

RECEIVED

NOV 25 2014

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals
RECEIVED

NOV 25 2014

S.C. Supreme Court

Appellate Case No. 2014-002222

Applicant for Intervention Russell L. Bauknight, as Personal Representative of the
Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust.....Appellant.

In re Susan D. Summer,.....Plaintiff,

of whom Susan D. Summer is.....Respondent,

v.

Alan Wilson, In His Capacity as Attorney General for South Carolina.....Defendant.

AND

Susan D. Summer,.....Respondent

v.

Alan Wilson, in his capacity as Attorney General of South Carolina.....Appellant,

and Applicant for Intervention Russell L. Bauknight, as Personal Representative
of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable
Trust.....Cross-Appellant

MOTION TO CERTIFY TO SOUTH CAROLINA SUPREME COURT
UNDER RULE 204 SCACR

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES:

Respondent Susan D. Summer respectfully requests that the Court certify this appeal of the Order of the Honorable Eugene C. Griffith, Jr. dated September 19, 2014 for transfer to the Supreme Court under Rule 204 SCACR. The appealed order finally denied Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust ("Bauknight"), the right to intervene in Respondent's suit brought under the South Carolina Freedom of Information Act (FOIA), S.C. Code Ann. §30-4-10 et seq.; transfer it to Richland County; and consolidate it with Case No. 2010-CP-40-4900 ("Case 4900"). The appealed order also directed the Attorney General of South Carolina to comply with Respondent's FOIA requests.

Bauknight filed his notice of appeal on September 29, 2014.

On October 15, 2014 the Attorney General delivered certain documents and a list of exempt documents to Respondent. On October 16 the Attorney General filed an appeal of the September 19 order, and of an earlier oral order denying his motion for transfer of venue.

The two appeals were combined as Appellate Case No. 2014-002222.

Respondent is a reporter and contributor to the *Newberry Observer*. She became interested in the estate of entertainer James Brown when two FOIA suits were filed in Newberry County in 2011. The two FOIA suits were transferred to Richland County, and one was consolidated with Case 4900, in which the Attorney General and Bauknight are plaintiffs.

In 2012 counsel for the Case 4900 plaintiffs violated the Reporter's shield law by issuing a subpoena for Respondent's notes and sources. The subpoena was subsequently withdrawn at the direction of the Attorney General. When the Attorney General denied or ignored various

FOIA request, respondent filed suit in December 2012 .

In April 2013 Bauknight moved to intervene. He and the Attorney General sought to transfer the case to Richland County; consolidate it with Case 4900; and delay FOIA compliance pending the resolution of certain discovery motions in Case 4900. Some of discovery motions have been pending since 2010.

On July 8, 2014, and again on September 19, Judge Griffith denied Bauknight's requests to intervene and the requests for transfer and consolidation. The September 19 order set conditions for the Attorney General's FOIA compliance.

On October 15, 2014 the Attorney General delivered certain documents and a list of claimed exempt documents. A hearing was scheduled for October 30.

On October 16 the Attorney General filed a notice of appeal of the September 19 order and of an earlier oral order denying his motion to change venue.

On November 13, 2014 the Honorable Jasper N. Cureton issued an order partially remanding the matter to the circuit court. The circuit court was urged to proceed expeditiously with a hearing originally scheduled for October 30 to consider the Attorney General's list of exempt documents and the issue of attorneys' fees. The hearing is set for December 4, 2014.

Because Bauknight asserts his notice of appeal invokes a stay of the Attorney General's FOIA compliance, pursuant to Rule 205 SCACR, Respondent has filed a Motion to Lift Stay in the lower court and asked that it be heard at the December 4 hearing.

The issues in this appeal are novel and of public importance. They include:

1. May a person who is not a public body, intervene in a FOIA suit?

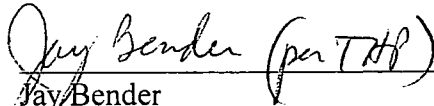
2. If both a public body and a private person delay FOIA compliance, including by appeals, may both be liable for attorneys' fees and costs?
3. Do patently unconstitutional 2008 gag orders in a case in which the Attorney General is no longer a party prevent his 2014 FOIA compliance?
4. Where a public body and a nonresident of the State are joint plaintiffs in a lawsuit; share private counsel; and have agreed that all documents held by their counsel are subject to the FOIA, may the public body, the nonresident or their counsel delay FOIA requests?
5. May a public body delay or deny FOIA compliance because the public documents sought are subject to discovery disputes in a civil suit?

The purpose of FOIA is for public bodies to provide citizens with public documents at a minimum cost and delay. A transfer of this appeal to the Supreme Court is consistent with that purpose, and will give provide guidance on important FOIA issues.

Respectfully Submitted,



Thomas H. Pope, III
Pope & Hudgens, P.A.
P.O. Box 190
1508 College Street
Newberry, SC 29108
Telephone: 803-276-2532
thpope@popeandhudgens.com
SC Bar No. 4508



Jay Bender
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
P.O. Box 8057
Columbia, SC 29202
Telephone: 803-799-9091
jbender@brblegal.com
SC Bar No. 651
Attorneys for Respondent

November 25, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED

NOV 25 2014

SC Court of Appeals

Appellate Case No. 2014-002222

Applicant for Intervention Russell L. Bauknight as PR of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust, Appellant

In re Susan D. Summer of whom Susan D. Summer is Plaintiff, Respondent

v.
Alan Wilson, in his Capacity as Attorney General for SC, Defendant.

AND

Susan D. Summer..... Respondent,

v.

Alan Wilson, in his capacity as Attorney General of South Carolina..... Appellant,

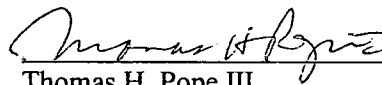
and Applicant for Intervention Russell L. Bauknight, as Personal Representative of the Estate of James Brown and Trustee of the James Brown 2000 Irrevocable Trust.....Cross-Appellant.

PROOF OF SERVICE

The undersigned hereby certifies that he has served Respondent Susan D. Summer's Motion to Certify to South Carolina Supreme Court Under Rule 204 SCACR dated November 25, 2014 in the above case on Appellant and Cross-Appellant by electronic transmission and by depositing copy same in the U.S. Mail, postage prepaid, properly addressed to each of the below counsel on 11/25/2014:

J. Emory Smith, Jr., Esquire
Assistant Deputy Attorney General
PO Box 11549
Columbia, SC 29211
Email: esmith@scag.gov
Counsel for Appellant Alan Wilson, in his capacity as Attorney General of SC

Mark V. Gende, Esquire
Sweeney Wingate & Barrow, PA
PO Box 12129
Columbia, SC 29211
Email: mvg@swblaw.com
Counsel for Applicant for Intervention Bauknight as PR of Estate of James Brown and Trustee of James Brown 2000 Irrevocable Trust


Thomas H. Pope III

November 25, 2014

THOMAS H. POPE III
W. CHAD JENKINS
KYLE B. PARKER

**DOPE
&
HUDGENS**
ATTORNEYS, P.A.

1508 COLLEGE STREET-P.O. BOX 190
NEWBERRY, SOUTH CAROLINA 29108
PHONE (803) 276-2532 FAX (803) 276-8684
WWW.POPEANDHUDGENS.COM

November 25, 2014

JOSEPH W. HUDGENS
Of Counsel
THOMAS H. POPE
(1913-1999)

RECEIVED

NOV 25 2014

S.C. Supreme Court

HAND-DELIVERED:

The Honorable Daniel E. Shearouse, Clerk
Supreme Court of South Carolina
1231 Gervais Street
PO Box 11330
Columbia, SC 29211

RE: Susan D. Summer, Respondent v. Alan Wilson, et al., Appellant and Cross-Appellant, and
Applicant for Intervention Russell L. Bauknight as PR of Estate of James Brown and Trustee, Appellant – In Re
Susan D. Summer, Plaintiff v. Alan Wilson, Defendant
(Appellate Case No. 2014-002222)

Dear Mr. Shearouse:

In connection with the above-referenced matter, I enclose the following for filing:

1. Original and seven copies of a Motion to Certify to the SC Supreme Court in Accordance with Rule 204, SCACR;
2. Original and seven copies of Proof of Service;
3. Our firm check in the amount of \$25 to cover the filing fee.

RECEIVED

NOV 25 2014

SC Court of Appeals

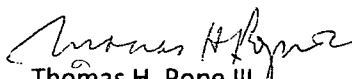
By copy of this letter, a copy of this motion is being filed with the SC Court of Appeals.

Also enclosed are two copies of the Motion to Certify and Proof of Service which I would appreciate your file stamping for our files.

With best regards.

Sincerely,

POPE AND HUDGENS, P.A.


Thomas H. Pope III

THP III/lg

cc: The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
J. Emory Smith, Jr., Esquire, w/encls.
Mark V. Gende, Esquire, w/encls.
Jay Bender, Esquire, w/encls.