

STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from Richland County
Court of Common Pleas

The Honorable Doyet A. Early, III, Circuit Judge
The Honorable L. Casey Manning, Circuit Judge

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JUL 30 2020

SC Court of Appeals

Appellate Case No. 2017-001899

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. II; Daryl J. 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 the Appellant.

**APPELLANT'S RETURN AND OPPOSITION TO RESPONDENTS' MOTION
RELATED TO ASSERTED SCRIVENER'S ERROR**

Appellant opposes the Motion to Correct Scrivener's Error in Opinion Pursuant to Rule 221(a) filed July 21, 2020, by Sweeny, Wingate and Barrow, P.A. ("SWB") on behalf of Respondents. SWB describes as a "scrivener's error" the characterization of Appellant's position as one of the personal representatives (PRs) under the Will of entertainer James Brown and trustees of The James Brown 2000 Trust (2000 Trust) in its decision issued July 15, 2020 in this appeal.

Subject to her Petition for Rehearing to be filed herein, and in support thereof, Appellant asserts that SWB's motion should be denied for multiple reasons, each of which serves as a separate, adequate ground for denial.

SWB lacks authority to speak, or should not speak, for most Respondents. The motion attempts to bolster the private positions of Respondent Tommie Rae Hynie, her son James Brown II (James), and Russell Bauknight, who has acted on behalf of Hynie and James since 2010 to damage Robert Buchanan, Jr. and Appellant.

Hynie has recently been determined by the Supreme Court of South Carolina not to be the spouse of James Brown in *Brown v. Sojourner*, Supreme Court Opinion No. 27982, filed June 17, 2020. [Petition for Rehearing pending.]

As has been stated by Buchanan, Appellant and multiple experts for years, and admitted by Respondents Deanna Thomas, Yamma Brown ("Yamma"), the Estate of Venisha Brown ("Venisha"), Tonya Brown (Tonya), Terry Brown (Terry) and others, there was overwhelming evidence when James Brown died in 2006, and when this case (Richland 4900) was filed in 2010, that Hynie was not Brown's spouse.

There is also substantial evidence that Hynie, Bauknight and the music manager for Respondent Legacy Trust, Peter Afterman, have worked since 2009, using James

Brown's fortune, to damage Buchanan and Appellant in their effort to secure spousal status for Hynie. Since 2013, working with Afterman, Hynie and James have received more than \$2.5 million in royalty proceeds, legal and GAL fees, and other payments that should be subject to the jurisdiction of the Richland 4900 Court and Court of Appeals in Richland 4900. In 2016, however, Hynie and James moved London , U.K., and now claim to be beyond the jurisdiction of the South Carolina Courts.

Based on the Wingate Contract, the Aiken 1337 complaint, and rulings secured by SWB since 2013, Hynie now claims about 46% of the claimed damage sought from Buchanan and Appellant, and should bear 23.75% of the damage they are able to recover from Plaintiffs and costs of Richland 4900, as should Bauknight acting "on behalf of" Hynie.

The motion, while stating that it is made under Rule 221(a) SCACR, is characterized as a motion, rather than a Petition for Rehearing. It seeks to treat the complex 4-year void service of Bauknight as claimed PR/Trustee under Brown's estate plan as a scrivener's error. The Court should dismiss the motion without addressing the issue.

Should the Court address the issue, it should find that the Court's statement about the status of Appellant with respect to the Estate/2000 Trust is accurate in light of the facts at the time Richland 4900 was filed in May of 2010; the Supreme Court's ruling in *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013) that the Attorney General of South Carolina assumed improper control over the Estate/2000 Trust and such assumption of control was void. Likewise, *Wilson v. Dallas* held that Bauknight's

attempted service as PR/Trustee under the Will/2000 Trust while he was serving as trustee of the Legacy Trust from May 2009 until May 2013, was void.

The Court is asked to take judicial notice of the Chart currently located at page 2909 of the (to be amended) record on appeal (ROA) in Appellate Case No. 2019-000362. The Chart and the full record in 2019-000362 address the complex issues of the period between May 2009 and May 2013 when the Attorney General, Bauknight, Buchanan, Appellant and others, including felon David Cannon, were asserting in various courts that they were fiduciaries under James Brown's estate plan.

The Supreme Court did not fully address the issue, but its finding was that Bauknight's PR/Trustee appointment was void. Likewise, the Attorney General's assumption of fiduciary control over the Estate/2000 Trust was void.

Wilson v. Dallas makes clear that Buchanan and Appellant were acting for the benefit of Brown's estate plan. The public record makes clear that Bauknight and his music manager Peter Afterman were working then, and are working now, to advance the interests of Hynie and James. See *Brown v. Sojourner*, Opinion No. 27982, dtd. June 17, 2020. Also see Affidavit of Peter Afterman, dtd. 10/27/19, filed October 28, 2019, Exhibit B; Memorandum in Support of Motion to Supplement; and Return of Venisha Brown and others to Petition for Rehearing filed July 10, 2020, pages 7 - 10 (related to misrepresentations by Hynie and Afterman to the Supreme Court about Federal Copyright Termination Rights).

The never-amended Richland 4900 complaint is clear that between May 2010 and May 2013 Bauknight, while purporting to act both as PR/Trustee and for the State/Attorney General, was working to dismember Brown's estate plan (and damage

Buchanan and Appellant to effect the dismembering) to benefit Respondent Legacy Trust and Hynie and its other "Beneficiary Plaintiffs".

Since 2013, the record shows, the actions by SWB and Bauknight to damage Buchanan and Appellant for the benefit of Hynie and others to whom Buchanan and Pope owed no duty, have continued. The Richland 4900 complaint has never been amended. The most obvious continued action of SWB and Bauknight to benefit Hynie and Richland 4900 Plaintiffs at the expense of Buchanan and Appellant is Bauknight's shifting of about \$1 million income a year and nearly 1/3 (31%) of the assets of Brown's charity over to children of Legacy Trust owner-successors Thomas, Yamma and others. Today, Hynie, Thomas and Yamma claim entitlement to more than 55% of the damages sought from Buchanan and Appellant in the Richland 4900 complaint.

The Supreme Court's voiding of Bauknight's PR/Trustee appointment from May 2009 until May 2013 appears to have been an intentional effort to cleanse James Brown's estate plan and charity of the damage caused by the Attorney General's 2008 settlement.

It is, of course, undisputed that Bauknight now serves as PR/Trustee under the estate plan of James Brown. He was appointed in October 2013. He was nominated by Thomas and other Will/2000 Trust contestants shortly after Hynie's counsel and counsel for Thomas announced in open court on May 29, 2013 their intention to disregard *Wilson v. Dallas* and reinstate the Attorney General's 2008 settlement.

Some of the reasons why the Court should deny the motion without reaching the complex issue of Buchanan's and Pope's role as Brown's fiduciaries between 2009 and 2013 follow.

SWB Lacks the Authority to Speak for Most Respondents

In its decision in *The Kitchen Planner, LLC v. Friedman*, filed July 1, 2020, Opinion No. 5738 this Court reminded the parties of the well-settled principle that parties are judicially bound by their pleadings unless withdrawn, altered or stricken by amendment or otherwise. *Postal v. Mann*, 308 S.C. 385, 387, 418 S.E.2d 322, 323 (Ct. App.1992); see also *Johnson v. Alexander*, 413, S.C. 196, 202, 775 S.E. 2d 697, 700 (2015) (“Parties are generally bound by their pleadings and are precluded from advancing arguments or submitting evidence contrary to those assertions”) *Postal*, 308 S.C. At 387, 418 S.E. 2d at 233 (“The allegations, statements or admissions contained in a pleading are conclusive as against the pleader and the party cannot subsequently take a position contradictory of, or inconsistent with, his pleadings and the facts which are admitted by the pleadings are take as true against the pleader for purpose of the action.”)

The Legacy Trust and its owner-successors are the principal Plaintiff/Counterclaim Defendants in Richland 4900 and this appeal. SWB explained this both in the Richland 4900 complaint and in its 2010 efforts to prevent dismissal of the complaint. SWB and the Attorney General used the Legacy Trust to move a 2011 FOIA case from another county and consolidate it with Richland 4900, evading FOIA compliance for 11 years.

Buchanan’s and Appellant’s answer and counterclaim says they never owed a duty to the Legacy Trust, or to its claimed owners. A motion to rejoin Bauknight as a counterclaim plaintiff as to every Plaintiff except the Estate/2000 Trust has been pending for 8 years.

The pleadings have never been amended. Yet SWB and Bauknight, while the stay was in place in Richland 4900, have secured a 2016 ruling in a FOIA case that the Legacy Trust does not exist, and have even begun to change the caption in circuit court filings to delete both the Legacy Trust and Attorney General. [See Exhibit A]

SWB should be estopped to make the motion for the Legacy Trust. SWB is bound by the ruling which the Legacy Trust secured finding that it does not exist. Yet both SWB and Bauknight have continued to act for seven years since *Wilson v. Dallas* to help Hynie and the Will/2000 Trust contestants damage Buchanan and Pope. And Bauknight “on behalf of” the Attorney General, Hynie and other Will/Trust contestants, has funded the damage from Brown’s charity.

SWB is bound both by the statements and omissions in the Richland 4900 complaint and by its separate and conflicting statements to this and other Courts related to the existence and non-existence of parties.

SWB should be judicially estopped to seek any relief for Respondent Legacy Trust, Bauknight as its trustee; or its owner-successors.

SWB is Acting for the Personal Benefit of Bauknight and Hynie

The public record in the Supreme Court; Thomas v. Brown, Aiken County Case 2019-CP-02-00320; and the Federal District Court, of which the Court may take proper judicial notice, is clear that SWB and Bauknight are working to damage Buchanan and Appellant for the benefit of Hynie, James and those aligned with Hynie and James.

This damage for the benefit of Hynie and certain Richland 4900 “Beneficiary Plaintiffs” who are owners of the Legacy Trust is exactly what is sought in the never-amended Richland 4900 complaint. In the complaint SWB acts as sole counsel to the

State/Attorney General and those seeking to damage Buchanan and Pope for protecting the estate plan.

SWB and Bauknight have worked for years to suppress the sworn testimony of Governor Henry McMaster that he never authorized SWB to file Richland 4900 in the name of the State/Attorney General. Bauknight "on behalf of" the Attorney General, Hynie and James, joins SWB in the continuing effort to damage Buchanan and Appellant and suppress the sworn testimony of the Governor, the Attorney General, the Solicitor General and others. See Ltr. of Mark V. Gende, Esq., to the Honorable Daniel Shearouse, Clerk of the Supreme Court, dated filed May 12, 2020 in *Brown v. Sojourner* in which Appellant is *not a party*. Also see February 12, 2020 Ltr. of Gende to the Honorable Clifton Newman, Circuit Court Judge, in Case 2019-cp-02-00320, filed therewith.

As late as July 28, 2020 SWB altered the caption of a Richland 4900 a lower court order, securing an order admonishing Appellant for her efforts to lift the stay which has been in place in Richland 4900 since September 2017. [See Exhibit A]

The Court is asked to take judicial notice of the multiple requests to lift the stay and the bitter effort of Hynie, Bauknight, still acting "on behalf of" the Attorney General, and SWB to prevent lifting the stay and to secrete testimony of the Governor and others which shows that Richland 4900 was unauthorized and is illegal.

Exhibit A shows the multiple times Hynie, Bauknight and SWB have been successful with the circuit court in rejecting efforts by Appellant since 2017 to make the sworn 2016 and 2017 testimony and documents of Governor, the Attorney General, the Solicitor General, the former Chief Deputy Attorney General, Kenneth Wingate, Esq.,

Everett Kendall, Esq., Wallace Lightsey, Esq., James Hardin III, Esq., Stephen Johnson, Esq., and others a part of Richland 4900. It even finds that successive motions, as the alliance of Bauknight and music manager Peter Afterman with Hynie have become clearer, are improper.

SWB and Bauknight Have Used Improper Litigation Tactics

In 2010 Louis Levenson, Esq., signed the Wingate Contract for numerous Respondents, including minors and the incarcerated Venisha Brown. He agreed for them to pay Wingate 40% of what he could get from Buchanan and Pope for the Legacy Trust and its beneficiary-owners.

Levenson and others had been using sanctions threats to advance the AG's 2008 settlement since January 2009.

In January 2016, with his signature on the Wingate Contract ratified by only two clients – Thomas and Yamma – Levenson began a push to carry out the May 29, 2013 announced plan to reinstate the AG's 2008 settlement.

In 2019 Levenson and Thomas, to gain control of the assets of the deceased Venisha Brown, asked the circuit court to find Appellant in contempt of the Supreme Court. See Gende letter.

In February 2020, SWB joined in that effort. The filings by Mark V. Gende, Esq., with the Supreme Court are only a small part of that effort.

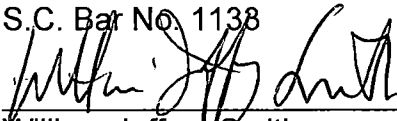
The use of contempt sanctions and threats has become a hallmark of SWB and Bauknight, and has been used successfully in the circuit courts to advance the position of Hynie and James for a decade. It should not be rewarded by this Court.

Conclusion

Respondents' motion is made by SWB without legal authority to act for the Attorney General, the Legacy Trust or most Respondents. SWB is bound by its pleadings, and has improperly removed from lower court pleadings both the Attorney General and the Legacy Trust, its major client. It has used contempt requests, FOIA disruption and other improper means to advance the position of Hynie, her son, and those still aligned with Hynie in Richland 4900. The motion was not made in the proper form. Even if properly made, the motion should be denied.

Respectfully submitted,

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Counsel for Appellant Adele J. Pope

July 28, 2020

Exhibit A

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

THE FIFTH JUDICIAL CIRCUIT

RUSSELL L. BAUKNIGHT, as Trustee of)
the James Brown 2000 Irrevocable Trust, as)
Personal Representative of the Estate of James)
Brown; Tommie Rae Brown, individually and)
on behalf of her minor child, James B. II;)
Daryl J. Brown, individually and on behalf of)
his minor child Janise B.; Lindsey Delores)
Brown; Deanna J. Brown Thomas; Jason)
Brown-Lewis; Yamma N. Brown,)
individually and on behalf of her minor)
children Sydney L. and Carrington L.; Tonya)
Brown; Venisha Brown; Larry Brown; and)
Terry Brown,)

Civil Action No. 2010-CP-40-04900

**ORDER DENYING MOTION OF THE
DEFENDANT TO LIFT STAY AND FOR
RELATED RELIEF**

and)

TOMMIE RAE BROWN, individually and on)
behalf of her minor child, JAMES B. II;)
DARYL J. BROWN, individually and on)
behalf of his minor child JANISE B.;)
LINDSEY DELORES BROWN; DEANNA J.)
BROWN THOMAS; JASON BROWN-)
LEWIS; YAMMA N. BROWN, individually)
and on behalf of her minor children SYDNEY)
L. and CARRINGTON L.; TONYA)
BROWN; VENISHA BROWN; LARRY)
BROWN; and TERRY BROWN,)

Plaintiffs,)

v.)

Adele J. Pope)

Defendant.)

grounds are improper, because a “losing litigant is not entitled to return to trial court indefinitely hoping for a change of heart or a more sympathetic judge, or to string out arguments. The Court noted ‘[t]here must be finality, a time when the case in the trial court is really over and the loser must appeal or give up.’” *Id.* at 20; 602 S.E.2d 777-78 (citations omitted). While the issue in Elam was the successive filing of motions for reconsideration, the same rationale applies to the successive motions of the Defendant in the instant matter.

The successive motions of the Defendant are improper, and there is no right to repeated petitions to the Court to change its rulings on matters previously decided, especially when Defendant has already appealed a previously denied motion.

IT IS THEREFORE ORDERED that the motion of the Defendant to lift the automatic stay during appeal and for related relief is DENIED.

AND IT IS SO ORDERED.

_____, 2020

Clifton Newman
Presiding Judge



Richland Common Pleas

Case Caption: Russell Bauknight , plaintiff, et al vs Adele J Pope , defendant, et al
Case Number: 2010CP4004900
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

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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

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RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; 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

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v.

Adele J. Pope, and Robert L. Buchanan, Jr. Defendants,

Of whom Adele J. Pope is Appellant.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that he has served a copy of Appellant's Return and Opposition to Respondents' Motion Related to Asserted Scrivener's Error on all

Respondents on the date shown below, by mailing a copy of the same to their counsel, addressed as follows:

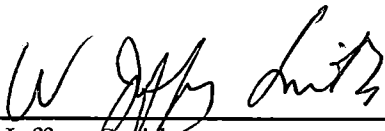
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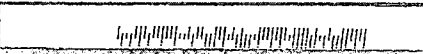
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July 28, 2020



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