

STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM AIKEN COUNTY
Court of Common Pleas
The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No. 2020-000967

Adele J. Pope, Appellant,

v.

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

APPELLANT'S REPLY TO RETURN TO PETITION FOR REHEARING

Appellant respectfully submits the following reply to the Return of Respondents to Appellant's petition for rehearing.¹

The Court's Dismissal Order Overlooks Material Constitutional Violations

Respondents' Return does not deny the undisputed facts which demonstrate that the lower court, on request of Respondents through a conflicted fiduciary, issued Nonpayment Orders which approved a payment into State coffers of Appellant's \$47,972. The payment was made without prior approval, violating Appellant's Due Process rights.

¹ Appellant refutes all allegations in Respondents' Return not specifically addressed and agreed to herein; incorporates her petition for rehearing and supporting documents; and incorporates the October 2020 Documents which are the subject of Appellant's motion to supplement the ROA.

The Nonpayment Orders enjoin the State from returning Appellant's fund to her for an unspecified period of time which may extend beyond her lifetime. The Nonpayment Orders further violate Appellant's Due Process and Equal Protection rights as a creditor by depriving Appellant of any procedure to secure the funds of which she is the undisputed owner. With no support whatsoever in the record, the Nonpayment Order asserts that Appellant consented to this violation of her Due Process and Equal Protection rights.

The Nonpayment Orders further violate Appellant's constitutional rights, including her First Amendment Rights, by prohibiting the Aiken Clerk/State's repayment of Appellant's \$47,972 until the conclusion of an unrelated, unauthorized, and unconstitutional 2010 Richland County lawsuit which has been pursued by the private law firm of Sweeny, Wingate and Barrow, PA. ("SWB") for 10 years and 7 months on behalf half the State/Attorney General of South Carolina ("AG" or "Attorney General"). Both SWB and Respondents' fiduciary, Russell Bauknight, purport to act "on behalf of the Attorney General."

The lower court had been recently assigned to the 2010 case, Richland County Case 2010-CP-40-4900 ("Richland 4900"). The court did not rely on the voluminous record in Richland 4900, but on representations of Respondents. The records in Richland 4900 and this case are clear that Appellant never consented to the deposit and that Richland 4900 is not a "companion case" to this case or any other.

The lower court further bolstered its approval of the unauthorized deposit by relying on disingenuous assertions made by Respondents. They included the claim that in 2016, more than a year before Appellant obtained the 2017 \$47,972 judgment, she had consented to its being withheld until the conclusion of Richland 4900.

The State now holds Appellant's \$47,972 and some of the legal interest due her with no procedure to release it, and pending a judgment sought by SWB for Tommie Rae Hynie (46%), Forlando Brown ("Forlando") (9%) and 5 other private clients of SWB (9% each).

Solicitor General Robert Cook testified in 2017 that in 40 years he had never seen a case like Richland 4900. Nor has anyone else. Since 2017, without State authorization, both SWB and Bauknight have pursued this private lawsuit as a State civil enforcement action, with SWB and Bauknight as purported private "prosecutors." A 2017 order was issued which sealed an affidavit of Appellant without review, and requires that all affidavits of Pope be filed under seal without review. A 2011 FOIA case to conceal the public Wingate Contract is consolidated with Richland 4900 and has not been resolved in nearly a decade.

Respondents' petition does not deny that on May 29, 2013 Hynie and Louis Levenson, Esq., announced to the Honorable Doyet A. Early, III in open court their plan to ignore the Supreme Court's decision in *Wilson v. Dallas* and reinstate the AG's 2008 settlement. It does not deny that withholding Appellant's \$47,972 is part of that plan, as is FOIA disruption and discovery abuse.

The facts show that in 2019, by making false Copyright Act claims, spending more than \$1 million on "defending" against Appellant's \$1.47 million claim; withholding Pope's \$47,972; disrupting FOIA compliance to conceal the Afterman \$4.7 million value and evidence that it shifted \$1 million a year and nearly 1/3 (31%) of Brown's "I Feel Good" charity to a trust for Forlando and 5 Levenson clients; continuing the false felony claims in Richland 4900; and lodging new, false perjury claims against Pope in Aiken 1337, Hynie and those aligned with her had almost reached the May 29 goal of dismembering James Brown's estate plan and blaming it on Buchanan and Pope. Judge Early's January 16, 2019 order stated in part:

The Supreme Court's opinion in *Wilson v. Dallas* is, the law of the case for this proceeding. Nevertheless this Court is not required to turn a blind eye to the fact that Mrs. Pope did not seek advice regarding the benefits of the [AG's 2008] settlement agreement vis-à-vis termination rights before her appeal attacking the settlement. Moreover, every appellate decision is, of course, limited to the facts before the Court.

The Supreme Court's decision in *Wilson v. Dallas* did not have the benefit of the testimony and evidence the Court received during this trial. The Court is likewise not required to turn a blind eye to the fact that the settlement agreement put an end to the litigation among the heirs [footnote]. This Court finds that Mrs. Pope's failure to seek guidance on this vitally important term of the Settlement agreement constituted a breach of her duty of her care and prudence. Order., 1/16/19, p.

Respondents' Return does not deny that the January 2016 Order overlooked the sworn testimony of the Governor, the AG and a dozen experts and other witnesses. It does not deny that Respondents did not seek reconsideration of Judge Early's direction that the \$47,972, with interest, be paid to Pope or Judge Early's failure to grant the request to pay the \$47,972 into the court.

Respondents' Return does not deny that when Appellant's counsel demanded the payment, with the agreed interest rate, Respondents deposited Pope's \$47,972 into State coffers without permission of the court. Then based on incorrect facts with no support within the record of either Aiken 1337 or Richland 4900, Respondents sought and obtained the Nonpayment Orders which allow the State to hold Pope's funds for an indeterminate period with no procedure to retrieve them.

Respondents' Return asks the Court, in a fact vacuum, to overlook the baseline Due Process rule that absent an "extraordinary situation" a party cannot invoke the power of the state to seize a person's property without a *prior* judicial determination that the seizure is justified. *See*, for example, *United States v. Eight Thousand Eight Hundred & Fifty Dollars (\$8,850) in U.S. Currency*, 461 U.S. 555, 562 n.12 (1983).

Respondents assert that the Court of Appeals did not violate any important principle or statute in its order dismissing this appeal. This is incorrect. An order dismissing the appeal leaves Appellant no recourse to recover funds improperly held by the State for an unspecified time with no procedure for return of her property. This is a clear violation of her Due Process Rights; an unconstitutional reading of Rule 67; and a violation of Appellant's other constitutional rights.

The Fourteenth Amendment states: "No State shall...deprive any person of life, liberty, or property without due process of law..." U.S. Const. amend XIV, § 1. The facts show that Appellant has been deprived of her property without Due Process and left without a procedure to recover it.. The Court's dismissal order, by not addressing the constitutional issues, gives silent support to the State's violation of Appellant's Due Process and other rights.

The South Carolina Supreme Court recently summarized the law of due process under the Fourteenth Amendment in the case of *State v. Dykes*, 398 S.C. 351, 357, 728 S.E.2d 455, 458 (2012):

The Constitution's provision that "[n]o state shall ... deprive any person of life, liberty, or property without due process of law," U.S. Const. amend. XIV, § 1, guarantees more than just fair process; it "cover[s] a substantive sphere as well, 'barring certain government actions regardless of the fairness of the procedures used to implement them,'" *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 840, 118 S.Ct. 1708, 140 L.Ed.2d 1043 (1998) (quoting *Daniels v. Williams*, 474 U.S. 327, 331, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986)). The core of the Due Process Clause, therefore, is the protection against arbitrary governmental action. *Id.* at 845, 118 S.Ct. 1708. Substantive due process in particular protects against the arbitrary infringement of "fundamental rights that are so 'implicit in the concept of ordered liberty' that 'neither liberty nor justice would exist if they were sacrificed.'" *Doe v. Moore*, 410 F.3d 1337, 1343 (11th Cir.2005) (quoting *Palko v. Connecticut*, 302 U.S. 319, 325–26, 58 S.Ct. 149, 82 L.Ed. 288 (1937), overruled on other grounds by *Benton v. Maryland*, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969)).

This Court should reverse its dismissal order; proceed with briefing; address the serious constitutional violations; and reverse the Nonpayment Orders.

The Wrongdoing of Hynie and Forlando is Relevant to this Appeal

Respondents' Return says that there were no Due Process Clause violations in the Nonpayment Orders for this Court to overlook when it dismissed this appeal. This is not correct.

The undisputed fraud of Hynie, as well as the wrongful actions of the Legacy Trust and Forlando are material to understanding the Due Process and other constitutional violations in the Nonpayment Orders.

On January 8, 2008 when the Honorable Doyet A. Early, III issued the first "Payment Order" awarding Buchanan's and Pope's \$317,000 SA fee, Hynie had already filed 5 baseless lawsuits for herself and her son. Forlando had filed a 50-page complaint in U.S. Dist. Ct. Case No. 3:08-cv-00014-WOB seeking to reinstate felon David Cannon, who had stolen \$17 million from James Brown, as trustee of Brown's 2000 Trust.

Hynie and Forlando did not join forces in Richland 4900 until 2011, but today hold 55% of the stake in that suit. Their litigation tactics, however, have been almost identical since 2007. They include making false statements under oath, and changing them as needed. They also include claiming to support James Brown's charity while seeking to dismember it; concealing public and nonconfidential documents in any way possible; securing help from the Attorney General; getting Brown's charity to pay their bills; and claiming that anyone who disagrees with them is a greedy, incompetent liar and/or felon. Both Forlando and Hynie have double-teamed their efforts, with Hynie using her son and Forlando using his father Terry Brown ("Terry"), who has vocally supported James Brown's estate plan since 2007.

In August 2008 the AG began what Sr. Asst. Jones describes as a 5-year “common interest” alliance with Hynie. Expecting a quarter of Brown’s assets; spousal status; and control with the AG, Hynie rejected an offer for 7% of Brown’s estate, but no spousal share.

By 2009 Hynie and the AG were acting through the Legacy Trust, and the Legacy Trust’s “probate claims expert” William Newsome, Esq. Newsome advanced the retaliation by withholding payment of Buchanan and Pope’s \$47,972 SA fee. That year, at the suggestion of Hynie’s counsel, 2 other Legacy Trust lawyers and AG Jones began planning what would become the Afterman \$79 million devaluation of Brown’s assets to \$4.7 million to discredit “Bobadele.”

In May 2010, before the Afterman \$4.7 million value arrived, Hynie, the AG and Legacy Trust (Bauknight) had already lodged the false felony claim against Buchanan and Pope in Richland 4900. Withholding funds and lodging the false felony claim, while concealing the public documents to show that Richland 4900 was illegal and unconstitutional and that the \$4.7 million was fabricated had continued for more than a decade.

In January 2011 Forlando secretly joined the Legacy Trust and planted the false Grammy© claim with the Atlanta law firm representing Terry. AG Jones distributed the secret documents to the settling parties.

From 2011 until 2021 Hynie and other SWB clients added FOIA disruption and noncompliance to their extraordinary discovery abuse in Richland 4900. The AG did not complain.

In 2012 Respondents finally paid Buchanan the \$500,000.00 remainder of his partial PR/Trustee commission, due since 2009. AG Jones, however, required that Buchanan not file a petition for rehearing in *Wilson v. Dallas* in order to be paid.

From 2013 until 2021 Afterman worked with Hynie's counsel to help her siphon off more than \$1 million in U.S. royalties from Brown's charity with public filings in the U.S. Copyright Office. While refusing to pay Pope's \$47,972. Respondents have paid Afterman (Inaudible Productions) more than \$1 million; SA/ST David Sojourner more than \$1.4 million; and millions of dollars to NP attorneys who worked for the Legacy Trust for from 2008 to 2013 and now work for Respondents. Under the Wingate Contract, Brown's charity continues to advance funds to pay SWB's costs in Richland 4900, even though 100% of the damages sought are for Hynie and other Legacy Trust owner-successors.

In 2013 the circuit court held a 15-minute *Wilson v. Dallas* remand hearing in which Judge Early "double approved" and praised all of Buchanan's service; found that there was no basis for the disgorgement of Buchanan's full SA fee, paid in 2008; or for his full partial PR/Trustee fee paid in 2008 and 2012. Judge Early also left open Buchanan's entry into Richland 4900 as to parties other than Respondents. He directed Newsome to prepare an order to that effect. When Judge Early retired in February 2019 Newsome had not presented the order.

• Instead of paying Pope's \$47,972 SA fee, Newsome served Pope with a "Disallowance" which forced her to file this case, Aiken County Case 2013-CP-02-1337 ("Aiken 1337"); resisted summary judgment as to the \$47,972 in 2014; moved to pay the \$47,972 summary judgment award into the court; and did not pay the \$47,972, with interest, when ordered to do so in the final, January 16, 2019 order.

After delaying for months, Respondents (Bauknight) refused a demand for payment; paid some of the funds due into the Aiken Clerk of Court; then sought the Nonpayment Orders based on the incorrect claims Pope had agreed to the deposit in 2016 and that Richland 4900 was a "companion case."

A new circuit judge disregarded the decade-old record in Richland 4900 and 7-year-old record in Aiken 1337; relied on Respondents' incorrect claims; and issued the Nonpayment Orders which authorize the State to withhold Pope's \$47,972 and partial interest for what may be her lifetime, with no procedure for its recovery.

These facts and their constitutional consequences were overlooked by the Court and should be considered in this appeal.

The Dismissal Order Overlooks Bauknight's Multiple Roles and Conflicts

Respondents' Return does not dispute the multiple and conflicting roles their fiduciary Bauknight holds in Richland 4900, or the fact that he has refused to pay Pope's \$47,972, while paying tens of millions of dollars to creditors of equal or lower priority, including \$700,000 to Hynie's son's counsel and GAL; \$1.4 million to SA/St David Sojourner; millions of dollars to Newsome's NP partners who served the Legacy Trust from 2008 until 2013; and more than \$1 million to Afterman (Inaudible Productions), who has been serving Hynie's lawyers since 2013.

Respondents' Petition asserts that the undisputed facts related to Bauknight's conflicts should not be considered and do not present Due Process problems. This is not correct. These conflicts, and their constitutional importance, were overlooked by the Court and should be considered.

In 2009 the circuit court appointed Bauknight PR/Trustee. He was already trustee of the Legacy Trust. The Supreme Court voided Bauknight's PR/Trustee appointment in 2013, making clear that Bauknight's service from 2009 until 2013 was to the Legacy Trust only.

Between 2009 and 2013 Bauknight engaged at least 20 Legacy Trust lawyers, including a dozen NP attorneys and at least 4 SWB attorneys. Of these, at least a dozen, including Newsome, were engaged in withholding payments from Buchanan and Pope or other retaliation.

Between 2009 and 2013 Newsome and SWB not only withheld payments from Buchanan and Pope, but refused to share, as Bauknight had agreed, the 145 boxes of public James Brown records Buchanan and Pope had delivered to Bauknight immediately after he replaced them.

On May 29, 2013, when Hynie and Levenson announced their plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement, many of the same NP and SWB attorneys, including Newsome, never changed positions. Withholding funds continued to be part of the retaliation. And Respondents (Bauknight) spared no expense.

By August 2013 Bauknight was defending the AG's 2008 settlement and claiming Pope (and presumably Buchanan) had "raped" Brown's estate. From 2013 until 2021, by his Aiken 1337 trial testimony, Bauknight spoke daily with Afterman and paid Afterman (Inaudible Productions) from funds Brown devised to his "I Feel Good" charity.

Bauknight and his spouse/CPA, while falsely accusing Buchanan and Pope of failing to file proper tax returns in Richland 4900, allowed the valuable tax file of resigned court-appointed CPA William Sellars to be destroyed after being abandoned for more than 6 years.

While withholding Appellant's \$47,972, Bauknight continued to fund Richland 4900 from Brown's estate. Both SWB and Bauknight continued to act on behalf of the State/AG and Hynie with knowledge of the AG's April 24, 2013 letter confirming that the AG was not a client of SWB.

Bauknight's irreconcilable conflicts are at the heart of the Due Process violations in the Nonpayment Orders. They were not disclosed by Respondents to the lower court. They were overlooked by this Court in its dismissal order, and should be considered.

Richland 4900 is Not a Companion Case

Respondents' Return asks the court not to consider the facts which make clear that Richland 4900 is not a companion case to Aiken 1337 or any other case. The Court should consider them, and their Due Process implications for the Nonpayment Orders.

It is undisputed that Appellant's funds were not only improperly put under State control without prior court approval, but, unless this appeal is heard, may be withheld in violation of Appellant's Due Process rights with no remedy indefinitely.

The Dismissal Order Overlooks a Decade of Costly, State-Sponsored Retaliation

The facts show that withholding Pope's \$47,972 SA fee has been part of the expenditure of millions of dollars from James Brown's charity to retaliate against Buchanan and Appellant. The record of Aiken 1337 makes clear that retaliation, and not proper resolution of probate claims, has been the goal of Bauknight since 2009. The expenditure of \$1 million over 8 years to resolve a \$1.47 million claim that could have been resolved in 2009, and the withholding of \$47,972 for a decade are just two examples. The Attorney General, with oversight of the James Brown matters, approved and participated in the retaliation from 2009 until 2013. He has done nothing to stop it since.

A September 18, 2012 motion filed by the AG, Bauknight and others on file in Supreme Court Case No. 2012-212917 called Pope's efforts to void an unconstitutional *ex parte* gag order as "an unabashed attack on Mrs. Tommie Rae Brown, the surviving spouse of James Brown..." [p.2]. In 2021 Respondents are using a claimed State "civil enforcement action" to carry out their plan as articulated to the Supreme Court in 2012:

Since late 2008 the family and the Attorney General have been in agreement that the litigation must end. Similarly, the family and the Attorney General are in agreement Pope's conduct must come to an end. . .[Mot. 9/13/12, p. 10]

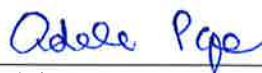
The Court overlooked that tying the return of Appellant's \$47,972 to Richland 4900 will violate Appellant's Due Process rights and continue this state-sponsored retaliation for an unspecified period that may last for her lifetime.

Conclusion

Respondents' Return asserts that undisputed facts showing violations of Appellant's Due Process rights should not be considered and that there have been no Due Process violations for the Court to overlook. This is not the case. The Court overlooked Due Process violations in the placement of Pope's \$47,972 into State hands with no prior authorization. More importantly, it overlooked the State action in the Nonpayment Orders which gives Appellant, but for this appeal, no remedy to recover her funds other than at the whim of a private law firm pursuing a State enforcement action for the benefit of its private clients. The Due Process Clause prohibits this.

The dismissal order should be reversed. This appeal should proceed expeditiously. The Nonpayment Orders should be reversed.

Respectfully submitted,



Adele J. Pope
SC Bar #4501
1228 Walnut Street
Newberry, South Carolina 29108
(803) 413-0753
adele@popelawfirm.com

Appellant, *pro se*

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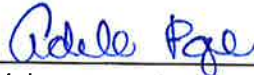
v.

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

CERTIFICATE OF SERVICE

I certify that on the 4th day of January 2021, I served the Reply to Return of Respondents to
Appellant's Petition for Rehearing in the above matter by hand delivery at the address shown below:

J. David Black, Esq.
Kirsten Small, Esq.
Nexsen Pruet, LLC
1230 Main Street
Columbia, South Carolina 29201


Adele J. Pope, Appellant, *pro se*
1228 Walnut Street
Newberry, South Carolina 29108
Telephone (803) 4130753
adele@popelawfirm.com
S.C. Bar No. 4501

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