

THE STATE OF SOUTH CAROLINA  
In the Court of Common Pleas for Greenville County

APPEAL FROM GREENVILLE COUNTY OF PROBATE COURT

Elizabeth P. Wiygul, Associate Probate Judge

Probate Case No. 2022-GC-23-00076  
Probate Case No. 2022-GC-23-00076

Appellate Case No. 2022-CP-23-06752

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**Sep 11 2023**

**SC Court of Appeals**

IN THE MATTER OF JACQUELINE  
GWENDORA WILLIAMS,  
Alleged Incapacitated Individual

Regency Hospital of Greenville, LLC, d/b/a  
Regency Hospital of Greenville,

*Appellant,*

v.

Jacqueline Williams, alleged incapacitated  
Individual, Mary Sullivan Porter, Angela  
Giles, and Triziequeka Green, next of kin,

*Respondents.*

Order

This matter is before the Court on appeal by Regency Hospital of Greenville, LLC from the Greenville County Probate Court's Order dated November 1, 2022.

I. Background

Appellant Regency Hospital of Greenville, LLC, d/b/a Regency Hospital of Greenville (“Regency Hospital”) filed a Petition with the Greenville County Probate Court seeking a determination of incapacity of Jacqueline Williams (“Ms. Williams”) and an appointment of a guardian and conservator. Mary Porter, as the agent under Ms. Williams Health Care Power of Attorney and Durable Power of Attorney, filed an Answer and Counterclaims requesting the denial of Regency Hospital’s petition for appointment due in large part to the existence of a valid and enforceable Durable Power of Attorney which rendered the appointment of a guardian and conservator unnecessary. On September 26, 2022, a hearing was held before the Honorable Judge Elizabeth Wiygul.

The Court found that Ms. Williams was an incapacitated individual as suffering from end stage renal disease, hypertension, diabetes mellitus type 2, coronary artery disease, and other comorbidities. Ms. Williams has a permanent tracheostomy, requires hemodialysis, and is dependent upon others to assist with daily living. While the Court ultimately concluded that the Durable and Healthcare Powers of Attorney rendered a guardian unnecessary, the Court did find that, on a temporary basis, Jennifer Chastain would be appointed as a temporary conservator for the sole purpose of assisting Ms. Porter with securing financial assistance to cover Ms. Williams’ future medical needs. Following an unsuccessful Motion to Reconsider filed, Regency Hospital filed an appeal with this Court on December 16, 2022.

## **II. Issues on Appeal**

Appellant presented four (4) issues on appeal, namely:

1. Did the Probate Court err when it denied the petition for the appointment of a Guardian/Temporary Guardian for the alleged incapacitated individual (A.I.I.) when the clear and convincing evidence established that A.I.I.’s agent under A.I.I.’s health care power of attorney refused to make medical decisions in A.I.I.’s best interests?

2. Did the Probate Court err when it refused to Order A.I.I.'s agent to take all actions necessary to allow A.I.I. to be discharged from Regency, an acute care hospital, and transferred to a skilled nursing facility when the clear and convincing evidence established the discharge and transfer would be in A.I.I.'s best interests?
3. Did the Probate Court err when it ordered that the A.I.I. was permitted to remain at Regency, an acute care hospital, indefinitely after the patient was medically cleared for discharge and required the lower level of care provided by a skilled nursing facility, which is a level of care Regency does not provide?
4. Did the Probate Court Order result in a taking of Regency's property interests without just compensation in violation of the Constitution?

### **III. Findings**

As noted by both counsel for Appellant and Appellee, the probate court, in its determination of the appropriateness of the appointment of a guardian and/or conservator in accordance with South Carolina Code Ann. 62-5-304, must be presented with "clear and convincing evidence" that tends to demonstrate "...that the individual is incapacitated and the appointment of a guardian is necessary to provide continuing care and supervision of the incapacitated individual." S.C. Code Ann. § 62-5-304. Clear and convincing evidence is that "degree of proof which will produce in the [fact finder] a firm belief as to the allegations sought to be established. Such measure of proof is intermediate, more than a mere preponderance but less than is required for proof beyond a reasonable doubt; it does not mean clear and unequivocal." *Anonymous v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 374 n. 2, 496 S.E.2d 17, 18 n. 2 (1998). It is well settled in this jurisdiction that the probate court, as the fact-finder, is afforded discretion to weigh the evidence in probate matters, and to the extent there is evidence in the record to support the probate court's decision, the decision will be upheld. *See generally In re Est. of Duffy*, 392 S.C. 41, 47, 707 S.E.2d 447, 450 (Ct. App. 2011).

The Order that is the subject of this appeal made three (3) outcome determinative factual findings, two of which have gone unchallenged on appeal: (1) the evidence and testimony submitted established Ms. Williams was in fact an incapacitated person pursuant to; (2) the evidence and testimony submitted established the existence of a valid Health Care and Durable Power of Attorney before a determination of Ms. Williams' incapacity; and (3) that Ms. Porter, as agent for Ms. Williams was, at present, acting in Ms. Williams best interest and therefore would not order Ms. Williams' discharge from Regency Hospital.

Appellant concedes the appropriateness of first two factual findings: (1) "Her [Ms. Williams'] attending physicians determined she was no longer able to meaningfully communicate or care for herself." Initial Brief of Appellant p. 7; (2) "Ms. Porter is the appointed agent under Ms. Williams' HCPOA pursuant to the South Carolina Statutory Health Care Power of Attorney Act, S.C. Code Ann. §§ 62-5-500 *et seq.* Initial Brief of Appellant p. 8.

Appellant challenges only the third finding by the probate court that Regency was not able to satisfactorily establish by clear and convincing evidence that Ms. Porter was not acting in Ms. Williams' best interest through her refusal to agree to a proposed discharge plan. However, what Appellant is seeking by way of appeal is a reweighing by this Court of the facts, evidence, and testimony that was presented to the lower court. It is inappropriate for the Court to conduct a *de novo* hearing.

Appellant's final argument is that the lower court's November 1, 2022, Order constitutes an unconstitutional taking in violation of S.C. Const. Art. I, §13(A). This Court finds Appellant's argument procedurally improper. The alleged result of the November 1, 2022, is of no consequence where the governmental agency accused of such a taking is not a party to the action.

#### **IV. Conclusion**

For the foregoing reasons, this Court denies Appellant's appeal.

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Honorable Edward W. Miller



Greenville Common Pleas

**Case Caption:** Regency Hospital Of Greenville Llc , plaintiff, et al VS Jacqueline Williams , defendant, et al

**Case Number:** 2022CP2306752

**Type:** Order/Other

So Ordered

s/ Edward W. Miller