

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF RICHLAND )

FIFTH JUDICIAL CIRCUIT )

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. II; )  
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 child Sydney L. and Carrington L.; )  
Tonya Brown; Venisha Brown; Larry )  
Brown; and Terry Brown )

Civil Action No.: 2010-CP-40-4900 )

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SC Court of Appeals

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RICHLAND COUNTY

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. II; )  
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 child Sydney L. and Carrington L.; )  
Tonya Brown; Venisha Brown; Larry )  
Brown; and Terry Brown, )

ORDER GRANTING  
ATTORNEY GENERAL ALAN  
WILSON'S MOTION TO BE  
DROPPED AS A PARTY

Plaintiffs, )

vs. )

Adele J. Pope and Robert L. Buchanan, )  
Jr., )

Defendants. )

*ME*  
#1

THIS MATTER COMES before me on the Motion of Attorney General Alan Wilson to be Dropped as a Party to this action, filed on March 25, 2013. The Court held a hearing and heard arguments from counsel on August 29, 2016. Senior Assistant Deputy Attorney General C.H. Jones, Jr. appeared for the Attorney General,<sup>1</sup> and Walter H. Bundy, Jr., Esquire, and M. Brent McDonald, Esquire, appeared for Defendant Adele J. Pope. Based on the pleadings, documents, and arguments of counsel presented to the Court, the Court finds that the Motion to be Dropped should be granted. Accordingly, the Attorney General's Motion to be Dropped as a Party is granted, and the Court Orders as follows.

The Attorney General moved to be dropped as a party pursuant to Rule 21, SCRPC, which states that “[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.” The Attorney General's Motion to be Dropped is consistent with Rule 21 and the language in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Following the South Carolina Supreme Court's decision in *Wilson v. Dallas*, 2013 WL 697042 (filed February 27, 2013),<sup>2</sup> the Attorney General filed a Petition for Rehearing wherein he advised the Supreme Court that he would shortly be moving to have himself removed as a party to the 4900 case and that any further action in the case to protect the charitable beneficiaries could be pursued by the new Trustee. See Petition for Rehearing, page 26-27. The Supreme Court acknowledged the Attorney General's desire to withdraw in its opinion of May 2013, stating as follows in footnote 30: “[T]he AG has recently informed this Court, in petitions filed after this Court's initial opinion, that he is now

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1 In an abundance of caution, the Attorney General filed a Notice of Special Appearance to avoid any dispute regarding who would be able to argue and handle the Motion to be Dropped.

2 The initial opinion was issued on February 27, 2013. The Court later withdrew and superseded this opinion with *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).



withdrawing as a party in that lawsuit and his office will maintain a monitoring role.” The Attorney General’s role in this matter is to protect the charitable beneficiaries, and with the appointment of Russell Bauknight (Bauknight), as the trustee, that is being handled to the satisfaction of the Attorney General. Accordingly, there is no need for the Attorney General to remain in this action. He is also immune from suit by the counterclaims as set forth later in this order.

Regarding the Attorney General’s role, the Complaint itself states that Henry Dargan McMaster<sup>3</sup> is in the action as a beneficiary plaintiff and “in his capacity as the Attorney General for the State of South Carolina[.]” See Complaint, paragraph 3(a). As noted by the general law, the Attorney General, in his *parens patriae* capacity, has the duty to protect the public interest and the authority to do so as granted to him by the state constitution, statutory law, and common law. Further concerning charitable trusts, the Attorney General has the duty to represent the interests of the unspecified charitable beneficiaries and the interests of the public at large. *Wilson v. Dallas*, 403 S.C. 411, 431, 743 S.E.2d 746, 757 (2013) (“[W]here the trust involves charitable entities, the trustee has a duty to defend the trust, and the AG has the duty to represent the unspecified charitable beneficiaries.”); see also S.C. Code Ann. § 1-7-130 (2005) (“The Attorney General shall enforce the due application of funds given or appropriated to public charities within the State.”); S.C. Code Ann. § 62-7-405(c) (2009) (“The settlor of a charitable trust, the trustee, and the Attorney General, among others may maintain a proceeding to enforce the trust.”); *Epworth Children's Home v. Beasley*, 365 S.C. 157, 164 n.3, 616 S.E.2d 710, 714 n.3 (2005) (“The Attorney General is the proper party to protect the interests of the public at

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<sup>3</sup> Henry Dargan McMaster was Attorney General at the time the action was filed. Pursuant to Rule 25(d), SCRPC, Alan Wilson was substituted for Henry Dargan McMaster when he became Attorney General in January 2010.

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large in the matter of administering or enforcing charitable trusts.” (citing *Furman Univ. v. McLeod*, 238 S.C. 475, 482, 120 S.E.2d 865, 868 (1961)); see generally 15 *Am. Jur. 2d Charities* § 132 (2015) (“Because of the public interest necessarily involved in a charitable trust or gift to charity and essential to its legal classification as a charity, it generally is recognized that the state Attorney General, in his or her capacity as a representative of the state and of the public, is the, or at least a, proper party to institute and maintain proceedings for the enforcement of such gift or trust.”).

As the Supreme Court explained in *Wilson v. Dallas*, “[I]t is axiomatic that a trustee is always under the direction and guidance of the court. . . .” (*Id.* (citing *Kingdom v. Saxbe*, 161 N.E.2d 461, 466 (Ohio, Ashtabula County Prob. Ct. 1958)). In addition to the Attorney General, it is also appropriate for an individual Trustee to protect the charitable trust, as explained in S.C. Code Ann. § 62-7-405. Because of the actions of Bauknight, who is under the direction and guidance of the Court, there is no need for the Attorney General to be involved. In *Wilson v. Dallas*, the Court explained that “[a]lthough the AG certainly has duties in regards to charitable trusts, if he believed Appellants, as trustees, were not good stewards, the remedy would be to seek their removal and replacement.” The Attorney General has no concerns with the appointment of Bauknight and believes that the charitable beneficiaries will be protected while he is trustee.

Shortly after the Supreme Court’s ruling, in addition to filing this Motion and consistent with what he informed the Court, the Attorney General sought to withdraw from several other Brown matters. This Court then issued an Order Withdrawing Attorney General dated October 30, 2013. In that Order, the Court explained that allowing the Attorney General to withdraw is appropriate, in light of *Wilson v. Dallas*; the appointment of Bauknight as Special Trustee by

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Order dated June 13, 2013; the appointment of 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 of the cases. Pursuant to this Order, the Attorney General withdrew from the following James Brown cases: 2007-CP-02-122, 2008-CP-02-1647, 2008-CP-02-872, 2009-CP-02-597, 2009-CP-02-1140, and 2009-CP-02-1810. I find the same reasoning applies in the present case and the Attorney General should be allowed to be dropped as a party.

This is a civil case, with causes of action including breach of fiduciary duty, breach of trust, and negligence. The Attorney General is a Plaintiff in the action to protect the interests of the charitable beneficiaries. Because Bauknight, as Trustee, is protecting these same interests, there is no need for the Attorney General to be a party and allowing him to be dropped will not prejudice any other Plaintiff.

The Attorney General's being a counterclaim defendant does not preclude his being dropped as a party because he is immune from suit as to those counterclaims for reasons set forth in his Supplemental Memorandum submitted herein.<sup>4</sup> See, *Williams v. Condon*, 553 S.E.2d 496, 509, 347 S.C. 227, 250 (S.C.App.,2001); *Butz v. Economou*, 438 U.S. 478, 516 (1978); *Vosburg v. Department of Social Services*, 884 F.2d 133, 138 (C.A.4, 1989); *Ostrzenski v. Seigel*, 177 F.3d 245, 251 (C.A.4, 1999); *Mathis v. McDonough*, 2014 WL 3894133, at \*11 (D.Md.,2014); *Metro Charities, Inc. v. Moore*, 748 F.Supp. 1156, 1163-64 (S.D.Miss.,1990); *State v. Superior Court In and For County of Maricopa*, 921 P.2d 697, 700, 186 Ariz. 294, 297 (Ariz.App. Div.

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<sup>4</sup> Immunity is an affirmative defense under South Carolina case law, but as discussed in the Attorney's General's Reply to Plaintiff's Memorandum, cases indicate that it may be covered by the affirmative defense of failure to state a claim or cause of action or raised in a later pleading after the answer. See, *Plyler v. Burns*, 647 S.E.2d 188, 195, 373 S.C. 637, 649 (2007); *Ramsey v. City of Forest Park*, 418 S.E.2d 432, 433, 204 Ga.App. 98, 99 (Ga.App.,1992); *Baker v. Sudo*, 240 Cal.Rptr. 38, 42, 194 Cal.App.3d 936, 942 (Cal.App. 4 Dist.,1987).




1,1996); *Dinsdale v. Com.*, 675 N.E.2d 374, 377, 424 Mass. 176, 180 (1997). Further, to allow the counterclaims to proceed against the Attorney General would not only be contrary to his immunity, they would override his discretion in the protection of charitable beneficiaries by bringing this suit and now trying to end his involvement since Bauknight continues to protect the charitable beneficiaries.

WHEREFORE, for the reasons set forth herein, the Court grants the Attorney General's Motion to be Dropped as a Party.

IT IS SO ORDERED.

B. K. R., South Carolina

5-31, 2017

  
\_\_\_\_\_  
The Honorable Doyet A. Early, III  
Presiding Judge

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2010CP4004900

Russell Bauknight  
James Brown 200 Irrevocable Trust  
PLAINTIFF(S)

Adele J Pope  
Tommie Rae Brown  
DEFENDANT(S)

Submitted by: \_\_\_\_\_ Attorney for :  Plaintiff  Defendant or  Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. No. Suit);  Rule 43(k), SCRPC (Settled);  Other \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other \_\_\_\_\_
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):  Affirmed;  Reversed;  Remanded;  Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court:

ORDER INFORMATION

This order  ends  does not end the case. Additional Information for the Clerk : \_\_\_\_\_

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge \_\_\_\_\_ Judge Code 236 Date \_\_\_\_\_

For Clerk of Court Office Use Only

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this 13 day of June, 2011 to attorneys of record or to parties (when appearing pro se) as follows:

- |                    |                             |                          |                    |
|--------------------|-----------------------------|--------------------------|--------------------|
| Kenneth B. Wingate | Everett Augustus Kendall II | Daryl L. Williams        | J. Calhoun Watson  |
| Mark V. Gende      | John Andrew Donsbach Sr.    | Adam Tremaine Silvernail | J. Emory Smith Jr. |
| Robert N. Rosen    | Joseph Odell Thickens       | Walter Henry Bundy Jr.   | Adele J Pope       |
|                    |                             | Michael Brent McDonald   | Adele J Pope       |

ATTORNEY(S) FOR THE PLAINTIFF(S) \_\_\_\_\_ ATTORNEY(S) FOR THE DEFENDANT(S) \_\_\_\_\_

Court Reporter \_\_\_\_\_ Clerk of Court Jeanette W. McBride