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**Jun 23 2023**

**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.: 2022CP3700157

Jirair Baghdassarian,

Plaintiff(s),

vs.

**Transcript of Record**

Judy Tupolo,

Defendant(s).

HEARING HELD VIA WEBEX

July 12, 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

1 PROCEEDINGS

2 THE COURT: Madam Clerk, call the next  
3 case.

4 THE CLERK: Case Number 2022CP3700157,  
5 Jirair Baghdassarian v Judy Tupolo. We have two motions  
6 on this roster. Plaintiff's motion for a temporary order  
7 of restraint, Defendant's motion for a more definite  
8 statement. Attorneys in this case, please state your  
9 name for the record.

10 MR. BAGHDASSARIAN: Hello, my name is  
11 Jirair Baghdassarian. Did you want me to say my name?

12 THE COURT: Mr. Baghdassarian, do you have  
13 an attorney?

14 MR. BAGHDASSARIAN: No, I am representing  
15 myself.

16 THE COURT: Okay. Now it looks like from  
17 the file, Mr. Merck represents the defendant. Is Mr.  
18 Merck present?

19 MR. BAGHDASSARIAN: I would like to object  
20 to that, because I think she is supposed to be here in  
21 person and not send somebody on her behalf, esp --

22 THE COURT: Mr. Baghdassarian, she is  
23 represented by counsel. I need to know if Mr. Merck is  
24 here.

25 MR. BAGHDASSARIAN: Okay.

1 THE COURT: All right, I see Mr. Merck's  
2 name has popped up, okay.

3 MR. BAGHDASSARIAN: Well, the notice -- I  
4 saw the notice notified on the website about six days  
5 ago. Weren't they supposed to notify of her absence at  
6 least 10 days ahead of time?

7 THE COURT: What is the objection, Mr.  
8 Baghdassarian?

9 MR. BAGHDASSARIAN: My objection is if she  
10 was supposed to be at the hearing, have someone  
11 representing her, shouldn't she have done that -- served  
12 me 10 days ahead of time as we are requested to do that  
13 by mail, ahead of the hearing.

14 THE COURT: A party can retain counsel at  
15 any time prior to a hearing. Mr. Merck, you represent  
16 the defendant in this case?

17 MR. MERCK: Yes, Your Honor.

18 THE COURT: All right. Well, let's start  
19 with -- the first motion on the docket is Mr.  
20 Baghdassarian's motion for a temporary order of  
21 restraint. Let me hear from him, and then I will hear  
22 from Mr. Merck on the motion for a more definite  
23 statement. So, Mr. Baghdassarian.

24 MR. BAGHDASSARIAN: Thank you, Your Honor.  
25 Thank you very much for allowing me to speak. So, Your

1 Honor, I know Don Adair for 20 years. He is one of the  
2 most well-known elders in our religious community. He  
3 has been, he has been a close friend. And he has been a  
4 good friend, has been on the historical camp of our  
5 denomination, which was founded in Texas. And he knew  
6 the founder in person. He is a writer known  
7 internationally as a bible teacher. I have heard lately,  
8 a year ago, that he is being restricted access to phone  
9 calls and to people and I got very concerned.

10 We lost track of him. Finally in end  
11 of January, probably January 23rd, I was able to  
12 find his phone number and found out he was in an  
13 assisted living facility. So I called him and was  
14 able to reach him. He expressed his frustration of  
15 being there. He said he refused -- he feels he is  
16 treated like a slave, and wanted me to take him out  
17 of the facility. I said, I am willing to do so and  
18 explained to him that there is a legal route to do  
19 so, that we need to give him access to legal counsel  
20 and document to revoke the power of attorney and  
21 sign himself out of the facility.

22 So I told him also that I need to  
23 call the people who are concerned about him, that he  
24 is welcome to stay at my place if he needed to. So  
25 he agreed on the revocation and expressed his

1 agreement to the plan. Suddenly, when we are on the  
2 conversation he tells me that the staff is listening  
3 to the phone conversation, that the power of  
4 attorney you need to call on is on the other line  
5 and that she has given the order that he should not  
6 talk to anyone anymore.

7           So when I insisted that a power of  
8 attorney is not a guardian and that the man has not  
9 been deemed legally -- there is no evidence that he  
10 has been deemed legally incompetent or incapable.  
11 He is well-oriented and lucid and able to make a  
12 decision, such as with whom he could talk. So they  
13 were rude enough and hung up on me and refused to  
14 allow me any conversation.

15           The phone was taken away from him  
16 against his will. He had expressed to me that he  
17 has been deprived from his freedom in that facility  
18 and that it is bothering him and that he does not  
19 wish to remain there. Judy texted me and accused me  
20 of being a vulture. And when I object and tell her  
21 she is infringing on his basic civil rights, she  
22 says she has the correct paperwork to do so. So I  
23 asked her to prove it. She refuses, saying she has  
24 no obligation to show me anything at all. So I try  
25 to connect with her daughter to mitigate, to say

1    sorry, I checked -- connected with the man that  
2    worked with her and the association she took over  
3    for Don Adair. So same results, being rude or  
4    evasive, elusive, not willing to reach any  
5    resolution or any compromise.

6                    I tried talking -- so it was, it was  
7    a tense situation for everyone. I have been in  
8    contact then with the police and filed reports of  
9    abuse. I was recommended to file a civil case with  
10   probate court, which was then transferred to Your  
11   Honor to civil court. And I am thankful, very  
12   thankful you are considering the case.

13                   So Judy has been depriving an adult  
14   man from his basic civil rights, basic freedom and  
15   decision making under the guise that he is legally  
16   incapacitated without any proof of his  
17   incapacitation. Even the facility where he was  
18   staying was treating her as if she was his guardian  
19   or caretaker, instead of an agent. They literally  
20   told me that he is under her, she is -- he is under  
21   her, therefore, he is under her jurisdiction and has  
22   to follow her direction, and that he is not able to  
23   make basic decisions. When I ask for any evidence,  
24   no one shows it to me. No one claims to have any  
25   court order or probation judgment legally

1    incapacitating the man.

2                    It was not until about four months  
3 later that Mr. Adair was able to reach me with a few  
4 phone calls. I am not sure really what happened,  
5 but I suspect, you know, possibly the phone numbers  
6 were taken away from him. But suddenly he is able  
7 to call. And I tested his cognitive ability on the  
8 phone and found that he was lucid, alert, conscious,  
9 and oriented to self, person, place, to time and  
10 situation.

11                   He had good long-term and short-term  
12 memory, as well as functional memory where he was  
13 able to follow set of instructions. I have all of  
14 these interviews recorded. Performed them step by  
15 step and then call me back and report the steps  
16 accomplished and the result of his endeavor.

17                   He also showed good judgment, knowing  
18 how to act in cases of emergency and what to do in  
19 situation of home fire and accident. Again, in the  
20 first conversation he revoked all power of attorney  
21 documents on the phone.

22                   And before I continue, Don Adair and  
23 the facility were subpoenaed to be here and they  
24 were served. So aren't they supposed to be present  
25 at this moment before I continue my speech?



1 witnesses including Katherine Kerr that when she  
2 acquired the power of attorney from him he was  
3 recovering from a tanssinjunga (ck) attack. And his  
4 confirmation of the situation may have been  
5 questionable.

6 I instructed him how to revoke it  
7 orally and in writing. So he revoked it orally and  
8 I recorded it on my phone recording. And he also  
9 wrote it down, signed it, dated it, and wrote his  
10 name and recommended him to show it to every staff  
11 and caregiver he talked to in the facility. He  
12 agrees to do so.

13 He called me a few days later and  
14 said Judy took the document away from him by force,  
15 not according to his will. Against his will. I  
16 instructed him to write it again and to tell her to  
17 stay away from him and from his belongings. He said  
18 he will do so.

19 Then he called me again and let me  
20 know that the facility will not honor his  
21 revocation, neither orally or written. I sent Judy  
22 and the facility written letters notifying them of  
23 the revocation and citing the South Carolina probate  
24 court that mandates the validity of such revocation.  
25 South Carolina Probate Court Section 62-5-512 allows

1 the principal to revoke the power of attorney  
2 document in an oral statement. I quote, "An oral  
3 statement or any other act constituting notification  
4 by the principal to the agent or to a health care  
5 provider responsible for the principal's care of the  
6 principal's specific intent to revoke the health  
7 care power of attorney," unquote.

8 I asked him if he wants to appoint  
9 someone else, as far as this whole matter, he agreed  
10 that it would be neither me nor -- or someone else  
11 called Scott Smith who he requested me to call. Me  
12 and another friend of his, Katherine Kerr, attempted  
13 to call Scott several times but he was not -- he was  
14 not answering at the number that Don Adair gave me.

15 I sent -- I mailed him documents to  
16 revoke her and appoint me instead of her by mail  
17 because they were not accepting neither the oral or  
18 the written. They want paperwork, so I sent them  
19 paperwork. And since then, I don't hear from him, I  
20 don't hear anything, I don't know what is going on.  
21 And I request the subpoena and he is not showing. I  
22 am really surprised. This is not acceptable. It is  
23 just not acceptable.

24 The police, on Friday, served him for  
25 the second time. I hand-served him on the legal

1 basis of more than two weeks, about two weeks ago.  
2 And I have it notarized that I served him and served  
3 the facility. And then I called the police and they  
4 served them again on Monday. And they said he was  
5 served personally.

6                   So I sent the documents with the  
7 restricted signature that he should -- only him  
8 could sign it, and instead I am surprised that  
9 someone else signed it at the facility and returned  
10 it back to me from him. And since then I don't hear  
11 anything from him. I don't know what is going on.

12                   So I believe depriving someone from  
13 his basic civil rights without any legal capacity or  
14 permission from probate court or respective court is  
15 just an illegal act. So she and whoever isn't  
16 complying is not only breaking the law but has  
17 committed an unethical, illegal, and viscous act of  
18 false imprisonment without any legal justification,  
19 or moral justification.

20                   Such act could be categorized as  
21 either a tort or a crime. I do not believe that she  
22 had honest or benevolent knowledge to do so. There  
23 are good reasons to believe based on what witnesses  
24 have heard, that her motives were to control his  
25 assets and his career, which she practically did.

1                   And she prevented him from  
2 communicating to his bible students and his close  
3 friends and to the people he used to teach and  
4 preach to. He came under her mercy, socially  
5 isolated, unable to defend himself, being deprived  
6 from democracy, counsel and legal advice. She took  
7 over his association, religious association, maybe  
8 what he was running, his career he built. He has  
9 built for, probably since the '70s. His career, his  
10 land, his properties, his friends, his social  
11 circle, his freedom, his headquarter, his financial  
12 resources, his credit card, his valuables to use  
13 them at her own whim, make herself a career and  
14 finances, usurping and stealing his resources and  
15 life.

16                   I heard he barely stayed with her in  
17 that house that she was renting as she rented a new  
18 facility that looked to be quite a luxury property  
19 and he just stayed with her a couple of months. He  
20 was living with someone else or he was living in a  
21 facility while using all of the assets and the  
22 moneys for her own pleasure.

23                   Someone in the association board  
24 called Carol Jones told me that he personally paid  
25 the first month, a grand, from the association

1 money. It was on the association that belongs to  
2 Don Adair. She also told me she took away over a  
3 hundred thousand dollars from the association's bank  
4 account. There were three people on the bank  
5 account, Carol Jones' wife and her. She, according  
6 to the rules, she was supposed to counsel before  
7 taking away the money, so she did not.

8 THE COURT: Hold on. Was there an  
9 objection?

10 MR. MERCK: Yes, Your Honor.

11 MR. MERCK: Yes, Your Honor, continued  
12 hearsay that he is bringing forth. So, of course,  
13 hearsay.

14 THE COURT: Okay. I am getting about  
15 every other word. Let's do this, let him finish and then  
16 I am going to hear from you. This, I don't think he  
17 submitted a memorandum and I am going to give him an  
18 opportunity to do that. It looks like you have submitted  
19 a memorandum.

20 MR. MERCK: Yes, sir.

21 THE COURT: So go ahead and finish, Mr.  
22 Baghdassarian. And then I will hear you.

23 MR. BAGHDASSARIAN: Even Judith told,  
24 herself when I talked to her on the phone, she admitted  
25 she took the money. Right. These are not -- I am not

1 really involved with their association directly, but this  
2 is what they told me. And she admitted she, she took the  
3 money and she has -- she does have the power of attorney.  
4 And, in fact, the books that belong to Don Adair and his  
5 (inaudible) are being sold by her. Well, actually what I  
6 know is that the issue with the location of the books are  
7 on a piece of land that is on a probate issue between him  
8 and relatives and she is not supposed to be doing that.  
9 So if she is -- obviously she admitted she took the money  
10 and Don Adair told me she took the money and also he told  
11 me she is using his Social Security and that -- she is  
12 using his Social Security and she steals his credit cards  
13 as well.

14                   And so she created all of this to  
15 herself, even admitted to me in person that she is  
16 keeping the money. There are witnesses that have  
17 sent letter (inaudible) emotional and financial  
18 abuse and expressing their concern about the  
19 situation. But the issue we are here is not about -  
20 is not totally about the financial abuse, this is  
21 one of the results of what is going on.

22                   The reason I am asking for a  
23 revocation is because he is being deprived from his  
24 basic rights without any proof of his incompetence.  
25 I can provide you the letters at your request, or if

1 you want me to read them right now I can do that.

2 And the revocation --

3 THE COURT: Hold on, Mr. Baghdassarian. I  
4 am going to -- let's do this, Mr. Merck has submitted a  
5 memorandum which I don't know if you have had an  
6 opportunity to see that memorandum.

7 MR. BAGHDASSARIAN: When? When did he  
8 submit it? What I saw, whatever -- I didn't see a  
9 memorandum from him at all, I didn't even see on the web  
10 site.

11 THE COURT: All right. I am going to give  
12 you an opportunity to respond, to review that and respond  
13 to it. So summarize, summarize your argument now. Now  
14 you -- what are you asking for in the hearing?

15 MR. BAGHDASSARIAN: We hereby courteously  
16 request the Honorable Justice a suspension of all power  
17 of attorneys. Since the facility is not accepting any  
18 legal avenue to do so. She has been abusing the  
19 document. She has been acting and regarded as if she was  
20 his guardian. And the facility seemed to be agreeing  
21 with her in a bias manner. Accepting an invalid document  
22 that is being abused beyond its scope and capacity.

23 I believe she will use and abuse as  
24 she has already done, any document signed by Don  
25 Adair that she has in possession to prevent anyone

1 that disagrees with her from accessing him and  
2 providing him the legal advice he needs to receive  
3 his freedom.

4                   Therefore, I believe any document  
5 that she has that provides her any status of any  
6 kind should be revoked. She also prevented from  
7 moving him to any other location where he could not  
8 be found, to prevent us from accessing him. I also  
9 request that the facility where he is staying will  
10 be commanded to allow to access-- give access to him  
11 so that we would be -- that he would be provided all  
12 legal procedures by providing him access to legal  
13 advice, notary, and witnesses that will allow  
14 appropriate dissertation of his legal rights. Thank  
15 you very much.

16                   THE COURT: Okay. And, Mr. Baghdassarian,  
17 are you related to Mr. Adair?

18                   MR. BAGHDASSARIAN: I am a good friend of  
19 his.

20                   THE COURT: You are just a friend. Okay,  
21 okay, I understand.

22                   All right, Mr. Merck, your response.

23                   MR. MERCK: Yes, Your Honor. Thank you.

24 So as I think Jirair -- as she has faithfully served as  
25 agent for Donnie Weiner (phonetic) Adair since 2020. She

1 has a health care power of attorney --

2 THE COURT: You are breaking up.

3 MR. MERCK: Your Honor --

4 THE COURT: I am getting about every other  
5 word.

6 MR. MERCK: Is it better now, Your Honor?

7 THE COURT: That is much better.

8 MR. MERCK: Okay. So, yes, Judy Tupolo  
9 does have a healthcare power of attorney and durable  
10 power of attorney for Mr. Adair. These were both  
11 executed July 27th, 2020. And the durable power of  
12 attorney was recorded. Now Mr. Adair has filed this  
13 action to have Ms. Tupolo removed as agent, however not  
14 only are his allegations real vague and to us don't seem  
15 to be credible, but we don't believe has standing to even  
16 bring this action. And that is the first focus of my  
17 memorandum that I filed.

18 THE COURT: Okay.

19 MR. MERCK: I would expect (ck) that he  
20 even to bring a motion, that he needs to show that he is  
21 entitled to some judicial relief. There is, under the  
22 South Carolina Uniform -- it specifically states who is  
23 allowed to seek judicial relief under these  
24 circumstances, and I have set that out in my memorandum.  
25 And he is none of these. He doesn't fit these criteria.



1 subpoenaed and -- last day -- and there are medical  
2 records that I have that show some -- may I think he was  
3 probably incapacitated -- I feel -- in evidence of that.  
4 But I don't want to present that because I believe the  
5 plaintiff is going to put this out in public. And so  
6 this is a vulnerable adult, so we just ask that you deny  
7 the motion and I just make a motion on the record to  
8 dismiss the case because he doesn't have standing. I  
9 think he has to show where he even has a right to bring  
10 an action, because I don't believe he does.

11                   And then on the motion for a more  
12 definite statement, that is just where before Ms.  
13 Tupolo retained me she had -- the issues were so  
14 vague that she filed a motion for him to come  
15 forward with a more -- complaint. But I don't  
16 believe, based on what he said today, that he is  
17 going to be able to do that, so really it would be  
18 more proper as a motion to dismiss. That is all I  
19 have, Your Honor.

20                   THE COURT: All right. This is what I  
21 want you to do. Mr. Baghdassarian has not had an  
22 opportunity to review your memorandum, so I would like  
23 you to send him a copy of that. And Mr. Baghdassarian, I  
24 will give you 10 days to file a formal, written response  
25 to his memoranda. I will give you an opportunity to

1 review that and I will take this matter under advisement  
2 so I can review the exhibits and the memorandum of law.

3 MR. BAGHDASSARIAN: Okay, but I do not  
4 understand, why didn't he serve me with this memorandum  
5 and it's not even on the website. I just checked the  
6 website today, it is not there. Can he just bring up a  
7 memorandum at the last moment without replying to me and  
8 I just, I think this is another attempt to waste time  
9 from Mr. Don --

10 THE COURT: Well, the memorandum has been  
11 filed with the Court. It is in the court file.

12 MR. BAGHDASSARIAN: I do not see it.  
13 Whatever Judy sent, I replied to it. My reply is there.

14 THE COURT: It is in this Court's file,  
15 and that is why I referenced it.

16 MR. BAGHDASSARIAN: When did he file it?

17 THE COURT: When I looked at the file it  
18 was there.

19 MR. BAGHDASSARIAN: When did --

20 THE COURT: So I am going to give you an  
21 opportunity to review it and respond to it. That is why  
22 I am giving you ten days to do that. I want you to have  
23 an opportunity to be heard on that issue.

24 MR. BAGHDASSARIAN: Thank you very much.

25 Thank you very much, but I -- what I am asking you,

1 wasn't he supposed to file this memorandum ahead of time?  
2 He just reported six days ago that he is going to  
3 represent her. And I see no other documents on the  
4 website, nor have I been notified of any documents. Judy  
5 has already wasted time several times. First time, first  
6 time when there was a hearing about three months ago, she  
7 just ignored the notice. And she was avoiding any  
8 service, so she was trying to waste time in order to  
9 prolong the suffering of Mr. Don Adair.

10                   And then, in summary, when the court  
11 was supposed to happen in June, two days before, she  
12 requests to have legal advice, although she had  
13 since January to get legal advice. So she has been  
14 wasting time. This is a game of wasting time. And  
15 I request the Court not to listen to this because  
16 what has been done is not appropriate. If he really  
17 -- he should, he should have submitted that he is a  
18 representative at least ten days ahead of time and  
19 have submitted the referendum and send me a copy  
20 instead of doing it last moment.

21                   THE COURT: Well, that is why I am giving  
22 you an opportunity to respond to it. I am --

23                   MR. BAGHDASSARIAN: Your Honor, I thank  
24 you, but I just want to emphasize --

25                   THE COURT: A party has got a right to

1 retain counsel literally up to the time of the hearing.  
2 Now you correctly state that ordinarily affidavits and  
3 exhibits are filed ahead of time with the court, but I am  
4 not going to decide anything until you have had an  
5 opportunity to review it and respond to it. That is why  
6 I am going to give you ten days.

7 MR. BAGHDASSARIAN: All right.

8 THE COURT: So that would be the order of  
9 the Court. I am going to take this under advisement.  
10 And, Mr. Merck, you go ahead today and send that to Mr.  
11 Baghdassarian.

12 MR. BAGHDASSARIAN: Okay. Can I answer  
13 some of the things he said or --

14 THE COURT: I am going to give you -- I  
15 want you to answer that in writing so that I can review  
16 it. And I am going to give you ten days to do that. And  
17 particularly any law that you can tell me that gives you  
18 standing to file this suit. Because the basis of his  
19 argument is that you don't have standing to file this  
20 suit, so I particularly want you to respond to that and  
21 any law that you can cite for me in your written  
22 response.

23 MR. BAGHDASSARIAN: To file this lawsuit?

24 THE COURT: Yes, sir, anything that --  
25 standing, the ability to file the lawsuit. That is what

1 the motion to dismiss is on.

2 MR. BAGHDASSARIAN: Okay.

3 THE COURT: And he cited some cases and  
4 memorandum, and again I am not deciding it now because I  
5 know you haven't had an opportunity to look at it. So I  
6 am giving you that opportunity.

7 MR. BAGHDASSARIAN: Okay, all right.

8 THE COURT: Okay, that will be under  
9 advisement and we will go from there. 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/*

MONA L. MANLEY  
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