

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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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

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Appellate Case No. 2018-002229

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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.

**RECEIVED**

SEP 10 2019

SC Court of Appeals

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RETURN AND OPPOSITION OF APPELLANT TO MOTION OF  
RESPONDENTS TO STRIKE

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Appellant Adele J. Pope (“Appellant”) opposes the motion of Respondents filed by Sweeny, Wingate & Barrow, P.C. (“Wingate”), to strike statements in the initial brief and designation of matter of Appellant for each and every reason stated below:

**Appellant’s Amended Initial Brief Complies with the Appellate Court Rules**

Respondents allege generally that Appellant’s amended brief does not comply with the Appellate Court Rules because the statement of the case “contains pervasive contested matters;” the brief contains “pervasive statements that are self-supported by Pope’s pleadings and/or affidavits;” and the brief “contains pervasive irrelevant matter.” Respondents do not identify a single example of any of these, and Appellant would show that her brief is in compliance with both the Rules and this Court’s July 26, 2019 Order.<sup>1</sup>

The only specific matters raised in Wingate’s motion are, inexplicably, several lower-court orders Wingate alleges Appellant has abandoned on appeal. Appellant submits that she has properly noticed her appeal and briefed the points on which all orders appealed from should be reversed. Despite alleging that certain parts of Appellant’s appeal have been abandoned (which she denies), Wingate makes no attempt to connect that allegation to any of its stated bases for striking Appellant’s amended brief and designation. Appellant submits that any suggestion that she has abandoned any part of her appeal would properly be presented in Respondents’ brief, not in a motion to strike.

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<sup>1</sup> Respondents incorporate the Motion to Strike filed by Respondent Attorney General, but that motion contains only a vague allegation that the amended brief does not comply with the Rules or the July 26, 2019 Order. Appellant is filing herewith a separate response to that motion and incorporates said response by reference.

Because Appellant's amended brief and designation comply with the Appellate Court Rules and this Court's Order, and because Wingate fails to cite any specific statement or inclusion which is not in compliance, Wingate's motion should be denied.

**Appellant's Citation to or Reliance on her Own Pleadings and/or Affidavits is Proper**

Wingate argues that Appellant's citation to her own pleadings and affidavits is somehow inappropriate. Notably, Wingate cites no rule or case which would support his argument.<sup>2</sup>

Indeed, this is an appeal from, among others, the lower court's grant of summary judgment to Respondents on all of Appellant's counterclaims. Pursuant to Rule 56, all facts in the record *must* be viewed in the light most favorable to Appellant. It is therefore appropriate for Appellant to rely on her own filings, especially since summary judgment was granted herein prior to the completion of discovery.

**Wingate Lacks Standing to File any Motion or Document for the Attorney General**

Wingate has again filed a motion, brief and designation claiming to act for the Attorney General of South Carolina (Attorney General), Russell Bauknight (Bauknight) "on behalf of" the Attorney General, and the James Brown Legacy Trust (AG's Legacy Trust) over which the Attorney General has effective control through his unfettered right to remove and replace Bauknight. Wingate lacks standing to file any documents for any of the three for each of the following reasons:

1. Wingate's Motion to Strike on behalf of the Attorney General continues Wingate's almost-9-year violation of the Constitution of the State of South Carolina, which requires

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<sup>2</sup> Wingate mentions Rules 208(b)(1)(e) and 208(b)(4), but neither rule could be interpreted to preclude any party from citing to its own filings.

that only the Attorney General of South Carolina (Attorney General) may sue on behalf of the State.

2. The constitutional violation is ongoing, unwaivable; jurisdictional; and may be addressed by the Court at any time.

3. Wingate's filing on behalf of the Attorney General continues the almost-9-year violation of the Due Process rights of Robert L. Buchanan, Jr. (Buchanan) and Appellant.

### **Wingate is Judicially Estopped from Speaking for the Legacy Trust**

Judicial estoppel bars Wingate from purporting to speak on behalf of the Legacy Trust. Since 2013 Wingate has been on notice of the claim of the James Brown Legacy Trust that it does not exist, which has been presented to both the lower court and this court.<sup>3</sup> Both Wingate and its trustee, Russell Bauknight, have resisted all effort to make the successors in interest to the Legacy Trust, the primary Plaintiff/Respondent in this action, parties.

The Legacy Trust is currently claiming in this Court in another appeal that it does not exist. The lower court in that matter accepted the Legacy Trust's assertion that it does not exist, and Wingate is therefore judicially estopped from purporting to speak on its behalf. *See Cothran v. Brown*, 350 S.C. 352, 566 S.E.2d 548 (Ct.App. 2002). That should not be allowed. If Wingate does not make the successors, including Tommie Rae, the AG's (New) Charity, Forlando, Venisha's Estate, and other Plaintiff/Counterclaim Defendants/Respondents, the Court should dismiss their claim; reverse the summary judgment; and allow the counterclaims to proceed against the termination rights proceeds owned by the Legacy Trust since 2009.

### **Bauknight Lacks Standing to Speak "on Behalf of" the Attorney General**

For almost nine years Bauknight, through Wingate, has purported to speak "on behalf of" the Attorney General of South Carolina, even though he had no legal authorization to do so. He

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<sup>3</sup> See Appellate Case No. 2016-01727, *Pope v. Wilson, et al.*

does so again in the motion and initial brief. Bauknight has openly used his claimed authority to act for the State's Chief Legal Officer to promote his incorrect claims made in 2011 to the South Carolina Supreme Court in the *Wilson v. Dallas* oral argument and other 2011 filings, namely:

1. Termination rights under Sections 304 and 203 of the U.S. Copyright Act are "all this case is about."
2. Tommie Rae's elective share claim is a "slamdunk" and she and her son James B. control the termination rights.
3. Termination rights will automatically start dissipating the "I Feel Good" Charity if The Attorney General's 2008 settlement is not upheld (or reinstated), and there will be nothing in the "I Feel Good" Charity by 2023.
4. James Brown's Estate and 2000 Trust have no corpus to speak of.
5. Nobody is trying to buy the James Brown assets, and his music empire was worth only \$4.7 million when he died on Christmas Day 2006

Bauknight's attempts to speak on behalf of the Attorney General are improper and unconstitutional.

#### **Wingate and Bauknight May Not Speak for Any Former Levenson Client**

In 2010 Levenson signed the 40% Wingate contract for more than 10 Respondents, including minors, without telling most. Wingate and Bauknight concealed that contract from the Court until after *Wilson v. Dallas*. They concealed that they were moving for these Respondents to intervene in a FOIA suit, and further try to conceal the Wingate contract.

Wingate and Bauknight did not present settlement offers by Pope in 2012 to many of the Levenson clients. They refused to allow GALs to be appointed. They exempted them from mediation and did not tell them about it.

By 2014 Wingate and Bauknight both knew Levenson had been terminated and that these former Levenson clients had reversed the positions they took earlier. Yet they persisted.

None of the former minors has been polled. Those who were deposed did not even know about the lawsuit, which was against the interest of all. Wingate's attempt to speak for them should not be allowed.

### **Wingate Cannot Speak for the Deceased Venisha**

For two years before her death Wingate could not locate Venisha for a deposition. Yet it pursued summary judgment for her. From 2011 until 2018 Wingate and Bauknight refused to have a GAL appointed for Venisha. She was not given a generous settlement proposed by Pope in 2012. She was exempted from mediation, and Levenson, with no POA, was allowed to act for her.

Venisha died in September 2018, and Wingate has resisted all of Appellant's reasonable efforts to correct the parties to this appeal. Venisha has a valuable interest, through the Legacy Trust, to termination rights proceeds to U.S. royalties to more than 200 copyrights between now and 2026 which she put in the Legacy Trust in 2009. In the year since Venisha's death, no Personal Representative has been appointed to preserve these assets. If Venisha is not timely replaced by a PR who is acting for Venisha's Estate, and not in groupspeak, her complaint should be dismissed; the summary judgment reversed; and the case proceed on the counterclaims.

### **Conclusion**

For the foregoing reasons, Respondents' motion to strike should be denied, and this appeal should proceed.

Respectfully submitted,

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September 10, 2019

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge  
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Of whom Adele J. Pope is Appellant.

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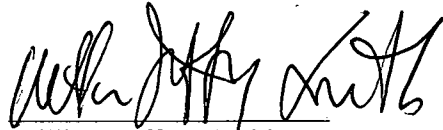
**PROOF OF SERVICE**

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I certify that on I have served Return and Opposition of Appellant to Respondents' Motion to Strike by hand delivery on counsel listed below:

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September 10, 2019

*By U.S. Mail:*

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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SFP 10 2019

SC Court of Appeals

Re: *Bauknight, et al, and Wilson, et al, v. Pope*  
Appellate Case No. 2017-002229

Dear Ms. Kitchings:

In connection with the above-referenced appeal, I enclose an original and seven copies of each of the following:

1. Return and Opposition of Appellant to Motion of Respondents to Strike and
2. Return and Opposition of Appellant to Motion of Respondent Attorney General to Strike.

Also enclosed are an original and one copy of the Proofs of Service for these documents.

I also write to bring to the Court's attention that on May 31, 2019, we filed a motion which, among other relief, sought an Order allowing the filing of only six (6) copies of the Record on Appeal in this matter. Although other matters addressed in that filing were ruled upon, the request to file a reduced number of copies does not appear to have been decided to date.

Thank you for your attention to this matter.

Sincerely,



Adam T. Silvernail

cc: C. Havird Jones, Esquire  
J. Emory Smith, Esquire  
Kenneth B. Wingate, Esquire  
Mark V. Gende, Esquire  
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