

**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**

Appellate Case No. 2019-000362

RECEIVED

Apr 15 2020

SC Court of Appeals

Adele J. Pope, Appellant,

v.

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

**RETURN AND MEMORANDUM OF APPELLANT IN OPPOSITION TO
MOTION OF REPENDENTS TO STRIKE RECORD ON APPEAL**

On March 27, 2020 Appellant served and filed a comprehensive 3041-page record on appeal (ROA) in this case. On April 1, 2020 Respondents filed a motion to strike the ROA, which should be denied because it seeks relief which was sought in this Court and denied in January 2020. In addition, the motion attempts to characterize this appeal in a way that is inconsistent with the ROA, the full record below, and Appellant's briefs. The motion fails to take into account the tens of thousands of pages of documents of which the circuit court took judicial notice. It also fails to take into account documents presented to the circuit court at two pre-trial motions for partial summary judgment; numerous motions and responses to motions; and with the deposition designations of the Governor, the Attorney General, the Solicitor General, Kenneth Wingate, Esq.,

David Sojourner, Esq., Wallace Lightsey, Esq., James Hardin III, Est, Judge (Ret'd) Walter Williams and others.

As shown on Exhibit A, attached hereto, on April 7, 2020 Appellant communicated with Respondents about the small number of inadvertently omitted pages of the trial transcript and requested that Respondents clarify certain other designations. As a result, Appellant should be able to file a small supplement to the ROA within days.

MEMORANDUM OPPOSING MOTION TO STRIKE RECORD ON APPEAL

The Motion to Strike Seeks Relief Considered and Denied by the Court

On October 10, 2019 Respondents moved to strike Appellant's initial brief and designation of matter to be included in the ROA in this appeal. The motion was denied on January 13, 2020. The ROA contains the very documents which Respondents sought to exclude.

Respondents' effort to limit the ROA to be considered by the Court was denied when made the first time. It should be denied again.

Rule 210 Places Responsibility for the ROA on Appellant's Counsel

In early March 2020 Appellant and her counsel faced concerns of the COVID-19 pandemic and a schedule that included other matters. They planned to complete the ROA in March. This was entirely consistent with Rule 210 SCACR, which places the duty of preparation, serving and filing the ROA on Appellant's counsel.

On March 17, 2020, with four of the seven volumes duplicated, Appellant requested a small number of documents and certain clarification from Respondents' counsel. When Respondents' counsel indicated it would be difficult to provide the documents and suggested that there was "no rush to file the ROA," Appellant's counsel contacted the clerk of court.

With the cooperation of the Aiken County Clerk of Court, the requested documents were received and the ROA was completed, served and filed on March 27, 2020.

This is an Appeal of Multiple Orders Which Involve Multiple Issues

In the “BACKGROUND” set out on pages 2 and 3, Respondents suggest that this is an appeal of a single order of January 16, 2019. Respondents further assert that this appeal does not involve any issue related to Richland County Case 2010-CP-40-4900 (Richland 4900); litigation over FOIA requests made by Appellant in 2011 which is still pending; and other issues. This assertion is inconsistent with the entire record below, the ROA, and the briefs on file. Some of the inaccuracies are discussed below.

This Appeal Relates to the Role of Respondents and Bauknight in Richland 4900

This appeal results from a 2009 joint claim of Robert Buchanan, Jr. and Appellant Pope. It is an appeal from a case which Appellant was forced to bring by the service on her by Respondents’ counsel William Newsome, Esq., on May 29, 2013 of a Notice of Disallowance with Notice of Impending Bar (Disallowance) [R, p. 633]

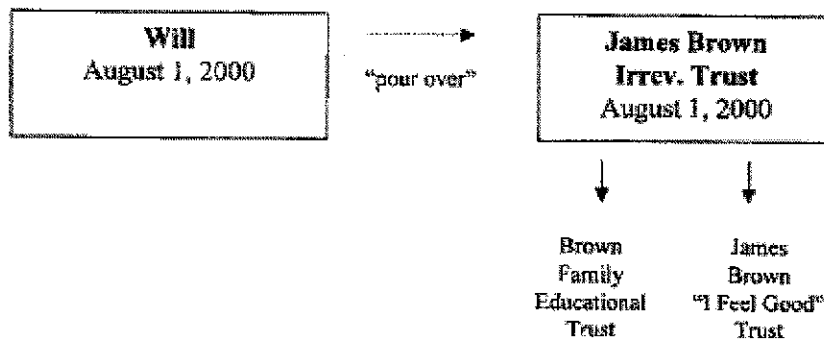
The timing of Disallowance is significant. It came three weeks after the May 8, 2013 decision of the South Carolina Supreme Court voided the appointment as PR/Trustee of Russell Bauknight under the Will and 2000 Trust of entertainer James Brown; voided a 2008 settlement made by the South Carolina Attorney General (“AG”) which Bauknight had recommended and the Honorable Doyet A. Early, III, had approved in May 2009; and declined to reinstate Buchanan and Pope as PR/Trustees.

The Disallowance was handed to Appellant by Newsome immediately after a status conference at which Richland 4900 Plaintiff Tommie Rae Hynie Brown (Tommie Rae) and a dozen Richland 4900 Plaintiffs represented by Louis Levenson, Esq., had advised Judge Early of

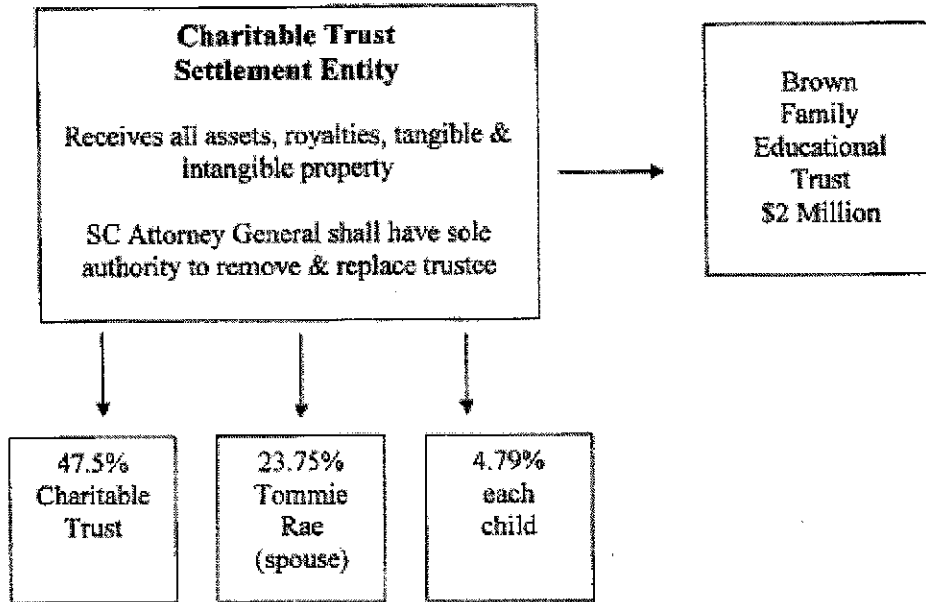
their plan to disregard the Supreme Court’s *Wilson v. Dallas* decision and reinstate the AG’s 2008 settlement. Bauknight served as trustee for most of the announcing parties under the James Brown Legacy Trust (Legacy Trust). In addition, in Richland 4900 he claimed to be acting “on behalf of” the AG.

Richland 4900 had been filed against Buchanan and Appellant Pope in May 2010. As the Richland 4900 complaint, and Respondents’ own explanation to the Honorable L. Casey Manning in 2010 show, Richland 4900 was not brought for the benefit of James Brown’s estate and 2000 Trust, but for the benefit of the Legacy Trust and its beneficiary-owners to whom Buchanan and Pope never owed a duty. Respondents contrasted it with James Brown’s estate plan as follows:

The original estate plan of James Brown included a Last Will and Testament which “poured over” the bulk of his estate to a separate, irrevocable trust that was created and funded on August 1, 2000. The relationship between the estate and the Irrevocable Trust are shown as follows:



The Charitable Trust is diagrammed as follows:



Appellant raised Bauknight's conflicts of interest in the complaint she was forced to file on June 10, 2013 if she wished to be paid anything for her unpaid \$47,972 2007 SA fee; the 5 1/2 years of her service between November 2007 until May 2013, for which she had received no pay; or the thousands of dollars she had paid for the costs of the appeal which became *Wilson v. Dallas*. [R. pp. 634-698] She focused on the claimed \$4.7 million at-death value of Brown's worldwide music empire value which the AG and Bauknight had used in Richland 4900 and in Supreme Court filings since 2011 to falsely accuse Buchanan and Appellant of a federal felony.

Appellant's cause of action for an unbiased SA/ST to hear her fee claim, with most other causes of action against Bauknight, was dismissed under Rule 12 (b). One of the two circuit court dismissal orders stated, in part:

Plaintiff alleges that the date of death value of the Estate was far more than the value purportedly established by Defendant Bauknight, and also that after the decedent's death, the Estate has generated funds to pay down substantial debts associated with the Estate. (Compl. ¶ 17, 113, 228). The Complaint, however, contains no allegations reasonably establishing how the date of death value

claimed by Defendant Bauknight, or any other action other than his mere denial of Petition[er]'s alleged claim against the Estate, jeopardizes payment of her claim from the current assets of the Estate.

[R, p. 231]

In October 2013 the circuit court held a *Wilson v. Dallas* remand hearing for Buchanan; praised his work; "double approved" all payments he had received; and ruled that there was no basis for disgorgement. Buchanan, whose work and 2009 claim were joint with Appellant, had been paid his full SA fee and, in 2012, accepted all except \$300 of his partial PR/Trustee fee contract payment. The circuit court even left open the possibility of Buchanan's re-entry into Richland 4900. He directed Newsome to prepare an order acceptable to Buchanan. No order has ever been filed.

In 2014 Respondents used the existence of Richland 4900 to prevent Appellant's claim for the \$47,972 2007 SA fee and \$1,473,550 partial PR/Trustee commission through May 26, 2009, for which Buchanan had been paid.

By late 2014 the Aiken Circuit Court had arranged a joint mediation of Aiken 1337 and Richland 4900.

In his May 2015 status report to the Supreme Court, the circuit court discussed Richland 4900; stated that Buchanan had "settled the case against him for \$500,000" when Buchanan had actually been paid that amount; and told the Supreme Court he believed Appellant's \$47, 972 unpaid SA fee claim was for \$2 million.

In 2016 and 2017 the circuit court issued numerous confidentiality and protective orders that prevented exploration of the claimed \$4.7 million at-death value of Brown's music empire; the propriety of Buchanan's and Pope's challenged to the AG's 2008 settlement; or the fact that Bauknight and his music manager Peter Afterman were allowing Tommie Rae and others to siphon

off U.S. royalties they had put in the Legacy Trust in 2009. The circuit court adopted the position of Sr. Asst. AG Havird “Sonny” Jones that he had a “common interest” privilege with Tommie Rae and Bauknight from August 2008 until May8, 2013, and that his “common interest” with Bauknight was continuing.

In two separate 2017 orders, the circuit court adopted the incorrect statement of Bauknight and Respondents that [t]he Internal Revenue Service independently reviewed the appraisal and agreed with the findings regarding the date of death valuation for the James Brown Estate. [R. p. 275, Order filed 6/16/17]

When the Honorable Jean H. Toal, acting circuit judge, directed Kenneth Wingate, Esq., and Everett Kendall, Esq. to answer questions about their commencement and continuation of Richland 4900, both refused to answer most questions. The Aiken Circuit Court then issued an order in both Richland 4900 and Aiken 1337 which exempted them from answering the questions they refused to answer.

The purpose of Richland 4900 was to damage Buchanan and Pope because they challenged the AG’s 2008 plan to give about \$2 million a year and half of the assets of James Brown’s charity to seven Richland 4900 Plaintiffs in exchange for their share of the section 304 and 203 U.S. royalties, which even by 2018 would be worth less than \$8.8 million. Those incorrect claims made by the AG and Respondents in Richland 4900 resonated with the Supreme Court when made by the State’s highest legal officer.

When a majority of the Richland 4900 Plaintiffs announced to the circuit court their plan to disregard *Wilson v. Dallas* and reinstate the AG’s 2008 settlement, they needed the help of the circuit court to continue to discredit Buchanan and Pope. The orders issued by the circuit court

between May 29, 2013 and January 2019 in both Richland 4900 and Aiken 1337 gave them that help. It was Respondents and the circuit court – not Appellant – who linked the two cases.

Respondents' assertion that this appeal does not relate to Richland 4900 is incorrect.

Respondents' 9-Year FOIA Disruption is Material to Aiken 1337

By 2011 four public documents would have brought an end to Richland 4900 and made short work of the challenges to James Brown's estate plan: 1. the Wingate Contract which shows that Governor McMaster did not authorize Wingate to sue in Richland 4900 or Bauknight to act "on behalf of" the AG; 2. The January 2011 Legacy Trust amendment executed just before Forlando planted the false Grammy © claim with an Atlanta law firm; 3. The claimed Peter Afterman \$4.7 million "appraisal" for a music empire that had brought in more than \$5 million a year when Buchanan and Pope served despite constant disruption by the AG; and 4. The so-called "Hynie diary," handwritten admissions confirming that Tommie Rae was married during her ceremony with James Brown.

Most troublesome of these is the claimed \$4.7 million valuation which the AG has used to accuse Buchanan and Appellant of a federal felony even though the Governor, the Solicitor General, and the AG maintain that neither they nor anyone in the AG's office reviewed it.

For nine years Respondents, through Bauknight, and the AG have resisted release of these public documents in order to advance Richland 4900 and the May 29, 2013 announced plan to disregard *Wilson v. Dallas*. The Court is asked to take judicial notice that in 2020 Respondents, through Wingate, are still seeking to prevent release under FOIA of the 2010 Wingate contract.

The circuit court issued orders in 2016 dismissing two 2011 FOIA suits which would have produced all of these documents except the so-called "Hynie diary." Appellant had not requested that document under FOIA, but someone else had. Under gag orders by the circuit court from

2008 until 2015, the “Hynie diary” became public again after the circuit court declared Tommie Rae to be Brown’s spouse. As stated in Appellant’s brief, the outcome of that still-contested ruling, is of no concern to Appellant.

What is important in Appellant’s fee claim is to show that Buchanan and Pope reasonably challenged Tommie Rae’s spousal claim and the AG’s plan to give her \$1 million a year and a quarter of Brown’s charity for her termination rights. What is important is that Buchanan’s and Pope’s \$99 million value – less \$15 million TIAA debt – was reasonable when presented by them and the court-appointed CPA to the IRS.

Respondents have continued their FOIA disruption and noncompliance with the AG for 7 years after the AG told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA matters shortly. This FOIA disruption and noncompliance, and the circuit court’s orders advancing it, are clearly relevant to the level playing field which Appellant has been denied since the May 29, 2013 announcement.

The decision of the South Carolina Supreme Court is Central to Aiken 1337

The Supreme Court’s *Wilson v. Dallas* decision is important to this appeal and the level playing field which Appellant was denied for the consideration of her entitlement to compensation for the 6 years she and Buchanan served James Brown’s estate, 2000 Trust and Estate plan. The *Wilson v. Dallas* decision remanded the matters for a review of attorneys’ fees and fiduciary fees and any necessary disgorgement.

In October 2013 Buchanan, whose work was joint with Appellant, was given a fair, brief remand hearing. Respondents made no objection. All amounts he was paid were approved. No disgorgement was necessary.

By contrast, the AG and Respondents forced Appellant to engage in a 7-year ordeal over a fee that could have been settled for \$2.1 million or less years ago. Aided by the circuit court, they secured an order which blamed the relentless litigation in which they have engaged on Appellant, and which denigrated both Buchanan and Pope for complying with their duty to defend James Brown's estate plan.

The Supreme Court's Order of July 10, 2015

Upon receipt of the July 10, 2015 order Appellant immediately abandoned her two-year *pro bono publico* effort to try to convince the Attorney General not to dismember Brown's "I Feel Good" Charity a second time. Neither the Governor, the AG, nor the Solicitor General hinted that Appellant had violated the July 10, 2015 order or acted in any matter in which she has no standing.

The Court is, however, asked to take judicial notice of claims being made in the Estate of Venisha Brown by Legacy Trust beneficiaries and the law firm of Kenneth Wingate, Esq., and of Appellant's responses to those unfounded, career-threatening claims.

The ROA Contains Only Matter Presented to the Lower Court

On page 7 and 8 of the motion Respondents assert that Appellant "egregiously" included in the ROA material not presented to the lower court. This claim was incorrect when it was made as to the designations in October 2019, and it is incorrect today. Equally inaccurate is the claim that in the ROA Appellant "improperly meld together multiple, separate matters..." These claims ignore the voluminous record in this case. Some of the errors in these conclusions are discussed below.

Respondent's Motion Overlooks the Circuit Court's Extensive Judicial Notice.

Prior to the first cross-motions for summary judgment in 2014, the circuit court had agreed to take judicial notice of all matters contained within the record of all James Brown cases – whether

or not in Aiken County – before May 8, 2013, the date of the final *Wilson v. Dallas* decision. The circuit court had taken similar judicial notice at the 2009 hearings on the AG’s 2008 settlement.

A glance at the documents about which Respondents’ complain shows that at least the following, by judicial notice (if not otherwise), were presented to the lower court as contemplated by Rule 210 (c) SCACR:

1. Summons and Complaint, Richland 4900 (2010); 2. Plaintiffs’ Motion to Dismiss Notice of Appeal in Richland 4900 (2011); 3. Supreme Court Motion to Supplement the Record on Appeal by Respondents, the AG and other, May 6, 2011; 4. more than 100 filings in the “Forlando Federal Suit,” 3:08-cv-00014-WOB (2008 – 2013); Handwritten admissions of Tommie Rae Hynie (before 2007); 5. Email of Sonny Jones, December 6, 2007; 6. Ltr. of Louis Levenson to Georgia Bar, June 20, 2008; 7. Email of Medlin to Chandler & others, July 31, 2008; 8. Agreement for Legacy Services, Sweeny, Wingate and Barrow, PA (2010); Motion to Strike Pope’s Offers of Judgment (2012); 8. Affidavit of Darren Julien (2008); 9. Memorandum of Pope to Bauknight re: Documents Delivered May 27, 2009; *S.C. v. Cannon*, Payments to Cannon 1999 – 2006 (2011).

This was not the only judicial notice taken by the circuit court, which also included notice of the Forlando Federal Suit after May 8, 2013, the 2018 federal suit filed by Deanna Brown-Thomas against Tommie Rae, Bauknight and others. While it was never precisely articulated, the circuit court, without objections, generally took judicial notice of matters in which both Respondents and Appellants had been involved.

Respondents’ Motion Overlooks the Court’s Judicial Notice of Numerous Orders and Facts

Exhibit 1 to the trial contains about 40 orders issued between February 2007 and September 2009, mostly by Judge Early. Except for the orders which became *Wilson v. Dallas*, none were appealed. At trial, without objection by Respondents, the circuit court took judicial notice not only of the orders, but of the facts contained in the unappealed orders. [R. pp. 1475-1477] Respondents failed to take this into consideration in the motion to strike.

Respondents’ Motion Overlooks Exhibits and Testimony in More than Twenty Depositions

Prior to the second summary judgment motion in 2017 numerous depositions with exhibits

were on file with the circuit court and were considered by the court in that summary judgment motion.

Respondents' Motion Overlooks the Rebuttal Deposition Testimony and Documents

As Appellant's designation, which the Court has declined to strike, shows, the designated deposition testimony and documents of the Governor, Attorney General and others was presented to the lower court both before and during trial. The trial designations are contained in the ROA and are briefly described below:

1. Deposition Designations of Solicitor Gen. Robt. Cook, and Designation to ROA 2874 Premarked Exhibits 1 – 10
2. Deposition of Expert James Hardin III, Esq., with Designations, ROA p. 2876:
D1 – Expert Report
D2 – Notebook (Creditors' Claim)
D-8 Bob's and Adele's Correct \$84 Million Value of James Brown's Music Empire
3. Deposition of Kenneth Wingate, Esq., Rich. 4900 counsel w/ Exhibits, ROA, p. 2878
Exhibits 1 – 17
4. Deposition of Rita Caughman, Esq. Designated "Adverse Expert," ROA 2879
Exhibits 1 – 6
5. Deposition of Asst. AG Mary Frances Jowers, May 3, 2016, w/Exhibits, ROA 2883
Exhibits AG1, AG2, AG 31, AG32, AGH 5, 8, 9, 24, 29, 33, 34, 36
6. Deposition of Attorney General Alan Wilson, w/ Exhibits, ROA, p. 2885
Exhibits 1-6, 8,9
7. Deposition of Sr. Asst. AG Havird "Sonny" Jones, May 5, '06, w/Exs., ROA 2887
AG 45, AG 46, Spitzer Article
May 19, 2016, w/ Exhibits, ROA 2899
AG 11, 19, 45, 46, 47, 48, 49, 50, 51 – 70,
8. Deposition of Judge (Ret'd) Walter Williams, w/ Exhibits ROA 2893
Exhibits 1 and 2
9. Deposition of Stephen J. Lambert, Trustee, the Graham Fdn., w/ Exhs. ROA 2904
10. Deposition of AG Auditor Sandra Matthews, w/ Exhibits, ROA 2895
Portion of Exhibit 2 (Darren Julien Affidavit0

11. Deposition of Governor Henry McMaster ,w/Exhibits [ROA 2897]
All Exhibits
12. Deposition of Sr. Asst. AG Creighton Waters, w/ Exhibits,[ROA. 2899]
Exhibits 1 and 2
13. Deposition of Everett Kendall, Esq., w/ Exhibits,[ROA 2915]
Exhibits 1 - 17
14. Deposition of “Adverse Expert” David Sojourner, w/ Exhibits,[ROA 2903]
Plaintiff’s Exhibits 73,76, 78, 79, 80
15. Deposition of AG Auditor Sandra Matthews, w/ Exhibits, [ROA 2895]
Portion of Exhibit 2 (Darren Julien Affidavit)

Respondents’ claim that these depositions and exhibits “were never made a part of the record” is simply inaccurate, and has already been addressed by this Court. The fact that the circuit court chose to ignore the testimony and documents proffered at trial, even when prompted by an extensive motion to alter or amend which contained excerpts of some of the testimony, does not mean that it cannot be included in the ROA on appeal. A quick review shows that many of the documents complained of by Respondents were part of the above depositions and exhibits, presented to the lower court either before trial, at trial, or at both times. A few are mentioned:

- Handwritten Admissions of Tommie Rae – Exhibit to Deposition of Gov. McMaster
- Wingate 10: Portion of Transcript of Record , Designation, Exhibit
- Wingate 15: Motion to Strike Pope’s Offers of Judgment, Designation, Exhibit
- Rule 26(a)(2) (B) Expert Report of James Hardin – Designation Ex., (and Forlando Suit)
- Hardin Resume’ – Part of Designation, Exhibit
- Bob’s and Adele’s Correct \$84 Million Value for James Brown Assets, Hardin Ex.
- Wingate Ex. 2, Questions – Designation, Exhibit

Plaintiffs assertion that these, and other, documents are improper “on several levels” is inaccurate. They are properly within the ROA. The assertion that Appellant never sought to admit them is simply incorrect and inconsistent with the record. The suggestion that the exhibits “might” have been attached overlooks that about thirty original depositions were, and are, on file with the court and were often brought to the hearings by the clerk of court. On page 9 Respondents state their position as to the admissibility, relevance and importance of these documents. Appellant does not agree with that position, as it does not agree with other positions in Respondents’ brief. Respondents’ position about these issues does not provide any basis for their exclusion from the ROA.

Respondents’ Assertions About Appellant’s Counsel’s Actions are Inaccurate

Respondents’ motion to strike boldly asserts on pages 5 through 9, and with no basis, that Appellant filed the ROA in an “attempt to gain some form of procedural advantage;” that items designated by Respondents were “intentionally” omitted; that the ROA does not contain material designated by Respondents; that the ROA contains material that was not designated by any party; and that Respondents’ attempt to uncover these alleged intentional acts and omissions have been “exhaustive.” These statements are not correct. The only advantage Appellant seeks is to be paid for work she did between 2007 and 2013, something that was denied her by the orders under appeal. Respondents’ search for errors simply failed to take into account the matters clearly presented to the lower court and extensive judicial notice taken by the Court.

Conclusion

For the reasons set out herein, Respondents’ motion to strike the ROA should be denied. Appellant expects to file a small supplemental ROA shortly, including any documents provided by Respondents responsive to Appellant’s April 7, 2020 request.

Respectfully submitted,

s/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone (803) 799-1770
adam@silvernailfirm.com
S.C. Bar No. 80219

Counsel for Appellant Adele J. Pope

April 15, 2020

EXHIBIT A

From: **Black, David** DBlack@nexsenpruet.com
Subject: RE: Pope v. Estate of James Brown, Appellate Case No. 2019-362 [IWOV-NPCOL1.FID1033932]
Date: April 10, 2020 at 4:08 PM
To: Adam Silvernail adam@silvernailfirm.com
Cc: Brown, Creston W CBrown@nexsenpruet.com



Adam,

In a follow up to your April 7, 2020 email, we are reviewing your numbers 1 through 9. As we have explained to you before, with our office staff working remotely, certain tasks take a little longer than if everyone were physically present in their offices. We anticipate providing you the requested information by mid-week.

I would like to reiterate that the Record on Appeal is not due to the Court of Appeals until Monday, April 27, 2020. Your email's reference to an attempt to unnecessarily refile the Record on Appeal on Monday, April 13, 2020 causes me great concern, specifically that you will intentionally file another incorrect and incomplete Record on Appeal which will then necessitate the Estate to file another Motion To Strike. Lets work together and submit a correct and proper Record on Appeal to the Court of Appeals so that this matter may be decided on the merits.

Regarding the (1) documents you included in the Record on Appeal which were not designated by either party and the (2) documents you included in the Record on Appeal which were not presented to the lower court, will you be removing those as well? The South Carolina Appellate Court Rules are clear: the Record on Appeal must not contain any material that was not designated by a party to the appeal (see Rule 210(g)), and the Record on Appeal shall not include matter which was not presented to the lower court in the proceeding that underlies the appeal (see Rule 210(c)). As I said earlier, the Estate desires for a correct and proper Record on Appeal to the Court of Appeals so that this matter may be decided on the merits.

Let touch base on Wednesday of next week to see where we are. Please confirm that you are in agreement that you will not file another Record on Appeal until all parties have exchanged the appropriate information?

Thanks, David

J. David Black
Member: Admitted in SC, DC
Nexsen Pruet, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
PO Drawer 2426 (29202)
T: 803.540.2072, F: 803.727.1409
DBlack@nexsenpruet.com

www.nexsenpruet.com

From: Adam Silvernail <adam@silvernailfirm.com>
Sent: Tuesday, April 7, 2020 2:46 PM
To: Black, David <DBlack@nexsenpruet.com>; Brown, Creston W <CBrown@nexsenpruet.com>

Cc: Adele Pope <adele@popelawfirm.com>

Subject: Pope v. Estate of James Brown, Appellate Case No. 2019-362

{EXTERNAL EMAIL}

Dear David and Creston:

I received your March 31, 2010 Motion to Strike the record on appeal (RoA) in Appellate Case No. 2019-00362, an appeal from Aiken County Case 2013-CP-02-1337. While I disagree with both the tone and most of the content, and will address that with the Court, I do ask that you provide me the documentation below so that I can complete the Supplemental RoA which it is my duty, as Appellant's counsel, to perform.

I did not intentionally omit anything from the RoA, and will file a supplemental Record including any documents you designated on February 12, 2020 which were inadvertently omitted.

Although it appears that we did in fact include some documents which you cite in your motion, at least in the form in which they are on file with Aiken County as exhibits in this case, I trust you will provide me with exactly what you believe has been excluded so that I can include it in the Supplemental ROA.

I have provided the following notes to make this easier for you.

1. OFFER OF COMPROMISE OF BUCHANAN AND POPE, March 31, 2009.

Note: Neither your original designation nor the Court Reporter's notes gave the date. Thank you for providing. Please let me know if you wish to include the COS which was a part of what you sent, but was not designated. If you do not clarify, I will omit from the Supplemental RoA.

2. Pages 650, 651, 913, 1335, 1336, 2215, 2216, and 2217 of the Trial Transcript.

These pages will be included in the Supplemental RoA

3. Defendants' Ex. 8, Email between Pope and Conlin dtd 1/22/09.

Your designation said Ex. 8 "Emails regarding clearance requests" and the Court Reporters' notes said: Email 1/22/09.

We included a couple of emails around that date. The Conlin email is located at ROA page 2984. Please advise if you need anything else included.

4. Exhibit 37, Inventory & Appraisal, 11/15/2007.

Note: The Court Reporter indicates only "Inv. & App." and does not indicate whether you want some or all pages.

Please provide exactly what you want included.

5. Plaintiff's Exhibit 73, document created by Adele Pope regarding anticipated use of settlement proceeds.

Note: Your designation said "Pope document re: Settlement Offer." The Court Reporter's Notes

say:

"Case Facts, AJP."

Please provide exactly what you want to be included.

6. Defendants' Exhibit 56, Supplemental Inventory & Appraisalment, dated 5/3/11.

Note: the Court Reporter's Notes say only "Inventory & Appraisalment"

Most of this is included in the RoA at page 621 and the following pages, as part of the Motion to Supplement the Record, beginning at page 610. I believe it includes pages 1, 4, 9, 10, and 11.

If you want more, or all pages together, please provide me with exactly what you want to be included.

7. Ltr. of TJBL (to be formed) dated October 12, 2007

This is on page 2911 of the RoA, as sent to us by the Aiken clerk.

8. Interim Accounting 1-A

Designation and Reporter's Notes were unclear about which part of this should be included Pages 1, 2 and Attachments are located in the RoA at pp. 2674-2682.

Unless we hear differently from you, we will include the entire 30-page accounting and 5 pages of attachments in the supplement, although some will be duplicates of 2674-2682

9. Valuation Analysis by Sharp

As provided by the Clerk of Court, this Exhibit D29 is part of the RoA at page 3014.

I would appreciate your responding by Monday, so that we can finalize and file the Supplemental Record.

Best,
Adam

--

Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)

Post Office Box 7995

Columbia, South Carolina 29202-7995

803/779-1770

The undersigned counsel for Appellant hereby certifies that he served a copy of the Return to Motion to Strike Record on Appeal on the date shown below by emailing a copy of the same (pursuant to current Order of the Supreme Court regarding service during COVID-19 crisis) to counsel for respondents, addressed as follows:

J. David Black, Esquire

dblack@nexsenpruet.com

Creston W. Brown, Esquire

cbrown@nexsenpruet.com

RECEIVED
Apr 15 2020
SC Court of Appeals

April 15, 2020

s/Adam T. Silvernail