mrs. Pope cannot be involved in any future Estate and Trust matters:

Appellants have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Dallas, 403 S.C. at 448-49, 743 S.E.2d at 766-67. Mrs. Pope was not involved in any of the below proceedings because the Supreme Court specifically held that she cannot be involved.

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A. Pope is the Only Individual Challenging the Orders

There is a split among James Brown's heirs as to whether the estate plan was validly enacted, or fraudulently procured. Notwithstanding those divergent views (held by heirs actively involved in these proceedings), it is instructive that not one of James Brown's heirs is challenging any of the subject orders of the circuit court. It is also instructive that Mrs. Pope *does not* represent any heirs. She represents *herself*. And she does not have any legal interest in the future of the Estate and Trust.¹

In its opinion, the Supreme Court noted some of the faithless actions that supported Mrs. Pope's for-cause removal as a fiduciary. It is important to note that those actions, and others, served as a foundation for the breach of fiduciary duty civil action filed against Mrs. Pope by her successor and some of James Brown's heirs. That action was filed in 2010 because some of the factual bases for the claims fell within the trust code's one-year statute of limitations. S.C. Code Ann. § 62-7-1005. That statute provides that a party has one year following receipt of a "report that adequately disclosed the existence of a potential claim." § 62-7-1005(a). Mrs. Pope's assertion that the 2010 breach of fiduciary duty action was filed for the purpose of having her abandon the *Wilson v. Dallas* appeal is meritless. The action was filed because Mrs. Pope committed serious breaches of her fiduciary duties, and those actions damaged the Estate and Trust.

B. Mrs. Pope Seeks to Create a False Narrative

Messrs. Bauknight and Sojourner are vigorously defending the estate plan created by the late James Brown. Notwithstanding that undeniable fact, Mrs. Pope (a member of the South Carolina Bar) actually writes that Mr. Bauknight "has declared his intention to dismantle it [*i.e.*, the estate plan]." (Memorandum, p. 11). She does not provide any citation or proof or evidence for that statement—and she cannot, because the statement is false. Mrs. Pope also writes that, "[b]y August 20, 2013, Bauknight had joined the chorus, saying he was going to follow the 'roadmap' the

¹ Mrs. Pope has a creditor's claim for her share of the nearly \$5 million fee that she filed against the Estate after her removal in 2009. That case is pending in the Aiken County Circuit Court, and it is the only James Brown related case in which Mrs. Pope has any legal interest.

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Supreme Court gave him to redo the settlement 'to a T.'" (Memorandum, p.22). That is also a false statement. The "roadmap" language comes from the August 20, 2013 deposition of Mr. Bauknight.² In that deposition he testified as follows:

Q. When you say defend the estate and trust, do you mean to defend the documents that constitute the 2000 will and trust of James Brown as written?

A. Yes. That's my job. That is my job. Frankly, I served -- until the Supreme Court ruled otherwise, I served under the settlement agreement because that was the law of this case. This -- Judge Early said that was the proper roadmap. I served under that roadmap. I followed that roadmap. That roadmap has been torn up by the Supreme Court. Not a problem in the world for me. I've got a new roadmap to follow and I will follow that roadmap and I will do it to the best of my ability. This is the -- this is my job and I take it very seriously. There's no one more independent when it comes to this than I am. I'm straight down the line and I will defend it vigorously.

....

I've got a new roadmap, and I'm going to follow this new roadmap to a T.

(Bauknight Deposition, p. 100 ln. 12- p.101 ln. 5; p. 105 ln.15-17) Mrs. Pope's representation to this Court is false.

² The deposition was taken in *Brown v. Pope*, 3:08-CV-0014 (D.S.C.), which is pending in the South Carolina District Court. That case was filed on January 2, 2008 by one of James Brown's grandsons (Forlando) to restrain Mrs. Pope from acting as the Trustee. Forlando ultimately dropped his claims against Mrs. Pope but the case is still pending because she filed a number of counterclaims against Forlando Brown, generally alleging that the action was instituted for ulterior purposes. Mr. Bauknight was first appointed as PR/Trustee on May 26, 2009, and was not a witness to any of the events surrounding the lawsuit. Nevertheless, Mrs. Pope subpoenaed Mr. Bauknight to appear for a deposition in that case.

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Mrs. Pope seeks to convince anyone who will listen, that no one but her is interested in protecting the Estate and Trust. Those words, however, do not jibe with the factual findings that the circuit court made in the Appointment Order. In that order, which Mrs. Pope is attempting to appeal, the circuit court praised Mr. Bauknight's service and articulated specific examples of his positive work. The circuit court provided that praise so that a reviewing court would have the benefit of those factual findings when confronted with the "writings" of Mrs. Pope.

Mrs. Pope suffers from an inability to accept the fact of her fiduciary lapses. The Supreme Court detailed some of her faithless actions and noted also that "the extreme discord between the parties convince[d] [the Court] that [Mrs. Pope's] continued service as [a] fiduciary[y] is not in the best interests of the estate." *Dallas*, 403 S.C. at 449, 743 S.E.2d at 767. Mrs. Pope's refusal to comply with the Supreme Court's mandate flows from her inability to accept the fact of her past conduct and is driven by her selfish desire to rewrite history. Her selfish motives are needlessly wasting Estate and Trust resources.

II. The Orders are Not Appealable

A. No Injunction Exists

In an effort to manufacture an appellate issue, Mrs. Pope asserts that the circuit court issued an injunction against her through the administrative orders that were entered following the *Wilson v. Dallas* decision. (The administrative orders are the subject of a separate appeal: Appellate Case No. 2013-001649.) Mrs. Pope writes that the Appointment Order "continue[s] an injunction in place since June 13, 2013 [the administrative orders] against most supporters of the two valid estate plans of James Brown." (Memorandum, p.9).

The administrative orders are not before the Court in this appeal. Nevertheless, it is critical to clarify that those orders do not contain injunctions; the orders effectuate the Supreme Court's decision, which among other things, mandated that Mrs. Pope cannot be involved in future James Brown Estate and Trust proceedings. Moreover, the administrative orders do not prevent "supporters of the two valid estate plans of James Brown" from defending the Estate and Trust. As discussed above, both Messrs. Bauknight and Sojourner are actively defending James Brown's estate plan. Mrs. Pope's "writings" to the contrary are incorrect.

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B. Mrs. Pope does not have Standing

It is important to clearly frame the issue presented. Mrs. Pope does not represent *any* of James Brown's heirs. She represents *herself* and she has no cognizable legal interest in who serves as the interim Personal Representative and Trustee. Moreover, the Supreme Court has held that Mrs. Pope can no longer have any involvement with the Estate and Trust. Once the Supreme Court sent the remittitur to the Aiken County Clerk of Court, Mrs. Pope was legally precluded from further involvement with the James Brown Estate and Trust (save her claim for a portion of the \$5 million creditor claim). Accordingly, the Supreme Court's decision forecloses this appeal.

"An appeal filed by one who has ceased to be a party to a suit is a mere nullity." *Nance v. Nationwide Ins. Co.*, 273 S.C. 617, 619, 258 S.E.2d 105, 1065 (1979). "A party cannot appeal from a decision which does not affect his or her interest" *Beaufort Realty Co., Inc. v. Beaufort County*, 346 S.C. 298, 301, 551 S.E.2d 588, 589-90 (Ct. App. 2002); *see also* Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may appeal."). Mrs. Pope's appeal must be dismissed.

C. The Appointment Order is Not Appealable

The Appointment Order is temporary. The order is set to expire at the conclusion of the Will and Trust challenges. Once the challenges are concluded, the Court will enter a final order appointing permanent trustees. Accordingly, the order is not appealable.

"The right of appeal arises from and is controlled by statutory law." *EnerSys Del., Inc. v. Hopkins*, 401 S.C. 615, 616, 738 S.E.2d 478, 479 (2013). "Generally, a party may only appeal from a final judgment and piecemeal appeals should be avoided because most errors can be corrected through a new trial." *Id.* at 617, 738 S.E.2d at 479. Because the subject order is temporary, it is not appealable.

If an "order . . . fall[s] within one of the enumerated subsections," *Id.* at 617, 738 S.E.2d at 479, of Section 14-3-330, however, it may be appealable. As it relates to the subject appeal, the enumerated exceptions relate to the following types of orders: (1) that pass upon the "merits"; (2) that are made in a "special proceeding";

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(3) that relate to an "injunction" or the "appointment of a receiver"; and (4) that affect a "substantial right" that "determines the action and prevents a judgment from which an appeal might be taken." *Id.*; see also S.C. Code Ann. § 14-3-330. None of these exceptions apply here. The subject order does not pass upon the merits of any litigation involving Mrs. Pope; the subject order does not follow from a special proceeding; the subject order does not relate to an injunction or the appointment of a receiver; and the subject order does not affect a substantial right of Mrs. Pope.

III. Conclusion

In what can only be described as a complete disregard for the rule of law, Mrs. Pope continues to meddle in the affairs of the James Brown Estate and Trust. Her selfish desire to re-write history is needlessly costing the Estate and Trust monies that have been directed for charitable purposes. Mrs. Pope continues to initiate wasteful appeals, and in doing so, the Estate and Trust is forced to incur fees and costs. Her conduct is creating waste, and the Estate and Trust respectfully requests that this Court put an end to it. For the reasons outlined above, respectfully, the Court should dismiss this appeal.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. David Black", followed by a horizontal line.

J. David Black

JDB/gb

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

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

The Honorable Doyet A. Early, III Circuit Court Judge

**Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No. 2013-002582**

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.....Appellant,

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

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

IN RE:

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

REPLY TO RETURN OF DAVID C. SOJOURNER, JR.

Appellant responds to the Letter/Return of David C. Sojourner, Jr. ("Sojourner") dated January 28, 2014, received January 29, 2014, to her Memorandum Related to Appealability.

Appellant respectfully adopts both her original Memorandum and her response to the Letter/Return of Russell L. Bauknight, and supplements them with the following facts related to this extraordinary appeal and the appeal of the June 13, 2013 Orders of The Honorable Doyet A. Early, III, and the Honorable Liz Godard purporting to enjoin Appellant and others from participating in any James Brown cases. This continuing injunction and the appealed orders continue a plan endorsed by the State to punish; refuse pay to; and ruin the careers of Appellant and Robert Buchanan, Jr. Their offense: daring to challenge the authority of the Attorney General (the "State/AG") to take over James Brown's private property and "I Feel Good" Foundation and to challenge the Order of the Honorable Doyet A. Early, III approving the takeover.

Mr. Sojourner asks this Court to dismiss Appellant's appeal with actual knowledge that the appealed orders purport to prevent Appellant and Mr. Buchanan from protecting themselves and their property interests – as they did for the Estate/2000 Trust until May 8, 2013 – in the suit filed January 2, 2008 by Brown's grandson Forlando, 3:08-cv-00014-WOB-SGW (the "Forlando Federal Suit") and other suits.

The orders, with findings wholly unsupported by any record and devoid of any examination of the appointees, tout the propriety of Mr. Bauknight's service, and even the service of Mr. Bauknight 15 main attorneys and members of the firm of Kenneth Wingate, Esq. ("Wingate") he has engaged. The orders and lack of Due Process

ignore that all have been at the service of Tommie Rae Hynie, her son James B. and Terry/Forlando Brown since 2009. They ignore that Bauknight, like Ms. Hynie and Louis Levenson, Esq., is seeking to reinstate an unjust settlement which destroys the "I Feel Good" foundation; destroys the reputations and property rights of those who defended Brown's noble estate plan; and destroys the Federal Copyright Act rights of the half of Brown's real heirs who are not challenging the Estate Plan – the half with whom the Estate/"I Feel Good" Trust should be making Termination Rights agreements.

The orders also ignore the mandate of *Wilson v. Dallas*.

These orders materially damage Appellant's and Mr. Buchanan's property right to restore the reputations and careers they enjoyed on May 19, 2010. when Mr. Bauknight, claiming to speak on behalf of the the Attorney General of South Carolina ("State/AG") sued them. They damage Freedom of Information Act ("FOIA") rights in three suit where Mr. Bauknight, to benefit himself and Ms. Hynie, is seeking to intervene to prevent the release of public documents. They damage Appellant's and Mr. Buchanan's ability to protect themselves from false claims of of both Forlando Brown and the 2000 Trust, speaking through Mr. Bauknight, in the counterclaim trial related to his now-abandoned frivolous suit, expected to be tried in 2014.

Mr. Sojourner's Return is Not Timely

Mr. Sojourner's Return, without explanation, was filed nearly a month after the Memorandum Related to Appealability filed with this Court by Appellant at the direction of the Honorable Jenny Abbott Kitchings.

Unfortunately, it also comes after action and inaction of Mr. Sojourner, under the questionable claim of authority described below, appears to endorse the plan of Louis

Levenson, Esq., and Tommie Rae Hynie announced May 29, 2013 to *again* dismember The James Brown "I Feel Good" private foundation, taking \$50 million restored to needy and deserving students by the South Carolina Supreme Court on May 8, 2013 in the *Wilson v. Dallas* decision.

Mr. Sojourner's Claimed Standing

Mr. Sojourner claims standing under two orders:

a. An Order of the Honorable Doyet A. Early, III dated October 1, 2013, which is the subject of this appeal and names Mr. Sojourner limited special trustee. The Order was issued based on:

1. Mr. Sojourner's Petition, which had no summons itself, but was attached to a petition containing a summons directed to "All Necessary Parties," but which was not served on anyone.
2. The Petition was not served on Appellant who has standing on multiple grounds.
3. Nor was it served on acknowledged heirs La Rhonda Pettit, Nicole Parris or Jeanette Mitchell, or beneficiaries Forlando, Daryl, Jason Lewis, Janise, Lindsey, or Romunzo, as required by the SCPC, among others ;
4. Nor was it served on two claimed heirs awaiting DNA testing under the Estate's Official Peeples DNA protocol, one (Michael) incarcerated in California and awaiting testing since 2007.
5. Nor was it served on creditors, including Appellant, and/or others who had made a Demand for Notice, as required by the SCPC.
6. The appointment was then made after a hearing which violated even the most minimal Due Process standards, including that Appellant and others were enjoined from participating and even those who found out about the hearing with no service or proper notice were not allowed to question either Mr. Sojourner or Mr. Bauknight.
7. At the time of the hearing Mr. Bauknight had not accounted for 18 months and concealed from the Court critical, material

facts not revealed at the "hearing" including :

- a. He was – and is – suing Appellant as PR/Trustee, as agent for Tommie Rae Hynie and as claimed agent for the Attorney General of South Carolina in Richland County Case 2010-CP-40-4900 (the "Wingate Suit").
- b. He was – and is – interfering as PR/Trustee and as agent for Hynie in three separate suits under the S.C. Freedom of Information Act ("FOIA"), to prevent disclosure of public documents, including those which will help demonstrate she was not Brown's spouse and knew it.
- c. He secretly paid \$563,000 – in addition to a 40% contingency – to the firm of attorney Kenneth B. Wingate, Esq. in 2012 to continue the Wingate Suit, even though Wingate had made no recovery from anyone.
- d. Wingate/Bauknight settled the Wingate Suit with Robert Buchanan, Jr. with a payment from the Estate of \$500,000 to Mr. Buchanan to secure release from Buchanan's counterclaims against Hynie, Bauknight and the Legacy Trust, improperly using Estate funds for these non-beneficiaries.
- e. Wingate had no authority to name the State/AG as a Plaintiff in the Wingate Suit or to claim that he was the attorney for the State/AG, and Bauknight had no authority to claim in the Wingate Suit that he was acting "on behalf of" the State/AG.
- f. Neither Wingate nor Bauknight advised AG Wilson of the \$563,000 payment to Wingate.

8. Mr. Bauknight claims that the \$563,000 he paid Wingate's firm is not subject to review under the *Wilson v. Dallas* remand.

- b. An *ex parte* Order of the Honorable Sue Roe, Probate Judge purporting to appoint Mr. Sojourner limited special administrator which was issued without a summons, without service on anyone, without notice, and without a hearing.

The extraordinary *ex parte* order was then delivered to Mr. Bauknight's lawyer to be served on all Interested Parties, but was not served on anyone. The *ex parte* Probate Court Order was discovered by Appellant – an Interested Person – in a review of the public records.

There is a substantial question whether the Probate Court and Judge Early lacked jurisdiction to issue the above appointments since SCPC §62-1-302 (a) limits the jurisdiction of the probate court to "the full extent of the Constitution.

Mr. Sojourner may have standing in the appeal to assert that his own appointments are constitutional and proper. His right to challenge the standing of another – especially one who has faithfully protected the Estate/"I Feel Good" Trust for seven years – is questionable.

Appellant's and Mr. Buchanan's Property Rights in the Wingate Suit

The Estate/2000 Trust is suing Appellant and Mr. Buchanan for tens of millions of dollars for, among other allegations, conducting the *Wilson v. Dallas* appeal. The Attorney General is a named Plaintiff in the Wingate Suit. As shown on Exhibit A, an assistant to AG McMaster, Havird Jones, Esq. attended hearings as a client, and allowed Mr. Wingate to introduce him as a client.

In the pleadings, in addition to representing the Estate/2000 Trust, Mr. Bauknight is pursuing the Wingate Suit as agent for Terry Brown, Tommie Rae Hynie, her son James B. He also claims in the Complaint to be speaking "on behalf of Henry McMaster as Attorney General of South Carolina."

As shown on Exhibit A, Mr. Wingate claimed for three years to be the sole law firm representing the State/AG and a dozen private clients, most non-residents of South Carolina.

The claims of Mr. Wingate and Mr. Bauknight they they were suing, and settling with Mr. Buchanan, in the name and on behalf of the State/AG began to unravel with AG Wilson's Petition for Rehearing in *Wilson v. Dallas* filed in March 2013. AG Wilson

asserted his predecessor AG did not want to bring the suit. He said the suit was authorized *for the Estate/2000 Trust*. He said:.

In this instance, the [AG] was particularly hesitant to sue because Appellants Pope and Buchanan enjoy a superb reputation throughout the legal community. Appellant Buchanan serves as a part-time federal magistrate judge and is a long time member of the South Carolina Bar. ... Appellant Pope has, for more than thirty years in South Carolina, been an outstanding attorney in the field of trust and estate matters. She is considered by the legal community to be an exceptional attorney. [p.25]

By December 2013 it was known that neither Mr. Bauknight nor Wingate was ever properly authorized to sue or settle with Mr. Buchanan in the name of the State/AG. Yet \$500,000 was paid from the Estate to buy releases from Mr. Buchanan for Tommie Rae Hynie, Terry Brown and Mr. Bauknight himself. And Mr. Bauknight secretly paid \$563,000 to Wingate in addition to the 40% contingency.

In both the June 13, 2013 orders, issued without notice or hearing, and the October 1 order, there is no exploration of these material issues.

Mr. Sojourner Reliance on the Agent and Co-Plaintiff of Hynie and James B.

On May 29, 2013 Tommie Rae Hynie and attorney Louis Levenson, Esq., asked Judge Early to go in chambers and hear why he should put in place *again* the 2008 settlement which dismembered The James Brown "I Feel Good" Trust as established in two successive Estate Plans of James Brown executed in 1999 and 2000.

The settlement was justified to the Court by a false "stipulation" that Tommie Rae Hynie was Brown's spouse; a "stipulation" that her son, who refuses testing under the Estate's official Peebles DNA Protocol, was Brown's son; and a false claim that Hynie

and her son control the Termination Rights under the Federal Copyright Act related to Brown's 800+ songs, about half the value of his music empire.

The claim has been generally known to be false since at least 2011. The Estate/"I Feel Good" Trust can secure it royalties to the 800+ songs for decades through Termination Rights agreements for a fraction of the nearly 25% of the "I Feel Good" Trust the 2008 settlement proposed to transfer to Tommie Rae.

The process is straightforward. The Estate/2000 Trust completes the Peeples DNA Protocol begun in 2007 for non presumed heirs. Then the Estate/2000 Trust makes modest but fair Termination Rights agreements with the necessary half of Brown's *real* heirs who are not challenging the Estate Plan.

Mr. Sojourner asserts that it is his duty to defend the Trust against the Will and Trust Challenges until they are resolved." The challenge of Louis Levenson, Esquire filed December 26, 2007 seeks an "administration in intestacy" (the "Levenson Suit"),

The proper heirs determination of heirs is critical to protecting the royalties under the Copyright Act. It would also be used to dilute the amount James B. would try to take from the "I Feel Good" Trust IF he passed the DNA test; and IF the Court did not find that he was intentionally excluded by the Will.

By Order of the Honorable Doyet A. Early, III dated March 8, 2008, the determination of heirs was approved even though the Estate/2000 Trust has two valid Wills. The Estate/2000 Trust consented to this Order so that it could protect the royalties with a correct heirs determination.

For Mr. Sojourner to be adopting the position taken by Mr. Bauknight is troublesome because:

- a. Mr. Bauknight currently serves as both agent for and Co-Plaintiff with Tommie Rae Hynie and James B. in 4 separate lawsuits.
- b. In one of the suits, Richland County Case 2010-CP-40-4900 (The "Wingate Suit") a primary issue is that Robert Buchanan, Jr. and Appellant owed Ms. Hynie no duty because she was not Brown's spouse, and Mr. Bauknight has been attempting for nearly a year, since the first *Wilson v. Dallas* decision, to prevent Ms. Hynie's deposition or summary judgment that she is not Brown's spouse.
- c. In the same suit, Mr. Bauknight serves as agent for Ms. Hynie's son, a minor with no GAL, and claims he is a son even though he is not presumed to be Brown's child; has refused the Peeples DNA Protocol; and is the only claimed child born during the 22 years between Brown's vasectomy and his death.
- d. Mr. Bauknight has bitterly fought – and continues to right – to keep 6-year old Gag Orders in place to prevent discussion of Ms. Hynie's handwritten notes which will do irreparable harm to her claims.
- e. Mr. Bauknight, as agent for both Ms. Hynie and James B., neither of whom is a resident of South Carolina, is trying to intervene in three S. C. Freedom of Information Act ("FOIA") Suits to prevent release of public documents which will damage Ms. Hynie's claims.

Appellant's Standing as an Interested Person

While the Memorandum sets out Appellant's standing on multiple grounds, her interest as an Interested Person under § 62-1-302 because she is a creditor is clear. It rests on the following:

- a. Appellant has not been fully paid for her 2007 SA service, even though it was an allowed claim; approved by the Court; and ordered to be paid, with interest at the legal rate on all unpaid amounts, by Order of Judge Early dated January 8, 2008 [the "Jan. 8 Order"].
- b. Appellant has not received a penny of PR/Trustee commissions for her service, even though \$1.4 million with interest was allowed and approved in the Jan. 8 Order.
- c. Appellant and Mr. Buchanan were sued by the Estate/2000 Trust on May 19, 2010 for, among other claims, not accepting a \$100 million offer

to purchase Brown's music empire and conducting the *Wilson v. Dallas* appeal. They counterclaimed for damages and offset; Wingate failed to timely respond; and all Plaintiffs are now seeking relief from default. Material issues in that case include:

1. Is it correct Buchanan/Appellant owed no duty to Ms. Hynie because she was neither a spouse nor beneficiary?
 2. Is it correct that Buchanan/Appellant properly served the Estate/2000 Trust and conducted the *Wilson v. Dallas* appeal?
 3. Is it correct that Mr. Bauknight, Ms. Hynie and Terry Brown made false representations to the court about the value of Brown's assets; the heirs of James Brown; and their rights under the federal copyright act?
 4. Has Mr. Bauknight breached his duty of loyalty to the Estate/"I Feel Good" Trust by his relationship with and service to Ms. Hynie and her son.?
- d. The Estate/2000 Trust as well as Mr. Bauknight as agent for Ms. Hynie and James B., have moved to intervene in two FOIA Suits to prevent Appellant from obtaining public documents, including the recently-released Wingate 40% contract.

As an Interested Person under the SCPC, and as a creditor with a right to propose the 1999 backup Will for probate, Appellant has a right to participate in all actions which affect her property interest .

Mr. Bauknight, claiming to speak on behalf of the S.C. Attorney General, has for three years accused Mr. Buchanan and Appellant of the federal felony of overstating Brown's music empire by \$79 million to the IRS for the purpose of obtaining a \$5 million commission. He has told the Supreme Court that there were no offers to buy Brown's music empire. At the same time he sued Mr. Buchanan and Appellant for not accepting a \$100 million offer. As Exhibit A shows, on August 30, 2010 Mr. Bauknight's counsel told the Richland County Court:

MR. KENDALL: Your Honor, the – they talk about a failure to – our allegation of their failure to accept a hundred million dollar offer. They may have lots of good reasons that they want to put to the Court for not having accepted that. We have lots of good reasons we're going to argue, but that's a fact question.

The Orders affect the lawsuits and the false felony claim. They damage Appellant's property interest in being able to practice her profession and be properly paid for her PR/Trustee service.

The June 13 Orders and the October 1 appointment Order which is the subject of this appeal, without proper notice or hearing – and after enjoining Appellant from participating – make wholly unsupported claims that Bauknight and his counsel have performed properly. This directly, and adversely, affects Appellant's ability to protect herself. She is aggrieved by such orders. She is particularly aggrieved when the false claims have been made by Bauknight under color of State authority. They deny her property right. They threaten her ability to be able to practice law.

Appellant's and Mr. Buchanan's Property Rights in the Forlando Suit

Forlando and father Terry ("Terry/Forlando") – for whom Mr. Bauknight serves as agent in four separate lawsuits – knew when James Brown died that his leaving his \$100 million music empire "I Feel Good" Trust and setting up \$285,000 education trusts for Forlando and six other grandchildren was exactly what James Brown wanted.

But two weeks after Brown's death Terry/Forlando contracted to pay Atlanta lawyer Louis Levenson 30% of what he could get them to dismantle the "I Feel Good" Trust. Terry/Forlando have since changed attorneys, but retained their plan.

Today Mr. Levenson wants to reinstate a settlement which will give him \$9 million from the "I Feel Good" Trust; Tommie Rae wants \$11+ million; her attorneys

\$10+ million; and Forlando a right of first refusal to buy the music empire (the "ROFR").

The ROFR was given by the AG in 2009 to Terry. The AG's senior assistant oversaw a secret 2011 amendment to the Legacy Trust and Terry's secret transfer of the ROFR to Forlando. As a result of the Bauknight's FOIA interference, this transfer was concealed for two years from State and Federal Courts.

Forlando/Terry *today* want to acquire the music empire based on Terry's and Bauknight's claimed less-than \$4.7 million at-death value. Forlando, however, has confirmed under oath that the less-than \$4.7 million was "bogus," and that \$150 million offers were available at the time of the 2008 settlement.

The June 13, 2013 order and the appointment orders were issued without a single question posed – or allowed to be posed – about these secret dealings. During the time, Forlando has been telling the Federal Court he was a peniless student, with no assets or expectation of assets from Brown's estate, and only wishing to carry out the noble estate plan of his famous grandfather.

The orders which enjoin any exploration of these secret transactions and make finding that Bauknight has no conflict and his attorneys have all acted properly, materially damage the "I Feel Good" Trust and the property rights of Appellant; all heirs who have been ignored; and all creditors who properly worked to uphold Brown's estate plan.

Mr. Sojourner's Failure to Seek to Set Aside the Hynie "Diary" Gag Orders

From early 2012 until today Mr. Bauknight has declared that Ms. Hynie was Brown's spouse; that her elective share was a "slam dunk;" and that she should be

given nearly 25% of the assets Brown gave to needy students. He has fought bitterly to prevent ungagging more than a dozen of his own witnesses in the Wingate Suit, and Appellant and Mr. Buchanan, all of whom are familiar with Ms. Hynie's own widely-disseminated handwritten notes; have openly asserted that she is not Brown's spouse and knew it; but are now gagged by 2008 Gag Orders. The Gag Orders are clearly a First Amendment prior restraint on free speech.

Mr. Bauknight, through Wingate even sought to subpoena the notes of a journalist regarding an interview she had with a longtime friend of Brown about the so-called Hynie "Diary" contents. This was a direct violation of the Shield Law. Wingate withdrew the subpoena only after negative national attention was focused on the issue.

In his short tenure Mr. Bauknight has done nothing to undo the Gag Orders so that he, himself, can evaluation whether, as her attorney confirms, they will do irreparable harm to Ms. Hynie's claims against Brown's Estate. Nor has he asked to be heard on the Estate/2000 Trust's motions to Ms. Hynie's claims as both improper and filed in the wrong court.

Mr. Sojourner's Lack of Concern for Continuing FOIA Violations

In Footnote 29 of its first *Wilson v. Dallas* decision nearly a year ago, on February 27, 2013, the S.C. Supreme Court directed that FOIA matters be taken up and resolved in "the first instance." It expressed similar concerns about the Wingate Suit.

The Wingate Suit, based on rulings obtained by Wingate while purporting to speak for the State/AG, now has exclusive jurisdiction over certain critical matters. They include whether Buchanan and Appellant, or Bauknight, breached their fiduciary

duty. They also include whether Ms. Hynie was Brown's spouse and whether her child was his child. The Aiken Court, based on State action and that of the Estate/2000 Trust, must, under the SCPC, hold these issues in abeyance until concluded.

The Footnote 29 was removed from the final *Wilson v. Dallas* decision based on AG Wilson's assurance he was getting out of the Wingate Suit and that he expected the FOIA matters to be resolved in the near future.

Two days after the decision, Wingate and Mr. Bauknight told the Richland County Court that the Supreme Court no longer had an interest in seeing these matter concluded. They asked to delay until the conclusion of all Aiken County matters – possibly for years:

a. FOIA # 1 - Where Plaintiff has since August 3, 2011 been seeking the AG's copy of any amendments to the Legacy Trust/Settlement Entity which sued her in the Wingate Suit and the AG's copy of the less-than \$4.7 million Appraisal of Brown's music empire which was the basis of a false felony claim lodged against Buchanan and Pope by AG Wilson's office, the Estate, the 2000 Trust, and Bauknight, claiming to be agent for the AG and others.

[Bauknight, for the Estate/2000 Trust, Tommie Rae, James B. and others, had been attempting to intervene in FOIA # 1 since 2011, and is still attempting to intervene on their behalf to stop FOIA compliance.].

b. FOIA #2 - Where Plaintiff has been seeking since August 10, 2011 a copy of the public Wingate Litigation Retention Agreement by which private attorney Wingate sued Buchanan and Pope naming the State/AG as Plaintiff and Bauknight as agent for the State/AG.

[Bauknight, for the Estate/2000 Trust, Tommie Rae and others, had been trying to intervene in FOIA #2 to prevent release of the Wingate Agreement since 2011, and obtain sanctions against Plaintiff for exercising her FOIA rights.]

The June 13 orders, October 1 Order and ex parte Sojourner SA order were

all issued in a manner which purports to prevent Appellant and others from exercising FOIA rights; Due Process rights; First Amendment rights; and all related property rights.

Had Mr. Sojourner's and Mr. Bauknight's appointments not been *ex parte* and without Due Process or in compliance with the SCPC, these issues could have been explored. These are important issues of Constitutional rights and public policy.

Mr. Sojourner's Lack of Authority to Protect the "I Feel Good" Trust.

Mr. Sojourner's appears to lack concern for assuring that he has proper authority to try to protect the noble estate plan and vigorously defend it, as required by James Brown in two successive, carefully planned Estate Plans executed over two years. This suggests that he is not familiar with Mr. Brown's own voice tape made nearly 15 years ago on February 24, 1999 expressing the importance of the gift of his music empire for needy students of all races.

In that voice tape Mr. Brown asks that many duplicates be made; and that his own voice, free of any "hanky panky," be used to confirm his intention to give back and "stabilize what we are trying to do today." Mr. Brown attributes his success "despite all obstacles" to God. He confirms his intention to help poor students of all races – not just black students. Of directing funds to one race, he says "we've had enough of that in America already."

After making the February 24, 1999 tape Mr. Brown delayed signing to be sure he understood the documents. He signed the first Will creating the "I Feel Good" Trust on June 15, 1999 – 4 days after completing a \$26 million transaction in New York. He made the "I Feel Good" Trust's creation irrevocable, and funded his irrevocable trust a year later, on August 1, 2000. Two of his children and Ms. Hynie were there; witnessed

the documents; and Ms. Hynie and daughter Venisha witnessed a related Advisory Board document.

Mr. Sojourner's *ex parte* SA appointment, for which reconsideration is being sought in the Probate Court, and his ST appointment procured in violation of the Constitution, SCPC and *Wilson v. Dallas* remand, cast a permanent shadow on his ability to protect the "I Feel Good" Trust even if he elects to do so.

Revelations Made During and Since the October 1 Orders

Because of Mr. Bauknight's 2 ½ year ongoing fight to prevent release of documents under FOIA, it was not known until October 2013 that AG McMaster amended the Legacy Trust in 2011; that Bauknight's lawyers prepared the amendment; and the AG's office oversaw the transfer of Terry's interest in the ROFR to Forlando.

For the same reasons, it was not fully understood until late 2013 that the State/AG never authorized Wingate to sue in the State's name; never authorized Bauknight to assert that he had authority to speak for the State; and never authorized or knew about the 2012 \$563,000 payment to Wingate.

In 2014 the Federal Court will decide in the Forlando Federal Suit whether Forlando's share of the 2000 Trust, and the share of the Estate he secretly acquired from Terry in 2011 should be charged with the legal costs of Forlando's now-dismissed frivolous complaint to enjoin the 2000 Trust from taking any action until Brown's original trustee David Cannon and his co-trustees were reinstated.

Mr. Bauknight, knowing the intent of Terry/Forlando to destroy the "I Feel Good" Trust and acquire the assets for themselves, now says that Forlando did nothing wrong. He says Buchanan's and Appellant's action in the Forlando Suit to prevent the

2000 Trust from being enjoined until a felon former trustee and co-trustees, the 3 seeking \$16 million in commissions and options or a "kickback" from an IPO to be formed, were reinstated was not necessary. Bauknight says of the protection of the Estate Plan in the *Wilson v. Dallas* appeal:

That's poppycock. Pure speculation from your client [Pope]. 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 . Supp.]

Mr. Bauknight made these intemperate remarks in August 2013. Since May 8, 2013, he and Mr. Sojourner have acquired six or more *ex parte* orders, or orders which violated Due Process, and which continue the State/AG's 2008 plan to trample on the "I Feel Good" Trust's right to contract the half of Brown's heirs not challenging the estate plan to protect its royalties; to confirm that Brown had no spouse; to make a proper heirs determination, with Peeples DNA Protocol testing and acknowledgment for non-presumed heirs who pass. The *ex parte* orders, and the injunction of June 13

Order which subsequent orders continue, also trample on the property rights of Mr. Buchanan and Appellant in four pending lawsuit in which Mr. Bauknight is protecting the interests of Tommie Rae, James B. and Terry/Forlando Brown.

Bauknight Appears to Speak for Sojourner

In her response to the Return of Mr. Bauknight, Appellant suggested that Mr. Bauknight might not speak for Mr. Sojourner. To the extent that Mr. Sojourner now allows Mr. Bauknight to speak for him, both Appellant and the "I Feel Good" Trust, along with the real heirs, need one or more *pro bono publico* "others" to help enforce the "I Feel Good" Trust.

Mr. Sojourner has recently taken the unprecedented step – to the detriment of the Estate/"I Feel Good" Trust – of trying to undo the acknowledged heir status of three of Brown's children – Nicole, La Rhonda and Jeanette. The three had undergone the Estate's official heirs-adjudication procedure and all been acknowledged by the Estate in 2007 before any heirs proceeding was commenced.

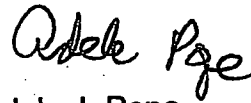
Mr. Sojourner has also done nothing to continue the Peebles DNA Protocol by making James B. take the DNA test paid for in 2008. James B is not a presumed heir, and is the only claimed child to be born after James Brown's vasectomy. At the same time, Mr. Sojourner is fighting a GAL and DNA testing for Brown's incarcerated son Michael.

These actions, the filing suggests, may have been intentional rather than inadvertent or from lack of knowledge.

Conclusion

The Orders which are the subject of this appeal continue, without Due Process, the injunction begun June 13, 2013. They threaten to dismember – again – what should be the State's largest-ever private foundation for scholarships for needy students. They are immediately appealable. This appeal deals with the continuation of an injunction. It involves important constitutional concepts and public policy. The appeal should proceed.

Respectfully submitted,



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S. C. Bar No. 4501

January 30, 2014

Exhibit A
[Emphasis Supplied]

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) 2010-CP-40-4900

Russell Bauknight, et al.,)

Plaintiffs,)

vs.)

TRANSCRIPT OF RECORD

Henry Dargan McMaster, et al.,)

Defendants.)

August 30, 2010
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

A P P E A R A N C E S:

KENNETH B. WINGATE, ESQUIRE

EVERETT A. KENDALL, II, ESQUIRE

Attorneys for Plaintiffs

DARYL L. WILLIAMS, ESQUIRE

J. CALHOUN WATSON, ESQUIRE

Attorneys for the Defendants

Crystal Holmes

2
1 MR. WINGATE: May it please the Court, Your
2 Honor. Ken Wingate along with my partner, Rhett
3 Kendall.

4 THE COURT: Yes, sir.

5 MR. WINGATE: And we are before you today in
6 connection with the Irrevocable Charitable Trust
7 established by the entertainer James Brown.

8 As Your Honor is aware from the pleadings,
9 our firm represents the 15 or so Plaintiffs listed on
10 the caption of the case which include globally all of
11 the beneficiaries of this Irrevocable Trust, both the
12 charitable and private individuals.

13 I would ask that Your Honor -- well, first,
14 let me introduce -- we're here representing, as you're
15 aware from the caption, an array of folks. I believe
16 Your Honor knows Sonny Jones ---
17

18 THE COURT: Yes.

19 MR. WINGATE: --- an attorney with the South
20 Carolina Attorney General's office, one of our
21 clients. Also we represent Russell Bauknight who is
22 very critically, Your Honor, the professional Trustee
23 of this Trust. I'll just come back and address that
24 in a moment. His counsel, Freddie Kingsmore is here
25 with us today. And then one of the family members,

1 didn't say ---

2 MR. KENDALL: --- run into the wall and we're
3 going to show that they did.

4 Your Honor ---

5 THE COURT: Burt Lancaster, thank you, very
6 much. Go ahead. Burt Lancaster.

7 MR. KENDALL: Your Honor, the -- they talk
8 about a failure to -- our allegations of their failure
9 to accept a hundred million dollar offer. They may
10 have lots of good reasons that they want to put to the
11 Court for not having accepted that. We have lots of
12 good reasons we're going to argue but that's a fact
13 question. That issue's never been disposed of, just
14 because we've heard about it before. The refusal to
15 sign a consent and similar things.

16 One of the things, Your Honor, that -- that
17 we need to -- I want to bring to the Court's attention
18 as I know you're going to have to consider this
19 carefully, is a lot of this has been addressed. In
20 fact, a lot of the challenges they've raised are
21 addressed, in fact in the Settlement Agreement and the
22 Order approving the Settlement Agreement. Not the
23 issues that we raised as allegations of negligence in
24 the breach of trust of fiduciary duty but rather the
25

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 18 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2007-CP-02-0122; Case No. 2008-CP-02-0872;
Case No. 2008-CP-02-0322; Case No. 2010-CP-02-0721;
Case No. 2012-CP-02-1059; Case No. 2008-CP-02-1426;
Case No. 2008-CP-02-1712; Case No. 2008-CP-02-2127;
Case No. 2008-CP-02-1556; Case No. 2008-CP-02-1557;
Case No. 2008-CP-02-1758; Case No. 2008-CP-02-1759;
Case No. 2008-CP-02-1647; Case No. 2013-CP-02-1348;
Case No. 2009-CP-02-1810;
Appellate Case No. 2013-002582

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.....Appellant,

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

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

IN RE:

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

PETITION FOR REHEARING

TO: THE HONORABLE CHIEF JUDGE AND AND ASSOCIATE JUDGES

Petitioner respectfully submits this Petition for Rehearing of the Order of the Honorable Paul E. Short, Jr. for the Court, dated January 30, 2014, a copy of which is attached hereto.

Petitioner asks the Court to alter, reconsider and vacate the said order so that this appeal may proceed as a part of, in tandem with or after, Appellate Case No. 2013-00169. Petitioner/Appellant respectfully submits that the Court overlooked or misapprehended the following:

1. The Court overlooked or misapprehended that the Orders which are the subject of this appeal are final orders, even though they bear the name "interim", because of their scope and the final and irreparable damage they cause to Appellant, The James Brown "I Feel Good" Foundation, a majority of the heirs of James Brown under State law and the Federal Copyright Act, and all creditors and others who seek to enforce the noble estate plan of James Brown.

2. The Court overlooked or misapprehended that Appellant has special interest standing to enforce the "I Feel Good" Foundation, which is aggrieved and irreparably damaged by the October 1, 2013 appointment Order which is the subject of this appeal.

3. The Court overlooked that the South Carolina Probate Code Provides that an action for the appointment of a personal representative is concluded with the appointment.

4. The Court overlooked or misapprehended that the only reason Petitioner was not a named party to the proceeding was that the Honorable Doyet A. Early,

III, and the Honorable Liz Godard, Clerk of Court, in violation of Appellant's Due Process and First Amendment Rights, and those of others seeking to enforce the "I Feel Good" Trust, issued three orders, without notice or hearing, on June 13, 2013 (The June 13 Orders") which:

- a. Purport to enjoin Petitioner and others from participating in James Brown Estate and Trust cases, even though Petitioner is a party to a pending suit brought against her by the Estate/Trust and two FOIA suits in which the Estate has sought to intervene.
- b. Direct the Clerk of Court to remove Petitioner's unheard motions from the public record;
- c. Direct the Clerk of Court not to accept Appellant's filings.

5. The Court overlooked or misapprehended that the unprecedented June 13 Orders are now the subject of an appeal in this Court as Appellate Case No. 2013-00169, and that the brief in the said appeal is expected to be filed within the next 30 - 60 days.

7. The Court overlooked or misapprehended that the October 1 appointment Order continues the injunction of Appellant as a creditor; as the proposed guardian ad litem ("GAL") for James Brown's incarcerated son Michael Deon Brown; and as an "Other" under Section 62-7-405(a) of the South Carolina Trust Code with Special interest standing to enforce the "I Feel Good" Trust.

8. The Court overlooked or misapprehended that Appellant/Petitioner is aggrieved in all of said capacities by the October 1 Order because they affect her/their property rights, and her reputation and liberty; she was enjoined by the June 13 Order and by failure of service from participating; and she/they received no notice or right to be heard in the appointment as required by the Probate Code.

9. The Court overlooked or misapprehended that Russell L. Bauknight has made material misstatements to the Court, and secured his appointment by concealing for a period of nearly a year \$563,000 in payments to attorney Kenneth Wingate, Esq., from what he asserts was a \$5 million estate at the death of James Brown.

10. The Court overlooked or misapprehended that Petitioner has standing to proceed with this appeal as fully set out in the Memorandum of Appealability filed herein, of which she asks the Court to take judicial notice; and the Replies filed to letter returns of Mr. Bauknight and Mr. Sojourner to the Memorandum..

11. The Court overlooked or misapprehended that this appeal was filed as part of Appellate Case No. 2013-00169; is a continuation of an improper injunction; and should not be dismissed.

12. The Court overlooked or misapprehended that an order which by its terms continues until the conclusion of all litigation in the Estate of James Brown is not an interim order.

13. The Court overlooked or misapprehended that the appointments which are reflected in the October 1 Order were secured by a Petition which failed to name a single party, and that nobody was served with the Petition, violating Due Process and the Probate Code.

14. The Court overlooked or misapprehended that since the Attorney General has declined to help correct the serious threats to the "I Feel Good" Foundation by four years of State control; James Brown, its settlor, is deceased; and Bauknight is currently serving as agent for Tommie Rae Hynie and James B.

In four pending lawsuits, the "I Feel Good: Trust is aggrieved and Petitioner has special standing to enforce it under Section 62-7-405 of the South Carolina Trust Code.

15. The Court overlooked or misapprehended that Petitioner has not ceased to be a party to this or certain others of the more-than 15 James Brown cases, and that she had a right as an Interested Person and creditor to be a party to all which affect her property interest, as does this.

16. The Court overlooked or misapprehended that Bauknight has run roughshod over the rights of most heirs, devisees, and beneficiaries of the estate plan of James Brown – not serving any of them with the petition which resulted in the October 1 Order which is the subject of this appeal, and that those whose rights he violated included:

- a. DNA-proved and acknowledged children: La Rhonda (died Dec. 2013); Jeanette; Nicole;
- b. Child incarcerated and seeking DNA confirmation since 2007: Michael
- c. Daughter of first marriage: Lisa
- d. Claimed child seeking DNA testing: James Curtis.
- e. Adult Grandchildren beneficiaries of 2000 Trust: Forlando, Romunzo, Lindsey, Janise
- f. Appellant and other creditors who have made proper demand for notice as provided in the Probate Code.

17. The Court overlooked or misapprehended that in filings with this Court and in the Richland County Court Bauknight has, and still does, represent himself

to be acting "on behalf of" the Attorney General of South Carolina; that the Attorney General is a Constitutional Officer elected by the voters of South Carolina to a four year term. See S. C. Constitution art. VI, § and the Chief Legal Officer; and that Bauknight has not authority to act for the AG.

18. The Court overlooked or misapprehended that, while acting under color of State authority, and with the concurrence of the State/AG until 2013, Bauknight has accused Petition/Appellant and Robert Buchanan, Jr. of the federal felony of intentionally overstating the value of James Brown's worldwide music empire by \$79 million to the IRS on a sworn estate tax return for the improper purpose of obtaining a \$5 million commission.

19. The Court overlooked or misapprehended that Bauknight also engaged and authorized the law firm of Kenneth Wingate, Esq., to sue Petitioner/Appellant and Buchanan in the name of the Attorney General of South Carolina while both served as agents for Tommie Rae Hynie, and that such action was improper.

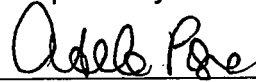
20. The Court overlooked or misapprehended that the very act of having to defend oneself against the State violates all notions of fair play and Due Process., and the the misuse of sovereign power is "not unlike hunting mice with an elephant gun." See *EEPC v. New Enterprise Stone & Lime Co.*, 74 F.R.D., 628, 632 (W.D. Pa. 1977).

21. The Court overlooked or misapprehended that Bauknight is currently seeking to intervene in three separate FOIA suits to assist Hynie in preventing the release of public documents, and that such action violates the rights of Appellant and other South Carolina citizens.

22. The Court overlooked or misapprehended that the claim to speak for the State while acting for Hynie was improper and material.

23. The Court overlooked or misapprehended that multiple and continuing orders of the Honorable Doyet A. Early, III and the Probate Court after the June 13 Orders, which are *ex parte* orders and/or obtained without service, notice or hearing, exacerbate the damage of the June 13 Orders and injunction.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
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Email: adele@popelawfirm.com

Attorney for Appellants

February 12, 2014

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

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

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court**

RECEIVED

FEB 18 2014

Appellate Case No. 2013-02582

SC Court of Appeals

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

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

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

AND:

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

IN RE:

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

**MOTION AND MEMORANDUM IN SUPPORT OF HOLDING
IN ABEYANCE**

TO THE HONORABLE CHIEF JUDGE AND ASSOCIATE JUDGES:

Appellants/Petitioners respectfully move this Court for an Order holding this matter, including consideration of Appellants' Motion for Rehearing of the Dismissal Order of the Honorable Paul E. Short, Jr., in abeyance until the following occurs:

1. This Court has ruled on the appeal from Aiken County Case No. 2013-CP-02-1337 ("Case 1337"), the initial brief of which was mailed for filing on February 11, 2014;
2. This Court has ruled on the appeal in Appellate Case No. 2013-00169, the initial brief of which is expected to be filed within sixty-days, if not earlier.

The ground of this motion are that Pope is currently seeking to protect her own rights under the Due Process and First Amendment Clauses of the United States and South Carolina Constitutions, as well as those of James Brown's incarcerated son Michael Deon Brown, and The James Brown "I Feel Good" Trust.

Pope, Robert Buchanan, Jr. and their small group of attorneys were the only persons protecting the "I Feel Good" Trust from August 10, 2008 until May 8, 2013, when the final decision was reached in *Wilson v. Dallas*, 743 S.E.2d 746 (2013). That decision overturned a plan to put Brown's private property under State control and give away more than half of the \$100 million fortune Brown gave to his "I Feel Good" Foundation for needy students in two successive estate plans.

Pope and Mr. Buchanan's constitutional and public interest standing, including statutory standing as "others" under Section 62-7-405 of the South Carolina Trust Code ("SCTC") to protect the "I Feel Good" Trust, was not reached in the *Wilson v. Dallas* decision because the Court found they had standing to appeal on other grounds. Footnote 5 of that decision said:

We need not reach Appellants' alternative arguments that they have constitutional standing or standing under the public importance exception.

Constitutional and public importance standing, including Pope's right to speak as an "Other" under SCTC Section 62-7-405, are at play in all three now-pending appeals because:

1. The "I Feel Good Trust" and Brown's real heirs are under direct threat, and the Court has enjoined Appellant from protecting an incarcerated son supported by Brown during minority in a pending Intestacy proceeding, refusing to grant her GAL Petition or conduct a hearing. He has done so despite the prisoner's call to Appellant to thank her for helping him.
2. The "I Feel Good" Trust is in jeopardy because Buchanan and Pope are enjoined from participating and neither Mr. Bauknight nor his appointee is protecting the 1999 Will, which makes Brown's estate plan ironclad. It is under threat of becoming void under the 10-year rule of the Probate Code if Mr. Bauknight serves or the injunction against Pope continues.
3. Pope is one of few experts in the State who can explain how the now-void 2008 Settlement proposed to take \$50 million from the "I Feel Good" Trust to "buy" Copyright Act termination rights it could have secured from the half of Brown's children intentionally excluded from the settlement for about \$100,000 (or less) a year.
4. Pope understands how damaging it was to the "I Feel Good" Trust's future -- and the scholarships it will provide under the IRS 5% Rule -- for Mr. Bauknight to have claimed it was less than \$1 million at Mr. Brown's death, rather than the correct approximately \$80 million.
5. The Attorney General has withdrawn from protection of the "I Feel Good" Trust in these important matters.
6. A second state takeover of Brown's private property and second dismembering of the "I Feel Good" Foundation will threaten private philanthropy in South Carolina for decades. And our State needs private philanthropy.

Appellant and Mr. Buchanan have a property interest in seeing that Mr. Bauknight not serve in any fiduciary capacity with respect to the Estate of James Brown and the "I Feel Good" Trust because:

1. He has falsely accused them of the federal felony of intentionally overstating James Brown's assets to the IRS by \$79 million for the improper purpose of obtaining a \$5 million commission.
2. As is demonstrated by the *Wilson v. Dallas* decision, the false felony claim met its mark, in part, and resulted in Petitioner and Mr. Buchanan being replaced as PR/Trustees under Brown's will and 2000 Trust.
3. At the same time Mr. Bauknight told the Supreme Court that Brown's worldwide music empire was worth \$4.7 million and that there had been no offers to buy the music empire, Mr. Bauknight was suing Mr. Buchanan and Appellant for tens of millions of dollars in Richland County Case 2010-CP-40-4900 (the "Wingate Suit") for not accepting a \$100 million offer for the music empire.
4. Mr. Bauknight's false felony claim threatens both the careers and the liberty of Appellant and Mr. Buchanan.
5. Each day, more is being revealed about the impropriety of Mr. Bauknight, the Wingate Firm and others in the Wingate Suit, including that most of the 15 Plaintiffs never signed the 40% contingency Litigation Retention Agreement.
6. Recently, it was discovered that Mr. Bauknight secretly paid the Wingate Firm \$563,000 in 2012, in addition to the 40% contingency; that AG Wilson was not told of the \$563,000 payment; and that it was concealed by Mr. Bauknight until October 2013.
7. Mr. Bauknight made this payment even though Mr. Wingate was in default as to the counterclaims; had not recovered a dime; and Mr. Bauknight had paid Mr. Buchanan \$500,000 from the Estate to have Tommie Rae Hynie and others released from Mr. Buchanan's counterclaims.
8. Much of what is coming to light is from public documents which Mr. Bauknight has tried to prevent from being released by both the Attorney General and the "Legacy Trust" created by former AG McMaster to hold the private assets of James Brown in the

now-declared-void settlement.

9. When the appointment Order which is the subject of this appeal was issued, there was no hearing as defined in the Probate Code.

10. Mr. Bauknight was allowed to make statements with no right of any party – even those not enjoined from attending – to cross examine him.

11. The Orders which are the subject of this appeal simply re-state the self-serving claims of Mr. Bauknight, and are contrary to the record.

12. For example, Mr. Bauknight praised himself – and the Court then praised Mr. Bauknight – for withholding \$1 Million from the \$285,000 education trusts of 7 of James Brown's grandchildren, although most of them are currently of school age and need their education funds now.

13. Mr. Buchanan and Appellant worked during their SA service and PR/Trustee service to be certain that the beneficiaries of these \$285,000 education funds not become victims of litigation.

Appellant, who has not been paid for her service from 2007 - 2009, even though a Court Order directs that it be paid, with legal interest since it became due, has served *pro bono publico* since May 8, 2013 to do several things:

1. To help see that the dismemberment of the "I Feel Good" Trust, which Appellant, Mr. Buchanan, *Pro bono publico* lead counsel James Richardson, Esq., Tressa Hayes, Esq., and James Bailey, Esq. put our Supreme Court in a position to stop, is not dishonored.

2. To protect the "I Feel Good" Trust from the announced intention of Tommie Rae Hynie and Louis Levenson, Esq. to allow the State/AG to again take over James Brown private property and "give" from his "I Feel Good" Foundation: \$11+ million to Ms. Hynie; \$10+ million to Ms. Hynie's attorneys; about \$9 million to Mr. Levenson; and an undisclosed amount to Mr. Bauknight and his 20 or more attorneys.

3. To see that Ms. Hayes and Mr. Bailey are paid for the fine service which helped save \$50 million the State proposed to take from the "I Feel Good" Trust, being about \$200,000

over a 4-year period for the two.

4. To restore my reputation and career, and that of Mr. Buchanan, both of which have been ravaged by the false accusations of Mr. Bauknight and Mr. Wingate – both of whom claimed to speak for the State of South Carolina with no authority to do so.

5. To obtain the public documents I have sought under FOIA and which Mr. Bauknight, to protect himself and Ms. Hynie, is trying to intervene in three separate FOIA cases to secrete.

6. To help make South Carolina a safer place for private philanthropy than it was for James Brown.

7. To help AG Wilson and the Court understand that they have been misled by Mr. Bauknight and Ms. Hynie about the Federal Copyright Act, and that the half of James Brown's children who openly support his estate plan are the ONLY people necessary to protect the "I Feel Good" Trust's Royalties to more than 800 James Brown songs for needy students for decades.

8. To use the expertise I have acquired in interaction between probate and copyright termination rights issues to help AG Wilson and the Court understand that what the now-void settlement proposed to "achieve" for the "I Feel Good" Trust at a cost of about \$50 million – more than \$20 million to lawyers – could have been achieved for about \$100,000 per year by giving a little dignity and appreciation to Brown's REAL heirs who were not challenging his noble estate plan, including:

1. Daughter from first Marriage: 1. Lisa

2. DNA-proved under Estate's Protocol and Acknowledged by Estate in 2007: 2. La Rhonda (died in December 2013); 3. Nicole; 4. Jeanette

3. Awaiting DNA testing since 2007: 5. Michael (incarcerated)

4. Awaiting DNA testing: 6. James Curtis

5. Have Repudiated the 2008 Agreement: 7. Daryl,
8. Terry.

Appellant respectfully requests that, as a result of the emerging constitutional issues related to Appellant, Brown's incarcerated son Michael, and the "I Feel Good" Foundation, including the failure of anyone other than Appellant to protect Brown's 1999 Will, which is in danger of the 10-year rule; the refusal of Judge Early to conduct a hearing on voiding 6-year-old Gag Orders; Mr. Bauknight's continued representation of Ms. Hynie and her son in the Wingate Suit; and Mr. Bauknight's continued interference with FOIA rights, with other important issues, this Court hold this matter in abeyance.

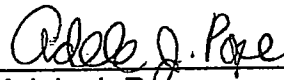
Judicial economy and the constitution will be served if this Court first addresses in Appellate Case No. 2013-00169 whether the following June 13, 2013 directives of Judge Early, issued without notice or hearing, can withstand constitutional scrutiny:

1. Remove Appellant's unheard motions from the public record;
2. Appellant has no standing to participate in cases related to the Estate of James Brown and the 2000 Trust (which sued her, and which case is pending);
3. The Clerk is directed not to accept future filing of Appellant.

These directives are the subject of a separate appeal. The injunction of the June 13 Orders which is the subject of that appeal is what prevented Appellant from participation in the Orders which are the subject of this appeal.

Holding this matter in abeyance until the above questions are decided will serve the Constitution and judicial economy.

Respectfully submitted,



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S.C. Bar No. 4501
Pro se

February 12, 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

FEB 18 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court

Appellate Case No. 2013-02582

Alan Wilson, in his Capacity as Attorney General of
South Carolina; and others Plaintiffs,
v.
Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

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

AND:

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

IN RE:

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

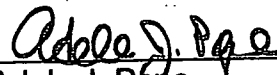
AFFIDAVIT IN SUPPORT OF ABEYANCE

PERSONALLY APPEARED BEFORE ME, Adele J. Pope, who being duly

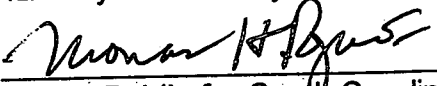
sworn, deposes and says:

1. I am the Appellant in the Motion for Abeyance.
2. The facts stated in the Motio/Memorandum are true to the best of my knowledge and belief.
3. I care about private philanthropy in our state and the "I Feel Good" Private Foundation.
4. My request to be GAL for Brown's imprisoned son is consistent with my concerns for the "I Feel Good" Trust.
5. It is my opinion to a reasonable degree of professional certainty that charities holding copyrights, to protect themselves under the Federal Copyright Act, should properly identify all heirs in the probate proceeding, then work at arm's length only with those who do not challenge the gift to the charity.
6. It is my opinion to that same degree State/AG's withdrawal, coupled with Mr. Bauknight's and his appointee's ignoring more than half of Brown's heirs while protecting Ms. Hynie's son threatens great damage to the "I Feel Good" Trust.
7. By virtue of my study and writings, I have expert knowledge in this area.
8. Ms Hynie's son is the only post-vasectomy claimed child of James Brown; was not born or any marriage; and has refused DNA testing for 7 years.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this
12th day of February, 2014

 (L.S.)
Notary Public for South Carolina
My Commission expires: 3-28-2022

RECEIVED
FEB 24 2014
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Lower Court Case Nos. 2008-CP-02-1647; 2009-CP-02-1810; 2007-ES-02-0056

Appellate Case No. 2013-002582

Ex parte: Adele Pope,..... Appellant,

In Re: The Estate of James Brown a/k/a James Joseph Brown,.....Respondent.

RETURN TO PETITION FOR REHEARING

I. Background of Appellant's Involvement in the Estate and Trust Litigation

A. Appellant's appointment and removal as a fiduciary.

The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court. The Appellant Adele Pope was initially appointed by the circuit court in March 2007 as Special Administrator with the limited duty to oversee the handling of Brown's Estate after petitions were filed by some of Brown's family members seeking the removal of the original personal representatives who Brown had named in his Will. *See Dallas v. Wilson*, 403 S.C. 411, 419, 743 S.E.2d 746, 751 (2013). In November of 2007, after the original fiduciaries either resigned or were removed for cause, Ms. Pope became the personal representative and trustee for

Brown's Estate and Trust.¹ *Id.* The South Carolina Attorney General intervened in the Estate and Trust litigation, and in August of 2008, Tommie Rae Hynie (who purports to be the surviving spouse of James Brown), Brown's children and grandchildren, and the Attorney General entered into a compromise agreement, which was submitted to the circuit court for its approval. *Id.* at 420, 743 S.E.2d at 751. Ms. Pope objected to the agreement, and in January of 2009, the circuit court appointed Russell L. Bauknight as Special Administrator and Special Trustee for the limited purpose of providing input and recommendations to the court regarding the compromise agreement. *Id.* The circuit court approved the agreement in May of 2009. Under the terms of the agreement, Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her. *Id.* at 420-22, 743 S.E.2d at 751-52. Ms. Pope appealed.

B. The South Carolina Supreme Court has affirmed Appellant's removal, finding her removal is in the best interest of the Estate.

On May 8, 2013, the Supreme Court issued an opinion reversing the circuit court's approval of the settlement, but affirming the removal of Ms. Pope as personal representative and trustee. Specifically, the Supreme Court rejected Ms. Pope's pleas to the contrary and found that the circuit court "did not violate the statutory provision regarding the removal of [Ms. Pope]" because "it was in the best interests of the estate." *Id.* at 448, 743 S.E.2d at 765. In so finding, the Supreme Court described the good cause for removal as follows:

Appellants [Ms. Pope and Mr. Buchanan] have sought \$5 million in fees for their services as fiduciaries for a relatively short interval of time. In addition, Appellants

¹ Robert Buchanan was appointed as Special Administrator and later as the personal representative and trustee along with Ms. Pope during this time frame. Since the Supreme Court issued its opinion in *Wilson v. Dallas* in May of 2013, Mr. Buchanan has had no involvement in the Estate of James Brown litigation other than seeking compensation for his previous service, and he has not joined Ms. Pope in her appeal.

sought and obtained permission from the circuit court to sell iconic assets from Brown's estate in order to raise funds, and a large portion of the amount raised went first to pay Appellants' own attorneys' fees. Appellants also unsuccessfully attempted to sell Brown's GRAMMY award at auction; the process was halted only because officials from the National Academy of Recording Arts and Sciences reclaimed the award after informing Appellants that it was a longstanding policy that the award could not be sold by recipients or anyone acting on their behalf. These actions and the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interests of the estate.

Id. at 448-49, 743 S.E.2d at 767.

In addition to affirming the removal of Ms. Pope for cause, the Supreme Court also found that Mr. Bauknight's appointment was void because it was made in conjunction with the now overturned compromise agreement. However, the Court explained that on remand, "[t]he circuit court may consider [after proper application] whether Bauknight should be appointed to fill a fiduciary position." *Id.* at 449, 743 S.E.2d at 767.

II. Order on Appeal and Dismissal

On remand, Judge Early has attempted to proceed with the Estate and Trust litigation, but his progress has been stifled by Ms. Pope's relentless insistence to remain involved despite her removal for cause and the Supreme Court's rejection of her appeal from that removal. Since the Supreme Court issued its opinion in *Wilson v. Dallas*, Judge Early reviewed numerous applications from individuals seeking to become fiduciaries for the Estate and Trust, and on October 1, 2013, he issued an order which (1) installed David C. Sojourner as the interim special administrator and special trustee of the James Brown Estate and Trust for the purpose of defending claims challenging the validity of the Will and Trust documents and (2) installed Russell L. Bauknight as the interim

personal representative and trustee of the James Brown Estate and Trust for all other purposes. Ms. Pope, who in May of 2009 was removed for cause as a fiduciary and whose removal was affirmed by the Supreme Court in May of 2013, has filed a Notice of Appeal from Judge Early's order appointing new fiduciaries on an interim basis.

Upon receiving Ms. Pope's Notice of Appeal, this Court asked the parties to file appealability memoranda. After reviewing those memoranda, The Honorable Paul E. Short dismissed the appeal for two independent reasons: (1) Ms. Pope was not an aggrieved party and therefore could not champion an appeal of the order, and (2) the underlying order appointing interim fiduciaries was temporary in nature and not immediately appealable. Ms. Pope has now filed a petition seeking a rehearing of that order, which Mr. Bauknight opposes.

III. Ms. Pope Has No Standing to Appeal

To have standing to appeal from an order, Ms. Pope must be "an aggrieved party." See S.C. Code Ann. § 18-1-30 (allowing aggrieved parties to appeal); Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, or sentence may appeal."). To be an aggrieved party, Ms. Pope must show the appealed order "operates on h[er] rights of property or bears directly upon [h]er interest, the word aggrieved referring to a substantial grievance, a denial of some personal or property right or the imposition on a party of a burden or obligation." *Bivens v. Knight*, 254 S.C. 10, 13, 173 S.E.2d 150, 152 (1970); see also *Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

This is an appeal from an interim order appointing fiduciaries. Ms. Pope was not appointed as a fiduciary, did not apply to become a fiduciary, and indeed *could* not apply to be a fiduciary because the circuit court and the Supreme Court have already determined that her continued participation is not in the best interests of the Estate. Accordingly, other than her claim against the Estate for unpaid fees, which is an entirely different case pending in the circuit court, Ms. Pope has no interest in the James Brown Estate and Trust litigation and cannot champion this appeal. *See Bivens*, 254 S.C. at 13, 173 S.E.2d at 152 (“The right of review is restricted to persons or parties aggrieved by the decision below. A party, therefore, cannot appeal from a decision which does not affect his interest, however erroneous and prejudicial it may be to the rights and interests of some other person.”).

In her petition for rehearing, Ms. Pope sets forth numerous arguments for why she has standing to appeal. None of them has any merit.

A. “Special interest standing” is applicable only when a taxpayer attempts to sue the State.

Ms. Pope claims to have “special interest standing” to enforce the Trust. The term “special interest standing” has only ever been used when a taxpayer attempts to sue the State and is required to show a “special interest” beyond the small interest of a general taxpayer. *See, e.g., Crews v. Beattie*, 197 S.C. 32, 49, 14 S.E.2d 351, 357-58 (1941) (“The general rule is that a taxpayer may not maintain a suit to enjoin the action of State officers when he has no special interest and his only standing is the exceedingly small interest of a general taxpayer.”); *Beaufort County v. Trask*, 349 S.C. 522, 529, 563 S.E.2d 660, 664 (Ct. App. 2002) (explaining the general rule of taxpayer standing requires a special interest). Furthermore, Ms. Pope never moved to intervene below as a party with “special interest standing” and cannot now attempt to appeal on that basis.

B. Ms. Pope is not the guardian of Michael Brown and did not file this appeal on behalf of Michael Brown.

In paragraph 6 of her petition for rehearing, Ms. Pope argues, in part, that she has standing "as the proposed guardian ad litem ('GAL') for James Brown's incarcerated son Michael Deon Brown." However, she has neither been appointed as his guardian, nor has she filed this appeal on Michael Brown's behalf or in her capacity as an attorney. Ms. Pope's notice of appeal was filed on her own behalf. She signed her name and purposefully referenced herself as "Appellant, *Pro Se*." She cannot now try to gain standing based on "guardian status."

C. Ms. Pope does not have standing under S.C. Code Ann. § 62-7-405.

Ms. Pope also claims to have standing as an "other" under S.C. Code Ann. § 62-7-405. Pursuant to subsection (c): "The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust." Although the term "others" is not defined by the statute, this Court need not determine the universe of individuals who might be included in that subgroup so long as it can determine that a former trustee, removed for good cause because (in the words of the Supreme Court) it would not be in the best interest for her to continue to serve as a fiduciary, is *not* an "other" who can enforce the trust.

D. The order on appeal does not affect Ms. Pope's property rights, reputation, or liberty.

In paragraph 8 of her petition, Ms. Pope argues that the order on appeal affects her "property rights, and her reputation and liberty." However, she fails to explain how this is so, and without guidance from her, it is not apparent how her property and liberty interests are affected by an order appointing interim fiduciaries to a position from which she has been removed and for which she did not apply.

E. Ms. Pope's pending claim to fees for her service as a fiduciary does not give her standing to be a party to this action.

Ms. Pope further argues that she is a party to this action because she is an "Interested Person and creditor." Ms. Pope's claim as a creditor, in which she is seeking her share of \$5 million in fees, remains pending in Aiken County under a separate lower court case number. Her creditor's claim is not affected by the interim appointment of fiduciaries and having a claim against the Estate does not give Ms. Pope standing to re-insert herself in the Estate and Trust Litigation, especially when the Supreme Court held that her continued service was not in the best interests of the estate. *Cf. Burns v. Gardner*, 328 S.C. 608, 617-18, 493 S.E.2d 356, 361 (Ct. App. 1997) (refusing to entertain the appellants' appeal from a sanctions order because the trial court imposed sanctions against the appellants' attorney, which did not prejudice the appellants' rights).

Ms. Pope, who was neither a party to the action below nor aggrieved by the order, may not champion this appeal. Accordingly, her petition for rehearing should be denied.

IV. The Interim Order Is Temporary in Nature and Not Immediately Appealable

In addition to finding Ms. Pope had no standing to appeal from Judge Early's interim order, this Court correctly found that the order was temporary in nature and not appealable. In her petition for rehearing, Ms. Pope argues the order on appeal is final (*see* ¶¶ 1, 3, 12) and that it continues an injunction (*see* ¶¶ 7,11). Neither of these arguments is correct.

According to our Supreme Court, an order is not final "[i]f there is some further act which must be done by the court prior to a determination of the rights of the parties." *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993). Here, the order on appeal appoints fiduciaries on a temporary basis and is set to expire at the conclusion of the Will and Trust challenges. The temporary

appointment of fiduciaries does not determine the rights of Ms. Pope, who never even applied to be a fiduciary.

Nor does the order appointing temporary fiduciaries continue an injunction, as Ms. Pope argues. It bears repeating that Ms. Pope did not apply to be a fiduciary, and this order did not enjoin her from becoming one. In an effort to manufacture an appellate issue, Ms. Pope refers back to orders issued by Judge Early on June 13, 2013. Those orders are subject to an entirely different appeal. Additionally, the June 13 orders do not contain injunctions either; they merely carry out the Supreme Court's mandate that Ms. Pope be removed as a fiduciary (the only role she played in the underlying litigation).

V. Conclusion

Ms. Pope had the opportunity to appeal from her removal as a fiduciary. She lost that appeal. Her role in this litigation is over. Mr. Bauknight urges this Court to deny the petition for rehearing and send a message to Ms. Pope that any future attempts to insert herself in this litigation will not be tolerated.

Respectfully submitted,



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February 24, 2014

Columbia, South Carolina

Attorneys for Russell L. Bauknight, the
Special Administrator of the Estate of
James Brown and the Special Trustee of
the James Brown August 1, 2000
Irrevocable Trust Agreement

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Lower Court Case Nos. 2008-CP-02-1647; 2009-CP-02-1810; 2007-ES-02-0056

Appellate Case No. 2013-002582

Ex parte: Adele Pope,..... Appellant,

In Re: The Estate of James Brown a/k/a James Joseph Brown,..... Respondent.

RETURN TO MOTION TO HOLD APPEAL IN ABEYANCE

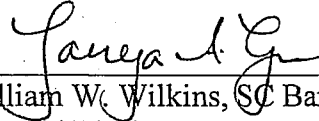
Appellant Adele Pope asks this Court to stay this appeal, and includes a request that the Court refrain from considering her petition for rehearing of the dismissal of this appeal, until the Court issues opinions in two other appeals: (1) appellate case number 2013-001649 in which initial briefs have not yet been filed; and (2) appellate case number 2014-000250, which Ms. Pope filed less than two weeks ago, on February 7, 2014. This Court dismissed Ms. Pope's appeal for two, independent reasons. First, it found she was not a party to the orders below. Second, it found the orders on appeal were temporary in nature and not immediately appealable. Unless the Court grants her petition for rehearing, which Ms. Pope asks that it not consider until months or possibly years from now, it cannot entertain her motion because she has no standing to file it.

Ms. Pope claims the stay she seeks is necessary to “protect her own rights under the Due Process and First Amendment Clauses of the United States and South Carolina Constitutions, as well as those of James Brown’s incarcerated son Michael Deon Brown, and The James Brown “I Feel Good” Trust. Importantly, Ms. Pope filed this appeal solely on her own behalf, and she signed the notice of appeal as well as this motion “*pro se*.” Thus, she cannot represent anyone’s interests but her own. Furthermore, she has been removed as the trustee of the “I Feel Good” Trust for cause, and that removal was affirmed by the Supreme Court. *Dallas v. Wilson*, 403 S.C. 411, 448-49, 743 S.E.2d 746, 767 (2013) (finding Ms. Pope’s continued service as a fiduciary was not in the best interests of the estate based on her sale of iconic assets to raise funds that first went to pay her own fees, her attempt to sell Brown’s GRAMMY award despite the longstanding policy that such an award cannot be sold, and the extreme discord between the parties). Finally, Ms. Pope’s only personal interest in the Estate litigation is her outstanding claim for fees, which has nothing to do with the orders on appeal and remains pending. Accordingly, this Court correctly dismissed the appeal, and in any event, the motion provides no compelling reason why the matter should be held in abeyance.

Motions like this one have made the orderly administration of the Estate of James Brown unnecessarily difficult and costly. Motions like this one are the reason the Supreme Court found that Ms. Pope’s continued involvement would not be in the Estate’s best interests. Motions like this one should be discouraged, and Ms. Pope should be warned that she risks being sanctioned if she continues to file motions like this one.

[Signature block on following page]

Respectfully submitted,



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Special Administrator of the Estate of
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the James Brown August 1, 2000
Irrevocable Trust Agreement

February 24, 2014

Columbia, South Carolina

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

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

The Honorable Doyet A. Early, III Circuit Court Judge

Appellate Case No.2013-002582

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.....Appellant,

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

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

IN RE:

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

REPLY TO RETURN TO PETITION FOR REHEARING

Appellant responds to the Return of Russell L. Bauknight to her Petition for
Rehearing. Petitioner craves reference to, and stands by, her Petition as filed. She
incorporates her Reply to Mr. Bauknight's Return to Motion to Hold in Abeyance

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SC Court of Appeals

filed herewith.¹ Finally, she asks the Court to reconsider and reverse its dismissal after holding this matter in abeyance for as little as three months, to consider:

1. The record in appellate case no. 2013-00169.²

2. The record in appellate case no. 2014-00250.³

She also makes the additional responses set out herein.

I. Responses to Mr. Bauknight's Statement of the Background.

A. General Response

Mr. Bauknight states:

The Estate of James Brown has been entangled in numerous appeals before this Court and the South Carolina Supreme Court.

A more complete statement of the Background is:

After being entangled in appeals by James Brown's original PR/Trustees David Cannon and Albert Dallas, the Estate of James Brown was set free from the State's proposed takeover of Brown's private property and his James Brown "I Feel Good" Private Foundation by the South Carolina Supreme Court on May 8, 2013 in

1

Without enumerating them in detail, Appellant asserts that the allegations and conclusions in the Return, in large measure, do not correctly reflect the record of the James Brown cases.

2

The Initial Brief of Appellant and designation of matter to be included in the record on appeal ("ROA") were filed February 21, 2014. Exhibit A contains a portion of the Initial Brief.

3

The Initial Brief of Appellant and designation of matter to be included in the ROA were filed February 11, 2014. Exhibit B contains a portion of the Initial Brief.

its decision of *Wilson v. Dallas*.⁴

The proposed takeover was brokered by a former Attorney General ("AG") on August 10, 2008. On January 30, 2009 Russell L. Bauknight asked the Court to approve the dismembering of Brown's estate plan. The circuit court did so on May 26, 2009.

In the AG's settlement, the State/AG, with no knowledge of its impact on the "I Feel Good" Foundation's 800+ copyrights to James Brown's songs, "stipulated" that Brown's companion Tommie Rae Hynie would be considered Brown's spouse for all purposes. Her son – not a presumed child -- would be "stipulated" to be a son without DNA testing.

The AG, Hynie and other "settling parties" contracted in the August 10 agreement to file a petition to replace PR/Trustees Robert Buchanan, Jr. and Adele Pope.

The AG's settlement came 11 days after AG McMaster had written Buchanan and Pope confirming his approval of them as permanent trustees of the "I Feel Good" Foundation. He had never challenged their status or actions as personal representatives.

The State/AG also agreed to join Hynie and the other "settling parties" to try to defeat the interests of half of Brown's known children and claimed children.

Five of Brown's then-known children were intentionally left out of the AG's agreement, even though they have rights equal to or greater under the Federal Copyright Act termination rights provisions than the settling parties.

⁴

403 S.C. 411, 743 S.E. 2d 746.

B. Specific Response – The Wingate Suit Appeal

The most compelling appeal, providing essential background, is from Richland County Case 2010-CP-40-4900 (the "Wingate Suit"). It came before this Court in 2011.

On May 9, 2010 the law firm of Kenneth Wingate, Esquire ("Wingate"), sued Robert Buchanan, Jr. and Appellant for tens of millions of dollars for the State/AG and almost fifteen plaintiffs. Plaintiffs included Bauknight as agent for Hynie and many nonresidents of South Carolina.

The Wingate Suit was filed by Wingate as sole counsel for all plaintiffs. The AG was not named as counsel, and did not sign the complaint or any subsequent filing.

The Wingate Suit seeks millions of dollars from Buchanan and Appellant for conducting the *Wilson v. Dallas* appeal and other claimed wrongdoing.

Wingate moved for relief from default as to Buchanan/Appellant's counterclaims for abuse of process and other counterclaims in 2010.

The Wingate Suit is the first known tort lawsuit by an AG against his own citizens in the State in which the AG is not listed as counsel on the complaint or subsequent pleadings and a private law firm is the sole attorney for both the State and a number of non-residents.

The Court of Appeals dismissed the appeal and an accompanying writ as premature.

The Wingate Case is still pending.

One year after the *Wilson v. Dallas* decision Bauknight continues to serve as agent in the Wingate Suit for Hynie, James B., and other non-devisee, non-beneficiary contestants of Brown's estate plan..

Buchanan and Appellant contend that it was not constitutionally permissible for Wingate to represent the State/AG, nor Bauknight to speak for the State/AG, while advancing the interests of Hynie and her son.

In his March 2013 Petition for Rehearing in *Wilson v. Dallas* AG Wilson advised the Supreme Court that AG McMaster had not authorized Wingate to bring the Wingate Suit with the State/AG as a plaintiff.

AG Wilson's statement was inconsistent with the actions of Sr. Assistant AG Havird "Sonny" Jones over the preceding three years. Jones attends most of the Wingate Suit hearings. At one of the first hearings he was introduced by Wingate as one of the firm's approximately fifteen clients.

From 2011 until 2013 Bauknight and Hynie conducted a bitter fight to prevent release of the public Wingate Litigation Agreement under FOIA.⁵ The Wingate Agreement would have clarified the question.

When released, it did⁶.

5

Bauknight, acting for Hynie, her son, Terry/Forlando Brown and others, is currently seeking to intervene and prevent FOIA compliance in three separate FOIA Suits filed during the pendency of the *Wilson v. Dallas* appeal.

6

The Wingate Agreement was released in late 2013 by a federal judge in case no 3:08-cv-00014-WOB (the "Forlando Federal Suit"). It is now known Wingate had no written authorization to sue in the State's name. Bauknight had no written authority to claim he was suing "on behalf of" the State/AG. Nor were any individual plaintiffs other than Bauknight parties to the 40% contingency fee. The Wingate Agreement was signed by Bauknight, who has about 20 attorneys, Levenson, Bell and counsel for Hynie. Hynie and these lawyers expected more than \$30 million

The Wingate Suit also alleged that Buchanan and Appellant had damaged the Plaintiffs by not accepting a 2007 \$100 million offer to buy Brown's music empire.

While suing Buchanan/Pope for not accepting a \$100 million offer, the State/AG, Bauknight and Hynie represented to the South Carolina Supreme Court that there were never any offers to buy the music empire. They also represented to the Supreme Court that the at-death value of Brown's music empire was under \$4.7 million.

They represented that Buchanan and Appellant had intentionally overstated the value of the music empire by \$79 million for the improper purpose of obtaining a \$5 million commission.

They concealed a 2006 appraisal of the Royalties by a professional appraiser and other documents which would show the allegations were false.

C. The August 10, 2008 Settlement

Mr. Bauknight states:

In August of 2008 ...Hynie (who purports to be the surviving spouse..), Brown's children and grandchildren and the Attorney General entered into a compromise agreement which was submitted to the circuit court for approval...Ms. Pope objected to the agreement.

A correct statement is:

In August of 2008 Hynie, who all of Brown's acknowledged children have now confirmed was not Brown's spouse, fewer than half of Brown's DNA-proven or presumed

from the AG's settlement.

children and one claimed-but-unconfirmed grandchild entered into a compromise agreement .

The AG and settling parties intentionally omitted, and agreed to try to defeat the interests of:

1. DNA-proven and acknowledged daughters: 1. La Rhonda;
2. Nicole; 3. Jeanette
2. Daughter from first marriage: 4. Lisa
3. Son (incarcerated in California) 5. Michael, awaiting testing under the Estate's official "Peoples DNA Protocol" since 2007.
4. Other "Doe Defendants" in the Levenson Intestacy Suit filed December 26, 2007. This included 6. James Curtis.

The AG's settlement disrupted the Estate/2000 Trust's DNA & DIGNITY program for identifying Brown's real heirs and making agreements with the most cooperative HALF – from those not challenging the estate plan – to protect the "I Feel Good" Trust's Royalties for decades⁷.

With proper completion of the Peoples DNA Protocol and agreements with ONLY those omitted from the AG's 2008 agreement, the Royalties could have been secured for decades,

By 2011 and 2012 Daryl and Terry had repudiated the AG's Agreement, asking publicly that the Will and 2000 Trust be enforced.

Every fiduciary who has served James Brown other than Bauknight opposed the AG's agreement.

7

If the Estate /"I Feel Good" Trust had not been immediately able to secure termination rights agreements with a cooperative HALF of Brown's real heirs, multiple strategies exist to otherwise protect the Royalties. See *Nine Ways to Avoid Copyright Terminations, Part I and PartII*; also see Smith, Pope, *Private Foundation, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* [unpublished draft, 2011]

D. Terms of the AG's Agreement

Mr. Bauknight states:

Under the terms of the agreement Ms. Pope was removed for good cause as the personal representative and trustee and Mr. Bauknight replaced her.

A correct statement is:

The State/AG, Tommie Rae and others agreed:

...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...[Agr., p. 2]

While they had already selected Bauknight before he gave his January 30, 2009 "independent" opinion that the AG's settlement should be approved by the Court, this part of the agreement was not disclosed. Bauknight testified he did not know who was going to be appointed the next PR/Trustee.

II. The South Carolina Supreme Court, without a complete record of the improper actions of Bauknight and Hynie which the AG condoned or overlooked, confirmed the replacement of Buchanan and Pope.

A. The Court's confirmation of replacement of Buchanan and Pope

For about \$200,000 in legal fees, and headed in the final 3 ½ years by *pro bono publico* lead counsel James Richardson, Esquire, the Supreme Court was given the opportunity to – and did – void the AG's settlement. The settlement had threatened to dismember not only the "I Feel Good" Trust but seven \$285,000 trusts for certain designated grandchildren.

Appellant's and Buchanan's counsel were not asked to protect them against

the mounting fabrications of Hynie and Bauknight in which two Attorneys General actively joined until March 2013.

There was no basis to give 52 ½ % of Brown's music empire to a non-wife and fewer than half of Brown's properly identified children. [Exhibit D] There was no basis to give a son ("Terry") a right of first refusal ("ROFR") to buy Brown's assets at "fair market value" and then participate in a devaluation to \$4.7 million which reduced the "I Feel Good" Trust to almost nothing.

The devaluation became more troublesome in January 2011 when Bauknight and a Sr. Assistant AG became involved in the secret transfer of the ROFR from Terry to his son Forlando. [See Exhibit E]

Now Forlando – who knew that \$84 million was a conservative value, and had testified that \$150 million offers were available in 2008 – was placed in a position to exercise a ROFR at less than 1/15 that amount.

Bauknight, the Sr. Assistant AG and Terry/Forlando fought FOIA and other requests to keep this secret transfer secret for two years.

From 2008 until 2013 the AG simply parroted Hynie's attorneys, even though they were directly adverse to the "I Feel Good" Trust.

Mr. Bauknight continues today as agent for Hynie and Terry/Forlando in four lawsuits. One is the Wingate Suit. He has not; cannot; and will not protect Brown's estate plan.

B. Bauknight and LSA/LST Appointment Not on Proper Application

All of Bauknight's appointments, and those of the LSA have either been ex

parte or in direct violation of the Due Process and Probate Code rights of Brown's heirs, devisees, beneficiaries and Interested Persons who have made demand for notice.

Brown's heirs, devisees, beneficiaries and Interested Persons were not served with the Summons and Petition which led to the orders which are the subject of this appeal. Appellant is one of those who had a right to be served. So are Michael, for whom she has a pending GAL petition, and claimed son James Curtis.

Appellant was enjoined from participating or naming proposed PR/Trustees.

The Advisory Board and the nomination of Ronald Stanley, Esq. and former Warner Music executive Ray Gonzales were ignored.

The "hearing" was a non-hearing. Not a single question was allowed to be asked of Bauknight or the LST.

During the process, Bauknight concealed \$563,000 he had paid Wingate in 2012 – in addition to the 40% contingency.

Even modest questioning would have revealed :

1. Bauknight's less than \$4.7 million "appraisal" is wholly inconsistent with the facts, and is directly contradicted by a \$42 million professional appraisal of the Royalties (without even considering the Publicity Rights) in 2006 in connection with a Royal Bank of Scotland transaction.
2. Hynie was not Brown's spouse and knew it. She, Brown and Dallas had a three-way conversation in 2006 in which it was confirmed that Hynie was a mere guest at his Beech Island mansion.
3. James B. is not Brown's son.
4. The \$84 million at-death value placed on the music empire by Buchanan and Pope on the Estate Tax Return is correct and conservative.
5. Had the assets been reported at their proper value, the AG's settlement

would have generated millions of dollars in taxes.

6. The estate tax proceeding needs further reporting and adjustment because:

A. Mr. Bauknight's claim on the Return that Hynie is Brown's surviving spouse will cause the Estate/"I Feel Good" problems in Copyright Termination Rights issues and otherwise unless Corrected.

B. Mr. Bauknight's claim on the estate tax return that less than \$3 million goes to the "I Feel Good" Trust – instead of the correct at-death approximately \$80 million – will distort the required payments to needy students under IRS guidelines.

7. Mr. Bauknight's claim to the Supreme Court that Hynie's elective share claim was a slam dunk was inaccurate, as was the claim that she and her son control the Copyright Act terminations.

8. The AG and Mr. Bauknight knew at least by the time of the Smith/Pope draft article, *Private Foundations* in 2011 that recognition, dignity and modest contracts with the HALF of Brown's *real* heirs not contesting Brown's estate plan was all that was necessary to protect the Royalties for decades.

9. The AG has either joined in or failed to correct misrepresentations about heirs, offers and value made by Bauknight and others.

10. The AG has allowed the fabricated Wingate Suit to continue for three years, and consolidated a Newberry FOIA Suit with it.

11. Mr. Bauknight touted a "settlement" in the Wingate Suit with Buchanan which was invalid and against public policy to make it appear that Appellant and Buchanan were at odds in their positions. They were not.

12. Bauknight, the AG and Terry/Forlando Brown concealed Legacy Trust amendments and a transfer from Terry – who supported the AG's Settlement– to Forlando, who was telling the Federal Court he opposed it.

It is reasonable to project that if the juggernaut of 10 Taxpayer-paid lawyers, 15 lawyers for Bauknight, 8 for Forlando and 5 for Hynie had not carried out a 4-year attack on Buchanan, Appellant and their small team – or if Bauknight had not withheld court-approved funds due them – the result might have been different.

Mr. Bauknight claims Appellant and Buchanan lost. While arguably they did for themselves, they put the Supreme Court in a position to save both the "I Feel Good" Trust and private philanthropy in South Carolina. And it did.

On the day before the Supreme Court oral arguments, Mr. Bauknight's attorney gave an interview reported in over 330 media outlets attacking Buchanan and Pope. With that level of power applied against them, Buchanan and Appellant were powerless to make the Court understand that the vitriol never came from Buchanan and Pope or their fine team. They were simply carrying out their duty to vigorously defend the estate plan of James Brown.

III. Order on Appeal

The word "Administrative" on Judge Early's permanent injunction in the June 13 Orders does not keep it from being an injunction. Likewise, the title "Interim" on the appointment orders does not make them interim.

They are permanent. They last until the conclusion of all litigation.

The Due Process rights of everyone who seeks to enforce the "I Feel Good" Trust and the Due Process and Equal protection rights of Brown's real heirs have been trampled on since the June 13 Orders. The October 1 appointment is a continuation of the June 13 injunction.

The October 1 Order praises Bauknight for having a summons on his petition. It disregards that it neither named nor was served on heirs, devisees, beneficiaries or Interested Persons who had demanded notice. Appellant is one of those. Further, Appellant and other were enjoined from the process by a direction in the June 13 Orders that the Clerk of Court remove Appellant's filed motions from

the record and not accept any future filings.

Attempts to be heard since June 10, 2013 on why Bauknight's appointment should be voided or he be removed for cause were not heard or considered at the September "hearing." The "hearing" did not meet the Probate Code definition of hearing.

Nobody who supported the estate plan was allowed to participate. No questions were allowed.

As one small example:

Mr. Bauknight bragged that he had \$1 million in the bank for payment of education funds of grandchildren Lindsey, Janice, Romunzo and others. He bragged that he was holding it until the conclusion of all litigation.

He did so even though all prior PR/Trustee had cleared the way for these students not to be held hostage to the litigation.

Having these students sign a ratification of the 2000 Trust and receive their funds should have been done February 28, 2013 at the latest.

And it would have helped in the defense of the estate plan.

The appointment order does not chastize Bauknight this cruel treatment of student grandchildren. It praises him.

There are numerous additional examples.

IV. Appellant has Special Interest Standing under § 62-7-405; Standing as a Creditor; and as Proposed GAL for Michael and others

A. Appellant has Special Interest Standing under Section 62-7-405

South Carolina Trust Code Section 62-7-405 confers standing to enforce charitable trusts on the Attorney General, the Settlor, the Trustee and others.

The "I Feel Good" Private Foundation is a charitable trust as defined in the Trust Code. The "I Feel Good" Trust is set out in four separate documents, including two successive Wills (1999 and 2000.) Both wills have incorporation by reference provisions to create the "I Feel Good" Trust even if the trust associated with the will is missing.

Fifteen years ago – on February 24, 1999 – Brown prepared a voice tape as he was preparing to sign the first will/revocable trust creating the "I Feel Good" Foundation. It is a compelling expression of his wishes.

It has never been heard by an Aiken County Court, even though it has been in the Estate's possession since shortly after Brown's death.

In the three years before Brown's death, after his 2000 Trust had been funded for years, all of the now-contestants to Brown's estate plan discussed his estate plan with him. Tommie Rae and the children Brown acknowledged in the Will have all admitted in the Wingate Suit that:

...the establishment of a Charitable Trust intended to provide financial assistance to deserving students who seek education in South Carolina and Georgia. This objective was the often stated and well-known desire of James Brown. [Mem. Opp., p.2, 8/27/10]

All children of James Brown and all fiduciaries except Bauknight – who serves as Hynie's agent in four lawsuits – have confirmed that Brown died without a spouse.

There was absolutely no basis in 2008 to give Tommie Rae more than \$11 million and her lawyers \$10 million. There was no basis to give Levenson \$9 million.

Had the 2000 Will been set aside, the 1999 Will stood to make it ironclad.

The voice tape in Brown's famous voice was icing on the cake.

But the AG's settlement gave lawyers wanting \$20 million a taste of something they did not deserve. And they will not let go.

It was Levenson, Hynie's lawyer and Bell who signed the Wingate 40% contingency fee contract with Bauknight in 2010. Many children did not even know about the suit in which they were Plaintiffs – or the 40% contingency.

It was Levenson, Hynie's lawyers and Bell who authorized Bauknight, Hynie and Wingate to interfere with three FOIA suits – and to seek sanctions in the name of children who did not know they were trying to intervene.

It was Bauknight who became Hynie's principal spokesperson. When asked after the decision whether Buchanan's and Pope's role in *Wilson v. Dallas* helped the estate, he stated:

That's poppycock. Pure speculation from your client. Fantasy...I'm the person who actually looked at this. And I said it was a fair and reasonable settlement. I don't know where this fantasy is that \$50 million was gone away. Number one, your client made up that number. Your client did that in a self-serving fashion so that she could take \$5 million out of this estate for her retirement. So to say that this would have diminished is a load. A total load. I looked at this. I say. You have no clue how termination rights where [sic].

You don't know the value. . . She has no clue what she was dealing with and put stuff in the paper that it's just totally fabricated untrue. It blows me away that someone with a law degree can be so dishonest and get away with it. ...You know, what? That's set aside by the Supreme Court. That's fine. I've got a new roadmap, and I'm going to follow this new roadmap to a T....

...[Y]our client raped this estate taking every dime out of it for her own fees and for Bob's fees and her lawyer's fees leaving it insolvent....Your client didn't even try. Your client didn't know the

numbers. I know the numbers. There was no diminished Legacy Trust. That's fabrication from your client. [Emphasis supplied.]

For a full year Bauknight has done nothing to dismiss the claims of Hynie; require DNA testing of James B. under the official Peeples DNA Protocol; or allow requested DNA testing of Michael, James Curtis and the Doe Defendants.

Bauknight and the LSA are fighting a GAL for an incarcerated son. They are either condoning or participating in interference by Bell and others with the Estate/"I Feel Good" Trust's ability to secure its copyright for decades by treating Brown's real heirs with dignity; completing the Peeples DNA Protocol for non-presumed heirs; and seeking agreements with the most cooperative half.

Both have fought the admission to probate of the 1999 Will, and placed it in great jeopardy of the 10-year rule.

Neither has argued that *all* heirs should be determined and allowed to help show Brown had no wife.

Bauknight will not do it. He is still her agent.

In short: Bauknight and his appointee LSA/LST have abandoned the "I Feel Good" Private Foundation. The AG – once too involved – has abandoned the "I Feel Good" Trust.

As a result of Bauknight's conflict, the A G's withdrawal, the jeopardy faced by the 1999 backup will, and the threat to Brown's royalty copyrights by actions which favor Hynie, Appellant and Buchanan, in addition to their individual rights, have Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust.

Bauknight and the LST are not just refusing to act. They are allowing Bell and others to usurp the termination rights contracts Bauknight should have completed –if not earlier – the moment the February 27, 2013 decision was rendered.

Where the Settlor is dead; the Attorney General has withdrawn; and the fiduciaries are openly hostile to the private foundation, Section 62-7-405 standing is not just appropriate. It is essential.

Appellant does not seek to be Trustee. But she does seek – and but for the injunction of the June 13 Orders – should have been involved in, helping find three PR/Trustees with the ability; interest and energy to take on the protection of what should now be South Carolina's largest-ever private foundation dedicated solely to the education of needy students.

Appellant currently serves as trustee of a tiny foundation. She formed and assisted for years the Pope-Brown Foundation. She is currently assisting an approximately \$50 million upstate family foundation as it transitions to its third generation⁸. She has special knowledge of the interplay of copyright termination law and State Probate law. She has worked *pro bono publico* since May 8, 2013 to help enforce the "I Feel Good" Trust.

Appellant has multiple standing to be part of this appeal and the process.

8

A trustee of the Graham Foundation has stated in an affidavit that he might not have recommended the engagement of Appellant by the Foundation for the self study if he had not known of her work and experience with others before the James Brown accusations against her.

V. Appellant's Role in the Litigation is not over

In his conclusion on page 8 Mr. Bauknight states:

" Her role in this litigation is over."

Had Mr. Bauknight not brought the Wingate Suit in the wrong county and prevailed in keeping it there, he might be right.

Had Mr. Bauknight not intervened for Ms Hynie and others in two FOIA Suits as to which he has no right to intervene – then consolidated one with the Wingate Suit – the public documents necessary to bring his false claims to an end might have been released three years ago.

That did not happen.

For more than a year since the first *Wilson v. Dallas* decision, Bauknight – and now the LSA – have blocked the Richland County Court's proceeding with important issues. Bauknight does so even though he and the State/AG prevailed in their claim that the following matters must be heard in Richland County:

1. Are Buchanan and Appellant correct that they owed no duty to Tommie Rae and James B. because neither is an heir, devisee or beneficiary of James Brown?
2. Did Buchanan and Pope commit the federal felony of intentionally overstating Brown's music empire by \$79 million to the IRS, or does the estate tax return need to be corrected because Bauknight claimed:
 - a. Brown's worldwide music empire was worth less than \$4.7 million;
 - b. Brown's TPP was worth only about \$.5 million;
 - c. Tommie Rae was Brown's spouse and got about \$1.3 million;
 - d. The AG's "Legacy Trust" is entitled to a \$3 million charitable deduction even though \$2 million of it is going to private

individuals?

3. Did Brown really give about \$80 million to the "I Feel Good" Trust, as claimed by Buchanan, Pope, Cannon, Dallas and Bradley – or about \$1 million as claimed by Bauknight?

4. Have the State/AG, Bauknight and Tommie Rae misrepresented the heirs and their rights under the Copyright Law to multiple courts by claiming Tommie Rae is the spouse when she is not, and ignoring *real* heirs who are not challenging the estate plan, including: Michael, La Rhonda, Nicole, Lisa, and Jeanette?

5. Should James B. – the only claimed child born in the 22 years between Brown's vasectomy and his death – have been required, and Michael, James Curtis and DOE Defendants allowed, to complete the Estate's official \$300 Peebles DNA Protocol?

V. Appellant's Application to be GAL for Michael and Others

Judge Early's declining to appoint her GAL for Michael, or hold a hearing, is damaging both the "I Feel Good" Trust and Michael.

Bell – known for filing false grievances, threatening grievances and filing false affidavits – is claiming to be Michael's lawyer. But he has not filed a *pro hac vice* application or protected Michael in the Hynie petition proceeding where he is protecting son Terry.

Michael still needs a GAL under Rule 17 (c). And – unsolicited– he called Appellant to thank her for applying.

The "I Feel Good" Trust needs to properly identify and make agreements with the most cooperative half of Brown's heirs – the ones who expect the least from the "I Feel Good" Trust; will be proud to be acknowledged; and will be proud to be supporting their father's noble estate plan.

On May 29, 2013 Hynie's counsel and Levenson – expecting about \$20

million in legal fees from the AG's Settlement – announced their plan to re-do the State's takeover and dismember "I Feel Good" Trust – again. Bauknight and his LSA/LST are helping them do just that.

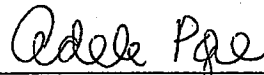
VI. Appellant as a Creditor who made demand for notice has Standing.

As a creditor Appellant had a right to participate in the appointment proceeding. She was denied that right by failure of service and the injunction of the June 13 Orders. She was also denied by a hearing which was not a hearing.

Conclusion.

Appellant respectfully requests that the Rehearing decision be delayed until the Court has the full record in appellate case numbers 2013-00169 and 2014-00250. Should the Court elect to proceed, she requests that the Petition for Rehearing be granted; the dismissal reversed; and the appeal proceed.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com

Attorney for Appellants

February 27, 2014

Exhibits:

Exhibit A - Partial, Initial Brief - 2013-00169

Exhibit B - Partial, Initial Brief - 2014-00250

Exhibit C- DNA & DIGNITY Plan to Protect Royalties

Exhibit D - Toberoff Ltr., 9/13

Exhibit E - Forlando, Sr. Assistant Jones, Others, emails Jan 2011

RECEIVED
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SC Court of Appeals

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

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

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court**

Appellate Case No. 2013-00169

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

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

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

AND:

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

IN RE:

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

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com
SC Bar #4501

Appellant, *pro se*

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II. The Attorney General's withdrawal, jeopardy to Brown's backup 1999 will, and the threat to the "I Feel Good" Foundation's royalty copyrights give Buchanan and Appellant Special Interest Standing under Section 62-7-405 to enforce the "I Feel Good" Trust	42
III. The June 13 Orders promote fraud on the court by disregarding the Richland County Court's jurisdiction to complete the Wingate and FOIA suits; and preventing Appellant and Buchanan from demonstrating Tommie Rae was not Brown's spouse and the State/AG joined in or condoned material misrepresentations by Tommie Rae, Forlando and others.	43
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Exhibit B

THE STATE OF SOUTH CAROLINA
IN THE Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2013-CP-02-1337

Adele J. Pope,.....Appellant,

v.

Estate of James Brown, Deceased; The James Brown 2000 Irrevocable Trust;
Russell L. Bauknight, Individually, as former *Executor de son tort*, and in every
current and former fiduciary status claimed or held as to the Estate of James
Brown and the James Brown 2000 Irrevocable Trust,.....Respondents,

AND:

Robert L. Buchanan, Jr.,.....Interested Party.

INITIAL BRIEF OF APPELLANT ADELE J. POPE

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com
SC Bar #4501

Apellant, *pro se*

TABLE OF CONTENTS

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I. Dismissal of most relief sought in the complaint under Rule 12(b) SCRPC should not have been granted because the complaint supports causes of action to remove Bauknight; void his fiduciary appointments; require him to account; appoint an SA/ST for litigation and administration; assess Bauknight individually: void the Disallowance; and grant related relief requested by Appellant. . .	24
II. The Court's failure to conduct hearings and dismissal of the action to remove Bauknight and grant related relief continue the State's violation of the Due Process and First Amendment rights of Brown's real heirs, Appellant and others, including devisees and beneficiaries, seeking to enforce the "I Feel Good" Trust.	30
III. In addition to standing as Interested Persons and creditors, Appellant and Buchanan have special interest standing under Section 62-7-405 to enforce the "I Feel Good" Trust and for Appellant to serve as GAL <i>pro bono publico</i> for Michael and others, because of their experience; their interest; the Attorney General's withdrawal; and threatened jeopardy to the 1999 backup will under the 10-Year Rule..	32
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Exhibit C

DNA & DIGNITY

(Proposed Plan for "I Feel Good" Foundation to Protect its Royalties for Needy Students)

1. The "I Feel Good" Foundation's Position and Protocol.

- a. James Brown died unmarried on December 25, 2006. [Toberoff, etc.]
- b. Termination rights agreements will be made only with DNA-proven or Presumed children who support James Brown's noble estate plan.
- c. Current candidates (subject to abandoning any claims) are:
 - a. DNA-Proven: 1. LaRhonda (daughters), 2. Jeanette, 3. Nicole;
 - b. First marriage: 4. Terry, 5. Larry, 6. Lisa;
 - c. Second marriage: 7. Deanna, 8. Yamma;

2. Offer - But do not require – Peeples DNA Protocol for 30 - 60 days.

DNA testing under the Estate's official Peeples DNA Protocol, paid for by the Estate, to be offered for 30-60 days to: 9. Michael (incarcerated), 10. James Curtis, 11. Tonya, 12. James B., 13. DOE Defendants identified as likely heirs by the GAL, Levenson Intestacy Suit.

3. Dignity & Reconciliation for Termination Rights Cooperation of Excluded Heirs.

After above 30-60-days, offer to the first six to accept of: La Rhonda, Jeanette, Nicole, Lisa and anyone passing Peeples DNA Protocol listed above, in exchange for agreement for lifetime termination rights cooperation:

1. Full recognition as heirs by the Estate and "I Feel Good" Foundation at a ceremony to be conducted at Brown's home estate in Beech Island .
2. [If possible] VIP Invitation to, and additional recognition, at the opening of South Carolina screening of "Get on Up!"
3. \$10,000 per year for life, effective 2011.

4. Offer Termination Rights Agreements to some Children Acknowledged in Will.

Make the offer set out above to the first two children acknowledged in the Will to accept – but with payment of \$50,000 per year for life, commencing upon execution of termination rights agreement and withdrawal of all claims against the Will, 2000 Trust and Estate.

5. If two Acknowledged Children do not accept, re-offer to all Excluded Heirs.

6. Consider "splitting heirs" and other available strategies to protect the Royalties for Needy Students as James Brown directed.

7. Update Protocol at death of each child, and as needed.¹

1

This proposal is consistent with the "Splitting Heirs" technique described in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* Also see: The Aspen Institute (supp. 2013). *The artist as philanthropist. strengthening the next generation of artist-endowed foundations.*

The Estate/2000 Trust's plan to protect its rights to more than 800 published and unpublished songs (the "Royalties") was started by Brown's original PR/Trustees in 2007. They established the Estate's official "Peoples DNA Protocol." Using the Peoples DNA Protocol, the Estate identified and officially acknowledged La Rhonda, Jeanette and Nicole. Others were excluded. Incarcerated son Michael's request for testing was interrupted by the AG's 2008 Settlement.

Buchanan & Pope continued the plan to protect Brown's Royalties. They consented to a March 8, 2008 Order of the Hon. Doyet A. Early, III which would have proceeded with the official Heirs determination in the Levenson Intestacy Suit although Brown had two valid Wills.

Four months later – and for nearly five years – the AG's 2008 Settlement stood as an impediment to a proper protection plan for the Royalties.

The completion of a properly-documented Heirs baseline during the probate process would have given the "I Feel Good" Foundation – and gives all charities who have been devised Copyrights – maximum flexibility to:

1. Contract with the half, or half + 1 needed to protect the copyrights ("Splitting Heirs") – 5 or so in the case of the "I Feel Good" Foundation
2. Avoid later costly federal litigation with a proper Heirs baseline.

A proper heirs determination was particularly important in this case because all fiduciaries, all children and others had overwhelming evidence that Brown died without a spouse. And his companion's child was not a presumed child. [He is the only claimed child born in the 22 years between Brown's vasectomy and death.. He has refused DNA testing under the Peoples Protocol for 7 years.] Yet the AG "spoke as one" with the two from August 2008 until May 2013. His appointee became their agent in four separate lawsuits. The AG's contract "stipulated" that both the companion and her son were heirs. The State/AG exempted companion's son from DNA testing under the Peoples DNA Protocol. The State/AG contracted to join them in attempting to defeat the interests of real heirs.

Since February 27, 2013 the Estate/"I Feel Good" Trust has been in a position to complete the Peoples DNA Protocol for non-presumed heirs and make Termination Agreements under the above, or a similar, plan. To do so will provide appropriate respect and recognition for all DNA-proven non-presumed children excluded by Brown.

It will also be good for the "I Feel Good" Foundation.

For under \$200,000 per year (and with almost no attorneys' fees), the above plan would have secured the "I Feel Good" Foundation's Royalties (about \$3 million a year) for needy students for decades. Starting in 2011. It still can.

To accomplish the same result the AG's 2008 agreement proposed to give away 52 ½% of the "I Feel Good" Foundation – about \$40 million at the time.

TOBEROFF & ASSOCIATES, P.C.

A PROFESSIONAL CORPORATION

Exhibit D

22337 PACIFIC COAST HIGHWAY #348

MALIBU, CALIFORNIA 90265

Tel: (310) 246-3333; Fax: (310) 246-3101

mtoberoff@toberoffandassociates.com

September 23, 2013

Via E-mail and U.S. Mail

Scott McDowell
Senior Vice President and
Head of Legal & Business Affairs
Warner/Chappell Music, Inc.
10585 Santa Monica Blvd.
Los Angeles, CA 90025

Re: James Brown/Terminations under the Copyright Act

Dear Mr. McDowell:

We represent James Brown's children, Terry L. Brown, Larhonda Waller, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Jeanette Mitchell Bellinger and Cinnamon Nicole Parris, and James Brown's grandchild, Sarah LaTonya Fegan a.k.a. Tonya Brown (collectively, the "Heirs"), who are believed to constitute all or a super-majority of James Brown's statutory heirs entitled to exercise termination rights under 17 U.S.C. §304. On the Heirs' behalf, we will be serving Warner/Chappell Music and others, in the near future, with statutory notices of termination regarding Mr. Brown's music.

The Heirs are informed and believe that Tomi Rae Hynie and James Brown, Jr., acting as James Brown's putative surviving spouse and child, respectively, have served purported notices of termination regarding his musical compositions (the "Tomi Rae Termination"). The Heirs are further informed and believe that the Tomi Rae Termination is being handled by a representative of the Estate of James Brown, despite the glaring conflicts of interest that this would appear to entail.

This letter is to notify Warner/Chappell Music that the Heirs vigorously contest the validity of the Tomi Rae Termination and the standing of Tomi Rae Hynie and James Brown, Jr. to serve any notices of termination under the Copyright Act regarding James Brown's music.

September 23, 2013
Warner/Chappell Music, Inc.
Page: 2 of 2

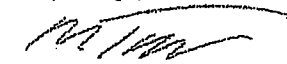
The Heirs' claim is based, without limitation, on the well-known fact that when Ms. Hynie purported to marry James Brown in December 2001 she was already married to Javed Ahmed (since 1997). The Heirs contend that this rendered her 2001 marriage void, and that the 2004 default judgment thereafter obtained by Ms. Hynie from a South Carolina family court, annulling her marriage to Mr. Ahmed, did not resuscitate Ms. Hynie's 2001 marriage to Mr. Brown pursuant to the recent on-point decision of the South Carolina Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 592 (2008) ("The question is whether the [2003 annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage." "While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second [1985] 'marriage.'").

Furthermore, Ms. Hynie's default judgment in *Tomi Rae Hynie v. Javed Ahmed* has no claim or issue preclusion effect on the Heirs as they were not parties to that action, and, in any event, the purported findings of fact and conclusions of law in that default judgment have no issue preclusion effect because such issues do not appear to have been "actually litigated" on the merits. See *State v. Bacote*, 331 S.C. 328, 330-31 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation."). The Heirs' challenge to James Brown, Jr. is based, among other things, on his refusal to take a simple Court-supervised DNA test verifying that he is James Brown's child.

Please be further advised that these essential legal matters will be the subject of pending litigation in the South Carolina courts or in an alternative forum.

We hope to keep you well advised as this process marches towards a resolution. In the meantime, the Heirs and I look forward to an amicable relationship with Warner/Chappell Music regarding their statutory termination interests, and the future of James Brown's music.

Very truly yours,



Marc Toberoff

cc: Kelly Burnett via E-mail, Senior Director, Legal & Business Affairs
Warner/Chappell Music, Inc.

Exhibit E

Sonny Jones

From: Sonny Jones
Sent: Thursday, January 20, 2011 10:44 AM
To: Matt Bodman; DavidBell@davidbelllawfirm.com; JTrigg@KilpatrickStockton.com
Cc: FKingsmore@nexsenpruet.com; amedlin@sc.rr.com
Subject: Brown-Terry Brown Docs
Attachments: TB.ASSIGNMENT.PDF; TBCON.PDF

In order that you may have them in one email I have attached Terry Brown's Amendment and Confirmation to the ROFR and Terry Brown's Assignment to Forlando Brown.

Thanks.

Confirmation and Amendment

Certain parties entered into an Addendum to Private Agreement of August 10, 2008 to Include Settlement Agreement with Terry Brown Creating Restated and Amended Private Agreement (the "agreement"), that created an entity (the "Settlement Entity") to hold all of the assets related to James Brown, as described in paragraph 1 of the agreement. Capitalized terms not defined herein have the meanings set forth in the agreement. Those parties hereby confirm and amend certain provisions of the agreement, as follows:

1. Under the agreement, Terry Brown ("Terry") has a Right of First Refusal ("ROFR"). This agreement confirms that Terry's ROFR in all respects under the agreement applies only to "the sale of all or substantially all" of the "James Brown Assets" (as the term James Brown Assets is defined in paragraph 1 of the agreement) The term "the sale of all or substantially all" includes only (a) the sale of the entirety (that is, one hundred percent) of the James Brown Assets in one or a series of related transactions, or (b) the sale of at least 65% of the estimated value of the entirety of the James Brown Assets as of such time in one or a series of related transactions. Terry's ROFR does not apply to any other transfer of any of the James Brown Assets or an interest therein For example, and notwithstanding anything to the contrary in the agreement or in the foregoing, the ROFR does not apply to the granting of one or more clearances or licenses of any duration, scope, or description for the use of any or all of the James Brown Assets, including but not limited to such purposes as movies, documentaries, video games, commercials or other advertisements, product brands, books or other publications, or theatrical productions
2. Under the agreement, Terry has the exclusive right to conduct a due diligence review ("due diligence right") of all of the James Brown Assets as provided in Paragraph 5 of the agreement. With respect to the due diligence right, the agreement is hereby amended to the extent and only to the extent as follows: (a) Terry may commence the due diligence review immediately upon the execution of this confirmation and amendment; (b) the due diligence period will be for a period of twelve months from the execution of this confirmation and amendment; (c) there is no prohibition against the Settlement Entity, and/or Russell Bauknight as fiduciary or any agent or consultant employed by or on behalf of the Estate or Settlement Entity, soliciting, encouraging, entertaining, discussing, or accepting offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets (including any offer generated by a beneficiary of the Estate or such other agents or representatives as the Estate or Settlement Entity may from time to time authorize), subject in all cases to the Terry's exclusive solicitation rights clarified in paragraph 3 below; and (d) Terry Brown or his designee shall have the exclusive right to use any work product or other materials in any medium prepared by or on behalf of Terry in the course of the exercise of the due diligence right for purposes of soliciting, encouraging, entertaining or discussing, offers with respect to the sale, transfer, license, or other disposition or exploitation of any of the James Brown Assets.
3. Under paragraphs 6, 7 and 8 of the agreement, Terry has the exclusive right to solicit offers for a period of six months ("right to solicit"). With respect to the right to solicit, the agreement is hereby amended to the extent and only to the extent as follows: the six-month period of the right

to solicit (which was formerly contemporaneous with the Exclusivity Period of the due diligence right) shall commence three months after notice from Terry (at any time after the later of the expiration of the due diligence review period or the funding of the Settlement Entity). The three-month period is to allow the Estate/Settlement Entity a reasonable time to wind down or complete any then-ongoing discussions, but the Estate and Settlement Entity will not use such period for any purpose that is intended to defeat Terry's enjoyment of the right to solicit; provided however, that Terry's right to solicit will prohibit neither the continued granting of music clearances nor the continued performance of licenses and clearances permitted by paragraph 1 above.

4. Terry and the other parties to the agreement shall agree that, during the periods in which Terry is exercising the due diligence right and the right to solicit under paragraphs 2 and 3 above, they shall cooperate with respect to providing Terry and his representatives full access to any and all records, documents, things and information within the parties' control concerning the James Brown Assets and the value thereof, including but not limited to contracts, documents and things pertaining to or reflecting James Brown's songwriting or recording activities, royalty statements, bank records, audits, valuations, tax documents, audio master tapes, video master tapes, government filings (including but not limited to trademark and copyright filings), personal effects, artwork, writings, journals, photographs, press clippings, promotional materials, whether or not constituting "Confidential Information" for purposes of the agreement (collectively, the "Documents"), subject to an obligation to safeguard such items. Terry shall have the right to make the Documents or information therein available to third parties as he reasonably deems necessary in connection with the exercise of the due diligence right and the right to solicit, provided that such third parties first enter into confidentiality agreements in favor of the Estate and/or the Settlement Entity, as applicable, that are at least as protective of such information as the provisions of paragraph 9 of the agreement.

5. Except as confirmed and amended by this confirmation and amendment, the agreement remains in full force and effect.



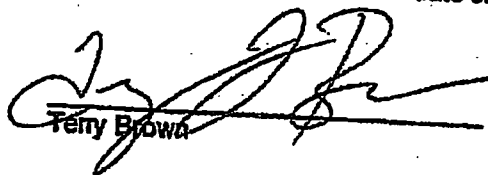
Henry D. McMaster
Attorney General of the State of South Carolina
Robert D. Cook
Assistant Deputy Attorney General
C. Havird Jones, Jr.
Senior Assistant Attorney General
J.C. Nicholson, III
Assistant Attorney General
Mary Frances Jowers
Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
For the South Carolina Attorney General

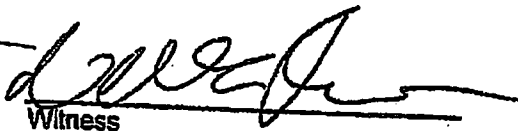
Georgia, Stephens County

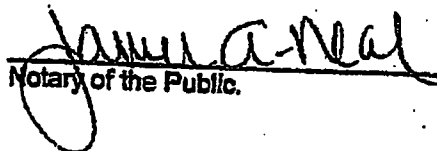
For in consideration of the sum of \$1 with love and affection and other valuable consideration, the undersigned, Terry Brown, being a biological child of James Brown the entertainer and known world-wide as the godfather of soul, and beneficiary under the Last Will and Testament of James Brown and the Irrevocable Trust of James Brown dated 8-1-2000, does hereby transfer, Irrevocably convey and assign unto William Forlando James Brown all my interest of every nature and kind in the Estate of James Brown.

To the extent that any third party may deem this transfer ineffective for any reason, I hereby designate and appoint, my son William Forlando James Brown, as my true and lawful attorney in fact hereby granting unto him a power, coupled with an interest, to execute any document in my name and stead as and to the same extent that I may execute and convey my interest in the matter of James Brown. This transfer shall be deemed irrevocable and coupled with an interest. I hereby acknowledge that I have made this transfer with due consideration, thought and design, and that I do so voluntarily and of my own accord.

Witness my hand and seal this date January 3, 2011


Terry Brown


Witness


Notary of the Public.

MY COMMISSION
EXPIRES ON
JUNE 7, 2011

Sonny Jones

From: Sonny Jones
Sent: Wednesday, January 19, 2011 9:50 AM
To: Matt Bodman; louis@levensonlaw.com
Cc: FKingsmore@nexsenpruet.com; amedlin@sc.rr.com
Subject: Brown: Cox- Forlando Meeting-Wed January 19, 2011 @ Nexsen Pruet
Attachments: Terry Brown Assignment.PDF; Ppt0000002.ppt

Attached please find the assignment from Terry Brown to Forlando and a power point presentation sent late yesterday from Terry Cox.

The meeting, per the power point, w/ Russell is scheduled today(Wed) @ 2 PM. Please advise if you would like to be included per conference call or in person.

Thanks.

The ROFR Amendment and the Due Diligence Approach

January 19, 2011

Agenda

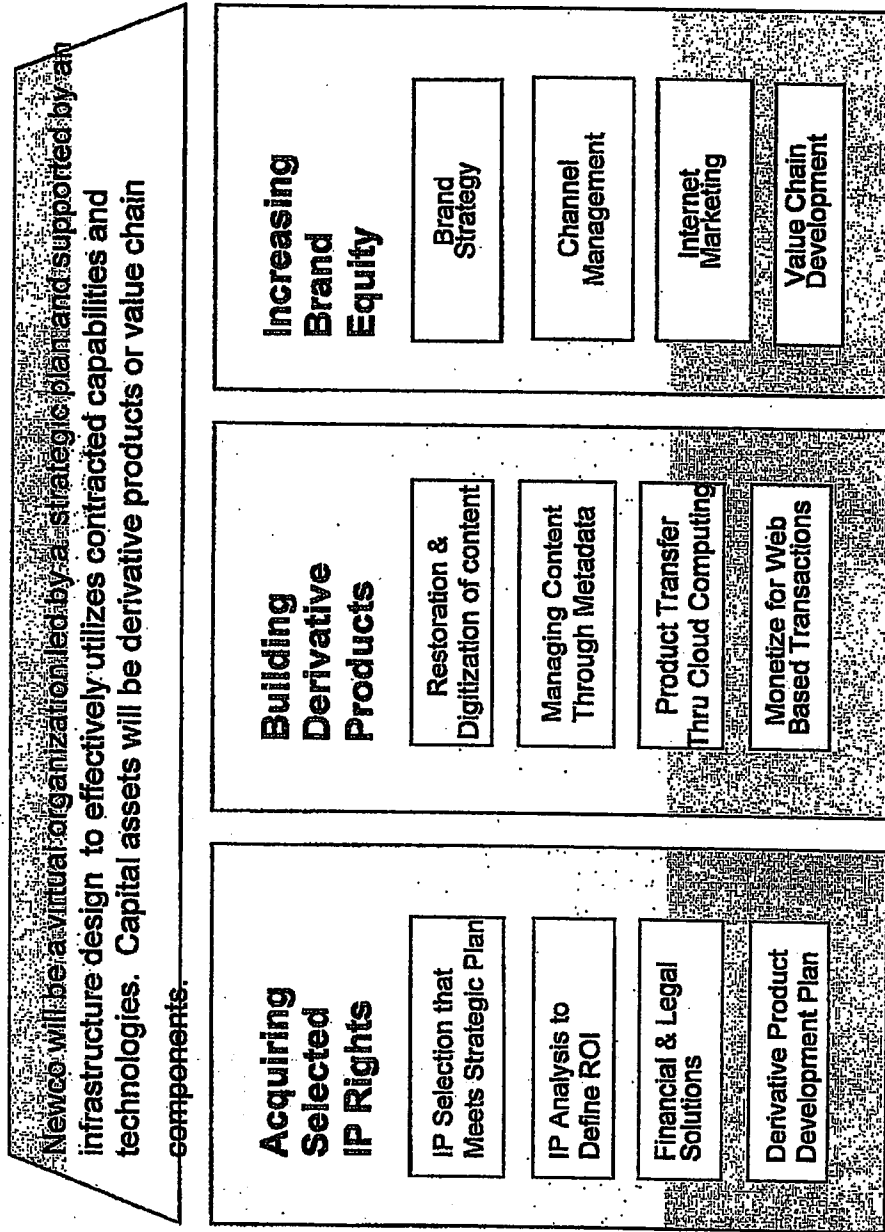
- The ROFR
- Our Assumptions
- Our Approach to Due Diligence
- Due Diligence Steps
- Due Diligence Structure

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Confidential

1

Newco: Provides value to its investors by: 1) providing a return from the ownership of derivative products (online video), and 2) the market value of an organization that has the capabilities for the scalability of derivative products. The following are proprietary capabilities of Newco.



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

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

**The Honorable Doyet A. Early, III Circuit Court Judge
The Honorable Liz Godard, Clerk of Court**

Appellate Case No. 2013-002582

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

v.

Albert H. Dallas and others .. Defendants.

OF WHOM:

Adele J. Pope, Individually and on Behalf of Others under South Carolina Trust
Code Section 62-7-405, is.....Appellant,

AND:

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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

**APPELLANT'S REPLY TO BAUKNIGHT'S RETURN TO
MOTION TO HOLD IN ABEYANCE**

Appellant respectfully submits that the Return of Russell L. Bauknight ("Bauknight") to Appellant's Motion to Hold in Abeyance makes representations which are not supported in the record of the James Brown cases. Without detailing them, she objects to the all statements and conclusions not referenced and agreed to herein. Appellant craves reference to her motion, and supplements it as set out herein.

I. The requested abeyance will not cause unnecessary delay.

Appellant, more than anyone, wishes to bring to an appropriate end the destruction to her own career and reputation, and that of Robert L. Buchanan, Jr. ("Buchanan"), which has been their reward for carrying out their Court-appointed duty to the noble estate plan of James Brown.¹

Appellant has served *pro bono publico* in the Aiken County matters since that duty came to an end on May 8, 2013. James Richardson, Esquire, served *pro bono publico* as lead appellate counsel for almost four years in the *Wilson v. Dallas* appeal. Counsel Tressa Hayes, Esquire and James Bailey, Esquire were efficient and dedicated.

Putting the South Carolina Supreme Court in a position to save James Brown's "I Feel Good" Trust – which it did – was a high stakes operation. But it

¹ Appellant has not been paid court-ordered payments of \$47,000 for her SA work in 2007. or approximately \$1.4 million – with interest accruing at the legal rate– Judge Early ordered that she be paid for her work, and that of her large staff, from November 20, 2007 until May 26, 2009. The only payment she has received from the Estate not reported on filed accountings with the Court in 2009 and earlier is a check for the costs awarded by the Supreme Court in *Wilson v. Dallas* 403 S.C. 411, 743 S.E.2d 746.

was not high priced.

The legal cost for defending for 4 ½ years against the State/AG's plan to give more than half of Brown's "I Feel Good" Foundation to a non-wife and about half of Brown's claimed children, including 7 days of circuit court hearings: about \$200,000.

The "I Feel Good" Foundation, now at over \$90 million, should be poised under IRS distribution guidelines to pay millions in scholarships to needy students each year. Brown's 7 designated grandchildren who ratify the estate plan should have been receiving their \$285,000 education trust payments since at least 2011.

Fair Termination Rights agreements under the Federal Copyright Act with the most cooperative half of Brown's *real* heirs – including incarcerated son Michael – should now be in place. The DNA & DIGNITY plan to identify non-presumed heirs which was interrupted by the AG in 2008, should have been completed². [See Exhibit A]

2

The Toberoff letter [Exhibit B] and the fight of David Bell, Esq. and a limited special administrator ("LSA") appointed by an *ex parte* order of the Probate Court on October 10, 2013 to prevent a GAL for incarcerated son Michael under Rule 17 (c) threaten damage both to Michael and to the "I Feel Good" Trust. They suggest Bauknight and the LSA are allowing Bell and others to siphon off the advantage of Termination Rights cooperation agreements the Estate/"I Feel Good" Trust should have secured by 2011 – but, at a minimum since February 27, 2013 – with Michael (subject to completing the Peeples DNA Protocol), Lisa, LaRhonda, Jeanette, Nicole, James Curtis (subject to the Peeples Protocol) and Tonya (subject to the Peeples Protocol). [These, alone, are the HALF necessary to protect the copyrights for decades.)

Both the LSA and Bell claim that Bell is Michael's lawyer, and insist that Michael does not need Appellant as his *pro bono publico* GAL. The impediments to this position

It has not happened.

Instead, Russell L. Bauknight is still representing non-wife Tommie Rae Hynie in four lawsuits. He is doing so despite her announced intention, with Louis Levenson, Esquire, on May 29, 2013, to dismember the "I Feel Good" Trust again with the same settlement.

include: Bell's fraud on multiple courts, including two material and false affidavits in the Forlando Federal Suit; Bell's conflicts in representing two parties with material opposite positions at the same time (Terry/Forlando); Bell's failure to make an appearance or seek *pro hac vice* status for Michael in the Hynie claims case, where the protection of Michael's heir status is critical; and Bell's protection of Terry in the Hynie claims case – but not Michael – after he claimed to be Michael's lawyer.

Michael called Appellant in an unsolicited call from prison in California AFTER Bell claimed to be his lawyer. He said he wanted to thank her for asking to be GAL and give her his prison number. Appellant declined to talk to him about the James Brown cases because of Bell's claim to be his lawyer, but advised Michael she would report the unsolicited call to Bell and the Court. She did so. Judge Early has declined to conduct a hearing on the GAL appointment, even though Michael has been in prison in CA and seeking DNA testing since 2007.

Bell also recently claimed to represent Lisa, Brown's daughter from his first marriage. Lisa was acknowledged in Brown's divorce agreement from Velma. Bell has not moved for either Lisa or Michael to intervene, or be served, in the Hynie proceeding; the James B. proceeding; or the Levenson Intestacy Suit.

Bell also claims to represent son Daryl, who testified on national television and started a blog to support the "I Feel Good" Trust. But Bell has not filed any notice or appearance or *pro hac vice* admission for Daryl in any case. Nor has he withdrawn Daryl's challenges to the Will/Trust filed by Levenson in late 2007.

Bell's history of dirty tricks includes filing six grievances in two states against Levenson in 2008, including claiming that Levenson forged his \$150,000 + 30% contingency contract with Forlando. Bell also filed two false affidavits in the Forlando Suit which kept Forlando's frivolous complaint alive for several years. In March 2009, after Terry joined the AG's settlement, Bell threatened Buchanan with a judicial grievance (Buchanan is a federal magistrate judge) if he did not resign immediately. Mr. Buchanan reported the letter to Judge Early.

There was no justification for the settlement. All of Brown's fiduciaries other than Mr. Bauknight, and all of the children who joined in the AG's settlement, know Ms. Hynie was not Brown's spouse. [See Exhibit B.] She did not control Brown's termination rights. Nor did they.

On June 13, 2013 The Honorable Doyet A. Early, III enjoined virtually everyone who supports the "I Feel Good" Trust from doing anything about the announced intention to dismember the "I Feel Good" Foundation.

The appeal of his extraordinary orders issued that day are the subject of appellate case No. 2013-00169. The initial brief in that appeal was filed February 21, 2014.

A second appeal, from Aiken County Case 2013-CP-02-1337 (now assigned appellate case number 2014-00250) addresses the summary dismissal of an action to remove Mr. Bauknight for cause based on his continuing service to Tommie Rae Hynie, and other acts.

The brief in that appeal was served on February 11, 2014.

Barring unexpected delay, the full record of these two cases will be in the hands of this Court within 60-90 days.

This is a short period of abeyance which might help save a \$90 million foundation for needy students.

II. Mr. Bauknight's representation that that "Ms. Pope's only personal interest in the Estate Litigation is her outstanding claim for fees..." overlooks five James Brown Estate matters, including three initiated by Mr. Bauknight against Appellant, and her Special Interest Standing under Section 62-7-405.

Mr. Bauknight asserts on page two of the Return:

Finally, Ms. Pope's only personal interest in the Estate litigation is her outstanding claim for fees, which has nothing to do with the orders on appeal and remains pending. [Ret., p. 2.Emphasis supplied.]

This statement overlooks that Appellant is involved in five pending lawsuits involving the Estate. In three, including two FOIA suits, the Estate, acting through Mr. Bauknight during his now-void appointment, initiated inappropriate action against Appellant. In the fourth, Mr. Bauknight's secret dealings have prolonged a frivolous suit which should have been over years ago³.

A brief description of four of the five cases follows:

1. The Forlando Federal Suit District Case No. 3:08-cv-00014-WOB;

Forlando sued the 2000 Trust on January 2, 2008 to enjoin it from taking any action until Brown's original trustees (the "Cannon Group") were reinstated.

3

The fifth is the subject of appellate case no. 2014-00250. Appellant was required to file Case 2013-CP-02-1337 because Mr. Bauknight, claiming authority under an *ex parte*, pre-remittitur Probate Court order appointing him SA, served Appellant on May 29, 2013 with a Notice of Disallowance and Notice of Impending Bar. Mr. Bauknight – who has not paid Appellant a dime of her court-ordered partial commission, and only paid Buchanan after extracting benefits for Hynie – asserted that Appellant, Buchanan, Hayes and Bailey were not entitled to be paid. He asserted that Appellant and Buchanan had improperly valued the James Brown assets — referring to his false felony claim.

The Notice of Impending Bar required Appellant to file suit. She did so on June 10, 2013 Under the Probate Code she included a request for all appropriate relief.

The June 13 Orders followed 3 days later. They are the subject of appellate case no 2013-00169.

Appellant respectfully urges the Court to await arrival of these briefs for a full understanding of their relation to this appeal.

Appellant and Buchanan have claims for damages and offset against Forlando's share of the 2000 Trust and Terry's former share of the Estate.

Forlando claimed Judge Early had illegally appointed Buchanan and Appellant, who ousted the innocent Cannon to get the \$5 million commission payable on Brown's \$100 million estate. He claimed they would help Ms. Hynie and not protect his \$285,000 education Trust.

Forlando was really a secret 39% owner of TJBL, seeking to buy the music empire.

In January 2009 Forlando's father Terry, also part of TJBL, joined the AG's settlement which destroyed Forlando's \$285,000 Trust.

From 2009 - 2013 Forlando pretended to object to the AG's settlement while Terry supported it. Both were represented by David Bell, Esq. They said:

Terry/Bell told the Supreme Ct.
Hynie was Brown's spouse

Forlando/Bell told the Federal Ct.
Hynie was not Brown's spouse; knew it; and begged him to marry her.

Brown's music empire was worth \$4.7 million at death

The Bauknight value is "bogus." Offers of \$150 million were available in 2008.

Tommie Rae's son is Brown's son.

Tommie Rae's son is not Brown's son, and cannot be..

Tommie Rae & her son control the Estate's Termination Rights under the Federal Copyright Act.

Tommie Rae has no Copyright Rights.

On May 19, 2010 Bell, Bauknight and others secretly contracted with the law firm of Kenneth Wingate, Esq. ("Wingate") to sue Buchanan and Appellant for conducting the *Wilson v. Dallas* appeal and other claims.

In January 2011 the AG and Terry, with others, secretly amended the Legacy Trust and Terry's right of first refusal to buy Brown's music empire under the AG's settlement (the "ROFR"). Terry then gave his interest in the Estate and ROFR to Forlando.

In April 2012 Forlando's frivolous claims were dismissed. He and Judge William Bertelsman discussed his assets:

THE COURT: Well, do you have any assets, Mr. Brown?

MR. BROWN: I do not.

THE COURT... But you're going to pursue these counterclaims, but if he has no assets – You willing to give us a sworn financial statement?

MR. BROWN: Absolutely.

...
THE COURT: Do you stand to gain any inheritance under the settlement in the State Court?

MR. BROWN: Not unless my father were to pass away. [Hg.4/13/12, pp, 3,46]

In 2013 Mr. Bauknight claimed Forlando had done nothing wrong. He abandoned the 2000 Trust's claim for attorneys' fees for the 4-year prevention of a federal injunction which, among other things, could have stopped the defense of the AG's settlement and the *Wilson v. Dallas* appeal.

In 2013 the Federal Court declined to dismiss the 2000 Trust as a party.

By late 2013 Forlando and Bauknight's collusion appeared to include Bauknight's allowing Bell/Forlando to siphon off contract benefits the Estate/"I Feel Good" Trust should have tied up by 2011 with the HALF of Brown's *real* heirs not challenging the estate plans. If not stopped, this may damage the "I Feel Good" Trust for years.

In late 2013 the federal court make the Wingate Litigation Agreement public. Bauknight had been fighting release under FOIA since 2011.

Current Status of the Forlando Federal Suit: Bauknight still represents Terry/Forlando in the Wingate Suit. A hearing on Buchanan and Pope's counterclaims for Summary Judgment and offset against the Estate/2000 Trust shares of Forlando/formerly Terry is scheduled for March 19, 2014.

2. The Wingate Suit, Case 2010-CP-40-4900.

On May 19, 2010 Bauknight contracted to pay Wingate a 40% contingency to sue Buchanan and Appellant for the Estate,

Hynie, Terry Brown and others to stop the *Wilson v. Dallas* appeal.

The Attorney General (State/AG") and Bauknight as agent for the State/AG were named plaintiffs. It now appears neither Wingate nor Bauknight had legal authority to act for the State/AG or sue in its name.

Bauknight is also a Plaintiff as agent for Tommie Rae Hynie, her son James B. and Terry Brown.

The complaint asserts, among other things:

- a. Buchanan/Appellant should have accepted a \$100 million offer for Brown's music empire ⁴.

4

While suing Buchanan/Appellant for not accepting a 2007 \$100 million offer for the music empire, Mr. Bauknight and the State/AG told the Supreme Court there had been no offers and that the at-death value of the music empire was \$4.7 million.

The State/AG and Bauknight knew TJBL had made three \$90 - \$100 million letters of intent between October 2007 and March 2008. Sr. Assistant AG Jones had inquired about the first \$100 million offer on December 6, 2007. He expressed fear it would go away if not accepted. It did not.

Forlando testified in September 2008, the week the estate tax return was filed, that \$150 million offers were still available.

Mr. Bauknight claims Buchanan/Appellant had no basis for their \$84 million value of the music empire on the estate tax return. He claims they intentionally overvalued the assets by \$79 million to get a \$5 million commission. He made this false claim knowing that the \$84 million value was consistent with a valuation formula for the estate tax return presented without objection to Judge Early, the AG and others in November 2007 as follows

$$\begin{aligned} \text{Value of Royalties and Publicity Rights} = \\ 12 \frac{1}{2} - 14 \times (\text{annual Royalties} + \frac{1}{2} \text{ Road Revenues}) \end{aligned}$$

Royalties were \$3+ million annually and Road Revenues for 2003-2006 \$18 million.

Mr. Bauknight claimed his "appraisal," which he refuses to disclose despite the Probate Code Requirement to do so, is the first professional appraisal

A March 2006 Term Sheet, within the Estate records made public in 2007, however,

b. The false claim that Buchanan/Appellant improperly valued Brown's music empire, exposing Plaintiffs to unnecessary estate taxes.

c. The false claim that the Christie's sale was improper.⁵

shows that in 2006 a professional appraisal was made in connection with a proposed Royal Bank of Scotland loan. The professional appraisal, just months before Brown died, valued the Royalties --about half of the value of the music empire -- at \$42 million or higher. [For reason unrelated to value, the May 2006 Royal Bank of Scotland loan was cancelled just before closing. See Pullman litigation.]

Mr. Bauknight has attempted to secrete documents formerly made public by Order of the Hon. Doyet A. Early, III dated August 10, 2007. Additional details about the 2006 professional appraisal within the Estate records are in his possession.

5

The Grammy issue, like the valuation issue, was not considered by Judge Early. The sale was approved in three court orders. The Grammy was specifically listed in the Christie's Selection for Sale which Judge Early directed Buchanan and Appellant to sign on April 1, 2008. When former PR/Trustee Dallas asked the Court of Appeals to stop the sale, the Grammy was listed in the catalogue filed with the Court of Appeals. The sale was approved by the Court on July 14, 2008 -- just days before the sale. This was the third approval order.

Former Trustee Albert Dallas, Jacque Hollander, Forlando and others, interfered with, and chilled the Christie's sale. According to Forlando, certain family members -- feuding over other matters -- joined together to sabotage the sale.

Neither the AG nor family members asked to remove the Grammy or timely asked for any other item from the Christie's sale, even though family members and Hynie were given time to do so by Judge Early's first Order of February 20, 2008.

In the April 1, 2008 Order directing Buchanan and Appellant to sign the Consignment Agreement -- with the Grammy listed -- Judge Early found that the Levenson clients had interfered with the sale, but had not -- to date-- caused any damage. Because of the illiquidity of the estate, he directed that anyone interfering with the sale would be charged with costs and damage.

Nine days before the Christie's sale, in violation of the sale order, Dallas filed his motion to stop the sale. His counsel William Hammond made public statements intended to chill the sale.

A motion filed by the Academy which issues Grammys in New York objected to the sale of the Grammy. The Academy also made a similar filing to try to stop Stevie Wonder's Grammy sale, the second time it was sold. The Academy, which did not prohibit sale of Brown's Grammy when issued, uses these legal tactics to try to stop legal sales.

With Levenson present, Christie's legal counsel urged Buchanan and Appellant not to withdraw the Grammy, and to resist the Academy's filing. They assured that the sale was perfectly appropriate and legal. [But the cost of legal defense would have been paid from the sale proceeds. It was estimated to be about \$5,000.]

The filing of the Academy's motion did, however, allow the Estate/2000 Trust to withdraw the Grammy from the sale without a withdrawal penalty.

Based on all factors, Buchanan and Appellant made the decision to withdraw the Grammy, which had a sale estimate in the \$15,000 range, without penalty.

The Grammy was returned to the S.C. State Museum which, under the same orders which approved the Christie's sale, held many items of memorabilia for safekeeping during the pendency of the Will/Trust challenges.

There was no need to even respond to the filing, since the matter was moot. Yet the lawyer who filed the motion puffed on his blog that he had "stopped" the sale.

Forlando later confirmed that he, his father, and some of the aunts and uncles – fighting over many other issues – got together to sabotage the Christie's sale. That claim is consistent with the television appearance Deanna Thomas made the morning of the sale to try to chill it.

[Levenson had earlier asked that the Estate/2000 Trust pay for his clients' attendance at the sale. He was told that they would not object to their submitting a request for such payment after the sale.]

Forlando also said that family members had funds to purchase at the sale, but were directed by their attorneys not to do so.

The Estate's motion, filed in accordance with Judge Early's orders, for Dallas to pay the legal cost of interference with the Christie's sale, was filed on July 27, 2008. It has not been heard.

There was no complaint about the Christie's sale during the settlement hearing in 2009. The first complaint about the Christie's sale was raised by Wingate nearly two years after the sale in the Wingate Suit. This was remarkable because the AG, a Plaintiff

On May 18, 2012 Wingate/Bauknight moved to compel Buchanan's compliance with a "settlement."

On July 18 Wingate/Bauknight obtained an emergency order to stop the deposition of their witness Dallas.

On July 20, 2012 Dallas, violating the 2008 Gag Orders (unless void or expired) gave a lengthy sworn statement confirming that Hynie was not Brown's spouse; about the contents of Hynie's handwritten notes; about Mr. Brown's vasectomy and other issues; and about a 2006 3-way conversation he, James Brown and Hynie had about their not being married.

In the summer of 2012 Wingate/Bauknight moved to strike Appellant's offers to Brown's children and grandchildren which, if accepted, might have prevented the *Wilson v. Dallas* decision. Wingate refused to appoint a GAL for the minors.

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

In May 2013 Wingate wrote the Honorable L. Casey Manning referencing the first *Wilson v. Dallas* decision which was replaced on May 8 as follows:

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without

in the Wingate Suit, had asked the South Carolina Court of Appeal to approve the Christie's sale in July 2008 during the Dallas interference. It was also remarkable, because Mr. Bauknight claimed loss on the sale even though the Christie's net proceeds exceeded by tens of thousands of dollars the value he reported on the I&A for ALL of Brown's tangible personal property. The Christie's sale involved only about 350 items of the thousands of pieces of tangible personal property, automobiles, furs and jewelry and memorabilia owned by Brown and his wholly-owned company JBE, Inc. [The Grammy was Item 168]. Many of the pieces not sold were placed for safekeeping at the Augusta Museum of History; the I. P. Stanback Museum at S.C. State; the S.C. State Museum; and the Lucy Craft Laney Museum. More than 40 boxes of music-related items were also transferred by secure transport to a sound storage facility.

any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.

...Therefore, Case 4900 Plaintiffs and Proposed FOIA Interveners respectfully request that [the Wingate/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court. [Emphasis supplied.] [Ltr. Gende 5/12/13]

Current Status of the Wingate Suit: As of February 26, 2014:

1. Bauknight still represents Hynie and her minor son;
2. Bauknight still represents Terry/Forlando;
3. Bauknight still represents others who are challenging the estate plans of James Brown;
- 4.. Bauknight still claims to speak on behalf of the AG
5. No hearing has been held since Wingate's request.

3. FOIA #1 - In this FOIA Suit, filed August 3, 2011 Appellant seeks a signed copy, with amendments, of the Legacy Trust and the AG's documents related to the Bauknight \$4.7 million appraisal.

The Legacy Trust is one of the Plaintiffs who sued Buchanan and Appellant in the Wingate Suit.

In the fall of 2011, Bauknight, for Terry, Hynie and others, moved to intervene and stop release of these public documents.

In 2012, at the request of AG Wilson and Bauknight, FOIA #1 was moved from Newberry County to Richland County.

In 2013 Wingate/Bauknight asked The Honorable L. Casey Manning to delay FOIA #1 for what may be years.

Current Status of FOIA #1 . As of February 26, 2014

- a. Bauknight still represents Hynie and others in FOIA #1.
- b. No hearing has been held.

4. FOIA #2 - In this FOIA Suit, filed August 10, 2011 Appellant sought a signed copy of the public Wingate Litigation Retention

Agreement under which the State/AG sued Buchanan and Appellant in the 2010 Wingate Suit.

Appellant sought the authorization, if any, for Bauknight to sue Buchanan and Appellant as agent for the State/AG.

In the fall of 2011 Bauknight, for Hynie, Terry and others, moved to intervene and seek sanctions against Appellant.

Current Status of FOIA #2 .

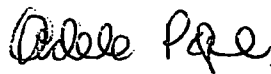
1. Bauknight still represents the Estate, Hynie and others.
2. Bauknight is still trying to intervene and stop FOIA compliance.
3. No hearing has been held.

Appellant's Special Interest status under Section 62-7-405, fully briefed in other cases, is a critical reason why the June 13 Orders should not have enjoined her; and why she has a direct Special Interest Status in this case, as well as status as a creditor and Interested Person. Her pending October 2013 application to be GAL for the incarcerated Michael is another basis for her standing. Bauknight failed to serve either Appellant or Michael with the petition which led to his appointment, which is the subject of this appeal.

CONCLUSION

The matter, if not consolidated with appellate case no. 2013-00169, should be held in abeyance for review of the full record in that case and in appellate case no. 2014-00250.

Respectfully submitted,



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Newberry, South Carolina 29018
803-413-0753
adele@popelawfirm.com

Attorney for Appellants

February 27, 2014

List of Exhibits

Exhibit A - DNA & DIGNITY

Exhibit B - Ltr. of Mr. Toberoff

DNA & DIGNITY

(Proposed Plan for "I Feel Good" Foundation to Protect its Royalties for Needy Students)

1. The "I Feel Good" Foundation's Position and Protocol.

- a. James Brown died unmarried on December 25, 2006. [Toberoff, etc.]
- b. Termination rights agreements will be made only with DNA-proven or Presumed children who support James Brown's noble estate plan.
- c. Current candidates (subject to abandoning any claims) are:
 - a. DNA-Proven: 1. LaRhonda (daughters), 2. Jeanette, 3. Nicole;
 - b. First marriage: 4. Terry, 5. Larry, 6. Lisa;
 - c. Second marriage: 7. Deanna, 8. Yamma;

2. Offer - But do not require – Peeples DNA Protocol for 30 - 60 days.

DNA testing under the Estate's official Peeples DNA Protocol, paid for by the Estate, to be offered for 30-60 days to: 9. Michael (incarcerated), 10. James Curtis, 11. Tonya, 12. James B., 13. DOE Defendants identified as likely heirs by the GAL, Levenson Intestacy Suit.

3. Dignity & Reconciliation for Termination Rights Cooperation of Excluded Heirs.

After above 30-60-days, offer to the first six to accept of : La Rhonda, Jeanette, Nicole, Lisa and anyone passing Peeples DNA Protocol listed above, in exchange for agreement for lifetime termination rights cooperation:

1. Full recognition as heirs by the Estate and "I Feel Good" Foundation at a ceremony to be conducted at Brown's home estate in Beech Island .
2. [If possible] VIP Invitation to, and additional recognition, at the opening of South Carolina screening of "Get on Up!"
3. \$10,000 per year for life, effective 2011.

4. Offer Termination Rights Agreements to some Children Acknowledged in Will.

Make the offer set out above to the first two children acknowledged in the Will to accept – but with payment of \$50,000 per year for life, commencing upon execution of termination rights agreement and withdrawal of all claims against the Will, 2000 Trust and Estate.

5. If two Acknowledged Children do not accept, re-offer to all Excluded Heirs.

6. Consider "splitting heirs" and other available strategies to protect the Royalties for Needy Students as James Brown directed.

7. Update Protocol at death of each child, and as needed.¹

¹
This proposal is consistent with the "Splitting Heirs" technique described in *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't....* Also see: The Aspen Institute (supp. 2013). *The artist as philanthropist. strengthening the next generation of artist-endowed foundations.*

The Estate/2000 Trust's plan to protect its rights to more than 800 published and unpublished songs (the "Royalties") was started by Brown's original PR/Trustees in 2007. They established the Estate's official "Peoples DNA Protocol." Using the Peoples DNA Protocol, the Estate identified and officially acknowledged La Rhonda, Jeanette and Nicole. Others were excluded. Incarcerated son Michael's request for testing was interrupted by the AG's 2008 Settlement.

Buchanan & Pope continued the plan to protect Brown's Royalties. They consented to a March 8, 2008 Order of the Hon. Doyet A. Early, III which would have proceeded with the official Heirs determination in the Levenson Intestacy Suit although Brown had two valid Wills.

Four months later – and for nearly five years – the AG's 2008 Settlement stood as an impediment to a proper protection plan for the Royalties.

The completion of a properly-documented Heirs baseline during the probate process would have given the "I Feel Good" Foundation – and gives all charities who have been devised Copyrights -- maximum flexibility to:

1. Contract with the half, or half + 1 needed to protect the copyrights ("Splitting Heirs") – 5 or so in the case of the "I Feel Good" Foundation
2. Avoid later costly federal litigation with a proper Heirs baseline.

A proper heirs determination was particularly important in this case because all fiduciaries, all children and others had overwhelming evidence that Brown died without a spouse. And his companion's child was not a presumed child. [He is the only claimed child born in the 22 years between Brown's vasectomy and death.. He has refused DNA testing under the Peoples Protocol for 7 years.] Yet the AG "spoke as one" with the two from August 2008 until May 2013. His appointee became their agent in four separate lawsuits. The AG's contract "stipulated" that both the companion and her son were heirs. The State/AG exempted companion's son from DNA testing under the Peoples DNA Protocol. The State/AG contracted to join them in attempting to defeat the interests of real heirs.

Since February 27, 2013 the Estate/"I Feel Good" Trust has been in a position to complete the Peoples DNA Protocol for non-presumed heirs and make Termination Agreements under the above, or a similar, plan. To do so will provide appropriate respect and recognition for all DNA-proven non-presumed children excluded by Brown.

It will also be good for the "I Feel Good" Foundation.

For under \$200,000 per year (and with almost no attorneys' fees), the above plan would have secured the "I Feel Good" Foundation's Royalties (about \$3 million a year) for needy students for decades. Starting in 2011. It still can.

To accomplish the same result the AG's 2008 agreement proposed to give away 52 ½% of the "I Feel Good" Foundation – about \$40 million at the time.

TOBEROFF & ASSOCIATES, P.C.

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mtoberoff@toberoffandassociates.com

September 23, 2013

Via E-mail and U.S. Mail

Scott McDowell
Senior Vice President and
Head of Legal & Business Affairs
Warner/Chappell Music, Inc.
10585 Santa Monica Blvd.
Los Angeles, CA 90025

Re: James Brown/Terminations under the Copyright Act

Dear Mr. McDowell:

We represent James Brown's children, Terry L. Brown, Larhonda Waller, Deanna Brown Thomas, Yamma Brown, Venisha Brown, Jeanette Mitchell Bellinger and Cinnamon Nicole Parris, and James Brown's grandchild, Sarah LaTonya Fegan a.k.a. Tonya Brown (collectively, the "Heirs"), who are believed to constitute all or a super-majority of James Brown's statutory heirs entitled to exercise termination rights under 17 U.S.C. §304. On the Heirs' behalf, we will be serving Warner/Chappell Music and others, in the near future, with statutory notices of termination regarding Mr. Brown's music.

The Heirs are informed and believe that Tomi Rae Hynie and James Brown, Jr., acting as James Brown's putative surviving spouse and child, respectively, have served purported notices of termination regarding his musical compositions (the "Tomi Rae Termination"). The Heirs are further informed and believe that the Tomi Rae Termination is being handled by a representative of the Estate of James Brown, despite the glaring conflicts of interest that this would appear to entail.

This letter is to notify Warner/Chappell Music that the Heirs vigorously contest the validity of the Tomi Rae Termination and the standing of Tomi Rae Hynie and James Brown, Jr. to serve any notices of termination under the Copyright Act regarding James Brown's music.

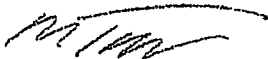
The Heirs' claim is based, without limitation, on the well-known fact that when Ms. Hynie purported to marry James Brown in December 2001 she was already married to Javed Ahmed (since 1997). The Heirs contend that this rendered her 2001 marriage void, and that the 2004 default judgment thereafter obtained by Ms. Hynie from a South Carolina family court, annulling her marriage to Mr. Ahmed, did not resuscitate Ms. Hynie's 2001 marriage to Mr. Brown pursuant to the recent on-point decision of the South Carolina Supreme Court in *Lukich v. Lukich*, 379 S.C. 589, 592 (2008) ("The question is whether the [2003 annulment order declaring Wife's first marriage void *ab initio* relates back so as to validate her purported 1985 marriage." "While an annulment order relates back in most senses, it does not have the ability to validate the bigamous second [1985] 'marriage.'").

Furthermore, Ms. Hynie's default judgment in *Tomi Rae Hynie v. Javed Ahmed* has no claim or issue preclusion effect on the Heirs as they were not parties to that action, and, in any event, the purported findings of fact and conclusions of law in that default judgment have no issue preclusion effect because such issues do not appear to have been "actually litigated" on the merits. See *State v. Bacote*, 331 S.C. 328, 330-31 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation."). The Heirs' challenge to James Brown, Jr. is based, among other things, on his refusal to take a simple Court-supervised DNA test verifying that he is James Brown's child.

Please be further advised that these essential legal matters will be the subject of pending litigation in the South Carolina courts or in an alternative forum.

We hope to keep you well advised as this process marches towards a resolution. In the meantime, the Heirs and I look forward to an amicable relationship with Warner/Chappell Music regarding their statutory termination interests, and the future of James Brown's music.

Very truly yours,



Marc Tobero

cc: Kelly Burnett via E-mail, Senior Director, Legal & Business Affairs
Warner/Chappell Music, Inc.

STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

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 APPENDIX in
the above matter 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

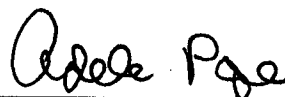
Robert N. Rosen, Esquire
18 Broad Street, Suite 201
Charleston, SC 29401

J. David Black, Esquire
Fred Lewis Kingsmore, Jr., Esquire
William W. Wilkins, Esquire
Burl F. Williams, Esquire
PO Drawer 2426
Columbia, South Carolina 29202-2426

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89 Broad Street
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Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com

Petitioner, *pro se*

June 13, 2014

STATE OF SOUTH CAROLINA
In the 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 CERTIORARI 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:

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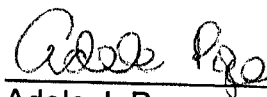
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June 13, 2014

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