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SC Court of Appeals

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In the Court of Common Pleas of the
State of South Carolina, County of Oconee

Case No.: 2017A0720100139

Jirair Baghdassarian,

Plaintiff(s),

vs.

Transcript of Record

Judy Tupolo,

Defendant(s).

HEARING HELD VIA WEBEX

October 25, 2022

BEFORE:

The Honorable R. Scott Sprouse

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APPEARANCES

REPRESENTING THE PLAINTIFF:

Jirair Baghdassarian, Pro Se

REPRESENTING THE DEFENDANT:

Trey Merck, Esquire

119 South Main Street, Suite B
Six Mile, South Carolina 29682

SERVING AS GUARDIAN AD LITEM:

Tjay Bagwell, Esquire

603 West Main Street
Walhalla, South Carolina 29691

1 PROCEEDINGS

2 THE COURT: What is our first case?

3 THE CLERK: Case number 2022CP3700157,
4 Jirair Baghdarrarian versus Judy Tupolo. This is
5 plaintiff's motion for temporary order of restraint.
6 Attorneys on this case, please state your name for the
7 record.

8 MR. BAGWELL: I am Tjay Bagwell, I am the
9 guardian ad litem for Mr. Donnie Adair, who he might not
10 be in the caption, but Ms. Tupolo -- Ms. Judy Tupolo is
11 his current power of attorney.

12 THE COURT: I see Mr. Merck down here and
13 then Mr. Baghdassarian. Gentlemen, can you hear me?

14 MR. BAGWELL: Yes, Your Honor.

15 MR. BAGWELL: I can hear, but it's cutting
16 out a lot. I like hear half of the word maximum.

17 THE COURT: Okay. Mr. Merck, I can't see
18 you. Can you hear?

19 MR. MERCK: I can hear you very well, Your
20 Honor. You are good. I'm going to try to see if I can
21 fix the camera.

22 MS. HALL: Judy Tupolo is here. Her
23 daughter, Alexia Hall, who has been a witness to many
24 things regarding the care of Don Adair.

25 THE COURT: Okay. I can see Mr. Merck

1 now.

2 MR. MERCK: Yes, sir.

3 THE COURT: This matter is set for a
4 rehearing. The Court held an earlier hearing. This
5 matter was sent to circuit court by order of the Oconee
6 County probate court on the grounds that this was an
7 action which was questioning the construction of a power
8 of attorney or the agent's conduct as power of attorney.
9 So, the probate court on February 28th, 2022 sent this
10 matter to circuit court.

11 A hearing took place, which resulted
12 in a form four order. And then a formal order was
13 issued in which a guardian ad litem was appointed
14 for Mr. Adair. Mr. Bagwell was appointed guardian
15 ad litem so that the Court could be informed of the
16 facts of the situation since there's great
17 divergence of the versions given by the parties in
18 the case and to be more informed and get accurate
19 information, the Court felt that it was necessary
20 for a guardian ad litem to be appointed.

21 The Court has received the report
22 from the guardian ad litem. And the purpose of this
23 hearing is for the guardian ad litem to put anything
24 in the record that he feels necessary. And the
25 Court will hear from each party after they have had

1 the opportunity -- well, it's been over a month,
2 they have had the opportunity to review the
3 guardian's report and filings have been received
4 from both parties.

5 So, Mr. Bagwell, is there anything
6 that you would like to put in the record as guardian
7 ad litem for Mr. Adair?

8 MR. BAGWELL: Just briefly, Your Honor. I
9 believe that Mr. Adair is in a bit of a good spot
10 compared to some of the cases that we have done like this
11 before. I don't believe that either the plaintiff or the
12 defendant is actually going to be a bad option for his
13 care. And I speak on that strictly speaking for Mr.
14 Adair. And if you don't mind, I call him Donnie. That
15 is what I did in my report.

16 The -- so many of the issues
17 surrounding Donnie are also tied up with the church,
18 the congregation, the organization that he invested
19 his entire life in. And so he didn't have many
20 possessions himself. He didn't have much money
21 himself, comparatively speaking, much money himself.
22 He does have a personal account that his social
23 security is being deposited into. But as far as
24 much land or many cars or large savings or anything
25 like that, none of this was personal to him. And it

1 really revolves around this organization. I call it
2 the association, I believe, in my report.

3 But it is part of a much larger
4 religion, the Seventh-day Adventist, this branch of
5 it that is located in Oconee County. Mr. -- Donnie
6 has been dedicated his whole life, along with his
7 wife Marilyn, late wife Marilyn I should say, really
8 dedicated themselves to this. And so I hate to
9 bring it up so much, but many of the troubles, many
10 of the disagreements between the parties stem from
11 how the money was used out of this religion, how
12 the, how the -- how Donnie gets to interact with the
13 current community in it. And so there has to be --
14 I put it in my report, but there has to be a
15 fundamental understanding that those two things are
16 connected in the minds of the parties, in the minds
17 of the community as a whole.

18 Now, as far as it mattering to the
19 Court or not, that of course, is up to the Judge.
20 But what I found is both the plaintiff and the
21 defendant have -- I don't mean to make light by
22 saying this, but they have said all of the right
23 words in their care for Donnie, that they not only
24 care for him, like love him personally, but they
25 also want to see what is best for him.

1 Now, the plaintiff is saying that
2 from a bit of a distance, saying how much he
3 respects Donnie, how close they have grown over
4 means of electronic communication, mostly by phone,
5 how he wants Donnie to be still heard by the word --
6 still heard by the world and the congregation as
7 long as Donnie can contribute to that.

8 There was nothing but overflowing
9 respect for Donnie and his position from the
10 plaintiff. The defendant, when speaking with her,
11 we talked a lot more about day-to-day stuff,
12 personal care, what their schedule looks like, and
13 so that is to be expected because the defendant has
14 spent the last couple of years spending pretty much
15 24 hours a day with Donnie. So the difference in
16 how they see Donnie is evident.

17 And the plaintiff, again, I didn't --
18 I didn't check a degree or a business card or
19 anything like that, but the plaintiff, through
20 personal interview with me, through his own
21 affidavits, has shown a great capacity to work with
22 people that are losing their mental capacity like
23 Donnie is doing. And so the plaintiff has -- I
24 think that it is his job, literally, to work with
25 folks like this in memory care. And so he is coming

1 at that with a particular advantage that I don't
2 have, that most people in the world don't have, is
3 that day-to-day experience with the memory care
4 patients.

5 The defendant, to her credit, has a
6 lot of experience with Donnie already. Already
7 knows his whims, already knows what upsets him or
8 what the good days look like and what the bad days
9 look like. So as far as Donnie's actual, physical,
10 personal care, which I believe should be one of the
11 most important things to me as his guardian ad
12 litem, I don't know if there's really a bad option
13 between the plaintiff and the defendant.

14 Beyond that, beyond the actual
15 physical care of Donnie's body and his mind is a
16 much more mirky, much more complicated issue. I
17 won't try to just revisit everything in my report.
18 But briefly, there is no doubt in my mind that
19 Donnie and Marilyn, his deceased wife, used money
20 from the church for their personal benefit. I don't
21 mean that in a bad way, because everybody knew that
22 they were doing it. I grew up in a family that my
23 dad was a pastor and my grandfather was a pastor, I
24 know that churches support people, churches pay
25 salaries. And just because Donnie and Marilyn

1 didn't draw a salary doesn't mean that they were bad
2 people, they are just -- they are not accountants.
3 They are ministers, they are not business people.
4 And so they made some mistakes over the decades
5 along the way in how they handled money. But I
6 don't believe that they were stealing it. If I
7 could do the air quotes, I don't believe that they
8 were stealing the money at all.

9 But when Donnie was no longer the
10 head of this organization, it brought up a lot of
11 complications. And those complications, from my
12 outside perspective, split the association into a
13 couple of factions. And I know that Judy is on the
14 board, Judy the defendant, is on the board of one of
15 those factions. But having Donnie in her care gives
16 her a great deal of sway over one of those, one of
17 those two factions. And with that sway, they used
18 hundreds of -- a hundred thousand dollars, at least,
19 and possibly more in a way that also -- I don't want
20 to use the word "misappropriation", but it's
21 misappropriation out in the open with everybody,
22 with everybody's knowledge.

23 Now that we don't have that
24 centralized leadership with Donnie, now that
25 misappropriation looks bad to one half of one

1 congregation, but it's completely approved by a
2 different half of the congregation. And so, are
3 these things important to Donnie's care? Maybe not
4 as much as his, as the actual physical wellbeing,
5 but they are a part of this story, a very complex,
6 actually now, set of accounting records and tithes
7 coming in and money being spent is, is complicated.

8 As I stated, there's no doubt in my
9 mind that Judy has used this money for personal
10 gain, it is -- but she used it with Donnie in her
11 house. She took this money and fixed the house that
12 she is on the deed on. The association doesn't own
13 this property, Judy testified to me that she owns
14 the property and used this association money to fix
15 the house up. But now Donnie is living in that
16 house. Is he getting a hundred thousand dollars
17 worth of value from the renovations she made in the
18 house? That is going to be arguable by either side.

19 But if -- this may be me speaking out
20 of turn, but if I may say, that money is spent.
21 Donnie is never getting it back. And, quite
22 frankly, I don't know if it would help with his care
23 or not. I understand that nursing homes are very
24 expensive, but Donnie having very little personal
25 property, very little income himself, would qualify

1 for Medicaid very soon, if not immediately, if it
2 came to applying for Medicaid to pay for long term
3 care moving forward.

4 And so, Your Honor, I believe that I
5 could probably ramble for a while longer, but the --
6 in summary, Donnie, is -- Donnie's needs are met
7 today. I believe if the plaintiff won this case,
8 Donnie's needs would be met. If the defendant wins
9 this case, I believe that his needs would be met.
10 All of the stuff about the association may not
11 matter to Donnie's actual needs, other than
12 undoubtedly what the plaintiff will bring up is
13 Donnie wants freedom. He wants to be able to teach,
14 he wants to be able to interact with his
15 congregation.

16 But whichever, plaintiff or
17 defendant, whichever side wins, that is only -- that
18 is only half of the congregation that I believe
19 Donnie is really going to communicate with because
20 there is a political divide in the congregation that
21 I don't know if it has anything to do with Donnie
22 really anymore. He served his time and he is
23 absolutely the elder, he is absolutely the super
24 star of this association, but does it matter for his
25 day-to-day care now? I can't say that it does.

1 THE COURT: Mr. Bagwell, you anticipated
2 my first question to you, and that is, as guardian ad
3 litem do you believe that Mr. Adair's basic needs are
4 being met?

5 MR. BAGWELL: I believe that he is clean,
6 fed, I believe that he gets to the doctor when he's
7 supposed to. I think, based on the conversations with
8 the plaintiff, I believe those needs could continue to be
9 met. Again, that is words, that is the testimony coming
10 this way. Donnie -- but when I met with him personally,
11 he appeared clean, safe, well fed. He still walks around
12 on his own, he doesn't even have to use a -- he is 90
13 years old, doesn't have to use a cane or anything like
14 that. He is actually, physically, in pretty good shape
15 for a 90 year old. But he is -- his current needs are
16 being met.

17 THE COURT: And, as you know, this Court's
18 involvement in these type matters is limited to the power
19 of attorney. And based on your investigation, have you
20 uncovered any evidence of abuse or fraud or breach of
21 fiduciary duty in the use of the power of attorney?

22 MR. BAGWELL: There's been no evidence of
23 physical abuse at all. And so, again, in my -- I'm not a
24 medical doctor, but in my, just my opinion, we will --
25 I'm sure that there will be a difference in my answer

1 here based on if I was the plaintiff or the defendant,
2 the only evidence of any abuse mentally or emotionally
3 comes from the plaintiff and the affidavits of the folks
4 that agree with the plaintiff, and that would be that
5 Donnie is denied freedom and opportunity, that he should
6 get to teach and to speak with the members of his
7 congregation.

8 So the -- I guess, the only evidence
9 of any type of abuse would be that Judy is too --
10 the defendant is too restrictive with Donnie and
11 that he -- that he could live a fuller life but is
12 unable to because he's not able to talk on the phone
13 as much as he used to, not able to teach as much as
14 he used to. So it is -- that is not evidence that
15 he is being spoken to too harshly, not evidence that
16 he's being bullied by Judy, other than Donnie
17 doesn't get to do what he wants to do everyday
18 because Judy doesn't let him. That is my only
19 evidence.

20 THE COURT: Now, you mentioned earlier
21 about the congregation split. If Mr. Adair resided with
22 the plaintiff in the case, do you feel that he would have
23 communication with the other side of the congregation?

24 MR. BAGWELL: Again, this is just coming
25 from growing up in church-based households, if you will,

1 but I think Donnie -- Donnie's communication is going to
2 be mostly limited to whichever side wins because each
3 side is going to say that the other side is trying to
4 poison Donnie's mind.

5 Donnie's mind is not what it used to
6 be though. They, each side of this congregation
7 split, is going to see the worst in the other side
8 and it will -- so the opportunities for Donnie to
9 teach will over time become limited anyways because
10 of his disease, but will be restricted by whatever
11 side wins.

12 And, again, teaching goes beyond a
13 hobby for Donnie, it is a passion. It is what he
14 wants to do most in this world. And he spent
15 decades doing it. But I want to say that he is not
16 the man that he used to be, but he still has
17 something to contribute. But it will be, it will be
18 bottle-necked, I believe, by one side or the other,
19 just through the nature of, not the promises that
20 the defendant or the plaintiff can make, just that
21 they -- the congregation is split. And I know that
22 is political and everybody wants a piece of the
23 power.

24 THE COURT: Mr. Bagwell, and don't
25 misconstrue this question because I know that you are not

1 a medical doctor, I'm not asking you for a medical
2 opinion. But as his guardian ad litem, did you feel that
3 Mr. Adair is capable of living by himself?

4 MR. BAGWELL: Absolutely not. He can be
5 left alone in a room for a short period of time. But I
6 would -- if I were taking him to the grocery store, I
7 would keep him in my line of sight. If I -- he could
8 probably be left alone to watch TV while his caregiver
9 takes a shower or goes to the yard to water the plants.
10 He could -- I have a set of nieces and nephews that are
11 between two years old and eight years old, and he is more
12 like the four or five year old, the niece that I have,
13 that you can trust them to be alone in a room for a short
14 time but not actually cook for themselves, bathe
15 themselves properly, or take care of themselves in any
16 way. He communicates like an adult when you are talking
17 to his face, but he would not be able to live on his own,
18 nor do I think he should be left for any long amount of
19 time by himself.

20 THE COURT: Thank you. Thank you, Mr.
21 Bagwell. Let me hear from the parties. I'll hear from
22 the plaintiff, Mr. Baghdarrarian, first. And then I'll
23 hear from Mr. Merck.

24 MR. BAGHDASSARIAN: Thank you, Your Honor.
25 We do appreciate Mr. Bagwell's report and we will take it

1 into serious consideration. Of course he is not a
2 medical professional, but he says things that are quite
3 important. He may have seen things that I haven't
4 because I talk to him on the phone. So, therefore, what
5 I see and what I understand from Mr. Bagwell, is that he
6 is at an early stage of dementia, according to Mr.
7 Bagwell. That is his impression because he compared it
8 with someone else, okay. And I'm not saying that this
9 should necessarily be true, but I am going to take it as
10 a consideration as true, just to move on with the
11 arguments. And we will comply with what he said, provide
12 him 24 hour assistance, as he requested.

13 Now, as far as concerning the abuse,
14 we never ask that Don Adair would be restricted to
15 his decision as with whom he should talk. All we
16 said is that he should have a phone and talk to
17 whomever he wants to talk. And many of the
18 complaints and affidavits that you see over there
19 are actually people who never -- who have nothing to
20 do with the association, have never been in the
21 association. These are old friends like Lynn
22 Bernowski, like Mr. M.J. Bingham. Actually M. J.
23 Bingham's father was the mentor of Don Adair. And
24 Don Adair helped build that association in Missouri.
25 And he was very concerned that -- he is a friend of

1 his father and he knows him for more than 50 years.
2 He is not able to talk to him.

3 So we are not asking that his
4 communication would be restricted to our side or any
5 of the sides, okay. I'm not with any faction,
6 neither program or entity, nor do I have anything to
7 do with whatever the fate of the association is
8 going to be. He is my old friend and I was very
9 upset and I heard a lot of, a lot of accusation of
10 her abusing him financially. And I am going to talk
11 about that. But the fact that she does not allow
12 him to have a neutral legal counsel, the fact that
13 she does not allow him to have a phone, she does not
14 allow him to have a laptop, she does not allow him
15 to talk to his friends who are not even part of that
16 association is my objection.

17 And I can assure you that if he
18 goes -- if he does not want her, and Mr. Bagwell
19 admits that he has an excellent long-term memory, he
20 said it in his report. And somebody who has an
21 excellent long-term memory remembers who are his
22 friends, he remembers those people who like him,
23 those people who do not like him. And the issue
24 with him is not simply about her, you know -- the
25 issue with her is not simply about putting him in an

1 assisted living facility, he had a lot of personal
2 issues with her. He felt that she was bullying him,
3 she was controlling -- she was restricting his
4 decision in things just like having a phone and
5 talking to his friends. So he really was not
6 comfortable.

7 In fact, I even, officially filed --
8 Don Adair filed a case of abuse, financial abuse
9 against her. He went to the fire station and filed
10 -- Don Adair says that he does not want her. He
11 appointed us as his power of attorney. And we do it
12 not because we have anything to do with the
13 association, because we are trying to help him to
14 understand that Mr. Don Adair, Mr. Bagwell says,
15 needs 24 hour assistance, which that is fine. There
16 are things that he cannot make decisions for, that
17 is fine. But he still knows who are his friends, he
18 still knows to who he wants to talk, he still has an
19 influence. Mr. Bagwell says that he is able to
20 teach.

21 So if Judy's, if Judy's purposes are
22 not simply to take control of the association and
23 the funds of association, so why doesn't she allow
24 him to talk to his followers, okay? Mr. Bagwell
25 admits that she took a hundred and four thousand

1 dollars from the association's funds, which
2 partially belongs -- which is partially what is
3 supposed to be used for Mr. Adair's -- Mr. Adair's
4 retirement.

5 She took it from something that he
6 influenced. His reputation. Influenced those
7 people to send tithes. And these tithes are being
8 sent, is being sent because Don Adair has influence.
9 But people, we are not here -- I mean, the other
10 faction, the other faction that is anti-Judy is not
11 even interested in having Don Adair talk to their
12 faction as much as they are interested for Don Adair
13 to talk to her faction. Because it is her faction
14 that is not seeing the story, is not hearing the
15 story that Don Adair wants to say.

16 None of the faction are hearing it.
17 And if they hear it I believe that they will change
18 their mind as to who they send the tithes and how
19 the money is being used. I have heard, I have heard
20 statements of members who really did not know that
21 she has used this money to buy personal property.
22 She used the funds that he gathered for over 50
23 years to buy personal property.

24 Now to say that Don Adair is living
25 with her, that is also something that happened when

1 this motion came to a late state. Until this motion
2 came to a late state, I do not believe he spent six
3 months with her, based on the information I have,
4 okay, and I am guesstimating, but I do not believe
5 he lived, he spent six months with her during the
6 whole two plus year period she had the power of
7 attorney. She did not want him. She put him in an
8 assisted living facility where he was restricted
9 from talking to people. He was not happy because of
10 those restrictions.

11 And now, you know, she complaints
12 about this and she doesn't -- and she is using that
13 reputation, she took that money to renovate, and I
14 believe, I believe she is even using tithe money to
15 buy that house. She put it in her name. She did
16 not put it in the association's name under the alibi
17 that she is taking care of Don Adair and she is
18 spending money on the association. But she put
19 everything in her name so that her and her daughter
20 and her family would inherit it.

21 And, on top of that, her statement
22 that I have just said right now, she is using that
23 property to rent that property to the association,
24 so she's making benefit every month. She is making
25 personal benefit. And this is an abuse of her power

1 of attorney. She is using the power of attorney to
2 use Don Adair's association and Don Adair's funds,
3 and Don Adair's reputation to buy property, to
4 renovate that property, and to rent that property to
5 that same association. That is all personal
6 benefit. That is against, that is against the law
7 in South Carolina to use all of this for personal
8 benefit.

9 She -- I have heard from witnesses
10 that she abused the power of attorney to put a van
11 in her daughter's name. Things have been
12 disappearing from his house. Don Adair is
13 complaining. That is what I heard, okay. If that
14 is wrong, then we need to investigate that, okay.
15 So she is, yeah, so he's been complaining about
16 that. And basically this is -- this is financial
17 abuse, as well as emotional abuse to be isolated
18 from the world when he's able to teach and he is
19 able to talk and he has enough long-term memory to
20 decide with whom he wants to live. So, that is a
21 restriction.

22 We even heard that until this motion
23 came, he didn't have even a decent suit to go to
24 church with. So all of this, and I don't think that
25 right now she took him back because she felt she was

1 going to lose custody over him. And I don't think
2 -- I think this is going to be short-lived. Because
3 if over two years he doesn't spend six months with
4 you, she spent a lot of time in Texas, and when she
5 comes back sometimes she puts him in either an
6 assisted living facility or with Alisa Peters
7 (phonetic), one of his friends.

8 And then spending money from his,
9 money from his Social Security Social Security, not
10 from the association's money, we do not believe
11 that. And if they are really spending the
12 association's money on him, then what -- how is it
13 going when Mr. Bagwell says that he doesn't have
14 anything? Mr. Bagwell says that he doesn't have
15 anything, he's about to be taken care of by
16 Medicaid.

17 Well, actually what I have heard from
18 witnesses is that the association was having \$10,000
19 of income in tithes, and that is all based on the
20 reputation and the teaching of Don Adair that he
21 gathered for over 50 years, okay. So I believe that
22 Don Adair, still, as Mr. Bagwell says, is of early
23 stage, whatever it is, so he still have at least 80
24 percent of his faculties and he's able to decide
25 with whom he wants to live. And for her restricting

1 him from talking to people and make decisions that
2 he's able to make, that by itself is a form of
3 abuse, okay.

4 The social isolation, the isolating
5 him from legal advice, and then using all of this
6 for a so-called charitable organization while she is
7 benefiting from it. This is only the hundred forty
8 four -- the hundred and four thousand. There are
9 other things. How is the tithes being spent? We
10 have already mentioned that she's selling his books,
11 that is his copyright. She is selling it and it is
12 on her website. I provided the website's name. She
13 is selling it, that money, where is the money going?
14 How come Don Adair says, I don't have any money, I
15 don't want to be thrown on the street. He knew the
16 consequences of leaving the facility. He says, I
17 don't want to be thrown on the street. He got no
18 option as to -- at all. If he still has 80 percent
19 of his faculties, he should have let's say at least
20 50 percent of the options. He's not even getting
21 that. He is getting nothing.

22 THE COURT: Thank you, Mr. Baghdassarian.
23 Mr. Merck, let me hear from you.

24 MR. MERCK: Yes, sir. Thank you very
25 much. First of all, I would like to thank you very much

1 for Tjay Bagwell being appointed as guardian ad litem. I
2 think Tjay has done an awesome job and really presented
3 the situation as it is and as it could be or will be in
4 the future. So I just really appreciate you for doing
5 that, that really took a close look at the issues
6 involved.

7 And Tijay said that physically Don
8 Adair is -- his needs are being met. So there's no
9 real dispute to that. I think that we have to look
10 at where this matter started from. There was some
11 allegations that Judy was abusing this power of
12 attorney. Judy was put in this position not really
13 of her own volition, she didn't really sign up for
14 this position. It wasn't like somebody presented it
15 to her and it was a lucrative type position and she
16 said, Yeah, I think I will do that. That wasn't the
17 way this whole thing came about. There was a need
18 there for Don Adair. She had at least enough
19 knowledge and position to where she could
20 potentially serve, but it wasn't -- it is not
21 something that would be desired among a large number
22 of people, to serve in the capacity that she has
23 served, and she's done it as well as she can.

24 And we really have to look at -- I
25 know the plaintiff has said that, I guess supposedly

1 Don would have some money or some funds, but I think
2 that the real dispute, if there is one, would be
3 between Judy and the association. There is no real
4 dispute here, it doesn't seem like, between Judy and
5 Don. Judy is trying to do the best she can for him.

6 And any kind of issues related to her
7 getting excess funds, if she did, the association
8 wanted to take care of Don, which they do, and have.
9 Those are really issues between her and the
10 association, they are not really -- really should
11 not be really before the Court. What we are here
12 for is, I guess, as we have to remind ourselves, is
13 that there were allegations that she was abusing her
14 power of attorney. We have now looked at that.

15 Tjay was appointed, Tjay took a look,
16 and he took a look at a lot of information and a lot
17 of stuff, he talked to a lot of people. I know
18 personally he did. He really did a comprehensive
19 look at the situation. And his findings are,
20 essentially, that the power of attorney is not being
21 abused. So that is where we are at. That is his
22 results. And that is, of course, in agreement with
23 what we believe has transpired.

24 Judy ended up relocating all the way
25 from Texas to take care of Don. She had probably a

1 better situation in Texas than she did here, but she
2 did what she had to do. You know, sometimes in life
3 we get lemons and we try to make lemonade, and I
4 think that that is what Judy has tried to do. And
5 it's been tough. I mean Don, even recently, he has
6 gotten real aggressive with Judy. I think with both
7 feet recently just kicked her in the chest as hard
8 as he could and caused her some physical problems.
9 And at times he's combative and difficult to
10 control. So I think that the plaintiff is really
11 kind of diminishing his mental status and what he is
12 able to do and how much control he could be allowed,
13 because at times he gets real paranoid and
14 aggressive and abusive.

15 And so we just ask you to, as we did
16 before, we ask you to dismiss this action. We
17 believe the power of attorney is being used properly
18 and we believe the evidence shows that. And we
19 don't believe that the plaintiff, even though they
20 have made a lot of allegations, none of which have
21 really panned out, we believe that the action should
22 be dismissed, and that what is being done on behalf
23 of Don is proper and is the best that can be done in
24 the situation that we have. We would ask you to
25 dismiss the action, Your Honor.

1 THE COURT: Well, I notice each party has
2 made some recent filings. The plaintiff responded to the
3 guardian's report. I have reviewed that, but I want to
4 go back and read it again. And then Mr. Merck, you made
5 some filings recently that I want to look at. So I am
6 going to take this under advisement. And thank you for
7 your arguments today. I will send you -- and, Mr.
8 Bagwell, have you submitted a fee affidavit for your
9 time?

10 MR. BAGWELL: I have not, Your Honor. I
11 didn't know if we were finished or not, so I have not
12 done that.

13 THE COURT: Okay, well do that, submit
14 that for the Court and then we will go from there.

15 MR. BAGWELL: Yes, Your Honor.

16 THE COURT: I'll be in touch, and I'll let
17 everyone know what I have decided to do with this. Thank
18 you. Thank you all for being here.

19 MR. BAGHDASSARIAN: Is it okay if I answer
20 the defense?

21 THE COURT: Very briefly. But I'll read
22 what you have submitted again.

23 MR. BAGHDASSARIAN: Okay, all right. So
24 Mr. Bagwell did not say that, in your presence and in his
25 report, he did not say that Judy had -- did not abuse the

1 power of attorney. What he said is that his basic needs
2 are met. He said he is in good hands from the sense of
3 his basic needs are met. But he also said that Brother
4 Don Adair has additional needs, which is his dignity, and
5 his dignity and to live his life fullest. And he said
6 that Mr. Baghdarrarian is the one who is caring for that,
7 okay.

8 As far as Judy, as far as Don Adair
9 being upset at her, she imposed herself on him. He
10 never chose her as his -- he never chose her as his
11 caregiver. In fact, he did not even know what he
12 signed when he signed his power of attorney and he
13 contests that. He said that she told him that God
14 had chosen her to be his nurse and she imposed
15 herself on him.

16 There are other people who want to
17 take care of him. Actually we are offering
18 ourselves and we know other people are offering
19 themselves. And she is not allowing those people.
20 She is not -- she just wants to have the exclusive
21 for her, because she's financially abusing. And
22 these things have to be investigated. And it is
23 very difficult to investigate it if she's not
24 allowing anything. She is using the power of
25 attorney to deny that.

1 Now, as far as the power of attorney,
2 we have shown in our reply to Mr. Merck's memorandum
3 that this power of attorney that she had, she did
4 not have the jurisdiction to restrict him from
5 things, including going into his room and stealing
6 his private phone numbers and stealing his private
7 notebooks and taking it from him, and using things
8 and depriving him things. We said if she had
9 jurisdiction over that, she should have had him
10 checked by doctors and present that to the Court so
11 that the Court will give her that jurisdiction and
12 the Court will specify what jurisdiction she has and
13 what jurisdictions she does not have.

14 If you read, 60 percent of abuse come
15 from family and caregivers, and that is why the law
16 gives some rights to the person. We do not defer in
17 the absolute. We do not say competent or
18 incompetent. We have to say competent in this and
19 incompetent in that. And Judy decided to declare,
20 with the power of attorney that makes her only an
21 agent, she does not make her her (SIC) guardian.

22 So in that sense only. None of the
23 six points that we mentioned in our reply to
24 memorandum have been answered by either the report,
25 nor by Mr. Merck, nor by the defense, or by anybody.

1 And they proved very, very clearly that she had the
2 power -- the jurisdiction of the power of attorney
3 and she has abused it.

4 And not until now we see no reply and
5 have totally been ignored. All of the six points we
6 have found, okay. So basically by that we can say
7 that Mr. Bagwell did not say that she did not abuse
8 the power of attorney. Mr. Bagwell said that we
9 will go further above his basic needs in taking care
10 of him, and that she -- there was no reply to those
11 funds -- if they do not reply, how is it that she
12 broke the jurisdiction of the power of attorney
13 without getting, without getting authorization from
14 the Court, then she has abused the power of attorney
15 and it should be suspended.

16 MS. TUPOLO: May I say something?

17 THE COURT: No, ma'am, your attorney has
18 articulated your position. I am going -- I am going to
19 read everything again and I'll let you know my decision.
20 Thank y'all. Close the record.

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CERTIFICATE

STATE OF SOUTH CAROLINA:

COUNTY OF OCONEE:

I, MONA L. MANLEY, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

DATED this 4th day of June, 2023.

Mona L. Manley /s/

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