

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

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

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Appellate Case No. 2013-001649

Lower Court Case Nos. 2007-CP-02-0122; 2008-CP-02-0872; 2007-CP-02-0322; 2010-CP-02-072; 2012-CP-02-1059; 2008-CP-02-1426; 2008-CP-02-1712; 2008-CP-02-2127; 2008-CP-02-1556; 2008-CP-02-1557; 2008-CP-02-1758; 2008-CP-02-1759; 2008-CP-02-1647; 2013-CP-02-1348

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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.....Respondent.

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**RETURN IN OPPOSITION TO POPE'S MOTION FOR  
EXPEDITED SUPERSEDEAS AND STAY**

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SC Court of Appeals

*“The law regards with jealousy, and even aversion,  
the officious intermeddling with a dead man’s estate.”*<sup>1</sup>

Russell L. Bauknight, on behalf of the James Brown Estate, submits the following memorandum in opposition to Pope’s incredible request for stay relief. Pope is engaging in a level of officious intermeddling that is simply breathtaking—she has moved this Court to issue an order enjoining a circuit court from hearing a summary judgment motion relating to a dead man’s estate that has nothing to do with her. The Estate has a pending motion for summary judgment and it seeks a ruling that Tommie Rae is not the surviving spouse of the late James Brown. Tommie Rae also has a pending motion for summary judgment and she seeks the opposite ruling. In *Wilson v. Dallas*, the Supreme Court remanded the Estate litigation to the circuit court to proceed consistent with its opinion and that is exactly what the Estate is doing. Pope’s motion effectively asks this Court to disregard the *Wilson v. Dallas* mandate. Pope’s motion should be summarily denied.

As this Court is well aware, Mr. Bauknight and Mr. Sojourner have been appointed to oversee, respectively, the proper functioning of the James Brown Estate and to defend the estate plan against all legal challenges. As this Court is likewise well aware, Pope was removed as a fiduciary for cause and has no authority to meddle in the affairs of the Estate. Rather, Pope’s sole remaining involvement with the Estate is her \$5 million fee claim—*i.e.*, she is a potential Estate creditor, ***and nothing more***. Notwithstanding that fact, Pope seeks to expand her involvement with the Estate through this appeal. This appeal should provide her no aid, however, for the question presented is merely whether

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<sup>1</sup> *Salvo & Wade v. Schmidt*, 29 S.C.L. 512, 2 Speers 512 (1844).

the circuit court properly carried out the ministerial function of clarifying the Clerk of Court records to conform to the Supreme Court's mandate.

Consistent with her appellate strategy, Pope is now attempting to use this appeal and the subject motion as a platform to further expand her involvement with the Estate. She has moved this Court to stay a summary judgment hearing related to the marital status of Tommie Rae. The purported basis for this extraordinary request is a looming mediation in a breach of fiduciary duty action brought by the Estate against Pope. What is not explained, however, is why the summary judgment hearing has any impact on that mediation. It does not—whether Tommie Rae is the surviving spouse of James Brown has nothing to do with whether the Estate has a claim against Pope for breach of fiduciary duty. Pope's motion is simply more of the same inexplicable officious intermeddling that is costing the Estate money—money that should be deposited into a scholarship reserve fund and not for the payment of legal fees and costs.

The summary judgment hearing should proceed as planned. In *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), the Supreme Court reversed a family settlement agreement upon a finding that it did not meet the statutory criteria set forth in S.C. Code Ann. § 62-3-1102. Accordingly, the Supreme Court remanded the case to the circuit court for further proceedings. Following the Supreme Court's mandate, the Estate proceeded with the litigation and has since moved for summary judgment. In its motion the Estate seeks a ruling that Tommie Rae is not the surviving spouse of the late James Brown. The Estate firmly believes that the law is in its favor and that it will win the motion. If the Estate wins its motion, then Tommie Rae's case is *over*.

Tommie Rae has likewise moved for summary judgment, but a ruling in her favor is not outcome dispositive. As the Supreme Court noted in *Wilson v. Dallas*, she would

still have to prove that the prenuptial agreement is not enforceable. 403 S.C. at 440, 743 S.E.2d at 762. Further, as the Supreme Court noted in *Wilson v. Dallas*, even assuming Tommie Rae could meet that burden, she would still have to prove that she was not intentionally omitted from the Will. *Id.* at 441, 743 S.E.2d at 762. For her omitted spouse claim, Tommie Rae would also have to show that James Brown made no transfers to her outside of the Will that were intended to be in lieu of a testamentary transfer. S.C. Code Ann. § 62-2-301.

The Supreme Court remanded the Estate litigation to the circuit court to proceed consistent with its opinion in *Wilson v. Dallas*. The Estate is complying with that mandate, and in doing so, endeavoring to uphold the estate plan of James Brown against all challenges. Pope's unwavering decision to subvert the Supreme Court's decision requires judicial intervention. Her "officious intermeddling with a dead man's estate" must be put to an end. Pope's motion should be denied.

Pursuant to Rule 269, SCACR, the Estate respectfully requests that the Court order Pope to pay the Estate's costs and attorney fees expended in responding to this motion.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "J. David Black", with a long horizontal flourish extending to the right.

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

November 20, 2014

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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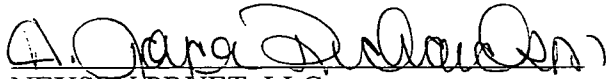
In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d  
August 1, 2000.....Respondent.

**PROOF OF SERVICE**

The undersigned certifies that a copy of the foregoing **Return In Opposition To  
Pope's Motion For Expedited Supersedeas And Stay** has been served upon counsel of

record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 20th day of November, 2014, to the addresses shown below.

Adele J. Pope, Esquire 1228 Walnut Street Newberry, South Carolina 29108	John A. Donsbach, Sr., Esquire 504 Blackburn Drive Augusta, Georgia 30907
Robert N. Rosen, Esquire S. Alan Medlin, Esquire 18 Broad Street, Suite 201 Charleston, South Carolina 29401	The Honorable Alan Wilson Attorney General, State of South Carolina Post Office Box 11549 Columbia, South Carolina 29211-1549
David G. Cannon Post Office Box 865 Barnwell, South Carolina 29812	Albert P. Shahid, Jr., Esquire 89 Broad Street Charleston, South Carolina 29401
Eugene C. Covington, Jr., Esquire Post Office Box 2343 Greenville, South Carolina 29602	Louis Levenson, Esquire 125 Broad Street, SW Atlanta, Georgia 30303
Robert L. Buchanan, Jr. Post Office Box 463 Aiken, South Carolina 29802-0463	

  
NEXSEN PRUET, LLC  
1230 Main Street, Suite 700  
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Columbia, South Carolina

**NEXSEN | PRUET**

**J. David Black**  
Member  
Admitted in SC

November 20, 2014

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

**Re: APPELLATE CASE NO. 2013-001649**

Dear Ms. Kitchings:

Enclosed herewith for filing are the original and seven (7) copies of **Return In Opposition To Pope's Motion For Expedited Supersedeas And Stay and Proof Of Service** in the above-referenced matter. Please return a copy to me, clocked-in, via our courier.

By copy of this letter and as evidenced by the attached Proof Of Service, we are serving counsel of record with a copy of the above Return.

Thank you for your assistance in this matter.

With kind regards, I remain

Very truly yours,



J. David Black

JDB/hjr

Enclosure

cc w/encl.:

- Adele J. Pope, Esquire
- Robert N. Rosen, Esquire
- David G. Cannon
- Eugene C. Covington, Jr., Esquire
- Albert P. Shahid, Jr., Esquire
- John A. Donsbach, Sr., Esquire
- Louis Levenson, Esquire
- Robert L. Buchanan, Esquire
- The Honorable Alan Wilson

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