STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Trial Court No. 2013-CP-02-1337; Appellate Case No. 2020-000967

Adele J. Pope..... Appellant,

v.

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

PETITION FOR WRIT OF CERTIORARI

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Appellant, *pro se*

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CERTIFICATION OF COUNSEL

Petitioner Adele J. Pope, *pro se,* respectfully petitions this Court for a writ of certiorari to review the decision of the Court of Appeals in *Pope v. Estate of James Brown, et al*, Appellate Case No. 2020-000967 (Order of Dismissal filed October 14, 2020). Petitioner hereby certifies that a timely filed Petition for Rehearing was filed in the Court of Appeals, and was denied by Order of February 3, 2021.

QUESTIONS PRESENTED FOR REVIEW

I. THIS COURT SHOULD GRANT THIS PETITION FOR WRIT OF CERTIORARI FOR ONE OR MORE OF THE FOLLOWING REASONS:

a. Because the money judgment was final and not interlocutory, this Petition should be granted, the Court of Appeals and lower court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

b. Because the money judgment was final and not appealed, this Petition should be granted, the Court of Appeals and lower court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

c. Because the order for money judgment is not an equitable matter, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

d. Because it was error for the trial court to approve Respondents' prior payment into the Aiken Court, to be held until the conclusion of "Richland 4900" and its consolidated FOIA suit, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

e. Because it was error for the trial court to enter an injunction against the enforcement of a money judgement for an indefinite period without providing any procedure for the return of Petitioner's funds, violating Petitioner's Due Process rights, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

f. Because it was error for the Court of Appeals to consider as interlocutory the appeal of a final order which reversed an earlier final order by a now retired judge, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

II. NO ADMISSIBLE EVIDENCE SUPPORTS THE LOWER COURT'S FINDING THAT "RICHLAND 4900" IS A COMPANION CASE.

III. NO ADMISSIBLE EVIDENCE SUPPORTS THE LOWER COURT'S FINDING THAT PETITIONER CONSENTED TO WITHHOLDING HER $47,972 UNTIL THE CONCLUSION OF "RICHLAND 4900".

STATEMENT OF THE CASE

I. FACTS OF THE CASE

In 2007 the Honorable Doyet A. Early, III, appointed Robert Buchanan, Jr. and Petitioner as special administrators ("SAs") of the estate of entertainer James Brown. Petitioner was nominated by Tommie Rae Hynie and clients of Louis Levenson, Esq.

On January 8, 2008 Judge Early awarded Buchanan and Petitioner a $317,000 SA fee for their 8 months' joint SA service, with interest at the legal rate after 60 days on all unpaid amounts. No motion to alter or appeal was taken from the payment order.

In July 2009 Buchanan and Pope filed a joint claim for Petitioner's $47,972 unpaid share of the $317,000 SA fee. Buchanan's share of the SA fee had already been paid in full.

From 2009 until May 29, 2013 Respondents, advised by "probate claims expert" William Newsome, Esq., did not pay or disallow the 2009 claim.

The Supreme Court decided *Wilson v. Dallas*, 403 S.C. 411, 743 S.E.2d 746 (2013), on May 8, 2013.

On May 29, 2013 Hynie and Levenson announced to Judge Early at a status hearing their plan to disregard *Wilson v. Dallas* and reinstate a 2008 settlement brokered by the Attorney General of South Carolina ("AG") which was voided by that decision. At the conclusion of the hearing Newsome, for Russell Bauknight, served Petitioner with a "Disallowance" asserting that she was not entitled to her $47,972 unpaid SA fee. The Disallowance stated that Petitioner would be "forever barred" from being paid the SA fee and certain other fees and costs if she did not file suit within 30 days.

On June 10, 2013 Petitioner filed "Aiken 1337," seeking her $47,972 SA fee, interest, and other relief. All causes of action except the fee claim were dismissed under rule 12(b).

Respondents' answer does not contain a counterclaim or seek any offset.

In October 2013 Judge Early held a *Wilson v. Dallas* remand hearing for Buchanan and approved his service, all of which was joint with Petitioner, and his SA fee and all other payments made to him.

In 2014 Judge Early denied Petitioner motion for summary judgment as to the SA fee.

In 2016 the AG, Hynie and other plaintiffs in Richland County Case 2010-CP-40-4900 ("Richland 4900") moved to consolidate Richland 4900 discovery with Aiken 1337 discovery. Petitioner opposed the motion, which was denied.

In October 2016 the Honorable Henry McMaster, now Governor of South Carolina, testified emphatically under oath that he did not authorize the private law firm of Kenneth Wingate, Esq., to sue Buchanan and Petitioner in Richland 4900; did not authorize Bauknight to act on behalf of the AG in Richland 4900; and did not know he was a named Richland 4900 plaintiff until after leaving office as AG in January 2011.

In November 2016 the AG, Hynie and other Richland 4900 plaintiffs moved to consolidate Richland 4900 expert discovery with Aiken 1337. The motion was denied.

On March 1, 2017 the Honorable Jean Toal, Acting Circuit Judge, directed Wingate and Everett Kendall, Esq., his law partner, to answer deposition questions about their authorization to bring and continue Richland 4900. [Order, Jg. Toal, 3/1/17]. Both asserted they were unaware of any change in their Richland 4900 clients, except for the change from AG McMaster to AG Wilson.

At the conclusion of Aiken 1337 discovery Petitioner again moved for summary judgment as to her unpaid SA fee, with interest. Summary judgment was granted on August 16, 2017.

Respondents moved to alter the language of the August 16 order, but did not challenge the

amount due. Respondents then moved to pay the $47,972, with interest at 8 ¾%, compounded annually, into the court.

On January 16, 2019 Judge Early issued the final order in Aiken 1337. While fully supporting of the May 29, 2013 announced plan of Hynie and the Levenson clients to reinstate the AG's 2008 settlement, and critical of Buchanan and Petitioner, Judge Early did not alter the summary judgment order or grant the request for a deposit of funds into the court. As to Petitioner's SA fee, Judge Early's final Aiken 1337 order stated:

> I. Mrs. Pope's Compensation as Special Administrator
>
> On January 8, 2008 this Court issued its order approving the [SA] fee of Mrs. Pope, plus interest at the rate of 8 ¾% from March 8, 2008 until paid in full. A portion of her [SA fee] was paid to Mrs. Pope during her tenure as Personal Representative, leaving a balance due to her of $47,972. The unpaid portion of her [SA] Fee, including interest, is part of her Petition in this case. By order entered August 16, 2017, this Court granted its summary judgment in favor of Ms. Pope in connection with her claim for [SA] fees in the amount of $47,972, plus interest at the rate of 8 ¾% from March 8, 2008 until paid in full. I find that Mrs. Pope is entitled to her [SA] fee, including interest until paid in full, but the [SA] fee award is not relevant to her claim for fees as [PR] of the Estate or Trustee of the Trust.

Respondents did not move to alter the final judgment. Judge Early retired on February 29, 2019. Several months later Petitioner, through counsel, demanded payment of the judgment amount, with interest.

Respondents, upon receipt of the demand, paid about $95,000 into the court. Respondents then notified the Honorable Clifton Newman of the deposit and filed a motion under Rule 67 SCRCP for approval of the deposit and a request to stop the accrual of interest.

From the filing of the motion, Petitioner has consistently confirmed that she never authorized her SA fee or any other monies to which she is entitled to be withheld; asserted that the unapproved deposit violates Rule 67; and presented substantial evidence that Respondents' attempt

to enjoin the return of Petitioner's funds is a violation of her Due Process rights and equal protection rights as a first-priority creditor of Respondent estate. Petitioner presented evidence that Respondents' deposit without prior approval by the court was made in bad faith by a conflicted fiduciary who serves as trustee and agent for Hynie and other Richland 4900 plaintiffs. Petitioner submitted evidence that the deposit continues state support for the unconstitutional, unauthorized and improper Richland 4900. Petitioner also presented evidence to show that Hynie and others are likely to prolong Richland 4900 and the 9-year-old FOIA case consolidated with it for another decade or more. In support of the return of her improperly deposited funds, Petitioner cited *Russo v. Sutton,* 317 S.C. 441, 454 S.E.2d 895 (1995), and other applicable law in addition to providing undisputed facts.

As evidence of the violation of her equal rights as a creditor Petitioner provided undisputed evidence that Respondents' fiduciary admitted to a federal court in 2018 that tens of millions of dollars in litigation costs had been incurred, all to be paid from Brown's "I Feel Good" charity. While paying out millions, Respondents have refused to pay Petitioner's $47,972 even though it has been due and earning interest at a higher-than-market rate since 2009.

Petitioner asserted that enjoining the return by the Aiken Clerk of her $47,972 until the conclusion of Richland 4900 violates her Due Process, Equal Protection and other rights, and there is no procedure for her to recover either the funds deposited with the court or the additional interest, in excess of $8,000 per year.

Petitioner has provided evidence that this case and Richland 4900 are not companion cases. The evidence includes the 2017 testimony of Solicitor General Robert Cook that in 40 years he has never seen a case like Richland 4900.

At a January 31, 2020 hearing Respondents presented no evidence or testimony to support their claim that the deposit was proper and that the Clerk should be enjoined from returning Petitioner's funds until the conclusion of Richland 4900. Respondents agreed that that the $47,972 debt to Petitioner was now almost $100,000 and was due to Petitioner. [Tr., 1/31/20, p. 6, 14] They asserted, however, than in a November 2, 2016 email, not known to be part of the record of any case, Petitioner had proposed "the very thing we're trying to do here." [TR., 1/31/20, p.2]

Despite undisputed evidence in the record that Buchanan and Petitioner brought in $7.83 million in their 18 months as PR/Trustees, Respondents' counsel asserted:

> MR. BLACK: Your Honor, when the estate was turned over to Mr. Bauknight there was $13,000 left in the estate. The estate was on the brink of bankruptcy. [Tr., p. 19]

Respondents did not advise the circuit court that all damages sought in Richland 4900 are for the Legacy Trust and its owner-successors, for whom Bauknight serves as trustee and agent. Not a penny is sought in Richland 4900 for Respondents.

Although the Legacy Trust obtained partial summary judgment in Richland 4900 in 2017, Respondents' counsel asserted that it never existed. Counsel stated:

> This Legacy Trust that she keeps talking about that's a settlement entity, when it went to the Supreme Court that settlement entity was never funded
> ...
> And the Court has ruled that there is no Legacy Trust because it was a creature from a settlement. The settlement was overturned by the South Carolina Supreme Court; therefore there is no Legacy Trust. When we filed this action [Richland 4900] though, we wanted to make sure that belt and suspenders, everything was covered, recall, Ms. Pope was appealing her removal. [Tr., p. 22]

To justify their unauthorized deposit, Respondents asserted:

> ... Your Honor, we should be able to pay that funding into the court and, at the appropriate time, the Court then will determine how that's paid out. [Tr., p. 21]

On February 26, 2020, the circuit court approved Respondents' 2019 deposit and held that interest would cease to accrue. No reference was made in the order to Rule 67, and the order did not state that the deposit was made in 2019, before approval was sought. [Order, 2/26/20]

Petitioner moved to alter, amend or vacate the deposit approval order.

On June 18, 2020 the circuit court, after a second hearing, issued its final order which, but for reversing its position on accrual of interest, remained the same. The 2-page body stated in part:

> 1. This equitable matter deals with Mrs. Pope's claim for prior fiduciary services This court has broad discretion to make findings consistent with equity and fairness.
>
> 2. Separate litigation against Plaintiff exists in companion case...[Richland 4900]
>
> 3. Plaintiff previously stated to Defendants that all monies due in this matter should be held in Escrow pending resolution of the companion case.
>
> 4. Until the resolution of the companion case, the sum previously ordered due should be paid into the Court, and once deposited, interest will continue to accrue on the amount deposited at the rate of 8.75%.
>
> . . .
>
> 6. The motion of Defendant should be Granted to the extent it seeks to deposit funds into the Court.
>
> 7. Due to the companion case in which Plaintiff may be ordered to pay a sum to the Defendants, the Defendants should be allowed to deposit funds into the Court and interest will continue to accrue on the sum deposited into the Court at 8.75%.

II. THE DISMISSAL BY THE COURT OF APPEALS

On June 30, 2020 Petitioner appealed the two lower court orders.

On August 7, 2020 Respondents filed a motion to dismiss the appeal as interlocutory. Although no offset was sought in Aiken 1337, the motion asserted:

> The SA fees are the subject of setoff in the event Respondents obtain a judgment against Ms. Pope in an action for breach of fiduciary duty currently pending in Richland County....C/A No. 2020-CP-40-4900 ("Richland 4900")

On August 31, 2020 Petitioner filed a detailed Return and Memorandum Opposing Respondents' Motion to Dismiss Appeal as Interlocutory. Petitioner asked the Court to take judicial notice of Judge Early's orders, and gave a detailed history of Richland 4900 demonstrating that Richland 4900 is a complex suit brought solely for the benefit of the AG's Legacy Trust owners, now possibly successors because of its claimed nonexistence. Petitioner set out the statutory and constitutional reasons why the appeal should not be dismissed. Petitioner demonstrated that Governor McMaster's sworn 2016 testimony confirms the position Buchanan and Petitioner have taken since 2010, namely that Richland 4900 is unauthorized, illegal and unconstitutional. She advised the Court that, as Solicitor General Cook stated it 2017, there has never been a case like Richland 4900. It has no companion.

On September 9, 2020 Respondents did not present facts to oppose those presented by Petitioner. Instead, Respondents characterized Respondents' memorandum as a "rambling, counter-factual screed against Tommie Rae Hynie. . ." [Reply, p. 2] Respondents asserted that "[t]he merits of the Deposit Order are Irrelevant to Its Appealability." [pp. 3,4] and that Section 14-3-330 provided no basis for the appeal.

On October 14, 2020 Petitioner moved the Court of Appeals to supplement the record on appeal ("ROA") with public documents which had just been released by the AG under FOIA to another citizen. The public "October 2020 Documents" include documents which were responsive to FOIA requests made years ago. They detail how in 2012 the AG's private Wingate firm attorney gave the AG legal advice not to comply with his duty under FOIA to release the public Wingate contract used to sue Buchanan and Petitioner in Richland 4900 in 2010. They also showed that the Wingate firm has known since at least April 24, 2013 that it was never hired by the State/AG to pursue Richland 4900.

On the day the motion to supplement the ROA was filed, the Court of Appeals dismissed this appeal as interlocutory.

Petitioner timely filed her Petition for Rehearing which set out Petitioner's position that the Court had overlooked facts which demonstrate that the "Nonpayment Orders" are final; that they constitute an incorrect reading of Rule 67, SCRCP, which violates Petitioner's Due Process rights; that they enjoin the payment of Petitioner's $47,972 and interest; that the lower court's factual findings have no support in the record; and that the orders deprive Petitioner of Due Process, Equal Protection and other substantial rights. [Petition. Pp. 2]

On December 16, 2020 the Court of Appeals requested that Respondents provide a return to the Petition for Rehearing, which was filed on December 29, 2020.

Petitioner filed a reply on January 4, 2021.

The Petition for Rehearing was denied on February 3, 2021.

ARGUMENTS IN SUPPORT OF THE PETITION

I. THIS COURT SHOULD GRANT THIS PETITION FOR WRIT OF CERTIORARI FOR ONE OR MORE OF THE FOLLOWING REASONS:

a. Because the money judgment was final and not interlocutory, this Petition should be granted, the Court of Appeals and lower court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

The Court of Appeals erred in finding that the orders approving Respondents' unauthorized payment of Petitioner's funds into the court are not final. They are.

The Nonpayment Orders are immediately appealable, because they "involve the merits" and finally determine substantial matters forming the whole or part of some cause of action or defense. S.C. Code Ann. § 14-3-330; *Duncan v. Government Employees Ins.* Co., 449 S.E.2d 580, 331 S.C. 484 (1994); *Tillman v. Tillman*, 801 S.E.2d 757, 420 S.C. 246 (S.C. App.2017).

The appealed orders are more troublesome because they rely on known misstatements of fact by Respondents, acting through a conflicted fiduciary. One example is the finding that Petitioner consented to the unauthorized deposit. In addition, Respondents persuaded a new circuit court judge presiding over a voluminous 10-year pretrial record and a consolidated FOIA case in Richland 4900, and an appealed judgment in Aiken 1337, that it was "equitable" to violate Petitioner's Due Process rights to her funds.

The deposit was made in violation of Rule 67. The State, through the Aiken Clerk, is now holding Petitioner's money. The circuit court has finally and unequivocally directed the clerk not to return it to Petitioner for what may be a decade or more. Or may last her entire lifetime. The orders allow Respondents to hold another $8,000+ a year of accruing interest which belongs to Petitioner. This appeal is Petitioner's only path to obtain return of her funds.

Rule 67 was not applicable when the deposit was made. There is no procedure for return of her $47,972 or collection of the interest which continues to accrue except by this appeal. The Court of Appeals erred in finding that the orders approving the deposit are not appealable.

> b. Because the money judgment was final and not appealed, this Petition should be granted, the Court of Appeals and lower court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

Respondents did not appeal the final $47,972 award in 2019. They do not dispute the amount due. The orders of the Court of Appeals and circuit court should be reversed and Petitioner's judgment award returned to her by Respondents.

For purposes of determining whether an order is appealable, "final judgment" is a term of art referring to the disposition of all issues in the case. *Doe v. Howe*, 607 S.E.2d 354, 362 S.C. 212

(Ct.App. 2004), *rehearing granted in part, on subsequent appeal*, 626 S.E. 2d 25, 367 S.C. 432 (2005).

In this summary post-judgment proceeding, the only issue was Respondents' request that the circuit court bless its payment into court of funds which have been undisputedly and repeatedly awarded to Petitioner. The court has done so.

The lower court's orders should be reviewed because they affect a substantial right and in effect determine and discontinue the action. *Duncan v. Government Employees Ins. Co.* 449, SE2d 580, 331 S.C. 484 (1994); *Tillman, supra.*

Petitioner has no further ability to protect her substantial rights except in this appeal. For this reason alone, the appeal should not have been dismissed.

> c. Because the order for money judgment is not an equitable matter, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

The record shows that Respondents sought approval of their unauthorized deposit of nearly $100,000 of Petitioner's funds into the court under rule 67 SCRCP. When it became apparent that their deposit had been improper, and Rule 67 was not applicable, they persuaded a newly-appointed circuit court judge that the deposit and its approval were an equitable matter in which the lower court had broad discretion do with Petitioner's $100,000 whatever it found equitable. This was not the case.

The Court of Appeals failed to address that the lower court violated Appellant's Due Process rights not to be deprived of her $47,972 by a willful deposit by Respondents into state

coffers of her assets. The lower court misapplied Rule 67 by treating the deposit as an equitable balancing act.

Rule 67, even though dealing with disputed funds and not applicable to Respondents' deposit, must be strictly followed. The Court of Appeals erred in not finding that the circuit court had no right to fashion an equitable remedy relating to what to do with Petitioner's final 2017 judgment. The lower court orders should have been considered and reversed.

> d. Because it was error for the trial court to approve Respondents' prior payment into the Aiken Court, to be held until the conclusion of "Richland 4900" and its consolidated FOIA suit, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008

Even if Rule 67 had been appliable, as Respondents asserted in their motion, the intentional violation of Rule 67 by placing Petitioner's funds in the court without prior approval, alone, merited consideration and reversal by the Court of Appeals. Respondents should be directed to pay Petitioner her full $47,972 with interest. The cost and delay of securing return of the unauthorized deposit should be borne by Respondents.

> e. Because it was error for the trial court to enter an injunction against the enforcement of a money judgement for an indefinite period without providing any procedure for the return of Petitioner's funds, violating Petitioner's Due Process rights, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

The Nonpayment Orders prohibit the Clerk of Court of Aiken County from paying to Petitioner funds that are hers and that are not subject to dispute. The Nonpayment Orders constitute an injunction.

An injunction is a drastic remedy issued by court in its discretion to prevent irreparable harm suffered. *Peek v. Spartanburg Reg. Healthcare Sys.*, 626 S.E.2d 34, 367 S.C. 50 (Ct. App.

2005). The lower court has enjoined the Aiken Clerk of Court from releasing funds which belong to Appellant until some indeterminate time in the future, and for no legal reason.

There is also a second injunction. As Petitioner's judgment continues to accrue thousands of dollars of interest each year, Petitioner is enjoined from seeking them from Respondents. Both of these ruling deny Petitioner's Due Process 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)).

The Court of Appeals erred in failing to find that the lower court orders approve the taking of Petitioner's funds, and enjoin their return in violation of her Due Process and other substantial rights. Those orders should be reversed.

> f. Because it was error for the Court of Appeals to consider as interlocutory the appeal of a final order which reversed an earlier final order by a now retired judge, this Petition should be granted, the Court of Appeals and trial court should be reversed, and an order entered directing Respondents to deliver to Petitioner $47,972 with interest from March 8, 2008.

Respondents paid lawyers $375 - $500 an hour to violate Rule 67 and make an unauthorized deposit of the funds demanded by Petitioner into the Aiken Court, then seek approval of what they had done. This took place after they had refused for a decade to pay funds which should have been paid in 2009. Even a cursory reading of Rule 67 makes clear that the deposit into court could not be properly authorized. Further, their request to Judge Early to make the deposit had not been granted.

. Respondents then went to a circuit judge who had recently taken jurisdiction over the massive Richland 4900 file and its unresolved consolidated 2011 FOIA case. Respondents asked the new circuit court to reverse the clear, unequivocal, final order of Judge Early that the 2007 SA fee, with interest from March 8, 2008 until paid, be paid to Petitioner.

The Court erred in failing to consider this improper, unauthorized reversal of Judge Early's 2017 summary judgment order. The orders approving the deposit should be considered and reversed.

II. NO ADMISSIBLE EVIDENCE SUPPORTS THE LOWER COURT'S FINDING THAT "RICHLAND 4900" IS A COMPANION CASE

The lower court of found that Aiken 1337 and Richland 4900 are companion cases. They are not. Aiken 1337, a fee claim case, was concluded in 2019. It had only three parties. It bears no relation to the quagmire which is Richland 4900. Richland 4900 has 17 Plaintiffs. After 11 years, the parties are not properly joined; discovery is incomplete; and two appeals are pending. Just a few of the things that make Richland 4900 unlike this case or any other set out below.

A. The Wingate contract is unique.

Bauknight is the only Richland 4900 Plaintiff to sign the Wingate contract. It was signed by 3 lawyers who would have secured about $18 million in contingency fees if they could have stopped the appeal which became *Wilson v. Dallas*.

The Wingate contract says on its face that it is a public document subject to FOIA. Yet Wingate and the AG have spent a decade refusing to produce it either in Richland 4900 discovery or under FOIA. The AG even transferred a 2011 FOIA case to Richland County and had it consolidated with Richland 4900 to prevent release of the Wingate contract. The AG has still not produced the Wingate contract under FOIA.

The Wingate contract provides that Brown's Estate will advance the costs for the Richland 4900 plaintiffs, who are seeking to dismember Brown's estate plan.

In 2020 the AG produced a letter dated April 24, 2013 to the Wingate firm which says the AG's office never hired Wingate, and the AG did not sign the Wingate contract.

Levenson signed the Wingate 40% contract for nearly a dozen Richland 4900 plaintiffs, including minors and an incarcerated Plaintiff. Now they have terminated him.

In short, the Wingate contract alone makes Richland 4900 unlike any other case.

B. Richland 4900 seeks to enforce the AG's 2008 Settlement.

All of the damages sought in the never-amended Richland 4900 are for the AG's Legacy Trust. Nothing is sought for Respondents. Respondents' counsel asserted that it is a "fiduciary duty" case, and the lower court adopted that position. But the fiduciary duty claimed in the Richland 4900 complaint is to the Legacy Trust, an entity created to dismember Brown's estate plan.

In 2012 Bauknight stated under oath that he had managed the Legacy Trust in Richland County for three years. In 2016, however, he stated in another affidavit that the Legacy Trust never existed. In 2017 the claimed nonexistent Legacy Trust, through its trustee Bauknight, obtained a partial summary judgment ruling in Richland 4900. Today the Legacy Trust is conducting two appeals to benefit Hynie and its other owner/successors.

C. Richland 4900 seeks damages for challenging Hynie's spousal claims.

The Richland 4900 complaint seeks to treat Hynie as the spouse of James Brown and obtain damages against Buchanan and Pope because they challenged the AG's plan to give here about $1 million a year and a quarter of Brown's music empire for half of the termination rights proceeds she put in the Legacy Trust in 2009.

D. A 9-year-old FOIA case is consolidated with Richland 4900

Since 2011 the AG and Wingate have successfully worked together to make Richland 4900 a FOIA graveyard. A 9-year-old FOIA case seeking the public Wingate contract has been consolidated with Richland 4900 for most of its life. The AG's efforts to consolidate other FOIA cases with Richland 4900 have met with less success, but caused considerable delay.

E. Disharmony Among Richland 4900 plaintiffs is rampant.

Despite the fact that the never-amended Richland 4900 complaint supports the AG's 2008 settlement and the May 29, 2013 announced plan to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement, there is now rampant disharmony among the Richland 4900 Plaintiffs, who are suing each other in multiple courts.

At least ten Richland 4900 plaintiffs have repudiated Hynie's spousal claims. Some were successful in the Supreme Court, but Hynie has sought review by the U.S. Supreme Court.

At least two Levenson clients now claim that certain other Levenson clients are not children of James Brown. And Levenson himself is engaged in litigation with at least one former client. Yet Bauknight continues to act as agent for all, including those who are suing him.

F. Hynie is expected to prolong Richland 4900 for a decade.

At the December 21, 2007 hearing on Buchanan's and Appellant's $317,000 SA fee claim, Hynie's counsel revealed that she had just challenged Brown's estate plan.

When Judge Early awarded the $317,000 SA fee on January 8, 2008 Hynie had filed six lawsuits for herself and her son, seeking more than half of Brown's assets. Collectively they were a sow's ear.

Hynie's handwritten admissions, public since 2007, confirmed her knowledge that her marriage ceremony with Brown was bigamous. Her son, not a presumed heir, was refusing a paid-for $300 DNA test under the estate's official protocol.

In August 2008 the AG's 2008 settlement gave Hynie hope for her hopeless claims. Richland 4900 and its consolidated FOIA case, however, have turned Hynie's baseless claims into a silk purse.

Respondents advised Judge Newman that Richland 4900 was a "belt and suspenders" case. It was, but not for Respondents. Richland 4900 is the belt which is holding up Hynie's now 46% stake in Richland 4900 while the consolidated FOIA case serves as her suspenders.

Peter Afterman, seleted by Hynie's counsel and serving the Legacy Trust since 2009 and Hynie since 2013, is helping. In 2011 Hynie, the AG and others touted Afterman's $4.7 million value of Brown's music empire as evidence that it was good for Brown's charity to give Hynie $1 million a year and a quarter of Brown's assets for half of her nonexistent Copyright Act termination

rights, and those of her son. That was not the case. The Bauknight/Afterman $4.7 million value did, however, shift about $1 million a year of income and nearly 1/3 of Brown's charity over to the family, just in case something went wrong in *Wilson v. Dallas.*

In 2011, when Forlando Brown became a secret owner of the Legacy Trust, the primary Richland 4900 plaintiff, Legacy Trust lawyers threatened sanctions if anyone sought documents of that "private" trust. Then by 2016 the Legacy Trust had disappeared.

In 2013 the Supreme Court in *Wilson v. Dallas* appeared to call a halt to Richland 4900. Hynie, Bauknight, Wingate and Afterman barely noticed.

Brown's charity continued to foot the for bill for the May 29, 2013 announced plan of Hynie and Levenson to disregard *Wilson v. Dallas* and reinstate the AG's 2008 settlement. After the circuit court found Hynie to be Brown's spouse, however, the Levenson clients fired him and remembered what their father had told them: that Hynie was not his spouse.

Respondents, through Bauknight, continued their support for Hynie's spousal claims, the Afterman $4.7 million value, and the claim that the AG's 2008 settlement was good for Brown's charity. In February 2018, when Bauknight admitted to a federal court that tens of millions of dollars in litigation costs had been spent, it was clear that Hynie was the primary beneficiary of those litigation efforts. While withholding Petitioner's $49,972, Respondents were spending millions on Richland 4900 and its related FOIA disruption.

Respondents paid Peter Afterman more than $1 million as he worked for Hynie's lawyers to file public termination rights notices seeking for her U.S. royalties from Brown's charity which would become available between 2015 and 2023. Respondents also paid SA/ST David Sojourner $1.4 million to defend against Hynie, but he testified in 2016 that he had no duty to protect the copyrights.

Respondents advanced Hynie's Wingate firm litigation tab in Richland 4900, engaging nine experts, including Brad Sharp, California, at $700 an hour and Jonas Herbsman, Esq. of New York at $600 an hour. There is no evidence that Respondents made any effort to seek return of Hynie's 46% of the costs of these Richland 4900 experts.

In the FOIA case consolidated with Richland 4900, and other FOIA cases Wingate and the AG tried to consolidate with Richland 4900, Respondents and the taxpayers of South Carolina have paid since 2011 for efforts to suppress public documents. Those documents confirm that Hynie was not Brown's spouse and Brown's charity is worth about $80 million – not $4 million. Wingate and the AG secured an order in 2017 that suppressed an affidavit of Petitioner without review, and held that all of Petitioner's further affidavits must be under seal. The FOIA efforts, along with 6 years of stays since 2013, helped Hynie and the few still aligned with her in Richland 4900 in their announced effort to reinstate the AG's 2008 settlement. But it was not enough.

In 2020 the Supreme Court held that Hynie was not the spouse of James Brown.

Richland 4900 has been pending for nearly 11 years despite the Supreme Court's 2013 suggestion that it should come to an end. With Respondents advancing Hynie's Richland 4900 legal bills, including in two pending appeals, and the FOIA cases to suppress public evidence of her wrongdoing, there is every indication that Hynie will prolong Richland 4900 for another decade or more.

Hynie, still in London, is holding onto the silk purse while others pay.

III. NO ADMISSIBLE EVIDENCE SUPPORTS THE LOWER COURT'S FINDING THAT PETITIONER CONSENTED TO WITHHOLDING HER $47,972 UNTIL THE CONCLUSION OF "RICHLAND 4900.

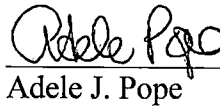
There is simply no evidence that Petitioner ever consented to the withholding of the SA judgment or any other funds to which she is entitled from Respondents. Yet the lower court,

which recently secured jurisdiction over Richland 4900, adopted this wholly-unsupported factual finding advanced by Respondents.

Conclusion

The Court of Appeals erred in dismissing orders of the circuit court which not only misapplied Rule 67 but did so in a manner which clearly violates Petitioner's fundamental rights, including Due Process rights and her rights as a first priority creditor. Rule 67 and Due Process do not allow Petitioner's undisputed, liquidated, unappealed $47,972 judgment to be deposited into the court for any period, much less an indefinite which may last for a lifetime, and during which Petitioner has no procedure to seek return of her property. The Petition for Certiorari should be granted. The orders of the Court of Appeals and lower court should be reversed. The Court should issue an order directing Respondents to pay Petitioner her $47,972, plus interest as provided in the summary judgment order until paid.

Respectfully submitted,



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February 16, 2021

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Trial Court No. 2013-CP-02-1337; Appellate Case No. 2020-000967

Adele J. Pope..... Appellant,

v.

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

PROOF OF SERVICE

The undersigned Appellant certifies that She has served a copy of the Petition for Writ of Certiorari on all Respondents on the date shown below, by hand-delivery, addressed as follows:

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February 16, 2021