STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge

Case No. 2013-CP-02-1337

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SC Court of Appeals

Adele J. Pope, Appellant

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Defendants

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INITIAL REPLY BRIEF OF APPELLANT

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Appellant respectfully submits the following reply to the brief of Respondents. In addition to the response set out below, Appellant incorporates in its entirety the brief of Appellant filed herein. Appellant objects to all statements in Respondents' brief unless specifically agreed to herein and notes herein certain specific issues.

I. Respondents' Counter-Statement of the Case is Inadequate and Incomplete

Respondents' counter-statement of the case, in violation of 208 SCACR, is argumentative and fails to advise the Court of the parties; the amount in question; the allegations in the pleadings; and other material developments in the case. Appellant respectfully submits that this failure to meet minimum standards for a counter-statement of the case should be considered an adoption of the Statement of the Case of Appellant.

II. Respondents Fail to Identify Multiple Issues, Including New Issues at Trial

Respondents state on pages 1-2 of their brief that the sole issue in this appeal is whether Appellant is entitled to be paid for her service from November 20, 2007 until May 26, 2009. The record, however, shows that there are multiple issues, including those that became inescapable beginning with 2017 rulings by the circuit court.

As framed in the original 2009 joint claim of Robert L. Buchanan, Jr. and Appellant Pope, nearly a decade before the Aiken Court's final ruling, the issues were:

> 1. Is Appellant entitled to her unpaid $47,972 SA fee, with interest at 8 ¾%, as awarded in the January 8, 2008 order of the Honorable Doyet A. Early1 (January 2008 Order)?[2]
>
> 2. Are Buchanan and Appellant entitled to payment of the $2.1 million they earned between November 20, 2007 and May 26, 2009, under their

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1 The Honorable Doyet A. Early is sometimes referred to herein as the "Aiken Court."

2 Robert Buchanan, Jr. had received his entire SA fee, about 30% of the $317,000.

"time + costs" contract with Respondents for themselves and staff as approved by the Aiken Court and bearing interest under the January 2008 Order?[3]

3. At the conclusion of their service to the Estate/2000 Trust of James Brown, are Buchanan and Pope entitled to an additional, discretionary commission which, with the amount addressed in 2, above, is about 5% of Brown's $99 Million Estate/2000 Trust?

4. Should Buchanan and Pope be reimbursed for the costs they advanced in *Wilson v. Dallas*?

In 2012, when Buchanan received most of what he was due under their partial-payment contract as of May 26, 2009, but waived interest or a discretionary commission, the question arose: Should Respondents pay Pope's share of the contract amount, which is accruing interest at 8 ¾%? [Order 1/8/08; Order PSJ] Other questions had already arisen, including:

1. Why has Russell Bauknight not promptly addressed this claim as required by the South Carolina Probate Code?

2. Are Respondents and the AG withholding Pope's 70% of the $2.1 million, to retaliate against her for the *Wilson v. Dallas* appeal?

2. Did Respondents and the AG further retaliate against Buchanan and Pope by bringing Richland County Case 2010-CP-40-4900 (Richland 4900)?

3. Have both Richland 4900 and FOIA interference to justify the AG's 2008 settlement made Buchanan's and Pope's service extraordinary?

4. Is the false felony claim being lodged against Buchanan and Pope by the AG and Respondents based on Bauknight's $79 million devaluation and claimed $4.7 million value of Brown's music empire unreasonable? [Tr., pp. 2172-3]

After most James Brown Legacy Trust (Legacy Trust) beneficiaries announced their plan on May 29, 2013 to defy *Wilson v. Dallas,* and the Aiken Court failed, when asked in 2015, to

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3 On June 24, 2009 Buchanan and Pope moved for payment and fully documented the amount earned under the contract which was presented at the December 2007 hearing; unopposed by all Interested Persons; and approved and found reasonable in the January 2008 Order. Mot. 6/24/09; [R., p.]; Order, Jg. Early 1/8/08 [R., pp] [Affid. B& P Supporting Fee Claim]

report the plan to reinstate the AG's 2008 settlement to the Supreme Court, the following issues emerged:

> 1. Are the circuit court's rulings helping the AG and Legacy Trust suppress public documents under FOIA, in Richland 4900 and in this case?
>
> 2. Are the circuit court's rulings, including those making public documents secret and denying Pope's FOIA rights, in retaliation for Buchanan's and Pope's successful appeal of the court's May 26, 2009 order?

III. Opposition to the AG's Settlement Was Not "Ill-Informed or Self-Interested"

The brief of Respondents overlooks the importance of the May 29, 2013 announced plan of Tommie Rae Hynie Brown (Tommie Rae) and most acknowledged relatives of James Brown to ignore the Supreme Court's decision in *Wilson v. Dallas* and reinstate the 2008 settlement deal brokered by the AG which threatened to shift about $2 million of income a year and more than half of Brown's assets from his "I Feel Good" Charity to will contestants. On pages 31-32 Respondents assert that Buchanan 's and Pope's appeal of the AG's 2008 settlement was "ill-informed" and "self-interested." The record refutes this claim.

The AG's August 10, 2008 settlement provides:

> 1. The AG takes control of the assets of entertainer James Brown; selects and effectively controls the fiduciary, but shares 75% management control with Tommie Rae; incorrectly "stipulates" Brown's heirs under State law and the U. S. Copyright Act; stops the Estate's official heirs determination process and DNA testing of all settling parties; gives about $1 million a year and a quarter of Brown's assets to Tommie Rae; gives another $1 million and quarter of Brown's assets to five clients of Louis Levenson, Esq.; and dismembers Brown's education trust for seven specific grandchildren [then 1/42 of Respondent 2000 Trust].
>
> 2. In exchange, the AG gets half of the Termination Interests[4] for his new charity, but gives the first $2 million to a trust for family members.

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4 Termination Interests refers to the right of heirs, as determined in the Copyright Act, to elect certain U.S. royalty proceeds under Sections 304 and 203 of the Act, and those proceeds.

3. The AG and Legacy Trust use James Brown's $4 million annual royalty income and the Termination Interests the settling parties put in the Legacy Trust in January 2009, to defeat the claims of known DNA-proven heirs under the Copyright Act and anyone challenging the AG's 2008 settlement. [Tr. Pp. 304, 305, 315, 316]

Buchanan and Pope were well-informed when they rejected the settlement which was made for the AG by a senior assistant AG who had no understanding of the Copyright Act, Termination Interests, the value of James Brown's estate and 2000 Trust or the lack of strength of the challenges to Brown's estate plan. [Tr. Pp. 517, 519; 1st Rept. And Rec. of SAs]

The Supreme Court's May 2013 rejection of the AG's 2008 settlement as a dismembering of the James Brown's in *Wilson v. Dallas* was likewise well informed.

IV. Respondents' Argument that Appellant Delayed this Matter is Unsupported

Pope, Respondents' expert Provence and the Probate Code all agree that claims must be timely processed. This claim was ready to be heard in 2009 and a motion had been filed to hear it. [Mot. Dtd. 6/24/09] Instead, Respondents delayed for 10 years, causing interest to double both the PR and partial SA fees. Appellant filed this case only when forced to do so by Respondents' May 29, 2013 service of the Notice of Disallowance of Appellant's entire claim (including her judgment for unpaid SA commissions). [Tr. P. 566]

V. Actions of the Aiken Court After the May 29, 2013 Announcement are Relevant

On page 3 and in footnote 3 of Respondents assert that factual allegations of Appellant's brief are unsupported or improperly supported, and some are not relevant. On pages 33 through 36 Respondents identify the testimony and documents of a dozen rebuttal witnesses, asserting they were not properly before the court or relevant. All documents were properly before

the court, and the concerns voiced by many were voiced by Pope in the 63-page complaint filed in this case in June 2013. [Complaint, pp. 1 – 63] All provide evidence that the orders under appeal should be reversed. They further show that the Aiken Court's orders, taken together, demonstrate an increasing retaliation against Buchanan and Pope for their successful appeal of the AG's 2008 settlement which the Aiken Court had approved, but which the Supreme Court voided. [App. Orders, Aiken Ct., 2017, 2019]

VI. The Aiken Court's Challenge to Pope's Credibility Over the May 29 Announcement

Bauknight's Legacy Trust counsel began their vitriolic attacks on Buchanan and Pope in 2009 [Tr. 2170]. At the time Judge Early had consistently praised Buchanan and Pope in more than twenty unappealed James Brown orders. [Orders dtd. 1/8/08, 2/1/08, 3/7/08, 4/1/08, 4/8/08] The May 26, 2009 order replacing Buchanan and Pope had specifically stated the replacement was without a finding of cause for removal. [Tr. P. 317]

At trial, and in its subsequent order, the circuit court challenged Pope's credibility, something the court had not done to Buchanan or Pope for a decade. This included the circuit court's challenge over its May 2015 status report where the court failed to advise the Supreme Court of the May 29, 2013 announced plan of Tommie Rae and a dozen Levenson clients to defy *Wilson* and reinstate the AG's 2008 settlement. Pope, politely and correctly, testified tothe court's error. [Tr., pp. 2296-2301; 2383-2384]

It is significant that William Newsome, Esq., trial counsel for Respondents, was present when the May 29, 2013 plan to reinstate the AG's 2008 settlement was announced, as was one of his partners. Neither – despite years of attacks on Buchanan and Pope – challenged her recollection of the May 29 hearing, which was reported in the media and noted in Pope's filings. [Tr. P. 2302].

VII. The Record Shows Challenges to Pope's Credibility and Actions Were Unfounded

Respondents' brief relies almost entirely on the statements of the circuit court about Pope and her actions and credibility. The trial record, however, with 100 pages of contemporaneous time records, other documentation and numerous orders, makes clear that Appellant's recollection of events was fully supported by the record, while the circuit court's recollection was often inconsistent with its own unopposed and unappealed findings between 2007 and 2009. Especially noteworthy are Respondents' incorrect characterizations of the Christie's sale on pages 25-28, which conflicts with the Complaint and orders of February 20, April 1 and July 14, 2008. [Ords. 2/20/08, 4/1/08; 7/14/08] Respondents' distortion of the First Semi-Annual Report, including confusing the actions Buchanan and Pope took as non-fiduciary SAs with those they took as PR/Trustees, is in direct conflict with the report itself [Rept.]; contemporaneous time records [Timesheets]; orders of the Aiken Court [Ords. 2/20/08; 4/8/08] Buchanan's and Pope's affidavit supporting their claim [Jt. Affidavit]; undisputed trial testimony [Tr. Pp. 31-347] and the Complaint in this case. [Compl.]

VIII. Rulings After the May 29 Announcement Favor the AG's 2008 Settlement

On pages 45-47 Respondents assert that there is no evidence of bias or retaliation against Appellant. That is incorrect.

The first act of the Aiken Court after the May 29, 2013 announced intention to disregard *Wilson* and reinstate the AG's 2008 settlement was to issue administrative orders which excluded Buchanan and Pope from Brown proceedings and directed the clerk to return any attempted filings in cases other than their own claims. [Ords. 6/13/13] For the next six years the circuit court would remain in a bell jar, increasingly hearing and repeating the negative claims about Buchanan and

Pope which were necessary to justify the second dismembering of Brown's carefully-crafted estate plan. [Status Report; Confidentiality Orders; Protective Orders; Depos. Wingate, Cook, Wilson; Tr. Pp. 2299-2305]

In 2015, the Aiken Court issued a Status Report to the Supreme Court, making a number of incorrect assertions. [Status Report] Although many of these inaccuracies (addressed in Appellant's brief herein) painted Appellant in a bad light, Appellant worked under the assumption that the report was based on misinformation in cases from which she and Buchanan had been barred, rather than bias. She spent the next 3 years attempting to get the correct information before the Aiken Court.

Unfortunately, the Aiken Court issued a number of discovery and confidentiality orders in this case, which had the effect of limiting Appellant's access to information or declaring public documents to be confidential. [Ords., 2/7/17; 3/1/17; 6/9/17(2); 6/15/17] Appellant's expectation that this case would be heard by a jury – at least on the issue of valuation – left open the possibility that even confidential documents would be presented to a neutral factfinder.

The Aiken Court cut off that possibility when it moved this case to the nonjury roster over Appellant's objection just before trial. [Ord. 8/18/17]

The depth of the Aiken Court's bias was not clear until it issued its final, scathing order in this case on January 16, 2019. The clearest evidence of bias is the length the Aiken Court went to recast Appellant's and Buchanan's services to the Estate/2000 Trust as categorical failures despite

the numerous orders of *the same court* having approved most of Appellant's actions (after notice and hearing to interested persons, and without any party having appealed the prior orders).[5]

The Aiken Court further spends 4 pages criticizing Buchanan's and Appellant's opposition to the 2008 settlement (later found by the Supreme Court to be an unjust and unreasonable dismembering of James Brown's estate plan), despite the lengthy opinion in *Wilson v. Dallas,* in which the Supreme Court not only agreed with Appellant and Buchanan, but took it upon itself to extensively criticize the settlement, the actions of the AG and the flimsy claims giving rise to the settlement. The Aiken Court found, without citing justification, that it was "not required to turn a blind eye" to Respondents' argument that the 2008 settlement would have allegedly ended some litigation. [Ord. 1/16/19, pp. 39-43]

The Aiken Court found that the Supreme Court "did not have the benefit of" the expert testimony presented in 2017 and 2018 in this case, but disregards the fact that the Aiken Court heard 7 days of testimony (including expert testimony) prior to approving the now-voided 2008 settlement.

The Aiken Court's 2019 findings are even more startling given that in 2013 it "double approved" all amounts paid to Buchanan; praised Buchanan's work, all of which was joint with

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5 The Aiken Court goes so far as to blame Appellant for the orders it issued *directing her*, with Buchanan, to conduct the Christie's sale. "While this Court approved the Christie's Sale, it did so based upon the recommendation of Mrs. Pope." [Ord. 1/16/19, p. 38] "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.*

Pope; and left open the possibility of Buchanan's re-entry into Richland 4900 to seek damages from parties other than Respondents. This praise would stop by 2015, and by 2019 the Aiken Court would rule that Buchanan, like Pope, was not entitled to any commission. Status Report, pp. [Ord. 1/16/19]

Appellant further notes that the Aiken Court specifically requested that Respondents add material to the proposed final order which the Aiken Court characterized as "personal attacks" allegedly made by Appellant. *See* Appellant's brief at 47-48.

Finally, the Aiken Court's receiving, then discarding of Bauknight's *ex parte* filing of what he had admitted to the federal court was tens of millions of dollars of litigation costs without preserving a copy deprived Pope of her Due Process rights to a fair trial and appeal. *See* Appellant's Brief at 33.

Taken together, these orders and rulings demonstrate a clear bias against Buchanan and Appellant, and the resulting final order herein demonstrates that Appellant did not receive a fair trial.

IX. The Rebuttal Testimony and Documents Are Properly Before the Court

At trial, before calling Pope as a live rebuttal witness, counsel introduced rebuttal deposition designations of the Solicitor General, the Governor, the AG and a number of other rebuttal witnesses. [Tr. pp. 2005-7] The designations had been presented to Respondents, who made no counter-designations. [R., p. 2005] Counsel explained that at the bottom of each designation were the documents to be admitted with the deposition, and used the designations for Solicitor General Cook as an example. Counsel advised that he wished to have the documents introduced before Pope testified in rebuttal. A discussion followed which included:

> THE COURT: Well, I'm not going -- if you're objecting to them, I'm not going to go through and read a thousand pages then make a determination Whether they're relevant or not. You're objecting to the whole thing or ---
>
> MR . NEWSOME: Yes, Your Honor
> ... [Further discussion]
>
> THE COURT: All right. Here's what I'm going to do. I'm going to allow him to offer it, but I'm not going to rule on it one way or the other presently until I've had a chance to see what it is. [Tr. p. 2007]

Pope discussed the testimony of some of the witnesses [Tr. Pp.2187-8; 2231-2, and it was included in the motion for directed verdict. Expert W. Steve Johnson acknowledged having read several of the offered depositions during his testimony on rebuttal. [Tr. Pp. 2541-2] When the circuit court's order overlooked the testimony of these critical witnesses, they were called to the Court's attention in a lengthy motion to alter or amend, but the Aiken Court failed to address the issue in its short denial order [Motion Alt./Amend]

The testimony of these witnesses was properly before the Aiken Court both at the second partial summary judgment hearing and at trial. Testimony of the Governor , Solicitor General and AG, along with others, supports Appellant's position that the $4.7 million valuation was fabricated without basis to damage Buchanan and Pope and did, in fact, make their defense of the estate plan extraordinarily difficult; that Richland 4900 was improper and illegal; and that the Aiken Court has retaliated against Buchanan and Appellant since Wilson. [See Sol. Cook, pp. 5-8, 12-26, 29-75-77-81; Gov. McM., pp. 1, 3, 5, 9, 21, 23-25, 30-42, 44-48, 52, 53, 55-57] They also show that the AG supported or joined in known incorrect statements to the Supreme Court by Bauknight, including:

1. Tommie Rae's elective share claim was a "slam dunk;"
2. James Brown's worldwide music empire was worth only $4.7 million;

3. Tommie Rae and James Brown II (James) control the Termination Interests under Sections 304 and 203 of the U.S. Copyright Act;

4. It was good for Brown's "I Feel Good" Charity to give Tommie Rae about $1 million of income a year and a quarter of Brown's assets for her Termination Interests;

5. Nobody was trying to buy the Estate/2000 Trust assets;

6. Brown's Estate/2000 Trust had no corpus to speak of;

7. Termination Rights are all this Estate is about.

8. If the Supreme Court did not approve the AG's 2008 settlement, there would be nothing left in Brown's "I Feel Good" Charity by 2023.

X. Tommie Rae's Post- *Wilson* Marital Status is Not Relevant to This Case or Appeal

Respondents note on page 3, footnote 3, the post- May 29, 2013 rulings of the circuit court and Court of Appeals related to the spousal status of Tommie Rae. This is not relevant to Buchanan's and Pope's fee claim. What is relevant with respect to Tommie Rae in that Buchanan and Pope, with all of the authority and responsibility as if appointed by James Brown, challenged the AG's plan to give her spousal status; about $1 million a year; and a quarter of Brown's assets.

The fact that Tommie Rae's marital status remains undecided 7 years later, Appellant submits, is clear indication that the AG's gift of a quarter of James Brown's assets to Tommie Rae prior to any meaningful discovery on her claim was premature, unjust and unreasonable. The Supreme Court agreed with Appellant and Buchanan on that matter, and Respondents should not be allowed to relitigate, based on subsequent occurrences, Appellant's and Buchanan's reasonable actions.

XI. The Appointment and Service of Buchanan and Pope was Joint

On virtually every page of their brief,[6] Respondents refer to joint acts of Buchanan and Pope as the acts of Pope. This pervasive inaccuracy is explained in footnote 6 on page 5 by the statement that in 2012 Mr. Buchanan settled all disputes and "renounced any claim to compensation for his work as PR/Trustee." This is incorrect.

Everything Buchanan and Pope did from March 2007 until at least July 2012 was joint, and they remained together in the Forlando Suit until it ended in 2015. Everything they did was joint, including their joint motion asking to be paid for the earned portion of their fee in June 2009. [Mot. 6/24/09] By July 2012, however, Buchanan faced financial difficulty from his service to Brown's Estate/2000 Trust and agreed to accept $500,000 for the $500,300 he was owed. He agreed to waive both interest and the discretionary request. See Exhibit [Tr. P. 2383]

Without telling the Supreme Court, the AG required Buchanan not to file a petition for rehearing in *Wilson v. Dallas.* A motion to declare this a violation of the AG's statutory duty has been pending since 2012 and not heard. [Tr. P. 344]

XII. Respondents' Characterization of the First Semi-Annual Report is Inaccurate

On pages 5 through 7 Respondents misdescribe Buchanan's and Pope's May 2008 First Semi-Annual Report to the AG and Beneficiaries as an invitation to the AG to dismember James Brown's estate plan behind their backs. See pp. 5 – 7 of Respondents' brief. A reading of the report, however, makes clear this is not correct. The report accurately outlines the many beneficial

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6 See p. 2, 3,4, 5, 6, 7, 8, 9,10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,23,24, 25, 26, 27, 28, 29, 30, 31, 32, 41, 42 and p. 47.

things Buchanan and Pope were doing between November 2007 and May 2008. [First Semi-Annual Rept.]

XIII. Buchanan and Pope Understood the TIAA (Pullman) Debt as SA's

On pages 21-22, Respondents assert that Buchanan and Pope would have saved money if they had engaged an expert to read the TIAA (Pullman) contract for them. The record shows that before they became PR/Trustees Buchanan and Pope had read, understood and negotiated an agreement with TIAA over an event of default related to TIAA funds Cannon took in 2006. By contrast, Bauknight and his "experts" misread and overvalued the TIAA debt by at least $3 million, causing tax and other problems. This dramatic overstatement, part of the $79 million devaluation, helped shift $1 million a year and nearly 1/3 (31%) of the "I Feel Good" Charity over to family members, where some will remain for another 20 years. It will then return, depleted by millions of dollars of unnecessary income tax, to the charity.

The TIAA debt was not $19 million when Brown died. It was not over $18 million, as Bauknight told expert Bradley Sharp. It was approximately $15 million after a $2 million escrow. Despite this, in 2015 the Aiken Court said in the status report that Bauknight had reduced the TIAA debt from $14 million to zero, nine years ahead of schedule. This was incorrect. Buchanan and Pope had reduced the TIAA debt to about $11.3 million, with a $2 million escrow to be applied to the final payment. Bauknight had only about $9.3 million to pay off by 2011. [Pl. Ex. 15] .

XIV. Testimony of the Governor, AG, Solicitor General and Others is Proper

Respondents' brief, without basis, asks this Court on pages 36 to 38, and elsewhere, to overlook the relevant, material, sworn testimony and documents of the Governor, the Attorney

General, the Solicitor General and others which fully support Appellant's position. [Depos. Cook, pp. 5-8, 12-26, 29-75, 77-81; McMaster, pp. 1; AG Wilson, pp. 11-17, 21-23, 33-35, 39, 41, 49] This evidence is proper and material.

XV. Respondents' and Excluded Experts Support $99 Million Value and Actions

The testimony of Respondents' experts Roger Miller and Laura Woolley, with TPP and copyrights at as much as $80 million, when taken with the testimony of experts the Aiken Court overlooked or declined to accepts, fully support Buchanan's and Pope's $99 million value of Brown's music empire; their extraordinary service; their good return with $7.83 million despite interference; and the wisdom of the challenge to the AG's 2008 settlement.

The Aiken Court, without basis, declined to allow Termination Interest testimony from either Pope or Smith, authors of *Private Foundations, Copyright Heirs and Musical Millionaires: why the James Brown "I Feel Good" Trust doesn't...* , The Court either ignored, discounted, or rejected the testimony of branding expert R. B. Alexander [Tr. Pp. 989-992] Steve Johnson, Esq, [Ct. 2]; IP expert Wallace Lightsey, Esq. [pp. 9-12, 31-41]; tax and estate planning expert , James Hardin III; Kenneth Wingate, Esq., [pp. 5-7, 14, 15, 21, 22, 29, 31-33, 35, 37, 39, 41, 42, 44-47, 68-72]; Graham Foundation trustee Stephen Lambert; "adverse expert" SA/ST David Sojourner; expert Rita Caughman; [pp. 3, 4, 10, 17, 19022, 25, 28, 29, 34] and others [Williams, pp. 1, 4, 5, 11, 13, 26 and Ex 1]. The Aiken Court then found that there was no credible testimony that the value of Brown's music empire was $99 million and that Buchanan's and Pope's service was deficient. [Ord. 1/16/19] The inescapable conclusion from these rulings is that the circuit court denied Appellant a level playing field as to her claim.

Respondents misuse a general statement by expert Roger Miller that settlements can be good and the Semi-Annual Report to justify the AG's dismembering of Brown's estate plan.

XVI. Buchanan and Pope Properly Dealt with Insurance

In footnote 3 on page 18 Respondents assert that Buchanan and Pope's insurance for the Beech Island Mansion was $1 million higher than the appraised value. No evidence was presented of the claimed cheaper insurance, and Bauknight has never accounted properly.

XVII. Thomas Overlooked the $7.83 Million in Royalties Earned by Buchanan and Pope

Respondents use the testimony of CPA Ellison Thomas to assert that Buchanan and Pope left the Estate/2000 Trust "virtually insolvent." In fact, the estate, in addition to bringing in $7.83 million in eighteen months, was just a signature away from the CORBIS/Greenlight deal which would have put $1 - $2 million a year into the coffers. Instead, the AG and Bauknight rejected the Greenlight deal and hired Afterman. Afterman valued Brown's right of publicity – and almost everything else – at near zero, and brought in nothing for the publicity rights.

Thomas prepared a chart which essentially balances the checkbook and ignored the $7.83 million of royalties Buchanan and Pope brought in in 18 months. The corrected Thomas chart shows the real picture. [Thomas Chart w/ Royalties] Thomas admitted he did not know of anything Buchanan and Pope did wrong. [Tr. Pp. 745-746] Thomas had very little recollection of matters he had worked on, most of which was follow-up to wrongdoing of Cannon, Dallas and associates discovered and pursued by Buchanan and Appellant until they were replaced. [Tr. Pp. 687, 695-700, 702, 706, 708-10, 712, 714-6, 718, 720, 722-3, 727-30, 733, 735, 738, 740, 745-6, and Pl. Ex. 15]

Like Mark Hobbs, CPA, also an expert, Thomas was told nothing about the Bauknight/Afterman shifting of 31% of the assets from the charity to family; the failure of Bauknight and his spouse/CPA to file proper income tax returns after the AG gave 50% of the income to private individuals, not the charity; or of Bauknight's $5 million overstatement of debts and deductions to the IRS which resulted in a claimed "refund." He was not told that Bauknight took a $2.8 million charitable deduction for assets which would pass to charity, when $2 million of the $2.8 million was going to family.

On pages 22 and 23 Respondents rely on 2 – out of 200 – clearances which Buchanan and Pope were unable to address because of disruptions by the AG or settling parties. They ignore that they brought in $7.83 million in 18 months, more than $4 million a year, in royalties.

The "death surge" period was over months before Buchanan and Pope became PR/Trustees. The Cannon PR/Trustees, busy with covering up Cannon's takings, missed opportunities during that period.

XVIII. Experts Hired in Late 2016 Lacked Facts and Relied Solely on Bauknight

None of the many experts Bauknight hired on a "deferred pay" basis for the Legacy Trust during his void 4-year appointment as PR/Trustee appeared at trial, Instead, in October 2016 Respondents designated nine experts who were also designated by Tommie Rae, the AG and the Legacy Trust in Richland 4900. None knew anything about the facts except what they were told by Bauknight and his lawyers. None had reviewed the claimed $4.7 million appraisal; some were told, incorrectly, the 2006 income tax returns were not filed. None were told that Bauknight's spouse/CPA failed to file proper income tax returns, and that she and Bauknight abandoned the tax file of resigned court-appointed CPA William Sellars, allowing it to be destroyed after more

than six years. [Tr. P. 2294] Most knew nothing about the heirs, Attorney General's disruption, Royal Bank of Scotland $42 million 2006 appraisal; or the actual amount of income Buchanan and Pope brought in. [Tr. P. 1253-64] None had ever heard of the Estate of Harlan Howard in which the IRS accepted a non-professional valuation of copyrights almost identical to the valuation method used by Buchanan and Pope for the intellectual property. [Tr. P. 2140] None was familiar with the tax problems caused by the $79 million devaluation, including its damage to Brown's fractional-share formula in the 2000 Trust. [Tr. Pp. 1785-1792] None had any experience with litigation related to Termination Rights in the probate court. These experts "saw no evidence of" things because either they were not given the facts, or they lacked the experience to address them. [Tr. Pp. 1897-8]

XIX. Provence Misapplied the Probate Court Requirement of Neutrality

Respondents on pages 14 and 15 rely on Provence's incorrect testimony about neutrality under the Probate Code. Ignoring Brown's estate plan, Provence incorrectly asserted that Buchanan and Pope owed a duty to persons Brown intentionally disinherited. [Tr. Pp. 1752-3]

Provence, as Respondents noted on page 15, testified Pope's time records showed "almost...super human" dedication to her task of protecting James Brown's estate plan, averaging over 200 hours per month. This is consistent with Judge Early's ruling that Buchanan's and Pope's work more than doubled after they became PR/Trustee on November 20, 2007. In 2008 and 2009 the circuit court praised that commitment of Buchanan and Pope and nobody questioned their contemporaneous time records for nearly a decade. Provence criticized Pope for studying to gain Termination Rights expertise, something Provence knew nothing about.

Expert Jim Hardin, Esq., unlike Provence, pointed out in a 50-page expert opinion issued in 2008 that Buchanan's and Pope's work was appropriate, and that their service as lawyers without extra charge benefitted the Estate/2000 Trust. [Hardin Op.] Others gave similar testimony. [Cook, pp. 5-8, 12-26, 29-75, 77-81; Hardin, pp. 104-122, 127-136, 141-143; Bob's and Adele's Correct $84 Million Value; Jg. Williams, pp. 1, 4, 5, 11, 13, 26 and Ex. 1; Lightsey, pp. 31-41]]

XX. Buchanan's and Pope's Proper Management of Brown's Beech Island Mansion

Respondents statements about the Beech Island mansion, like the remainder of the statements between pages 14 and 37, were made by experts hired in late 2016 or later who did not review time records, the complaint, or Judge Early's April 8, 2008 order and other contemporaneous orders. The facts about the Beech Island mansion are that Buchanan and Pope, with the Aiken Court's blessing were seeking a museum purchaser, and hoping to have family involved. [Tr. p. 201] Beech Island was offered to Brown's acknowledged children and Deanna accepted, but Levenson rejected it. [Tr. P. 202] When the AG took over Bauknight spent half a million dollars from Brown's charity fixing up something the AG agreed to sell to the family at a reduced price. [Tr. P. 998]

Buchanan and Pope also placed thousands of Brown's 10,000 items of TPP in four museums for safekeeping and insurance and oversaw the packing and delivery of 45 boxes of music items to a Nashville sound storage facility. [First Semi-Annual Rept., Tr. P. 166]

XXI. The Copyrights Were Catalogued in 2007

On pages 15 through 18 Respondents make statements wholly refuted by the record which shows that Buchanan and Pope obtained a catalogue of the copyrights in 2007 and kept – and made available to all – the quarterly royalty statements. [Tr. P. 2143] Respondents'

statement that "Ms. Pope never bothered to catalogue the copyrights" should be corrected to say that Bauknight never bothered to look at the documents he was handed in May and June of 2009. See Receipt signed by Bauknight [Tr. P. 1916]

Buchanan's and Pope's focus on preventing the AG from giving away $2 million a year and half of Brown's 900 copyrights necessarily became their major focus in August 2008. Complaint [Tr. Pp. 302, 449-51, 487, 2110-11, 2182-3, 2229-30, 2295, 2247-48]

XXII. "Found No Evidence" Means Respondents and Experts Ignored the Records

In sworn depositions as early as 2013 Bauknight had virtually no memory of actions within the estate. Yet he complained about Buchanan and Pope, finding no evidence, for example, of filing of Brown's 2006 income tax returns which were filed both with the IRS and in the Aiken Court in 2007. [Tr. P. 2116] He didn't tell experts he had failed to pick up the James Brown tax files from William Sellars, allowing them to be destroyed. [Tr. Pp. 2286-7] He blamed the failures of his spouse/CPA to file tax returns on Buchanan and Pope.

"Found no evidence" and "did not see" became the hallmarks of Respondents and their experts. The complaint, contemporaneous records, and undisputed testimony of Pope, the Solicitor General and others confirms the competent and beneficial work of Buchanan and Pope.

XXIII. Tommie Rae's Three Suits and the Four Will/Trust Challenges

On page 16 and 17 Respondents assert that Buchanan and Pope were trigger-happy litigators with a "myopic focus on litigation" and, but for one, filed "the first lawsuit related to the estate." The record is otherwise. Within six weeks of Brown's death Tommie Rae and James had filed three defective lawsuits. By a year and a day after his death all except one of the acknowledged children and Tommie Rae had filed four more lawsuits. And Forlando, the

following week, began his four-year federal suit seeking to reinstate Cannon and Dallas as Brown's trustees. [ ]

Buchanan's and Pope's declaratory judgment suit asking for emergency relief to correct the theft of Cannon and other wrongdoing of Cannon and Dallas was not a suit against the family, and was appropriate. It produced at least five beneficial orders. [Ords. dtd. 1/18/08, 1/8/08, 2/1/08, 4/1/08, 4/8/08]

XXIX. The $99 Million Value is Supported by the RBS Appraisal and Other Evidence.

Expert James Hardin III, testified that the factors used by Buchanan and Pope to arrive at the $99 million (less $15 million TIAA debt) value were those typically used in a professional appraisal. As shown in Exhibit D8 to the Hardin Deposition, Buchanan's and Pope's valuation was fully supported by voluminous documentation not secreted by Respondents, including the term sheet for the $42 million 2006 RBS appraisal of about 850 of the 900 copyrights. [Depos. Hardin, Ex. D8]

The formula presented by Buchanan and Pope was accepted by the IRS in the Estate of Harlan Howard in 2002, but none of the experts, including Bradley Sharp, was aware of that decision. [Tr. Pp. 1892, 1902, 2141, 2532-3, 2541] *In re Estate of Howard*, M2008-00540-COA-R3-CV (Tn.App. 2009) correctly states that the purpose of a tax valuation is to get the figure right – not see what you can get away with. [Tr. P. 2141] Bauknight, by contrast, devalued Brown's assets by $79 million to get away with sullying Buchanan and Pope. This had devastating consequences to Brown's charity not corrected by *Wilson v. Dallas*. Bauknight got away with a loss of $31% of the charity and $1 million a year to a family trust for 20 years or more, and hundreds of thousand of dollars of unnecessary income tax each year. [Tr. P. 2141]

The $79 million devaluation endorsed by the AG without review, like the unconstitutional and unauthorized Richland 4900 and the FOIA interference, made the work of Buchanan and Pope more difficult. The same was true of their having to conduct *Wilson v. Dallas* at their own expense. The result, however, allowed the Supreme Court to issue a decision to save $50 million in assets and $2 million a year in income the AG tried to give away for Termination Interests worth $5 million or less.

Conclusion

The circuit court committed various errors in arriving at the January 16, 2019 Order, along with the appealed pre- and post-trial Orders. Respondents have not overcome any argument addressed in Appellant's brief, and this Court should grant the relief set out therein.

Respectfully submitted,

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Attorney for Appellant

March 9, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Doyet A. Early, III Circuit Court Judge

RECEIVED
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SC Court of Appeals

Appellate Case No. 2019-000362

Adele J. Pope, Appellant

v.

Estate of James Brown and The James Brown 2000 Irrevocable Trust, Respondents

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PROOF OF SERVICE

The undersigned hereby certifies that he has served a copy of Appellant's Initial Reply Brief and Designation of Additional Matter to be Included in the Record on Appeal by hand-delivering a copy of the same on the date shown below to Respondents' counsel, addressed as follows:

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March 9, 2020