

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.....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.

AFFIDAVIT OF ADAM T. SILVERNAIL

PERSONALLY APPEARED BEFORE ME Adam T. Silvernail, who being duly sworn, deposes and says:

1. I am over eighteen (18) years of age, and this affidavit is made of my own personal knowledge.

2. I am an attorney at the firm of Moses & Brackett, P.C., and I have been licensed to practice law in South Carolina since 2010.

3. My practice has been primarily devoted to litigation over estates, trusts and property since I began practicing.

4. I have represented Adele J. Pope ("Adele") in connection with Richland County Case No. 2010-CP-40-4900 ("Case 4900") since late 2010. That case is currently captioned:

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child Janise B., Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children, Sydney L., Carrington L., and Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

and

ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN - LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN Plaintiffs,

v.

Adele J. Pope Defendant.

5. That case was commenced on May 19, 2010 by Kenneth B. Wingate, Esquire and Sweeny Wingate & Barrow, P.A. ("Wingate"), who represented all

Plaintiffs therein. As shown above, his clients included the South Carolina Attorney General (the "AG"); Tommie Rae Brown ("Tommie Rae"); Russell L. Bauknight ("Bauknight"), on behalf of the "James Brown Legacy Trust," Tommie Rae, the AG and others; and a number of individuals.

6. The Plaintiffs in Case 4900 sought tens of millions of dollars in damages from the Defendants for alleged breaches of fiduciary duty. These allegations were based in part on Defendants' conducting the appeal in *Wilson v. Dallas*. That appeal eventually resulted in the Supreme Court's reversal of a 2008 settlement, which was brokered by Attorney General Henry D. McMaster.

7. The original Defendants were Robert L. Buchanan, Jr. ("Bob") and Adele. Bob and Adele filed an Answer and Counterclaim seeking damages for abuse of process, civil conspiracy, attorneys' fees under S.C. Code Ann. §62-7-1004 and certain other relief.

8. The Plaintiffs defaulted on the Counterclaims. Wingate filed a motion for relief from default, along with an Affidavit acknowledging that he had been served with the Answer and Counterclaim. Judge Manning heard that motion in 2012, but no final Order has been issued to date.

9. We noticed the depositions of several Plaintiffs, including Tommie Rae, in early 2011. Wingate moved to quash all notices, and we moved to compel the Plaintiffs to attend depositions. None of those motions has ever been heard or decided by the Richland County Court.

10. As shown in the caption of Case 4900, Bauknight brought the action "on behalf of" the AG, Tommie Rae and others. To this day, he continues to be a

purported agent for these Plaintiffs. Neither Tommie Rae nor Bauknight has ever sought to end Bauknight's agency in Case 4900.

11. In May 2011, we moved to enjoin Wingate and Bauknight from speaking for the AG. That motion was heard and denied in 2012, and we moved to alter or amend Judge Manning's decision. Although Judge Manning heard the motion to alter or amend in 2012, no written order has been issued.

12. In the summer of 2011, Adele requested certain documents from the AG, pursuant to the South Carolina Freedom of Information Act. These documents included the contingency-fee agreement between the AG and Wingate. The AG refused to produce any documents to Adele as a result of her involvement in Case 4900.¹

13. In August 2011, I filed two FOIA suits on Adele's behalf in Newberry County. Adele lives and practices in Newberry, and her FOIA requests and subsequent responses from the AG were exchanged via U.S. Mail from Newberry.

14. The AG was a defendant in both FOIA suits. The Legacy Trust was an additional defendant in one of them. Both moved to transfer the FOIA suits to Richland County and consolidate them with the stagnant Case 4900. Over our objection, the cases were transferred and one was consolidated with Case 4900 in early 2012.

¹ More than two years after the FOIA suits were filed – and during the time they have languished in Richland County – the contingency-fee agreement was declared public by the Federal District Court after hearing discovery motions in the case captioned *Forlando J. Brown v. Pope and Buchanan*, Case No. 3:08-cv-00014. Despite this declaration by the Federal Court, the AG has continued to refuse to produce *his* copy of this document under FOIA.

15. Although Judge Manning scheduled one hearing on the FOIA matters in 2012, no motions were decided, and no Orders have been issued in those cases since their transfer to Richland County in January 2012.

16. I have written the Court on at least nine (9) occasions since early 2013 to request a hearing on the FOIA suits, which are now over three years old. Attached as Exhibit A is my most recent correspondence, which includes a summary of previous attempts to have these matters heard.

17. I believe that the baseless attempt by Tommie Rae and others to intervene in the FOIA suit, along with the AG's complicity in the intervenors' interference with Adele's FOIA rights, has caused substantial delay and expense to my client.

18. Shortly after the filing of the FOIA suits, Tommie Rae and the other Case 4900 Plaintiffs (through Wingate) moved to intervene in one of the FOIA suits for the express purpose of ensuring that the documents were not released.

19. In May 2012, Bob accepted a \$500,000 payment from Bauknight (on behalf of the Estate and/or 2000 Trust) as a settlement of his counterclaims in Case 4900. The payment to Bob was conditioned on his giving a full release to Tommie Rae, the AG and the other Plaintiffs, none of whom appears to have contributed to the settlement payment. The payment was also conditioned upon Bob's agreement that he would not participate in any further filings (specifically including any petition for rehearing) in the *Wilson v. Dallas* appeal, which had been argued but not decided. A member of Wingate's firm signed the settlement agreement on behalf of all Plaintiffs.

20. In July 2012, Plaintiffs asked Judge Manning to order a mediation in Case 4900. We objected, based largely on the fact that *no Plaintiff had appeared for a deposition* in the more-than 2 years since Wingate filed the action. Although we had requested documents in discovery, the Plaintiffs have to date produced only a 2-page witness list in support of their claims and defenses.

21. Although we thought mediation was premature, Judge Manning ordered that it take place without further discovery. Despite our reservations about the timing, we immediately engaged with Plaintiff's counsel in selecting a mediator and setting a date.

22. The July 2012 Order requiring mediation is the most recent written Order filed in Case 4900.

23. We expected that the *Plaintiffs* would attend the mediation, and we believed that their personal attendance was necessary for any meaningful progress. This was especially true since none had yet sat for a deposition.

24. Rule 6(b) of the ADR Rules requires the attendance of all parties at mediation. Plaintiffs nonetheless objected to the requirement that they attend the mediation Judge Manning had ordered at their insistence. Judge Manning exempted attendance by Plaintiffs.

25. The mediation was not successful in resolving Case 4900. I am informed and believe that this was in large measure because the Plaintiffs did not attend.

26. Although Tommie Rae did not attend mediation, she did make a public post on Facebook within 2 hours of the mediation's end. She stated:

This mediation today is to get rid of Adelle Pope an X trustee appointed by the state that has misappropriated and slandered this family with her hatred. Do not start a fire where there is not one! Be patient. This is The Supreme Court they will rule justly. . . We got rid of them Adelle Pope is the last of the rats!

27. We were finally able to depose the first Plaintiff in December 2012. Tommie Rae still was not available for a deposition. After the initial opinion in *Wilson v. Dallas* was issued on February 27, 2013, Wingate declared that he was unable to continue with discovery or hearings of the dozens of outstanding motions as a result of his conflict in representing all Plaintiffs.

28. Between the initial decision in *Wilson v. Dallas* and the final opinion therein, the AG filed a "motion to be dropped as a party" to Case 4900, and Wingate filed a motion to withdraw as counsel for the AG. Neither motion has ever been heard.

29. After the final *Wilson v. Dallas* opinion was issued on May 8, 2013, Wingate sent a letter to Judge Manning asserting that Case 4900 and the FOIA suits should be stayed until the final outcome of all Aiken County litigation. We responded by pointing out the Wingate's conflict could be resolved immediately in the traditional manner: Plaintiffs, if unable to be represented by their current counsel, should retain new counsel.

30. We have repeatedly urged the Court to set a hearing on the pending motions, but have to-date received no communication from the Court regarding Case 4900 since early 2013. When we noticed depositions of certain Plaintiffs in early 2014, Plaintiffs filed a motion formalizing their 2013 request to stay Case 4900

indefinitely pending the outcome of the Aiken County litigation.

31. As far as I am aware, no depositions have been taken in the Aiken County litigation since the *Wilson v. Dallas* decision, and Tommie Rae has yet to sit for any deposition since James Brown's death.

32. In November 2014, the Honorable Doyet A. Early, III notified Adele that he and Judge Manning would be ordering a mediation of both Case 4900 and Adele's *pro se* case in Aiken County.

33. Eager to work toward a long-overdue resolution of Case 4900, Adele and I provided names of mediators as requested by the Court, and I contacted the Richland County Court and Wingate about possible mediators, dates and to confirm that the *parties* would attend.

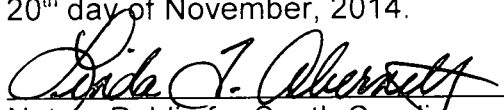
34. Wingate immediately asserted that the parties should again be exempted from attendance at mediation. I believe that the mediation the Court has advised it will direct has a substantial chance of success if all of the parties are required to conform to the ADR Rules and attend. I believe such a mediation, as soon as ordered, could be organized and held within 60 days with the cooperation of all parties and counsel.

FURTHER DEPONENT SAYETH NOT.



Adam T. Silvernail

SWORN TO before me this
20th day of November, 2014.



Notary Public for South Carolina
My Commission Expires: 11-14-18

MOSES & BRACKETT, PC

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November 13, 2014

The Honorable L. Casey Manning
Chief Administrative Judge
Post Office Box 192
1701 Main Street, Room 214
Columbia, South Carolina 29202-0192

Re: *Pope vs. Wilson, et al*
Richland County Case No. 2012-CP-40-0350
Pope vs. Wilson
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

Because it has been a month since your law clerk's last correspondence regarding a hearing in the above-referenced FOIA matters, I write again to ask that the Court immediately set the pending motions in those cases for hearing. As your Honor may recall, these FOIA cases were filed in August 2011.

Although there has been some discussion about a possible mediation of *Bauknight, et al vs. Pope*, with which one of the FOIA cases was consolidated, **these FOIA suits are not subject to mediation.**

Since the last hearing on these FOIA matters, I have written letters to your Honor on the following dates to request that the pending motions be heard:

1. February 8, 2013;
2. March 15, 2013;
3. November 22, 2013;
4. April 17, 2014;
5. April 29, 2014;
6. May 7, 2014;
7. May 28, 2014; and
8. October 8, 2014.

In addition to these letters, there have been several instances of email communication requesting a hearing. After the *Wilson v. Dallas* decision on February 27, 2013, your Honor's law clerk advised us that you preferred to wait until the petitions for rehearing were disposed of to hold a hearing in these matters or Case 4900. Those petitions were decided on May 8, 2013.

Between then and October 13, 2014, we received no responses from the Court to the

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letters listed above. On October 13, 2014, your law clerk contacted us about scheduling the pending motions. Between October 13, 2014 and October 15, 2014, she provided some times and dates when we might hold a hearing. All counsel responded with availability, but no hearing was set. We have not received any communication from the Court since October 15th.

Because these matters are long-overdue for a hearing and disposition, I write once again to ask that the Court set the pending motions for hearing at its earliest convenience. Many of the motions which need to be heard were filed in 2011, and the delay in these cases has denied my client her right to a quick and inexpensive production of public documents.

Every attorney involved in these cases practices in a multi-lawyer firm (or, in the case of Mr. Smith, an office with dozens of lawyers), and I ask that the Court proceed with setting a hearing (or proposing two or three dates) and directing that each attorney make arrangements to have the hearing covered if availability is an issue.

As always, I thank you for your consideration.

Very truly yours,



Adam T. Silvernail

cc: J. Emory Smith, Esquire
Keith M. Babcock, Esquire
A. Camden Lewis, Esquire
Ariail E. King, Esquire
Adele J. Pope, Esquire
Mark V. Gende, Esquire

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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
AFFIDAVIT OF ADAM T. SILVERNAIL 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:

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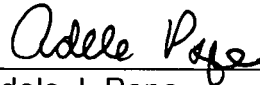
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November 20, 2014

Pro Se