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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

Appellate Case No. 2013-001649

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, Respondents.

**MOTION AND MEMORANDUM FOR EXPEDITED SUPERSEDEAS AND  
STAY OF NOVEMBER 24, 2014 SUMMARY JUDGMENT HEARING OF  
RESPONDENT TOMMIE RAE HYNIE ON HER SPOUSAL CLAIM, AND  
STAY OF SPOUSAL DETERMINATION PENDING MEDIATION IN  
CASE 2010-CP-40-4900**

TO: THE HONORABLE CHIEF JUDGE AND THE ASSOCIATE JUDGES OF THE  
COURT:

Appellant respectfully moves this Court, or a single Judge thereof, for an expedited Order granting a stay of the November 24 summary judgment hearing in which Respondent Tommie Rae Hynie ("Tommie Rae") seeks to be declared the spouse of entertainer James Brown. Appellant asks for a stay of Tommie Rae's spousal claims, from which she is barred by the orders on appeal herein, until the completion of the court-directed mediation in Richland County Case 2010-CP-40-4900 ("Case 4900") which was announced November 3, 2014.

In Case 4900 the Attorney General, the Attorney General's Legacy Trust and Tommie Rae are jointly suing Robert Buchanan, Jr. and Appellant for tens of millions of dollars for conducting the appeal which resulted in the May 8, 2013 decision in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

On November 3, 2014 the Aiken lower court announced that the Honorable L. Casey Manning will shortly be issuing an order directing mediation in Case 4900. Appellant's and Buchanan's answers and counterclaims in Case 4900 rest on the fact that they owed Tommie Rae no fiduciary duty because she was not Brown's spouse.

Appellant learned after a November 10 hearing that Tommie Rae and the Estate intend to proceed on November 24 with Tommie Rae's summary judgment motion in which she claims to be Brown's wife. [See Exhibit A, a media report of the November 10 action.] They plan to hear the summary judgment motion based on stipulated "facts" which, on information and belief, ignore:

1. The widely-known contents of Tommie Rae's "diary" which do irreparable harm to her claim to be Brown's spouse;
2. The admission of at least six clients of Louis Levenson, Esq., her

co-Plaintiffs in Case 4900, that Tommie Rae was not Brown's spouse and they knew it when they joined the Attorney General's 2008 settlement.

3. The sworn testimony of Respondent Albert Dallas, Tommie Rae's and the Attorney General's witness in Case 4900, that he, James Brown and Tommie Rae discussed together in the summer of 2006 that Brown and Tommie Rae were not married, and that Brown and Tommie Rae permanently separated after that.

4. The sworn statement of Mr. Wells that the public claimed "diary" which does irreparable harm to Tommie Rae's spousal claim was not a diary, but handwritten notes discarded on Trust property.

5. The sworn testimony of Respondent Forlando Brown that Tommie Rae and James Brown were not married; that she begged him to marry her after he discovered she was married when they had a ceremony in 2001; and that Brown was hurt and refused.

Expedited relief is necessary because twenty months after the first *Wilson* decision Tommie Rae, the Attorney General and Bauknight are still pursuing Case 4900 and refusing FOIA compliance to release the "diary," while Tommie Rae rushes to carry out their joint, 6-year attempt to convince the courts that she was Brown's spouse.

The extraordinary circumstances which require Appellant, under Rule 225(d), to apply to this Court, rather than the lower court, are that the lower court orders dated June 13, 2013 (the "June 13 Orders") which are the subject of this appeal were issued without notice or hearing. Further, at the direction of the lower court in the June 13 Orders, the clerk of court has rejected filings of Appellant in the fourteen cases affected by the orders. The lower court has also failed to grant numerous requests by Appellant to hear her motion to declare void or expired the unconstitutional 2008 gag orders preventing discussion of the widely-known contents of the so-called Hynie "diary." At

the same time, the Attorney General and Bauknight have aided Tommie Rae, and damaged the "I Feel Good" Trust and Appellant, by attempts to keep the 2008 gag orders in place.

Failure enforce or grant a stay on an expedited basis will result in irreparable damage, unnecessary expense and injustice to Appellant and to Brown's "I Feel Good" Trust. It will advance Tommie Rae's and Levenson's May 29, 2013 announced intention to reinstate the Attorney General's 2008 settlement which would transfer about \$30 million from the "I Feel Good" charitable foundation to Levenson, Tommie Rae and her attorneys, based not on the merits of their claims, but their being favored by the Attorney General.

The damage is exacerbated by Bauknight's continued service as fiduciary and agent for both Tommie Rae and the Attorney General in Case 4900, and the Attorney General's continuing aid to Tommie Rae as her co-plaintiff and co-counterclaim defendant. This use of State power and charitable funds against Appellant and the "I Feel Good" Trust, and to aid Tommie Rae, is unprecedented and improper.

**MEMORANDUM IN SUPPORT OF  
EMERGENCY ENFORCEMENT OF STAY AND OTHER RELIEF**

On July 29, 2013 Appellant appealed the June 13 Orders. On that day Tommie Rae's spousal claims, on information and belief, became subject to the automatic stay of Rule 205 SCACR, which states:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 225. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with

matters not affected by the appeal.

While the June 13 Orders were, in part, an injunction, they were much broader. They, and this appeal, affect fourteen James Brown cases. Tommie Rae's spousal claims are affected by this appeal.

In the first *Wilson* decision, issued February 27, 2014, the Supreme Court directed that Case 4900, brought jointly by the Attorney General, his Legacy Trust and Tommie Rae against Buchanan and Appellant, be addressed in the first instance. The same direction was made for the James Brown FOIA case the Attorney General had consolidated with Case 4900, and another he is trying to consolidate.

This mandate was critical to Appellant and Buchanan because:

1. The Attorney General and Tommie Rae are using taxpayer and charitable funds to sue Buchanan and Appellant.
2. The Attorney General and Tommie Rae claim Buchanan and Pope breached their fiduciary duty by conducting the *Wilson* appeal, which is false.
3. The Attorney General and Tommie Rae claim Buchanan and Appellant owed a fiduciary duty to Tommie Rae and her son James B., but they did not.
4. The Attorney General and Tommie Rae claim Buchanan and Appellant should have accepted a \$100 million 2007 offer for Brown's music empire.
5. At the same time the Attorney General and Tommie Rae have told the Supreme Court the music empire was worth \$4.7 million, and no offers were made.
6. The Attorney General and Tommie Rae threatened Buchanan's and Appellant's careers with the false claim that Buchanan and Appellant committed the federal felony of overstating the value of Brown's music empire by \$79 million on the estate tax return to get a \$5 million commission.

Buchanan's and Appellant's careers and reputations were shattered by these false claims, and justice required that they proceed. Until November 3, 2014 that has

not happened.

On May 8, 2013, after the final *Wilson* decision omitted footnote 29, the Attorney General's and Tommie Rae's lawyer told the Richland court:

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 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 Intervenors respectfully request that [Case 400/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.]

The Attorney General and Tommie Rae followed this statement with a written motion to stay in 2014.

For more than three years the Attorney General and Bauknicht have used taxpayer dollars to evade FOIA compliance; consolidate all James Brown FOIA cases with Case 4900; subordinate them to Case 4900 discovery; then stay Case 4900. The public documents not produced under FOIA include the Hynie "diary."

On November 3, 2014 the logjam was broken with the announcement that the Richland circuit court would order mediation in Case 4900. One week later, the Estate and Tommie Rae rushed have her spousal claim heard on stipulated "facts." Those "facts" ignore the overwhelming admissible evidence that Tommie Rae was not Brown's spouse and knew it.

As referenced above, the stipulated "facts", exclude material facts and documents

which overwhelmingly show that Tommie Rae was not Brown's spouse. They do not include the letter of Copyright expert Marc Toberoff, confirming the admission of at least five Levenson's clients that they knew Tommie Rae was not the Brown's spouse when they entered the Attorney General's 2008 settlement.

On information and belief, the scheduled summary judgment hearing is an unjust attempt to reinstate the Attorney General's settlement and damage Appellant in Case 4900. This causes irreparable harm to Appellant and to the "I Feel Good" Foundation.

For six years taxpayer dollars and charitable funds have been wasted by the Attorney General and Bauknight in an attempt to make Tommie Rae appear to be Brown's spouse; dismember the "I Feel Good" Foundation; and damage its copyrights. A state law determination that Tommie Rae was Brown's spouse, recognized by the Federal Copyright Act, is part of that plan. Since late 2012 more than \$2 million has been spent to carry out the plan.

Sheltered by the Attorney General and his trustee, Tommie Rae has not submitted to a single deposition since 2008. It is time for this State support of someone committed to destroying the "I Feel Good" Trust, and anyone who stands in the way of that destruction, to stop.

## **CONCLUSION**

An expedited stay of the November 24, 2014 hearing and Tommie Rae's spousal claim proceedings pending the conclusion of Case 4900 mediation will prevent irreparable harm and extraordinary expense to Appellant and the "I Feel Good" Foundation. It will mitigate the violation of Appellant's First Amendment and Due Process

rights by the June 13 Orders which are the subject of this appeal. It will allow Buchanan and Appellant a fair chance to restore their rights and reputations in Case 4900 against the false joint claims of the State, the Attorney General's trustee and Tommie Rae. It may help curb FOIA abuse by Bauknight and Tommie Rae, and FOIA noncompliance by the Attorney General.

This limited stay will promote justice, fair play and a level playing field for Appellant and all others who believe that respecting James Brown's estate plan is essential to the protection of private philanthropy in South Carolina.

Respectfully submitted,

*Adele Pope*

Adele J. Pope  
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S.C. Bar No. 4501

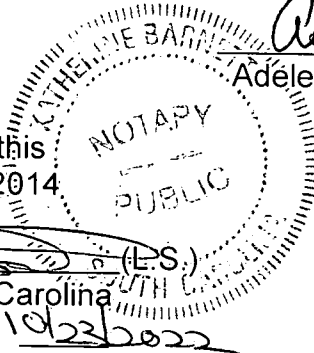
November 17, 2014

#### VERIFICATION

PERSONALLY APPEARED BEFORE ME Adele J. Pope, who, being duly sworn, deposes and says that she is the Movant in the above motion for a stay of this summary judgment hearing of Respondent Tommie Rae Hynie and proceedings until the completion of the mediation in Case 4900 and FOIA compliance by the Attorney General, and that the facts stated in herein are true and correct to best of her knowledge and belief.

*Adele Pope*  
Adele J. Pope

SWORN TO before me this  
17th day of November, 2014



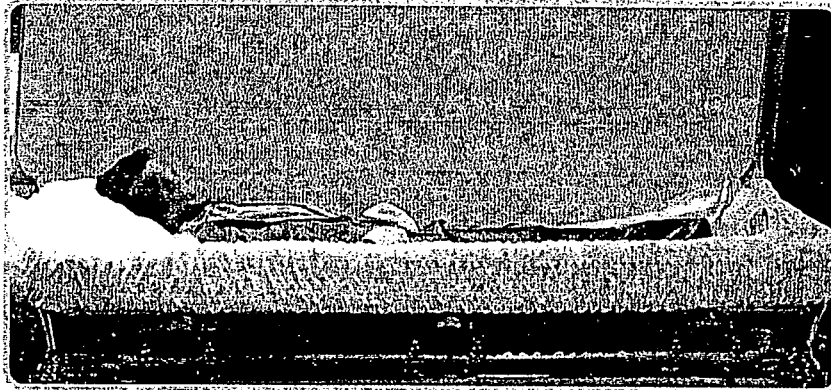
Notary Public for South Carolina  
My Commission expires: 10/23/2022



Exhibit A

FROM WATCHDOG WIRE

## SC: JAMES BROWN COMPANION MOVES TO BAN DNA-PROVEN CHILDREN FROM ESTATE HEARINGS



James Brown estate still in limbo November 14, 2014 by Sue Summer

The companion of music legend James Brown has asked an Aiken Court in South Carolina to ban several of Brown's children from participating in hearings that will determine if Brown had a spouse when he died on Christmas Day 2006.

According to several filings in the Brown estate case, the determination of Brown's marital status will have an effect on the rights of his children under the Federal Copyright Act—and in turn, on his education charity.

Companion Tomirae Hynie inherited nothing under Brown's 2000 will, which left his music empire to the "I Feel Good" Trust for educating needy children in South Carolina and Georgia.

In 2007, Hynie contested the will, claiming to be Brown's wife and entitled to a spousal share of his estate. Under a settlement deal approved in 2009, Hynie was given one-quarter of Brown's music empire, and the six children named in his will were given another quarter.

The settlement was overturned in May 2013 by the South Carolina Supreme Court, which called the deal a "dismemberment" of Brown's "noble" estate plan.

Since the 2013 ruling, Hynie has renewed her spousal claim, and her motion for summary judgment is scheduled for Nov. 24.

At an Aiken hearing on Nov. 10 before Judge Doyet Early, Columbia attorney Alan Medlin argued on Hynie's behalf that under the S.C. Probate Code, only the estate's Limited Special Administrator (LSA) David Sojourner of Columbia should be a party in the hearing.

Sojourner was appointed in late 2013 at the request of current Brown trustee and Personal Representative, Russell Bauknight of Columbia, for the purpose of defending Brown's estate plan against will contests and other claims.

Attorney Vera Gilford of Florida, representing DNA-proven daughter Jeanette Mitchell, argued that her client should be allowed to intervene in the Hynie hearing because the determination of Brown's marital status will affect Mitchell's property interests. Gilford also represents the children of another DNA-proven daughter, LaRhonda Petit, who died in December 2013.

Gilford has filed an amicus brief for the Nov. 24 hearing in which she challenges Hynie's spousal claim.

Hynie and Brown exchanged vows in a 2001 ceremony, but she was married to another man at the time. Hynie obtained an annulment from Javed Ahmed in 2004, but Brown was so humiliated about her previous marriage that he thereafter refused to marry her, according to Brown's former attorney Albert "Buddy" Dallas.

Gilford argues that under "Lukich v. Lukich," decided by the South Carolina Supreme Court in 2008, Hynie's 2004 annulment does not validate her bigamous 2001 ceremony with Brown.

In its 2013 *Wilson v. Dallas* ruling, the Supreme Court also expressed serious doubts about Hynie's spousal claim based on "Lukich v. Lukich." The Court further noted Hynie had signed two agreements, in 2001 and 2004, that she would never make a claim against Brown's estate.

Gilford's brief raises several questions about Hynie's 2004 annulment. The brief also claims Hynie's testimony at the annulment was "inconsistent, contradicted, unreliable and biased."

In interrogatories filed with the court, Hynie has stated that her marriage to Ahmed was an immigration scam. She said Ahmed told her before their marriage that he had other wives in Pakistan, but she proceeded to marry him anyway. Hynie further claims the marriage was not consummated and the two never lived together, but Gilford's brief includes an affidavit that contradicts those statements.

Sojourner's attorney, John Beach of Columbia, took no position on Mitchell's motion to intervene in the Hynie hearing.

Also at the Nov. 10 hearing, Medlin challenged the Court's July ruling that Mitchell was an heir. Gilford responded the Court had already ruled and Medlin's arguments were untimely.

"We have general opposition to any move to determine heirs," Medlin said.

Medlin advised the Court that DNA-proven, illegitimate children have no right to participate in Hynie's hearing, and their claims to be "heirs" should be handled in federal courts under the Federal Copyright Act.

"A California lawyer represents nearly everyone here in termination rights, and they should use the federal court for this," Medlin said.

Copyright expert and retired intellectual property attorney, Jeff Smith of Newberry, has attended several James Brown estate hearings, and he believes otherwise. "The Federal Copyright Act would look to the State of South Carolina to determine if there really was a spouse at the time of James Brown's death, and, if so, who the spouse was."

Smith and former trustee Adele Pope of Newberry have written a professional article about copyrights and the Brown estate.

In Pope's appeal of 2013 orders that booted her from the Brown estate proceedings, she emphasized that the question of heirs is critically important for the protection of the "I Feel Good" Trust—and also has consequences related to rights under the Federal Copyright Act, including the rights of children not named in the will.

Judge Early first ordered an heirs determination in the Brown estate in March 2008. Former Judge Rodney Peebles developed a DNA protocol under which the heirs could be identified. Under the Peebles protocol, Mitchell and at least three others have been identified as Brown's children and were acknowledged by the estate. A fourth child, son Michael Deon, has more recently been identified under the Peebles DNA Protocol.

Brown has at least five claimed children who were not named in the will, among them Hynie's minor son, James II. It is not known whether he passed the DNA test: he submitted to the test only after Sojourner agreed to keep the results "confidential."

Attorney Peter Shahid of Charleston represents Hynie's son, who asked the Court to intervene in the Nov. 24 hearing so that James II can protect his mother's interests. "His interest is directly affected by his mother's interests."

Medlin did not object to the intervention of Hynie's son, saying, "We believe that Tomirae's marriage was valid, and that an attempt to marry legitimizes children."

He said, however, that he would argue against Mitchell and Petit.

One key piece of evidence about whether Brown was married may be unavailable at the Nov. 24 hearing. According to a longtime friend of Brown's, Hynie's diary recorded that she pleaded with him to marry her after the 2004 annulment—not something a wife would do.

Copies of the diary were available to all parties early in the case, but in 2008 Judge Early ordered the copies returned and issued three gag orders that forbade anyone to speak about the diary contents. The orders were issued without a hearing, and they were violated by Hynie herself in a television interview only months after they were issued.

Former trustee Pope moved in 2012 to have the gag orders lifted, but attorneys for Attorney General Alan Wilson and Bauknight argued on behalf of Hynie that the gag orders should be kept in place.

*Featured image from Shutterstock*

## Sue Summer

Sue Summer is a journalist from South Carolina. She has extensively covered the legal battle over James Brown's estate.  
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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, Respondents.

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**PROOF OF SERVICE**

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I certify that on the 17th day of November, 2014, I have served a copy of the  
MOTION AND MEMORANDUM FOR EXPEDITED SUPERSEDEAS AND STAY OF  
NOVEMBER 24, 2014 SUMMARY JUDGMENT HEARING OF RESPONDENT  
TOMMIE RAE HYNIE ON HER SPOUSAL CLAIM, AND STAY OF SPOUSAL  
DETERMINATION PENDING MEDIATION IN CASE 2010-CP-40-4900 in this  
matter on the Respondents Described below by depositing a copy of same in the

United States Mail, postage prepaid, addressed to them or their attorneys of record as follows, and on counsel for Respondent Tommie Rae Hynie by email as shown:

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November 17, 2014

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NOV 17 2014

**SC Court of Appeals**

November 17, 2014

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Post Office Box 11629  
Columbia, South Carolina 29211

By Hand Delivery

Re: Wilson and others v. Dallas and others  
Appellate Case No. 2013-001649

Dear Ms. Kitchings:

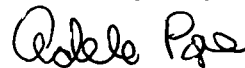
In connection with the above appeal, enclosed please find the following:

1. An original and seven copies of the MOTION AND MEMORANDUM FOR EXPEDITED SUPERSEDEAS AND STAY OF NOVEMBER 24, 2014 SUMMARY JUDGMENT HEARING OF RESPONDENT TOMMIE RAE HYNIE ON HER SPOUSAL CLAIM, AND STAY OF SPOUSAL DETERMINATION PENDING MEDIATION IN CASE 2010-CP-40-4900;
2. An original and one copy, Proof of Service of the above.
3. My check for \$25 for the filing fee.

Kindly file the required documents and return a file-stamped copy of each with the person who delivers them.

Thank you for your help.

Yours very truly,



Adele J. Pope  
Appellant, *Pro Se*  
S.C. Bar No. 4501

cc:

Eugene C. Covington, Jr., Esq.  
Robert N. Rosen, Esquire  
Albert P. Shahid, Jr., Esq.  
Tanya A. Gee, Esquire  
John Andrew Donsbach, Esquire  
David G. Cannon