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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

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

Appellate Case No. 2020-001383

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 FILED BY SWEENY, WINGATE & BARROW, P.A. TO PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully submits this reply to the Return of Respondents to the Petition for Writ of Certiorari submitted by the Sweeny, Wingate & Barrow, P.A. ["SWB"].[1] Because the alleged procedural defects noted by SWB are meritless; all material addressed in the Petition for Writ of Certiorari is preserved and properly before this Court; and SWB's incorporated statement of facts is inadequate and misleading, Petitioner respectfully submits that this Court should grant a Writ of Certiorari; review this case; and reverse all orders appealed from.

Summary of Reply to Return of Respondents

Respondents, through SWB, ask this Court not to grant Petitioner's petition for certiorari. They do so based in part on identifying alleged procedural defects in the petition, which are baseless as addressed below. SWB further generally asserts that there is nothing novel about this case, which they continue to insist is simply a run-of-the-mill lawsuit "sounding in breach of fiduciary duty, breach of trust, and negligence." [Return, pp. 9-10] As argued to the court of appeals and as set out in Petitioner's petition to this court, SWB's characterization is misleading at best. Their own never-amended complaint in this matter shows that this action was brought on May 19, 2010 as a tort suit intended to damage the reputations and careers of Robert Buchanan, Jr. and Petitioner for the benefit of the Attorney General of South Carolina ("AG" or "Attorney General"), Tommie Rae[2] and other "Beneficiary Plaintiffs" of the Legacy Trust[3]. The stated basis for the complaint is, in part, Buchanan's and Petitioner's appealing the 2008 settlement agreement

[1] Petitioner incorporates her contemporaneous Reply to the Return of the South Carolina Attorney General in this case.

[2] To avoid confusion all relatives and claimed relatives of entertainer James Brown are referred to herein by their first names, unless the context requires otherwise. Fiduciaries and former fiduciaries under the estate plan of James Brown will be referred to by last name.

[3] The Legacy Trust was created in 2009 by the AG, Tommie Rae and others, with the AG and Tommie Rae collectively having 75% control of the entity, in addition to the AG's unfettered right to remove and replace the Trustee of the Legacy Trust.

brokered by the AG, despite the fact that this Court ultimately found that settlement to be unjust and unreasonable. *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013).

SWB's return focuses primarily on making this case, which is an extension of what this court labeled "an unprecedented misdirection of the AG's authority,"[4] sound as dull as possible in hopes that this Court, like the court of appeals, will decline to review the decade of abusive and illegal litigation by the AG and SWB which brings the case here. Petitioner submits that all orders appealed from are ripe and should be substantively reviewed and reversed. She would further show that all of the alleged procedural defects noted by SWB are baseless and, again, intended to draw attention away from the facts of this case.

I. This Case Presents Novel Issues of Law which Warrant Consideration by this Court.

While complaining that Petitioner uses "sensational" language[5] in suggesting that this case presents novel issues of law (Return at 9), SWB fails to present any other case in which an AG has combined with private plaintiffs, sharing a single private law firm, to sue individuals for money damages. Petitioner submits that no such case exists, which by definition makes the issue novel. In their argument on the point, SWB relies on caselaw and statutes to support the principle that the

[4] *Wilson, supra.*

[5] On August 23, 2012, when Richland 4900 had been pending for only two years, the AG and other Respondents filed a Motion for Direction as to Pretrial Publicity outlining some of the sensational aspects of this case. [R. 704-705, Ex. A, media binder index, R. 706]. The motion was accompanied by a notebook containing 100 media articles and public posts pertaining to this case and related James Brown Estate events, including articles about the *Wilson v. Dallas* oral arguments and in FOIA cases where Respondents made many of the same claims made in the Richland 4900 complaint. [R. 704-760]. The articles filed by SWB demonstrate efforts by the AG, Bauknight and SWB to prevent release of the public Wingate Contract and other documents. R. 714-720; Respondent Daryl Brown's repudiation of the relief sought in Richland 4900, R. 730-731; the efforts of the AG and SWB to prevent release of public information about Tommie Rae's bigamous ceremony with James Brown, R. 744-749; and other sensational actions in this case.

AG may hire outside counsel, which has indeed been previously litigated. No case cited by SWB involves an AG joining with private plaintiffs or sharing counsel with private plaintiffs. The order of Judge Couch in *South Carolina v. Eli Lilly & Co.*, Circuit Court Case No. 2007-CP-42-1855 (which was not reviewed by any appellate court), actually supports Petitioner's arguments regarding the AG's participation in this case. Judge Couch, rejecting an 11th hour challenge, raised by Ely Lilly & Co. just before trial, based his Honor's rulings in that order on the fact that "Attorney General McMaster has absolute control over the disposition of this case." [*See Lilly* Order at 16, R. 111] In this case no member of the Office of the AG was counsel of record, and the AG could not have had absolute control over private counsel shared with numerous private individuals.

Judge Couch's order sets out the due process safeguards required for the State's use of private special counsel – again, in a case that did not involve private individuals sharing that counsel. Those due process safeguards are also contained in the Wingate Contract, though they have been ignored for 10 ½ years in this case. Nearly all are aspects of the State's maintaining absolute control of the litigation involving private counsel, including:

> 1. There must be a contract. Here there is no signed contract. Governor McMaster has stated under oath that he never authorized SWB to bring Richland 4900 in the name of the State/AG. There is also no evidence AG Wilson hired SWB.
>
> 2. The AG must have a need for outside counsel because of complexity. That was not the case when this suit was filed. It has become extraordinarily complex *because the State, though private counsel, involved itself*.
>
> 3. The AG must be counsel of record and control the litigation. The Office of the AG has never been counsel of record herein, other than making a "special appearance" in conjunction with its motion to be dropped as a party.
>
> 4. The AG must review all pleadings. In *Lilly* the AG confirmed his involvement. That is not the case here.

Petitioner further notes that SWB cites this case in support of its contention that the AG's participation and representation herein are completely quotidian and that "there is nothing 'novel' about the [AG] retaining outside counsel." [Return at 5] SWB says nothing about what could most charitably be described as years-long confusion over whether the AG ever authorized this case or was ever actually represented by SWB. Although the record below contains abundant evidence of the inconsistent statements and positions of SWB, the AG, now-Governor McMaster and others regarding the AG's part in authorizing and continuing this lawsuit, Petitioner notes that the documents she has moved this Court[6] to accept into the record are not only revelatory on this issue but also further muddy SWB's continuing argument that its representation of the AG is appropriate and legal.

II. SWB Fails to Show any Procedural Defect in the Petition for Writ of Certiorari.

In its return, SWB identifies multiple alleged procedural defects[7] in Petitioner's Petition for Writ of Certiorari. Because all are both baseless and alleged to bar this Court's consideration of this matter, Petitioner responds to each as an initial matter.

[6] Petitioner further notes that her Reply to SWB's opposition to supplementing the record herein contains a more detailed factual history of this matter, which is thoroughly cited to the record on appeal herein and which she incorporates by reference. Although SWB criticizes Petitioner for referring to the motion to supplement in her Petition for Writ of Certiorari, Petitioner notes that the only reference therein was a cursory note of the motion's existence and, again, indicating that Petitioner believes her Petition stands on the current record herein.

[7] SWB couches certain of its substantive arguments, such as appealability, in procedural terms. Because SWB proceeds to argue these substantively, Appellant likewise incorporates her argument on each issue from her Petition and, where necessary, makes a substantive response to SWB below.

a. The Questions Presented Comply with the Spirit and the Letter of the Rules.

First, SWB suggests that Rule 242(d)(2) requires Petitioner to recycle verbatim the issues presented in her Final Brief to the court of appeals. [Return at 8-9] Petitioner submits that SWB misreads and misapplies Rule 242. As stated therein, a Petition for Certiorari to this Court is limited only to "questions raised in the court of appeals and in the petition for rehearing." Further, the Rule notes that "[a]question presented will be deemed to include every subsidiary question fairly comprised therein." Appellant submits that every question presented in her Petition for a Writ of Certiorari was raised in the court of appeals. In her Petition to this Court, the questions were reworded (though not changed or expanded) to address the court of appeals' treatment in its opinion.

SWB also suggests that Petitioner did not raise constitutional arguments below, because she did not include a discrete question presented in her brief below. Petitioner has continuously raised constitutional issues related to the representation and participation of the AG since the filing of this case in 2010. Her Brief in the court of appeals directly raises those issues, and they are preserved and ripe for this Court's review. [*See* Appellant's Final Brief at 17-18] Because the court of appeals declined to address any constitutional issue, Petitioner has separately noted them in the questions presented to this Court.

SWB argues that Rule 242(d)(4) requires Petitioner to repeat verbatim her questions on appeal, but the Rule itself shows otherwise. It requires the petitioner to "present with accuracy, brevity and clarity the *information and arguments that are essential to a ready and adequate understanding of the points requiring consideration"* [emphasis supplied]. The petition in this

case, while presenting only issues presented to and preserved in the court of appeals and circuit court, meets the requirement of this rule by noting the issues for consideration by this Court *in light of the court of appeals' treatment of them*.

b. No Appendix is Currently Required.

SWB further asserts that Petitioner has failed to file an appendix, as required by Rule 242(e), and the Petition should therefore be dismissed. SWB appears to have overlooked this Court's Amended Order, dated May 29, 2020, re: Operation of the Appellate Courts during the Coronavirus Emergency (Order No. 2020-5-29-2), which provides in Paragraph (e) that the requirement of filing an appendix is suspended. Petitioner's counsel can find no indication that, as of the date of this filing, the Order has been further amended or vacated since May 29, 2020, and thus no appendix was necessary in this matter.

It appears that SWB includes this argument simply to anchor a footnote touting that a minority of the many motions to strike SWB has filed in this and other appeals were granted. Petitioner more substantively addresses below the troublesome history of SWB's repeated and wasteful attempts to silence her through motions to strike, dismiss and sanction her.

III. All Issues Presented are Ripe for this Court's Review.

SWB argues that the circuit court's orders addressed in its Return cannot be reviewed because of years-old, undecided Rule 59(e) motions. Although Petitioner incorporates the argument made in her Petition on this matter, SWB's misleading allegations require clarification.

Generally, SWB's assertion that Petitioner would not be "aggrieved" by a remand without substantive review of the orders appealed and that Petitioner "was the one who decided to file this

premature appeal" (Return at 7) is in conflict with the entire record herein, the controlling law, and the opinion of the court of appeals.

From the time Tommie Rae was declared Brown's spouse by the circuit court in 2015, the attacks by SWB and Bauknight, both acting for the State/Attorney General and Tommie Rae in Richland 4900,[8] became relentless. Sanctions requests became the standard procedure.[9]

Likewise, SWB's assertion that Petitioner "[c]riticizes" the current circuit court judge assigned to this case (Return at 10) is another play from Respondents' gamebook of distractions from the issues in this case. SWB interprets Petitioner's argument that the third circuit court judge assigned to this case would be unable to make a meaningful review of previous judges' orders under Rule 59(e) to somehow be intended or made as a personal offense to Judge Newman.[10] No reasonable reading of the Petition herein could support SWB's argument that it amounts to criticism of the currently assigned circuit judge.[11] It is axiomatic that consideration of a Rule 59(e) motion requires consideration only of evidence before the court at the time of its original decision.

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[8] As shown in the caption to this filing, as well as every other filing in Richland 4900 since its inception on May 19, 2010, Bauknight is shown to bring this case "on behalf of" the AG, Tommie Rae and all other Richland 4900 Plaintiffs.

[9] Petitioner asks this Court to take judicial notice of the filings by SWB and other counsel for Bauknight in this appeal, as well as in Case Nos. 2018-2229; 2019-00362; and 2020-00967, wherein SWB and/or Bauknight have sought not only to strike nearly every document filed by Petitioner, but also have frequently sought sanctions, dismissal of Petitioner's appeals; and even for Petitioner to be held in contempt. Petitioner also asks this Court to take judicial notice of the fact that a minority of those motions have been granted on any point, and even those only struck certain filings and allowed them to be corrected and re-filed.

[10] Petitioner notes that no one at this point can predict *who* will actually be the circuit court judge to hear any matter on remand.

[11] Petitioner does believe that orders issued in this case by the Honorable Doyet A. Early, III, more than 20 of which have been appealed, resulted from bias which took hold after years of Respondents' unified vitriol toward Petitioner. *See* Brief of Appellant, Appellate Case No. 2019-00362, Argument V. Petitioner submits that Judge Newman or any future judge inheriting the record currently including numerous orders based in part on Judge Early's bias further supports her request that this Court substantively review and reverse the orders on appeal.

With *any* order which is 5, 7 or more years old, the most able judge would have trouble parsing from the voluminous record in this case what was available to, much less considered by, the original judge.

The argument Petitioner has raised regarding the effective denial of her Rule 59(e) motions is based not in criticism of Judge Newman, but in judicial economy and the reality of any judge reviewing an order issued by another.[12]

The State/AG, through a private law firm and an agent who is serving Tommie Rae, has ruined Petitioner's career and reputation and violated her Due Process and other rights for 10 ½ years. Petitioner is without a doubt aggrieved by the orders she asks this Court to review, and she would certainly be further aggrieved if this matter were simply remanded to the circuit court for another decade of damage to Appellant by a private law firm which has for the last decade used the imprimatur of the State's highest legal officer to legitimize the baseless claims by the Legacy Trust and its beneficiaries.

It is undisputed that the circuit court's order "dropping" the AG as a party was final; immediately appealable; and, indeed, had to be appealed after the circuit court declined to reconsider it. The remaining orders appealed must be reviewed in the context of the AG's participation in this case and were properly (and necessarily) appealed along with the final order removing the AG from this case. *See* S.C. Code Ann. §14-3-430, as well as Petitioner's Memoranda regarding appealability, filed in the court of appeals and cited below.

[12] In this case, at least one transcript from this case was not produced and can no longer be obtained. *See* Letter of Silvernail to S.C. Ct. of Appeals, dtd. 12/1/17, noting that one of the transcripts below in this appeal was unavailable.

As to SWB's suggestion that Petitioner was under some duty to argue the appealability of the orders addressed in SWB's return (*see* p. 7, n. 3 of the Return), Petitioner would show that the issue of appealability was raised *sua sponte* by the court of appeals in this case and, on request of that court, briefed fully. *See* Req. for Memoranda re: Appealability, dtd. 9/22/17; Memos of Petitioner dtd. 10/2/17 and 10/19/17; Memo of SWB dtd. 10/16/17; Memo of AG dtd. 10/2/17; and Order dtd. 11/29/17, directing that the appeal proceed as to all orders. Although SWB now asserts that it "pointed out" that certain Rule 59(e) motions were pending, Petitioner notes that the instances SWB cites in its brief are in its Statement of the Case, and at no point in its brief is any substantive argument made that the pending motions precluded the court of appeals from reviewing the orders appealed from. SWB's argument that Petitioner waived this issue, which the court of appeals took up *sua sponte* and which was addressed in her Petition for Rehearing below and in her Petition for Writ of Certiorari, is incorrect.

No brief filed by SWB or the AG sought affirmance on the ground that any Rule 59(e) motion was pending, even though they were placed in the record in this case. Indeed, all parties briefed the substance of the orders appealed from, placing the court of appeals (and now this Court) in a position to proceed with a decision on the merits and bring this decade-old case to an end. The court of appeals' declining to undertake any substantive review of three orders appealed because of the pending motions required Petitioner to present her argument on that matter to this Court. She properly did so in her Petition, and she submits that this Court should consider the substance of her appeal on those issues.

"Rule 1, S.C.R.Civ.P., provides the Rules of Civil Procedure govern procedure in all South Carolina courts in all suits of a civil nature. Rule 1 further directs the Rules shall be construed to secure the just, speedy, and inexpensive determination of every action." *Standard Federal Sav.*

and Loan Ass'n v. Mungo, 306 S.C. 22, 410 S.E.2d 18 (1991). Petitioner submits that remanding these matters, as the court of appeals did, for consideration of motions to reconsider orders of two circuit court judges by a third judge now assigned to the case is likely to result in this matter returning to the appellate courts and continuing for years. Petitioner incorporates the argument in her Petition and submits that both the Rules and the notion of judicial economy will be served by this Court's substantive review of these orders now.

IV. Respondents' Counterstatement of Issues Overlooks the Facts and Constitutional Issues Presented in this Appeal.

On page 2 of its Return, SWB asserts that the Court of Appeals issued four "straightforward rulings" and refers to pages 1-7 of their brief as a counter-statement of the case. In addition to being argumentative and inaccurate, this counter-statement of the case tells nothing about the parties; pleadings; changes in positions of parties; or significant developments in the case, either before or while it was in the Court of Appeals. Petitioner refers to pages 2-12 of her reply brief to SWB in the court of appeals, which clarify and correct, with citations to the record, many of the incorrect assertions made by SWB. Petitioner nonetheless also addresses certain of SWB's allegations below.

SWB refers to the Rule 21 SCRCP order as allowing the State/AG to "withdraw," but the facts show that the AG's intention was to be dismissed as never having been a proper party while, at the same time, actively pursuing discovery and even seeking summary judgment as to the counterclaims; subordinating FOIA suits to Richland 4900 discovery; and even attempting to consolidate Richland 4900 with Aiken 1337. [*See, e.g.,* R. 851-853]

Respondents' brief refers to this case as a "breach of duty action," but fails to state that the claimed breach is not to the Estate of James Brown, the James Brown 2000 Irrevocable Trust

or the beneficiaries of either. It is to the Legacy Trust which the Attorney General and Tommie Rae created in 2008; over which they had 75% control; which was represented to the Richland 4900 court by SWB in 2010 to be the "Settlement Entity Charitable Trust;" and of which Tommie Rae and other Respondents are now the owner-successors.

As the Honorable Frank Addy, Jr., ruled in a FOIA case order on November 22, 2011:

> **I. Facts of the Case.**
> Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County. *See Bauknight v Pope*, 2010-CP-40-4900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's responsibilities in relation to the James Brown Legacy Trust. [Emphasis supp.]
> [Order., Jg. Addy, 11/22/122, R., p. 61]

Wilson v. Dallas should have ended Richland 4900, since the Legacy Trust, created to dismember James Brown's estate plan, was seeking damages against Buchanan and Appellant. It did not, possibly in part because lawyers for the Legacy Trust were representing to the circuit court, the court of appeals and, ultimately, this Court that the Legacy Trust did not exist.[13] At the same time, SWB, in the midst of a 3-year stay, secured a 2015 order relieving both the AG and the claimed-nonexistent Legacy Trust from default.[14]

V. Constitutional Issues Related to State Action in this Case Warrant Review by this Court.

In 2017 the Solicitor General stated under oath that in 40 years he had never seen a case like Richland 4900. As set out above, the State's participation in this case – including the AG's

[13] *See Pope v. Wilson, et al*, Appellate Case No. 2019-1581.
[14] Legacy Trust confusion continued after the Richland 4900 stay was lifted in March 2016. SWB secured summary judgment as to the counterclaims of Buchanan and Pope in Richland 4900 for the Legacy Trust, Tommie Rae and the AG after the AG was dismissed under Rule 21 and other Legacy Trust lawyers, relying on a 2016 affidavit of Bauknight, were claiming to the Court of Appeals that the Legacy Trust never existed.

failure to clearly state what its part in this case has been and now-Governor McMaster's statements that SWB was not authorized to bring this case on behalf of the State – raises substantial constitutional issues. The Court's allowing SWB and Bauknight to continue to speak for the State/AG under these circumstances will clearly continue the State/AG's violations of Petitioner's constitutional rights, including her right to due process and equal protection.

As set out above, the *Lilly* order clearly identified important constitutional issues related to the State's engagement of private counsel. Although Judge Couch's analysis of *that case* resulted in a finding that the constitutional protections were met, a review of those same factors in this case shows the opposite.

Conclusion

The Return of SWB continues the State support and funding from James Brown's charity of a 10 ½ year-old unconstitutional, improperly authorized lawsuit brought by the AG to damage and discredit Buchanan and Petitioner for protecting the estate plan of James Brown from the AG's effort to dismember it. The State/AG, through private SWB, and Bauknight, has deprived Appellant of the level playing field required by Due Process clause, First Amendment rights, and FOIA rights. This Court should accept Appellant's petition for certiorari; reverse the decision of the Court of Appeals; and help bring the damage to Buchanan and Petitioner to an end.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

Respectfully Submitted,

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