

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC 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

Appellate Case No. 2019-000362

Adele J. Pope,Appellant,

v.

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

**SUPPLEMENT TO RESPONDENTS’
MOTION TO STRIKE RECORD ON APPEAL**

Russell Bauknight, as Personal Representative and Trustee of Respondents, the Estate of James Brown and the James Brown 2000 Irrevocable Trust, respectfully submits this supplemental memorandum in support of Respondents’ Motion to Strike Record on Appeal (“ROA”), filed and served on March 31, 2020.

In the Motion, Respondents’ noted that counsel for Appellant Adele Pope (“Ms. Pope”) insisted on completing and filing the ROA weeks before it was actually due, without waiting for materials requested from Respondents and while refusing to give Respondents’ counsel a chance to review the index.

The reason for Ms. Pope’s headlong rush to file the ROA has now become clear: to

bolster her arguments in a *separate* appeal arising from a *different* action. Such bootstrapping is plainly improper and provides yet another reason to strike the ROA.

The separate appeal is No. 2018-002229, which arises out of a breach of fiduciary duty action in the Richland County Court of Common Pleas, captioned *Bauknight, et al. v. Pope*, No. 2010-CP-40-4900 (“Richland 4900”). The plaintiffs in Richland 4900 allege that Ms. Pope’s maladministration violated the fiduciary duties she owed as personal representative of the Estate and trustee of the Trust, causing significant financial damages. In Appeal No. 2229, Ms. Pope contends that (1) the circuit court erred in denying her motion to dismiss Richland 4900; (2) the circuit court erred in granting summary judgment on her counterclaims; and (3) that her due process rights were violated by unspecified actions taken after May 29, 2013.¹

¹ For years, Ms. Pope has insisted that during a status conference on May 29, 2013, some person or group of people (the names vary from filing to filing) announced a plan to “disregard” the Supreme Court’s order in *Wilson v. Dallas* by “reinstating” the 2008 settlement. Ms. Pope has never provided any evidentiary support for this claim. There is no transcript of the May 29 status conference. Attorney Louis Levenson, who was present on May 29, has given sworn testimony that he does not recall any attempt to reinstate the 2008 settlement. (**Exhibit 1** (Deposition of Louis Levenson, pp. 10, 239).)

In May 2015, Judge Early submitted a status report to the Supreme Court summarizing all events since the issuance of *Wilson*. The status report (ROA pp. 967-973) specifically mentions the May 29, 2013 status conference and that “[n]o lawyer, party, or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or ‘courthouse talk’ of any proposed settlement.” Shortly after receiving the status report, the Supreme Court issued an order praising Judge Early for his adroit handling of “these complicated and contentious matters.” (**Exhibit 2** (Order, at 3).)

Most tellingly, Ms. Pope’s complaint in this action—filed on June 10, 2013, less than two weeks after the May 29 status conference—excoriates Mr. Bauknight (and virtually everyone else involved with the Estate and Trust) for numerous alleged misdeeds *but does not contain any allegations regarding the supposed attempt to reinstate the 2008 settlement during the May 29 status conference*. (ROA pp. 634-697.)

In sum, Ms. Pope’s unsupported claims regarding the May 29, 2013 status conference appear to have been concocted long after the fact, in yet another of her “continued attempts to involve

The Attorney General was dropped as a party to Richland 4900, but Ms. Pope appealed that decision in Appeal No. 2017-001899, which is still pending. The Attorney General's participation in Appeal No. 2229 is expressly subject to and without waiving his position that he was properly dropped from the case. On January 8, 2020, the Attorney General filed and served his Amended Initial Brief of Respondent Attorney General, noting that Ms. Pope's Initial Brief of Appellant "includes numerous purportedly factual statements and allegations that cite documents containing undocumented arguments of counsel which were filed for purposes other than the orders under appeal." (Att'y Gen. Br. at 2.)

The ROA in this appeal was filed on March 27, 2020. As explained in the Motion, Ms. Pope filed the ROA without giving Respondents' counsel (who were in the midst of transitioning to remote work due to the Coronavirus pandemic, and informed counsel of this fact) sufficient time to provide requested materials and without even acknowledging their repeated requests to see a draft of the index.

On April 8, 2020, in Appeal No. 2229, Ms. Pope filed her Appellant's Initial Reply Brief to Brief of Attorney General. (**Exhibit 3.**) In it, she contends that the Court of Appeals can properly consider "admissions" made during depositions in this case ("Aiken 1337"), even though they were never filed in Richland 4900. Ms. Pope claims the testimony is properly considered because counsel in Richland 4900 and members of the Attorney General's staff were allowed to attend these depositions, "these admissions should be

herself in the resolution of the Estate and Trust and *may result in contempt charges.*" (Exhibit 2, at 4.)

considered by the Court. This is doubly so where *some of this sworn testimony is now in the record on appeal (ROA) in Case No. 2019-000362.*" (Exhibit 1, at 5 (emphasis added).)

Clearly, Ms. Pope rushed to file the ROA in this appeal so that she could use it to bolster her position in Appeal No. 2229. Respondents respectfully submit that such improper tactics provide a further basis for striking the ROA.

Respectfully submitted,



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Attorneys for Russell L. Bauknight as Personal Representative of Respondent the James Brown Estate and as Trustee of Respondent the James Brown 2000 Irrevocable Trust

April 10, 2020

Exhibit 1

Excerpts of Levenson Deposition

1 A. I believe we did. There was a request for
2 our approval on that and I believe we did sign after
3 that. Yes, sir. I don't know that we actually signed
4 it. I believe it just asked for our authorization for
5 it, for the Wingate firm to handle that, I think. I
6 could be wrong, Adam. But I think that's what
7 happened.

8 Q. And do you know whether in 2013
9 Bob Buchanan and Adele Pope knew that you forwarded
10 the folks who had authorized that?

11 A. I don't know.

12 Q. Were you aware that Russell Bauknight and
13 the Attorney General and Ken Wingate's firm had been
14 trying since 2011 to avoid releasing that contract?

15 A. No. I was not aware of that.

16 Q. Do you recall at the status conference
17 that we have talked about a little, that there was a
18 request made to go into chambers and discuss
19 reinstatement of a settlement with Judge Early?

20 A. No, I don't recall that.

21 Q. Would you agree with me that one of the
22 effects of the Wilson versus Dallas decision was to
23 void the 2008, 2009 settlement agreement?

24 MR. WILLIAMS: Object to form.

25 A. I would agree that one of the

1 A. Yes. The second opinion was May of 2013,
2 yeah.

3 Q. And the settlement was voided in that
4 opinion?

5 A. Yes.

6 Q. Do you disagree with me that the opinion
7 there did not state that the Legacy Trust was voided
8 or otherwise affected?

9 A. It did not explicitly say so, but to the
10 extent that it was incorporated in the settlement or
11 as a progeny of the settlement, it would by -- by
12 inclusion in the settlement be no longer applicable.
13 I would perceive it that way.

14 You know, the baby went out with the bath
15 water on that settlement, everything went out. You
16 know, and even the parts of the settlement which the
17 Supreme Court said were appropriate and which they
18 affirm. Nonetheless, the settlement was disapproved.

19 Q. We have discussed earlier the -- your
20 memory of the May 29th, 2013, status conference?

21 A. Yes. Pretty much lack of memory, but yes.

22 Q. And the June 10th, 2013, order expelling
23 Mrs. Pope and Mr. Buchanan from participating in
24 James Brown cases?

25 A. That's the Supreme Court opinion, you

Exhibit 2

*South Carolina Supreme Court Order
of June 10, 2015*

The Supreme Court of South Carolina

Ex parte: Adele J. Pope, Appellant,

In re: Estate of James Brown, a/k/a James Joseph
Brown, Respondent.

Appellate Case No. 2013-001649

and

Adele J. Pope, Appellant,

v.

Estate of James Brown, Deceased; The James Brown
2000 Irrevocable Trust; Russell L. Bauknight,
Individually, as former Executor de son tort, and in every
current and former fiduciary status claimed or held as to
the Estate of James Brown and The James Brown 2000
Irrevocable Trust, Respondents,

and

Robert L. Buchanan, Jr., Interested Party.

Appellate Case No. 2014-000250

and

Alan Wilson, in his Capacity as Attorney General of South Carolina;
and others, Plaintiffs,

v.

Albert H. Dallas and others, Defendants,

Of whom Adele J. Pope, Individually and on behalf of Others under
South Carolina Trust Code Section 62-7-405, is Petitioner,

And Terry Brown, Forlando Brown, James B., David G. Cannon, Albert H. Dallas and Tommie Rae Hynie are Respondents,

And Alan Wilson in his Capacity as Attorney General of South Carolina, Deanna J. Brown Thomas and Robert L. Buchanan, Jr., are Additional Interested Persons.

In Re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No: 2014-001279

and

Alan Wilson, in his capacity as Attorney General of the State of South Carolina, Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B., Deanna J. Brown Thomas, on behalf of her minor child, Jason L., Yamma N. Brown, on behalf of her minor children, Sydney L. Carrington L., and Tonya B., Vanisha Brown, Larry Brown, Tommie Rae Hynie Brown, James B., through his Guardian ad Litem, Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust, Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of The Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N. M. Paris, LaRhonda Petitt, Jeanette Mitchell and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust, Defendants, of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of The Estate of James Brown and Trustees of The James Brown 2000 Irrevocable Trust are, Appellants, and Albert H. Dallas,

Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of The James Brown 2000 Irrevocable Trust, Terry Brown, Romunzo Brown, Forlando Brown, Cinnamon N. M. Paris, LaRhonda Petitt, Jeanette Mitchell and Russell L. Bauknight, as Special Administrator and Special Trustee for The Estate of James Brown and The James Brown 2000 Irrevocable Trust are, Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d August 1, 2000.

Appellate Case No. 2009-142286

ORDER

By order dated February 19, 2015, this Court stayed all proceedings in the Aiken County Circuit Court involving the Estate and Trusts of James Brown and the marital status of Tommie Rae Hynie a/k/a Tommie Rae Brown. We hereby lift that stay.

This Court greatly appreciates the attention the Honorable Doyet A. Early, III, has paid to the management of these complicated and contentious matters and expects the actions in the circuit court to continue as expeditiously as possible as set forth in the status report and in accordance with this Court's opinion in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013). Judge Early shall order payment of any personal representative and trustee distributions that have been finally determined.

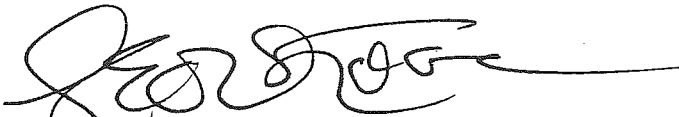
Adele J. Pope has filed a motion seeking confirmation that the stay does not affect Richland County cases in which she is involved. Because we lift the stay, we deny Pope's motion as moot.

In addition, Pope has filed a motion to reopen another case involved in the Estate and Trust. In that case, the Court of Appeals dismissed Pope's appeal because she was not an aggrieved party. This Court denied Pope's petition for a writ of certiorari, and the remittitur was sent on October 28, 2014. We deny Pope's motion to reopen the case because this Court no longer has jurisdiction over the matter. *State v. Keels*, 39 S.C. 553, 17 S.E. 802 (1893) (the appellate court has no

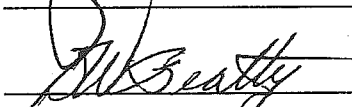
jurisdiction in a matter when the remittitur was properly sent).

By opinions filed simultaneously with this order, we affirmed Pope's appeals in Appellate Case Nos. 2013-001649 and 2014-000250. David C. Sojourner, Jr. has filed a motion to intervene in those appeals. Based on the affirmance of the circuit court's orders, we deny the motion to intervene as moot.

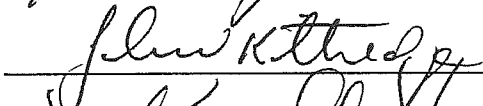
Pope is hereby prohibited from filing any further motions or appeals in actions involving the Estate and Trust of James Brown, such as the above actions, in which she clearly has no standing. We caution Pope that continued attempts to involve herself in the resolution of the Estate and Trust may result in contempt charges.



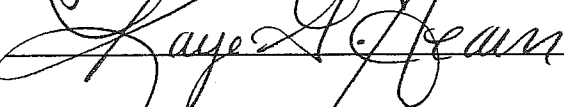
C.J.



J.



J.



J.

Pleicones, J., not participating

Columbia, South Carolina

June 10, 2015

cc:

Adele J. Pope, Esquire
Eugene C. Covington, Jr., Esquire
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Exhibit 3

*Appellant's Initial Reply Brief to Brief of Attorney General,
Appeal No. 2018-002229*

STATE OF SOUTH CAROLINA
In the 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.; 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.; 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.

APPELLANT'S INITIAL REPLY BRIEF TO BRIEF OF ATTORNEY GENERAL

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Appellant submits the following response to the separate brief of Respondent Attorney General.

Summary of Response to Brief of the Attorney General

In a scant 5-page brief the Attorney General of South Carolina (“Attorney General” or “AG”) asserts the right to secure partial summary judgment as to the counterclaims in this case (Richland 4900), while simultaneously asserting he was never a Richland 4900 Plaintiff. (p.1); challenges the credibility of Appellant (p.2, 4); asserts that matters not filed in the unofficial public record should not be considered by the Court of Appeals under Rules 208 and 210 (p.2, 4); and asserts that Appellant’s brief should not be considered because of inadequate citations or late filings, or both. (p. 2-4). In particular, the Attorney General’s Brief asserts that the Court of Appeals should not consider certain matters presented to the circuit court before the final order which is the subject of this appeal, even though the AG was actively seeking discovery relief and other benefits for himself and other Respondents during the period.¹(p.3,4) The brief asserts that documents timely filed should not be considered because they are “inappropriate” or “not filed for the purpose” of the brief. (p.2)

¹ In 2016 the Attorney General sought to be dropped as a misjoined party under Rule 21, SCRCF. [Not. Sp. App, & Mot.] That same year Plaintiffs’ counsel, Sweeny, Wingate and Barrow, P.A. (“SWB”) withdrew its 2013 motion to be relieved as counsel for the AG, and in 2016 and 2017 the AG, through Wingate, actively participated in and supported protective orders for Tommie Rae and other Richland 4900 Plaintiffs. [Mot. to Postpone Depos, 4/25/16; Mot. for Prot. Order, 7/28/16; Mot. Protective order, AG, 7/18/16; Motion for Prot. Order Venisha; Mot. for Protective Order, Lt. Gov. McMaster, 8/25/16; Motion for Protective Order, Deanna Brown-Thomas, 3/3/17; Pope Response to Mot. for Prot. Order, TR, 12/30/16; Affids. Of Pope dtd. 4/19/16 re: Depos of Jowers and Jones; and to compel Lindsey Brown Depos., Aug. 22, 2016; Privilege log and depositions of Kendall and Wingate] The Attorney General also sought to consolidate discovery in Richland 4900 and the already-consolidate FOIA case with Aiken County Case 2013-CP-02-1337, a case filed three years after Richland 4900. [Aff of Pope opposing consolidation, June 2, 2016], and then to consolidate expert discovery in the cases. [Return of Aiken 1337 Pl. to Mot. to consolidate Expert Discovery, 1/17/17]

In the brief the Attorney General adopts the brief of Respondents who brought Richland 4900 in 2010 to damage Appellant and Robert Buchanan, Jr. so that they would abandon the appeal which became *Wilson v. Dallas*, 403 S.C. 411, 417, 743 S.E.2d 746, 750 (2013). Then on May 29, 2013 these Respondents advised the Honorable Doyet A. Early, III, of their plan to disregard the Supreme Court's decision in *Wilson v. Dallas* and reinstate the AG's 2008 settlement which *Wilson* found to have dismembered the estate plan Buchanan and Pope had a duty to protect.

Seven years ago, the Attorney General told the Supreme Court he was getting out of Richland 4900. Yet the AG's 2020 brief continues the Attorney General's active promotion, for the benefit of private individuals favored by the Attorney General in his 2008 settlement, of the relief sought by the James Brown Legacy Trust (Legacy Trust) and its owner-beneficiaries in the Richland 4900 complaint.

The AG's use of his public office to damage citizens for the benefit of private parties should not be permitted. The orders on appeal should be reversed. The actions of the Attorney General and the circuit court since the May 29, 2013 announced intention to disregard *Wilson* should be found to have deprived Plaintiff of her Due Process and FOIA rights. The Richland 4900 complaint should be dismissed. For each reason set forth herein, the pre-conclusion-of-discovery grant of summary judgment to the Attorney General, the Legacy Trust and its beneficiary-owners as to the counterclaims of Appellant should be reversed. The ten-year-old Richland 4900 case should be remanded to the circuit court for the correction of the parties; the completion of discovery; and trial.

The Attorney General's Brief Challenges Appellant's Integrity Without Basis

On page 2, the Attorney General's Brief refers to facts of this case as "purported factual statements," and suggests that Appellant and her counsel have placed incorrect filings within the

record. The brief continues a decade of attacks on Appellant's and Buchanan's integrity that began when Richland 4900 was filed. [Complaint].

By 2011 the AG was telling the Supreme Court that Buchanan and Pope, based on greed, had overstated the value of Brown's worldwide music empire by \$79 million in the IRS estate tax proceeding to get a \$5 million commission on a \$5 million estate. If true, this scurrilous claim would have exposed them to prosecution for a federal felony. Email, Pope to AG Jones, Levenson, 11/5/12 pp, 1,4,7 [R., p 2322] [Ret. 10/28/18, p. 15] Return & Opposition, filed 4/1/13, p.3[R., p.]

The AG's scurrilous claims were coupled with extraordinary efforts to prevent release of the public documents, both under FOIA and in discovery, that would show the claims to be false. Goliath's Roar, Ex. 31 to Plf. Mot., dtd. 8/23/12 [R. p.] The Attorney General worked vigorously, and successfully, to secure motions for protective orders to prevent and limit the testimony of the AG and his staff, and to prevent the production of documents which would show the AG's claims to be false.

By 2016, however, the sworn testimony of the Governor, the Solicitor General, the Chief Deputy (during the period), and Solicitor General Cook confirmed that none of them had any basis for the felony claim or other attacks. [Mot. 11/20/18; mot. 10/29/ 18, p. 18]

The Brief of the Attorney General² overlooks that in 2016 and 2017, by oral directive, the Honorable Doyet A. Early, III allowed members of the law firm of Sweeny, Wingate & Barrow,

² Where the AG is a party, he speaks for the State. *State v. Bellardino*, S.C. Sup. Ct. Op. 27924 (April 8, 2020). Yet the brief adopts known incorrect "facts" such as the claim that the settling parties were all of Brown's heirs under the Copyright Act, and that termination rights under the Copyright Act will dissipate Brown's "I Feel Good" Charity by 2023. There is clear evidence these "facts" are not facts. The testimony of the Governor, Attorney General and Solicitor General confirm either that they are wrong; that the State/AG knows nothing about the claimed facts; or both.

P.A. (“Wingate”), the Attorney General’s private lawyer, to attend depositions in Aiken County Case 2013-CP-02-1337 (“Aiken 1337”) to protect the interest of its client, the Attorney General. It overlooks that Wingate firm members Kenneth Wingate, Esq., and Everett Kendall, deposed under circuit court order, provided material information which supports Appellant’s position. See Ord. dtd. 3/1/17. It overlooks that sworn testimony and admissions of Respondents Daryl Brown, Yamma Brown and others within the record support Appellant’s position that the complaint should have been dismissed and summary judgment as to the counterclaims denied. [Mot. Alter/Amend SJ] The same is true of admissions of Terry Brown in Court of Appeals case 2016-1373 in which he confirms the validity of the estate plan. The brief overlooks evidence of other lawsuits filed by Respondents and presented to the circuit court in which Respondents take positions directly contrary to those being taken by them in this case. Complaint, *Brown Thomas v. Hynie* [R., pp.]; Mot., Bauknight, *Brown-Thomas v. Hynie*. [R. pp.]

On page 3 the brief describes as “a few quotations from a McMaster deposition” testimony of then-Lt. Governor Henry McMaster in *two* depositions, one in Richland 4900. In those depositions Governor McMaster testified emphatically under oath that he never authorized Wingate to bring Richland 4900 in the name of the State/Attorney General; never authorized Russell Bauknight to speak in Richland 4900 “on behalf of” the Attorney General; and did not even know that, as AG, he was a named Plaintiff in Richland 4900 until after he left office in Richland 4900. [Mot. Alter/Amend SJ, pp. 7-9]

The brief, on pages 3 and 4, asks the Court of Appeals not to consider 2017 sworn testimony of the Solicitor General Robert Cook confirming that in a March 2013 meeting with the Attorney General and Appellant Pope he found Appellant to be competent and concerned about

James Brown's "I Feel Good" Charity which she and Buchanan had defended for five years in the matter which became *Wilson v. Dallas* on May 8, 2013.

The brief, on these same pages, asks the Court to disregard the courteous conduct of Appellant and sworn testimony of Attorney General Alan Wilson taken in his deposition in 2017 in Aiken 1337. As the deposition was being taken, the Attorney General, though Wingate, was asserting in Richland 4900 that the AG's high office, busy schedule, and lack of information about a lawsuit commenced by his predecessor precluded his being questioned about this unprecedented tort suit filed (but not authorized) by the Attorney General against Buchanan and Appellant a decade ago. [Ord. 5/31/17]

This Brief of the Attorney General overlooks that this is a pre-conclusion-of- discovery, pretrial appeal of a grant of summary judgment to the Attorney General as to Appellant's counterclaims after he was dismissed by the same circuit court as a Plaintiff under Rule 21. It is also the appeal of a 2010 circuit court order declining to dismiss under Rule 12(b), a complaint which, on its face, and with reasonable judicial notice, should have been dismissed as unconstitutional and for other reasons nearly a decade ago. Complaint, Mot. Dismiss [R. p.]

Where both the Attorney General's private Richland 4900 counsel and his office counsel were allowed to attend depositions of the Attorney General's staff and former staff, which have been in the public record since at least 2017, and where the sworn testimony of the Governor, the Attorney General and the Solicitor General conflict directly with positions taken in this case, these admissions should be considered by the Court. This is doubly true where some of this sworn testimony is now in the record on appeal (ROA) in Case No. 2019-000362, a 2019 ruling Respondents asked this Court to consider in this case.

Although this is a Rule 56 case, the Brief of the Attorney General asserts that affidavits of Appellant are improper for Court consideration, as are the sworn testimony and admissions of the Attorney General and other Respondents which support dismissal of the complaint and denial of summary judgment as to the counterclaims. Ret. Mot. SJ, 8/26/16. [R. p.] Nor, according to the AG's brief, should the sworn testimony of Appellant's witnesses and experts. or the sworn testimony and admissions of the Attorney General's own witnesses and experts, including Roger Miller and Jonas Herbsman, Esq., be considered (p. 2.3) These assertions are inconsistent with Rule 12(b) and Rule 56, and well as the Appellate Court rules.

"In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). "[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Mgmt._Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). " Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law." *Lanham v. Blue Cross & Blue Shield of S.C.*, 349 S.C. 356, 362, 563 S.E.2d 331, 333 (2002). Moreover, because summary judgment is a drastic remedy, it should be cautiously invoked to ensure a litigant is not improperly deprived of a trial on disputed factual issues. *Madison ex rel. Bryant v. Babcock Ctr., Inc.*, 371 S.C. 123, 134, 638 S.E.2d 650, 655 (2006).

The AG's Adoption of the Legacy Trust Brief Violates Appellant's Due Process Rights

The Attorney General adopts the brief of Respondent James Brown Legacy Trust (Richland 4900), for whose benefit Richland 4900 was brought against Buchanan and Pope. He does so even

though the circuit court in 2016 found in a FOIA case that Respondent Legacy Trust no longer exists, and the same circuit court, in Richland 4900, declined to identify or substitute its successors as Plaintiffs/Counterclaim Defendants in this case. Ord. 6/14/16; Ord. 12/6/17 [R. p.] For the State to place its mighty power and request for millions of dollars in tort damages from Appellant and Buchanan at the service of an entity which claims in the Richland 4900 Complaint that it is nearly half charity, but in 2013 disappeared into thin air, is manifestly unjust; deprives Appellant of a level playing field; and denies her due process rights.

The Attorney General's Brief Continues the Scorched Earth Approach to Richland 4900

The Brief of the Attorney General continues Richland 4900's scorched-earth approach to settlement which the Attorney General has endorsed – and allowed Bauknight to fund with James Brown's fortune. Since prior to the commencement of Richland 4900, generous offers have been ignored or subjected to motions to strike, while tens of millions of dollars have been spent on litigation costs. Def. Est. Trust's Mot. to Dismiss, CA. Case No. 2:18-cv-000307, filed 2/28/18, memo, p. 3 [R., p.] [Pl. Ret. 10/20/18, p4, and Footnote 3. In 2012 alone, the Attorney General joined in moving to strike 14 offers of judgment and “[a]ny other offers that have been served – or may soon be served – on any Plaintiff in this matter. Motion to Strike, dtd. Aug. 13, 2013, pp. 2,3 [R., pp.]

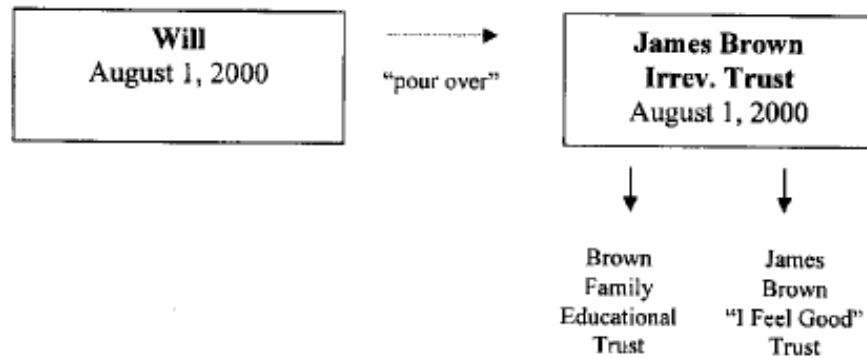
The Brief of the Attorney General Seeks Damages from Appellant for Private Persons

By adopting the brief of the Legacy Trust and its beneficiary-owners, the Attorney General's Brief puts the State/AG at the service of Tommie Rae Hynie Brown (Tommie Rae) and other private Respondents. This State action multiplies the financial damage to Appellant and continues the Attorney General's decade-long assault on the integrity and competence of Buchanan and Appellant that is Richland 4900. The Attorney General's actions serve no public or

charitable purpose. As described below, the Attorney General’s Brief serves only the interest of Respondents committed to dismembering for their personal benefit an estate plan Buchanan and Pope had a duty to defend.

On August 27, 2010, the Attorney General and other Respondents made clear in their Memorandum in Opposition to Motion to Dismiss that Richland 4900 was not brought for the benefit of James Brown’s estate of the 2000 Trust.³ [Memo. Opp. Dismiss] They stated:

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:

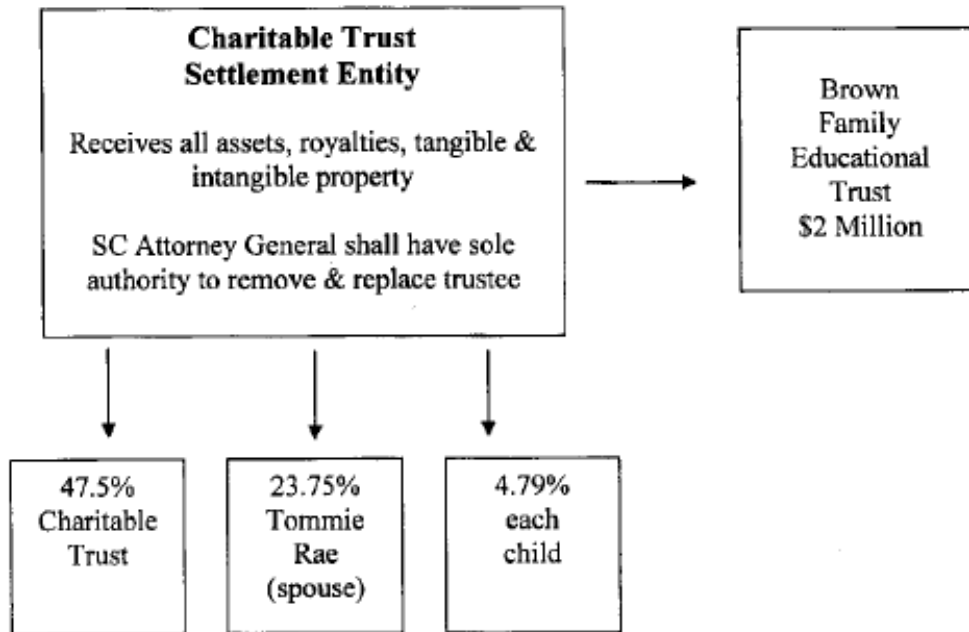


Memorandum of Plaintiffs, P. 2 [R., pp.]

Describing the Legacy Trust as the “Charitable Trust Settlement Entity,” and confirming that it would receive the tens of millions of dollars Richland 4900 sought from Buchanan and Pope, the Attorney General and other Respondents presented the circuit court with a chart to show how the funds would be divided, and who would control it. They said:

³ In his 2011 order transferring a Newberry County FOIA case seeking a copy of the public Wingate contract to bring Richland 4900 to Richland County, and consolidating it with Richland 4900, the Hon. Frank Addy, Jr. also found that Richland 4900 was brought for the benefit of the Legacy Trust. [Ord. 11/22/11]

The Charitable Trust is diagramed as follows:



In 2010 Bauknight, by affidavit, assured the circuit court that he operated the Legacy Trust in Richland County, and the Attorney General and others supported his claims about its situs. Acknowledgment [R. p.] Memo. Opp. Venue [R. p.]

In 2013, between the two *Wilson v. Dallas* decisions, the Legacy Trust began to claim that it would not exist if *Wilson v. Dallas* did not uphold the AG's 2008 settlement. On May 10, 2013, however, the Attorney General, Tommie and most Respondents secured an order placing Russell Bauknight, trustee of the Legacy Trust, in charge of Brown's fortune.⁴

On May 29, 2013 Tommie Rae and the same Respondents announced to Judge Early, though counsel, their intention to reinstate the AG's 2008 settlement. For the next seven years the Legacy Trust has taken conflicting positions with the Court – claiming in FOIA matters that it does not exist. Order of Jg. Early, 6/14/16 pp. 1 – 3 [R., pp.] There is no evidence, however, that it

⁴ *Wilson v. Dallas* voided Bauknight's appointments under James Brown's Will and 2000 Trust but did not specifically address his role as trustee of the Legacy Trust.

has ever accounted for the millions of dollars which it controlled, through the AG, between May 2009 and May 2013. Nor is there any evidence that either the Legacy Trust or the AG's (New) Charity sought or obtained IRS 501(c)(3) approval, or ever dissolved in a manner required for charities.

By August 2013 Bauknight's music manager, Peter Afterman, was helping Tommie Rae and James Brown II file termination notices with the Copyright Office to obtain U.S. royalty termination rights proceeds to dozens of James Brown songs between 2015 and 2026. Tommie Rae and other Respondents, however, had placed these termination rights proceeds in the Legacy Trust in January 2009. Complaint, *Brown-Thomas v. Hynie* [R. p.]

In late 2013 a federal judge released the Wingate contingency fee contract to bring Richland 4900. Mot. Lift Stay, p. 2 [R., p.] Signed by Bauknight for the Legacy Trust, the Wingate contract provided that Brown's estate would advance to the Legacy Trust and its beneficiaries the costs of Richland 4900, including costs of the Wingate firm. Mot. Alter/Amend Ord. Dropping AG, filed 7/19/17, pp. 34-35. These funds were never repaid.

By 2016 the Legacy Trust had obtained a FOIA ruling from Judge Early that it did not exist. Order, Jg. Early, June 14, 2016 [R, pp. 183 - 185] This ruling came just two months before the Legacy Trust argued in Richland 4900 that it was entitled to summary judgment as to all of Buchanan's and Pope's counterclaims.⁵ Trscpt. 8/29/16. Bauknight presented an affidavit saying that the AG had had no involvement in the Legacy Trust since 2013.

⁵ The Attorney General, Legacy Trust and its other beneficiary-owners "settled" with Buchanan in 2012. Funds devised to Brown's charity were advanced by Bauknight to secure releases for the AG, Tommie Rae and others from Buchanan. As a condition of payment to Buchanan of \$500,000 he had been owed since 2009, the AG, without advising the *Wilson v. Dallas* Court, required that Buchanan not file a petition for rehearing in *Wilson v. Dallas*, or take any action to protect the "I Feel Good" Charity. [Mot. 5/18/12] A motion to void these conditions has been pending since 2012. [Ret. 5/21/12]

By 2016 Tommie Rae had received about \$1 million in termination rights proceeds, and her lawyer told the circuit court that Bauknight should be “knighted” for his service to Legacy Trust beneficiaries. Mot. Terry Brown, pp.23,24, n.3 [R., pp.]

In 2016 Governor Henry McMaster, AG who created the Legacy Trust in 2008 and signed an amendment to it in January 2011, just before leaving office as AG, testified that he knew nothing about the Legacy Trust or its operation. [Supp. Mot. 10/30/18]

In 2017 Attorney General Wilson, the Chief Deputy AG (2009-2017) and Solicitor General Robert Cook all testified they knew nothing about the Legacy Trust or its operation. [Mot. July 2017, pp.]

In 2018 Respondents Deanna Thomas, Yamma Brown, Venisha Brown and Tonya Brown, with others, sued Tommie Rae, James Brown II and Bauknight over the same termination rights proceeds the Respondents had placed in the claimed-nonexistent Legacy Trust nine years earlier.

By 2020 the Attorney General’s Brief and an April 1, 2020 denial of certiorari in Supreme Court case no. 2019-1581 made clear that the Attorney General is supporting the claim of the Legacy Trust but claims no charitable or public benefit from this now-private entity. This appears to have doubled the interest of Tommie Rae in the Legacy Trust to nearly half, and the interests of Forlando Brown (formerly Terry Brown), Deanna Brown Thomas, Larry Brown, the Estate of Venisha Brown, Yamma Brown and Daryl Brown to about 9% each. Buchanan and Pope owed no duty to these private Legacy Trust beneficiary-owners ever.

What is clear is that the Attorney General’s Brief, while continuing the damage to Buchanan and Appellant, does not do so for any charitable or public purpose. The Attorney General’s Brief, by placing the prestige of his State office behind the attempt to collect millions of

dollars from Appellant for these private individuals, has deprived Appellant of her Due Process rights, and the level playing field that they require.

The AG's Effort to Secure Summary Judgment After Dismissal Under Rule 21 is Unjust

In 2016 the Attorney General asked to be dismissed under Rule 21 SCRPC as a Plaintiff in this Richland 4900, claiming he was never properly made a Party Plaintiff. To allow the State/AG to now pursue summary judgment as to Appellant's claims while pursuing his claim that he is not a party would be unjust and further deprive Appellant of a level playing field.

The AG's Brief Supports the Announced Plan to Defy *Wilson v. Dallas*

Seven years after the Attorney General advised the Supreme Court that he was getting out of Richland 4900, his brief lends the full support of the State to the May 29, 2013 announced plan of Tommie Rae and all individual Respondents except Terry Brown to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. [AG Pet. Rehearing, *Wilson v. Dallas*] It also gives additional State support to a dozen circuit court orders issued since May 29, 2013 which denigrate and further damage Buchanan and Appellant to help Tommie Rae and the Levenson clients carry their plan into effect, further violating Appellant's Due Process rights.

The Brief of Appellant is Fully and Properly Documented

In a misreading of *Hickman v. Hickman*, 301 S.C. 455, 456-457, 392 S.E.2d 481, 482 (Ct. App. 1990), the Attorney General's Brief asserts that the Brief of Appellant may not use arguments of counsel to support the brief. The brief fails to acknowledge that *Hickman* stands for the proposition that where statements of counsel rest on evidence within the record, they are appropriate. That is the case here. Despite its technical arguments, the Attorney General's Brief does not cite a single fact which is not supported by proper Rule 12(b) and Rule 56 evidence, including admissions and matters as to which the Court may take proper judicial notice.

Evidence Was Properly Presented to the Circuit Court Before the Last Appealed Order

On pages 3 and 4 of the brief, the Attorney General asserts that the use of a Return opposing the withdrawal of counsel for Terry Brown, and Appellant's affidavits are not appropriate in this Rule 12 (b) dismissal and summary judgment case. That is not correct. Matters in the brief about Terry and other Respondents fully support dismissal of the Richland 4900 Complaint and denial of summary judgment as to the counterclaims.

As a single example, since at least 2016 Terry Brown has openly supported Buchanan's and Appellant's positions in the answer and counterclaim that his challenges to his father's estate plan were without merit. In Court of Appeals Case 2016-1373, decided May 22, 2019, Terry obtained a ruling that he had never challenged his father's estate plan.

Appellant's Return to the motion of attorney Donsbach, filed October 29, 2018, summarizes some of the abundant evidence in the Richland 4900 record showing that Terry's complaint should have been dismissed and that he should not have been granted summary judgment. [Ret.Mot. 10/29/18] That abundant record includes undisputed evidence of Terry's long association with felon David Cannon [*Id.*]; his \$2 million offer for the tangible personal property he and the Attorney General told the Supreme Court had a value of zero, or near zero [*Id.*]; and the January 2011 amendment by the Attorney General, Terry and others of Respondent Legacy Trust and contemporaneous transfer of Terry to his son Forlando Brown of his interest in Richland 4900 and the right of first refusal Terry was given by the AG to buy the Legacy Trust's assets. Agreement, 8/10/08 [R., pp.] Amdmt., Legacy Trust [R, pp.]; Assignment, Terry to Forlando [R. p.] These matters have been properly before the circuit court in Richland 4900 for years. They began with the concern of Buchanan and Appellant, raised in 2011, that the devaluation of Brown's

worldwide music empire from \$84 million to \$4.7 million would devastate James Brown's charity.

[Ret. 7/12/11, Exs.]

The admissions of Terry and others show that the orders on appeal should be reversed and the Richland 4900 complaint dismissed.

The Attorney General's Brief Supports Shifting \$1 Million a Year and Nearly 1/3 (31%) of Brown's Charity to Family While Blaming Buchanan and Pope for Losses

It is undisputed that in 2011 when the IRS did not challenge the claimed \$4.7 million value Bauknight and Peter Afterman⁶ put on Brown's worldwide music empire about \$1 million a year and nearly 1/3 (31%) of the "I Feel Good" Charity's assets were shifted over to the taxable Brown Family Education Trust, some to remain for more than 20 years.⁷

Wilson v. Dallas did not correct this problem, which has been obvious from Brown's 2000 Trust since 2011, and about which the Attorney General and his senior staff have had actual knowledge since 2013.

⁶ The AG asks the Court to believe the claim that Buchanan and Appellant caused tens of millions of dollars to James Brown's worldwide music empire. But the AG also says Bauknight's "expert," Peter Afterman properly valued that music empire at \$4.7 million just 11 months before Buchanan and Pope took office. The AG does so with the undisputed evidence that, despite enormous disruption by the Cannon trustee, the AG and the settling parties, Buchanan and Pope brought in \$7.8 million of royalty revenue in 18 months. They averaged more per year (\$5.2 million) than the total claimed value.

Where an expert's opinion does not work, or flies in the face of all reliable evidence, it should not be considered. That is the case with the \$4.7 million claimed value used by the AG to accuse Buchanan and Pope of a federal felony. It does not work.

⁷ After being unnecessarily taxed, this income and the underlying assets will be returned to the "I Feel Good" Charity as each of Brown's 7 grandchildren -beneficiaries of the Family Education Trust attains age 35. See Trust, Article VI. [R. p.]

The Attorney General's Brief supports this unnecessary and easily correctable loss of nearly 1/3 of the charity and millions of dollars in income tax, and the attempt to lay blame for losses on Buchanan and Pope

The 2018 Documents are Appropriate and Were Properly Presented to the Lower Court

On pages 3 and 4 the Attorney General's Brief suggests that matters presented to the Court in 2018, before the final ruling on the summary judgment were not properly presented to the Court. A review of the voluminous, ten-year record shows that matters which were presented in 2018 were all proper. Most were a mere summary of matters in the record, or of which the Court could, and did, take judicial notice, for years. Some came into the record after the summary judgment hearing because discovery was ongoing throughout 2016 and 2017, and Wingate firm lawyers were allowed to attend depositions of the AG and his staff and former staff to protect the interest of the AG, a Wingate client, in Richland 4900. [Mot. Alter/Amend SJ, pp. 7-9] All provide proper support for reversal of the orders on appeal.

Documentation Supporting Reversal of the Denial of Rule 12(b) Dismissal was Complete in 2010

In addition to the charts shown above, the only thing needed to support Buchanan's and Pope's 2010 motion to dismiss the Richland 4900 complaint on ten separate grounds was the complaint itself. The Richland 4900 complaint, with a single private law firm representing the State/AG and all Plaintiffs in a tort suit against S.C. citizens was all that was needed. [Complaint] In addition, the orders of Judge Early in Aiken County, unappealed and binding on the Plaintiffs, made clear that venue was improper in Richland County; that the same dispute was going on in Aiken County and in the appeal which became *Wilson v. Dallas*; and that Buchanan and Pope owed no duty to the Legacy Trust or its beneficiaries. The Will and 2000 Trust of James Brown, and the AG's 2008 settlement as amended to include Terry Brown, of which the Court took judicial

notice [see Charts, above], with the unappealed orders, made clear that almost every action complained of in the Richland 4900 Complaint -- except the claimed-wrongful *Wilson v. Dallas* appeal -- was barred by the applicable 1-year statute of limitations.

The Attorney General's Brief asserts that there was some deficiency in the record in 2010. There was not.

Even if Converted to a Rule 56 Motion, Dismissal of the Complaint was Fully Documented

While dismissal of the Richland 4900 Complaint under Rule 12(b) was appropriate and documented, had the circuit court elected to look outside the pleadings and matters of proper judicial notice, converting Buchanan's and Pope's motion to a Rule 56 motion, dismissal of the complaint was still proper. Respondents' reliance on the *Lilly* circuit court case, where the Attorney General was an attorney of record and maintained control of the case, bore no relation to Richland 4900, where the AG was not an attorney in the case; the AG had no control over the case; and Bauknight, with no authority, was claiming to be acting "on behalf of" the AG and numerous private parties, including nonresidents of South Carolina and minors with no GAL. Unlike Lilly, the Wingate firm did not have the risk of economic loss for costs. It was borne by the Legacy Trust, with a loan from Brown's charity that was never repaid. And there is no benefit to the State. Order. Jg. Couch, pp. 2, 12, 15, 16 [Tr., 8/29/16, p. 109;] Unlike Richland 4900, Judge Couch found that the contract with outside counsel did not violated due process. The order said, in part:

Here the *Santa Clara* [Due Process] test is met, for Attorney General McMaster has absolute control over the disposition of this Case. Article III (D) of the Special Counsel agreement makes this clear.... Order, p. 16 [R., p.]

The undisputed facts now show, as was the case in 2010, that the Richland 4900 Complaint was not authorized by Governor McMaster, or a single person other than Bauknight and lawyers

wanting millions of dollars in contingency fees if they could stop the *Wilson v. Dallas* appeal. What Rosen Wants. [R. p.] What Tommie Rae wants. [R. p.]

Governor McMaster has confirmed that he never authorized Wingate to sue Buchanan and Pope in the name of the State/AG. A dozen Plaintiffs have fired Louis Levenson, Esq., who purported to bind them to a 40% contingency contract. Ret. Memo, dtd., p. 12 [R., p] Wingate privilege log, Item 61:8 [R., pp.] At least four Plaintiffs are now suing Bauknight, who claims to be acting “on behalf of” them, as well as the AG, in this case.

In short, dismissal of the Richland 4900 Complaint was appropriate under Rule 12 (b) nearly ten years ago. It is appropriate under Rule 12(b) today. No fact has been produced to breathe appropriate life into this unauthorized, unconstitutional, illegal lawsuit.

Conclusion⁸

The Brief of the Attorney General lends the support of the State to the May 29, 2013 announcement of Tommie Rae and other Respondents to Judge Early of their plan to disregard the Supreme Court’s decision in *Wilson v. Dallas* and reinstate the AG’s 2008 settlement which rewrote and dismembered the estate plan of entertainer James Brown. Brief. Pls. 8/27/10 [R., pp.] It continues the career-threatening attacks on the integrity and competence of Robert Buchanan, Jr. and Appellant Pope and of FOIA and discovery noncompliance which has been used to damage them for nine years. It supports a 10-year-old complaint, never amended, seeking to punish Buchanan and Appellant for conducting an appeal which they had a duty to take.

For the reasons stated herein, and in her other briefs, the orders on appeal in the pretrial appeal should be reversed. The case should be remanded to dismiss the Complaint with prejudice;

⁸ Appellant denies all allegations of the Brief of the Attorney General not specifically addressed herein. Appellant also incorporates herein all facts and argument contained in Appellant’s Brief and Appellant’s Reply Brief in response to the Brief of Respondents.

correct the parties; complete discovery; and proceed to summary judgment or trial as to the counterclaims.

Respectfully submitted,

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