

STATE OF SOUTH CAROLINA
In the Court of Appeals

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APR 7 2015

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Court Judge, **SC Supreme Court**

Appellate Case No. 2013-002582
(Sup. Ct. Appellate Case No. 2014-001279)

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.....Petitioner,

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.

**REPLY TO OPPOSITION OF RESPONDENT SOJOURNER
TO MOTION TO REOPEN AND CERTIFY**

SUMMARY OF RESPONSE

On February 19, 2015, the South Carolina Supreme Court assumed jurisdiction,
at least temporarily, over the Tommie Rae Hynie spousal proceeding and other James

Brown trust and estate cases pending in Aiken County. They did so, at least in part, in response to a January 13, 2015 Order of the Honorable Doyet A. Doyet, III, declaring Tommie Rae Hynie to be the surviving spouse of James Brown.

The January 13 Hynie spousal order placed nearly 900 copyrights, and their \$3+ million annual royalty stream James Brown gave to his "I Feel Good" Trust (the "Foundation") in jeopardy.

Mr. Sojourner appears to be the only person attempting to prevent the reopening of this appeal. He lacks standing to act because his own appointment as limited special administrator ("SA") is void for lack of jurisdiction. In Mr. Sojourner's claimed role as limited special trustee ("ST"), he asserts he has no duty or authority to protect the Foundation's 900 copyrights.

The appeal should be reopened because the lower court lacked jurisdiction over Appellant and most heirs, devisees and beneficiaries of James Brown when the October 1, 2013 order was issued. It should be reopened because the appointments were in direct violation of *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Appellant should be found to have standing under SCTC Section 62-7-405 to help enforce the Foundation and protect its copyright royalties for the needy students James Brown intended to protect.

Memorandum in Opposition to Mr. Sojourner and Supporting Reopening

a. The AG and Others Do Not Oppose Reopening.

On January 13, 2015, the lower court placed the Foundation's almost 900 copyrights in jeopardy by declaring that a person who was not James Brown's spouse was his spouse. On February 19, 2015, the Supreme Court stopped the Hynie spousal

proceeding. The Supreme Court directed the Aiken County Clerk to deliver all James Brown orders issued since its *Wilson* decision to the Supreme Court.

The October 1, 2013, order appointed Mr. Bauknight as sole trustee of the Foundation and Mr. Sojourner to a limited role (the "Bauknight Appointment Order"). At the time of the Appointment Order, and today, Mr. Bauknight serves as trustee for Ms. Hynie and agent for her son, James B.

The Attorney General of South Carolina ("AG"), Mr. Bauknight, Ms. Hynie, Terry Brown and others, have not opposed Appellant's motion to reopen. It should be granted.

b. Mr. Sojourner Lacks Standing to Oppose the Reopening.

Mr. Sojourner asserts that he speaks as limited SA. His claim rests on an *ex parte* order of the Honorable Sue H. Roe dated and filed October 10, 2013. [Ord. Dtd. 10/10/13, Ex. A, Aff. Pope, dtd. 12/17/13, C-Track, filed in this appeal.]

The order of Judge Roe is void because the Probate Court lacked jurisdiction over Interested Persons; the action was not properly commenced with summons and complaint/petition; not a single heir, devisee or Interested Person was notified; no hearing was held; and the order, when issued, was handed to counsel for Mr. Bauknight, and not properly served on anyone.

An order that is void and wholly without jurisdiction may be declared void by the Appellate Court.

Mr. Sojourner's appointment as Limited ST is for the sole, exclusive and specific purpose of defending in the will and trust challenges. Mr. Sojourner has asserted he has no duty to protect the Foundation's copyrights. He has taken direct action to

reverse the DNA & Dignity program by which Appellant and Robert Buchanan, Jr. were identifying heirs to protect the Foundation from dissipation under the Federal Copyright Act termination rights provisions. He lacks standing or authority to speak for the Foundation.

c. The Appellate Court Has Jurisdiction in the Appointment Matter.

The *Wilson* remand contained two directives: the proper appointment of fiduciaries in accordance with Brown's documents, and the review of fees and costs.

The Bauknight Appointment Orders violated the remand directions. On February 19, 2015, the Supreme Court ordered, in relevant part:

We hereby direct the Aiken County Clerk of Court to provide this Court with all orders issued in any action related to the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown since May 8, 2013, the date of this Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 747 (2013)...All proceedings in the Aiken County Circuit Court involving the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown shall be stayed pending further Order of this Court.
[Ord. App. Case Nos. 2013-001649, 2014-00250]

The Appellate Court has taken jurisdiction over the Bauknight Appointment Order.

d. An Affidavit is Unnecessary.

Mr. Sojourner asserts that the court should not consider Ms. Pope's motion because the facts are not verified. The Court was, and is, asked to reopen the matter based on the record. Included in that record is the Affidavit of Adele J. Pope dated December 17, 2013, which sets out in detail why this appeal should proceed. It is supplemented by the Supreme Court's action of February 19, and the orders of the

lower court now on file in the C-Track in Appellate Cases No. 2013-001649 and No. 2014-000250. They should be considered by the court.

e. Pope Has Section 62-7-405 Standing to Protect the Foundation.

Appellant Pope and Robert Buchanan, Jr., are the only two people who have worked consistently since August 10, 2008 to protect the Foundation and its copyrights. The AG will not seek reconsideration of the Hynie spousal order. Mr. Bauknight has called Pope's filings to save the copyrights "officious intermeddling with a dead man's estate." Mr. Sojourner asserts he has no duty to protect the Foundation's copyrights, but has asked Judge Early to reject Ms. Pope's motion to amend the Hynie spousal order.

The copyrights are a valuable asset of the Foundation.¹

The inventory filed by Brown's original trustees in November 2007 shows Brown's net worth at \$85,663,562.99. Of that amount, \$45,963,261.50 is attributed to Brown's persona, image and likeness. Most of the remainder is attributed to the value of the copyrights. Hynie's counsel; Bauknight and the AG began in 2009 to devalue the music empire so Ms. Hynie, Terry Brown and the Levenson clients could secure the copyrights. By 2011, they claimed the music empire was worth only \$4.7 million.

In an order filed March 10, 2008, Judge Early directed publication for the

¹ The inventory filed by Brown's original trustees in November 2007 shows Brown's net worth at \$85,663,562.99. Of that amount, \$45,963,261.50 is attributed to Brown's persona, image and likeness. Most of the remainder is attributed to the value of the copyrights. Hynie's counsel; Bauknight and the AG began in 2009 to devalue the music empire so Ms. Hynie, Terry Brown and the Levenson clients could secure the copyrights. By 2011, they claimed the music empire was worth only \$4.7 million.

following purpose:

...to determine all lawful heirs at law of James Brown, including lawful heirs at law who may be entitled to rights under state and federal laws.

On August 10, 2008, the AG agreed to treat Hynie as Brown's spouse and exempt her son and others he favored from DNA testing.

From August 10, 2008, until May 8, 2013, efforts to save the copyrights were rejected. After *Wilson*, Ms. Pope was removed from the James Brown trust and estate cases without notice or hearing on June 13, 2013.

The January 13, 2015 Hynie spousal order followed, making it critical that someone protect the Foundation's copyrights.

f. The Termination Rights Provisions.

In 1976, Congress passed a new Copyright Act. See 17 U.S.C. §101 *et seq.* The 1976 Act modified numerous aspects of the previous Copyright Act passed in 1909 (the "1909 Act.") The 1976 Act changed the way in which federal copyright protection would begin, the methodology for calculating the duration of copyright protection, and the length of such copyright protection. See 17 U.S.C. §§ 102, 302(a).

The termination of transfers provisions of the 1976 Act (17 U.S.C. §§203 and 304 (c)) allow, under a narrow set of statutorily defined circumstances, a majority of the heirs of a deceased author as identified in the statute to recapture the copyright from the original grantee for works that entered into federal copyright protection under both the 1909 Act and the 1976 Act. These termination of transfer provisions do not apply to works that were created as works made for hire. See 17 U.S.C. §§203(a), 304 (c).

With respect to the heirs of deceased authors, the Copyright Act's promise is

“...to secure to the author’s family the opportunity to exploit the work if the author has died. *Penguin Group (USA) Inc. V. Steinbeck*, 537 F.3d 193, 197 (2d Cir. 2008) (internal citations and quotation marks omitted.). Congress concluded that “[a] provision of this sort [was] needed because of the unequal bargaining positions of authors, resulting in part from the impossibility of determining a work’s value until it has been exploited.” H.R. Rep. No. 1476, 94th Cong., 2d Sess. 124, *reprinted in* 1976 U.S. code Cong. & Ad. News 5649 at 5740; *see also, Siegel*, 542 F. Supp. 2d at 1139.

The Act defines children broadly to include even those the author himself elects to exclude from his estate. It was the intent of congress to benefit all heirs. If the widow or widower, who is determined by application of state law, and enjoys the status of half of the heirs, can be fabricated in a state spousal proceeding, the intent of Congress will not be carried out.

The Foundation and the heirs are not united as to termination rights. They should be on opposite sides as the Foundation seeks agreements with the least expensive half to protect its copyrights from loss of royalties. But both the Foundation and heirs the AG does not favor agree that there should be no finding of a spouse where one does not exist. And fair heirs/spousal proceedings are essential. The Bauknight Appointment Order prevented this.

g. Ms. Hynie’s Attempted Termination Notices

§201.10, entitled “Notices of termination of transfers and licenses,” delineates the contents and procedures required for a termination notice to take effect. The regulation refers to the “author” and the “grantee” as parties to the termination process.

Reopening this appeal is critical and immediate because Mr. Sojourner and the

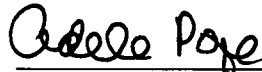
lower court were put on notice in September 2013 that Mr. Bauknight's music agent, Peter Afterman, was helping Ms. Hynie and her son James B. file termination notices. Allowing Afterman to aid in this attempt to secure certain copyrights for themselves was in direct conflict with protection of needy students. 2

Neither Mr. Sojourner nor the lower court has taken any action in eighteen months to stop Mr. Afterman. Mr. Bauknight remains Ms. Hynie's fiduciary, and the agent for James B. In Case 4900.

Conclusion

Appellant adopts the facts and argument in her motion. The Court of Appeals was deprived of an adequate record when it dismissed the appeal of the Bauknight Appointment Order. Justice and judicial economy will be served by reopening this appeal and transferring the appeal to the Supreme Court.

Respectfully submitted,



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Newberry, South Carolina 29108
Telephone: 803-413-0753
Email: adele@popelawfirm.com
S.C. Bar No. 4501

April 6, 2014

² In his website, Inaudible Productions, Mr. Afterman's claims to have been hired by the State of South Carolina to manage James Brown's assets.

Exhibit A

From: Alan Medlin <amedlin@scrr.com>
Sent: Sunday, August 30, 2009 4:11 PM
To: Kingsmore, Fred L.; Carter@eckb.com; Chandler@eckb.com; JLee@eckb.com; rrosen@rosen-lawfirm.com; AGSJONES@scag.gov; MFlowers@scag.gov; JNicholson@scag.gov; David Michel; louis@levensonlaw.com; lori@levensonlaw.com
Cc: rbauknight@BPSCPAS.COM
Subject: Tax valuation
Attachments: tax valuation.rtf

Follow Up Flag: Follow up
Flag Status: Completed

Attached please find a case hot off the press dealing with tax valuation issues of the second greatest country music songwriter (after Hank Williams) who wrote what is arguable the best country song ever: Patsy Cline's "I Fall to Pieces." It is a treasure trove of information for us, including: (1) the method of valuation for songwriter royalties includes an average of some prior years royalty stream multiplied by a multiple (somewhere between 5 and 8 seems reasonable based on the opinion); (2) names of some experts; (3) the Service accepted the multiple of 8. Based on the info in the opinion, Bobadele has grossly overvalued the estate for 706 purposes. The opinion deals only with royalties and not image and likeness, which apparently was inapplicable to the decedent songwriter. Of course, among ourselves, we are not sure we have the right to image and likeness under SC law, so any separate valuation of that should be discounted accordingly.

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Trust u/a/d August 1, 2000.

PROOF OF SERVICE

I certify that on the 6th day of April, 2015, I have served the REPLY TO
OPPOSITION OF RESPONDENT SOJOURNER TO MOTION TO REOPEN AND
CERTIFY in the above matter on Respondents and others as shown below by
depositing a copy of same in the United States Mail, postage prepaid, addressed
to them or their attorneys of record as follows:

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S.C. Bar No. 4501
Petitioner, *pro se*

April 6, 2015

Adele J. Pope
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(803) 413-0753

April 6, 2015

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

CERTIFIED MAIL

RECEIVED

APR 7 2015

S.C. Supreme Court

Re: *Wilson v. Dallas*
Appellate Case No. 2013-002582

Dear Mr. Shearouse:

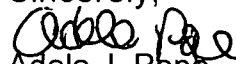
In connection with the REPLY TO OPPOSITION OF RESPONDENT SOJOURNER TO MOTION TO REOPEN AND CERTIFY in the above matter, enclosed please find an original and seven copies of the Reply and Proof of Delivery.

Kindly file the original and copies as appropriate, and return a file-stamped copy of each to me in the enclosed, stamped envelope provided for your convenience.

The Return is being filed in both to the Supreme Court and to the Court of Appeals. By copy of this letter I am providing a duplicate original and copies to the Honorable Jenny Abbott Kitchings, Clerk of the Court of Appeals. I ask that she also provide me with a clocked copy in the stamped envelope provided to her.

Thank you very much.

Sincerely,


Adele J. Pope

S.C. Bar No. 4501

Enclosures as stated

cc: Counsel and parties as shown on
Proofs of Delivery
The Honorable Jenny Abbott Kitchings