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SC Court of Appeals

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. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown And Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children 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.

CORRECTED FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE

James Brown died on Dec. 25, 2006.[1] [R. 1416] His estate plan included the Will leaving his personal effects to six children and the residue to the 2000 Trust. At Brown's death the 2000 Trust set aside a "fractional share" for the education of seven specific grandchildren. [R. 364, 370; R. 1371-1372] Everything else was devised to Brown's Feel Good" Trust for the educational benefit of disadvantaged children. [R. 1371-1372] The Will and 2000 Trust both contained no-contest clauses which provided that any beneficiary who challenged the estate plan would forfeit any interest under the Will or 2000 Trust or any standing as a beneficiary. *Wilson v Dallas*, 403 S.C. 411, 417, 743 S.E.2d 746, 750 (2013). [R. 364]

Brown appointed three trustees for the 2000 Trust, which was funded during his lifetime. [R. 1408, p. 2; 219; 225; 1371] After Brown's death, millions of dollars in takings by one or more original Trustees were discovered, and all three eventually resigned. [R. 1372; 1375] Robert Buchanan and Appellant Adele Pope were appointed to serve as Personal Representatives under the Will and Trustees of the 2000 Trust (PR/Trustees). *Wilson* at 419, 743 S.E.2d at 751.

The Attorney General (AG) intervened, disrupted the estate plan, and purported to settle the James Brown litigation by an agreement with certain heirs and claimed heirs which gave them

[1] In this brief and citations to the record, this Case, Richland County Case 2010-CP-40-4900 , may be referred to as "Richland 4900", Richland 4900 Plaintiffs other claimed members of James Brown's family will be referred to by their first names to avoid confusion. The full names of all except grandson Forlando are set out in the R4900 complaint, which may be abbreviated "Comp." [R. 215] R4900 Defendants Robert Buchanan, Jr. and Adele Pope may be reference as "B&P". References to the record may shorten Plaintiffs to "Pl" and Defendant or Defendants to "D," and terms such as motion (Mot) and others may be similarly shortened. R4900 Plaintiff James Brown Legacy Trust is referenced herein as "Legacy Trust;" The Motion to Alter, etc. Ord. Dropping AG as a Party filed 7/19/17 is "Mot. 7/19/17;" Return to Motion to Strike of 11/20/18 is "Mot. 11/20/18; and Supplemental Motion filed 10/30/18 is "Mot. 10/20/18."

a large part of James Brown's assets in exchange for the AG's effective control over the James Brown assets. *Wilson* at 421, 743 S.E.2d at 752; Pl. [R. 1416; 1409; 1410; 1703; 1709-10; 363-4]

Appellant Pope and Buchanan sought to protect the integrity of James Brown's estate plan by challenging the legitimacy of the settlement. [R. 1709-10; 363; 366; 1378; 1388; 1389] In 2010 Respondents threatened to sue Buchanan and Pope unless they dropped their appeal of the trial court's approval of the settlement. [R. 958] The appeal was not dropped, and this case was filed on May 19, 2010, with Sweeney, Wingate & Barrow, P.A. (SWB), as sole counsel for all Respondents. [R. 215]

Buchanan and Pope went forward with the appeal and the Supreme Court held that the AG lacked authority to intervene, settle the litigation, and take effective control of Brown's assets. *Wilson* at 447, 743 S.E.2d at 766; R. 741-2. Even though Buchanan and Pope's challenge to the AG's settlement was successful, Richland 4900 continues 6 years later. No trial has been held, and SWB continues to act for all Respondents.

This is an appeal of the circuit court's order declining to dismiss the Richland 4900 complaint [R. 91]; order granting summary judgment to all Respondents as to all counterclaims [R. 188; 204]; and certain other orders.[2] It is one of several pre-trial appeals from Richland 4900 pending at the time this brief was filed.

On May 19, 2010 the Richland 4900 complaint was filed in the Probate Court for Richland

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[2] Ords, Early, 1/23/17, pp. 1-16; 1/23/17 (Larry), pp. 1-2 [R., 170-1]; 1/24/17, pp. 1-2; 2/6/17, pp. 1-2 [R., pp. 172-3]; 3/7/17, pp. 1-2; [R., pp. 174-5]; 3/9/17, pp. 1-2 (Tommie Rae) [R., pp. 178-9]; 3/9/17 (Seal), pp. 1-2; [R., pp. 176-7]; 6/6/17, pp. 1-2 [R., pp. 186-7]; 12/6/17, pp. 1-5 [R., pp. 206-10]; 4/8/16, [R., pp. 151]; 7/25/16, pp. 1-2 [R., pp. 161-2]; 7/26/16, pp. 1-2 [R., pp. 163-4]; 9/13/16, pp. 1-2; 9/21/16; pp. 1-3 [R., pp. 167-9]; 11/22/16, p. 1; 12/27/16, pp. 1-2; Ords, Mann. 11/8/10 (Venue), pp. 1-6 [R., pp. 99-104]; 1/7/11, pp. 1-2 [R., pp. 105-6]; 10/5/12, pp. 1-3 [R., pp. 130-2]; 7/13/12, pp. 1-2 [R., pp. 125-6]; 7/5/12, pp. 1, 3 [no page 2] [R., pp. 121-2]; 10/13/15, pp. 1-2 [R., pp. 143-5]; 3/2/16, pp. 1-2 [R., pp. 147-8].

County by SWB for all Plaintiffs. [R. 215-228] The case was removed to the Richland County Circuit Court; declared complex; and assigned to Judge Manning. [R. 89] Judge Manning presided over the case until March 24, 2016, when it was assigned to Judge Early. [R. 150]

Plaintiffs are the Legacy Trust, and its "Beneficiary Plaintiffs," 15 individuals and the AG. [R. 217] Russell L. Bauknight (Bauknight) is a party as Trustee of the Legacy Trust and in other capacities. [R. 215] The Legacy Trust, also known as the "Settlement Entity," is a collective investment vehicle created on August 10, 2008 and funded by 2009 with the termination rights proceeds of the Beneficiary Plaintiffs under Sections 304 and 203 of the U.S. Copyright Act, 17 U.S.C. §§ 101 *et seq.*, and other assets. [R. 1409; 1410]

The Legacy Trust "[r]eceives all assets, royalties, tangible and intangible property," and distributes income and assets according to its ownership interests. [Pl. Memo Opp. (Venue), 8/27/10, pp. 2, Exhibit A, p. 41][R., p. 1409] Plaintiff Legacy Trust is 75% controlled by the AG and Tommie Rae, but the AG has the right to remove and replace its trustee, Bauknight, at will. [Memo, Venue, 8/27/10, p. 2][R., p. 1409] Mot., 10/30/18, p. 6 [R. p. 1001]

When the Richland 4900 complaint was filed, the AG's (New) Charity held a 47.5% share of Plaintiff Legacy Trust, and Tommie Rae a 23.75% share. [R. 1409] Each of six Plaintiffs, acknowledged as children by James Brown in his last will, held a 4.79% share. [*Id.*]

The AG's (New) Charity was created as part of an August 2008 settlement brokered by the AG. The 2008 settlement rewrote the estate plan of James Brown. *Wilson* at 447, 743 S.E.2d at 766; R. 1409.

The Legacy Trust was amended in January 2009 to add Plaintiff Terry Brown (Terry) and give him a right of first refusal to purchase Brown's music empire (ROFR). [R. 652] It was amended again in December 2010 to allow Terry to begin acting under the ROFR. [R. 652-7]

The August 2008 settlement called for the replacement of Buchanan and Pope. [R. 1409] They were replaced as PR/Trustees by Bauknight as part of the Aiken Court's May 26, 2009 order approving the 2008 settlement. The Aiken Court did not hear or rule on the AG's request to remove all five prior PR/Trustees under Brown's estate plan. [R. 1407-9] Buchanan and Pope appealed the settlement. [R. 224]

In October 2009 the stay pending the appeal was lifted, and both Plaintiff Legacy Trust and Brown's 2000 Trust were in active operation in Richland County. [R. 1432]

In January 2011 Terry transferred his 4.79% share of the Legacy Trust to his son, Forlando [R. 1467] [Bauk, Depos., 8/20/13, pp. 37-38; Ret. 10/29/18, p. 1; Mot., 10/30/18, pp. 1, 9] [R. pp. 996, 1004] When Brown's daughter Venisha died in September 2018, her estate became the owner of her 4.79% Legacy Trust share. Mot. 10/30/18, pp 2, 16, 17 [R., pp. 997, 1011, 1012] Motions to correct the parties as to these and other changes were not heard. [R. 650-1]

In the complaint Plaintiffs allege that Buchanan and Pope breached their fiduciary duty to the Beneficiary Plaintiffs by opposing and appealing the AG's settlement, and in other ways. [R. 216-227] Plaintiffs allege Buchanan and Pope should have accepted a 2007 offer to purchase Brown's music empire for $100 million; mishandled a July 2008 auction; failed to understand the basic operation of federal copyright law; and artificially inflated the reported value of Brown's estate "for the purpose of justifying a claim for approximately $5 Million in fees." [R. 220-4]

On June 22, 2010, Buchanan and Appellant moved to dismiss the complaint on the following grounds:

1. Plaintiffs failed to comply with S.C. Code § 15-36-10 when claiming alleged negligence of attorneys. [R. 233]
2. Another action was pending between the parties. [R. 233]
3. The alleged wrongful acts had been approved by the Aiken Court in unappealed orders. [R. 235-6]

4. The allegations in the complaint far exceeded the AG's statutory and constitutional authority to act, violating Due Process rights of Defendants. [R. 236-8]

5. Private Counsel SWB exceeded its statutory and constitutional authority. [R. 238]

6. Plaintiffs failed to join indispensable parties and appoint guardians *ad litem* (GALs). [R. 238]

7. Claims asserted against them were barred by the 1-year statute of limitation. [R. 238-9; 1245]

8. Plaintiffs lacked standing to sue under James Brown's will and 2000 Trust, either because they were non-beneficiaries or had violated the *In Terrorem* clauses, or both. [R. 239-40]

9. Richland 4900 was filed to benefit the Legacy Trust and its beneficiaries, and Buchanan and Pope never served the Legacy Trust or owed its beneficiaries any duty. [R. 230]

10. South Carolina Code Ann. § 33-56-180 bars recovery because Buchanan and Pope were acting within the scope of their authority as agents for The James Brown "I Feel Good" Trust, a 501(c)(3) private foundation. [R. 230]

The motion to dismiss was supported by memoranda; affidavits of Buchanan and Appellant; orders of the Aiken Court and other orders and documents. [R. 242] The unappealed Aiken County orders addressed Buchanan's and Pope's service between March 2007 and May 26, 2009 as both special administrators of Brown's estate (SAs) and PR/Trustees. [R. 3-80; 231-241]

On May 8, 2013 the Supreme Court voided the AG's settlement in its final decision in *Wilson, supra.* The decision also voided Bauknight's appointments as Brown's PR/Trustee under Brown's will and 2000 Trust but did not directly address either Bauknight's role as trustee of Plaintiff Legacy Trust or as trustee of the AG's (New) Charity.

On August 2, 2010, subject to the motion to dismiss, Buchanan and Appellant moved to transfer venue to Aiken County. [R. 273-275] Plaintiffs opposed the motion. [R. 1407; 1431]

On August 27, 2010, Buchanan and Appellant supplemented their motion to dismiss based on a representation by Plaintiffs in the *Wilson* appeal that an appraisal expected shortly would show Brown's estate and 2000 Trust were worth less than $12 million when he died on December 25,

2006. [R. 1433] The Richland Court was also asked to take judicial notice of the public record of numerous pending James Brown matters. [R. 1628]

On August 30, 2010 a hearing was held. [R. 1041; 1628]

On September 30, 2010, subject to the motion to dismiss, Buchanan and Pope served their answer and counterclaim, denying any liability as to any Plaintiff. [R. 362] They also counterclaimed against all Plaintiffs for abuse of process [R. 388]; civil conspiracy [R. 389-91]; intentional interference with their payment contract with Plaintiff Estate/2000 Trust [R. 391-2]; and Plaintiffs' violations of SCPC § 62-1-106 (2013) [R. 392-3]. Buchanan and Appellant demanded a jury trial and sought attorneys' fees and costs. [R. 393]

On October 1, 2010, Plaintiffs filed an affidavit of Beth Bauknight, custodian of the James Brown estate records. The affidavit attached Buchanan's and Pope's interim and final accountings, and a custody receipt which stated that they had brought in $7.83 million and on May 27, 2009 they had (reserving all rights) delivered assets valued at more than $99 million to Bauknight. [R. 1733; 1333-1341]

By orders dated November 8, 2010, and January 7, 2011 the Court denied the motions to dismiss and for change of venue. [R. 91; 99; 105]

On November 16, 2010 Plaintiffs filed a motion to set aside entry of default as to the counterclaims and attached a proposed answer to the counterclaims. [R. 397] Buchanan and Appellant opposed the motion. [R. 694-8]

In 2011 the Honorable Alan Wilson replaced the Honorable Henry McMaster, now Governor of South Carolina, as AG, and the South Carolina Court of Appeals dismissed as not immediately appealable Buchanan's and Pope's request for early appellate review of the order denying their motion to dismiss. [R. 107; 869]

On May 18, 2011, Buchanan and Appellant moved to disqualify SWB and enjoin Bauknight from acting for the AG. [R. 412; 1477-88; 1676-85]

In the fall of 2011 the AG sought to have two Freedom of Information Act[3] (FOIA) cases transferred from Newberry County to Richland County and consolidated with Richland 4900. [R. 714-5]; The Richland 4900 Plaintiffs moved to intervene in one of the FOIA suits to support the AG's position and sought sanctions against Pope. [R. 1516]

Both FOIA cases were moved to Richland County, and the case seeking the AG's contract with SWB was consolidated with Richland 4900. [R. 114]. The consolidation motion described Richland 4900 as "arising out of [Pope's] fiduciary responsibilities in relation to the James Brown Legacy Trust." [R. 114]

On November 1, 2011 the Supreme Court heard oral arguments in the *Wilson v. Dallas* appeal. [R. 544-5; 553; 554; 556]

In 2012 Plaintiffs moved to prevent various depositions and produced only a witness list in response to document discovery. [R. 1454; 444-456] Plaintiffs also filed 100 media articles as part of a motion related to pretrial publicity. [R. 544-622].

In May 2012 Plaintiffs moved to compel a settlement with Buchanan. [R. 1686] Pope supported the $500,000 payment to Buchanan sought to void other provisions as violating the AG's public duty. [R. 486-492] The motion was not heard, but several months later the Court issued an order referencing the settlement and holding that the parties would pay their own fees and costs. [R. 125-6]

In 2012 Pope submitted offers of judgment to most Plaintiffs which SWB moved to strike.

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[3] *Pope vs. Wilson and James Brown Legacy Trust*, formerly case no. 2011-CP-38-0364, and *Pope vs. Wilson*, formerly case no. 2011-CP-38-0379.

[R. 499-543]. Thereafter Pope moved for summary judgment and related relief as to most Plaintiffs. [R. 634; 641; 646; 663] The motions have not been heard.

In July 2012 the Circuit Court declined to disqualify SWB or enjoin Bauknight from speaking for the AG, and Appellant later appealed. [R. 123]

On July 19, 2012 the Circuit Court directed the parties to conduct a pre-discovery mediation and held motions in abeyance pending its outcome. [R. 127-9; 1518-9]

In October 2012 the Circuit Court exempted individual Plaintiffs from attending the mediation and declined Pope's request to appoint GALs for minors and Venisha, who was incarcerated. [R. 130] No settlement was reached. [R. 1662-1663]

On February 27, 2013 the Supreme Court issued its first decision in *Wilson v. Dallas.* The Supreme Court admonished the AG to conclude Richland 4900 and the FOIA suits "in the first instance." *Wilson, supra.*

On March 6, 2013 Appellant met with Plaintiff AG Wilson, Solicitor General Robert Cook and then-Chief Deputy AG John McIntosh. Appellant and counsel had a second meeting with AG Cook and AG McIntosh a few days later. [R. 882; 923; 973-4]

On March 27, 2013, the AG and other Plaintiffs asked the Richland Circuit Court not to conduct any hearings in Richland 4900 or in the two FOIA cases. [R. 1738-9].

On May 8, 2013, the final decision in *Wilson* was substituted for the first decision. The Supreme Court voided the AG's 2008 settlement; voided Bauknight's appointments under Brown's will and 2000 Trust; and noted in footnote 30 the AG's assurances that he was taking action to withdraw from Richland 4900. Buchanan and Appellant were not reinstated, and Aiken 1647 was remanded for action by the Aiken Court. *Wilson* at 449, 743 S.E.2d 767.

On May 10, 2013, Bauknight was appointed special administrator and special trustee

(SA/ST) by the Aiken Court. In Richland 4900, Plaintiffs, through SWB, asked the Court to stay Richland 4900 and both FOIA cases. Respondents asserted:

> The Supreme Court, in substituting the new opinion has completely eliminated footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters.
>
> ...
>
> ...Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that [Richland 4900/FOIA Suits] be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court.
> [R. 1585]

On May 29, 2013 the Aiken Circuit Court held a status conference. Counsel for Plaintiffs Tommie Rae and eleven Richland 4900 Plaintiffs advised the Aiken Court of their intention to disregard *Wilson* and reinstate the AG's 2008 settlement. [R. 1739; 885-6] With Bauknight, they asked the Aiken Court to exclude Buchanan and Pope from James Brown cases. The AG expressed pleasure that Bauknight had been appointed. [R 886]

On June 10, 2013, Appellant filed Aiken County Case 2013-CP-02-1337 (Aiken 1337). [R. 1691]

On June 13, 2013 the Aiken Court issued administrative orders excluding Buchanan and Appellant from James Brown (Aiken County) cases except their own claim cases. The Aiken Court directed the Aiken Clerk of Court to return any attempted filing by Buchanan or Pope not in their own claim cases. [R. 866]

In October 2013 Bauknight, nominated by several Plaintiffs, was appointed PR/Trustee under the Will and 2000 Trust. David Sojourner, Esq., proposed by Bauknight, was appointed as SA/ST. [R. 1020-23]

In October 2013, the Aiken Court, held a *Wilson* remand hearing for Buchanan. The Court,

without objection of Bauknight, orally approved Buchanan's service, all of which was joint with Appellant; ruled that no disgorgement was appropriate under *Wilson*; and left open the possibility of Buchanan's re-entry into Richland 4900. [R. 938-9].

In April 2014 Richland 4900 Plaintiffs reduced their 2013 stay request to a written motion to stay. [R. 659-60]. Appellant opposed the stay. [R. 661]

In late 2014, the Aiken Court and Richland Circuit Court conferred *sua sponte* and ordered a joint mediation in Richland 4900 and Aiken 1337. [R. 133-5]

In January 2015, the Aiken Court declared Plaintiff Tommie Rae to be Brown's spouse. [R. 1009] Several Richland 4900 Plaintiffs appealed the order. [*Id.*]

In March 2015 the Aiken Circuit Court orally denied Appellant's request, to require the successors in interest to Plaintiff Legacy Trust, which claimed it did not exist, to appear at the court-ordered joint mediation. [R. 924-8]

On May 8, 2015 the Aiken Court delivered a status report to the Supreme Court at the request of the Court. [R. 1009] Buchanan and Appellant were not asked to respond and did not. [R. 1009, n. 4]

In 2015 the Aiken Court ruled that James B. is a child of Brown. [R. 1009, n. 4] Thereafter the Aiken Court awarded James B's Aiken GAL and attorney $700,000.00 in fees. [R. 858]

By order dated October 13, 2015, the Circuit Court granted Plaintiffs' motion to set aside Plaintiffs' default and held that the AG was never in default. [R. 143-5]

On October 13, 2015 the Circuit Court again exempted individual Plaintiffs from the October 22 mediation and declined to appoint GALs. [R. 141-2] No settlement was reached.

In 2016 Tommie Rae and James B. moved to London, U.K. [R. 1028-31]

By order dated March 2, 2016 the Circuit Court stayed Richland 4900. [R. 147] Appellant

moved for reconsideration.

By order dated April 8, 2016, the stay was lifted and the new Circuit Court judge thereafter ruled that "discovery in this case shall begin anew." [R. 150; 151]

In 2016 and 2017 the Circuit Court issued various protective orders to Tommie Rae, the AG and others, including Venisha, who could not be located. [R. 178; 170; 167]

The Circuit Court conducted hearings on May 17, 2016 and August 29, 2016. [R. 1607; 1089]

On June 14, 2016 the Circuit Court dismissed both 2011 FOIA cases, and appeals were taken. [R. 152; 155; *Pope v. Wilson,* 6/19/19.]

On July 25, 2016 the Circuit Court's Scheduling Order *sua sponte* stated that "a date-certain trial will be set for [this case] either prior to or jointly with Case 1337." [R. 161-2]

In October 2016 Respondents moved to consolidate Aiken 1337 and Richland 4900 expert discovery. Appellant opposed the consolidation. [R. 159-60]

By order dated March 9, 2017 the Circuit Court, without considering the contents, directed that an affidavit of Pope be placed under seal and that "[a]ll further Affidavits filed by [Pope] will be filed under seal." [R. 176-7] The Court stated, in part:

> (3) A determination will be made at the time of trial which Affidavits will be used in the trial of this matter. This Order specifically makes no finding about the content of the January 17, 2017 Affidavit. . . . .

By order dated May 31, 2017 the Circuit Court dropped the AG as a party to Richland 4900 under Rule 21 SCRCP. [R. 180]

By order dated June 23, 2017 the Circuit Court granted summary judgment to the AG and all Respondents as to all of Buchanan's and Pope's counterclaims, and on July 14, 2017 Appellant moved for reconsideration of the order [R. 188-203; 914-940]

On September 12, 2017, Appellant appealed the order granting the AG's motion to be dropped; the order preventing the AG's deposition; and other orders. *See* Appellate Case No. 2017-001899, pending in this Court.

On December 6, 2017, the Circuit Court denied Appellant's motion to lift the stay imposed by the appeal, stating: "The Orders on appeal here are wide-ranging, [a]ffecting both the inclusion-exclusion of parties to the suit and to the right of the attorneys to represent those parties." [Order filed 12/6/17, p. 2][R. p. 207]

In January 2018 Venisha, Tonya Brown (Tonya), Deanna and others sued Tommie Rae, James B, Bauknight and others over termination rights. [R. 1016].

In 2018 Bauknight told a Federal Court that tens of millions of dollars had been spent in litigation costs from Brown's Charity since 2007. [R. 1037]

On September 19, 2018 Plaintiff Venisha died. [R. 1011]

In October 10, 2018 John Donsbach, Esq., moved to be relieved as counsel for Terry. [R. 1718] Appellant opposed the motion. [R.1720]

On October 30, 2018, Appellant moved to lift the stay for limited purposes. [R. 996]

In November 2018 Bauknight's counsel in another case asked the Circuit Court to rule on the motion to alter the summary judgment order. [R. 214] Appellant opposed the ruling until the stay was lifted and other action taken. [R. 1748].

By order dated November 26, 2018, the Circuit Court, without lifting the stay, denied reconsideration of the partial summary judgment order. [R. 211]

This appeal was filed on December 17, 2018.

STATEMENT OF THE FACTS[4]

In 2000 entertainer James Brown finalized his estate plan, leaving most of his assets to educate needy students. *Wilson* at 417, 743 S.E.2d at 750. By the time Brown died on Christmas Day 2006 trust David Cannon had taken $17 million from Brown. [R. 1721]

Twelve years after Brown's death, not a dime had gone to educate needy students, and tens of millions of dollars to be paid by Brown's charity had been spent on litigation costs. [R. 1734]. Years have been spent on a plan to put and keep the AG and Tommie Rae in control of Brown's music empire, and to distribute nearly three-quarters of Brown's music empire and its $4 million annual income to the AG's (New) Charity and Tommie Rae. [R. 269-272]

For the AG's plan to succeed, Buchanan and Pope had to be discredited. [1729] For nine years, Richland 4900 has been used for that purpose. [R. 1002; 1006; 1012] A brief summary of its background and history follows.

Before the Attorney General's Entry into the James Brown Cases

Between 1999 and 2007 Cannon and Albert Dallas helped Brown bring in about $84 million, and Cannon took about $17 million of what came in. [R. 1721] But Cannon and co-trustee Dallas wanted more. [R. 27-44]

Under a 2006 deal known as the "October 18 Letter," Cannon, Dallas and Brown's music manager Frank Copsidas were seeking a quick sale of Brown's music empire for about $100 million.[R. 26] The sale would cover up Cannon's takings and reap about $15 million for Copsidas; $5 million for Cannon; $5 million for Dallas; and $5 million for Greenberg Traurig (GT), the law firm of Brown's entertainment attorney, Joel Katz, Esq. [R. 1678-9]

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[4] Appellant incorporates the Statement of the Case in her Statement of the Facts.

In July 2007, as Cannon's takings were about to be uncovered, Dallas and Cannon, through Atlanta lawyers at Powell Goldstein (PG), tried to move the situs of Brown's 2000 Trust to Georgia. [R. 1235; 21-70] That failed, and Cannon resigned. [R. 21-23]

In August 2007, Cannon wired $900,000 to Roatan Island in the Caribbean for his turnkey retirement home. Then he and Dallas went to the AGs of Georgia and South Carolina for help. [Ord. 4/8/08, p. 28-30] They got it.

Cannon and Dallas told the AGs that the Aiken Court was favoring Buchanan and Pope against Cannon. They said Buchanan and Appellant were greedy and incompetent and had ousted the innocent Cannon to get the $5 million commission payable on Brown's $100 million estate. [R 941-2]

The AGs entered the James Brown proceedings. [R. 50]

The Attorney General's Alliance with Cannon, Dallas and Tommie Rae

On October 4, 2007 the AG made his official entry in Case 2007-CP-02-0122 (Aiken 122). [R. 50] For a decade Senior Assistant AG Havird "Sonny" Jones, with virtually no oversight from two AGs, would form and carry out the State/AG's policy towards Brown's "I Feel Good" Charity. [See, e.g., R. 1067-8]

The day after they were appointed PR/Trustees on November 20, 2007, AG Jones asked Buchanan and Appellant to resign. [R. 1251] He accused them of unethical conduct. [*Id.*] The open attacks would continue for years. [R. 1294-1302]

Buchanan and Appellant asked the Circuit Court to review their appointment and service. If it was deficient, they wanted to resign. On April 8, 2008, after a full hearing, the Aiken Court found their appointment correct and their service ethical and appropriate. [R. 21-70] Other Aiken

Court orders reviewed and approved virtually all of their actions. [R. 3; 7; 15; 21; 71; 74] They were not appealed.

In May 2008 philanthropist John Rainey, Buchanan and Pope met with then-AG McMaster to address AG Jones' interference. The meeting went well. On July 30, 2008 AG McMaster approved Buchanan and Pope as permanent trustees of the "I Feel Good" Charity. But AG Jones had a different idea. [R. 1308-9; 1311-4; 1315]

The Contract with the Acknowledged Family and Tommie Rae

In August 2008 Brown's six acknowledged children, grandson Forlando and Tommie Rae all knew that the creation of a trust to educate needy students was Brown's often-stated and well-known desire. [R. 1416] They knew Brown left only personal and household effects (less estate taxes) to the six and left everything else to Brown's 2000 Trust. *Wilson* at 439.

They knew that, under a "Fractional Share" formula in the 2000 Trust tied to Brown's estate tax proceeding, a small fraction of the 2000 Trust's assets and income (1/42) was now ready to be used to educate Forlando and other grandchildren to age thirty-five. [R. 74-80] The rest of the 2000 Trust (about 41/42) would soon start providing more than $3 million a year in scholarships for needy students in South Carolina and Georgia. [R. 1726]

Brown's acknowledged family also knew that they could enjoy U.S. royalties to some of Brown's 900 copyrights, and even his unpublished works. Over decades, beginning as early as 2012, Brown's children could exercise termination rights and claw back from publishers some of the benefits from Brown's U.S. royalties for their lifetimes. When they died, their termination rights would go to their children. [R. 1477-88]

They knew they would have to share termination rights with Tommie Rae if she were Brown's spouse, but there was strong evidence that she was not. [Aff. Pope 8/21/12, pp. 1-5]

With this knowledge, on August 10, 2008 Plaintiffs Venisha, Deanna, Yamma, Daryl Brown (Daryl) and Larry Brown (Larry) contracted to "stipulate" that Tommie Rae was Brown's spouse and let her have a quarter of Brown's music empire. [R. 1712-16; 1311-1314] They agreed to let the AG and Tommie Rae take control of Brown's music empire. They agreed to dissolve the 1/42 share Brown had given their children, and require them to look to the AG's (New) Charity for their education. [R. 1311-4] They did it so they would get about $1 million a year and a quarter of Brown's music empire for themselves. [Aff. B. Bauk., Ex. A, p. 1]

By January 2009 Terry, who had sworn his father's estate plan was valid, would agree to the dismembering. [R. 636; 1399-1400; 1665]

The James Brown Legacy Trust is Funded and Terry Brown Joins the Settlement

In January 2009 Bauknight was serving as trustee of Plaintiff Legacy Trust, and Brown's personal and household effects, along with termination rights of the settling parties, had been put in the Legacy Trust. With 75% control, Tommie Rae and the AG could manage, or even sell, the music empire without the consent of any acknowledged children. [R. 1311-4]

In September 2008 Forlando testified that offers of $150 million were available for the music empire. [R. 1727] This was not inconsistent with later expert testimony of Roger Miller that "frothy" investors were seeking to purchase music catalogues such as Brown's, which is "solid gold." [R. 758; 911]

In September 2008 Buchanan and Pope filed Brown's estate tax return. It showed on Scheduled F that Brown's music empire was worth $84 million, $99 million less a $15 million debt to the New York Teacher's Association (TIAA). [R. 1322; 457-69]

The estate tax return was reviewed in detail in a November 2008 Federal Court hearing in Forlando's suit to enjoin the 2000 Trust from taking any action until Cannon and Dallas were reinstated. [Aff. Pope (Terry) , 6/2/11, pp. 7-11][5]

By January 2009 Terry had joined the settlement. He got a 4.79% share of the Legacy Trust and the ROFR, a 10-year right to buy Brown's music empire. [R. 1728]

On January 30, 2009 Bauknight, without disclosing his role as trustee of the Legacy Trust, gave his "independent" recommendation that the AG's deal be approved. [R. 1390]

The Aiken Court Approves the Plan to Dismember Brown's Estate Plan

The Aiken Court was assured by AG Jones and the settling parties that now-Governor McMaster would carefully oversee the operation of Plaintiff Legacy Trust and protect the needy student beneficiaries James Brown intended to benefit. [Pl. Memo, 8/27/10, Ex. A, pp. 38-40] In fact, neither then-AG McMaster nor AG Wilson would know anything about Brown's estate plan except what AG Jones told them. Nor did other members of the AG's senior staff. [R. 1010-12] Neither knew anything about the 10+-year operation of Plaintiff Legacy Trust. [*Id.*]

Despite expert and fact testimony that the 2008 settlement was bad for the "I Feel Good" Charity and threatened the plan to protect its copyrights, the Aiken Court approved the settlement. [R. 1622] The Court did so without hearing, or ruling on, the AG's petition for removal for cause of five PR/Trustees, including Buchanan and Appellant. [R. 250]

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[5] The $99 million value included Brown's 900 copyrights; his image and persona (right of publicity); his claims against Cannon, Dallas, GT, Morgan Stanley and others related to the $17 million Cannon took; his Rolls Royce and fleet of automobiles; and 10,000 items of tangible personal property. [R. 1322] No objection was made by Terry, Forlando or anyone else about the $99 million value within the applicable 1-year period.

By September 2009 the AG and settling parties, through Bauknight, were using Brown's fortune to lodge a vitriolic attack on Buchanan and Pope. [R. 1342-5; 1665-9; Aff. Pope 11/8/17, pp. 10-12] The attacks continued until this appeal was filed. [Aff. Pope 11/8/17, pp. 10-12]

By October 2009, with the stay of Buchanan's and Pope's appeal lifted, and an order preventing their payment for the appeal secured, Bauknight and a dozen lawyers were managing Brown's music empire for the Legacy Trust beneficiaries. [Memo 8/29/16 (re: Depos, AG)]

The AG's Stipulation of Heirs Stops the Trust's Termination Rights Plan

The 2008 settlement contained the following provision:

> No DNA testing will be required of any child or grandchild who is a party to this agreement. [R. 270]

This ended the careful planning Buchanan and Pope were already making to minimize the impact of Copyright Act termination rights on the "I Feel Good" Charity's royalties before 2012. [R. 1477-88]

In 2008 Federal termination rights and interests under the Copyright Act, 17 U.S.C.§§ (c) and 203 (a), and the proceeds therefrom, were poised to become perhaps *the* most important interest under the Copyright Act, after the copyright itself. [R. 1020] Termination rights, however, apply only to U.S. copyright royalties, and U.S. copyright royalties make up only about half of Brown's $4 million annual royalty stream. [R. 822]

About $2 million a year of Brown's $4 million annual royalty income – the non-U.S. royalties – are not subject to termination rights under Sections 304 and 203; [R. 822]

Under the Copyright Act, the AG could not by stipulation deprive DNA-confirmed children, La Rhonda, Jeanette, Nicole, and others of termination rights. [R. 1021-2] Yet the AG agreed to use Brown's fortune to try to defeat the claims of these heirs under the Copyright Act. This set

Brown's "I Feel Good" Charity up for more than a decade of unnecessary multi-million-dollar litigation. [R. 1034; 1311-14.]

The AG's actions were in sharp contrast to the "splitting heirs" and DNA + Dignity plans of Buchanan and Pope which were designed to properly identify heirs under the Copyright Act, and then work with the most cooperative (least expensive) heirs to minimize the impact of termination rights. [R. 1477-88; 815-817] The projected cost for this project, already in place pursuant to a March 8, 2008 order, was thousands, not millions, of dollars. [Ord. 3/8/08]

The Copyright Act procedure for the determination of a spouse of a deceased copyright holder is intimately tied into State probate law. 17 U.S.C.A §101. Yet the AG and Tommie Rae assured the Aiken Court termination rights were purely a Federal matter. [Memo, 8/27/10, Ex. A]

Termination rights can be exercised only by those who collectively own more than half of the termination interests. *Id.* §§304(c)(1), 203(a), and under the Act a spouse holds half of the vote. The acknowledged children agreed to stipulate that Tommie Rae was Brown's spouse despite strong evidence to the contrary. [R. pp. 1713-4] They also knew that James was the only claimed child born in the twenty years between Brown's vasectomy and his death and had refuse a paid-for $300 DNA test. But they agreed to stipulate that he was an heir. [R. 1311-4]

In 2013, by voiding Bauknight's appointments and his effort to make Tommie Rae Brown's spouse, *Wilson v. Dallas* gave the AG a fresh start to protect the "I Feel Good" charity's 900 copyrights and for the PR to finish a proper heirs determination. Appellant personally explained this to the AG in March 2013. [R. 1005-6] The AG, however, failed to stop the plan to reinstate the 2008 settlement, was announced in open court immediately after the *Wilson v. Dallas* decision. [R. 1007-8]

The $79 Million Devaluation and Richland 4900

By June 2009 Buchanan and Appellant had delivered 145 boxes of documents to Bauknight; fully accounted for all of their actions; and delivered more than $99 million of assets to Bauknight. [R. 1332-44] They had reduced the TIAA debt from about $15 million at Brown's death to about $11.3 million, with a $2 million escrow available for application to the final payment. [R. 1742] Buchanan and Appellant had resolved $34 million of claims in favor of Brown's estate, and the baseless $10 million claims of Cannon and Dallas were ready for summary judgment. [R1725-6] They agreed to meet weekly with Bauknight if he wished. [R. 1342-5]

Within a month Bauknight had rejected the GreenLight 2-year publicity rights deal expected to bring in $1-2 million a year, and within a year he was working on a devaluation of Brown's famous image and likeness to zero, or near zero as of Brown's death. [*Id.*]

Urged to deal with the tax issues the retroactive shifting of about $2 million a year from the "I Feel Good" Charity to tax-paying individuals, had caused, Bauknight and his CPA did nothing – except claim that Buchanan and Pope had made tax errors. [R. 224] He did not even pick up the James Brown tax file from resigned Court-appointed CPA William Sellars.[6]

In August 2009 one of Tommie Rae's lawyers proposed to devalue Brown's 900 copyrights to $24 million or less, and value Brown's right of publicity at zero to discredit "Bobadele." [R. 1002; 1729].[7]

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[6] For six years Bauknight and his CPA failed, despite warnings, to pick up the critical tax file of resigned, court-appointed CPA William Sellars. They never filed corrective income tax returns to show the shifting of $2 million a year in income from charitable beneficiaries to private individuals. The Sellars file was allowed to be destroyed as abandoned after more than 6 years. [R. 1002] Yet Bauknight, representing all Plaintiffs, including the AG, would assert in Richland 4900 that Buchanan and Appellant had not properly handled tax matters. [R. 224]

[7] Investor Terry Cox had put the right of publicity at $45 - $50 million, and the miscellaneous assets at $10 - $15 million. [R. 1267-70]

In October 2009 Peter Afterman, also proposed by Tommie Rae's counsel, was hired as the "music expert" to carry out the devaluation. [R. 999]

In February 2010 Cannon was indicted for $12 million of the $17 million he had taken, and a 2008 forgery to cover up some of the takings. By November 2010, he would be named as a witness against Buchanan and Pope in Richland 4900. [1454-5]

In early 2010 a lawyer for Tommie Rae told Buchanan's lawyer that AG Jones had hired Kenneth Wingate, Esq., and would sue Buchanan and Pope if they did not drop the appeal of the AG's settlement. [R. 867; 958]

On May 18, 2010, Bauknight, a lawyer for Tommie Rae, Louis Levenson, Esq., and David Bell, Esq., signed the SWB 23 % - 40% contract. It was not signed by the AG. Nor was it signed by a single Beneficiary Plaintiff. [R. 669-70]

By May 19, 2010, when the Richland 4900 complaint was filed, every action taken by Buchanan and Pope's had been reviewed by the Respondents more than a year earlier. [R. 1628-37]

Governor McMaster, by his sworn testimony, did not authorize SWB to file Richland 4900 in the name of the State/AG; did not authorize Bauknight to sue "on behalf of" the State/AG; and did not know he was a Richland 4900 Plaintiff until after he left office in January 2011. [R. 1002]

In September 2010 the Peter Afterman/PBW valuation arrived. Afterman valued the copyrights at $23.7 million. He then reduced that by $19 million to arrive at the $4.7 million claimed at-death value of Brown's music empire. The $19 million, undisclosed within the "appraisal," was a $3+ million overstatement of the approximately $15 million TIAA debt. [R. 1003]

In the claimed $4.7 million "professional valuation," Bauknight valued Brown's right of publicity; personal property; and claims against Cannon, Dallas, GT and Morgan Stanley at zero or near zero. [R. 1003] [8]

In September 2010 the Respondents agreed to withhold the claimed-$4.7 million value from the *Wilson v. Dallas* Court while Bauknight presented the value to the IRS. [R. 1698] They did not tell the Probate Court or Supreme Court of the claimed-$4.7 million value until eight months later. [*Id.*]

In December 2010 the AG and settling parties presented a single brief in *Wilson v. Dallas.* They did not disclose the $4.7 million valuation. [R. 457]

On December 30, 2010 Plaintiff Legacy Trust was secretly amended and Forlando given Terry's 4.79% and the ROFR. Forlando would bring to Richland 4900 the underhanded dealings he, Cannon and Dallas had used since 2007. [R. 1722] Within a month, Forlando had planted the false Grammy © claim noted in *Wilson.* Robert Potter, Esq., who was attributed with "halting" the Grammy © sale was unaware of the post, and the facts were not correct. [R. 1732]

In January 2011, when the IRS failed to challenge Bauknight's change to the $4.7 million valuation, about 3/10 of the "I Feel Good" Charity's income and assets were shifted to the Family Trust, generating income tax on about $1 million a year of income. [R. 1726; 1731]

In 2010 the AG, and Bauknight "on behalf of" the AG, began to accuse Buchanan and Pope of the federal felony of overstating the value by $79 million in sworn IRS filings to get a $5 million commission. [R. 1734]

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[8] At the same time, Bauknight/Afterman was preparing the "Afterman Report" which was used to assert that the claim against GT, which he valued at zero, was worth substantially more than $10 million. [R. 1727]

In October 2011 Cannon was allowed to enter an *Alford* plea to some of his takings. Appellant's victims' statement for the needy students was not presented to the Court. The AG did not seek either restitution or jail time for Cannon. The matter would be reopened after Deanna and family members protested. [R. 621]

In 2011 Bauknight's counsel told the Supreme Court that Brown's estate and 2000 Trust had no corpus to speak of; that nobody was trying to buy the assets; that Tommie Rae's elective share was a "slamdunk;" that Tommie Rae and her son control the termination rights; that the "I Feel Good" Charity would have nothing by 2023 if the AG's settlement were not approved; and that termination rights were all this estate is about. [R. 1734] The Supreme Court was not told that termination rights would never apply to about half of the 900 copyrights or to Brown's other assets. [R. 1005]

In 2012 the beneficiary Plaintiffs bitterly opposed the lifting of two *ex parte* 2007 gag orders issued by the Aiken Court which had stopped dissemination and discussion of Tommie Rae's admissions that she was married, living with her husband, and possibly pregnant before meeting Brown. [R. 1490-1510]

In 2012 the AG and other Richland 4900 Plaintiffs agreed to pay Buchanan $500,000, but required that he do nothing to help the "I Feel Good" Charity and not file a petition for rehearing in *Wilson v. Dallas.* The Supreme Court was not notified of this limitation. [R. 486-92] Appellant urged the Court to void all terms except the payment to Buchanan. [*Id.*]

In the fall of 2012 SWB moved to strike Pope's beneficial offers of judgment to grandchildren and others. [R 499-543]

On March 6, 2013, Appellant met with AG Wilson, Solicitor Gen. Cook, and then-Chief Deputy AG John McIntosh to discuss the tax and charitable problems Bauknight's $79 million

devaluation of the music empire. [R. 1736-8] The valuation reduced the required scholarships for needy students by $3 million or more a year. [*Id.*] Methods to correct the problems without publicity were discussed, but the AG elected to do nothing. [*Id.*]

Solicitor General Cook confirmed that he believed Appellant was competent and concerned about the "I Feel Good" Charity, not greedy and incompetent as documents with his name (but not signature) had claimed and would later claim. [*Id.*]

In March 2013 the AG told both Appellant Pope and the Supreme Court that he was getting out of Richland 4900. *Wilson* at n. 29. But he did not.

The AG and Bauknight made no effort to properly dissolve either the Legacy Trust or the AG's new charity.

On May 29, 2013 Tommie Rae, through counsel, and Levenson, announced to Judge Early in open court their intention to disregard the *Wilson v. Dallas* opinion and reinstate the 2008 settlement. [R. 1739] They joined Bauknight in urging the Aiken Court to exclude Buchanan and Pope from any participation in James Brown cases. [R. 1730]

On June 13, 2013 the Aiken Court issued administrative orders excluding Buchanan and Pope from Aiken James Brown cases. [R 886-7] Since then, without any participation of Buchanan and Pope, the Richland 4900 Plaintiffs have engaged in relentless, vitriolic, multi-million-dollar litigation among themselves, with all repudiating one or more material positions SWB is taking for them in the Richland 4900 complaint, including litigation against Bauknight, who claims to be agent or fiduciary for all Richland 4900 Plaintiffs. *See* Opinion No. 5651, filed May 22, 2019, *In Re: The Estate of James Brown a/k/a James Joseph Brown, The Estate of James Brown ...Respondents, and Tonya Brown et al, Respondents, and Daryl Brown and Terry Brown Respondents below, Of whom Terry Brown is the Appellant.* Also *see* R. 1564-77; 1616-21; 1028-

31.

By August 2013 Peter Afterman had helped Tommie Rae and James B. file termination notices in the Copyright Office seeking to obtain termination rights proceeds for the heirs to U.S. royalties to more than 100 songs between 2015 and 2023. By 2016, Venisha and others had served overlapping termination notices related to 246 songs, to be paid out between 2018 and 2026. [R. 1016-27]

Deposed in August 2013 in the Forlando Federal suit, Bauknight claimed Forlando had done nothing wrong in his 4-year effort to reinstate Cannon and Dallas and that Appellant was dishonest. He defended the 2008 settlement. [R. 1740]

In September 2013 Bauknight was appointed PR/Trustee. He claimed, among other things, to have reduced the TIAA debt by $14 million. He also claimed Afterman had benefitted Brown's estate and 2000 Trust. [R. 1543-5]

In October 2013, the Aiken Court, held a *Wilson v. Dallas* remand hearing for Buchanan. The Aiken Court, based on its own observations, praised the service of Buchanan, all of which was joint with Appellant. [R. 891] The Court left open the possibility of Buchanan's re-entry into Richland 4900 and directed Bauknight's lawyer to prepare an order to that effect. None has been filed. [*Id.*]

In 2015, with Bauknight's acquiescence, beneficiary-Plaintiffs received about $2 million in termination rights proceeds belonging to Plaintiff Legacy Trust. [R. 897-8; 1016-27]

By 2015 Bauknight had paid Sojourner and his lawyer nearly $1.4 million not to protect the copyrights in the Tommie Rae and James B. cases. [R. 898]

Despite the May 29, 2013 announcement, the Aiken Circuit Court told the Supreme Court it had not heard even a whisper of settlement, or courthouse talk of one. The Court repeated Bauknight's claims and denigrated Buchanan and Appellant. [R. 1544]

By 2016 James had been declared Brown's child, and the Aiken Court had awarded his attorney and GAL approximately $700,000 in fees. [R 1693]

In 2017 Respondents' expert Roger Miller testified that Brown's copyrights were worth 15 – 20 times annual royalties. [R. 760] At $4 million a year, less than what Buchanan and Appellant brought in, this would be $60 - $80 million for the copyrights alone. Cox and others valued the right of publicity at $40 million or more. [R. 1627-38]

Between May and July 2017 the Circuit Court dropped the AG as a party under Rule 21 SCRCP. [R. 180] After dropping the AG as a party, the Circuit Court granted summary judgment to all counterclaims. [R. 188] Those granted summary judgment included the Legacy Trust, which claims it does not exist, now-deceased Venisha, who could not be found to be deposed before her death. [*Id.*]

Appellant Pope moved for reconsideration. [R. 914] She asked the court to consider substantial evidence, including deposition testimony of Wallace Lightsey, Esq., Bauknight, Plaintiffs' experts Jonas Herbsman, Esq., Ellison Thomas, CPA, and Roger Miller, Plaintiff Jason, Defendant's expert R. B. Alexander, FOIA counsel Thomas Pope, Esq., and other evidence. [*Id.*]

In January 2018 Respondents Venisha and others claimed in a suit in California U.S. district Court that Tommie Rae, James and Bauknight, with others, had:

> embarked on a series of duplicitous business machinations calculated to deprive Brown's children of their rightful interest in Brown's music under the Copyright Act and (ii) divert the financial proceeds from such interests to herself, in violation of the Copyright Act and state common law. . . [Complaint, *Brown v. Hynie*]

In February 2018 Bauknight stated:

> Litigation costs to the estate and ultimately to the charitable trust have now run into the tens of millions of dollars. Although the charitable trust purportedly was to provide scholarships for needy children, to date not one penny has been available for those scholarships because the probate litigation has continued. *Emphasis supplied* [R. 1034]

On July 28, 2018 Daryl Brown made an attempt in Aiken County to receive a distribution of assets he put in the Legacy Trust prior to bringing Richland 4900. [Aff. Daryl Brown. 8/28/18]

ARGUMENT

I. The Circuit Court Erred in Failing to Dismiss the Complaint.

a. Standard of Review

Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006). The appellate court applies the same standard of review as the trial court in reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP. *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). Although orders denying motions to dismiss are usually considered interlocutory, they are reviewable on appeal when an appealable order is before the appellate court. *See Cox v. Woodmen of World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 397, 402 (Ct.App.2001).

b. Each of the Ten Grounds for Dismissal Supports Dismissal

1. Beneficiary Plaintiffs failed to comply with S.C. Code § 15-36-100 when claiming alleged negligence of attorneys.

S. C. Code Ann. § 15-36-100 requires plaintiff to "file as part of the complaint [alleging professional negligence] an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim *based on the available evidence at the time of the filing of the affidavit*". [Emphasis Supplied.] Beneficiary Plaintiffs admitted they failed to comply with Section 15-36-100 but asserted they were not seeking relief related to any legal work of Buchanan and Appellant for which Buchanan and Appellant sought no separate fee.

2. Another action was pending between the parties.

Rule 12(b)(8) requires dismissal if the same matters are pending before the same parties in another action. That was the case in 2010 when the Richland 4900 complaint was filed. All parties to Richland 4900 were parties to Case Aiken 1647. [R. 231-41] No Plaintiff had appealed any of

the more than 50 orders issued in Aiken Case 122. All were bound by the common history, the orders, and their admissions through testimony, filings and statements of counsel, in Aiken 1647 and other like cases. [*Id.*]

There were more than 300 filings in Aiken Cases 122, 872 and 1647. Every action of Buchanan and Appellant has been immediately disclosed and been challenged by at least one Plaintiff often (before August 10, 2008) while other beneficiary Plaintiffs vigorously defended their acts. [R. 1627-40]

In 2010 their Aiken 1647 fee claim was pending. [R. 231-41; 1627-40] The complaint made clear that Respondents claim that all matters in Aiken County were concluded was not correct. [R. 225]

Because of the existence of Aiken 1647 and other cases, the complaint should have been dismissed.

3. The alleged wrongful acts had previously been approved by orders of the Aiken Court which beneficiary Plaintiffs did not appeal.

In the comprehensive Order of April 8, 2008 the Aiken Court, after a full hearing, approved every action of Buchanan and Appellant from March 2007 to April 8, 2008. [R. 21-70] Following that, the AG joined them in seeking approval for the third order which supported the July 17, 2008 Christie's sale. [R. 71-73] The April 8 Order and others, none of which was appealed, had already approved all of the actions complained of in the complaint. Dismissal was appropriate.

4. The allegations in the complaint far exceeded the AG's statutory and constitutional authority to act, violating Due Process rights of Defendants.

The AG had no authority to file an action through private counsel seeking money damages on behalf of private individuals, including non-resident minors with no GAL. [R. 216; 238]

In *California v. Infineon Technologies AG,* 531 F. Supp.2d 1124 (N.D. Cal. 2007)[9] the U.S. District Court considered whether AGs of various states, including South Carolina, could bring suit in a California Federal Court for money damages against technology companies.[10] The claims made therein were on behalf of both the states themselves and individual businesses within each state. That Court found that, under South Carolina law, the South Carolina AG was not only unable to bring such a suit in California, but the AG was also without authority to sue for money damages in any situation not specifically authorized by the legislature.[11]

Neither *S. C. Code Ann.* §§ 1-7-130 nor 62-7-405(c) (1976, as amended) granted the AG authority to bring Richland 4900, which authority must be granted by the legislature. On that basis alone, Richland 4900 should have been dismissed.

The AG was clearly acting outside the scope of his *parens patriae* authority in asserting the private tort claims of individuals in this action. The AG asserted no separate or unique claim of the state, as distinct from the claims of the private individual plaintiffs. As such, the AG was not acting within his *parens patriae* capacity, and this suit should have been dismissed.

Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex. Rel., Barez, 458 U.S. 592 (1982) held that, in order to maintain a *parens patriae* suit, a State must articulate an interest apart from the interests of particular private parties, that is, the State must be more than a nominal party. *Id.* at 593. In

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[9] In that case, the plaintiff attorneys general sought money damages on behalf of their respective states, as well as individual and businesses in their respective states. The Court undertook a thorough discussion of the ability of each state's Attorney General to sue for money damages under the various theories asserted. It found that the South Carolina Attorney General needed specific legislative authorization to sue for money damages, and that no such authorization had been made under the Unfair Trade Practices Act. Moreover, it found that the common law *parens patriae* authority extended only to actions for injunctive relief. The Court held that the South Carolina Attorney General would require specific authorization by the legislature to seek money damages on behalf of individuals or businesses.

[10] *Id.*

[11] *Id.*

Richland 4900 no such interest exists.

The AG and Bauknight, who claimed to be acting for the "I Feel Good" Trust, had the duty to *defend* this false claim against Buchanan and Pope – not bring it. [R. pp. 1002-12]

The AG's retention of SWB to pursue the State's purported claims against Defendants violated their Due Process rights. "Due Process requires the government's attorneys to be financially disinterested in the outcome of the litigation inasmuch as they are – ostensibly, at least – serving the public interest, and not their own financial interests."[12] [13]

In this case, the AG, joined by private individuals, hired SWB to pursue the claimed interests of the State, *and their private interests*. [R. 216-227] The engagement on a contingency fee basis, and the AG's claim to 10% of a legal fee in which he was not an attorney or record, gave him a financial interest in the outcome of the litigation, as did his personal control of the (new) Charity.

In addition, the AG, with a right to *enforce* the due application of monies given to *public* charities, sought damages against Buchanan and Pope to punish them for carrying out their duty under James Brown's Will and 2000 Trust. Brown's estate did not create a *public* charity, although its "I Feel Good" Trust, a private foundation, has certain elements of a public charity. The 2000 Trust is a private, *irrevocable* inter vivos trust which divides into the "I Feel Good" 501(c)(3) private foundation for education and a separate, *non-charitable* education trust for the grandchildren.

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[12] *Commonwealth of Pennsylvania v. Janssen Pharmaceutica, Inc.* No. 24 EAP 2009 (Saylor Dissent) (Pa., Decided August 17, 2010) (citing *People ex. Rel. Clancy v. Superior Court,* 705 P.2d 347 (Cal. 1985))

[13] Although several recent cases where recovery would serve the public good have approved contingency arrangements to represent State interests, these cases are readily distinguishable because the interests asserted by the State were to the benefit of the public. The interests asserted by the State in this case are those of private individuals, without any benefit to the general public of South Carolina. See, e.g., *Philip Morris Inc. v. Glendening,* 349 Md. 660, 709 A.2d 1230 (1998); *Priceline.com Inc. v. City of Anaheim,* 180 Cal.App.4th 1130 (2010).

The U.S. Supreme Court addressed the limits of enforcement powers of the State in the 1829 case of *Inglis v. The Trustees of the Sailor's Snug Harbor,* 28 U.S. 99.

In *Inglis* the Supreme Court allowed the New York legislature to enact a statute to establish a sailor's home on the testator's land only because the *testator had specifically requested legislative action* under certain circumstances. The Court stated:

> If after such a plain and unequivocal declaration of the testator with respect to the disposition of his property, so cautiously guarding against and providing for every supposed difficulty that might arise, any technical objection shall now be imposed to defeat his purpose, it will form an exception to what we unequivocally laid down in all our books as a cardinal rule in the construction of wills that the intention of the testator is to be sought after and carried into effect. *Id.* at 113.

Inglis found that the State could act only because it was *contemplated by the testator's will.* Even so, a concurring opinion warned "It is one thing to enforce a charitable trust, and quite another to destroy the legal rights of the parties to which it is attached." New York State did not, as here, take more than half of the decedent's assets and direct them to those he intentionally disinherited, then let the AG form a "new" charity with the rest.

As the Supreme Court would find, the AG asserted rights to "take over" all aspects of the James Brown litigation and both the estate and 2000 Trust exceeded his statutory authority. *Wilson.*

After securing Defendant's removal with no cause existing or found, the AG sought money damages against Buchanan and Appellant because they would not sign, *as PRs*, an agreement, under pain of contempt, not to criticize the AG or the settlement. [R. 223; 227]

The AG's statutory authority to *enforce* and *parens patriae* authority could not be so broad as to ignore the First Amendment and Due Process clauses. No public purpose was served by this heavy-handed violation of Buchanan and Appellant's First Amendment and Due Process rights.

The AG's violations set out above were not rendered moot by *Wilson v. Dallas.* On the contrary, the AG's 5-year active participation in Richland 4900 and praise of Bauknight as he spent

millions of dollars for the Legacy Trust and "on behalf of" the AG to continue to attack Buchanan and Pope increased the damage to both Buchanan and Appellant. [R. pp. 1005; 1012; 1015]

5. Private Counsel SWB exceeded its statutory and constitutional authority.

SWB and all Respondents had in hand the SWB contract which was no contract at all. Signed only by Bauknight and lawyers hoping to reap about $20 million in contingency legal fees for their clients' meritless claims, the contract was not executed by most individual Respondents and failed to comply with the AG's obligations under *S.C. Code Ann.* §1-7-170 (1976, as amended).

SWB had no authority whatsoever to file suit on behalf of the State/AG or for Bauknight as agent for the State/AG. In suing in the name of the State/AG with no signed contingency fee agreement from either the AG or individual Respondents, SWB not only crossed over ethical lines, it took State action to violate Buchanan and Appellant's Due Process and First Amendment rights.

The action of SWB and Bauknight claiming to act "on behalf of the AG" was exacerbated by the years spent concealing the SWB contract; interfering in FOIA cases to prevent its release [R. pp. 1007; 1008; 1011]; and standing in the way of a deposition of Governor McMaster, where he would confirm that he did not authorize SWB to file suit in the name of the State/AG or Bauknight to act "on behalf of" the AG. [R. 1013]

SWB not only exceeded its statutory and constitutional authority, but did so recklessly and intentionally.

6. Beneficiary Plaintiffs failed to join indispensable parties and appoint GALs.

By December 2010 Forlando was an indispensable party to Richland 4900, but Respondents concealed his role as he took the opposite position in Federal Court, and, trading on the wide reach of Cannon and Dallas, planted the false Grammy © claim with an Atlanta firm. [R. p. 998, n. 3]

The conflict of the parents with minor Plaintiffs was patent, as was Bauknight's inability to

act on their behalf. The same would become true for the incarcerated Venisha. Under Rule 17 SCRCP, SWB and Bauknight did not, within a reasonable time, correct these problems. They actively fought not to have GALs for eight years. The complaint should have been dismissed as to these parties.

7. Claims asserted against Buchanan and Appellant were barred by the 1-year applicable statute of limitation.

The South Carolina Probate Code and Trust Code §62-7-307 bar the actions against Buchanan and Appellant. Acts going back to November 2007 had been fully reported and examined more than a year before the action was filed. [R. 3-80] They were barred by the 1-year statute of limitations.

8. Respondents lacked standing under the will and 2000 Trust to bring the action, either because they are non-beneficiaries or as a result of their violating the *In Terrorem* clauses, or both.

Respondents Legacy Trust, Tommie Rae, James B, and Tonya lacked standing to bring Richland 4900 because Buchanan and Appellant never owed them any duty. [R. 1193-1219]

The AG lacked standing because he was violating his statutory duty to the "I Feel Good" Charity for the benefit of his (New) Charity. Bauknight lacked standing on behalf of Brown's estate and 2000 Trust because his appointments were void and because, on the face of the complaint, he was working to dismember Brown's estate plan.

The remaining Respondents lacked standing under Brown's Will and 2000 Trust when they challenged Brown's estate plan in 2007. Item X of Brown's Will is clear:

> . . . Furthermore, any person not provided for in this Will, my Irrevocable Trust or other such instrument, whether or not claiming to be a beneficiary or party in interest, shall not have standing or be qualified to contest, claim an interest in or otherwise dispute the disposition of my estate, as I herein disclaim and disinherit any such persons. Any such alleged claim shall be considered an affront to my wishes and shall be challenged as such by my fiduciaries. [Will, Art. X]

Richland 4900 Plaintiffs who were acknowledged by Brown lost standing on December 26, 2007 when they challenged the Estate plan. [Will, Art. X]

9. Richland 4900 was brought for the benefit of the Respondent Legacy Trust and for its beneficiaries, and Buchanan and Appellant never served as trustees of the Legacy Trust or had any fiduciary duty or obligation to the Legacy Trust or its beneficiaries.

This case was brought for the benefit of Respondent Legacy Trust and its beneficiaries, none of whom are beneficiaries of Brown's 2000 Trust. Buchanan and Pope as Brown's PR/Trustees never owed any duty to either Respondent Legacy Trust or its beneficiaries. For that reason, the complaint should have been dismissed.

10. South Carolina Code Ann. § 33-56-180 bars recovery because Buchanan and Appellant were acting within the scope of their authority as agents for The James Brown "I Feel Good" Trust, a 501(c) (3) private foundation.

All of Defendants' actions complained of occurred while they were employees, as defined in §33-56-170(2)[14] of the "I Feel Good" Trust, a 501(c)(3) private foundation, described for purposes of §33-56-180 as a charitable organization.

S.C. Code Ann. §33-56-180(a) provides:

> A person sustaining an injury or dying by reason of the tortious act of commission or omission of an employee of a charitable organization, when the employee is acting within the scope of his employment, may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15. *An action against the charitable organization pursuant to this section constitutes a complete bar to any recovery by the claimant, by reason of the same subject matter, against the employee of the charitable organization whose act or omission gave rise to the claim unless it is alleged and proved in the action that the employee acted in a reckless, willful, or grossly negligent manner, and the employee must be joined properly as a party defendant.* A judgment against an employee of a charitable organization may not be returned unless a specific finding is made that the employee acted in a reckless, willful, or

[14] "Employee" means an agent, servant, employee, or officer of a charitable organization.

> grossly negligent manner. If the charitable organization for which the employee was acting cannot be determined at the time the action is instituted, the plaintiff may name as party defendant the employee, *and the entity for which the employee was acting must be added or substituted as party defendant when it reasonably can be determined.* [Emphasis supplied]

Buchanan and Appellant were clearly acting as agents for Brown's "I Feel Good" private foundation, which is entitled to the same immunity as public charities under S. C. Code Ann §33-56-180. On that basis alone, the complaint should have been dismissed.

11. Filing of the Complaint in Richland County Supported Dismissal

The duty of Buchanan and Appellant resulted only from their services as PR/Trustees.

S.C. Probate Code §62-1-302(a)(1) and (3) provide that the Probate Court – subject to removal to Circuit Court as provided in §(d) -- has exclusive original jurisdiction over all subject matter related to estates of decedents and trusts, including, as here, *inter vivos* trusts.

§§62-1-303 and Section 62-3-201, read together and with §62-1-302(a), made it clear that all proceedings related to the Will and 2000 Trust must be brought in Aiken County, and the failure to do so was jurisdictional, requiring dismissal.

This case was intentionally brought in Richland County in violation of a clearly defined statutory requirement that it be brought in Aiken County. The complaint should have been dismissed in 2010. [R. p. 1014]

II. The Circuit Court Erred in Granting Summary Judgment as to Buchanan and Appellant's Counterclaims.

a. Standard of Review

Because the circuit court granted beneficiary Plaintiffs summary judgment on all Appellant Pope's counterclaims, this matter is governed by Rule 56(c) of the South Carolina Rules of Civil Procedure. This rule provides a motion for summary judgment shall be granted " if the pleadings,

depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "An appellate court reviews the granting of summary judgment under the same standard applied by the trial court pursuant to Rule 56, SCRCP." *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 379, 534 S.E.2d 688, 692 (2000).

"Under Rule 56(c), the party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). This initial responsibility may be discharged by pointing out to the trial court that there is an absence of evidence to support the non-moving party's case, and it is not necessary for the moving party to support its motion with affidavits or other similar materials negating the opponent's claim. *Id.* Once the moving party carries its initial burden, the opposing party must do more than rest upon the mere allegations or denials of his pleadings, but must, by affidavit or otherwise, set forth specific facts to show that there is a genuine issue for trial. *Id.*; Rule 56(e), SCRCP.

"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).

b. Collateral Estoppel Does Not Bar any of Appellant Pope's Counterclaims.

The circuit court erroneously found that collateral estoppel barred all of Pope's counterclaims as a result of *Wilson v Dallas* and the Federal District Court's Order in *Brown v. Pope and Buchanan.* "Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). "The party asserting collateral estoppel must demonstrate that the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Id.* "'While the traditional use of collateral estoppel required mutuality of parties to bar relitigation, modern courts recognize the mutuality requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issue.'" Id. (quoting *Snavely v. AMISUB of S.C., Inc.*, 379 S.C. 386, 398, 665 S.E.2d 222, 228 (Ct. App. 2008)). "The doctrine of collateral estoppel should not be rigidly or mechanically applied." Id. at 555, 684 S.E.2d at 782.

i. Wilson v. Dallas

The lower court found that the Supreme Court's affirmance of Buchanan and Pope's removal as PR/Trustees in *Wilson v. Dallas*, 743 S.E.2d 746 (2013) collaterally estops Appellant Pope from pursuing her counterclaims. This argument completely overlooks that Appellant Pope's counterclaims are based on the Plaintiffs' conduct—not Pope's conduct. The Supreme Court simply did not decide in *Wilson v. Dallas* whether or not Respondents in this action are liable for

abuse of process, civil conspiracy, intentional interference with contract, violation of S.C. Code Ann. Section 62-1-106, or an award of attorneys' fees in this case pursuant to S.C. Code Section 62-7-1004. Indeed, the record in *Wilson* closed before Richland 4900 was filed. The filing of this action took place months later. Appellant Pope could thus not have had a "full and fair opportunity to litigate" the issues put forth in her counterclaims during the prosecution of the *Wilson* appeal both because it had nothing to do with the present counterclaims and because the record was closed.

The lower court relied on the single paragraph in the *Wilson* opinion which acknowledges certain complaints not ruled upon in the circuit court in that case. The quoted paragraph is dicta, at best, and the Supreme Court never made any finding that Pope or Buchanan breached any duty to any Respondent.

Instead, the issues decided in *Wilson* were:

1. Will the Circuit Court's approval of the McMaster settlement which dismembered James Brown's estate plan be reversed? [The Supreme Court answered this in the affirmative.]

2. Will the Circuit Court's decision to replace Pope and Buchanan as PR/Trustees prior to a hearing on their removal be reversed?[15] [The Supreme Court declined to do so.]

The Supreme Court never addressed Appellant Pope's counterclaims in this action in *Wilson*. Perhaps even more fundamental to lower court's ruling is that it misapprehends the relevant facts and the nature of the law giving rise to the counterclaims. Respondents argued that *Wilson v. Dallas* conclusively established that they had numerous legitimate reasons for bringing this action. This is inconsistent with their previous position in this action and Respondents'

[15] The lower Court's Order Approving Settlement Agreement specifically noted that the "court ha[d] not heard the [removal action] pending the settlement approval." (May 26, 2009 Order at 9)

settlement with Buchanan in Richland 4900. It is also untrue. Finally, assuming *arguendo* that *Wilson* lent any credibility to Respondents' claims, it would not matter under the law for a counterclaim of abuse of process or any other counterclaim made herein. "To cause process to issue without justification is an essential element of malicious prosecution, but not of abuse of process. In the latter, the issuance of the process may itself be justified; it is the malicious misuse or perversion of the process for an end not lawfully warranted by it that constitutes the tort known as abuse of process." *Huggins v. Winn-Dixie Greenville, Inc.*, 249 S.C. 206, 209, 153 S.E.2d 693, 695 (1967); see also *Swicegood v. Lott*, 379 S.C. 346, 665 S.E.2d 211 (Ct.App. 2008)(cert. den'd June 24, 2009). Moreover, whether or not Respondents had legitimate reasons for bringing this lawsuit has nothing to do with whether or not there are facts giving rise to the other counterclaims.

None of the issues in the instant case was "directly determined by" the Supreme Court in *Wilson*. Further, Buchanan and Pope were precluded from participation in James Brown issues after May 8, 2013. Pope is therefore not collaterally estopped from pursuing the counterclaims which are based on issues not "directly determined by" the *Wilson* Court.

ii. The Forlando Federal Case

The lower court further indicated that the findings of the Honorable William O. Bertelsman in *Brown v. Pope and Buchanan*, 3:08-cv-00014-WOB (the "Forlando Federal Case") collaterally estop Appellant Pope from pursuing her counterclaim for civil conspiracy. As an initial matter, Pope notes that none of the Respondents was a party to the Forlando Federal Case other than the 2000 Trust. And the 2000 Trust, through Bauknight, has acted in concert with Forlando since 2011.

[16] In addition, Buchanan, paid in 2012 to settle his counterclaims against Respondents in Richland 4900, continued with Pope as a party to the Forlando Case until its conclusion.

Although common parties are no longer required to establish collateral estoppel, the vast difference in the parties to (and facts of) the two actions should be taken into consideration in this Court's analysis. [See Footnote 15]

Regardless of whether the Forlando Federal Suit could bring about collateral estoppel as to any issue in this case, it does not. The conspiracy presented in that case related to Forlando's efforts to reinstate Cannon and Dallas as trustees of the 2000 Trust. Although Forlando is identified as a part of the civil conspiracy at issue in Case 4900, it is a different conspiracy from his actions with Cannon and Dallas, and the counterclaim alleges herein that all Respondents conspired to cause damage to Pope by the 2009 devaluation proposal, threats and filing and prosecuting this action and taking other actions to force Pope and Buchanan to drop their appeal of the McMaster settlement.

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[16] Any comparison to the Forlando case is further complicated by the fact that Bauknight's service to the 2000 Trust was declared void by the Supreme Court [R. p. 1006]; that he served as agent for Terry Brown from 2010 in Richland 4900, and secretly became the agent for Forlando in January 2011 [R. p. 1008]; that he condoned Forlando's false statements to Judge Bertelsman in the Forlando Suit, including the false claim that Forlando had no assets, when he owned nearly 1/25 of the 2000 Trust, which had been enhanced from about 1/300 by the Bauknight/Afterman $79 million devaluation to $4.7 million [R. p. 1003]; that Bauknight withdrew the 2000 Trust's claims against Forlando for legal fees for his 4-year attempt to reinstate felon Cannon and his co-trustee Dallas as trustees of the 2000 Trust [R. p. 1008]; that in his August 2013 deposition Bauknight claimed that Appellant had "raped" the estate of James Brown' that Terry had not transferred his interest to Forlando; that Appellant was not truthful; and that Forlando had done nothing wrong in his 4-year effort to reinstate Cannon and Dallas as trustees of the 2000 Trust. [*Id.*] It is further complicated by the fact that Bauknight and SWB continue to act for Forlando/Terry in Richland 4900 after Terry's transfer to Forlando; after John Donsbach, Esq., appeared for Terry/Forlando; and even after Donsbach was "terminated" by Terry/Forlando, a device Terry and Forlando, aligned with Cannon and Dallas, have used to change positions since 2008.

Plaintiffs identify only causes of action set out in the Forlando Federal suit and this case. They do not attempt to identify what issues they assert are precluded by the decision in the Federal case. Because the issues in the two cases differ, the Federal Court did not directly determine any issue common to Case 4900.

c. Summary Judgment Should Not have Been Entered when the Court Found a Broad Stay Precluded Proceeding with Discovery and other Matters.

In December 2017, Judge Early denied Appellant Pope's motion to lift the automatic stay after her appeal of the lower court's order dropping the AG as a party, finding that the appeal was broad and operated to stay all matters in this case. Nonetheless, a year later the lower court proceeded to deny reconsideration of its order granting summary judgment to all Respondents (including the AG), giving rise to this appeal. It was prejudicial for the lower court to proceed with this order where Appellant Pope had been deprived of the ability to proceed with discovery and other matters which would have affected the court's grant of summary judgment.

d. Summary Judgment was Premature Except for Appellant's Motions as to Some Plaintiffs.

Summary judgment to Respondents herein was premature, as Appellant Pope had not had a full and fair opportunity to conduct discovery on her counterclaims. Pope and Buchanan, who was also named as a Defendant herein, timely answered and asserted counterclaims against all Respondents for:

1. Abuse of Process;
2. Civil Conspiracy;
3. Fraud Under S.C. Code Ann. Section 62-1-106;
4. Attorneys' Fees; and
5. Intentional Interference with Contract.

Respondents defaulted on the counterclaims but were relieved from their default by Order of the Honorable L. Casey Manning, dated October 12, 2015.

Appellant Pope noticed the depositions of several Plaintiffs beginning in Spring 2011, but Respondents refused to appear, instead moving for protective Orders on all deposition notices issued by Pope or Buchanan. The first Respondent's deposition was taken in December 2012, and another was deposed in January 2013. Beginning in March 2013, Respondents sought a stay of this action related to the alleged "judicially created conflict" of SWB, which has been sole counsel of record for all Plaintiffs since the commencement of this case. [Ltr. of Gende, dtd. 3/27/13] As a result of their counsel's asserted conflict, Respondents again refused to appear at depositions until the stay request was lifted on April 8, 2016. [R. 151] Plaintiff Tommie Rae Brown was deposed on June 16 and 17, 2016. [R. 1565] Lt. Gov. Henry McMaster, in his individual capacity, was deposed on August 18, 2016. [R. 916-8] Other Respondents have refused to show up for properly noticed depositions and others have yet to be scheduled and taken. [Non-Appearance fo Venisha, pp. 1-3, Legacy Tr., pp. 1-3] Indeed, discovery in this action was begun anew by Order of the circuit court on April 8, 2016. [R. 151] Each deposition that was taken by counsel for Appellant Pope after the lifting of the stay was incredibly difficult to schedule and subject to motions for protective orders that were never heard by the circuit court, thereby preventing Pope from even taking those depositions in full. [R. 739-40]

Appellant Pope identified dozens of potential witnesses, and Respondents previously provided a witness list naming more than a dozen witnesses. [R. 1454-5] Because of the extraordinarily slow and difficult process of obtaining party depositions, no non-party depositions had been taken at the time the circuit court entered summary judgment. [R. 739-40] Written discovery is also not yet complete—including outstanding discovery asking the Respondents to fully identify the damages sought in this action.

Because Pope has not had a full and fair opportunity to undertake discovery, particularly the depositions of certain Respondents, their experts and other key witnesses, and summary judgment was thus premature. "[S]ummary judgment should not be granted until the opposing party has had a full and fair opportunity to complete discovery." *Baughman v. American Tel. and Tel. Company*, 306 S.C. 101, 112 410 S.E.2d. 537, 543, (1991).

e. Buchanan and Appellant Demonstrated Facts to Support Each Cause of Action.

1. **Civil Conspiracy**

Buchanan and Appellant met all of the elements of civil conspiracy necessary to recover.

In. *Lyon v. Sinclair Refining Co.,* 189 S.C. 136, 200 S.E. 78 (1938), and the "essential consideration" that the "primary purpose or object of the combination is to injure the plaintiff." *Lee v. Chesterfield General Hosp., Inc.* 289 S.C. 6, 13, 344 S.E. 2d 378, 383 (Ct. App. 1986). That was clearly the case with the $79 million devaluation and other acts. [R. 1350]

2. **Abuse of Process**

As to each Respondent all of the elements of Abuse of Process have been met, namely (1) an ulterior purpose and (2) willful acts in the use of the process not proper to the conduct of the proceeding. *Argoe v. Three Rivers Behavioral Center and Psychiatric Solutions*, 388 S.C. 394, 697 S.E. 2d 551, 555 -556 (2010).

The ulterior purpose was not to replace Buchanan and Pope, who had been replaced, but to use the mighty power of the State/Attorney General, through Bauknight and the McMaster Legacy Trust, to so damage their reputations and careers with false, fabricated accusations that they would be forced to abandon their duty to appeal a settlement which dismembered The James Brown "I Feel Good" Charity.

3. **Fraud Under §62-1-106**

§62-1-106 of the South Carolina Probate Code directly applies to this action and states in relevant part:

> Whenever fraud has been perpetrated in connection with any proceeding or an any statement filed under this Code or if fraud is used to circumvent the provisions or purposes of this Code, any person injured thereby may obtain appropriate relief against the perpetrator of the fraud or restitution from any person (other than a bona fide purchaser) benefitting from the fraud, whether innocent or not, but only to the extent of the benefit received. [Emphasis supplied]

Plaintiffs knowingly engaged in the false heirs determination [R. 1001]; false claims about termination rights [*Id.*]; false claims about Buchanan and Pope; and other known false representations to the Courts, beginning before the commencement of this action, and continuing until the appeal was filed [*Id.*, R. 998; 1004; 1012]. Buchanan and Appellant were clearly damaged thereby. [*Id.*, R. 1005; 1006; 1013]

In addition, the fraud on the Supreme Court, following the claimed zero value of Brown's Right of Publicity and Tangible Person Property to the IRS and the securing of an ill-gotten "refund" proximately caused injury to Defendant as required by the Code. [*Id.*, R. 1005, n. 5]

Even innocent former minors have benefitted from the §62-1-106 termination rights and valuation fraud on multiple courts made on their behalf. [*Id.*, R. 999, 1002, 1013]

Forlando's Federal lawsuit, referenced in a footnote, bears no relation to Richland 4900, except that Forlando and Bell have both engaged in deception in two cases. [R. 1004] For example, Forlando has agreed under oath that offers of $150 Million were available in late 2008 and that the $4.7 million claim is "bogus" while Bauknight, his (undisclosed) agent in Richland 4900, told the Supreme Court that the $4.7 million value claim was correct. [R. 1005, 1013] In short, Forlando and Terry have repeatedly defrauded the Court, and been supported and joined in by the Legacy

Trust and its Beneficiary Plaintiffs, including with the false Grammy Claim; have benefitted from the fraud; and Buchanan and Appellant have been damaged. [R. 1005-1013]

The AG has joined, with knowledge of its falsity, the false $4.7 million claim to the Supreme Court and other Courts. [R. 1005-1006]

From January 2011 until after the *Wilson* decision in 2013 Respondents all secreted from the Court the SWB contract and made false statements about its contents. [R. 1005-1007]

4. Intentional Interference

Appellant, like Buchanan, demonstrated that each of the element of tortious interference with contractual relations had been met, namely: 1. The existence of a contract; 2. Knowledge of the contract; 3. Intentional procurement of its breach; 4. The absence of justification; and 5. Resulting damages. *Kindard v. Crosby*, 315 S.C. 237, 240, 433 S.E. 2d 835, 837 (1993) [*Id*, pp. 17, 18]

Buchanan's and Appellant's appointment, while by the Court, was under the Will and 2000 Trust of James Brown, with all authority and duties as if they were originally appointed by James Brown (but with no duty to appoint a third trustee). The Will and 2000 trust give Buchanan and Pope full authority to contract with the Estate/2000 Trust for reasonable compensation, which they did. [R. 3-6]

There was no attempt to make a contract with the Court, as suggested in the summary judgment order. What Buchanan and Pope did was present the contract they had made with the Estate/2000 Trust by petition for approval and at the December 21, 2007 hearing.

At the December hearing Tommie Rae's lawyer even praised Buchanan and Pope. The Aiken Court polled the AG and all Interested Parties, through counsel. None objected. The Circuit

Court approved the payment contract and found it reasonable in a January 8, 2008 order which also approved their SA fee.

The AG and all other Beneficiary Plaintiffs were parties to the proceeding and received the payment order in January 2008. None sought reconsideration. None appealed.

The contract existed. The Plaintiffs had knowledge of the contract. There was no justification for filing a 2010 Richland County complaint to address a January 2008 Aiken order they did not appeal. The damage is undisputed. Buchanan was forced to accept far less than what he was owed. Nine years after May 26, 2009, Appellant has not been paid any PR/Trustee commission.

The Circuit Court in the summary judgment order simply overlooked or ignored the general rules of contract and the clear record before the Aiken Court as to Buchanan's and Appellant's contract [*Id*, 17, 20] ; Buchanan's and Appellant's Petition for Approval of the Contract; the December 2006 hearing on the Petition; and the Payment Order approving the contract. [Id, 3,9, Ord. 1/8/08]

III. The Acts After the May 29, 2013 Announcement Deprived Buchanan and Pope of their Due Process Rights

On May 29, 2013, the Circuit Court and AG both knew of the intention of Tommie Rae and other Richland 4900 Plaintiffs to ignore *Wilson v.* Dallas and reinstate the 2008 settlement. By September 2013, Bauknight had called Pope a liar and defended the 2008 settlement while Afterman assisted Tommie Rae in siphoning off copyrights belonging to the 2000 Trust. [R. 1016-27] In 2015 when asked, the Circuit Court declined to advise the Supreme Court of the announced intention to reinstate the 2008 settlement. [R. 1543-5] The Circuit Court has issued numerous orders which advance the May 29, 2013 announced intention to dismember James Brown's estate plan. [Notice of Appeal, all Exhs.] This has deprived Buchanan and Appellant, who had defended the

estate plan, of the level playing field to which they are entitled under the Due Process clause. U.S. Const. Amend. XIV, Section 1.

CONCLUSION

For the foregoing reasons, Appellant Pope respectfully asks that this court correct the parties to this action; find that orders appealed from were erroneous; reverse the orders; and remand the case with instructions to the circuit court to dismiss the complaint and proceed with discovery and trial on Appellant's counterclaims.

Respectfully submitted,

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