

STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUN 18 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.

**REPLY TO RETURN OF RESPONDENTS TO APPELLANT'S
MOTION TO STRIKE INITIAL BRIEF AND RELATED
DOCUMENTS AND FOR RELATED RELIEF**

Appellant, reserving and incorporating all objections as stated in her motions to strike the initial briefs filed by Respondents, and by the Attorney General separately; her returns to the motions of Respondents and the Attorney General separately to strike; and supporting documentation, submits the following reply to Respondents' Return to Appellant's Motion to Strike Initial Brief of Respondents.

Incorporation of Reply to Return of the Attorney General to Appellant's Motion to Strike

Appellant adopts and incorporates in its entirety in this Return her Reply to Return of Attorney General to Appellant's Motion to Strike and her other filings in relation to her motion to strike and those of Respondents filed June 18, 2019.

Respondents' Challenges to Appellant's Standing Have No Basis in Fact or Law

After suing Plaintiff for nine years to increase the assets of Plaintiff/Respondent Legacy Trust, the owner of the Termination Rights proceeds under Sections 304 and 203 of the U.S. Copyright Act to about 900 copyrights contributed in 2009 by the "Beneficiary Plaintiffs," the Legacy Trust and Respondents who placed the Termination Interest in the Legacy Trust assert that Appellant has no standing to seek to protect those assets. This is not the case.

Appellant meets all the elements of standing set out in *Sea Pines Ass'n for the Prot. Of Wildlife v. S.C. Dep't of Natural Resources*, 345 S.C. 594, 606-1, 550 S.C.2d 287, 291- 292. She has suffered, by Respondents' actions as stated in the answer and counterclaim, and since, an actual or imminent invasion of a legally protected interest. A clear causal connection exists between the injury and the challenged conduct. And a favorable decision will redress the injury. This standing clearly extends to the reasonable steps to secure the assets of Plaintiff Legacy Trust, the Estate of Venisha Brown, Terry Brown, and Tommie Rae and James.

**Respondents Provide No Facts or Law Which Should Prevent the Court
From Striking the Unauthorized Brief; Requiring that the Real Parties in Interest
be Added and Former Minors Who Had No GAL Polled; and Related Relief.**

Respondents do not deny that this appeal, and the case below (Richland 4900) must be pursued and defended by the real parties in interest, and that the now-named parties are not all of them. They do not deny that Forlando Brown (Forlando) became the real party in interest for Terry Brown (Terry) in 2011 and is a 4.79% owner of Plaintiff/Respondent Legacy Trust. They do not deny that the Legacy Trust owns valuable Termination Interests to 900 Copyrights contributed by the individual Respondents in 2009. They do not deny that Circuit Court did not hear the motion to add Forlando and address the issue of whether the Attorney General's conditions placed on Robert Buchanan, Jr. are void. They do not deny that none of the five former minor Plaintiffs nor their parents signed the SWB 40% Wingate contract and none has ever ratified the contract. They do not deny that not a single former client of Louis Levenson, Esq., knew about the Complaint filed for them; that Levenson signed the SBW 40% contract to secure his \$9 million commission if he could stop the *Wilson* appeal; and that he was terminated by all of the people for whom he signed the SBW contract years ago. They do not deny that SWB and Levenson successfully prevented the appointment of a GAL for eight years; and that no former minor has ratified their actions. They do not deny that SWB has no authority to file a brief or act for the deceased Venisha Brown (Venisha), and she is entitled to have a personal representative (PR) who will act for her, rather than for Levenson, substituted in this case.

In the Return SWB, purporting to speak for Respondents, challenges Appellant's standing to raise these critical issues on pages 3 and 4. But the Return does not present any evidence that the current owners and/or successor in interest of Plaintiff/Respondent James

Brown Legacy Trust – not created by James Brown, but by the Attorney General and others – are necessary parties to this proceeding.

The Attorney General who, with Tommie Rae, has 75% control of the Legacy Trust testified under oath in 2017 that he has taken no action in Richland 4900 since May 8, 2013, except to try to be dropped as a party. He knows nothing about the Legacy Trust. He does not know that its ownership has changed since the Complaint was on May 19, 2010 and Robert Buchanan, Jr. and Appellant filed their Answer, as follows:

<u>Legacy Trust Owner When Complaint Filed</u>	<u>Current Owner/Successor</u>	<u>Percentage</u>
Tommie Rae Brown	Tommie Rae Brown (U.K.)	23.75%
Venisha Brown	Estate of Venisha Brown	4.79%
Terry Brown	Forlando Brown	4.79%
Daryl Brown	Daryl Brown	4.79%
The Attorney General's (New) Charity	James Brown's "I Feel Good" Trust¹	47.5%
Yamma Brown	Yamma Brown	4.79%
Deanna Brown Thomas	Deanna Brown Thomas	4.79%
Larry Brown	Larry Brown	4.79%

(Bold Denotes change in ownership)

He does not know that half of the owners are now suing trustee Russell Bauknight and other Legacy Trust owners over the Termination Rights proceeds all of them put into the Legacy Trust in 2009 and subjected to the jurisdiction of the Richland County Court in Richland 4900 in 2010.

¹ In 2008, acting for James Brown's Estate/2000 Trust, the Attorney General entered into a binding agreement not to challenge the heir status of Tommie Rae, James B., Terry Brown, Daryl Brown, Venisha Brown, Deanna Thomas, Yamma Brown and Larry Brown under the Termination Rights provisions of the U.S. Copyright Act if pooled their Termination Interests under the Copyright Act in Plaintiff/Respondent Legacy Trust, taking the percentages set out above, and gave 47.5% to the AG's (New) Charity. The AG's (New) Charity, stated to be substantially similar to James Brown's "I Feel Good" Charity, does not appear to have ever been properly formed or qualified by the IRS. In a 2010 filing SWB advised the Circuit Court that the 47.5% of the Legacy Trust goes to Brown's "I Feel Good" Charity.

These changes of real parties in interest and facts make clear that SWB, despite its criticism of Appellant, lacked authority to file a brief for all Respondents, including the Attorney General. Likewise, Russell Bauknight, claims without authority to act “on behalf of” the Attorney General and more than a dozen Plaintiff/Respondents. The same is true of the terminated Levenson. The Court should strike the briefs; direct the correction of parties; and dismiss the Complaint and remand as to any noncompliant Plaintiff/Respondent.

Where the Aiken Court and the Attorney General Support the May 29, 2013 Announced Plan to Disregard *Wilson v. Dallas*, Appellant Appropriately Informs the Court.

The Return criticizes Plaintiff for calling to the Court’s attention the AG’s defiance of the *Wilson v. Dallas* decision while telling the Supreme Court it would promptly complete FOIA cases and get out of Richland 4900. Judicial estoppel and the record of this case, including the sworn testimony of the Attorney General and SWB’s filings for the last six years show that he has elected to disregard the Supreme Court. The same is true of the Circuit Court which learned of the plan of Levenson to ignore the Supreme Court on May 29, 2013; failed to inform the Supreme Court when asked in 2015; and, most recently, asserted in a 2019 order that Brown’s music empire appears to be worth \$4.7 million, despite evidence that the copyrights alone are worth \$60 - \$80 million, and that Buchanan and Pope disserved the James Brown estate by opposing a settlement which took \$2 million a year and more than half of the assets of the “I Feel Good” Charity. Page 3 and 4 of the return must be considered in light of these undisputed facts.

**Where the Estate and 2000 Trust Have Sued Appellant for Nine Years,
She May Defend Herself**

The Return asserts throughout that Appellant, by appealing a summary judgment ruling in this case, brought in 2010 for the sole private benefit of the Legacy Trust and its “Beneficiary

Plaintiffs,” including the Attorney General, is violating a 2015 Supreme Court order that she may not act in cases in which she clearly has no standing. [Return, p. 5] This is simply incorrect. By August 2013, Bauknight, who speaks for Plaintiff/Respondent Estate/2000 Trust, called Pope “dishonest;” defended the AG’s right to dismember James Brown’s estate plan; and defended the Legacy Trust. The AG continues to support these accusations.

Appellant has no stake in this second dismembering of Brown’s estate plan. She has both a critical stake, and standing, to defend claims by the State/Attorney General, and the Estate/2000 Trust that it was unreasonable to challenge a settlement which took \$2 million a year and half of the assets from a charity she and Buchanan had a duty to defend, and dismembered the education trust for seven children, five minors, they had a duty to protect.

SWB Failed for Nine Months to Secure a Proper PR for Venisha After her Death.

Respondents dedicate a considerable portion of the Return (pages 3 – 5) to criticizing, without basis, Appellant’s action as one of Venisha’s creditors whose potential claim exceed \$3 million appear, to secure, under appropriate provisions of the Probate Code, a PR who will protect creditors and properly administer her 4.79% interest in Plaintiff/Respondent Legacy Trust for the benefit of Venisha’s estate, not Plaintiff/Respondent Deanna Thomas (Deanna) or Levenson. SWB claims one of Appellant’s statements about the status of Venisha’s estate “perhaps the most outrageous statement in the entirety of the Affidavit.” [Return, pp. 3-4] SWB told the Circuit Court in 2018 that no lifting of the stay was required for the simple task of substituting a PR. The actual facts, however, are that there is no PR after nine months and SWB failed to act in December 2018 when notified of the Probate Court proceeding for a PR. The actual facts show that SWB, Levenson, and Bauknight have used the incarcerated, vulnerable, and now-deceased Venisha for their own purposes for nine years. They are:

Venisha Brown died intestate on September 19, 2018 a resident of Aiken County. Nobody held a valid power of attorney (POA) for her before her death.

In 2008 Venisha, through Levenson reached an agreement with Tommie Rae, Deanna, Terry and others, to place her Termination Interests under Sections 304 and 203 of the U.S. Copyright Act into Plaintiff Legacy Trust in exchange for a 4.79% interest in the Legacy Trust. All agreed to give 47.5% of the combined Termination Rights to charity in exchange for Brown's Estate not challenging their status as heirs under state or federal law. Levenson was owed \$150,000 plus 30% of what he secured for Venisha and others.

From January 2009 until at least 2013 Venisha, through counsel represented to Judge Early, the Richland 4900 Court, and the Supreme Court that she had placed all of her Termination Interests under the Copyright Act into the Legacy Trust in exchange for her ownership.

On May 18, 2010 Levenson, in an apparent failure to comply with the Rules of Professional Conduct regarding contingency-fee agreements, signed a 40% contract for Venisha to sue Buchanan and Pope to stop the appeal of the 2008 settlement so that he could get an approximately \$9 million legal fee by stopping the appeal which became *Wilson v. Dallas*.

On May 19, 2010 SWB filed Richland 4900 for Venisha. There is not a scintilla of evidence that Venisha even knew about the Wingate contract or Richland 4900.

From 2010 until her death Venisha was repeatedly incarcerated; represented by Levenson in various matters; and missing when not incarcerated. Despite this history, Levenson, SWB and Bauknight, acting "on behalf of" Venisha, refused repeated efforts to appoint a GAL to protect her interest.

In 2011 SWB moved for Venisha to intervene in a FOIA suit to prevent release of the Wingate contract she did not sign. Venisha, through SWB, even sought (but did not obtain) sanctions against Appellant for seeking a copy of the Wingate contract. There is not a scintilla of evidence to suggest that Venisha knew about her FOIA intervention or the sanctions.

In 2012 Levenson and SWB exempted Venisha from having a GAL at mediation, and Levenson claimed he had authority to act for Venisha. That year SWB moved to strike a generous offer to Venisha intended to help her receive benefits from her Termination Interest. Without showing the offer to Venisha, SWB moved to strike it. That year, Hope Campbell obtained a \$2.4 million default judgment against Venisha.

In 2013 Levenson and Tommie Rae's lawyer announced to the Honorable Doyet A. Early, III, their intention to ignore the decision of the Supreme Court and reinstate the Attorney General's 2008 settlement deal which put James Brown's assets into Plaintiff/Respondent Legacy Trust.

From 2013 the Legacy Trust began to claim it did not exist, and Bauknight allowed Tommie Rae to receive \$1 million (in 2015) of Termination Rights proceeds that belong to Plaintiff/Respondent Legacy Trust. In addition, Plaintiff/Respondents Deanna, Tonya Brown (Tonya), Yamma Brown (Yamma) and others signed a contract with Marc Toberoff to give Toberoff 40% of the Termination Rights proceeds they had put in Plaintiff/Respondent Legacy Trust in 2009. Toberoff agreed to give Levenson $\frac{1}{4}$ of the 40%, 10% of the Termination Rights proceeds already placed in the Legacy Trust, from which he was seeking 30%. There is no evidence Venisha was ever properly advised of this action.

In 2016 Venisha and others served Termination Notices to receive the U.S. royalties to 246 copyrights which Venisha and other former Levenson clients had placed in Plaintiff/Respondent Legacy Trust between 2018 and 2026.

Between 2016 and Venisha's death SWB advised the Court Venisha could not be found, but Toberoff filed suit for Venisha and others against Bauknight, Tommie Rae, James B. and David Sojourner, Esq., in California. The suit was transferred to South Carolina. By Venisha's clear representation to the Federal Court, and under the law, Termination Rights have nothing to do with the estate of her biological father, James Brown. They are the right of his heirs under Federal Law.

SWB learned of Venisha's death in 2018 and took no steps to secure the appointment of a proper PR. When Appellant moved before Judge Early to lift the stay in Richland 4900, SWB – purporting to act for Venisha, the claimed non-existent Legacy Trust, and others, filed a vitriolic response claiming that the substitution was routine; that it was improper to seek to secure Venisha's assets; and that Pope was violating a Supreme Court order. Judge Early declined to lift the stay, and denied the motion to strike.

On November 6, 2018 Plaintiff/Respondent Deanna engaged Zachary Moulton, Esq., to seek her appointment as Venisha's PR. Relying on Deanna, Moulton advised the Probate Court that Venisha had little or no assets.

Both Appellant and Levenson properly responded as creditors to the Complaint, which was later amended. Pope answered the Complaint on December 18, 2018, properly attaching her Statement of Creditor's Claim and seeking appointment of a PR, as required by Sections 62-3-804, -805, and -806. [Appendix, pp. 3-10] In addition to serving the identified heirs, Appellant

wrote Kenneth Wingate, Esq., Levenson, and Robert Byrd, Esq., attorneys of record for Venisha in various proceedings, and provided them with a copy of her Answer. [Appendix, p. 11]

On January 8, 2019 counsel for Hope Campbell, through counsel, filed her \$2.4 million claim. [Appendix, pp. 12-13] .

By letter dated January 28, 2019 Levenson mailed his ANSWER TO PETITION AND REQUEST FOR APPOINTMENT OF PERSONAL REPRESENTATIVE TO PROTECT CREDITORS for filing. [Appendix, pp. 19 -22] Levenson's Answer was almost identical to Appellant's; attached his Claim; and sought the immediate appointment of a PR to "pay proper expenses of administration; conduct the litigation in which Decedent placed herself; protect the assets for the benefit of creditors and taxing authorities; properly determine heirs; and deliver the remaining assets, if any, to heirs." Levenson, like Pope, asserted that Venisha had placed her Termination Interests in Plaintiff/Respondent Legacy Trust and owned a 4.79% interest.

Levenson's claim, p. 1 of which is at page 23 of the Appendix, did not disclose the ¼ of the Toberoff fee Levenson seeks, and Toberoff, does not appear to have filed a Claim.

On February 5, 2019 the Honorable Tonya Marchan, Probate Judge, appointed Leon Green GAL for the unknown heirs of Leroy Fair, Jr., Venisha's half-brother. [Appendix, p. 24] The Probate Court also appointed a GAL for Plaintiff/Respondent James Brown II, who subsequently reached majority.

On February 7, 2019 the Probate Judge, *sua sponte*, removed the case brought by Deanna to circuit court, and filed a Return of Probate Court which outlines all of the 17 documents sent to the Circuit Court for Aiken County. [Appendix, pp. 25 – 26]

On and after February 28, 2019 Appellant filed various documents raising concern about Deanna's representation to the Court, through counsel, that Venisha had "little or no assets." Some of those filings are at pages 28 through 40 of the Appendix. Appellant sought a hearing on the appointment and agreed to serve, either alone, or with Levenson, who is also seeking to be appointed.

By June 10, 2019 neither Levenson nor anyone else had objected to Appellant's appointment.

At the June 10, 2019 hearing before the Honorable Clifton Newman, Moulton sought to be relieved, and Judge Newman orally agreed that he would be. He asked Deanna how long it would take her to get new counsel, and she asked for sixty days. Bauknight, who has acted "on behalf of" Venisha in this case for nine years, attended the hearing with two attorneys, but did not seek to be appointed PR or move to intervene.

Despite the fact that Deanna said she needed sixty days to seek an attorney, Levenson began accusing Pope of violating a Supreme Court order and asking the Court to proceed with a hearing and appoint Venisha, whose appointment he had opposed in filed pleadings. Levenson claimed that Pope, by trying to preserve her claim to Venisha's interest in Plaintiff/Respondent Legacy Trust within the 1-year period and improperly interfering in the resolution of the Estate and 2000 Trust, which was incorrect. Judge Newman, however, was appropriately concerned by Levenson's false allegations and Levenson's lengthy reading from 2019 order of Judge Early which is the subject of a separate appeal.²

² Consistent with his support since 2013 for the May 29, 2013 announced intention of Tommie Rae and Levenson to disregard the Supreme Court's decision in *Wilson v. Dallas*, Judge Early's order, simply overlooking the testimony of the Governor, the Attorney General, Sr. Asst.

Appellant called to the Court's attention that the order of Judge Early which was quoted extensively by Levenson had overlooked the testimony of the Governor, Solicitor General Cook, and others, and on appeal.

By order dated June 21, 2019 Judge Newman simply ruled that Moulton was relieved as counsel and Deanna "shall have sixty (60) days from the date of this Order to secure other counsel. He ruled: "Other Motions pending in this case will be held in abeyance until this sixty (60) day period has expired."

The Attorney General's Failure to Authorize Richland 4900 is Fact, Not Allegation

Where Appellant has been sued for nine years by the Attorney General, and the former Attorney General stated under oath in 2016 in two depositions that he did not sue her, her standing to challenge SWB's continued action on behalf of the AG is patent. It is a fact, not an allegation, that there was no signed contract between the State/Attorney General and SWB, and that now-Governor McMaster did not authorize SWB to sue in the name of the State/AG.

The January 2019 Order Reflects Judge Early's Support for the May 29 Announcement

Respondents cite the January 16, 2019 Order of Judge Early, on appeal in Case 2019-000362 as evidence that Appellant's affidavit "grossly misrepresents" how she has impacted the estate. That order must be considered, if at all, in light of Circuit Court's 6-year assistance to Tommie Rae and the Levenson clients in response to the May 29, 2013 announced intention to

Attorney General Havird "Sonny" Jones, Asst. Attorney General Mary Frances Jowers, Wallace Lightsey, Esq., Judge (Ret'd) Walter Williams, James Hardin III, Esq., and the \$60 - \$80 million value placed on Brown's 900 copyrights by Roger Miller, expert for Plaintiff/Respondent Estate/2000 Trust, the Order of Judge Early, now on appeal, finds that Buchanan and Appellant should have supported the Attorney General's settlement which dismembered James Brown's estate plan, and that neither is entitled to any compensation as PR/Trustee. The order, and other rulings by Judge Early, are the subject of Appellate Case No. 2019-000362.

reinstate the AG's 2008 settlement. That evidence is fully supported by the record in this case, and the public record. The January 2019 order, for example, simply overlooked testimony of the Governor, the Attorney General, the Solicitor General, James Hardin III, Esq., Wallace Lightsey, Esq., Sr. Asst. AG Havird "Sonny" Jones, Kenneth Wingate, Esq., and others, finding that they did not testify.

Conclusion

SWB, purporting to act for the Attorney General whose sworn statements are to the contrary and all other Respondents, lodges additional vitriolic claims against Appellant. Respondents, through SWB, provide no facts or law to prevent the Court from striking the briefs; correcting the parties; and allowing re-briefing when the real parties in interest are joined. This should be done.

Respectfully Submitted,

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June 18, 2019

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Of whom Adele J. Pope is Appellant.

**CERTIFICATE OF SERVICE OF REPLY TO RETURN TO
MOTION TO STRIKE INITIAL BRIEF, MOTION AND RELATED
DOCUMENTS OF RESPONDENTS AND FOR RELATED RELIEF**


I certify that on June 18, 2019 I have served the **REPLY TO RETURN TO MOTION TO STRIKE INITIAL BRIEF, MOTION AND RELATED DOCUMENTS OF RESPONDENTS AND FOR RELATED RELIEF** by hand delivery on counsel listed below:

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