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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

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

Appellate Case No. 2013-001649

Ex parte: Adele J. Pope, Appellant,

In Re: Estate of James Brown a/k/a James Joseph Brown,
Respondent.

**ATTORNEY GENERAL ALAN WILSON'S RETURN TO
APPELLANT ADLE J. POPE'S MOTION TO ADD THE ATTORNEY GENERAL AS
RESPONDENT**

The Attorney General respectfully submits this Return in response to Appellant Adele J. Pope's Motion to Add the Attorney General of South Carolina, the James Brown Legacy Trust and Certain Heirs of James Brown as Respondents to the above-captioned appeal. The Attorney General asks the Court to deny the Motion as to the Attorney General. The Attorney General takes no position regarding the James Brown Legacy Trust or Certain Heirs, except that the Attorney General notes that the James Brown Legacy Trust does not exist at this time.

This appeal involves the Estate and Trust of James Brown. This matter is an appeal of certain Orders, including two administrative Orders wherein Judge Early appointed Russell

Bauknight to serve as fiduciary on an interim basis, recognized that Appellant Pope (Pope) had an outstanding fee petition, and refused to consider certain documents filed by Pope in her fiduciary capacity because she was no longer a party to these matters.

The Attorney General has reviewed the briefs in this matter and does not believe his involvement is needed. In addition, he does not agree with certain facts in Pope's Statement of the Facts. For example, the Attorney General does not believe there was ever an "Attorney General's first destruction of the 'I Feel Good' Trust," nor is there a "pending second destruction." Amended Final Brief of Appellant, p. 5. Pope says that two Attorneys General have, among other things, promoted "false propositions" and "trampled on the rights of Brown's real heirs" Amended Final Brief of Appellant, p. 5. These are just a few examples of the many incorrect or misleading statements in Pope's brief.

Pope offers three main arguments in this appeal, and none are specifically related to the charitable beneficiaries. While the Attorney General believes that issues such as due process rights, equal protection rights, and concerns about fraud on the Court – issues raised by Pope - are of the utmost importance, the issues presented in this case do not require his becoming a Respondent.

This Court has previously issued an opinion regarding the role of the Attorney General in charitable trust matters in another appeal related to the Estate and Trust of James Brown. *See Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). The Attorney General is respectful of the Court and seeks to follow the Court's ruling regarding the role of the Attorney General. Accordingly, the Attorney General does not seek to be a party to this appeal.

The Attorney General's authority concerns only the charitable beneficiaries. *See* S.C. Code Ann. § 1-7-130 (1986). "The role of the Attorney General is as an overseer of charities

representing the public, the ultimate beneficiary of the charitable trust.” *Wilson v. Dallas*, 403 S.C. at 446, 743 S.E.2d at 765 (quoting *In re Estate of Horton*, 11 Cal.App.3d 680, 90 Cal.Rptr. 66, 68 (1970)).

Significantly, the Attorney General exercises discretion in determining whether to get involved in charitable trust matters. In *Ames v. Attorney General*, 124 N.E.2d 511 (Mass. 1955), the Petitioners sought to use the name of the Attorney General in a charitable matter. The Attorney General stated in an opinion that “[t]o permit the use of the name of the Attorney General where it is clear to him the trustee is acting in good faith and within the bounds of reasonable judgment and sound discretion, simply because others, equally in good faith, differ with the decision of the trustee, would open the door to unreasonable and vexatious litigations.” The Court agreed and did not compel him to be a part of the case. Similarly in the present case, the Attorney General in his discretion does not seek to be involved in this matter, and the Court should not add him as a Respondent.

While the Attorney General continues to monitor the James Brown matters, as he advised the Court he would do in his Petition for Rehearing of the *Wilson v. Dallas* decision, his involvement is not needed in this matter, and the Motion should be denied. As the Attorney General explained in his Petition for Rehearing, “any further action in this case to protect the charitable beneficiaries may be pursued by the new trustee.” Petition for Rehearing, p. 27. The current trustee, Russell Bauknight, is a Respondent in this matter and the charitable beneficiaries are protected by him. Accordingly, there is no reason for the Attorney General to be a party.

Just as the Attorney General has not maintained an active role in the Brown matters in other courts, he does not need to be a party or have an active role in this appeal. At a status conference on May 29, 2013, the Attorney General notified the Circuit Court of his desire to

withdraw following the *Wilson v. Dallas* decision. The Circuit Court's Order Withdrawing Attorney General, was filed November 6, 2013, withdrawing him from 2008-CP-02-1647, 2008-CP-02-0872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810, all cases related to the James Brown Estate and Trust. As the Circuit Court explained in its Order, allowing the Attorney General to withdraw was appropriate "in light of the Supreme Court's opinion in *Wilson v. Dallas*, Op. No. 27227 (SC. Sup. Ct. refilled [M]ay 8, 2013); the appointment of Russell Bauknight as Special Trustee by Order dated June 13, 2013; the appointment of Russell Bauknight as Special Administrator dated June 13, 2013; and the Attorney General's desire, pursuant to his statutory and common law authority, to have a monitoring role in this matter." The Court went on to explain that the Attorney General would be able to intervene in the future if needed, stating as follows: "This Order is without prejudice to the Attorney General's right to move to intervene in the future, as he finds appropriate based on his monitoring of the case."

In addition to the Order Withdrawing Attorney General which applies to many of the Brown matters, the Attorney General filed a Motion to be Dropped as a Party in Case Number 2010-CP-40-4900, pending in Richland County, on March 25, 2013; this Motion has not been heard. At this time, the Attorney General has assumed a more passive role in the Brown matters and his involvement in this appeal is not necessary.

Conclusion

Based on the foregoing reasons, the Attorney General respectfully asks the Court to deny the Motion to the extent it seeks to add the Attorney General as a Respondent.

Respectfully submitted,
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January 16, 2015

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CERTIFICATE OF SERVICE

I hereby certify that this 16th day of January, 2015, I served a copy of the within **Attorney General Alan Wilson's Return to Appellant Adele J. Pope's Motion to Add the Attorney General as Respondent** on all counsel of record by depositing a copy in the U.S. Mail and addressed as follows:

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