

STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

MAY 31 2019

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge  
The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No. 2018-002229

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

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, Respondents.

v.

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

Of whom Adele J. Pope is Appellant.

**RETURN AND OPPOSITION OF APPELLANT (SUBJECT TO  
MOTION TO DISMISS) TO MOTION OF RESPONDENTS TO  
STRIKE STATEMENTS IN INITIAL BRIEF AND DESIGNATION  
OF MATTER OF APPELLANT FILED BY SWEENEY, WINGATE  
& BARROW, P.A.**

Subject to Appellant's Motion to Strike Respondents' Initial Brief and other filings made by Sweeny, Wingate & Barrow, PA, ( collectively Wingate") on May 24, 2019, Plaintiff opposes the motion, purportedly filed for all Respondents, including the Attorney General of South Carolina (Attorney General) , Appellant Adele J. Pope ("Appellant") respectfully asserts that the motion of Wingate Should be dropped for all of the following reasons:

1. Wingate lacks standing to speak for any Individual Respondent Except Bauknight.

2. To the extent the Wingate has the authority to speak for the Attorney General of South Carolina, it does so in direct defiance of the Constitution of the State of South Carolina by continuing a 9-year old unconstitutional lawsuit to damage Appellant and Robert Buchanan, Jr. for the personal benefit of the Attorney General and members of his staff, and in direct defiance of his statutory duty, if he enters a case, to protect funds allocated to charities; and, since May 8, 2013 the Supreme Court of South Carolina in its decision in *Wilson v. Dallas* in order to carry out a plan to dismember entertainer James Brown's "I Feel Good" Charity and give the staff of the Attorney General, with Tommie Rae Brown (Tommie Rae) unprecedented 75% control of the assets of James Brown and the termination rights of members of his family (including unprotected minor grandchildren) under Sections 304 and 203 of the U.S. Copyright Act, 17 U.S.C. §101 et seq. by placing these assets in Respondent James Brown Legacy Trust, then distributing the \$4 million (or more) annual income and assets upon a sale as follows:

- a. **47.5% to the Attorney General's (New) Charity** which has never been formed or qualified by the IRS; which claims it is private; for which a \$2.8 million estate tax charitable deduction was claimed by Legacy Trust trustee Russell Bauknight (Bauknight) in IRS filings in the Estate of James Brown; but which has never made required IRS filings; and has never accounted either to the Court or to the taxpayers of South Carolina.
- b. **23.75% to Tommie Rae**
- c. **4.79% to Venisha Brown (Venisha), Deceased**
- d. **4.79% to Terry Brown ( Terry)**
- e. **4.79% to Deanna Brown Thomas (Deanna)**
- f. **4.79% to Daryl Brown (Brown)**
- g. **4.79% to Larry Brown (Larry)**
- h. **4.79% to Yamma Brown(Yamma)**

3. To the extent Wingate has authority to speak for the Attorney General of South Carolina, it is supporting the failure of the Honorable Doyet A. Early, III, in a Status Report filed with the Supreme Court of South Carolina on or about May 8, 2013 in *Wilson v. Dallas*

to advise the Supreme Court of the May 29, 2013 publicly announced intention of Tommie Rae, Venisha, Larry, Daryl, Yamma and other Levenson clients to disregard the Supreme Court's ruling of May 8, 2013 and reinstate the Attorney General's settlement of August 10, 2008, and in which the Circuit Court reported to the Supreme Court, upon the Supreme Court's inquiry, that it had no knowledge of any settlement, not even courthouse talk. [Affidavit, Exhibit CC, p. 140]

4. To the extent Wingate has the authority to speak for the Attorney General of South Carolina, it is doing so in blatant violation of representations which the Attorney General made to the Supreme Court of South Carolina in its Petition for Rehearing filed with the Supreme Court in *Wilson v. Dallas* in which the Attorney General advised the Supreme Court of its intention to withdraw from this Case, Richland County Case 2010-CP-40-4900 (Richland 4900) and to complete James Brown FOIA cases in which it had refused FOIA compliance since 2011 promptly.

5. To the extent Wingate has authority to speak for the Attorney General of South Carolina, it is assisting the Attorney General in its violation of its prosecutorial duty to achieve a fair outcome and do justice, and not to seek personal gain or exhibit bias.

6. To the extent Wingate has authority to speak for the Attorney General of South Carolina, the filing continues the known false claim the Attorney General, through Bauknight as its claimed agent and Senior Assistant Attorney General Havird "Sonny" Jones has made to the Supreme Court that Robert Buchanan, Jr. and Adele Pope overstated the assets of entertainer James Brown to the IRS on the federal estate tax return by \$79 million for the improper purpose of obtaining a \$5 million commission from a \$5 million estate, a federal felony.

7. The sworn testimony of now- Governor Henry McMaster, which has been known to the Attorney General of South Carolina since 2016, is clear that such a claim is a serious allegation; that Governor McMaster never authorized the filing of Richland 4900 in the name of the Attorney General of South Carolina; that he did not know he was a Plaintiff in Richland 4900 until after he left office as Attorney General in January 2011; and that he never authorized Bauknight to speak "on behalf of" the Attorney General.

8. The filing promotes the FOIA interference and disruption which Wingate, Bauknight, Tommie Rae and certain members of the staff of the Attorney General have engaged in since 2011, including by secreting the claimed \$4.7 million Bauknight/Peter Afterman valuation, a \$79 million devaluation of the James Brown music empire to \$4.7 million, carried out at the August 2009 suggestion of advisors to Tommie Rae for the purpose of discrediting "Bobadele," Robert Buchanan and Appellant. [ Affidavit, Ex. AA, Ex. Q, p. 131]

9. The filing continues the personal vendetta of Senior Assistant Attorney General Havird "Sonny" Jones, to whom two Attorney's General, with no oversight, delegated the statutory duty of the Office of the Attorney General to protect The James Brown "I Feel Good" Trust, but which Sr. Assistant Attorney General Jones,

with no knowledge of termination rights, estate taxes, income taxes, or the operation of James Brown's music empire, desired to control for his personal benefit, and which Robert Buchanan, Jr. and Appellant opposed, which personal vendetta is fully documented within the record of this appeal.

10. Wingate lacks standing to make any filing on behalf of Venisha Brown, who is deceased.

11. Wingate lacks standing to make any filing for James B. and for four former minors who have not ratified its actions, and for whom Bauknight and Wingate refused to allow GALs to be appointed during their minority. (James B will be 18 in June 2019)

12. Wingate lacks standing to act for the claimed nonexistent James Brown Legacy Trust.

13. Wingate's refusal to secure a GAL for Venisha while she was incarcerated, even with knowledge that she had terminated Louis Levenson, Esq., who signed the Wingate Contract for her, compounds its lack of standing to speak for her estate..

14. Wingate lacks standing to act for Forlando Brown (Forlando) or Terry Brown (Terry)

15. The Court of Appeals should strike the purported Respondents Brief; Correct Parties; and stay filings for a reasonable period to complete this project.

16.. Governor McMaster's sworn testimony that he did not authorize Wingate to bring Richland 4900 in the name of the State/Attorney General is not a "contested matter,"

17. Governor McMaster's sworn testimony that he did not authorize Bauknight to speak "on behalf of" the Attorney General is undisputed and material.

18. Summary judgment was granted during discovery and while a stay was pending.

19. The facts found in *Wilson v. Dallas* were facts based on matters before it.

20. Representations made to the Supreme Court of South Carolina (Supreme Court) in *Wilson v. Dallas*, including by the Attorney General, were inaccurate.

21. The claim that Buchanan and Pope wanted a \$5 million commission from a \$5 million estate was inaccurate and material.

22. *Wilson v. Dallas* did not address the \$79 million devaluation of the music empire.

23. Bauknight's and Wingate's FOIA interference prevented the Supreme Court from having facts about the improper Wingate Contract before *Wilson v. Dallas*.

24. The Supreme Court did not know that Forlando planted the false Grammy© claim.

25. The Supreme Court did not know the Attorney General ratified the false \$4.7 million value claim without reviewing Peter Afterman \$79 million devaluation of the music empire.

26. Respondents' Motion to Strike overlooks the deposition testimony and documents of more than a dozen witnesses, including Respondents, their witnesses and experts..
27. Undisputed affidavits of Appellant and others are facts under Rule 56 SCRPC.
28. The Statement of the Case does not contain "pervasive contested matters."
29. The Initial Brief and designations contain proper, material, undisputed pleadings, affidavit and depositions
30. The \$79 million devaluation of James Brown's Music Empire is Material
31. Respondents lack of familiarity with the 9-year record they caused to be made.
32. Appellant's Brief fully complies with Appellate Court Rules and Applicable Law

The material facts in this summary judgment appeal are supported by sworn testimony of the Governor, Appellant, the Solicitor General and others. They are properly stated in the brief and properly documented there. They are summarized in the Affidavit filed herewith, and briefly below.

On May 18, 2010, Bauknight and three attorneys who would make about \$20 million in contingency fees if they were able to stop the appeal which became *Wilson v. Dallas* signed the Wingate Litigation Retention Agreement. [Deposition excerpts, Everett Kendall, Esq.]

Wingate, without permission of Governor McMaster, then Attorney General, filed this suit in the name of the State's highest legal officer, with Bauknight also claiming to act "on behalf of" the Attorney General, to damage Robert Buchanan, Jr. and Appellant so they would abandon the appeal which became *Wilson v. Dallas*. If they were unable to damage them enough to make them drop the appeal, they would sully them before the Appellate Court with the \$79 million devaluation of the music empire which had been planned since 2009, and was completed in September 2010.

Senior Assistant Attorney General Jones, with knowledge that Governor McMaster had not authorized Wingate to file suit in the name of the Attorney General, appeared in Court and

allowed Wingate, who also knew that the suit was not legally authorized, to introduce him as a “client” of Wingate. This satisfied the Court.

When filing Richland 4900 did not make Buchanan and Pope drop their appeal of the Attorney General’s settlement, Senior Assistant Attorney General Jones, Tommie Rae and Bauknight proceeded with plan to make them appear greedy and incompetent to the Supreme Court by devaluing the music empire from its correct \$99 million (less \$15 million TIAA debt) to a claimed \$23.7 million (less an overinflated TIAA debt of \$19 million).

Tommie Rae, Bauknight, and Senior Assistant AG Jones withheld the claimed \$4.7 million from the Supreme Court for eight months, from September 2010 until May 2011, while Bauknight not only used the \$4.7 million value in IRS filings, but failed to tell the IRS that \$2.8 million was going to the Attorney General’s (New) Charity, which had not been formed or approved by the IRS. In addition, the first \$2 million of the \$2.8 million Bauknight claimed was going to charity was actually going to family members selected by the Attorney General – not by James Brown.

The IRS did not balk because under the “fractional share” formula of Brown’s 2000 Trust, the devaluation of the assets by \$79 million had shifted 3/10 of Brown’s “I Feel Good” Charity from the charity over to the taxable trust for 7 grandchildren. If returns are properly filed, the IRS will collect hundreds of thousands of dollars each year on about \$1 million of income Bauknight shifted from the charity. Those assets will return, diminished, to the “I Feel Good” Charity as the 7 grandchildren reach 35.

The Attorney General actively supported incorrect claims by Bauknight to the Supreme Court, including that Tommie Rae’s elective share claim was a “slamdunk;” that Brown’s Estate/2000 Trust had no corpus to speak of; that termination rights were all this case is about; and

that there would be nothing left in the "I Feel Good" Trust in 2023 if the AG's plan to give away 52 ½% of its assets were not approved. The Supreme Court was not even told that termination rights will never apply to the non-U.S. royalties, which are about half of the \$4 million a year, or to the right of publicity and other assets.

In January 2011 Forlando Brown (Forlando) planted the false Grammy© claim which was noted two years later by the Supreme Court, and was secretly given a 4.79% of the Legacy Trust. Since 2012, when Buchanan and Pope learned of the secret transfer, the Circuit Court has not heard the motion to add Forlando as the real party in interest for Terry. Although the transfer to Forlando was circulated in January 2011 by Sr. Assistant Attorney General Jones, Bauknight claimed under oath in 2013 in Forlando's suit that the transfer never happened. Forlando is an essential party to this suit, as he has carried out the false filings of former trustees Albert Dallas and David Cannon for a decade.

In March 2013 Attorney General Alan Wilson, then-Chief Deputy John McIntosh and Solicitor General Robert Cook were told by Appellant and her counsel of the problems Bauknight had caused, and of easy ways to solve them quietly. Attorney General Wilson told both the Supreme Court and Appellant he was getting out of Richland 4900. In his sworn testimony in Richland 4900 in 2017 he stated that he had done nothing since March 2013 except try to get out of Richland 4900, but his actions, through Wingate and Senior Assistant Attorney General Jones, were the opposite.

On May 10, 2013 Wingate asked Judge Manning to stay everything in Richland County, including two FOIA cases and Richland 4900. Speaking for the Attorney General, Wingate said the Supreme Court placed no importance on completing Richland 4900 and the FOIA cases because it had removed a footnote from its February 2013 initial opinion, Wingate said everything

in Richland County should be stayed while the Aiken Court completed its James Brown work. That day Senior Assistant Attorney General Jones, Tommie Rae and Levenson secured orders from the Aiken Court to put Bauknight in charge of Brown's assets.

On May 29, 2013 Tommie Rae and Levenson, speaking for the remaining beneficiaries of the James Brown Legacy Trust other than Terry (now Forlando), announced to Judge Early in open court their intention to defy the Supreme Court's ruling in *Wilson v. Dallas* and reinstate the Attorney General's 2008 settlement. Bauknight, Tommie Rae and Levenson then requested the Aiken Court to exclude Buchanan and Pope from all James Brown proceedings. The Aiken Court did so on June 13, 2013 directing the Clerk not to allow them to make any filing in a case other than their own claims cases.

Buchanan, whose work had always been joint with Appellant, was given a *Wilson v. Dallas* remand hearing in October 2013, and Judge Early, based on his then-personal knowledge, praised the service of Buchanan; found no basis for disgorgement; and "double approved" the funds Buchanan had had been paid in 2008, 2009 and 2012, which was just \$300 short of the amount he had earned under the "time + costs" contract with Respondent Estate/2000 Trust on May 26, 2009. Judge Early also left open the possibility Buchanan's re-entry into Richland 4900 if the Richland Court found that the Attorney General's conditions placed on the settlement the Richland 4900 parties made with Buchanan in 2012 were improper. (The Attorney General, without informing the Supreme Court, prohibited Buchanan from filing a petition for rehearing in *Wilson* or taking any action that might help the "I Feel Good" Charity.)

In 2013 Bauknight was reinstated, nominated by will/trust contestants and Legacy Trust beneficiaries Deanna and Yamma as PR/Trustee .

By 2015 Tommie Rae had been declared Brown's spouse and, aided by Peter Afterman, paid \$1 million in termination rights proceeds she had placed in Respondent Legacy Trust. She moved to London, UK, but has submitted herself to the jurisdiction of the Court in this case. Bauknight made no effort to recover the \$1 million to help pay the Buchanan settlement, and had been claiming, at times since 2013, that Legacy Trust did not exist. Wingate, however, continued to pursue Richland 4900 for the benefit of the Legacy Trust and its "Beneficiary Plaintiffs."

Until 2015 the Attorney General and Bauknight successfully waged a FOIA campaign against a journalist to keep Tommie Rae's handwritten admissions that she was married, living with her husband, and possibly pregnant from coming out. The SA/ST who "defended" the estate plan failed to proffer these admissions in the hearing, even though they were made public in 2007.

When asked by the Aiken Court to report in 2015, including about settlements, Judge Early did not report the May 29, 2013 announcement by Levenson and Tommie Rae's lawyer of their intention to defy the Supreme Court's *Wilson* ruling. Instead, the Aiken Court stated:

The Order requesting this status report inquired whether any proposed settlement agreement had been submitted for court approval. The answer is an unequivocal no. No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of a proposed settlement.  
[Status Report, p. 6, Exhibits, Affidavit, p. 140]

The Aiken Court praised Bauknight in the status report, claiming Bauknight had paid off Brown's TIAA debt of \$14 million seven years early. Bauknight had actually paid only \$9 million, because Buchanan and Pope had reduced the TIAA debt to \$11 million, and a \$2 million escrow was applied to the last payment. Judge Early also denigrated Buchanan and Pope, asserting, for example that Pope's unpaid \$48,000 2007 SA fee claim was for \$2 million. The Aiken Court, incorrectly, said that Bauknight had received the estate "on the brink of insolvency,"

when Buchanan and Pope had actually negotiated and asked the Court to approve a 2-year publicity rights deal with GreenLight projected to bring in \$2 million a year.

Bauknight did not sign the GreenLight contract, then valued Brown's right of publicity at zero, or near zero, to discredit "Bobadele" as had been proposed by Tommie Rae's attorney.

By 2015 David Bell, Esq., and Levenson, who had signed the Wingate 40% contract for all individual Respondents except Tommie Rae and James – many of whom did not know of Richland 4900 until years after it was filed – had been terminated by the people for whom they signed the contingency fee. Wingate took no action to poll them, including minors for whom they had worked to prevent the appointment of a GAL, to see if they wished to continue on a 40% contingency they had never agreed to.

By 2016 the Aiken Court had declared James, Tommie Rae's son, to be Brown's heir when the SA/ST failed to provide evidence of Brown's vasectomy in the 1980s. Then the Aiken Court awarded the GAL and attorney for James, who refused a \$300, paid-for DNA test in 2008, \$700,000.00 in legal and GAL fees. He did so even though James' maximum share of what he claims to be Brown's \$5 million estate is no more than 1/20, even if he prevails as a pretermitted child.

The SA/ST who defended the Tommie Rae claim and James B's claim charged over \$1.3 million for himself and his lawyer; took one deposition; and took no responsibility for the protection of Brown's 900 copyrights. [ By contrast Bauknight had told the Supreme Court termination rights were all this case is about.]

Judge Early was appointed to Richland 4900 and two James Brown FOIA cases in 2016. He dismissed the two 2011 FOIA with no trial and found that the Legacy Trust does not exist.

Wingate simultaneously sought summary judgment for the Legacy Trust and for the Attorney General, who controls the Legacy Trust, in Richland 4900. Senior Assistant Attorney General, by special appearance, simultaneously asked for the Attorney General to be dropped as a party based on claimed misjoinder.

Wingate claimed that *Wilson v. Dallas* was determinative of the issue in Richland 4900, and that no discovery was needed. Yet the briefs and motions of Wingate and the Attorney General brief discuss many disputed issues.

While Wingate said no discovery was needed, he asked Judge Early to consolidate discovery in Richland 4900 with Aiken 1337; designated forty witnesses; and designated nine experts, the same as designated by Bauknight in Aiken 1337.

In 2016 and 2017, to save money because she was *pro se* in Aiken 1337, Pope deposed now Governor McMaster (also deposed in Richland 4900), Attorney General Wilson (Judge Early declined to allow his deposition in Richland 4900), Solicitor General Cook, former Chief Deputy McIntosh, Senior Assistant Attorney General Creighton Waters, Senior Assistant Attorney General Jones, Assistant Attorney General Mary Frances Jowers, and auditor Sandra Matthews.

Judge Early allowed Wingate, as Richland 4900 counsel, to attend the Attorney General and staff depositions in Aiken 1337 to protect the Attorney General, his Richland 4900 client.

In Richland 4900 certain “Beneficiary Plaintiffs” of the Legacy Trust were deposed, including Deanna, Yamma, Tonya, and former minors. Wingate did not ask the Aiken Court to consider their testimony in the summary judgment matter, because much does not support the allegations in the Complaint.

By 2018 Respondents Tonya, Deanna, Yamma and Venisha, with others, were suing the SA/ST, Bauknight, Tommie Rae and James in Federal Court, claiming Bauknight and others were trafficking in termination rights. By 2018 Bauknight had admitted to the Federal Court that tens of millions of dollars in litigation costs had been spent from James Brown's "I Feel Good" Charity since 2007. They were not spent by Buchanan and Appellant, who has received no PR/Trustee commission and had still not been paid the unpaid portion of her court-awarded 2007 SA fee.

Without completing discovery, hearing motions to add Forlando; void the Attorney General's conditions placed on Buchanan; or other motions to correct the parties, in 2017, after dismissing the Attorney General as a party for misjoinder, the Aiken Court granted summary judgment to Respondents as to Pope's counterclaims. The Aiken Court, after declining to lift the stay imposed by an appeal of its order dropping the Attorney General as a party, ruled on the motion to alter, denying it.

Summary judgment as to Appellant's counterclaim has now been granted to Tonya, James and Tommie Rae, to whom Appellant and Buchanan never owed a duty; the claimed non-existent Legacy Trust; the Attorney General, who had been dropped as a party; Terry, who had transferred his interest to Forlando; Venisha, who is deceased; and others who have openly challenged and disagreed with claims made in the Richland 4900 Complaint.

### **Conclusion**


If not stricken, the Motion to Strike of Wingate on behalf of all Respondents, including the Attorney General should be denied. Wingate should be declared unable to represent the Attorney General because his representation is, and has for nine years been, unconstitutional. Wingate should be declared to have no standing to speak on behalf of any other Respondent until the parties

are corrected as set forth above. The appeal should be stayed briefly while these matters are resolved.

Respectfully Submitted,

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May 31, 2019

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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, Respondents.

v.

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

Of whom Adele J. Pope is Appellant.

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**CERTIFICATE OF SERVICE OF RETURN AND OPPOSITION OF APPELLANT (SUBJECT TO MOTION TO DISMISS) TO MOTION OF RESPONDENTS TO STRIKE STATEMENTS IN INITIAL BRIEF AND DESIGNATION OF MATTER OF APPELLANT FILED BY SWEENEY, WINGATE & BARROW, P.A.**


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I certify that on May 31, 2019 I have served RETURN AND OPPOSITION OF APPELLANT (SUBJECT TO MOTION TO DISMISS) TO MOTION OF RESPONDENTS TO STRIKE STATEMENTS IN INITIAL BRIEF AND DESIGNATION OF MATTER OF APPELLANT FILED BY SWEENEY, WINGATE & BARROW, P.A. by hand delivery on counsel listed below:

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