

STATE OF SOUTH CAROLINA
In the Court of Appeals

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NOV 20 2014

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

SC Court of Appeals

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.

**REPLY TO RETURN OF RESPONDENT TOMMIE RAE HYNIE TO
MOTION OF APPELLANT FOR EXPEDITED SUPERSEDEAS AND
STAY OF NOVEMBER 24, 2014 SUMMARY JUDGMENT HEARING AND
SPOUSAL CLAIMS PENDING MEDIATION IN CASE 2010-CP-40-4900**

Appellant submits this Reply to the Return of the Respondent

Tommie Rae Hynie, also known as Tommie Rae Brown ("Tommie Rae"), dated November 19, 2014 to Appellant's request for a stay of a November 24 summary judgment hearing and other proceedings on Tommie Rae's claim to be the spouse of entertainer James Brown until the completion of mediation in Richland County Case 2010-CP-40-4900 ("Case 4900").

Tommie Rae's responses, in large measure, conflict with the facts and the record of the fourteen Aiken James Brown cases which are the subject of this appeal; in FOIA cases; in Case 4900, in which she and the Attorney General are suing Appellant.

Some of Tommie Rae's inaccuracies are set out below.

a. Case 4900 Mediation Should Proceed Before the Spousal Claim.

Tommie Rae placed the issue of whether she is Brown's spouse before the Richland County Court in 2010 in Case 4900. On pages 4, 5 and 6 of her return Tommie Rae ignores the record, positions of the parties, and possible outcomes in that case. Her counsel filing the return is not her counsel in Case 4900. Appellant incorporates the affidavit of Adam T. Silvernail, Esquire, Appellant's counsel, for a correct history of Case 4900.

b. Tommie Rae; the Attorney General; Bauknight; the Copyrights; the Heirs; the \$4.7 Million Claimed value of the Music Empire.

Before her return, filed 16 months after the automatic stay imposed by Rule 205 SCACR became applicable to her spousal proceedings,

Tommie Rae has not participated in this appeal. She did not file a brief. She is bound by Appellant's statement of the case. She has relief on Bauknight, her fiduciary and agent in Case 4900, to protect her. He has. And so has his limited special administrator ("LSA").

Appellant's amended final brief and reply brief to the *sole* brief filed in this appeal, that of Bauknight, demonstrates this.

The 2008 settlement Tommie Rae seeks to reinstate was propped up by a series of false and material justifications presented to the Supreme Court, including: Tommie Rae was Brown's spouse; that Brown's music empire was worth only \$4.7 million when Brown died; that the settlement caused no estate tax problems; that Tommie Rae and her son control the Federal Copyright Act termination rights to the 800 copyrights Brown gave the "I Feel Good" Trust; that Tommie Rae, the Levenson clients and Terry Brown are all of Brown's heirs; and that Buchanan and Pope are officious, greedy intermeddlers wanting a \$5 million commission from a \$5 million estate.

None of this was true. The music empire was worth almost \$85 million. Tommie Rae was not the spouse. And the termination rights could have easily been controlled by the "I Feel Good" Foundation for decades for about \$100,000 a year. To do so, all that was needed was modest contracts with the half of Brown's real heirs given nothing under the

Attorney General's settlement.

c. Tommie Rae's \$20+ Million Claim and the \$5 Million Fee Claim.

On pages 2, 3, and 6, and elsewhere, counsel for Tommie Rae – who seeks about \$10 million in legal fees if he can reinstate the Attorney General's settlement – asserts that Appellant is motivated by a \$5 million fee claim. He claims Appellant seeks to delay estate proceedings to enhance that fee.

Counsel and Tommie Rae know that Appellant has never sought a \$5 million fee. They also know the following:

1. Tommie Rae nominated Appellant as special administrator ("SA") and approved her appointment as PR/Trustee.
2. Tommie Rae approved a 2008 Court Order of Judge Early which awarded Appellant about \$217,000 for her 7 months' work as SA; found that her work load had doubled since she became PR/Trustee; awarded her a fee for her work and that of her staff on a time + costs basis; and that approximately \$1.38 million was due her under the Order on May 26, 2009, with interest, when she was replaced.
3. Bauknight has refused to pay even the \$48,000 of unpaid 2007 SA fee until Case 4900 is concluded, but asked to stay Case 4900.
4. Buchanan was paid the amount he was due under Judge Early's 2008 Order only after releasing Tommie Rae from his counterclaims in Case 4900 and agreeing not to protect himself or the "I Feel Good" Foundation in a Petition for Rehearing, an unconscionable condition not approved by the Supreme Court.
5. Appellant's and Buchanan's counsel conducted the 4-year defense of the Attorney General's settlement for only about \$200,000, due in large measure to the *pro bono publico*

service of lead appellate counsel James Richardson, Esquire.

6. Appellant has worked *pro bono publico* since May 8, 2013, to help any heir, devisee or other person who seeks to enforce the "I Feel Good" Foundation or protect its copyrights.

d. Case 4900, this Appeal and Tommie Rae's Spousal Claims.

On pages 4-7 Tommie Rae claims that this appeal, Case 4900 and Appellant's claims have nothing to do with her spousal claim or the November 24 hearing. She praises Bauknight's LSA for an appeal which helped her keep real heirs not challenging Brown's estate plan out of her spousal proceeding. She defends a stipulation of facts that is inaccurate, incomplete and biased in her favor.

The stipulation is good for Tommie Rae. It is, however, manifestly unjust to Appellant; to the HALF of Brown's real heirs who are not challenging the estate plan; and to the needy students Brown intended to benefit. It also damages all others who believe that if Brown's private foundation and private property are not protected from a second State takeover, private philanthropy in South Carolina will be in great danger.

Bauknight's LSA not only claims he has no duty to protect the "I Feel Good" Trust's copyrights, but is affirmatively aiding Tommie Rae by proceeding with a manifestly unjust and incorrect summary judgment which intentionally omits known, admissible facts demonstrating that Tommie Rae was not Brown's spouse, and knew it.

e. Appellant's Motion Was Proper and Complied with SCACR.

Tommie Rae asserts on page 2 that Appellant cannot seek a stay or supersedeas because "there is no order under appeal related to the Motion for Summary Judgment." This is not correct. Tommie Rae's spousal claims are part of, and affected by, the three June 13 Orders which are the subject of this appeal.

f. Appellant has a Property Interest in the Spousal Claim.

On page 2, Tommie Rae claims, with emphasis: "Pope has no interest in cases pending before Judge Early." This is not correct. She is being sued by Tommie Rae, and has a counterclaim against her.

g. Pope has a Direct Interest in the Elective Share and Omitted Spouse Share Matter, the Subject of the November 24 Hearing

Tommie Rae asserts on page 3 "[w]hatever, if anything, would eventually be awarded to Pope on her creditor's claim can in no way be affected by Mrs. Brown's spousal share claims." This is not correct.

Appellant's defense against Tommie Rae rests, in part, on her civil status.

h. The Supreme Court's Decision Not to Reinstate Buchanan and Pope Cannot be Read to Deny Them First Amendment, Due Process; FOIA or other Probate and Trust Code Rights.

On page 3, footnote 2, Tommie Rae cites the portion of one of the June 13 Orders, which is a subject of this appeal, that states Judge Early's assertion that because Buchanan and Appellant were removed as

fiduciaries they are “no longer part[ies] to the James Brown Estate and Trust Litigation.” This appeal asserts that this is not what *Wilson* intended. The decision did not strip Buchanan and Appellant of their First Amendment, Due Process, FOIA or Probate and Trust Code rights.

i. Tommie Rae, the Attorney General and Bauknight Interjected Themselves into Pope’s Life – Not Pope into the Estate’s Administration.

On page 4 Tommie Rae speaks of Appellants “continuing attempts to inject herself in the administration of the James Brown estate”. It was the Estate (Bauknight), Tommie Rae and the Attorney General who injected themselves into the lives and careers of Buchanan and Appellant by suing them in Case 4900; denying their FOIA rights; and falsely accusing them of a federal felony. Not the other way around.

j. The Limited Special Administrator’s “Success” in Keeping Brown’s Real Heirs Out of the Tommie Rae’s Proceeding.

As stated above, the limited special administrator, like Bauknight and the Attorney General, is serving the interests of Tommie Rae, Louis Levenson and David Bell, which is to reinstate the settlement and collect \$20 million in legal fees. His ability to dismiss and keep real heirs not challenging the estate plan out of Tommie Rae’s spousal proceeding is a victory for Tommie Rae. It is a defeat for the “I Feel Good” Trust and its copyrights – and for the needy students.

k. Mediation in Case 4900 is Impacted by Tommie Rae's Spousal Claim and the November 24 Hearing.

On page 4 Tommie Rae's counsel interprets what he believes the Court meant about the Case 4900 mediation. Presumably Judge Manning's mediation direction was to require the parties to address and settle the claims in that case. Tommie Rae's spousal status and the claimed \$4.7 million value are primary issues to be resolved. Tommie Rae and her co-plaintiffs placed them there.

l. Tommie Rae is In Default as to the Counterclaims in Case 4900.

On page 4 and 5 Tommie Rae claims the real party in interest in Case 4900 is the estate. This is incorrect. She is a real party in interest; subject to Appellant's counterclaims; and seeking relief from default.

m. Whether Spouse or Not, Tommie Rae is a Party to Case 4900.

On Page 5 Tommie Rae asserts that if she is not Brown's spouse, she will not be a party to Case 4900. This is not correct.

n. The "Diary" Contains Important Admissible Evidence.

On pages 5 and 6 Tommie Rae makes incorrect claims about her "diary." All fiduciaries before Bauknight asserted correctly that these handwritten notes, discarded on 2000 Trust property when Brown and Tommie Rae separated in the summer of 2006, were both material and admissible, as is the testimony of former trustee Dallas and grandson

Forlando that Tommie Rae begged Brown to marry her after her 2004 annulment, but he would not. There is only one reason why neither Bauknight nor his limited special administrator is protecting the “I Feel Good” Foundation with this evidence: They serve Tommie Rae.

o. There is No Basis to Withhold Charitable Funds

Tommie Rae states on page 6 that “unless and until the competing interests in the James Brown estate are determined, not one penny will pass to any charitable beneficiary.” This is not correct. Tommie Rae and *all* persons who challenged Brown’s Will admitted in writing in Case 4900 that the creation of a trust for the benefit of needy students was the often-stated and well known desire of James Brown. Summary judgment that the Will is valid based on these admissions should have been the first order of business on remand. The Attorney General should be concerned that it was not. But he is still serving Tommie Rae in Case 4900.

p. Pope’s Case 4900 Claims Should Come from Tommie Rae and Other Adults Who Brought Cae 4900.

Tommie Rae asserts on page 6 and in footnote 11 that Appellant’s commission claim and any payment from Case 4900 must come from the Estate. This is incorrect. The cost of Case 4900 should be borne by Tommie Rae and adult plaintiffs who brought the unconstitutional lawsuit.

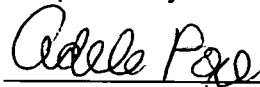
q. Other statements of Tommie Rae.

Appellant refutes all other statements of Tommie Rae not consented to herein, and incorporates her motion, briefs and the affidavit of Adam Silvernail, Esquire as part of this reply.

Conclusion

Tommie Rae's spousal claim is affected by, and a subject of, this appeal. It is a subject of Case 4900. Judge Manning's intention to direct mediation in Case 4900 has been announced. The stipulation of facts and other conduct of the November 24 hearing is manifestly unjust because the Attorney General and the Estate's fiduciaries are still working for Tommie Rae in Aiken, in Case 4900 and in three FOIA cases. The stay should be granted, and the mediation and conclusion of Case 4900 and the FOIA matters Tommie Rae, Bauknight and the Attorney General are trying to consolidate with Case 4900, or have consolidated with it, should proceed in the first instance as contemplated by the Supreme Court in footnote 29 of its first *Wilson* opinion.

Respectfully submitted,



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S.C. Bar No. 4501

November 20, 2014

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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.

PROOF OF SERVICE

I certify that on the 20th day of November, 2014, I have served a copy of the
REPLY TO RETURN OF RESPONDENT TOMMIE RAE HYNIE TO MOTION OF
APPELLANT FOR EXPEDITED SUPERSEDEAS AND STAY OF NOVEMBER 24,
2014 SUMMARY JUDGMENT HEARING AND SPOUSAL CLAIMS 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, and email where shown, as follows:

Tanya A. Gee, Esquire
PO Drawer 2426
Columbia, South Carolina 29202-2426

David G. Cannon
P. O. Box 865
Barnwell, SC 29812

Eugene C. Covington, Jr., Esquire
P. O. Box 2343
Greenville, SC 29602

Robert N. Rosen, Esquire
18 Broad Street, Suite 201
Charleston, SC 29401

and
rnrosen@rosen-lawfirm.com

Albert P. Shahid, Jr., Esquire
89 Broad Street
Charleston, South Carolina 29401

John A. Donsbach, Sr., Esquire
504 Blackburn Drive
Augusta, Georgia 30907



Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S. C. Bar No. 4501

November 20, 2014

Pro Se

Adele J. Pope
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753

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November 20, 2014

SC Court of Appeals

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

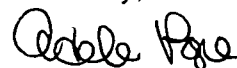
Dear Ms. Kitchings:

In connection with the Motion and Memorandum of Appellant for Expedited Supersedeas and Stay of November 24, 2014 Summary Judgment Hearing of Respondent Tommie Rae Hynie (also known as Tommie Rae Brown) on her Spousal Claim and Stay of Spousal Determination Pending Mediation in Case 2010-CP-40-4900, enclosed please find the following:

1. Original and one copy of REPLY TO RETURN OF RESPONDENT TOMMIE RAE HYNIE TO MOTION OF APPELLANT FOR EXPEDITED SUPERSEDEAS AND STAY OF NOVEMBER 24, 2014 SUMMARY JUDGMENT HEARING AND SPOUSAL CLAIMS PENDING MEDIATION IN CASE 2010-CP-40-4900;
2. Original and one copy of Affidavit of Adam T. Silvernail; and
3. Original and one copy of Proofs of Service of each.

Kindly file the originals and return a file-stamped copy of each with the person who delivers this letter. Thank you.

Sincerely,



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

Enclosures

cc: Counsel as shown on Proofs of Service