

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

**SC Court of Appeals**

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Case No. 2013-CP-02-1337

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Adele J. Pope, Appellant

v.

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

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**BRIEF OF APPELLANT**

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## STATEMENT OF ISSUES ON APPEAL

- II. The lower court erred in Failing to Consider the Deposition Testimony of Numerous Witnesses Offered on Reply.
- II. The Lower Court Erred in Admitting an Offer Made by Appellant to Settle this Case and Richland 4900 Into Evidence.
- III. The Lower Court Erred in Making Findings which Conflict both with its Own Previous Rulings and Holdings of the Supreme Court in *Wilson v. Dallas*.
- IV. The Lower Court Erred in Accepting Respondents' *Ex Parte* Filing of their Litigation Billing Records; Not Allowing Appellant to Review Them; and Destroying the Records after the Court Received and Reviewed them.
- V. The January 16, 2019 Order is a Result of the Circuit Court's Bias Against Appellant, which Began Just After the *Wilson v. Dallas* Decision.
- VI. The Lower Court Erred in Failing to Disqualify Bauknight and his Counsel

## STATEMENT OF THE CASE

On May 29, 2013, Russell Bauknight, through William Newsome, Esq., served Appellant Adele Pope with a notice of disallowance with notice of impending bar of a joint claim Appellant and Robert Buchanan, Jr. had presented to Respondents, the Estate and 2000 Trust of entertainer James Brown (Estate/2000 Trust), on July 17, 2009. [R. 356-359; 665]

Newsome served the notice at the conclusion of a status hearing held by the Honorable Doyet A. Early, III<sup>1</sup> following the May 8, 2013 decision of the South Carolina Supreme Court in *Wilson v. Dallas*, 402 S.C. 411, 743 S.E.2d 746 (2013). The notice stated that the disallowance was issued by Bauknight as special administrator (SA) of the Estate. [R. 665 (Notice, p. 1)]

The notice stated that the joint claim Appellant and Buchanan had filed in 2009 was disallowed in its entirety, and asserted that there was no “no way” Buchanan and Pope could have earned the amount they sought in the claim. [R. 665] The notice stated that Buchanan’s portion of the claim had been settled. [R. 665] The notice also stated:

Further, your claim is based on an overinflated, unsubstantiated and self-serving valuation of the probate estate as of the date of Mr. Brown’s death.

You petitioned the court and obtained an Order dated January 8, 2008 allowing payment to yourself and Mr. Buchanan toward your commissions for service as Special Administrators in the amount of \$317,000, plus costs. This payment may now be subject to disgorgement pursuant to the Supreme Court’s opinion in this matter dated May 8, 2013, in which the Court found that you were properly removed as Co-Personal Representative and Co-Trustee for cause.

This claim is disallowed on the basis that the requested fees and commissions were not earned and therefore are not due . . . and that the Estate is entitled to offset for any damages suffered as a result of any maladministration during

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<sup>1</sup> The Honorable Doyet A Early, III is referred to herein as the “circuit court”, “Aiken Court” or “Judge Early.” Judge Early presided over all Aiken County James Brown circuit court matters from February 2007 until his retirement in February 2019.

your service as Co-Personal Representative and Co-Trustee.

Failure to protest the disallowance of your claim, (that is, failing to file your petition for allowance...in the Probate Court and failing to commence a proceeding on the claim within thirty days after the service of this Notice of Disallowance . . .), shall result in your claim being forever barred. R. 665 (Disallowance, p 1)

On June 10, 2013 Appellant filed the complaint in this case (Aiken 1337) in the Probate Court for Aiken County. [R. 666-729] The complaint attached and incorporated a petition for allowance of claim, which seeks:

All Amounts Requested in the Original Claim and All Relief requested in the Complaint of Which the Petition for Allowance is an Exhibit, all of which is incorporated herein by reference. [R. 730 (Petition for Allowance, p. 1)]

The complaint named Buchanan as an “Interested Party” [R. 667] It sought individual relief against Bauknight, including attorneys’ fees and costs of this action. [R. 667, 728, 729]. Restating portions of the claim and documentation presented in 2009, the complaint alleged that Appellant is entitled to a partial personal representative and trustee (PR/Trustee) fee in the liquidated amount of \$1,473,550 which was due on May 26, 2009 under a court-approved contract she and Buchanan have with Respondents; the unpaid portion of her 2007 SA fee of \$47,972; and interest on both amounts as set out in an order of the Aiken Court dated January 8, 2008 (Payment Order). [R. 669] The complaint and claim seek attorneys’ fees and costs. [R. 728]

The 2013 complaint alleged in part:

This case now stands – alone or consolidated with the Dallas Claims Case – as the appropriate and efficient forum under *Wilson v. Dallas* to determine:

(1) The Fiduciary Commissions, if any, of Russell; Adele; Bob; [Albert] Dallas;

...[David ] Cannon and..[Alfred] Bradley<sup>2</sup>;

(2) The payment/disgorgement of attorneys' fees paid or promised by Russell;

(3) The payment of attorneys who served Bob and Adele, [R. 669 (Complaint, p. 3)]

The complaint describes the service of Buchanan and Pope from March 7, 2007 through May 8, 2013, and alleges breaches of fiduciary duty of Bauknight under the Will and 2000 Trust.

It contains more than twenty headings, including:

Background Facts – James Brown [R. 671-677];

Bob and Adele's Service [R. 677-679];

The Crisis at Beech Island (Mr. Brown's Home Estate) [679-680];

Estate and Income Tax Issues [R. 680-681];

The Declaratory Judgment Case [R. 682];

Tangible Personal Property [R. 682-683];

The Christie's Sale [R. 683-684]

Application for Recognition of the "I Feel Good" Trust and Steps to Correct Tax Problems caused by the Cannon/Dallas Group [R. 684-685];

Protection of Publicity Rights and Royalties [R. 686-687]

Royalty and Related Clearance Requests [R. 687]

Engaging Entertainment & Exempt Organization, Other Counsel [R. 687-691]

Defense of Claims Against Estate/Trust [R. 692 (Comp. p. 26)];

Preventing Forlando's<sup>3</sup> Attempt to Enjoin the 2000 Trust and Return the Cannon Group as Trustees [R. 693-697];

The Effect of Service as PR/Trustees on Bob's and Adele's Careers; [R. 697-698]

The August 10, 2008 Settlement and Bob's and Adele's Duty to Appeal [R. 699-701];

Russell, Case 4900 and the Attorney General's Office [R. 701-702];

Pursuing the Cannon Appeal [R. 703-704 (Comp., pp. 37, 38)];

Defense of the Estate Plan and Other "Family" Claims; [R. 704-705];

Sale of the Joseph Brown House; [R. 705-706];

The March 2009 Offer of Compromise [R. 706-711]

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<sup>2</sup> Bradley served as a trustee under Brown's 2000 Trust from its creation until his resignation on November 20, 2007. [R. 693 (Compl., p. 27)] He died in 2010, and was paid no personal representative or trustee (PR/Trustee) commission. [R. 2922 (Memo PSJ, 7/2414, p. 37)] He is referenced herein only when necessary.

<sup>3</sup> Unless required by the context, claimed family members of James Brown will be referred to by first names only. Forlando is the son of Terry, a son of James Brown.

Bob and Adele Provide Assistance with the Transition of Management. . . Pending Appeal  
[R. 711-713]

The Duty to Defend James Brown's Right to Control Succession in his Estate,  
Grandchildren's Trust and the "I Feel Good" Trust [R. 713-714]

The complaint alleges that Bauknight has a conflict of interest because of his loyalty to the James Brown Legacy Trust (Legacy Trust) and its beneficiaries, and his rejection of offers to minor beneficiary Plaintiffs of Richland County Case 2010-CP-40-4900 (Richland 4900) while preventing them from having a guardian *ad litem* (GAL). [R. 669-670; 713] It also alleges that Bauknight failed to curb fraud on the court of Forlando and Terry. [R. 714-721]

The complaint asserts that Bauknight, acting under color of State Authority, has falsely accused Buchanan and Pope of the federal crime of intentionally overstating the value of Brown's music empire by \$79 million in IRS filings for the improper purpose of obtaining a \$5 million commission. [R. 721] The complaint also asserts that Bauknight improperly involved the Estate/2000 Trust in FOIA suits against its interest. [R. 722-723]

The complaint asserts that the 2012 Richland 4900 settlement with Buchanan should be declared void, and asserts:

271. The State is now asking to be out of Case 4900. On information and belief, Russell should not use Brown's money to fight a fight which did not need to happen. [R. 724 (Complaint, p. 58)]

The complaint asserts Bauknight made incorrect claims to the Supreme Court, including:

1. Bauknight claimed the Estate/2000 Trust has no corpus "to speak of;"
2. Bauknight claimed Copyright Termination Rights are "all this case is about;"
3. Bauknight claimed Tommie Rae's Elective Share claim was a "slam dunk;"
4. Bauknight claimed that if Tommie Rae and her son James did not get the Termination Rights, the settling parties would;
5. Bauknight claimed that the value of Brown's music empire was less than \$4.7 million.  
[R. 717; 726-727]

The complaint seeks a discretionary amount for the period November 20, 2007 through June 13, 2013 which, with the \$1,473,550 liquidated amount, would not exceed approximately \$2.8 million.<sup>4</sup> [R. 734] The complaint demanded a jury trial, and attachments to the complaint provided additional information.[R. 730-736] With the complaint Appellant filed a motion and supporting documentation requesting expedited relief and the appointment of a SA/special trustee (SA/ST) to represent the Estate/Trust in Appellant's claim. [R. 737-740]

On June 12, 2013 the case was removed to the Aiken Court of Common Pleas by the Honorable Sue H. Roe, Probate Judge. [R. 215]

On June 13, 2013 Judge Early issued an administrative order related to this case and other James Brown cases. [R. 794] The order directed that Buchanan and Pope not participate in any James Brown case other than their own fee claims. It directed the Aiken Clerk of Court to return any document filed by Buchanan or Pope in a case other than their fee claims. [*Id.*]

On July 6, 2013 Respondents and Bauknight, individually, moved to dismiss the complaint in this case. [R. 741]

In November 2013 Appellant moved for summary judgment. [R. 752-761; R. 762-768].

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<sup>4</sup> Exhibit 4 to the complaint clarifies that the total fee sought in June 2013, including partial PR/Trustee fee contract amount through May 26, 2009; interest to June 2013; and the additional discretionary fee covering her service from November 2007 until May 8, 2013 did not exceed approximately \$2.8 million. [R. 734]

By orders dated January 7, 2014 and March 10, 2014 the circuit court dismissed all claims against Bauknight, individually, and all claims against Respondents except for the relief sought in the petition for allowance of claim.<sup>5</sup> [R. 219; 235] Respondents were directed to answer, and did so on January 17, 2014. [R. 770-771]

In May 2014 Appellant moved for partial summary judgment as to the \$47,972 unpaid 2007 SA fee; \$1,473,550 partial PR/Trustee fee; and interest on both amounts. [R. 851]

Appellant provided documentation for the summary judgment motions and asserted:

...d. Failure to grant the requested relief to Plaintiff where the Court has double approved a \$500,000 payment to [Buchanan], whose service to the Estate/2000 Trust was always joint with Plaintiff, would violate movant's Due Process, Equal Protection and Probate Code Rights. [R. 853]

Respondents opposed the partial summary judgment motion; filed a copy of the complaint in Richland 4900; and stated:

... [Pope] seeks a ruling that the existence of any pending litigation by Defendants against Plaintiff . . . should not delay payment of her fees. . . Defendants take the position that . . . , any award of fees to the Plaintiff at this point in the litigation is extremely premature. R. 938 (Return, Estate/2000 Trust, 6/20/14, p 2).

And:

Defendants acknowledge that under the [Payment Order] [Pope] and Mr. Buchanan were to be paid an award of fees and costs related to the period prior to November 20, 2007, subject to interest at the legal rate if not paid within 60 days of the January 8, 2008 Order. Defendants acknowledge that such payment was not made to Plaintiff. . . [viewed under Rule 56 ]. [Defendants] are entitled to money damages in [Richland 4900] in an amount that exceeds Plaintiff's claim for [SA] fees. Therefore partial summary judgment as to the payment of [SA] fees should be denied. R. 944 (Return, Estate Trust, 6/20/14, at p. 8)

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<sup>5</sup> Efforts to overturn the dismissal orders were unsuccessful, and the dismissal were affirmed in opinions with no precedential value. [R. 772; 840-846; 238.]

And:

Defendants acknowledge that the [Payment Order] found it appropriate and reasonable for Plaintiff and Mr. Buchanan to “continue to receive fees and costs on an hourly basis. . . .

... The basis of the disallowance followed the Supreme Court’s opinion in *Wilson v. Dallas*...

The Defendants continue to take the position that Plaintiff is not entitled to fees, commissions, or costs for the period from November 20, 2007 through May 26, 2009. . . R. 946-947 (Ret., Estate, 6/20/14, pp.10-11)

On June 30, 2014 Appellant filed documents asserting that Respondents’ music manager, Peter Afterman, was helping Tommie Rae and her son James secure U.S. royalties devised by James Brown to Respondent 2000 Trust. [R. 2900-2932; 2889; 2937-2938] Appellant requested an expedited summary judgment ruling and alleged:

Without asking for offset in its Answer, the Defendant Estate/2000 Trust now asks this Court to further damage Plaintiff by not paying her even funds earned in 2007. This is manifestly unjust under the facts. R. 2932 (Memo., 7/2/14)

In August 2014 Respondents moved for a confidentiality and protective order, which Appellant opposed. [R. 849; Mot. 8/6/14; Aff. Pope, 9/6/14, pp; Email, Jowers, 2/13/08; Email, Jones, 5/20/10]

On August 19, 2014 Respondents moved for partial summary judgment that Plaintiff was not entitled to any compensation or costs after May 26, 2009. [R. 954]

By order dated September 8, 2014 the Aiken Court denied Appellant’s motion to strike an affidavit of Bauknight. [R. 240]

In October 2014 a hearing was held on the summary judgment motions. [Receipt., Clerk 10/28/10; Ltr. Pope to Jg., 10/27/14, pp. 1]

In November 2014 Judge Early advised the parties that he and the Richland 4900 court had *sua sponte* determined to order a joint mediation of this case and Richland 4900 [Email chain, 11/14]

By order dated December 2, 2014, the Aiken Court ruled:

Plaintiff Adele Popes motion for partial summary judgment for attorney fees and Russell L. Bauknight, Trustee cross motions for partial summary judgment are denied – material issues of fact exist which preclude summary judgment. R. 242

Appellant moved to alter, amend or vacate the December 2 order. [Mot., filed 12/12/14]  
The motion was denied. [Ord., 1/20/15]

On January 13, 2015 Appellant filed a motion to require Bauknight and principals and successors of the Legacy Trust, a Richland 4900 Plaintiff, to attend the announced mediation. The motion attached the following:

1. A letter of Lewis & Babcock, FOIA counsel for the Legacy Trust, dated January 6, 2013, asserting that the Legacy Trust had no legal existence since May 8, 2013; [R. 985 (Ltr., L&B, 1/6/15)]
2. An email chain among Powell Goldstein (PG) law firm, Sr. Asst. AG Sonny Jones, and others dtd. November 15, 2011. [R. 986-991] Email, Chain, 11/15/11, pp. 1 – 4; R. 980-984 (Motion Pope to Require, 1/13/15)]

On January 14, 2015, the Aiken Court signed the joint mediation order [R. 243]

In March 2015, the circuit court orally denied Appellant's motion to require principals and successors to Richland 4900 Plaintiff Legacy Trust to attend mediation.

On May 6, 2015 the Aiken Court issued a status report to the Supreme Court related to the James Brown cases pending in Aiken County. [R. 993-999].

Among other statements, the Aiken Court reported that Bauknight had reduced James Brown's debt to the New York Teachers' Association (TIAA) from \$14 million to zero, and that the Court believed Appellant's 2007 SA fee claim was \$2 million and her PR/Trustee commission claim \$5 million. [R. 996-999] The Aiken Court stated it had determined that Tommie Rae was James Brown's spouse, and that a consent order confirming that Tommie Rae's son James was a child of James Brown was being circulated. [R. 994-995] The Court stated that no settlement had been presented to the Court, and that the Court was not aware of any discussions of a settlement since the *Wilson v. Dallas* decision. [R. 998]

Buchanan and Pope were not invited by the Supreme Court to respond to the Aiken Court's status report, and did not. Several Richland 4900 Plaintiffs did file responses, each of which asserted that portions of the status report were erroneous. [R. 1000; 1003; 1012]

The joint Richland 4900/Aiken 1337 mediation was held in October 2015 and did not result in a settlement. [R. 992]

On January 22, 2016 Appellant filed a status report. [Status Report, 1/22/16, pp. 1-6, w/letter mailing to Clerk, Judge Early]

On February 23, 2016 Appellant filed a motion asking for certain relief, clarification and judicial notice. [R. 1020-1035]

On March 2, 2016 Respondents moved to quash notice of the deposition of James Richardson, Esq. scheduled for March 4, and sought sanctions against Appellant, but the deposition took place and Richardson testified (by deposition) at trial. [Mot., 3/2/16, pp. 1-2]

In March 2016 the Supreme Court assigned Richland 4900 and two Richland County James Brown FOIA cases to Judge Early, and provided that he have statewide jurisdiction over the three cases. [Ord. 3/24/16]

In April 2016, Richland 4900 Plaintiffs and Respondents moved jointly to consolidate discovery in Richland 4900 and Aiken 1337. [Mot., 4/11/16; Return, Mot., pp. 1-16] Appellant opposed the motion, which was not granted. [R. 247]

In 2016 and 2017 the Attorney General moved to prevent depositions of various Attorney General staff members, and also moved for protective orders related to depositions taken, including those of now-Governor McMaster, Sr. Asst. Attorney General Havird “Sonny” Jones (AG Jones), Asst. Attorney General Mary Frances Jowers (AG Jowers) and others. [R. 1038-1039] Over objection of Appellant, the Aiken Court granted a number of protective orders to the Governor, the Solicitor General, other AG staff, SA/ST David Sojourner, Esq., Kenneth Wingate, Esq., and others. [R. 1112-1120; R. 1107-1108; Pl. Ret/Opp.Mot. Quash Subpoenas, Depos. AG Matthews, AG Waters, McIntosh and Cook AG Smith ,etc, p. 1- 4; Mot., 1/17/17; Mot. 1/23/17, pp. 1-4; R. 1112; R. 268; 272; 262 (Orders, Jg. Early, 6/16/17, 6/9/17, 1/20/17, 3/1/17)]

On September 1, 2016 the Aiken Court filed a confidentiality order and an administrative order, and Appellant moved to alter, amend or vacate both. [R. 249; R. 1047]

In September 2016 Appellant moved to disqualify Bauknight and his counsel in this case only, and for related relief, based on his continued service to Tommie Rae and other Legacy Trust beneficiaries. [Mot. to Disqualify]

On October 11, 2016 Appellant disclosed her experts and a summary of their opinions, and on November 28, 2016 Respondents disclosed their experts. [R. 1054-1080]

In October 2016 now-Governor Henry McMaster was deposed. [R. 2235-2236]

By order dated December 16, 2016 and filed January 3, 2017, the circuit court denied Appellant's motion to disqualify Bauknight and his counsel in this case only, and for related relief. [R. 261] Appellant's motion to alter, amend, or vacate the order was denied. [R. 262; R. 261]

On January 3, 2017 Appellant served a motion and supporting affidavit related to Respondents' experts. [R. 2948-2967; Mot. 1/3/17, pp. 1-8]

On January 4, 2017 Richland 4900 Plaintiffs and Respondents moved jointly to consolidate expert discovery in Richland 4900 and Aiken 1337 and for a stay. [R. 1089-1094] Appellant opposed the motion, which was not granted.

On May 23, 2017, after the close of discovery, Appellant moved for partial summary judgment as to the \$47,972 SA fee; \$1,473,550 partial PR/Trustee commission; and interest on the two amounts. [R. 1136] The motion was supported by depositions of Governor McMaster; Plaintiff's designated intellectual property (IP) expert Wallace Lightsey, Esq.; Respondents' designated termination rights expert Roger Miller; Attorney General Alan Wilson; former Chief Deputy Attorney General John McIntosh; Plaintiff's designated trust and estate expert James Hardin III, Esq.; Plaintiff's designated trust and estate expert W. Steven Johnson, Esq.; Thomas Pope III, Esq., counsel in James Brown FOIA cases; Plaintiff's designated valuation expert R.B. Alexander; Plaintiff's designated termination rights expert Wm. Jeffrey Smith, Esq.; Plaintiff's designated charitable foundation expert Stephen J. Lambert; Plaintiff's designated "adverse" trust and estate expert Sojourner; Plaintiff's designated "adverse" trust and estate expert Rita Caughman, f/k/a Cullum; AG Jones; AG Jowers and others. Approximately fifteen of the witnesses

and experts, some of whom were designated as both fact and expert witnesses, testified by deposition or in person at trial. [R. 1054-1081, R. 2527, R. 2510, Lambert, p. 1]

In August 2017, after the close of discovery, Respondents designated Louis Levenson, Esq., as a fact witness, and he was deposed during trial. [R. 1233]

On August 10, 2017 Respondents moved to transfer this case to the non-jury roster, and the motion was granted over Appellant's objection on August 18, 2017. [R. 1149; 1161-1172; 287-288]

By order dated August 16, 2017 the Aiken Court awarded Appellant summary judgment as to the \$47,972 with interest at 8 ¾% from March 8, 2008 as set out in the Payment Order, and denied the remainder of the relief requested. [R. 285]

Respondents moved for consideration of the SA fee order, then moved to pay the judgment into the Court. [R. 1208; R. 1242] The amount was not paid when this appeal was filed.

Following the Levenson deposition, Appellant moved to lift the confidentiality designation as to the Bauknight/Peter Afterman \$4.7 million at-death valuation. [R. 1212] Respondents opposed the motion and moved for sanctions against Appellant. [R. 1221]

This case was tried before the Aiken Court on September 5-7, 2017; December 14-15, 2017; February 20-21, 2018; April 19-20, 2018; May 8-9, 2018; and June 4-5, 2018. [R. 1461-1467] Prior to trial, counsel appeared for Appellant, who had served *pro se* since the commencement of the action. [Not. App. 9/4/17]

After Appellant's case in chief, Appellant's counsel objected to any testimony about Bauknight's service based, in part, on the answer of Respondents, but the testimony was allowed. [Return, 5/7/18, p. 3] Appellant's objections as to all rebuttal testimony were preserved, as were

objections to other testimony and rulings, including cross examination of Appellant about a confidential settlement offer to Respondents and other Richland 4900 Plaintiffs. [R. 2113-2114]; the failure to qualify Appellant's designated expert R.B. Alexander, Alexander [R. 1938-1942]; the Court's ruling not to accept expert testimony of Wm. Jeffrey Smith. [R. 1905-1907]; the Court's ruling that Pope could not testify as an expert related to estates, trusts, the relationship of termination rights under Sections 304 and 203 of the Copyright Act and State probate and heirs proceedings, and other matters. [R. 1484-1487; 1960-1962] The Aiken Court also declined to admit several documents, including Appellant's compilation related to the 18-year history of the 2000 Trust. [R. 2039-2044, R. 3024-5]

In December 2017 the Aiken Court directed Defendants to file a memorandum related to the duty to defend James Brown's estate plan. [R. 1902] The Aiken Court also directed Respondents to file all of the Estate/2000 Trust's attorneys' fees, costs and litigation costs from May 26, 2009 through the first four days of trial, and ruled that it could be designated confidential. [R. 1902-1903]

In February 2018, after the Aiken Court allowed Respondents to present only a redacted copy to Appellant and a both complete and unredacted copy to the court, Respondents filed the records *ex parte* with the court only. [R. 1249-1257] Appellant moved to require disclosure of the *ex parte* filing. [R. 1249]

After reviewing the *ex parte* filing, the Aiken Court discarded the litigation records; and failed to preserve a copy for appeal. The Court then notified counsel that the order for production

was rescinded. [R. 1386-7; 1391]. Appellant preserved her objections both to the *ex parte* filing and the discarding of the records after review. [*Id.*]

On June 14, 2018 Appellant moved for partial directed verdict as to motion to alter the \$47,972 SA fee; the \$1,473,550; partial PR/Trustee commission; interest; and attorneys' fees. [R. 1258-1309] Respondents also moved for partial directed verdict. [R. 1258-1309]

After the parties submitted proposed orders, on January 7, 2019 the Aiken Court communicated with Respondents, with a copy to Appellant, regarding the proposed orders. [R. 1310 (Handwritten note of Jg. Early to Counsel, dtd. 1/7/19)]

On January 16, 2019 the Aiken Court issued its order denying reconsideration as to the \$47,972 with interest at 8 ¾% since March 8, 2008; denying Respondents' motions for sanctions; and holding that neither Buchanan nor Appellant was entitled to any compensation or reimbursement for costs for their service under the Will and 2000 Trust of James Brown from November 20, 2007 until May 8, 2013. [R. 292-352] Plaintiff moved to alter or amend the order. [R. 1312-1400]

On February 7, 2019 the Aiken Court issued a Form 4 Order denying Appellant's motion to alter or amend. [R. 353]

This appeal followed.

## Statement of the Facts<sup>6</sup>

Twenty years ago entertainer James Brown announced his intention to devise the bulk of his fortune to educate needy students in South Carolina and Georgia, which he did. [R. 1393] Ten years later, in 2009, the Aiken Court approved a deal brokered by the Attorney General of South Carolina which dismembered James Brown's estate plan and threatened about \$4 million a year in copyright royalties Brown devised to his charity. [*Wilson* at 444; R. 1390]. In 2013 the Supreme Court voided the Attorney General's settlement, but within days the Attorney General's fiduciary had been reinstated and the Aiken Court advised by challengers to Brown's Will of their plan to disregard the Supreme Court's ruling and reinstate the AG's settlement which gave them more than half of James Brown's assets and about \$2 million a year of income. [R. 1316]

Since James Brown's death in 2006, only two fiduciaries, Buchanan and Appellant, have defended Brown's estate plan as Brown's Will and 2000 Trust directed. [R. 1377] They did so from December 2007 until May 2013. [*Id.*] In 2019, in the case which is the subject of this appeal, the Aiken Court found that neither of them was entitled to any compensation or reimbursement for the costs for their 5 ½-year service to the Estate, 2000 Trust and estate plan of James Brown. [R. 351] In its order the Aiken Court criticized Buchanan and Appellant for defending the estate plan and for actions which the Court had reviewed and approved after hearings in 2007, 2008 and 2009. [R. 292-352] The Aiken Court praised the Attorney General's fiduciary, Bauknight, who had used funds of Brown's "I Feel Good" Charity to hire lawyers and experts to assist Brown's charity in its own dismembering. [*Id.*] The Court did so even though Bauknight's federal court filings during

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<sup>6</sup> Appellant incorporates the Statement of the Case as part of this Statement of the Facts.

the trial showed that the music empire Bauknight and the South Carolina Attorney General valued at \$4.7 million had spent tens of millions of dollars since 2007 on litigations costs. [R. 1392] Twenty years after Brown made his charitable intentions clear, not a penny had gone to educate needy students.

#### **Brown's Voice Tape of His Intentions, the TIAA Loan and the 1999 Estate Plan**

In 1999 James Brown made and preserved a voice tape of his intentions to create the "I Feel Good" Charity for needy students. In June of that year Brown executed his first will and trust carrying out his plan. Four days earlier Brown had borrowed \$26 million from TIAA, and pledged the royalties from 850 of his copyrights as collateral. Brown and financier David Pullman, who arranged the TIAA loan, valued Brown's worldwide music empire at \$100 million.<sup>7</sup> [R. 1392-1393]

#### **Brown Finalizes his Estate Plain with The James Brown 2000 Irrevocable Trust**

The following year Brown signed the 2000 Trust and his last will (Will) which leaves Brown's entire residuary estate to the 2000 Trust. When Brown died, a small "fractional share" of the 2000 Trust would be segregated to educate seven specific grandchildren to age 35, and the rest would go to the "I Feel Good" Charity for needy students. [R. 2578-2611] Tommie Rae and daughter Venisha were with Brown when he signed the estate plan, and witnessed a related document. [R. 1741] *In Terrorem* clauses strengthened Brown's direction that his fiduciaries vigorously defend against all challenges to his estate plan. [R. 2578-2586]

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<sup>7</sup> The 7.95% TIAA loan, is sometimes referred to as a "Bowie bond." [R. 1520 (Tr. p. 72)]

### **The First Six Years of the James Brown 2000 Irrevocable Trust**

For the first six years of the 2000 Trust's existence Cannon and Dallas managed Brown's music empire and Beech Island mansion and 60-acre home estate which had been deeded to the 2000 Trust. Brown earned an average of more than \$8 million a year, at least \$3 million of which was from copyright royalties. [R. 3026-7] Between 2003 and 2006 Brown earned \$18 million in performance revenues. [*Id.*]

The successful 6-year management of Cannon and Dallas was, however, overshadowed by the \$17 million Cannon took from Brown between 1999 and 2006, and the efforts of Dallas to help cover up Cannon's takings. [R. 1644-1645].

### **Brown Devises \$80 Million The James Brown "I Feel Good" Charity**

From Brown's death on Christmas Day 2006 until 2011 the record showed that Brown's worldwide music empire and other assets were worth at least \$100 million when he died; that his royalties had been \$3 million or more for a decade, and were increased by Buchanan and Pope to more than \$4 million a year; and that the TIAA loan, \$26 million in 1999, had been reduced to about \$15 million at Brown's death (about \$17 million less a \$2 million escrow). [R. 1558-9, 1709]

Brown's same assets, with a number of albums released after Brown's death; \$34 million dollars of claims resolved; and the TIAA debt reduced to less than \$10 million were delivered to Bauknight the day after Buchanan and Pope were replaced without a finding of cause as PR/Trustees on May 26, 2009. [R. 2756, 1800]

Brown's unchallenged 2007 I&A, prepared by the Estate's tax attorney, valued the music empire at about \$83 million (after the TIAA debt), even though some of the items were not on Schedule F, the schedule used to report them on the estate tax return. [R. 2636-9; Tr. p. 367]

Buchanan and Pope's unchallenged final accounting (reserving rights) showed that in May 2009 Buchanan and Pope delivered assets in excess of \$99 million to Bauknight, and that the TIAA debt was \$11.37 before the \$2 million escrow. [R. 2800-2805]

Under Brown's 2000 Trust and the estate tax return filed in 2008, at the time the assets were delivered to Bauknight about 1/42 of the assets and \$4 million annual income of Brown's 2000 Trust was ready to be used for education benefits for the seven grandchildren, and the Aiken Court had approved the distributions. [R. 149] The other 41/42, determined under the "fractional share" formula in Brown's 2000 Trust, would soon go to the "I Feel Good" Trust, which could start distributing \$3 million or more in scholarships for needy students each year. [R. 1383]

Buchanan's and Pope's IRS filings and Pope's testimony that Brown gave about \$80 million to the "I Feel Good" Charity were fully supported in 2009 and fully supported at trial by, among others, the original trustees; the Estate's first tax attorney; the Estate/2000 Trust's CPA; retired Judge Walter Williams; Dr. Terry Cox; and a number of family members, including Terry and Forlando who were part of two of three \$92 - \$102 million letters of intent to buy the James Brown assets. The \$80 million is also supported by Respondents' own experts.

At his death Brown's music empire had four principal components: the 900 copyrights; the right of publicity; the personal property; and the claims against the Cannon PR/Trustees, GT, Morgan Stanley and others. [R. 1410]

In a 2008 IRS filing Buchanan and Pope estimated the claims against the Cannon PR/Trustees, GT and others at \$10 million, and there is no evidence of another valuation. [R. 2662-3]

In 2008 celebrity auctioneer Darren Julien, and in 2018 Respondents' expert Laura Woolley, Julien's former colleague, valued Brown's 10,000 items of tangible personal property at as much as \$20 million. [R. 1395-6] The Christie's sale of just 350 of the 10,000 items in 2008 brought about \$800,000 despite active chilling of the sale by clients of Louis Levenson, Esq., Forlando, Dallas and others. [R. 1407]

The testimony of Respondents' expert Roger Miller places what he describes as Brown's "solid gold" catalogue of 900 copyrights at no less than \$45 million, and as high as \$80 million. [R. 1493; 1922-23] Miller testified that this amount must be reduced by termination rights, which may slowly affect the U.S. half of Brown's \$4 million annual royalty stream, but did not value the termination rights at death. Miller valued the termination rights of all heirs as of 2017, with certain assumption, at \$8.8 million, but leaves the valuation of termination rights of individual heirs to the lawyers. [R. 1915-21]

As the estate of Michael Jackson has shown, the value of a celebrity's right of publicity, even among experts, produces a wide range of opinions. While still SAs in 2007 Buchanan and Appellant asked the Aiken Court to approve the valuation of the publicity right and copyrights on the estate tax return together, using a multiple of 12 ½ - 14 times copyright royalties and ½ gross road show revenues. [R. 2640-46] This was consistent with a formula used in the estate tax proceeding of songwriter Harlan Howard, and accepted by the IRS, and no objection was made either by the AG or anyone else to the formula. [R. 2079-80] Cox, a branding expert who relied on outside investors for his valuation, placed the right of publicity at \$45 - \$50 million. [R. 2618-

24] Tax attorney William Hammond, like the Cox investors, assigned about half of the value of the music empire to the right of publicity.<sup>8</sup> [R. 1722-23; R. 2636]

Buchanan's and Pope's \$84 million value for the music empire as shown on schedule F of Brown's estate tax return was widely known within days of its September 2008 filing. It was also known to be the \$99 million less the \$15 million TIAA debt. [R. 1410-11] Brown's estate tax return was addressed both in the November 2008 temporary injunction hearing in the Forlando suit, and in the 7-day hearing in 2009 on the Attorney General's settlement. [R. 1789-90]

Retired Judge Walter Williams, a philanthropist, attorney and former member of the 2000 Trust's advisory board with extensive valuation experience, testified (by deposition) that \$100 million was low for Brown's assets. [R. 2400-05]

What is certain is that by the time Buchanan and Pope became PR/Trustees on November 20, 2007 a lot of people wanted Brown's music empire and the \$7+ million in royalty revenues Buchanan and Pope would bring before they were replaced as PR/Trustees eighteen months later. [R. 3027-27 (Plf. Chart)]

#### **The Attempted Sale of Brown's Music Empire and Challenges to Brown's Estate Plan**

Buchanan and Pope became SAs in March 2007, with limited oversight duties. [R. 7] In their first quarterly report they outlined all of the duties the Cannon PR/Trustees were ignoring

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<sup>8</sup> Working with Martin Cribbs, a promoter of deceased celebrities, and one of Brown's entertainment lawyers, in 2009 Buchanan and Pope secured a 2-year publicity rights contract with GreenLight which was projected to bring in at least \$1 million to \$2 million a year. [R. 2087-2089 (Tr. pp. 2149-2151)] It was rejected by the AG, the settling parties, and Bauknight. In 2013 a filing by James showed that Bauknight and Peter Aftereman had valued the right of publicity, the tangible personal property and the claims at or near zero in IRS filings. Neither Aftereman nor anyone who could validate the claimed \$4.7 million valuation appeared at trial. [R. 1410]

while trying to bring about a quick sale of the James Brown assets under a scheme known as the “October 18 Letter.” The sale would cover up Cannon’s takings and reap about \$5 million each for Cannon and Dallas; \$15 million for music manager Frank Copsidas; and \$5 million for the Greenberg Traurig law firm (GT). [R. 2099-3109] The Cannon PR/Trustees continued to pursue the sale and ignore their duties until all had resigned as of November 20, 2007. [R. 18-20], For the next three years they actively worked to undo their resignations and disrupt the operation of the Estate/2000 Trust. [R. 1971-72]

Within 10 days of becoming PR/Trustees Buchanan and Pope filed a Declaratory Judgment action to ask for court approval of an emergency plan to address the liquidity crisis in which the Cannon PR/Trustee left the Estate/2000 Trust. [R. 53-60] Over the next year, the Aiken Court conducted numerous hearing and approved many of the proposals in the plan. [R. 23; 30; 33; 34; 36; 38; 53; 61; 62; 65; 66; 86; 90; 96; 149.]

Within a year and a day of Brown’s death Tommie Rae, James and the Levenson clients had filed more than five lawsuits to secure Brown’s assets or challenge the estate plan all knew to be valid. [R.1598] The challenges to Brown’s estate plan were baseless, but required attention. [R. 1801] James refused a paid-for \$300 DNA test, which should have ended his lawsuit. [R. 1802-3]

### **The Attorney General Enters the James Brown Cases, and Stays**

In September 2007 the Attorney General, through AG Jones, entered the James Brown proceedings at the request of Cannon and Dallas, and stayed for more than a decade. [R. 1551 (Tr. p. 103)]

The testimony of Pope and other documents of Buchanan and Pope show how deeply two Attorneys General and more than six members of the AGs’ staff have been involved in the James

Brown Estate and 2000 Trust for a dozen years. Pope's testimony that they did so with little regard for the fiduciary responsibility they undertook for James Brown's assets or oversight of Bauknight is fully supported by the testimony (by deposition) and documents of Governor Henry McMaster, Attorney General Alan Wilson, Solicitor General Robert Cook, former Chief Deputy Attorney General John McIntosh, Sr. Asst. Attorney General Havird "Sonny" Jones, Sr. Asst. Attorney General Creighton Waters, Asst. Attorney General Mary Frances Jowers, and Attorney General auditor Sandra Matthews.<sup>9</sup>

### **The Attorney General's Alliance with Cannon, Dallas and Forlando**

On November 21, 2007, the day after Buchanan and Pope were appointed PR/Trustees, AG Jones asked them to resign. [R. 1670-71] From November 2007 until May 2008 the Attorney General, though AG Jones, supported Cannon, Dallas (and Forlando, who worked with them) in their relentless and partially-successful efforts to delay and disrupt virtually every aspect of the administration of the Estate/2000 Trust, either to be reinstated or to get \$10 million from a sale.

AG Jones delayed the engagement of counsel to seek redress for the \$17 million Cannon took. [Ord. 1/9/08] From January until April 2008 AG Jones refused to cooperate with the James

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<sup>9</sup> R. 2168-2231 (Cook Depos., pp. 8, 12 – 26, 29 – 75, 77-8); R. 2510-2526 (AG Jowers Depos., 5/3/16, pp. 1, 4, 5, 8 – 10, 13-15, 18, 24, 26, 31, 34-37, 40, 43, 45, 50, 61 – 63, 65 – 67, 73, 77, 80 -82, 84, 87, 88, 91, 95 97, 100, 102, 106–108, 112, 117, 124- 126, 130, 134, 136–138, 141, 142, 147 – 148, 154, 157, 158, 176, 180, 191, 193; AG Jowers, depos, 5/4/14); R. 2329-65 (AG Wilson, Depos., pp. , 1, 4, 5, 7, 10, 12, 15 17, 20, 23, 28, 31, 32, 34, 35, 41 – 43, 49, 53, 57- 59, 61- 63, 65, 67, 68, 70 – 72, 75, 76, 78, 80, 82, 84, 92, 94 – 97, 100, 103, 112, 115, 116); R. 2527-2571 (AG Jones, 5/5/16 Depos. pp. 3-5, 7, 14, 43, 44, 49, 50, 52, 54, 55, 61 – 63 65, 97, 114, 127, 130, 135, 138, 140, 143-146, 150 – 152, 154, 156, 157 – 159, 165, 169, 170, 171, 176, 185, 201, 2013, 225–227); R. 2485-2509; 2654-58 (S. Matthews, Depos. pp. 1, 3-8, 11-22, and Darren Julien Affidavit): R. 2235-2328 (Gov. McMaster, Depos, pp. 1,3,5,7,9,21, 23-25, 30 -42, 44-48, 52,53, 55 – 57, 61-65, 69, 71, 73, 74, 76,77, 79-90, 94 – 96, 99, 100, 102, 104-106, 108, 110, 113 – 115, 116, 117, 118, 120 - 124, 126, 131, 133-135); R. 2571-77 (AG Waters Depos., 2/9/17, pp. 1-5, 8-9, 14-18, 21, 24, 28, 30, 32, 35, 37, 39).

Brown 75<sup>th</sup> Birthday Television Special contract Buchanan and Pope made with the help of entertainment counsel Ray Gonzalez, causing the project to be unable to be funded. [R. 1633-34] In February 2008 Governor McMaster appeared with Forlando on WIS TV to attack Buchanan and Pope and support Forlando's federal suit to enjoin the 2000 Trust from taking any action until Cannon and Dallas were reinstated as trustees. [R. 1610-11]

#### **Multiple Orders Review and Approve Buchanan's and Pope's PR/Trustee Service**

In January 2008, facing challenges by the Attorney General and a federal injunction suit by Forlando, Buchanan and Pope asked the Aiken Court to conduct a hearing to review their appointments and service. [R. 96-145 (Ord. 4/8/08); R. 1599-1600] If both were not found to be ethical and appropriate, they asked the Court to allow them to resign in a way that would not help Cannon and Dallas return. [*Id.*]

In a 50-page order dated April 8, 2008, the Aiken Court reviewed in detail the entire SA and PR/Trustee service of Buchanan and Pope, and found all to be appropriate and ethical. [R. 96-145] Numerous other orders approved their actions. [R. 53, 61, 65, 66, 96, 149] AG Jones was not satisfied. Buchanan and Pope sought the help of philanthropist John Rainey, Esq. He arranged a meeting with the Attorney General. [R. 1643]

#### **The May 2008 Meeting With Attorney General McMaster and John Rainey**

On May 28, 2008 Buchanan and Pope met with Rainey and Attorney General McMaster to address the damage AG Jones was causing. [*Id.*] The meeting went well, and they agreed to work together to appoint a third trustee. [R. 1671-72] On July 30, 2008 Attorney General McMaster wrote approving Buchanan and Pope as permanent trustees. [R. 1638-39; 1679] But AG Jones had different plans.

### **The Attorney General Assumes Control and Dismembers the Estate Plan**

On August 10, 2008 the Attorney General, Tommie Rae and the Levenson clients met and agreed to replace Buchanan and Pope with a fiduciary they chose; dissolve Brown's trust to educate seven specific grandchildren; give the AG's (New) Charity about \$2 million a year and half of Brown's assets; give Tommie Rae about \$1 million a year and a quarter of Brown's assets in exchange for her termination rights proceeds, if any; give the Levenson clients about \$1 million a year and a quarter of Brown assets in exchange for their termination rights proceeds and personal property; put Brown's assets and the termination rights proceeds and personal property of the settling parties in the AG's Legacy Trust (Settlement Entity), to be 50% controlled by the AG and 25% by Tommie Rae (with 5% each by others); "stipulate" that Tommie Rae, James and five Levenson clients are Brown's heirs under state law and the Copyright Act; stop the Estate's DNA testing protocol for all settling parties; and use the Legacy Trust's assets and income to defeat the claim of Brown's other heirs and anyone challenging the AG's settlement deal. [R. 2711-14; *Wilson v. Dallas*]

### **Buchanan and Pope Defend the Estate Plan of James Brown**

From August 2008 until May 8, 2013 Buchanan and Pope took reasonable steps to defend the estate plan as required by Brown's Will and 2000 Trust. They tried to stop the AG's plan to transfer half of the assets and income to Tommie Rae and the Levenson clients, and another \$2 million a year and half the assets to the AG's (New) Charity. When they addressed the income, estate and excise tax problems, as well as the damage to Brown's estate plan, AG Jones assured the Court:

THE ATTORNEY GENERAL IS GOING TO...MAKE SURE  
IT IS TAKEN CARE OF AND WE HAVE CONTROL OVER [THE]

CHARITABLE TRUST AND SETTLEMENT ENTITY [Legacy Trust], SO WE'LL MAKE SURE THIS CHARITABLE TRUST SET UP UNDER THIS SETTLEMENT WILL BE CARRIED FORTH PROPERLY....

The testimony of Governor McMaster, Attorney General Wilson and Solicitor General Cook is that neither Attorney General knew about the creation or operation of the Legacy Trust/Settlement Entity which the AG has controlled since 2009. [R. 1314-15] Persuaded by AG Jones, however, in May 2009 the Aiken Court approved the AG's 2008 settlement. [Wilson]

**Buchanan and Pope Bring in \$7+ million in Royalties and Provide Other Benefits**

In addition to defeating \$34 million in claims against the Estate; defending against seven suits by claimed heirs; preventing a federal injunction sought by Forlando; and working with the IRS and CPA Sellars to address massive tax problems caused by Cannon and CPA Farr, Buchanan and Pope stabilized the royalty clearance process. [R. 1796; 1804-05; 2100-01] In eighteen months they approved 200 clearances and brought in over \$7 million, substantially more than \$4 million a year. [R. 3024-25; 2708] This was more than the \$3.5 - \$4 million brought in by Bauknight from 2009-2018. They also defended appeals taken by Cannon and Dallas through the initial briefs. [R. 1666-67] They secured IRS approval of the "I Feel Good" Charity, which had been overlooked by the Cannon PR/Trustees. [R. 2033-2034] In addition to the 75<sup>th</sup> Birthday special, they secured a 2-year publicity rights contract with GreenLight projected to bring in \$1 - \$2 million a year between 2009 and 2011, but which was rejected by the AG and Bauknight. [R. 1797-98] They placed thousands of Brown's items in museums where they were protected, insured and displayed at no cost to the Estate/2000 Trust pending the outcome of the Will challenges, and sent 45 boxes of music items to a sound storage facility in Nashville, to be near the Gonzalez firm, to be reviewed, restored and exploited. [R. 847]

### **The Attorney General Doesn't Want Buchanan and Pope as Fiduciaries**

The order replacing Buchanan and Pope specifically found that it was not “for cause,” and that Judge Early had not heard the AG’s “for cause” petition. [R. 170; 206] Between 2009 and 2013 the Attorney General would contribute the power of his office and funds from James Brown’s charity to change that result. In September 2009 counsel for Tommie Rae articulated the Attorney General’s agenda:

THEY'RE [Buchanan and Pope] THE ONES ACCUSING MR. BAUKNIGHT OF BEING IN LEAGUE WITH CANNON AND DALLAS AND OR BRADLEY AND THE SETTLING PARTIES, THE BEST I CAN TELL, ARE NOT IN SUCH A LEAGUE. WE HAVE NO INTEREST IN ANY FIDUCIARY OTHER THAN MR. BAUKNIGHT. . .

AS MR. WILKINS POINTED OUT NO SETTLING PARTY WANTS THEM TO REMAIN. NOW, THAT'S IMPORTANT...WE'RE UNANIMOUS, AS MR. WILKINS POINTED OUT ON THIS ISSUE, WE DO NOT WANT THEM TO BE FIDUCIARIES AND IF THEY PREVAIL – IF THEY WIN ON APPEAL AND THEN WE GO BACK AND TRY THOSE WILL AND TRUST CONTESTS AND THEY WIN THOSE AND WE TRY THE PRETERMITTED CHILD CONTEST AND THEY WIN THOSE, THEN EVERYTHING GOES TO THE CHARITY...THE ATTORNEY GENERAL HAS THE AUTHORITY TO REPRESENT THE CHARITIES IN THAT CASE .

THE ATTORNEY GENERAL DOESN'T WANT THEM. EVEN IF THEY WIN ALL THE WAY OUT, THE ATTORNEY GENERAL WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL'S OFFICE DOES NOT WANT THEM AS FIDUCIARIES. R. 1450-51

### **The AG Supports Reducing the Charity from \$80 Million to \$2.8 Million or Less**

In August 2009 Tommie Rae’s attorney proposed to devalue Brown’s copyrights to \$24 million or less, and consider valuing the right of publicity at zero, or near zero, to discredit “Bobadele.” [R. 1316-17] By September 2010 Bauknight, with Peter Afterman, arrived at a \$4.7 million value for Brown’s 900 copyrights, right of publicity, tangible personal property, and

claims. [R. 1426] The “appraisal” was withheld from the Supreme Court in *Wilson v. Dallas* until the following May, after the final briefs were filed. Solicitor General Cook, who did not know of the filing, testified that it is best to present new information to the appellate court as soon as possible. [R. 1316-17; 1426]

Without reviewing the \$4.7 million valuation, the Attorney General adopted it, and has used it since 2011 to accuse Buchanan and Pope of the federal felony of intentionally overstating the value of Brown’s assets by \$79 million in IRS filings to get a \$5 million commission on a \$5 million estate. [R. 2159-60] Governor McMaster, a former U.S. Attorney, testified (by deposition) to the seriousness of the allegation. [R. 1315] Solicitor General Cook, who did not know about the \$4.7 million claim, testified that he believed Pope was concerned about the “I Feel Good” Trust when she discussed the problems of the \$79 million devaluation to \$4.7 million with Attorney General Wilson in 2013, and that he did not believe Appellant to be greedy or incompetent. [R. 1318] Attorney General Wilson testified (by deposition) that he knew nothing about the \$4.7 million; did not recall the meeting; but did not refute Appellant’s recollection. [R. 1319-26]

#### **The AG and Tommie Rae Bring and Continue Richland 4900 for Nine Years**

In May 2010 Bauknight, Levenson, counsel for Tommie Rae, and David Bell, Esq., signed a contract with the law firm of Kenneth Wingate, Esq. (Wingate) to bring Richland 4900 to sully Buchanan and Pope to stop the appeal which became *Wilson v. Dallas*. [R. 1315] It was brought for the benefit of the Legacy Trust and its beneficiaries: the AG’s (New) Charity, 47.5%; Tommie Rae, 23/75%; Venisha, 4.79%; Terry 4.79%; Deanna, 4.79% and three others 4.79%. [R. 626-638] But it was not legal. Nine years later, however, the AG, Tommie Rae and Bauknight are still using

Richland 4900 to damage Appellant and carry out the May 2013 announced plan to ignore the decision of the Supreme Court in *Wilson v. Dallas*.

Solicitor General Cook testified (by deposition) that in forty years he has never seen a case like Richland 4900. [R. 1317] Governor McMaster testified (by deposition) emphatically that he never sued Appellant.[R. 1315]

Attorney General Alan Wilson testified (by deposition) that in January 2011 he authorized the illegal Richland 4900 to continue, but only to maintain the “status quo.” [R. 1320]

AG Jones continues to praise Bauknight as he funds Richland 4900 from James Brown’s “I Feel Good” Charity without seeking reimbursement from the AG’s (New) Charity, Tommie Rae or others. He has done so, even though Bauknight, as trustee of the Legacy Trust, holds termination rights proceeds which make up a substantial portion of the total \$8.8 million value of termination rights proceeds of all of Brown’s heirs which could be used.

The nine-year cost to James Brown’s charity to sully the two people who defended it for 5 ½ years is not known because the Aiken Court discarded the *ex parte* report which would show it. [R. 1249]

#### **The Attorney General’s FOIA Noncompliance Related to \$4.7 Million Value Claim**

From August 2011 until 2019 the Attorney General and Bauknight worked together to prevent release under FOIA of the \$4.7 million valuation and other documents which made clear the AG’s 2008 settlement was a bad idea for James Brown’s charity. (*Pope v. Wilson*, Op. No. 5657; *Pope v. Wilson, et al*, Op. No. 2019-UP-219).

### **The Attorney General Supports Bauknight's Incorrect Claims to the Supreme Court**

In 2011 the Attorney General, through AG Jones, supported Bauknight's incorrect claims to the Supreme Court that nobody was trying to buy the James Brown assets; that the worldwide music empire was worth only \$4.7 million; that Brown's Estate and 2000 Trust had no corpus to speak of; that termination rights were all this case/estate is about; and that Tommie Rae's elective share claim was a "slamdunk." [R. 1322-23] The Supreme Court was not told that termination rights apply only to U.S. royalties, which are about half of Brown's \$4 million annual income stream.<sup>10</sup> [R. 1340]

### **Appellant Advises the Attorney General of the Damage of the \$4.7 Million Value**

In March 2013, between the two *Wilson v. Dallas* decisions, Appellant met with Attorney General Wilson, Solicitor General Cooke, and then Chief Deputy McIntosh to discuss the damage to the "I Feel Good" Charity of the \$4.7 million devaluation., including that it reduced scholarships for needy students from \$3 million or more a year to \$200,000 a year or less. [R. 1318-19] AG Wilson then told the Supreme Court he was getting out of Richland 4900 and hoped to conclude the FOIA cases in a short time. [R. 1319] Then the Attorney General did just the opposite by continuing to delay FOIA compliance and by remaining in Richland 4900. [R. 1390]

### **Tommie Rae's Son Reveals How Bauknight Arrived at \$4.7 Million**

Bauknight claims the \$4.7 million valuation is confidential, and that he has not shown it to others. Yet in March 2013 James told the Supreme Court Bauknight arrived at the figure by valuing

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<sup>10</sup> Wallace Lightsey, Esq., and Appellant both testified that there are multiple strategies available to charities to limit the impact of termination rights on their royalty streams. [R. 1340-42] Buchanan and Pope secured an order in 2008 to determine the heirs under both State law and the Copyright Act and hired Smith to help develop the "I Feel Good" Trust's strategy. [R. 86; 2860]

the 900 copyrights at \$23.7, then reducing that number by \$19 million for the (\$15 million) TIAA debt. [R. 1411, 1429] Bauknight and Afterman appear to have bettered the proposal of Tommie Rae's counsel to value Brown's right of publicity at zero by also valuing Brown's tangible personal property and the claims at zero. [R. 1400-01, 1407]

#### **The Supreme Court Notes the False Grammy© Claim and \$4.7 Million Value**

The false Grammy story planted by Forlando in 2011 and the claim of the State's highest legal officer that Buchanan and Pope were seeking a \$5 million commission from a \$5 million estate, with the existence of Richland 4900 which Attorney General McMaster had not authorized to be brought in the name of the State/AG, discredited Buchanan and Pope with the Court. The AG, through AG Jones, and Bauknight, spending an undisclosed amount from James Brown's charity, had changed their "not for cause" removal to one "for cause." [R. 1407-08]

#### **The Attorney General and Tommie Rae Reinstate Bauknight**

The May 8, 2013 *Wilson v. Dallas* decision voided the fiduciary appointments of Bauknight under Brown's estate plan and voided the AG's 2008 settlement. By May 10 AG Jones, Levenson and Tommie Rae had secured an order from the Aiken Court reinstating Bauknight, and the AG and others had asked that the FOIA cases and Richland 4900 be stayed while the Aiken Court completed its work. [R. 1390, 1432]

#### **The May 29, 2013 Announced Decision to Disregard the *Wilson v. Dallas* Decision**

On May 29, 2013, Tommie Rae and the Levenson clients announced to Judge Early in open court their plan to defy the *Wilson v. Dallas* decision and reinstate the AG's 2008. Then Bauknight joined them in asking the Aiken Court to exclude Buchanan and Pope from all James Brown hearings. [R. 1312, 1313, 1390] AG Jones announced the Attorney General's pleasure that

Bauknight had been reinstated. Right after the hearing Newsome, identified at trial as Bauknight's claims expert, served Pope with the disallowance. [R. 1784-85]

#### **The Aiken Court Removes Buchanan and Pope from James Brown Cases**

On June 13, 2013 the Aiken Court, as requested, directed that Buchanan and Pope could not participate in any James Brown case except their own fee claims. The Aiken Clerk of Court was directed to return any filing by Buchanan or Pope in any other case. [R. 216] Over the next six years, with no input from Buchanan or Pope, the Aiken Court took numerous steps to advance the announced plan to dismember the "I Feel Good" Trust a second time. [R. 993; 292]

#### **The Actions of Bauknight and Afterman to Reinstate the AG's 2008 Settlement**

By August 2013 Bauknight was claiming that Pope was a liar, and Afterman was helping Tommie Rae and James file termination notices to siphon off U.S. royalties from more than 90 of the "I Feel Good" Charity's copyrights. [R. 1312-13] In 2017 Levenson was named as a witness to criticize Buchanan and Pope for defending the estate plan. [Mot. Exclude Witness, 8/28/17]

#### **The Aiken Court "Double Approves" Buchanan's Service and Payments**

In October 2013 the Aiken Court "double approved" the \$653,000 Buchanan had been paid. [R. 3026; 1314] Buchanan had received his entire SA fee; about \$53,000 of partial PR/Trustee commission in 2008; and another \$500,000 in 2013. [R. 3026 (SOC Chart)] Judge Early left open the possibility of Buchanan's re-entry into Richland 4900. [R. 2127] The ruling was completely different from the ruling in Aiken 1337. [R. 292]

#### **The Aiken Court Advances the Announced 2008 Settlement**

In January 2015, one day before signing the joint mediation order, the Aiken Court found Tommie Rae to be Brown's spouse under stipulated facts. [R. 1313] Sojourner, paid almost \$1.5

million to defend the estate plan, did not even proffer Tommie Rae's handwritten admissions that she was married, living with her spouse, and possibly pregnant before the ceremony with Brown. [R. 1313, 3026] That year the Aiken Court circulated a consent order for James to be declared a child of James Brown, and in 2016 the Aiken Court awarded his GAL \$700,000 in past and future legal and GAL fees. [R. 1430 (Mot. Alter or Amend, p. 119)] When a journalist published Tommie Rae's admissions after the spousal ruling, the Aiken Court issued a rule to show cause, but the Supreme Court declined to enforce it. [R. 1433]

#### **The Aiken Court Fails to Tell the Supreme Court of the Intention to Disregard *Wilson***

On May 8, 2015 the Aiken Court filed a status report with the Supreme Court. [R. 993-999] The Aiken Court failed to tell the Supreme Court that on May 29, 2013 Tommie Rae and Levenson openly announced their intention to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. The Aiken Court stated:

The Order requesting this status report inquired whether any proposed settlement agreement has been submitted for Court approval. The answer is an unequivocal no. *No lawyer, party or anyone else has discussed, mentioned, suggested or inquired of me anything about settlement. Neither am I aware of any rumor or "courthouse talk" of any proposed settlement.* R. 996 (Status Report, p. 4). [emphasis supplied]

The Aiken Court praised Bauknight; claimed he had reduced the TIAA debt by \$14 million when it was actually by less than \$10 million; and denigrated Buchanan and Pope. Of Pope's \$47,972 SA claim, the Aiken Court stated he believed it was \$2 million, and he told the Supreme Court he believed her fee claim to be \$5 million. [R. 993-8]

#### **Judge Early Dismisses Appellant's FOIA Claims and Richland 4900 Counterclaims**

In 2016, within months of being assigned two James Brown FOIA cases filed by Pope in Newberry County in 2011, and transferred by the AG to Richland County, the Aiken Court

dismissed both FOIA claims and declared the Legacy Trust does not exist. [R. 1434] An appeal was taken.

In 2017, prior to the close of discovery, Judge Early dismissed the Attorney General as a party to Richland 4900, then granted the AG, the claimed non-existent Legacy Trust, and other Richland 4900 Plaintiffs summary judgment as to Appellant's counterclaims. [*Id.*]

Just before trial the Aiken Court transferred this case to a non-jury roster and declined to appoint an advisory jury as to the value of the James Brown assets. [R. 287]

#### **The Aiken Court Discards Attorneys' Fees and Litigation Records Filed *Ex Parte***

After ordering that Respondents produce all of their litigation records and attorneys' fees, the Aiken Court accepted the *ex parte* filing; reviewed it; then discarded the filing and rescinded its order for production. The Court did so with knowledge of Bauknight's admission that tens of millions of dollars in litigation costs had been spent since 2007 from what he claimed was a \$4.7 million music empire. [Tr. pp. 2295-2297] A hallmark of Buchanan's and Pope's service was their efficient selection and use of high-quality, modestly priced attorneys and experts. [R. 1392, 1439 (Mot. Alter or Amend, p. 80, 128)] The discarded filing was material to show that Buchanan's and Pope's \$84 million was correct; that Buchanan's and Pope's service was efficient and effective; and that the Attorney General's and Bauknight's claimed \$4.7 million value of Brown's music empire was incorrect. [R. 1249; 3029]

#### **The Aiken Court Ignores \$2.1 Million Offer to Settle Before and During Trial**

In nine years Respondents never made an offer to settle this claim. They did not respond to the \$2.1 million settlement offer made before and during trial, or to repeated earlier offers of Buchanan and Pope [R. 2138-39; 2154] Instead, the Aiken Court allowed Respondents to question

Appellant about a confidential offer to Tommie Rae, the Attorney General and other owners of the Legacy Trust in Richland 4900. [R. 2113-14] Respondents provided no evidence that the AG had seen the complex offer, which could have been accepted without a penny being paid by Respondents.<sup>11</sup> The Court's order disregarded Appellant's offer and asserted in the order that Appellant was trying to take funds from Brown's Estate/2000 Trust. [*Id.*]

### STANDARD OF REVIEW

Eight years after Buchanan and Pope filed their claim based on their contract with Respondents, and four years after Appellant demanded a jury trial on the claim, the lower court ruled that this was a matter of equity. [R. 287] Faced with the dilemma of a multi-year delay if she sought an appeal, Appellant accepted that ruling as the law of the case. This appeal should be considered as an equity matter. Ordinarily, an appellate court reviews cases in equity by finding facts in accordance with its own view of the preponderance of the evidence. *Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E.2d 773, 775 (1976).

The admission or exclusion of evidence, generally, is reversible where the trial court abused its discretion in admitting or excluding evidence. "To warrant reversal based on the admission or exclusion of evidence, the appellant must prove both the error of the ruling and the

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<sup>11</sup> There is no evidence the offer was presented to the Attorney General, even though it would have immediately put \$10 Million into a charity which would pay \$500,000 yearly in education scholarships for 10 years. If the Attorney General had elected to do so, he could have used the \$10 million charitable portion to help solve the serious income tax problems caused by Bauknight's \$79 million devaluation. Much of the settlement could have come from the Legacy Trust's share of the \$8.8 million value of all termination rights. It also could have come from Venisha's estate or Forlando's share of the 2000 Trust which Bauknight's \$79 million devaluation of the music empire to \$4.7 million increased from about 1/300 of the assets and income of the 2000 Trust to about 1/25.

resulting prejudice." *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 26, 609 S.E.2d 506, 509 (2005).

## ARGUMENT

### 1. The Lower Court Erred in Failing to Consider the Deposition Testimony of Numerous Witnesses Offered on Reply.

The lower court found in its order that Appellant had introduced testimony by only herself and W. Steven Johnson on rebuttal. [R. 306 ] This is in direct conflict with the record, which shows that Appellant offered testimony from more than a dozen witnesses by deposition on rebuttal. These include the Governor, the Attorney General, the Solicitor General and other AG staff members, as well as experts Wallace Lightsey, Esq. and James Hardin III, Esq. [R. 1313-91; Pl. Ex. 47)] Respondents objected to the admission of the depositions into evidence, but the lower court accepted them. [R. 1943-51] No ruling was issued to exclude any of this testimony, and the lower court failed to challenge the qualifications of Appellant's designated rebuttal experts, including James Hardin III, Esq., Wallace Lightsey, Esq., Stephen Lambert, and legally "adverse" experts David Sojourner, Esq., and Rita Caughman. [R. 1973-2577 (Notebook of Rebuttal Designations)] [*Id.*]

The testimony of these witnesses and experts who were actually involved in James Brown matters was critical to rebut the testimony of Bauknight that he and Peter Afterman had benefitted Brown's 2000 Trust, which was bolstered by seven experts working for Richland 4900 Plaintiffs and not hired by Respondents until 2016. This testimony includes the sworn statement of now-Governor Henry D. McMaster that he did not sue Appellant in Richland 4900; Attorney General Alan Wilson's testimony that he provided no oversight of Bauknight during the two years he had fiduciary control over James Brown's assets or during the 9 years he has allowed Bauknight to

manage the Legacy Trust which is controlled by the Attorney General. It includes the testimony of IP litigator Wallace Lightsey, Esq., which supports Appellant's proffered expert testimony regarding intellectual property matters and refutes the claims of Bauknight. [R. 1973-2577 (Notebook of Rebuttal Designations)] Rebutting the claims of Bauknight and Respondents' expert, the Sojourner testimony, and that of Caughman, show that Appellant and Buchanan, with a small number of highly-qualified and efficient attorneys and experts, brought far greater experience than the fiduciaries before or after, and also worked harder; provided greater benefits; and asked for lower combined fiduciary and legal fees.

The lower court's final order makes no mention of these witnesses or the proffer of their expert testimony on rebuttal. Appellant made a detailed motion to alter or amend the lower court's order under Rule 59(e), including presentation of portions of the deposition testimony offered on rebuttal, but the lower court denied her motion in full. [R. 1312; 353 (Mot. Alter/Amend 1/22/19; Ord. 2/7/18)] This issue is thus preserved for review by this court. *Rickborn v. Liberty Life Ins. Co.*, 321 S.C. 291, 468 S.E.2d 292 (1996).

The admission of reply testimony is within the sound discretion of the trial court. *State v. Todd*, 290 S.C. 212, 214, 349 S.E.2d 339, 340 (1986). "Reply testimony should be limited to rebuttal of matters raised by the defense, rather than to complete the plaintiff's case-in-chief." *State v. Huckabee*, 388 S.C. 232, 242, 694 S.E.2d 781, 786 (Ct.App. 2010). Testimony that is "arguably contradictory and in reply to" that offered by the defense is admissible. *Todd*, 290 S.C. at 214, 349 S.E.2d at 340. *State v. Garris*, 394 S.C. 336, 351, 714 S.E.2d 888, 896 (Ct.App. 2011); *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 438, 319 S.E.2d 695, 700 (1984).

It was error for the lower court to find that only two witnesses were offered on reply, where testimony from more than a dozen witnesses was presented. It was error for the lower court to say Plaintiff had no experts where she had Hardin, Lightsey, Lambert and others. Because the deposition testimony offered on reply bears on the ultimate issues decided by the lower court, Appellant submits that the lower court's orders must be reversed. *See Brown v. Allstate Ins. Co.*, 337 S.C. 499, 523 S.E.2d 807 (Ct.App. 1999).

The lower court's failure to acknowledge more than a dozen witnesses' testimony and rule on their documents and qualifications of some as experts on reply is also relevant to the lower court's finding that Appellant needlessly deposed numerous witnesses who were not used at trial. The lower court found incorrectly that "...the inescapable conclusion is that this case was extremely expensive, and unnecessarily so, for the Estate and Trust to defend. [R. 306-7] Appellant had deposed all witnesses *pro se* and the record is clear that it was the Attorney General, Respondents and the Richland 4900 Plaintiffs who added to delays and costs in the depositions of the Attorney General's staff, Wingate and Kendall. Because the lower court discarded the litigation records of Defendants, the record does not show whether the lower court considered them in its analysis of the ultimate issues in this case.

**2. The Lower Court Erred in Admitting an Offer Made by Appellant to Settle this Case and Richland 4900 into Evidence.**

Over Appellant's objection, the lower court admitted into evidence a settlement offer made by Appellant to Richland 4900 Plaintiffs, including Respondents, to settle a case brought by Bauknight as trustee of the Legacy Trust and claimed agent for the Attorney General against Buchanan and Pope in 2010. [R. 626; 2113-4] The lower court relied on that settlement offer for its finding that Appellant "required Defendants to resolve this case through a trial." [R. 307]

The lower court's admission of this settlement offer and its reliance on the offer in deciding the ultimate issues in this case was error. Under SCRE Rule 408, evidence of offers or acceptances of settlement "is not admissible to prove liability for or invalidity of the claim or its amount." *See also Peoples Federal Savings and Loan Ass'n of South Carolina v. Resources Planning Corp.*, 358 S.C. 460, 596 S.E.2d 51 (2004). The admission of the settlement offer is reversible error, but Appellant notes that, even if properly before the lower court, the offer was misinterpreted and misused in its ultimate ruling.

In its order, the lower court found that Appellant had delayed and complicated this case by "unreasonable settlement demands," and it then characterized Appellant as "demanding \$19,000,000" when Appellant had actually offered to settle this case for less than 1/8 of that amount. [R. 307] The lower court failed to consider Appellant's real offer and refusal of Respondents to make an offer in nine years. The Court also failed to consider numerous other offers made by Appellant and Buchanan to settle Richland 4900.

Upon examination by Respondents' counsel, Appellant clarified that she had been advised by counsel that a settlement offer made to Respondents would have to resolve her counterclaims against Tommie Rae, the Legacy Trust and others to whom she never owed a duty. She made a confidential offer, more than half of which would have gone to charity. [R. 2129]

Because the lower court's order relies on the admission and misapprehension of the offer in reaching its conclusion that Buchanan and Appellant are entitled to no compensation, the entire order should be reversed.

**3. The Lower Court Erred in Making Findings which Conflict both with its Previous Rulings and Holdings of the Supreme Court in *Wilson v. Dallas*.**

During Appellant's and Buchanan's tenure, every detail of the administration of James Brown's Estate and 2000 Trust was scrutinized in open court. More than thirty (30) orders were issued in the pending cases involving the Estate and 2000 Trust. Most of these were issued by Judge Early. [Pl. Ex. 1, index] A number of these orders were admitted into evidence in this case without objection, and virtually all lend support to the joint claim filed by Appellant and Buchanan in 2009 which is the subject of this case. [R. 1493-94] The lower court nonetheless disregarded its own rulings made more than eight years earlier on multiple issues in reaching its ultimate conclusion that Appellant would be paid no fee for her fiduciary service.

**a. The Christie's Contract and Sale were Approved by the Aiken Court and Affirmed by the Attorney General and Court of Appeals**

A sale of 350 of James Brown's 10,000 items of tangible personal property was held by Christie's auction house in July 2008. Planning for the sale began before Appellant and Buchanan became PR/Trustees, and Christie's was selected after Sotheby's and Julien's had been considered. [R. 53; 96; 146] Judge Early found on February 20, 2008, after a full hearing, that the sale was appropriate in light of the "deplorable condition" and the lack of liquidity in which the Cannon PR/Trustees had left James Brown's estate and 2000 Trust. [R. 58;60] A federal injunction suit filed by Forlando to reinstate Cannon and Dallas prevented traditional financing. [R. 53]

In its April 1, 2008 order, the lower court supplemented its first order; found that clients of Levenson had interfered with the sale; and directed the signing of the contract. [R. 1630-32] Neither order related to the Christie's sale was appealed by any party. In July 2008, when Dallas

tried to stop the sale, the Attorney General joined Buchanan and Pope in asking that it go forward, and the Court of Appeals ruled with them. [R. 146]

In its 2019 order, after having found no impropriety in the service of Buchanan in 2013, the lower court found that “[w]hile this Court approved the Christie’s Sale, it did so based upon the recommendation of [Appellant].” [R. 329] Despite its own 2008 orders *directing* Appellant and Buchanan to proceed with the Christie’s sale, the lower court proceeds to find that Appellant “failed to properly manage the Christie’s Sale, and in doing so, breached [their] duty of prudence.” [R. 330] Appellant submits that the doctrine of collateral estoppel bars Respondents’ ability to relitigate issues, such as the Christie’s sale, which have been previously litigated and decided.

“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.*

In this instance, the propriety of the Christie’s sale had been extensively aired in the lower court. It was discussed in multiple hearings and the resulting orders directed Appellant and Buchanan to conduct the sale. It was error for the lower court to allow Respondents to introduce expert and fact testimony on this issue a decade later and then use that testimony to find that conducting the sale the lower court had *directed* Buchanan and Pope to conduct (on the exact terms his Honor had directed in two detailed orders) was evidence of Appellant’s breaching her fiduciary duty.

**b. The Lower Court Erroneously Found that Appellant and Buchanan Improperly Resisted the 2008 Settlement, despite *Wilson v. Dallas* Holding that they were Correct.**

The lower court based its decision that Appellant was entitled to no compensation for her service, in part, on his finding that Appellant “inappropriately breached her duty of loyalty by placing her interests in front of the best interests of the Estate and Trust” in opposing the approval of the 2008 settlement agreement brokered by AG McMaster. [R. 333-34]

In *Wilson v. Dallas*, the Supreme Court held in no uncertain terms that the 2008 settlement “reached in this case was not a fair and just resolution of a good faith controversy and that court approval is not appropriate” and that the settlement “subverts” James Brown’s stated desires. *Wilson* at 767. The Supreme Court further found that the AG’s part in the 2008 settlement “overreache[d] his statutory authority.” [*Id.*] All parties to this case were parties to *Wilson*, and had the opportunity to fully litigate issues related to the approval of the 2008 settlement. Respondents are therefore collaterally estopped from relitigating that issue, and the lower court was bound by the rulings of the Supreme Court in *Wilson*. See *Carolina Research, Inc., supra*.

The lower court’s held that it could not “turn a blind eye” to the alleged benefit that the 2008 settlement bestowed on the Estate and 2000 Trust by ending litigation. It did so while excluding Appellant and two of her experts, and not considering the expert testimony of Hardin, Lightsey and Smith. The claim that the settlement was beneficial is contrary to the record and to the *Wilson* Court, which explicitly held:

Even if a good faith controversy had existed, the remedy more appropriately would have been the reformation of the documents to provide for any monies payable, not the total dismemberment of Brown's carefully-crafted estate plan and its resurrection in a form that grossly distorts his intent. We find the compromise

proposed here is fundamentally flawed because the entire proposal is based on an unprecedented misdirection of the AG's authority in estate cases. We also believe that a departure from the testator's intent is not reasonably necessary to protect the beneficiaries' interests because any alleged advantage to them occasioned by the avoidance of further litigation, as propounded by the settling parties, is illusory at best. *Wilson* at 764.

*Wilson* is not only binding precedent on the lower court, but also constitutes the law-of-the-case among the parties to this action as to the appropriateness of the AG's settlement. The lower court thus erred in disregarding *Wilson* and making findings expressly inconsistent therewith. Because its ultimate decision is based, at least in part, on findings inconsistent with *Wilson*, the orders appealed from must be reversed.

**c. The Lower Court Found that Appellant had No Contract, Despite the Same Court's Previous Approval of the Contract.**

Appellant and Buchanan had a valid contract for payment with the Estate and 2000 Trust, which they could have entered into without court approval. They nonetheless sought approval of the contract, and one of Tommie Rae's lawyers, praised their "belt and suspenders" approach. [R. 2125-6] The lower court issued an order approving the contract and making findings of fact related to the service of Appellant and Buchanan up to that date. [R. 23-25] The lower court found that Appellant and Buchanan's rates were reasonable; that their work had approximately doubled after their appointment as PR/Trustees; that they had successfully submitted the application for recognition of the "I Feel Good" Trust as a tax-exempt charity; that they were necessarily engaged in defending the estate plan; that they had begun addressing substantial tax issues facing the Estate and 2000 Trust; and that they had done all of this and more in just over a month of service. [*Id.*] In its status report of 2013 the lower court confirmed that it found no impropriety in the service

of, or payments to, Buchanan, all of whose work was joint with Appellant. Buchanan was paid almost exactly the amount he was owed in 2009, although he waived interest to settle.

Under the January 8, 2008 order, Appellant's claim for her unpaid SA fee (\$47,972 plus interest) and payment for her time and costs as PR/Trustee (\$1,473, 550) was due in May 2009.

Despite this unappealed order having been issued more than a decade earlier, the lower court found that Appellant had no contract with the Estate and 2000 Trust and that Appellant and Buchanan's service had been of no net benefit to the Estate and 2000 Trust. [R. 351-52]

**d. The Lower Court's Finding that Appellant and Buchanan Improperly Valued James Brown's Assets is in Conflict with its Previous Oral Ruling.**

On November 14 and 15, 2007, before becoming PR/Trustees, Appellant and Buchanan presented their proposal to value the copyrights owned by James Brown using a formula which multiplied the predictable income generated by those assets by 12 ½ -- 14 times. Appellant and Buchanan made this proposal at the November 15, 2007 hearing, and Judge Early directed that any party objecting to the Estate's using that method on the estate tax return should file objections. No objection was filed, and no further hearing was held on the matter. [R. 1710-27]

In fact, at the hearing in which Appellant and Buchanan (at that time, still serving as SAs and with no idea that they would be appointed PR/Trustees five days later) proposed to value the royalties, image and persona using the proposed formula, the idea of hiring Peter Shukat<sup>12</sup> and an appraiser to conduct a professional valuation was raised. Judge Early interjected, "I am not going

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<sup>12</sup> Appellant notes that the "New York lawyer" proposed by Dallas whom Judge Early emphatically stated would not be engaged for a valuation was Peter Shukat, the late law partner of Jonas Herbsman, on whose expert testimony the lower court extensively relies in his order. [R. 1979-80; 292]

to hire a New York lawyer. We got enough lawyers now.” [R. 1448] His Honor went on to direct: “Mrs. Pope, I want your idea you suggested. You can share it with [counsel for the then-PRs]. Yall get me some type of proposal.” [*Id.*]

Eleven years later the lower court stated:

. . . it is not credible for Mrs. Pope to claim that the above formula, that was not approved by the Court, and was tucked into a Special Administrator filing, served as the basis for her valuation when she later served as the PR . . . [R. 341]

The lower court’s 2019 criticism of Buchanan’s and Appellant’s estate tax return filed in 2008 and failure to engage professionals to value the assets is irreconcilable with the very same judge’s 2007 direction that a professional *not* be engaged and that the valuation formula was adequate. Further, the lower court failed to acknowledge that the IRS had accepted a substantially similar nonprofessional appraisal in the estate of songwriter Harlan Howard, who died in 2002, and that Brown’s charity owed no estate taxes. The lower court itself, along with the Attorney General and others, were presented with the formula, and the lower court expressly directed that the valuation proceed without hiring a professional. In 2013 the lower court approved Buchanan’s service. Then in 2019 the same court substantially based its order on Appellant’s and Buchanan’s handling of the valuation. [R. 334-45; 349]

**4. The Lower Court Erred in Accepting and Discarding Respondents’ *Ex Parte* Filing of their Litigation Billing Records and Destroying the Records After the Court Received and Reviewed Them.**

On December 15, 2017, the circuit court directed:

In addition to that, under seal, the confidential -- I want to know the money that the subsequent litigation from the time that Mr. Bauknight was appointed, what the cost of the estate has been for the subsequent litigation, including attorney's fees, expert fees, litigation costs and support personnel through four days of testimony already. That's under seal, but obviously, I want to consider that in -- if I have to

balance out anything about the duty to defend versus the efficiency to the estate as to whether to continue litigation or to resolve it. [R. 1902 (Tr., p. 1134)]

Appellant filed a motion to require disclosure of the *ex parte* filing. [R. 1249-58]

Thereafter, in chambers, Judge Early indicated that he had reviewed the litigation billing records, but was rescinding his order that they be produced and had discarded the records. [R. 1268]

Appellant objected to the lower court's review of these documents where they were never presented to Appellant or placed in the record herein. [R. 1386-87; 1391]

A civil litigant's right to due process "encompasses the individual's right to be aware of and refute the evidence against the merits of his case." *Vining v. Runyon*, 99 F.3d 1056, 1057 (11th Cir. 1996) (internal quotation marks omitted). "Although a judge freely may use in camera, ex parte examination of evidence to prevent the discovery or use of evidence, consideration of in camera submissions to determine the merits of litigation is allowable only when the submissions involve compelling national security concerns or the statute granting the cause of action specifically provides for in camera resolution of the dispute." *Id.* (internal citations omitted).

As the Second Circuit recognized in *U.S. v. Abuhamra*, 389 F.3d 309, 322 (2d Cir. 2004), a "due process concern [is] raised when a court relies on ex parte submissions in resolving an issue that is the subject of an adversarial proceeding." This is because "due process demands that the individual and the government each be afforded the opportunity not only to advance their respective positions but to correct or contradict arguments or evidence offered by the other." *Id.*

The *ex parte* presentation of the litigation billing records by Respondents; Judge Early's receipt and review of those documents; and the circuit court's discarding them prejudiced Appellant. Appellant submits that the orders appealed from must be reversed.

**5. The January 16, 2019 Order is a Result of the Lower Court's Bias Against Appellant, Related to the *Wilson v. Dallas* Decision.**

As set out above, the lower court made extensive findings against its own previous orders and against the Supreme Court's findings in *Wilson* to support its ultimate decision that Buchanan and Appellant were not entitled to be paid for their services after November 20, 2007.

The lower court's finding is inconsistent with the Supreme Court's explicit holding that the 2008 settlement was a "dismemberment" of James Brown's estate plan and "subvert[ed]" his stated desires, Judge Early nonetheless finds that he "is not required to turn a blind eye" to Respondents' argument that approval of the settlement was in the best interest of the Estate and 2000 Trust. [R. 333] Essentially, the circuit court makes findings in its order which revert to the logic used in its May 26, 2009 order approving the 2008 settlement – logic which was explicitly rejected by the Supreme Court.

In addition, the circuit court includes an entire section in its order entitled "Mrs. Pope Has Engaged in a Pattern of Personal Attacks" where the evidence was undisputed that personal attacks had been lodged by Cannon, Dallas, staff of the Attorney General and settling parties against Appellant and Buchanan for a decade. Nevertheless, the circuit court finds that "[t]hese disparaging personal attacks grew to include . . . ultimately this Court." [R. 308] The only example given to support the lower court's conclusion that Appellant had made a "personal attack" on the circuit court itself was the following quote from Appellant's trial testimony herein:

Unfortunately, the Supreme Court's June 10<sup>th</sup> Order was based on false representations by Judge Early. I don't believe they were intentional, but they were false. Judge Early told the Court he had never heard even a whisper of settlement. The truth is in open court on May 29<sup>th</sup> of 2009 – 2013, Mr. Medlin and Mr. Levenson had openly, in open court, told Judge Early they wanted to go in-camera and reinstate the very settlement that had just been overturned by remittitur just a day or two earlier. [R. 309 (Ord. 1/16/19, p. 18)]

Although Appellant did respectfully take the position that the lower court had misinformed the Supreme Court in his 2015 Status Report, she expressly stated that she did not believe that to have been intentional. The lower court interpreted this as a “personal attack.” Then, after having praised the service of Buchanan and Appellant for years, found various aspects of her testimony not to be credible.

Appellant does not take lightly her submission of this argument, but the lower court’s harsh tone and findings regarding her service – all of which was joint with Buchanan, and nearly all of which was openly conducted in the court’s presence without objections, requires it. [R. 1310-11]

This express finding, with other rulings, lead to the conclusion that the lower court was biased against Appellant and Buchanan.

Additionally, the totality of the lower court’s rulings and orders show that she was deprived of due process. Throughout this case, non-confidential documents were made confidential, stymying Appellant’s ability to pursue her claim. [R. 249-59; Aff. Pope, 6/6/17)] As argued above, the case was transferred to the non-jury roster weeks before the start of a day-certain trial which had been scheduled for months. [R. 287-89] The lower court departed completely from both the tone and findings in numerous previous orders and rulings; admitted and allowed extensive discussion of Appellant’s confidential settlement offer (which was a complex attempt to craft an offer which could resolve *both* this case and another case in which Appellant seeks damages against more than a dozen other individuals and entities); and ultimately rendered its order finding, for the first time in more than a decade, that Appellant was not a credible witness and that her service had been detrimental to the Estate and 2000 Trust.

Read together, it is clear that the lower court did not offer Appellant a level playing field in this action and thus deprived her of her right to due process. *See Caperton v. A.T. Massey Coal Co.*, 556 U.S. 868, 876, 129 S.Ct. 2252, 173 L.Ed.2d 1208 (2009).

**6. The Lower Court's Erred in Failing to Disqualify Bauknight and his Counsel.**

In a 2008 order, the lower court acknowledged that one or more SA/STs might be needed in James Brown cases. The loyalty of Bauknight to Tommie Rae and other Legacy Trust beneficiaries and his continuing of Richland 4900 for their benefit made it manifestly uncustom for the lower court to allow them to defend this claim. The fact that Buchanan's claim was approved in 2013 after a hearing with no witnesses makes this clear.

**Relief Requested from this Court**

Appellant submits that the findings of the circuit court were against the weight of the evidence and, in several instances, directly contrary to the same court's previous final orders and the Supreme Court's holdings in *Wilson*. This court, with a broad standard of review in this equity case and a full record presented, can make findings based on its own view of the facts.

Appellant's claim has been pending for more than ten (10) years, and Appellant has been forced to expend massive amounts of her own time and invest substantial funds in this needless litigation. The portions of Appellant's claim which are due under the contract and January 8, 2008 order of the circuit court have been liquidated and earning interest since 2009. This court has the opportunity to bring this matter to a correct conclusion by reversing the circuit court's orders and granting the following relief:

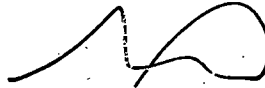
1. Reversing the lower court's order declining to disqualify Bauknight and his counsel and its orders denying her claim and the necessary related relief.

2. Directing that Appellant be paid the liquidated amount of \$1,473,550, plus interest from May 26, 2009, pursuant to her contract with the Estate and 2000 Trust and the January 8, 2008 Order;
3. Directing Respondents to pay the outstanding SA fee of \$47,972, plus interest at 8 3/4% from March 8, 2008, as twice ordered by the lower court.;
4. Remanding this case solely for a determination of the reasonable attorneys' fees (from the commencement of the trial herein, before which Appellant had handled this matter *pro se*) and costs as provided in her claim and the payment order.

### **Conclusion**

For the reasons set forth above, Appellant respectfully submits that this Court should reverse the orders of the lower court and grant the relief set out above or, alternatively, remand this matter to the circuit court for a new trial.

Respectfully submitted,



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October 9, 2020

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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

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Appellate Case No. 2019-000362

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OCT 09 2020

SC Court of Appeals

Adele J. Pope, Appellant,

v.

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

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**PROOF OF SERVICE**

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The undersigned counsel for Appellant certifies that he has served a copy of the following:

1. Motion to File Amended Reply Brief Out of Time;
2. Amended Initial Reply Brief
3. Final Brief; and
4. Final Reply Brief

on all Respondents on the date shown below, by emailing a copy to their counsel, addressed as follows:

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October 9, 2020

s/Adam T. Silvernail  
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