

STATE OF SOUTH CAROLINA  
In the Supreme Court

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MAY 16 2013

S.C. Supreme Court

APPEAL FROM AIKEN COUNTY  
Court of Common Pleas

The Honorable Doyet A. Early, III Circuit Court Judge

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Appellate Case No. 2012-212917

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IN RE: THE ESTATE OF JAMES BROWN A/K/A JAMES JOSEPH BROWN

Adele J. Pope ..... Appellant,

v.

Alan Wilson, Attorney General of South Carolina,  
Russell Bauknight as Trustee of the Legacy Trust  
and in other fiduciary capacities, and Tommie  
Rae Hynie Brown..... Respondents.

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**MOTION AND MEMORANDUM OF ADELE J. POPE, *PRO SE*, TO DISMISS  
ATTORNEY GENERAL AND BAUKNIGHT AS PARTIES AND RENEWED  
MOTION TO EXPEDITE BASED ON MAY 8, 2013 DECISION IN *WILSON V.  
DALLAS*, OPINION NO. 29227 (May 8, 2013) AND SCHEDULED  
APPOINTMENT HEARING**

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Based on the May 8, 2013 decision of this Honorable Court in *Wilson v. Dallas*<sup>1</sup> and the scheduling of the Honorable Doyet A. Early, III of a hearing on May 29, 2013 to appoint successor Personal Representatives under the Will of James Brown and successor Trustees of the James Brown 2000 Irrevocable Trust (the

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<sup>1</sup> *Wilson v. Dallas*, Opinion No. 27227.

"2000 Trust") as directed in *Wilson v. Dallas*, Appellant respectfully renews her motion to expedite this matter and further moves before this Honorable Court for the following relief:

1. Dismiss Attorney General Alan Wilson ("AG Wilson") and Russell L. Bauknight in all capacities as parties to this appeal;
2. Accept the initial brief of Appellant filed herein August 14, 2012;
3. Expedite this appeal;
4. Declare void the 5-year-old Gag Orders that prevent AG Wilson from discussing the contents of or releasing under FOIA the widely disseminated handwritten notes of Respondent Tommie Rae;
6. Declare that the Gag Orders, being a prior restraint on First Amendment rights, cannot be used to prevent testimony of Appellant, eight of Brown's descendants and others.

#### **Summary of Need for Expedited Relief**

Immediate relief is needed because the Honorable Doyet A. Early, III has scheduled a hearing on May 29, 2013 to appoint successor PR/Trustees under the Will of James Brown and the James Brown 2000 Irrevocable Trust ("PR/Trustees") in accordance with his documents. The documents require three fiduciaries who will "vigorously defend" the Estate Plan against the claim of Tommie Rae and all others seeking to set it aside.

For five years two attorneys general have supported and bolstered Tommie Rae's claim to be Brown's spouse while all Brown fiduciaries prior to Bauknight assert her claim has no merit.

A false impression that Tommie Rae *is* Brown's spouse has been created by this high-level support.

*Wilson v. Dallas* suggests that Tommie Rae's claim to be Brown's spouse is weak. The Gag Orders prevent a dozen or more potential witnesses who know Tommie Rae was not Brown's spouse from discussing her writings which support that fact.

To allow Tommie Rae – at the May 29 hearing – to continue to gag these witnesses who have read her handwritten notes and confirmed she is not Brown's spouse – even if they wish to be gagged, as Exhibit A suggests they do<sup>2</sup> - would place The James Brown "I Feel Good" Trust in jeopardy of losing – again – millions of dollars James Brown dedicated to needy students.

### **Facts and Argument**

This appeal was filed on August 13, 2012 asking the Court to void 2008 Gag Orders which prevent all discussion of the widely-known contents of handwritten notes made by Tommie Rae, companion of entertainer James Brown.<sup>3</sup> Appellant's initial brief was served August 14, 2012.

Appellant sought to void the Gag Orders when Tommie Rae sued Appellant and Robert Buchanan, Jr. in 2010 for conducting the *Wilson v. Dallas* appeal and failing to accept a \$100 Million offer to buy James Brown's assets. Appellant's answer and counterclaim assert that Tommie Rae was not Brown's spouse.

Attempts to void the Gag Orders met with strenuous resistance by Tommie

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<sup>2</sup> Portion of email chain related to May 29, 2013 hearing.

<sup>3</sup> The notes were made after Brown discovered in 2003 that Tommie Rae was married when she conducted a ceremony with him in 2001 and before his death on Christmas Day 2006.

Rae. She was supported in those attempts by AG Wilson and Bauknight.

Based on the pending *Wilson v. Dallas* appeal, Judge Early ruled in 2012 that he lacked jurisdiction to void the 2008 Gag Orders. The Gag Orders silence Appellant and scores of from discussing or distributing the widely-known contents of Tommie Rae's handwritten notes which have come to known as the Hynie "diary."

Tommie Rae's attorney has confirmed that discussion and dissemination of the "diary" contents would cause irreparable harm to Tommie Rae.

On May 8, 2013 this Court's opinion in *Wilson v. Dallas* voided the settlement and Respondent Bauknight's appointment.

On May 15 Judge Early announced that he will hold a hearing on the appointment of successors under Brown's Will and the 2000 Trust on May 29.

Since the May 8 decision Hynie continues to assert that she is Brown's spouse. She and Bauknight have:

1. Asked the Richland County Court to delay indefinitely a case in which Tommie Rae's marital status is ready for summary judgment;
2. Asked the same court to delay for what may be years FOIA suits in which she and Bauknight seek to intervene and sanction Appellant.

On May 8 Forlando Brown – holding the right of first refusal to buy Brown's assets under the McMaster settlement – told a federal Court that on February 27 this Court in *Wilson v. Dallas* confirms that Appellant "misappropriated various forms of money and property."

Action in the last week suggests that Tommie Rae, Forlando and others are continuing to discredit Appellant in order to revive the settlement.

## **AG Wilson Should be Dismissed as a Party**

The Attorney General's five-year endorsement of Tommie Rae's claim to be Brown's spouse began in August 2008 when Tommie Rae's counsel announced that she and the Attorney General spoke "as one."

By September 8, 2009 – after the settlement was approved -- Tommie Rae was even bolder. Speaking at a September 9, 2009 hearing her counsel said of Appellant and Robert Buchanan, Jr. :

...THE ATTORNEY GENERAL DOESN'T WANT THEM EVEN IF THEY WIN ALL THE WAY OUT. THE ATTORNEY GENERAL'S OFFICE WOULD BE THE LAST PERSON STANDING AND THE ATTORNEY GENERAL DOESN'T WANT THEM AS FIDUCIARIES.

In 2010 Tommie Rae, Bauknight and AG Wilson all sued Buchanan and Pope for appealing the McMaster settlement and failing to accept a \$100 Million offer they have since told this Court was never made.

AG Wilson supported Tommie Rae's vitriolic claims in a September 13, 2012 Motion to Dismiss this appeal.

At the time he endorsed Tommie Rae's motion – and now – AG Wilson could not have even discussed the "diary" with his staff without violating the Gag Orders.

In light of his filing between the two *Wilson v. Dallas* decisions, AG Wilson appears to have modified his position.

Assuming AG Wilson no longer supports silencing those whose testimony will defend the "I Feel Good" Trust, he should be dismissed as a party.

## **Bauknight's Should be Dismissed as a Party**

Since 2009 Bauknight has been a primary supporter of Tommie Rae's claim to be Brown's spouse. Yet – if the Gag Orders are still in effect – Bauknight could not have read them or discussed their contents without violating the orders.

Bauknight and Tommie Rae continue to try to delay AG Wilson's FOIA compliance. Tommie Rae has escaped giving a deposition for six years – even in the three -year-old case where she is Plaintiff. Appellant's summary judgment motion is pending in that case.

It is time for the witnesses to be ungagged and a Court to determine that Tommie Rae is not Brown's spouse.

Bauknight's position with the Estate and 2000 Trust is now void. He should not lend the impression that Brown's Estate and 2000 Trust support Tommie Rae's quest, which is directly opposed to its best interest.

He should be dismissed as a party.

## **The May 8 Decision and Tommie Rae's Interference With FOIA**

Since *Wilson v. Dallas* Tommie Rae, in requesting a years'-long delay in the FOIA suits <sup>4</sup> said the following of the May 8 decision:

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The FOIA suits seek a copy of the Wingate Contract under which Hynie and AG McMaster, with others, sued Appellant and Buchanan in Case 4900; AG Wilson's copy of the less-than \$4.7 Million appraisal of Brown's music empire and other documents to support the State's allegation that she and Buchanan intentionally committed a \$79 Million overstatement to obtain a \$5 Million commission; a copy of the Legacy Trust, which sued Appellant and Buchanan in Case 4900; and a copy of the document authorizing Bauknight to assert that he speaks on behalf of the Attorney General of South Carolina in Case 4900.

The Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 from the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. . . the court no longer puts any primacy or priority on any court hearing these matters. We believe that such a position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject for a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of an FOIA claim.

...it is now abundantly clear that all matters related to the James Brown Estate cases must be heard and decided by the Aiken Court. How the Aiken Court rules on a...number of issues across a number of cases will then determine the posture the group of plaintiffs or individual plaintiffs who will continue on with Case 4900.

..Therefore, Case 4900 Plaintiffs . . . respectfully request that Case 4900 be held in abeyance in its entirety until all underlying issues related to the Plaintiffs are resolved by the Aiken Court.

[Emphasis supplied.]

### **Tommie Rae and the Federal Copyright Act**

On May 29 Judge Early will face the challenge of appointing fiduciaries who will protect and defend James Brown's estate plan, including its royalty copyrights, which make up about half of the music empire he dedicated solely to needy and deserving students.

Although not mentioned in the original May 10, 2008 McMaster settlement, by 2011 termination rights were asserted by some to be a principal component of the settlement. Tommie Rae developed the myth that as Brown's "wife" she had added great value to Brown's assets by contributing "her" rights to the Legacy Trust.

In oral arguments in *Wilson v. Dallas*, Bauknight opined that copyright termination rights were “all this case is about.” He also argued that Tommie Rae’s spousal claim was a “slam dunk.”

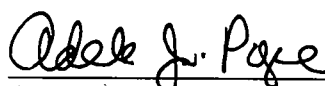
The stipulation that Tommie Rae was Brown’s spouse put Tommie Rae – with her minor son – in control of termination rights to the exclusion of Brown’s real heirs.<sup>5</sup>

At least eight descendants of James Brown and others who know Tommie Rae’s myth that she brought value to the settlement *is* a myth should be able to speak freely without facing Tommie Rae’s threats of litigation. Even if they cling to their settlement with her, five-year-old Gag Orders should not shield their prior statements.

### Conclusion

For the reasons stated herein, this Court should dismiss AG Wilson and Russell Bauknight as parties to this appeal based on the May 8, 2012 *Wilson v. Dallas* decision; expedite the appeal; and declare the Gag Orders involved void.

Respectfully submitted,



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S. C. Bar # 4501

May 16, 2012

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<sup>5</sup> But for the settlement and stipulation, Brown’s Estate and 2000 Trust could have secured copyright termination cooperation in its negotiations with royalty copyrights by agreement with any 5 of the following nine: DNA-proved daughters (1) LaRhonda; (2) Nicole; (3) Jeanette; (4) Daryl; (5) Larry; (6) Terry; (7) Deanna; (8) Yamma; and (9) Venisha. At least six are familiar with the “diary” and have testified or filed documents to confirm that Adrienne Rodriguez was Brown’s last spouse.

From: "Louis Levenson" <louis@Levensonlaw.com>  
 To: "Early, Doyet A. Law Clerk (Adam C. Ness); ; Early, Doyet A.; Early, Doyet A." <dearlyc@sccourts.org;dearlyc@sccourts.org;dearlyj@sccourts.org;dearlyj@sccourts.org>  
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 Subject: James Brown Estate and Trust/Hearing on May 29th at 2 PM  
 Date: 5/15/2013 10:43:39 PM

Dear Judge Early and counsel

First, my apologies for writing this further response so late in the day to Your Honor's earlier request for scheduling of the hearing on May 29th or 30th. As I had said earlier, I am free on the 29th and I believe the Court has set it down for that date at 2 PM in Barnwell.

As to Ms. Pope's email to this Court at 10:12 AM on May 15th, I urge, as explained more fully below, that 1) Ms. Pope has no standing to contact the Court or to argue these or any matters in the case on remand as it presently is situated before Judge Early and 2) what she has shown to the Court is simply argument from one without standing discussing matters that are passed off as evidence, all well beyond the scope of the request by Your Honor to simply schedule a hearing on May 29th or 30th.

Ms. Pope's e-mail correspondence and efforts to take an active role in this case following remand are not appropriate. Ms. Pope simply does not have standing to object or otherwise have input on the appointment of any fiduciary in any other litigation or administration issue in this Estate and Trust. On May 8, 2013 our South Carolina Supreme Court handed down its final opinion in the appeal from the May 26, 2009 Order approving the parties' settlement agreement. I use the word "final" when referring to the May 8, 2013 decision or opinion because, as the Circuit Court is well aware, the Supreme Court published its initial opinion on February 27, 2013. In the initial opinion, the Supreme Court affirmed this Honorable Court's ruling removing Ms. Pope. Following the issuance of the February 27, 2013 opinion, Ms. Pope petitioned the Supreme Court to amend its decision and reinstate her as a fiduciary. On May 8, the Supreme Court issued its amended (and restated) opinion. In that opinion the Supreme Court even more conclusively than before affirmed its prior holding that Ms. Pope was properly removed. One of the more powerful sentences used in the initial opinion and conclusively confirmed by the final opinion was that: "the extreme discord between the parties convince us that Appellants' continued service as fiduciaries is not in the best interest of the estate." Consequently, the Supreme Court has conclusively held that Ms. Pope cannot serve in any fiduciary capacity relating to the James Brown Trust and Estate.

Although e-mail has often been used to plead one's case to the Court in this and related matters, respectfully, it is not the proper method to litigate by any party or lawyer and I hesitate to do that, but time is brief before Your Honor will consider the remand upon the remittitur.

I am writing now because I believe, on behalf of my clients, the 5 children of Mr. Brown and the children of those children, that it is important that we move forward with the mandate from the Supreme Court with those litigants and attorneys who still have a role in the disputed matters in the Circuit Court. Ms. Pope has litigated her claims and those have been rejected; she can have no role in the estate and trust case with the exception of her narrow and limited claim as a creditor seeking an unliquidated amount for her PR commission claim—the same claim that the Supreme Court mentioned in its recitation of the facts that shaped its conclusion that Ms. Pope's "continued service as [a] fiduciary(y) is not in the best interest of the estate." Section 62-1-201(20) does provide that a creditor is an "interested person"; that section also states that "heirs, devisees, children, spouses" etc. are interested persons. Importantly, however, section 62-1-201(20) also provides that the meaning of interested person, "as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved in, any proceeding." I would urge to Your Honor that the sentence of subsection 20 cited above confirms that Ms. Pope's interest is to be and should be narrowly limited to the basis of her interest—that is, her PR commission creditor's claim which is not yet ripe to be heard, and certainly not to be heard on May 29th, 2013.

We welcome Your Honor's determination of everyone's role and standing is to be, hopefully to be considered by the Court on May 29th at 2 PM in Barnwell, consistent with the mandates of the Supreme Court opinion dated May 8, 2013, such that we can please expedite this estate litigation (the first step of which may be for Your Honor to appoint a PR) without the participation of additional persons who simply lack standing. To the extent that an evidentiary hearing were to be scheduled sometime in the future on the creditor's claim of Ms. Pope (and others who have claims, as well) regarding her request for compensation, notice to her and her participation would be appropriate and necessary. I respectfully suggest we are not nearly at that point yet.

Best regards

Louis Levenson

PS: In the past, I have been happy to put together an "agenda" for the hearings and am pleased to do so again for the one scheduled for May 29th if it pleases the Court.

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Exhibit A

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Alan Wilson, Attorney General of South Carolina,  
Russell Bauknight as Trustee of the Legacy Trust  
and in other fiduciary capacities, and Tommie  
Ray Hynie Brown.. ..... Respondents.

**PROOF OF SERVICE**

I certify that on the 16<sup>th</sup> day of May, 2013 I have served the Motion and Memorandum of Appellant Adele J. Pope, *Pro Se*, to Dismiss Attorney General and Bauknight as Parties and Renewed Motion to Expedite Based on May 8, 2013 Decision.. by depositing a copy of same in the United States Mail, postage prepaid, addressed to their attorneys of record as follows:

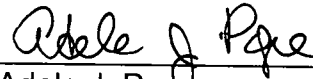
**ATTORNEYS OF RECORD FOR RESPONDENTS:**

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May 16, 2013