

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Nov 23 2020

APPEAL FROM RICHLAND COUNTY

SC Court of Appeals

Court of Common Pleas

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

Appellate Case No. 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B. II; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

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

v.

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

Of whom Adele J. Pope is Appellant.

**REPLY TO RETURN OF ATTORNEY GENERAL TO MOTION
FOR JUDICIAL NOTICE AND EXPEDITED CONSIDERATION**

Appellant submits the following Reply to the Return of the Honorable Alan Wilson, Attorney General of South Carolina (“AG Wilson”) to the motion of Appellant for judicial notice of the “AG’s October 2020 Documents” and expedited consideration of this appeal.¹

The Return of the Attorney General continues a 12-year alliance of the State/AG with Tommie Rae Hynie Brown (“Tommie Rae”), the primary client of SWB. In doing so, the State/AG continues 10 ½ years of Due Process, FOIA, and First Amendment violations in this unconstitutional, unauthorized lawsuit, Richland 4900.

Richland 4900 was brought by the AG, Tommie Rae and others in 2010 to retaliate against Robert Buchanan, Jr. and Appellant because they opposed the AG’s 2008 settlement which put Tommie Rae and the AG in control of James Brown’s music empire and redistributed Brown’s “I Feel Good” charity in accordance with the wishes of the AG. [R. 217]

The AG’s adoption of the Return filed by SWB for Tommie Rae and SWB’s private clients also continues State/AG support for the publicly announced May 29, 2013 plan of Tommie Rae and clients of Louis Levenson, Esq., to disregard *Wilson v. Dallas*, 403 S.C. 411, 441, 743 S.E.2d 746 (2013), issued just three weeks earlier, and reinstate the AG’s 2008 settlement. [R. 1739; 885-6]

Since the May 29, 2013 announcement to the Honorable Doyet A. Early, III of the plan to reinstate the AG’s 2008 settlement, the AG has continued to support Richland 4900 and the AG and SWB have continued FOIA disruption and noncompliance to enhance the Richland 4900 benefit to Tommie Rae and other SWB private clients in Richland 4900. [R. 152; 155; 714-5;

¹ Appellant incorporates herein in its entirety her Reply to the Return of Respondents to the Motion for Judicial Notice filed by Sweeny, Wingate and Barrow, P.A. (“SWB”), to be filed herewith, and notes that the AG’s return relies on SWB’s.

1516] Tommie Rae holds an approximately 46% stake in Richland 4900; five former Levenson clients hold a 45% stake; and Forlando Brown (“Forlando”) holds a 9% stake.² [R. 1467; 996; 1004]

The Attorney General and his Senior Staff have had knowledge since March 6, 2013 of the damage caused to James Brown’s charity by the fabricated Afterman \$4.7 million valuation of Brown’s music empire which was conceived by Tommie Rae’s advisors to discredit “Bobadele.” They know that it did not save taxes or prove that Buchanan and Appellant’s were greedy, incompetent felons, as claimed in Richland 4900 and to the Supreme Court. [R. 882; 923; 973-4]

The AG and his staff have had actual knowledge for years that the Afterman \$4.7 million valuation actually shifted \$1 million a year and nearly 1/3 (31%) of Brown’s charity out of the “I Feel Good” charitable trust and over to a trust for Forlando and family members, depriving needy students and causing serious tax problems. [R. 1726; 1731]

The October 2020 documents show, for the first time, that both the AG and SWB, with knowledge of the intention of the Supreme Court as set out in *Wilson*, chose to continue the State/AG’s retaliation against Buchanan and Appellant for 7 ½ years when release of the October 2020 documents would likely have brought Richland 4900 to a screeching halt in the spring of 2013.

The Attorney General has recently begun to assert that he is a prosecutor and that Richland 4900 is an “enforcement action” by the State/AG to protect James Brown’s charity. It is nothing

² In January 2011 Sr. Asst. AG Havird Jones circulated an amendment to Respondent Legacy Trust/Settlement Entity signed by Governor McMaster, Terry Brown (“Terry”)and others, followed by an assignment by Terry of his interest in the Legacy Trust and the right of first refusal (“ROFR”) the AG had given to Terry. [R. 1461; 1467]

of the kind, and never has been. It was brought and continued to dismember James Brown's estate plan. It has never changed.

In 2014, with that knowledge, the State/AG continued the retaliation by not releasing the October 2020 Documents despite an order of the Honorable Eugene C. Griffith in a separate FOIA matter. The AG apparently followed the 2012 legal advice of SWB, disclosed in the October 2020 Documents, that it was better for the AG to use funds of State taxpayers and James Brown's charity to evade FOIA than to comply with FOIA; damage the Richland 4900 Plaintiffs; and embarrass the Office of the AG.

The advice of SWB contained in the October 2020 Documents is particularly troublesome where SWB was giving the AG FOIA advice while acting under the Wingate Contract which SWB was concealing in Richland 4900 discovery and the AG was concealing in a 2011 FOIA case consolidated with Richland 4900. The Wingate Contract, concealed by SWB in discovery from 2010 until 2020, states on its face that it is a public document is subject to FOIA. In addition, the Wingate Contract provides that that *all documents held by SWB in Richland 4900* are subject to FOIA. [R. 669-670]

In 2015 when the circuit court failed to advise the Supreme Court of the announced May 29, 2013 plan of Tommie Rae and the Levenson clients to disregard Wilson and reinstate the AG's 2008 settlement, the AG did nothing. [R. 1543-5] The AG chose retaliation against Buchanan and Pope over its alleged "enforcement" of James Brown's charity. The AG and the AG's staff did so with actual knowledge that the AG's selected trustee Bauknight was implementing the 2008 settlement; clinging to the fabricated \$4.7 million Afterman value; calling Appellant dishonest; and claiming that Appellant (and apparently Buchanan) had "raped" James Brown's estate.

By 2016 the AG had actual knowledge that Bauknight had spent \$1.4 million for an SA/ST not to protect the \$4 million annual royalties Brown devised to the “I Feel Good” charity; Tommie Rae, as the claimed spouse, had collected \$1 million and escaped to London, U.K.; and the circuit court had awarded a \$700,000 litigation war chest to Tommie Rae’s son from what the AG claimed was a \$5 million estate. [R. 858] Instead of “enforcing” the “I Feel Good” Charity, the Attorney General, with SWB, used the power and prestige of the State’s highest legal officer to seek summary judgment not only for the AG, but for the Legacy Trust, Tommie Rae and other Legacy Trust beneficiary-owners.

In 2016 the AG also chose to ignore the emphatic, sworn 2016 deposition testimony of the Honorable Henry McMaster, now Governor of South Carolina (“Governor McMaster”) that, as AG, Governor McMaster had not authorized SWB to bring Richland 4900 in the name of the State/AG; had not authorized Bauknight to speak “on behalf of” the State/AG in Richland 4900; and did not even know he was a Richland 4900 Plaintiff until after leaving office as AG in January 2011. [R. 863-4] The AG, instead, chose to continue the State’s retaliation against Buchanan and Appellant and the State’s support for Tommie Rae.

In 2017 Tommie Rae’s own filing in Richland 4900 made clear that Richland 4900 was never an “enforcement action” to protect Brown’s “I Feel Good” charity. It is, and always has been an action to enforce Respondent Legacy Trust which has disappeared. Tommie Rae states:

Ms. Pope’s [and presumably Mr. Buchanan’s] ill-considered appeal of the 2008 settlement cost the charitable trust³ tens of millions of dollars. In that agreement, as the court is well-aware, Mrs. Brown and the

³ Tommie Rae appears to be calling Respondent Legacy Trust the “charitable trust.” But see SWB filings of August 30, 2010 and Order of Judge Addy showing that the claimed “Charitable Trust Settlement Entity” is the Legacy Trust, which had had no charitable component since 2013.

Brown children⁴ contributed approximately 50% of all termination rights proceeds to the charitable trust. Because Ms. Pope succeeded in destroying the settlement agreement, the charitable trust lost the right to those tens of millions of dollars of termination rights proceeds. Because Mrs. Brown has now agreed to contribute 65% of her share of the termination rights proceeds, the charitable trust will benefit immensely. It appears, however, that the Brown's children's share of termination rights proceeds will remain irretrievably lost to the charitable trust – thanks to Ms. Pope's appeal. [R.,p. 972, footnote 1, Brief, p. 8]

In his sworn deposition in March 2017, AG Wilson confirmed that he knew nothing Buchanan and Appellant had done wrong; knew nothing about Richland 4900; but had continued Richland 4900 since January 2011 to maintain what he had been told was the “status quo.” AG Wilson's staff had not told the AG about Governor McMaster's October 2016 sworn testimony.

At this point, the information the AG had, and the October 2020 Documents, gave AG Wilson a perfect opportunity to stop the FOIA noncompliance; end Richland 4900; stop supporting Tommie Rae in her announced plan to reinstate the AG's 2008 settlement; and stop the retaliation against Buchanan and Appellant.

The AG chose to continue the retaliation. He did so even though the sworn testimony of the Solicitor General confirmed that in March 2013 the Solicitor General did not think Appellant was greedy, incompetent or a felon. He thought she was concerned about James Brown's charity. [R. 883]

In March 2017, ordered by the Honorable Jean Toal, Acting Circuit Judge, to testify about their authorization to bring and continue Richland 4900, two SWB attorneys, under oath, simply

⁴ The AG's 2008 Settlement actually included only about half of Brown's claimed children, exposing the charity to termination rights claims by those the AG excluded.

failed to disclose the October 2020 documents, as they should have. [See Exhibits to Motion to Supplement the Record, Appellate Case No. 2020-1383, attached to Appellant's motion herein]

Since 2017 the Attorney General has supported Tommie Rae, Levenson, SWB and Bauknight in applying the mighty power of the State/AG to assuring that no appellate court know about the State's support for Tommie Rae's nearly-14-year relentless effort to dismember James Brown's estate plan and charity and take control of Brown's music empire.

Both the AG and SWB have unclean hands. Both withheld for more than seven years documents which would have changed the results of the order on appeal and could have ended two 2011 FOIA cases and Richland 4900 more than seven years ago. The AG's position is made more troublesome by his claim that he is a prosecutor protecting James Brown's charity.

Conclusion

The Attorney General does not deny that the documents for which judicial notice is sought have never been produced before and should have been produced both under FOIA and in Richland 4900 discovery. Both the AG and SWB have unclean hands; have helped Tommie Rae and Levenson defy *Wilson*; and have violated discovery, FOIA and a FOIA order. The documents should be considered in this appeal.

[SIGNATURES ON FOLLOWING PAGE]

Respectfully Submitted,

Charles E. Carpenter, Jr.
Carpenter Appeals & Trial Support, LLC
4825 Portobello Rd.
Columbia, SC 29206
Telephone: (803) 758-2886
charlie@carpenterappeals.com
SC Bar No. 1133

S/Adam T. Silvernail
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 7995
Columbia, South Carolina 29202
Telephone: (803) 779-1770
adam@silvernaillawfirm.com
SC Bar No. 80219

William Jeffrey Smith
1216 Crenshaw Street
Newberry, SC 29108
Telephone: (803) 597-0209
Email: wjstv@mindspring.com
SC Bar No. 0005225

Daryl L. Williams
Gertz & Moore, LLP
1416 Laurel Street (29201)
Post Office Box 456
Columbia, SC 29202
SC Bar No. 6121

Attorneys for the Appellant

November 23, 2020

STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED
Nov 23 2020
SC Court of Appeals

The Honorable Doyet A. Early, III, Circuit Court Judge

The Honorable L. Casey Manning, Circuit Court Judge

Appellate Case No.: 2018-002229

RUSSELL L. BAUKNIGHT, as Trustee of The James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James B.; Daryl J. Brown, individually and on behalf of his minor child, Janise B.; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor child Sydney L. And Carrington L.; Tonya Brown; Venisha Brown; Larry Brown; and Terry Brown

And

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

v.

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

Of whom Adele J. Pope is Appellant.

PROOF OF SERVICE

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

1. Reply to Return of Sweeny, Wingate and Barrow to Motion for Judicial Notice;
2. Reply to Return of AG to Motion for Judicial Notice; and
3. Return to Motion of Sweeny, Wingate and Barrow to Strike

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

Kenneth B. Wingate
Mark V. Gende
Sweeny, Wingate & Barrow, P.A.
1515 Lady Street
Columbia, SC 29201
Telephone: (803) 256-2253
kbw@swblaw.com
mvg@swblaw.com

Counsel for Respondents

Alan Wilson, Attorney General
Robert D. Cook, Solicitor General
J. Emory Smith, Jr., Deputy Solicitor General
PO Box 11549
Columbia, SC 29211
Telephone: (803) 734-3680
esmith@scag.gov

Counsel for Respondent Attorney General

s/Adam T. Silvernail
Counsel for Appellant

November 23, 2020



Adam Silvernail <adam@silvernaillawfirm.com>

Bauknight, et al v. Pope, Appellate Case No. 2018-2229

1 message

Adam Silvernail <adam@silvernaillawfirm.com>

Mon, Nov 23, 2020 at 1:01 PM

To: "Ken B. Wingate" <kbw@swblaw.com>, "Mark V. Gende" <MVG@swblaw.com>, Emory Smith <ESmith@scag.gov>
Cc: Charles Carpenter <charlie@carpenterappeals.com>, Daryl Williams <dwilliams@gertzandmoore.com>, Jeff Smith <wjstv@mindspring.com>, Adele Pope <adele@popelawfirm.com>

Counsel:

Attached and served upon you are two Replies to Returns to Motion for Judicial Notice, along with our Return to the Motion to Strike.

A copy of this email will be filed with the Proof of Service.

Adam

--

--

Law Office of Adam T. Silvernail, LLC

1905 Marion Street (29201)





Post Office Box 7995

Columbia, South Carolina 29202-7995

803/779-1770

RECEIVED**Nov 23 2020****SC Court of Appeals**

4 attachments

-  **Pope 2229 Appeal Return to MTS.pdf**
160K
-  **Pope 2229 POS Replies JN and Return MTS.pdf**
93K
-  **Pope 2229 Reply to Return of AG re Judicial Notice.pdf**
177K
-  **Pope 2229 Appeal Reply to Return of SWB re Judicial Notice.pdf**
178K