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SC Court of Appeals

BRIEF OF APPELLANT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

R Scott Sprouse, Circuit Court Judge

Case No. 2022- 01785

Judy Tupolo,

Respondent,

v.

Jirair Baghdassarian,

Appellant.

INITIAL BRIEF OF APPELLANT

Jirair Baghdassarian
Appellant

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ARGUMENTS

1. BECAUSE THE RESPONDENT IS NOT A LEGAL GUARDIAN OF DON ADAIR, BECAUSE THE LATTER HAS NOT BEEN DECLARED A WARD, BECAUSE NO COURT OF LAW HAS DECIDED TO DEPRIVE DON ADAIR FROM SOME OF HIS BASIC RIGHTS PRESENTED IN THE APPELLANT’S ALLEGATIONS, BECAUSE NO COURT OF LAW HAS TRANSFERRED THESE BASIC RIGHT FROM THE PRINCIPAL DON ADAIR TO THE AGENT JUDY TUPOLO, THE RESPONDENT HAS NO JURISDICTION TO DEPRIVE AN ELDER OF HIS BASIC HUMAN RIGHTS, SUCH AS FREEDOM OF TRANSPORTATION, SAFE DISCHARGE, CHOOSING WITH WHOM AND WHERE TO LIVE, RECEIVING VISITS AND PHONE CALLS, RESPONDENT HAS VIOLATED CONSTITUTIONAL, AND SOUTH CAROLINA LAW RELATED TO CIVIL RIGHTS AND HAS COMMITTED A CRIMINAL ACT, THE TRIAL HAS ERRED IN DISREGARDING ANY PLEA FROM DON ADAIR, TO BE GIVEN AUDIENCE, GRANTED HIS RIGHT FOR SPEECH AND MAKING CHOICES AND IN PROTECTING HIS CIVIL RIGHTS. 2

2. BECAUSE THE RESPONDENT IS NOT A GUARDIAN AND HAS NO JURISDICTION FROM A COURT OF LAW TO DEPRIVE AN ELDER OF BASIC HUMAN RIGHTS, SHE HAS VIOLATED SOUTH CAROLINA LAW RELATED TO THE USE OF POWERS OF ATTORNEY; THE TRIAL HAS ERRED IN DISMISSING THE CASE AND NOT SUSPENDING HER POWER OF ATTORNEY PRIVILEGES. 2

3. BECAUSE FREEDOM OF EXPRESSION OF MOVEMENTS AND CHOICE OF SELF-DETERMINATION, OF USING OWN OF PROPERTY AND FUNDS ARE BASIC HUMAN RIGHTS THAT EVERY US CITIZEN IS BORN WITH, THAT ARE DIVINELY GIVEN TO EVERY INDIVIDUAL AND ARE PROTECTED BY THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW, AND IT IS UP TO THE RESPONDENT THAT HAS NOT DENIED, THAT IS OPENLY ADMITTING, AND THAT IS EVEN REQUESTING TO VIOLATE THOSE RIGHTS TO PROVE WITH CLEAR EVIDENCE, BEYOND REASONABLE DOUBT THAT SHE HAS BEEN GIVEN THE LEGAL RIGHT AND JURISDICTION BY A PROBATE COURT OF LAW TO BYPASS THOSE RIGHTS AND TO JUSTIFY THE REASONS WHY SHE IS VIOLATING THOSE RIGHTS OF THE ELDER DON ADAIR SINCE JULY 2020, THE TRIAL HAS ERRED IN PLACING THE BURDEN OF PROOF ON APPELLANT NOT THE RESPONDENT. BECAUSE SHE HAS NOT BEEN ABLE TO PROVE WITH CLEAR EVIDENCE, BEYOND REASONABLE DOUBT, THE JURISDICTION

BY WHICH SHE DEPRIVED DON ADAIR OF HIS RIGHTS, THE TRIAL HAS ERRED IN NOT FINDING HER ABUSE AS FACTUAL AND NOT SUSPENDING HER POWER OF ATTORNEY PRIVILEGES.

- 4. BECAUSE TEMPORARY SUSPENSION OF A POWER OF ATTORNEY IS NOT SEEKING A PUNITIVE ACTION AGAINST THE RESPONDENT BUT RATHER SEEKING ACCESS TO THE ELDER TO ADVOCATE FOR HIS RIGHTS AND SEEKING INVESTIGATIVE TOOLS FOR THE PURPOSE OF FURTHER INVESTIGATION OF ALLEGED FINANCIAL, EMOTIONAL, AND SPIRITUAL ABUSE AGAINST AN ELDER, THE DECISION FOR SUSPENSION MUST BE BASED ON APPELLANT PRESENTING NO MORE THAN REASONABLE SUSPICIONS INSTEAD OF CLEAR AND CONVINCING EVIDENCE OR PROOFS THAT ARE BEYOND REASONABLE DOUBT, THE TRIAL HAS ERRED IN NOT ACCEPTING THE SUSPICIONS THAT HAVE BEEN CONSIDERED BY THE JUDGE AS SERIOUS, BY REQUESTING CLEAR EVIDENCE THAT IS BEYOND REASONABLE DOUBT AND BY NOT GRANTING THE MOTION 2
- 5. BECAUSE THE POWER OF ATTORNEY DOCUMENTS ARE NOT GOVERNED S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ., BUT INSTEAD, UNDER TITLE 62-5-500 ET SEQ., STATUS DOES NOT HAVE TO BE PROVEN IN MATTERS OF MEDICAL POWER OF ATTORNEY; THE TRIAL HAS ERRED IN DISMISSING THE CASE UNDER CLAIMING THAT THE APPELLANT HAS NO STANDING IN FILING THIS MOTION ACCORDING TO S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ.
- 6. BECAUSE THE APPELLANT HAS PROVEN STATUS EVEN FROM S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ., FOR FINANCIAL POWER OF ATTORNEY AS WELL, THE TRIAL HAS ERRED IN THE DECISION THAT THE APPELLANT HAS NO STATUS.
- 7. BECAUSE DON ADAIR HAS NOT BEEN PROVEN AN INCAPACITATED WARD ACCORDING TO LEGAL DUE PROCESS IN PROBATE COURT, THE TRIAL ERRED IN REJECTING DON ADAIR'S REVOCATION OF THE POWER OF ATTORNEY ACCORDING TO SOUTH CAROLINA LAW BY SUSPICION INSTEAD OF CLEAR, CONVINCING EVIDENCE.
- 8. BECAUSE DON ADAIR HAS NOT BEEN PROVEN INCOMPETENT AND IS NOT A PARTY IN THE LITIGATIVE PROCESS, THE TRIAL ERRED IN APPOINTING A GUARDIAN AD LITEM FOR A US CITIZEN THAT HAS NOT BEEN PROVEN INCOMPETENT AND IS NOT A PARTY OF TRIAL.
- 9. THE TRIAL ERRED BY CHARGING A FEE OF OVER \$50 FOR A GUARDIAN AD LITEM REPORT AND CHARGING THE APPELLANT

HALF OF THE COST.

10. BECAUSE THE PRESUMPTION OF COMPETENCY IN FEDERAL AND SOUTH CAROLINA LAW REQUIRES THAT THE PERSON WOULD BE CONSIDERED AND TREATED AS COMPETENT TILL PROVEN BEYOND REASONABLE DOUBT AS INCOMPETENT AND NOT VICE VERSA, THE TRIAL HAS ERRED IN DISMISSING THE CASE FOR SIMPLE SUSPICIONS OF INCOMPETENCE WITHOUT CLEAR EVIDENCE AND LEGAL DUE PROCESS DETERMINING THE SCOPE OF COMPETENCY AND WHAT ARE THE FUNCTIONS THAT THE ALLEGED INCAPACITATED PERSON CAN AND CANNOT COMPREHEND AND PERFORM.

TABLE OF AUTHHORITIES

CASES

1. *State v. Forte*, 206 N.C. App. 699 (2010)

Right to witness

2. *O'Connor vs Donaldson*

Right for mentally ill to refuse involuntary confinement.

3. *Addington vs. Texas*

Supreme court decision that it is unlawful to involuntarily commit individuals without due process, where the burden of proof must be “clear and convincing evidence”.

4. *Jones vs. United States*

Confirms *Addington vs. Texas*

5. *Jackson vs. Indiana*

Supreme Court decision that indefinite commitment violates equal protection, and is unlawful.

STATUTES

Constitution amendments:

U.S. Constitution Bill of Rights

- First amendment of US Constitution gives every US citizen freedom of speech
- Fifth amendment: Free life, liberty, or property cannot be deprived without legal due process.
- Ninth amendment guarantees basic rights cannot be taken by any other rights. Hence, possessing

a power of attorney is no sufficient reason to take away from someone's basic rights.

- The Thirteenth Amendment protects against slavery and involuntary servitude or confinement. deprived of his basic rights.

- Fourteenth Amendment section one protects the privileges of all US citizens for freedom, liberty, and property.

Federal Rules of Evidence rule 601

SC Court Rules:

Rule 17 of

Rule 41 of

Rule 1.14 of

SC Probate codes:

TITLE § 62-8-101 ET SEQ

TITLE § 62-5-500 ET SEQ

TITLE § 62-5-304A ET EQ

SC civil codes:

TITLE § 16-3-910

TITLE § 16-3-915 (A) and (B)

TITLE § 16-3-20

Bill of Rights for Residents of Long-term facilities under chapter 81, Title 44

42 USC Ch. 102: MENTAL HEALTH SYSTEMS

From Title 42—THE PUBLIC HEALTH AND WELFARE

CHAPTER 102—MENTAL HEALTH SYSTEMS

SUBCHAPTER IV—MENTAL HEALTH RIGHTS AND ADVOCACY (1) (A, least restrictive liberty);

(B, individualized treatment with constant reevaluation); (C, participation, and informed consent); (D,

refusal of treatment); (F, freedom from restraint and seclusion); (J, rights for visits); (L, right for grievance);

(M) (i, ii, and especially iii right of access to advocate); (4) (A, incompetence must be adjudicated only by a court order);

<https://uscode.house.gov/view.xhtml?path=/prelim@title42/chapter102&edition=prelim>

OTHER AUTHORITIES

[115 Davidian Way, Tamassee, SC 29686 | Zillow www.zillow.com/homes/115-Davidian-Way-Tamassee,-SC-29686_rb/111149847_zpid/](https://www.zillow.com/homes/115-Davidian-Way-Tamassee,-SC-29686_rb/111149847_zpid/)

- Sabatino, C. (2023, August 30). *Capacity to make health care decisions - fundamentals*. Merck Manuals Consumer Version. <https://www.merckmanuals.com/home/fundamentals/legal-and-ethical-issues/capacity-to-make-health-care-decisions>

“A doctor cannot go against a person’s wishes unless a court declares the person legally incapacitated ”

- Sabatino, C. (2023b, August 30). *Health Care Power of Attorney - Fundamentals*. Merck Manuals Consumer Version. <https://www.merckmanuals.com/home/fundamentals/legal-and-ethical-issues/advance-directives#v715015>

“...only as guidance for the agent, rather than as a binding instruction...”

“A principal who has capacity can cancel the health care power of attorney at any time. The choice of agent does not have to be permanent.”

- Scott, D. (2008, September). *Capacity Assessment*. Toolkit for Primary Care. <https://www.nbasw-atsnb.ca/assets/Uploads/toolkit-for-primary-care-capacity-assessment.pdf>

STATEMENT OF ISSUES ON APPEAL

1. DID THE TRIAL COURT ERR IN FAILING TO ACKNOWLEDGE THAT RESPONDENT HAS VIOLATED HUMAN BASIC RIGHTS OF AN ELDER AND CONSEQUENTLY FAILED TO PROTECT HIM?
2. DID THE TRIAL COURT ERR IN FAILING TO FIND THAT THERE ARE REASONABLE SUSPICIONS ABOUT THE RESPONDENT ABUSING MEDICAL POWER OF ATTORNEY PRIVILEGES?
3. DID THE TRIAL FAIL TO ACKNOWLEDGE THE ABSENCE OF LEGALITY IN THE RESPONDENT'S USE OF POWER OF ATTORNEY PRIVILEGES IN DEPRIVING THE PRINCIPAL, DON ADAIR, OF HIS BASIC HUMAN RIGHTS, SUCH AS FREE CHOICE TO MAKE SAFE DECISIONS?
4. DID THE TRIAL FAIL TO SET THE STANDARD OF EVIDENCE FOR ABUSE OF POWER OF ATTORNEY AS BEING REASONABLE SUSPICIONS INSTEAD OF CLEAR AND CONVINCING EVIDENCE OR BEYOND REASONABLE DOUBT?
5. DID THE TRIAL ERR IN DECLARING THAT STATUS IS REQUIRED TO FILE A MOTION TO SUSPEND A MEDICAL POWER OF ATTORNEY BY CONSIDERING THAT A POWER OF ATTORNEY IS GOVERNED BY THE SC CODE OF LAWS ANN. § 62-8-101, ET SEQ. INSTEAD, UNDER TITLE 62-5-500 ET SEQ.?
6. DID THE TRIAL FAIL TO ACKNOWLEDGE THAT THE APPELANT DOES HAVE STATUS ACCORDING TO CODE ...?
7. DID THE TRIAL ERR IN REJECTING DON ADAIR'S REVOCATION OF POWER OF ATTORNEY?
8. DID THE TRIAL ERR IN APPOINTING A GUARDIAN AD LITEM FOR A PERSON THAT IS NOT PART OF A LITIGATION AND HAS NOT BEEN PROVEN INCOMPETENT?
9. DID THE TRIAL ERR IN CHARGING A FEE FOR GUARDIAN AD LITEM REPORT THAT EXCEEDS \$100?

10. DID THE TRIAL ERR IN IGNORING THE PRINCIPLE OF PRESUMPTION OF COMPETENCY MANDATING THAT A PERSON SHOULD BE CONSIDERED COMPETENT TILL PROVEN OTHERWISE AND NOT VICE VERSA?

STATEMENT OF THE CASE

On February 22, 2022, Jirair Baghdassarian brought this motion at probate court against Judy Tupolo, alleging abuse of power use of power of attorney. The probate court ordered the motion to be removed from the circuit court. Two hearings happened on 07/12/2022 and 10/25/2022. The honorable Judge R Scott Sprouse ordered the case dismissed the Petition with prejudice, but without prejudice for both parties to apply to probate court for conservatorship. and ordered the Guardian ad Litem fee to be split evenly between the parties, requiring each side to remit \$1,335 to Mr. Bagwell.

On January 9, 2023, Baghdassarian served the Notice of Appeal on Tupolo.

STANDARD OF REVIEW

The judge's decision was based on an order that was written by the Respondent's attorney, Mr. Merck, without consulting the Appellant, and which includes the following presumed points that need to be reviewed:

1. Judy Tupolo is presumed to be a legitimate caregiver of Don Adair based on two documents that the Judge supposes are legitimate. The documents are a Durable Power of Attorney and a Durable Health Care Power of Attorney executed on July 27, 2020, where only the Durable Power of Attorney was recorded.
2. The judge seems to have concluded that it "appears" that Mr. Adair has been "well-taken care of" by Judy Tupolo.
3. There is evidence to "suggest" that Mr. Adair "may be" incapacitated, however, the "proper medical evaluations have NOT been performed", and a petition for conservatorship and/or guardianship have not been filed.
4. Don Adair's legal revocation of Judy's power of attorney has been rejected based on a "question" about Mr. Adair's capacity.
5. Plaintiff's formal allegations are vague and not credible.
6. The financial allegations do not involve the personal funds of Mr. Adair; therefore, the order concludes that it is not related to any financial abuse of a power of attorney toward the principal and should not be involved in this motion.
7. The order assumes that Plaintiff does not have a standing based on S.C. Code of Laws Ann. § 62-8-101, et seq., and therefore should be dismissed for the lack thereof.
8. Plaintiff is just an acquaintance of Mr. Adair who is not in a position to care for Mr. Adair or manage his assets, and he needs to make such proof that he fits one of the classifications of the Act. Therefore plaintiff not only lacks standing but also is not fit to replace Judy in the care of Mr. Adair.
9. The court ordered that the Guardian ad Litem fee shall be split evenly between the parties, requiring each side to remit \$1,335 to Mr. Bagwell.

Standard of review for each of the above decisions:

1. The standard of review is error in law. The alleged medical power of attorney was not recorded, and its legitimacy, legality, and existence have been contested. Plaintiff has been requesting to see it so he could scrutinize it since January 2022, and that right has yet to be given. The medical, not the financial, power of attorney is the contested alibi used to deprive Don Adair and the Appellant of their right to see each other. Both have the right to see the document and scrutinize it. The standards by which legality, authenticity, veracity, and legitimacy have been decided to have been unilateral and occult. Plaintiff has not been given the right to contest it objectively by visually scrutinizing it. The trial needs to sufficiently scrutinize the document and allow the appellant the right to scrutinize it.
2. The standard of review is error in matter of fact and law. The concept of well taken care of is based on the guardian ad litem, whose GAL report is contested due to either

- voluntary or involuntary bias based on unilateral sources or witnesses ignoring all the sources and witnesses and facts he has been given from either Plaintiff's side or even the alleged abused principal. The guardian ad litem clarified that he meant that Judy Tupolo only cared for Don Adair's basic needs and did not address any allegations related to the abuse of power of attorney. The concept of taking care of someone's basic needs has nothing to do with abuse of power, financial exploitation, or spiritual and emotional abuse. It does not answer even one of the allegations presented by the Appellant and is simply a diversion from the core subject of the motion. The trial has erred in deciding without appropriate legal, due process.
3. The standard of review is error in matter of error in law. The concept of evidence to "suggest" an incapacity that "may be" or may not be, is neither logical nor legal. It insults the whole concept of human and US constitutional rights. A US resident of SC should not be stripped of his freedom of speech, right for advocacy and self-representation, and determination based on vague suspicions without clear evidence. Clear evidence is either clear and convincing or not clear and not convincing. It must be based on a correct medical unbiased legitimate, and legal protocol that cannot leave any shadow of a doubt. It cannot "suggest" an uncertain "may be". The sentence defies logic, is absurd, and should not have been part of a just and sensible judicial order. The order itself admits that "however the proper medical evaluations have not been performed, and a petition for conservatorship and/or guardianship have not been filed." We want to add that we have not seen any medical, neurological, or psychiatric opinion about Don Adair's diagnosis, mental capacity, or mental situation so we could be able to scrutinize it, contest it and evaluate its validity and measure any legal competency. The court should not accept any such documents since they have not been presented according to the correct procedure.
 4. The standard of review is error in matters of law and fact. Rejecting the revocation of an instrument that can be used to oppress a person and strip him of his basic rights cannot be done unless the person has been conclusively proven incompetent and there is imminent danger to his life. None of that has been proven and cannot be accepted. Even if Judy Tupolo did not commit any abuse of power of attorney, and even if her alleged medical power of attorney was completely legitimate, Don Adair's legal revocation, per se, is sufficient to suspend permanently her medical power of attorney based on SC law. Claiming that the revocation is alleged and contested is unacceptable because the recording can be authenticated, and Mr. Adair has not been allowed to speak publicly. He has been muzzled and prevented from speaking openly. Any interview that happened was done in an occult and suspicious manner. He should have been allowed to speak for himself and testify that his recorded revocation is legitimate. We have added the recordings on file for the court to scrutinize them and verify their authenticity. The court cannot reject them without scrutinizing them, verifying their authenticity, and confirming with the principal, Mr. Don Adair. The trial has erred in this matter. The judge asked us our opinion about Don Adair's competency because the appellant is an expert on competency matters. Mr. Bagwell, the guardian ad litem ahs graciously expressed we are an expert on the matter of competency because we have worked in our careers with cases of dementia and mentally ill as a psychiatric and

- neurological healthcare provider and nurse practitioner. Our reply was clear, and we testified under perjury that we had assessed Mr. Adair on the phone. We found out that he was fully competent to understand what a power of attorney is, understand its nature, and the consequences of revoking it. Based on that, we testified and were and still are fully confident that when he revoked the power of attorney document, as the presented recordings prove it, he was fully capable of revoking it and he should be given the right to revoke it instead of depriving him of that right. The trial has thus erred in fact and law by rejecting a U.S. citizen's freedom to decide whom to represent him.
5. The standard of review is an error in a matter of facts. Stating that our allegations are vague and not credible is not justified and is an error that should be found defective once the court reads our allegations and finds out how clear they are and well-presented and backed up by evidence and by reference to SC law and by affidavits. The statement does not even define the standards that render the allegations either clear or unclear, nor does the statement clearly request what is further needed to clarify the allegations and make them more credible. The defense, including the lawyer, has not contested the deprivation of Don Adair from basic decisions. They even openly requested it when the lawyer, Mr. Merck, requested that Don Adair be denied his God-given right to represent himself and to be able to revoke the power of attorney whose legitimacy is contested. They even denied Don Adair his voice to report abuse, which he did not only on recordings but also based on witnessing, such as his report of abuse in the firefighting station. There are even open declarations from Judy Tupolo and her daughter, who is a substitute for the power of attorney, that they are depriving him of those rights. There is a recording from the facility that has been used as a witness for the benefit of the defense, claiming they are not allowing Don Adair to make certain decisions. The allegations cannot be considered vague or not credible when the defense's strategy admits them and manipulates the situation to claim that they are within the scope of a medical power of attorney to do so because Don Adair is allegedly incapacitated. However, the alleging party has no proof of the alleged incapacitation's existence, nature, or extent. The process of denying Don Adair any free contact with the outside world, with the trial process and the judge, is, per se, enough suspicion to make the allegation acceptable by the court as reasonable suspicions.
 6. The standard of review is an error in facts and law. The court has erred in stating that financial allegations do not involve Mr. Adair's personal funds, concluding that the allegations could not be related to any financial abuse of power of attorney. The allegations are not only related to the association funds but also to Don Adair's funds. Financial abuse does not necessarily have to relate to stealing funds directly owned by an alleged victim or a principal but by any other resource that does not have to be owned by the victim that the latter could and should benefit from materially, spiritually, emotionally, or financially.
 7. The standard of review is error in matter of facts and law. A medical power of attorney is governed by S.C. Code of Laws Ann. § 62-5-500 et. Seq. rather than S.C. Code of Laws Ann. § 62-8-101, et seq. Some situations in law do not require a status for

- someone to defend another person, especially in situations of medical power of attorney as an ill person may be vulnerable, and any person could and should be able to defend him, even a staff, a nurse, a good Samaritan or medical provider. Don Adair himself petitioned for the revocation of power of attorney as attested on recordings and he has status. SC court Rule 17 c and d(5) drawn from code §15-5-360, allow friends to petition on the behalf of an alleged incompetent person in case they were deemed incompetent. Moreover, the appellant has proven he does have status for even a financial power of attorney governed by S.C. Code of Laws Ann. § 62-8-101, et seq. The trial has erred in this matter.
8. The standard of review is an error in the matter of facts. It is not true that Plaintiff is only an acquaintance of Don Adair. The status issue has been addressed in no. 7. This is not an issue of guardianship on which judgment on the appellant's fitness of care for Mr. Don Adair should base its decision. Nevertheless, the appellant's perseverance, honesty, and care for Mr. Don Adair have been attested by the guardian ad litem and by multiple affidavits.
 9. The standard of review is an error in law and discretionary matters. The court has erred in appointing a guardian-ad-litem and forwarding half of the fees demanded by the guardian to the appellant. The court has not followed proper procedure in appointing guardian ad litem since Don Adair has not been proven incapacitated, and proper procedures for applying for guardianship have not been followed based on SC Code of Laws Section 62-5-106, 62-5-303 B and 403B. This was not a guardianship case; Don Adair has not been proven incapacitated, nor is he part of the litigation. No party has petitioned for guardian ad litem, and Don Adair should not have been marginalized from the trial. He had the right to be present and to speak but he was denied such a right after we subpoenaed him and was ready to speak on the trial of 7/11/2022. Moreover, according to SC Court rule 41, a guardian ad litem fee in certain similar conditions should not exceed \$50; we believe this should also apply to vulnerable adults as much as to children. The allegations of incapacitation came from the respondent, not the appellant. In this situation, it is the claimant's duty, the respondent's, not the appellant's, neither the court's duty nor the alleged incapacitated person's duty, to file a motion to probate requesting proof of incapacitation. At this point, the respondent bears the expenses and must go fully through the procedures, not halfway. Otherwise, the procedure of appointing a guardian ad litem would be questionable, suspicious, and capricious, contributing to the distortion of the truth. Furthermore, we believe the Guardian ad Litem's report was biased from the nature of its sources, and it has not dealt with the core subject of the issue, which is the abuse of power of attorney privileges. Guardian ad Litem does not have the duty or scope to prove medical incapacity or legal incompetency. Legal competency is a term that relates to guardianship, not to the medical nor financial power of attorney; therefore, appointing guardian ad litem was superfluous and unnecessary in both situations. Therefore, the decision to appoint guardian ad litem and charge the expenses to the appellant is an abuse of discretion and a plain trial error.

The standard of review for the statements of issues on appeal:

1. Matter or error in law
2. Matter of error in facts and law
3. Matter of error in law
4. Matter of error in law. If the court is still unconvinced, we solicit the honorable justice a De Novo review as an alternative.
5. Matter of error in facts and law.
6. Matter of error in facts
7. Matter of error in law
8. Matter of error in facts and law
9. Matter of abuse of discretion and error in law
10. Matter of error in law.

In addition, considering that the order was a unilateral document written by the respondent's party without taking any of the point of views of the other party, and considering the amount of error manifested in the judgment, we find that, if the court finds it necessary to request a De Novo review for the whole order, that would be less biased.

FACTS

Exposition.

Don Adair has been deprived of making decisions arbitrarily without appropriate legal nor medical processes. A guardian ad litem report does not replace a proper medical and legal evaluation of what he can or cannot do. Don Adair is being illegally held against his will by a woman with no legal jurisdiction to prevent him from making decisions. Mr. Bagwell, the guardian ad litem, agreed that we are an expert in medical competency evaluation and that he is not qualified to evaluate either medical capacity or legal competency. We have been able to evaluate Don Adair's capacity to understand the nature of a power of attorney and the consequences of revoking it. We firmly and fully believe that he was fully capable of doing so when we talked to him. We have very good reasons to suspect financial abuse, as attested by the Guardian ad litem report that many of Don Adair's private belongings, such as his \$ 30,000 private fund in his former bank account, his social security, and many other belongings, had disappeared when Judy was managing all his personal and financial affair. This makes her the primary suspect. We have kindly requested justice to allow us to talk to Don Adair to evaluate him more thoroughly and investigate the serious allegations of abuse. We have shown SC law that this is an abuse of power from all the above were suspicions and evidence of abuse of power of attorney. Accepting our request was not only humane and legal, but denying such a request is ignoring the law, and it is a participation in trampling on an elder's human rights and ignoring his need for help and assistance against some apparent and highly suspected abuse. We request that our plea to suspend power of attorney be accepted and free this man from illegal and immoral, even criminal, detention.

The unfair monopoly of order writing by the defense:

The order for dismissal given on 2022-11-22 was written by Mr. Merck without consulting Plaintiff's side, which is unprofessional conduct, unfair and should be seriously addressed. It is against court traditions and regulations. Consequently, it is obviously de facto biased due to its nature and source, and it is taking the view of only one part, the defense, totally ignoring those of the second, the Plaintiff.

Contradictions in the order:

Parts of the order contradict the honorable Judge Sprouse's decisions and recommendations. For example, stating that "This action is strictly governed by the South Carolina Uniform Power of Attorney Act as set out in S.C. Code of Laws Ann. § 62-8-101, et seq." is factually false. It is a

statement not found in the above-mentioned law and contradicts the judge's decision to pursue this matter. Before and during the first hearing, the defense asked the judge, from the very beginning of the case, to dismiss the case due to lack of status. The judge did not dismiss the case for lack of status. He allowed it to continue till the end, overruling the defense's request. The case took place several months later, two hearings, including an appointment of a GAL incurring thousands of dollars of costs of GAL report and other court expenses, including our time. How can the defense write in the order at the end of the case that we have no status after the judge overlooked the no-status argument, and after incurring all the above expenses and our efforts? This contradicts the judge's decision and the law, which places the medical power of attorney under title 62-5-500 et seq., not under code 62-8-101 et seq., providing Appellant status. It cannot be said that we do not have the status after our status has been implicitly accepted when the argument was requested in the beginning and was already overruled. Code 62-8-101 relates to the financial, not the medical, power of attorney being contested. Besides, we have shown enough arguments to prove that we even have status under code 62 related to the financial power of attorney.

We are also surprised that Mr. Merck has insisted since the beginning of this case that "Plaintiff's formal allegations are vague and not credible." It is also a contradiction to the whole process of the judicial course. The Judge has already declared in his statement in his order on 2022-8-0 that the allegations are "serious," so he appointed a guardian ad litem to investigate the matter. We do not understand what he means by "vague" and what is clear for the defense when we have used 14 pages in our reply to his memorandum explaining how Judy Tupolo, who is not Don Adair's guardian and who has not been granted specific powers by the court, and who has abused her power of attorney by acting as a guardian with special powers given only and exclusively in exceptional cases, and only to guardians, never to the power of attorney agents. She has deprived him of discharging himself under safe conditions and from deciding with whom he can communicate and who will be his next caregiver. She even rejected any attempt to seek advocacy and legal advice.

Validity of the allegations:

We expressed all the specific laws from the SC probate code one by one and in such accurate detail backed up by SC probate codes that we are surprised that neither Mr. Merck nor the guardian ad litem has made any efforts to respond to any of them nor to expose by law their invalidity nor even to specify which part of our allegations are vague nor how it can be made clearer. His accusation of vagueness lacks clarity, specificity, and objectivity. His argument that our vague allegations are, per se, ambiguous is a perfect prototype of ambiguity and a desperate means to explain his incapacity to respond to any (= zero) of our claims or allegations, not even one of them.

Saying that our allegations are not credible without presenting corresponding evidence proving where we are lying, even without where our presented arguments have failed their purpose, is another hopeless way of justifying the defense's lack of answers. It is also a form of double

standard from the side of the defense. We must emphasize that we do not need proof to suspend the medical power of attorney temporarily; we are not requesting punitive actions against Judy Tupolo. This was not a trial but a simple motion asking the judge to give us temporary access to Mr. Donnie Adair to assess him, investigate the matter of abuse, and legally provide him with the requested help. It was not our burden to prove during this motion, beyond reasonable doubt, that the suspicions are true but rather to maintain a high level of suspicions of abuse. Such suspicions were accepted by the honorable Judge Sprouse and reiterated by Mr. Bagwell in his GAL report; that should be reason enough to suspend a power of attorney temporarily and would be sufficient to give a chance to meet in person with Mr. Adair for a couple of hours, days, or sessions and investigate the matter further. So, we have answered and are answering the defense again that we do not need evidence to suspend a power of attorney. But to say that our allegations are not credible would be in contradiction to the judge's decision, to the Gal report that confirms she was placing him in a location against his will, to the defense and the assisted living facility who were admitting they were not allowing people to talk to Don Adair without her permission, to the multiple affidavits that confirm that various numbers of his friends and acquaintances were being denied access to him, and to the defense's incapacity of denial of such allegations. Judy admits she deprives him of his liberty, though she claims good intentions for the deprivation. These were our allegations, which were never explicitly denied by the defense, the judge, the guardian, ad litem, and not by any witnesses. They are even confirmed by the recordings we have on file. The defense attorney, Mr. Merck, has participated in those deprivations by requesting the judge to deny Don Adair any trial audience and reject his revocation of the power of attorney. By what evidence can the defense say they are not credible? How much more weight do they need to become credible? Denying their credibility while ignoring all the above arguments and without any valid argument or attached evidence is, in fact, incredible.

The validity and existence of the Power of Attorney are still contested:

Since January 2022, we have been requesting to see the medical power of attorney, which should not result in a HIPAA violation since the document does not disclose any medical information. We asked for it from all involved parties, including the probate and circuit courts. We have never been granted access to see it, to verify its existence, veracity, legality, and authenticity. Judy took action to impose herself on Don Adair in July 2020 when he had a Transient Ischemic Attack. So, her violations are suspected of having happened since that time. Her attorney, Mr. Merck, is the one who wrote the order signed by the judge on July 2020. That does not justify what she committed before 2020. Moreover, we need to verify the document, the signature, and whether it was properly notarized. We do not understand how, nor for what reason, we have been denied

that right when the medical power of attorney is the main subject of the presently filed motion. We found ourselves ironically filing a motion to suspend a document with no legal jurisdiction over the principal and whose legality, veracity, and authenticity are also contested. Even its very existence is challenged. We ask the honorable court if there is anything it should grant to the appellant to discuss; it is the document's above-mentioned existence, veracity, legality, and authenticity. None of that has been allowed, and pursuing a case while its core subject is contested is like building a house without any foundation. It is unfortunate and ironic that we have not been granted that right so far, and we firmly insist on requesting it again. Until then, we must contest and deny its existence, veracity, authenticity, and legality. We can even deny that Mr. Adair had truly signed it since he was surprised when he was told that he did, and he said that whatever he signed, he was unaware of what he signed. This is attested in the recordings presented to the court.

We have not been granted access to any physician report or diagnosis to challenge it, although it was one of our requests during the motion.

Constitutional Basic Human Rights violated:

Denying Don Adair his fundamental civil rights as a human being and as a native US citizen, based on suppositions, while “suggesting” not proving, that he perhaps “maybe,” not that there is conclusive evidence that he indeed is, incapacitated is a cruel and unacceptable judgment. It denies the person’s own fundamental rights of freedom based on unproven allegations. This is like saying that a man should be considered guilty until proven innocent, while the opposite is true justice. Don Adair has thus been placed in a situation where he is isolated from the world. We have not heard from him since June 2022. We did not know where he was nor how he was doing. He was only allowed to speak to those whom Judy agreed with. He was denied unbiased legal advice and free advocacy from any of his friends. He was simply an old man who may naturally, at his age, have some limitations and morbidities. He was being denied the right to defend himself. When the plaintiff or anyone attempts to help him after his desperate request and yearning for help, Don Adair is denied the right to contact the person and validate his call for help. The story is cruel. It is the story of an old man who was abused and deprived of his fundamental rights. He is falsely imprisoned and treated like an inmate. He is denied the right to speak, and when he can talk, he is mocked and asked to prove his capacity. It is the person that is imprisoning him, in this case, Judy Tupolo, that must prove his incapacity. It is not Don Adair’s burden, nor ours, to prove his capacity. When we talked to Don Adair on the phone from January to June 2022, we were confident that he still retained many of his capacities, most notably the capacity to revoke the power of attorney.

The allegation of incapacity invalidates the Power of Attorney document:

Moreover, if the defense's party claims that Don Adair has some form of dementia that involves vascular dementia, an illness related to stroke, or a transient ischemic attack, the event of stroke or TIA happened in 2020. She had him sign a power of attorney after the event when he was still recovering, and his mental situation should have been worse. That means if any party is claiming that his status of vascular dementia is incapacitating him from revoking a power of attorney in 2022, the argument applies more strongly in 2020 when he was still in recovery and rehabilitation, which means he should have been more incapacitated to grant a power of attorney to Judy Tupolo in 2020. Her power of attorney documents should have been revoked for that reason alone.

Paternal protective compassion does not supersede Individual Human Rights unless the individual is in imminent danger or life-threatening condition and is not capable of understanding the nature of the threat:

Stating that he is denied his rights under the pretext of protecting him has no consistency nor intrinsic validity. Even Mr. Bagwell, in his GAL report, has admitted that he found no ill intentions in Plaintiff's motives toward Don Adair. On the contrary, the report says that Plaintiff's respect for Don Adair is "overflowing" and that Plaintiff "seems to care for Donnie genuinely and wants to protect him from further humiliation by giving him back as much of his life as he can." Considering the latter statement from the guardian ad litem report, we do not see the imminent threat to Don Adair's life to have him choose with whom he wants to stay or whom he chooses as a caregiver if the person's motives are harmless and beneficial. He is simply attempting to liberate himself from a woman he has been persistently and consistently accusing of spiritual, mental, and financial abuse and who has deprived him of his essential freedom. What harm could happen to him if he was allowed to make such a decision? The GAL report admits that he still has good functional long-term memory.

Neither old age nor diagnosis is sufficient to deprive someone of Individual Basic Human Rights:

Depriving a man of his basic God-given rights based on his old age, a medical diagnosis, or even a vague observation not supported by specialized reports that define precisely what he is capable of and what he is not capable of is undoubtedly doing that man injustice, for we cannot

gamble with people's human rights. We cannot gamble with the freedom that, for many, is more precious than food or shelter and even more precious than material survival. Many would rather die than live imprisoned or be humiliated. Not only has this man not been provided any other help or support besides the one we are attempting to give him, but he is also being denied whatever help he is requesting under the pretext that there may be lay evidence not based on "proper medical evaluations" to "suggest" that he "may" or may not be incapacitated (of no one knows which capacity), is similar to seeing a frail old man tied in ropes by a perpetrator, unable to speak because his mouth is taped or because he is mute, or because speaks a different language or even may have some mental or physical disability, ignoring him and preventing anyone from helping him under the pretext that he "may" or may not know what he is talking about. He is challenged to prove that he did not do anything wrong to deserve his situation or that he is not incapable while he is not in a reasonable position to do so. Neglecting to give him his safe right to deliver himself from someone he believes is abusing him sets a precedent that would lead to negative consequences for the general elderly population. What if this happened to any other elderly related to you or me? This would not be simply a crime against Don Adair, but a crime and injustice against humanity and should not be allowed under any safe circumstance. History teaches us that neglecting to act in many situations, such as abuse or crimes, leads to further abuse and crimes.

It has been admitted by many, including the assisted living facility and the defendant herself, that she is depriving him of his freedom of choice, from his desired social contact, even from a personal phone and from advocacy.

Don Adair has not been declared a Ward. No Financial nor medical power of attorney has guardianship jurisdiction. Even a guardianship has no jurisdiction to deprive a principal, even if he were a ward, of his basic Human Rights without proper legal procedures:

In our discourses, we have shown that no SC law provides rights for a medical POA to force any treatment on a principal; they can only consent on his behalf when he is professionally and, according to strict procedures, evaluated as incapacitated. The incapacitation evaluation must specify the duration, nature, and subject of the incapacity. Which means it is not enough to state that a man is incapacitated. It must precisely indicate the situation, the symptoms, and the duration of the incapacitation. In other words, it must specify what the "ward" cannot understand and cannot decide, why and for how long, and document the observation supporting the evaluation. Two neutral medical specialists must document it in a matter of capacity. Anything else is illegal and leads to likely abuse. Consenting on a principal's behalf does not mean we can force him to do something unless there is a court order determining so, especially when the issue is not a matter of a petty family disagreement but rather a legal issue where the vulnerable person is being deprived of basic constitutional rights and where the alleged perpetrator is being seriously accused of

financial, social, and spiritual abuse.

No justice court has provided Judy Tupolo any such rights, and thus Don Adair should have the right to decide who his medical power of attorney should be, with whom he wants to live, and with whom to associate. Her argument that we are trying to scam him does not stand. The guardian ad litem, Mr. Bagwell, in his report and the last session he attended, reported that Don Adair's funds were dissipated and that nothing was left, doubting any chance of financial or material retrieval. Consequently, how could we scam him, and what can we covet when she left nothing to scam and when she has used up everything?

Conservatorships are advised when the abused person is unaware of his situation or cannot communicate. Then we can attempt to prove that the ward is incapacitated and that the court should make all the decisions on his behalf. According to the GAL report, this situation differs for Don Adair, who has very good long-term memory. Even the assisted living facility administrator, Mrs. Nichols, reported in her affidavit on July 7th of 2022 that Mr. Adair "could make his need known" in most situations. We are not in a situation where we need to humiliate him further by declaring him incompetent and by ignoring everything he says as if nothing he says matters, as if he is a pet or a five-year-old boy without life experience, or if he cannot communicate. In fact, despite his age and past medical history, which may show some cognitive decline, we do not believe he was incapable of choosing with whom to live if he is accompanied by a competent adult who can care for him. In our discussion with him, we have been convinced that he has enough capacity to determine who his caregiver should be and that he should have that option. He did that in public in front of many people several times, and we recorded it in session. His revocation of the medical power of attorney is legal and not alleged, as testified by recording. We are very sorry that Don Adair was not given a chance to speak in court, although we had him legally subpoenaed according to the regulations set by the court. Don Adair personally insisted to me he wanted to speak to the judge. He was denied such a right. Unfortunately, this man has not been treated like a human being, depriving him of the right to speak in a public hearing to the judge in front of an audience.

GAL report:

Concerning the Guardian ad Litem report, we would like to remark on the following:

We express all our gratitude and respect for the guardian ad litem, Mr. Tjay Bagwell. We thank him for his positive remarks about us, his discernment of our good intentions, and our overflowing care for Don Adair. He honestly stated that we want him to live his life to its fullest extent and save him from the humiliation he was suffering from while under the mercy of Judy Tupolo.

We are not questioning the honesty of Mr. Bagwell, but his report lacks objectivity in many aspects. We believe it failed to investigate the core subject of this motion, which is the abuse of the power of attorney and the allegations presented. None of the allegations have been addressed. He mentions that a \$ 30,000 private account for Mr. Don Adair disappeared, yet he still needs to investigate what happened to it; the same applies to his social security funds and the rest of his

valuables and belongings. This is an uninvestigated alleged abuse happening while she controlled all his assets by her power of attorney. This should have been reason to acknowledge that Don Adair's accusations were founded on credible facts or plausible situations, not unfounded paranoid delusions, contrary to what the defense is trying to allude.

The GAL report spends much time justifying why Judy abused lifetime association savings and funds by accepting a letter written by people Mr. Bagwell does not know, has never met, whose legitimacy is contested, and who have never been investigated nor their representation legitimacy ever confirmed. In fact, when we looked at the letter posted as affidavit, we saw no other signature but Alexia Hall's, Judy's daughter. The letter is not even an affidavit, nor is it notarized, nor is it a sworn statement. It is not our duty nor Don Adair's duty to prove the already contested legitimacy of her so-called church officials. Still, the defense must verify their legitimacy, and the report admits that their legitimacy has been challenged, stating the "pro-Judy" and "anti-Judy" stand on the matter. This motion does not aim to prove or disprove the board's legitimacy. Undeniably, Mr. Don Adair has served the association for over 50 years to gather the above funds, including his retirement allocation. Judy directly or indirectly uses her power of attorney status to remove this fund and use it for selfish purposes, renovating her own private house and using nonprofit money for personal profit and gain. Having a few signatures of unknown people does not justify abusing the power of attorney. The man has been deprived of his retirement without any legal or ethical justification and without giving him the legitimate capacity to object. These facts cannot and have not been contested by any party. None of this has been mentioned or investigated.

As the honorable Judge Sprouse noted, the accusations and allegations are serious and should have been reason enough to suspend her power of attorney. The report also needs to document the illegality of her misuse of special guardian powers without being granted those powers. There is not a single legal argument in the report addressing that subject. No other party has addressed any of those allegations presented by Plaintiff, and the defense has not objectively denied it. Affidavits prove them.

The report lacks objectivity when it restrains Adair to the limitations of a five-year-old boy, although Mr. Bagwell denies being qualified to determine capacity. We thanked Mr. Bagwell for his honest denial during the last hearing and for referring to Plaintiff as the expert on capacity. Comparing Don Adair's case vaguely to his experience with his mother does not enable Mr. Bagwell to evaluate Adair's capacity. This is a sentimental subjective comparison and not an objective cognitive, neurological, or psychiatric medical evaluation. Hearing the recordings presented to the court would prove the opposite, at least when Don Adair revoked a power of attorney. We have even seen a video taken by Judy's daughter and posted on Judy's association's website, allegedly soon after Mr. Bagwell's interview, where Don Adair shows competent lucidity similar to the recordings presented to the court. Stating that someone he admits has perfect long-term memory and over 90 years of life experience should be treated as a five-year-old and deprived of all freedom and decision-making is deferring to the absolute. It does not address what the principal can and cannot do. It also ignores that such suppositions of incompetence can be abused and misused if not done through proper legal channels and that Judy Tupolo never used any of these legal channels. In depriving him of certain fundamental rights without legal or professional evaluations and without being granted those powers by a court of justice, there is no question to doubt that Judy has abused her power of attorney and that it should be suspended for that reason

alone.

Stating that Judy has cared for him is also subjective and incomplete. It does not state the whole truth. Mr. Bagwell meant she cared for his basic needs, but is that enough? Do we get treated like a dog having no more than basic needs when we reach 90 or when we have a cognitive diagnosis? What about his dignity and fundamental rights as a human being? Besides, as far as we understand, she must be using his money or the money he has the right to, such as Medicaid, insurance, social security, or other, to care for him. She is not doing what most of his friends, including Plaintiff, are unwilling or unable to do. Moreover, stating that Judy has been left to care for his needs is inaccurate. We heard from many witnesses that, until this motion was filed, Judy did not spend much time with Don Adair and mostly placed him under the care of others, such as her friends and facilities, who are paid by his private money, Medicare, and contested association funds. We do not understand what good care is it when she deprives him of his basic human rights, such as the right to have visits respected according to the SC patient's bill of rights.

Stating that Plaintiff is an outsider also is not a valid argument. The report ignores that we have known Don Adair for over 20 years and have visited him in person. Judy's experience with Don Adair is not a credit for her but rather a discredit, considering that she did not do much to care for him except use his funds to have others care for him and accompany him on a few trips to church on the weekend. Mr. Bagwell has the affidavit and testimonies of several people who knew Don Adair before Judy. We can mention, for example, Catherine Kerr, who has spent, on occasions, considerable time and effort to care for Don Adair and knew him till he was hijacked, no less than Judy; she testified of her knowledge to us. The same is done by Mr. Bingham, who had known Don Adair personally and in person since childhood, even before the internet was invented, and who testified of our character and intentions and who committed to caring for Mr. Don Adair on his association premises. His affidavit is found in court. We have known many persons who have known Don Adair personally and loved him, such as Eleanor Sorenson, Mary Hansen, Bonnie Smith, and others. We provided enough affidavits from such people testifying of our honesty, intentions, capabilities, and qualifications, and we were willing to offer more if the judge found it necessary.

Don Adair has been unethically and illegally marginalized from any decision:

SC rule 1.14 states that even if the person has diminished capacity, he needs to be treated with respect and be accorded the status of a client. Mr. Bagwell does not seem to have respected that in his report; he seems to have turned a completely deaf ear to Mr. Adair's complaints about Judy and his revocation of the power of attorney.

“SC RULE 1.14: CLIENT WITH DIMINISHED CAPACITY status of a client not to be overruled

by his representative:

[2] The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. Even if the person has a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication.”

Why was a GAL appointed with incurring high costs?

We did not request the appointment of a guardian ad litem, nor do we believe that it was necessary to do so:

SC Court Rule 17, especially (b), (c), and (d), specify in which conditions, why, and who may be appointed as Guardian ad litem. The latter is appointed when a minor or incapacitated person is a party to the litigation, be it a case of abuse, neglect, or any litigation. But, since Don Adair is not a minor nor has he been proven incapacitated yet, and since he has not been considered a party in this litigation, there was no need to appoint a guardian ad litem. The guardian litem is not to determine capacity, nor is he qualified to do so.

We contest the administration of such a high fee for the guardian ad litem, which we believe does not respect SC Rule 41 law, specifying that fees for guardian ad litem should not exceed \$50.

<https://www.sccourts.org/courtReg/displayRule.cfm?ruleID=41.0&subRuleID=&ruleType=FAM>

Title: “**COUNSEL AND GUARDIAN AD LITEM FEES IN ABUSE AND/OR NEGLECT PROCEEDINGS**”

(a) Limitation on Fees. In all child abuse and neglect proceedings, the court shall grant to legal counsel appointed for the child subject to child abuse and/or neglect proceedings a fee not to exceed One Hundred (\$100.00) Dollars. The court shall grant to a guardian *ad litem* appointed for a child subject to such proceedings a fee not to exceed Fifty (\$50.00) Dollars.” Based on the title, we believe this not only applicable to children but also to vulnerable adults such as those allegedly incapacitated.

Though the term child is used here, the title addresses a generic situation. We understand that if it is restricting the fee for a minor since the minor cannot work, it should be the same for an allegedly incapacitated elder who cannot work either. It is obvious from the title and the rule’s content that it specifies nothing different from any other category.

Some of the biases we would like to remark further are the following:

When the Defense wrote their reply to the memorandum, they were deposed in court about an hour before the session began; the judge asked us why we did not reply. We told him we never saw it; he adjourned the hearing and requested us to respond in 10 days; otherwise, the case would

be dismissed in their favor. We did answer on time as requested. We presented our allegations in reply, and our memorandum was added thereafter. We showed that if the defense can present answers to these allegations, then the Defendant should have no case since she was very obviously acting as guardian with special powers when there is no evidence of her status nor of any powers given to her over Don Adair, which would be clear evidence of abuse of power of attorney powers. We expected them to be treated as we were treated by giving them the same period. We acted better than the defense because we did not depose our reply one hour before a hearing and gave them ample time to answer. We expected them to be given the same ten-day period to justify their illegal abuse of power of attorney or make a judgment in our favor. This did not happen. They were not requested to reply at all, and it took a long period before it was decided to appoint a guardian ad litem to do the task they were supposed to do. But the guardian ad litem failed to do his duty and did not investigate any of the allegations in this matter. We find that unfair. We should have been granted judgment in our favor because the defense could not justify their power of attorney abuse by acting as a guardian with special powers. This was proven and not denied by the defense, even admitted publicly by Judy Tupolo and her daughter Alexia Hall, who is supposed to have secondary power of attorney.

Don Adair has been marginalized without legal, medical assessment:

If the honorable judge had seen it necessary to find out if Don Adair was incapacitated or not, he should have granted our request to appoint a legal medical specialist capable of certifying the incapacity and the extent of the incapacity in a medical, scientific objective manner. Mr. Bagwell admitted that he is not a specialist in that field and needs to be qualified to evaluate capacity. We thank Mr. Bagwell for his honesty in admitting so and in reporting that the Appellant would be a good caregiver for Don Adair and referring to the Appellant as an expert to be consulted in matters of incapacity. What is the use of appointing guardian ad litem and paying him three thousand dollars for no extraordinary circumstance when the elder has not been proven incapacitated and when the law stipulates as the guardian ad litem himself has admitted that he is not qualified to determine capacity?

Two specialist medical providers are required to assess capacity as explained in our reply to memorandum of July 26, 2022 p. 8 -20, and our request to appoint at least one was overlooked. The cost of a guardian ad litem should not have been our burden. If the court thinks the man is incapacitated and needs defense, then the court should appoint a public guardian to care for him at his or at the government's expense. Still, we never claimed his incapacitation. It would not be fair to place the burden on us when we have already taken it to defend him and when the issue is about the abuse of power of attorney, not litigation involving a proven incapacitated person. It is the burden of the person alleging the incapacitation and using it to justify the abuse to file a motion and follow the legal, due process to prove status and legal incompetence.

Judy Tupolo did not take good care of Don Adair:

Judy should have taken better care of Don Adair. According to our discussion with him and witnesses, the latter was, as testified by the recordings, alert, conscious, and oriented to self, person, place, situation, and time. He was continent for bowels and urine, and he was ambulatory. He was able to make his food and his laundry. He never wore diapers or needed anyone to change his clothes or assist in his ambulation. It does not seem that she even had the habit of taking his vital signs despite the swelling he had been having when we contacted him in 2021. She left him to be cared for by others with his money and Medicaid funds. She did not make any special effort for him that any true friend around him was unwilling or unable to do. He never asked her to care for him; her care was unwelcome and too imposing. He never promised her anything back for anything she did.

Bias in GAL report:

We want to also add, without questioning the honesty of Mr. Bagwell, whom we appreciate very much, that unlike his testimony in court which was more complete and unbiased, the Guardian ad Litem's written report was, de facto, biased for the following reasons: Mr. Bagwell's information was almost unilaterally based on the defense's witnessing. Mr. Bagwell ignored Mr. Adair's opinion stating that he should be treated like five years old and that he is not the best decision-maker for himself. However, there was no proof from his report or our presented recordings that this is an objective statement to be taken as a conclusive fact. From that part, his visit with Don Adair did not consider his opinion, nor did it investigate the abuse of power of attorney from the legal point of view. Mr. Bagwell also totally ignored all the affidavits we presented, our testimony, and Catherine Kerr's statements. We had a challenging time contacting Mr. Bagwell as he was very difficult to reach; when we called him daily, we were finally able to get through to him, and when we gave him our testimony, we found out that none of nor any of Kerr's testimony was mentioned in his report. On the other hand, Mr. Bagwell seems to have no issue at all contacting not only Judy Tupolo, but also her attorney and a letter that comes from supposed leaders in the organization who partially live in Zambia, Africa. The only question Mr. Bagwell asked me was what I would do if I were chosen as his guardian, which was surprising as this was not a case of guardianship. He asked me questions about what I would do in such or such situations. When I responded to him that a neutral physician should physically and personally assess Mr. Adair to verify his skills and capacity since Mr. Adair contested some medical statements as being done without direct physical assessment, we were surprised to see in his report

stating that we are deferring to the absolute and that we are willing to comply to all of Don Adair's demands. The latter statement is inaccurate. We were surprised that this is one of the many examples where Mr. Bagwell either did not consider any of the testimonies we gave or, misunderstood their context to say the least. This unilateral resource of his report makes it biased, even if that bias may be unconscious or involuntary with no malicious intentions. We repeatedly mentioned to Mr. Bagwell the legal rights of Mr. Adair and how Judy is infringing on those rights, and we gave him phone numbers and referred to bank accounts and hospitals where he could subpoena information to investigate the abuse; unfortunately, we found ourselves having wasted our breath since none of it was considered at all.

Among other things the report ignores is that there are witnesses whom we gave him the name and whom he could have contacted that claim that Don Adair asked her to marry him because she flirted with him at late hours of the night, striking his cheeks, playing with his hair, and rubbing his feet, and sometimes being inappropriately dressed. Don Adair complained that she accused him of sexual harassment and threatened to expose him if he did not "behave." He recognized her schemes lately and said he would refuse her if she proposed to marry him. He did not mention what happened to his private bank account of \$30,000, to his precious valuables such as his \$14,000 printer, to his books being sold on Facebook and her website <http://www.salemgadsda.org/> where his books are expected to be his own private intellectual property. He does not mention what happened to his social security income and to the former credit card that he accused Judy of using for her personal use. He does not mention what happened to his violin and how his dog mysteriously died. He does not investigate how he is being treated now, at the expense of medical insurance, whether he has been placed on Medicaid, or how he could qualify for Medicaid when he had assets and income till Judy arrived on the scene. He does not investigate the allegations of whether Judy truly took care of him or whether he did not need much help from her since witnesses said he could even do his laundry that she rarely, if ever, cooked, and that she is paying others from his money to take care of him.

Contradictions:

We also find many contradictions in Mr. Bagwell's report, such as when he says Don Adair has an excellent long-term memory and is still capable of giving Bible studies, but then if that is true, how can Mr. Bagwell consent to his imposed isolation when Mr. Adair has an excellent long term memory and remembers his friends of 50 years and can give studies to his Bible students and when Judy has no jurisdiction to confine him against his will? We understand that if this was not a contradiction, Mr. Bagwell might have expressed one side of the story while ignoring the other. In other words, by stating that Judy is his caregiver and that she took good care of him, what he meant is that she took care of his basic needs, but is that enough for a human being to be treated like a dog taking care of his basic needs such as shelter or food? What about his freedom of will and dignity? What about financial exploitation? What about spiritual and emotional abuse? None of that counts

toward good care. Moreover, we do not understand how Mr. Bagwell could make a statement confirming that she took good care of him based on one visit. We do not even know where that visit happened, how long it took, or what the interview's content was. We gave him phone numbers and names to inquire about and explained that Judy rarely spent any time with Mr. Adair and, most of the time, left him to be cared for by others with his own money. So, she did nothing that any common friend around him could not have done. To leave someone in a facility to be cared for by Medicaid money, his social security, or his own funds is not evidence of good care. Concerning the financial abuse, Mr. Bagwell is very aware of the contested legitimacy of her council. He accepted a letter from strangers he did not know. He does not know those people and did not verify their legitimacy; his understanding of their contested legitimacy is evidenced by his statement that there are pro-Judy vs. anti-Judy factions and opinions. The letter he received is not even a sworn statement. The report verifies that she took over \$100,000 of the association funds and used it on her private house renovation. Mr. Bagwell misses the point here. He spends almost 50% of his report trying to justify or explain her misuse of monies, comparing it with how Mr. Adair allegedly "mismanaged" the association. However, he fails to note that Mr. Adair toiled for over 50 years to build the association and gather the funds. She took it over by isolating him, preventing him from speaking against and using her legitimacy through a power of attorney since Mr. Bagwell is very aware of Don Adair's large influence over the association. It is well understood that whether the letter is legitimate or not, it does not change the fact that this money and this association were Don Adair's historical and financial legacy and that he had the right to free access to part of this fund as his retirement money and that whatever "council" agreed with the misappropriation of funds did it in complicity with Judy and that the latter used her status of power of attorney to perform such abuse. This abuse of power of attorney leads to spiritual abuse and financial exploitation.

Justifying the fund misappropriation by saying her home has sheltered Don Adair does not stand either. Until this motion came to a late stage, Judy left Don Adair to be cared for in facilities and told him that he would stay there till he died. After the motion reached a climax, she had no option but to take him back for a brief period, and we have good reasons to believe he soon had to be placed again in a facility away from his association. Moreover, stating that she could not register the property in the association's name does not stand either. We know from witnesses that the association had a generous income and should have qualified in one way or another. According to an association member, the association was paying her \$1800 rental property in Seneca. These alone qualify as mortgage payments for the association. In any way, she could have found a legal way to secure the association's ownership while still using her credit. Legally, If she wants a place for Don Adair from his or his association's money, it should have been registered in his or the association's name, not hers. Otherwise, it is considered an illegal abuse of power.

Moreover, Mr. Bagwell is aware that the exploitation is not limited to association funds but also to the personal funds of Don Adair. He mentions his account for \$ 30,000 and his social security. So, since there was no evident justification for the disappearance of these funds, and since they disappeared while she controlled the finances, what would be the explanation for their disappearance except financial abuse?

Mr. Bagwell ends his statements that both Plaintiff and the defendant would be good caregivers for Don Adair, except that our care for Mr. Adair is overflowing and full of respect, while Judy does not seem to have more than basic care for him. He also adds that Judy is burdened with Mr. Adair's

care despite the possible abuse and financial exploitation. But again, we question how that can be good care despite admitted and suspected financial benefits and her inhumane treatment of him. Mr. Bagwell also justifies why Don Adair cannot stand Judy by saying that she placed him in an assisted living facility but that she understood that and took him back out. But that neglects the fact that he told us, and may have told him, that she wanted to leave him in the facility until he died and that she did not take him out till she felt threatened by this motion when it arrived at its late stage. So, it is thanks to our motion she took him out when it was too late to cover up her abuse and avoid losing the motion. He failed to notice that when he expressed his frustration, she had already taken him out of the facility, and he still could not stand her nor stand being around her, not because he was in a facility since he wasn't, but because of her dictatorial attitude depriving him of his fundamental rights. We are confident that she will place him in a facility again sooner or later, and we highly suspect she did until he died. We read a communication from her daughter saying he needed a nursing home. A subpoena should determine where he is at this moment. It is a tragedy that Mr. Adair is going through, and no one has stood up or been able to help him and give him access to advocacy and neutral legal advice. The report has yet to determine his capacity or the lack thereof. Unfortunately, we understand that elder abuse is very common and that he is not the only elder going through such abuse. That makes the case more critical as it sets a precedent for the case of the general elderly population.

A simple safe request that could have made a huge difference in Don Adair's life has been totally ignored and shoved to another court:

We are not seeking punitive actions against Judy. This is not a trial or a lawsuit. It was a simple motion requesting clemency from the court to give us access to Don Adair since the Defendant has not been able to bring conclusive scientific evaluation that he is incapacitated, since the defendant nor the justice nor the GAL report has not been able to prove any ill intentions in us, since Don Adair has revoked his power of attorney and is being held against his will, since there are severe suspicions of abuse and exploitations and since the defendant has been acting as a guardian with special powers not granted by a power of attorney without any judicial grant of such powers. We did not need to prove these allegations beyond a doubt. All we needed to do was show that these were serious allegations worthy of investigation so that the court would grant us temporary access to Don Adair. The motion should have been decided in a matter of hours or days. Instead, it has been a matter of years lengthening the tragedy.

We were requested to reply or justify every request and accusation from Defendant, yet the reciprocity was not there. The defendant has been unwilling to reply to not even one of our accusations and allegations. Guardian ad litem was appointed to investigate the allegations properly and address the legal reasons for the motion. The issue was treated as if we were requesting guardianship or conservatorship and then dismissed with a no prejudice to applying for conservatorship at probate court, where this issue was filed in the first place.

We have proven with conclusive, clear evidence, beyond a reasonable doubt, that Judy Tupolo has

been restraining Don Adair against his will, thus acting as a guardian with special powers that can only be granted by a probate court after medical evaluations and special court procedures. Defendant has not denied those allegations. The latter should have been reason enough to temporarily suspend the power of attorney and grant us access to Mr. Don Adair.

Defendant has not presented a single affidavit to the court except the one written by Mrs. Kimberly Nichols. The latter seems to agree that Don Adair's dementia, if he had any, is a form of vascular dementia. The latter is not a neurodegenerative disease secondary to stroke or cerebral ischemia. It should have been at its peak of reducing the patient's capacity immediately after the stroke. That means if Don Adair had been incapacitated from any faculty, that incapacitation would have been most visible just after the TIA when he had supposedly granted a medical power of attorney in 2020. It means that the power of attorney's validity should have been contested for that reason alone. Mrs. Nichols also said that Don Adair mostly knew how to make his needs known. That means he understood and appropriately communicated his needs in most situations.

Don Adair's revocation is valid, and refusing it is a crime against humanity that sets a very dangerous precedent for American elders:

We contest the refusal to accept Don Adair's revocation of the power of attorney "at this time."

When we talked to Don Adair, we ensured he understood well what a power of attorney is, as attested by the recordings presented to the court. He could roughly explain the powers it gave her over his situation and verbally expressed his understanding. He understood what the consequences were of revoking it. He understood his options very clearly as to where and with whom he would be able to reside in case his power of attorney was revoked. He appointed us orally as his power of attorney. The only thing that hindered him from officially completing such an appointment was her prevention from reaching a notary public to finalize his revocation and appoint us as his power of attorney instead, at least temporarily, to help him with this matter. She isolated him from any further contact with any of his friends who disagreed with her and were trying to communicate with him over this matter.

Although we respect Mr. Bagwell and agree with many aspects of his report, we vehemently disagree with him when he thinks that providing a man with his basic needs is sufficient to be considered "good care." It is evident from the report results that there are still severe accusations of financial abuse of Don's funds. The information fails to explain why Don Adair is highly frustrated with Judy to the point of kicking her, as her lawyer attests. Surely, it must be because he is detained against his will when he has other safe options and does not get along with her. It is clear from the recordings that Don Adair is fully aware of the nature and consequences of his activities related to the power of attorney. He has the right to revoke it and appoint whomever he wants until proven otherwise incapacitated of that specific capacity. Don Adair has other safe options; so far, he has been neglected and prevented from his fundamental rights without any advocacy, legal aid, or help.

Judy had not been able to prove that when Don Adair signed her any power of attorney document, he was in his full mind having the capacity to understand the nature and consequences of his signature. Don Adair has contested the document's validity and claimed he did not understand what he was signing, which undermines the document's validity. It should have been revoked for that reason alone.

We suspect Judy Tupolo may have been deceptive in her testimonies.

In her affidavit of 10.25.22, Judy said that Don Adair wanted her to take care of him while in the recordings presented to court he says the opposite, that she imposed herself on him and that he never promised her any pay. The same affidavit or letter she places the frame of taking him out of the facility by May 14. Police report of subpoena service, July 8th 2022 p. 3 and 5, prove he was still there on July 8th. Was she trying to tell the court that he was removed from the facility when he was still in the facility? How come when we requested the facility to bring Don Adair during the hearing on July 12 online, there was no excuse that he was taken away by Judy nor did Judy report to be willing to show him at that time, which tells us that he may still have remained in the facility. Was she distorting the truth to hide his location and claim she was taking good care of him personally while he remained in the facility?

We have exposed in our concluding statement p. 6 par. 1, that Judy may have been deceptive to the court when she is trying to convince the court that she adjusted her life by moving to South Carolina from her place in TX to take care of Don Adair and take him out of the facility after the motion was filed, and live with him because supposedly he needs 24 a day hours supervision and because he wants to stay near his office in SC. At the same time, when she wrote the letter and during the hearing on 10-25-22, she appeared online with her daughter in Texas. What was she doing there, and where was Don Adair? There is lack of consistency in the story.

We also believe she may have committed perjury when she said that the association's money had been used to renovate her house. Zillow shows the house has been sold for \$175 000. Why would a renovation involving basic painting cost over \$ 104,000 in Tamasee, SC. We believe the number is unrealistic; she could not have even spent half of it for that renovation. Pictures on Zillow show that the house was not in a situation that required so much renovation. That means the defendant may be lying, hiding, distorting, or exaggerating facts, thus likely committing perjury and possible fraud to cover up the fund handling. Paying herself and her daughter would not be a logical explanation to justify such an extravagant expense. A thorough investigation may prove the allegations.

See: [115 Davidian Way, Tamasee, SC 29686 | Zillow www.zillow.com/homes/115-Davidian-Way-Tamasee,-SC-29686_rb/111149847_zpid/](https://www.zillow.com/homes/115-Davidian-Way-Tamasee,-SC-29686_rb/111149847_zpid/)

Zillow shows the house before it was sold, in good condition, not needing much more than basic painting and furniture.

Tupolo's false accusations.

We do not understand why she accuses us of sending a spy called Kaka while she admitted she was paying him, and when we talked to him, he told us that she was the one who sent him for a mission. He told us he was staying in her house and getting paid by her. She seems to have admitted the latter facts as well. This is another hint of a lack of truthfulness and transparency in her words, testimonies, and accusations. It is a paranoid, unacceptable, defamatory lie and could also fall under perjury since she presents it as a fact, not a suspicion. All the above renders her testimony void and untrustworthy to testify for herself as a good caregiver for Don Adair.

Is this another of her conspiracy theories adding perjury to her lies?

When the judge recommended that the issue be pursued under conservatorship in probate court, he assumed that Mr. Adair was incapacitated and needed a guardian or conservator. There is no evidence to prove that he does.

The material presented by the defense did not have any convincing evidence of incapacity nor incompetence:

The pictures that the defense presented do not prove that there was any imminent threat on Don Adair's life. Besides the affidavit of Mrs. Kimberly Nichols, none of the affidavits was a sworn statement. Therefore, it cannot be accepted as evidence in court. Mrs. Nichols' affidavit should not be accepted because it contradicts the police's report by saying on July 7 that Don Adair had already been discharged before July 7th when the police report prove that he was served when still in the facility on July 8th.

Her accusation that the Appellant has sent a spy, called Kaka, to spy on her and manipulate Don Adair is another paranoid lie that should not stand. We have been able to contact this Kaka, and he told us that he was on a mission commissioned by Judy Tupolo and that he stayed in her house and was paid by her. How can someone she lodges in her house, pays money for, and is commissioned by her be a spy for us? We do not know this man personally. We deny all her accusations. We had talked to him a couple of times before that incident, thinking that, as her agent, he could mediate the issue. No other contact was made with this man at all.

Sum of the matter:

There is no evidence based on the professional evaluation that Don Adair was incapacitated

by June 2022, nor did the Defense do any legal or medical process to define what he is capable of and what he is incompetent of doing.

Our limited assessment of Don Adair by phone from January to May or June 2022, as a professional medical expert in matters of capacity, has proven to us that Mr. Don Adair was alert, conscious, and oriented to self, person, situation, place, and time. He understood very well what a power of attorney is, its nature and scope, what it means to revoke it, and its consequences. His revocation of the power of attorney should be granted and accepted.

Our motion to temporarily suspend the power of attorney and grant Don Adair his wishes is reasonable and safe.

We have proven our commitment to his care and our relationship with Donnie Adair through many affidavits, some presented by friends who know us and have known him personally for over 50 years.

Since Mr. Adair understands very well the nature and consequences of his request, and since Plaintiff is considered a safe alternative to his bondage with Defendant against his will, and since there are serious allegations and suspicions of abuse and exploitation from Defendant, and since Defendant has not denied, as we have proven from affidavits, that she has been holding him against his will without legal authorization, and since she has been abusing her power of attorney powers acting as a guardian with special powers and treating Don Adair as a ward who has lost specific rights, at least her medical power of attorney, if not the financial one as well, should be at least temporarily if not permanently suspended, along with all the powers she has granted to others, and access to Mr. Don Adair should be granted to Plaintiff to fulfill the alleged abused elder's wishes.

Contesting the GAL report fee:

Guardian ad litem appointments were unnecessary, as this is not an issue of guardianship but rather an issue of power of attorney abuse. It was the defense's burden, not the guardian ad litem's burden, to explain her position. We should not have been placed under the burden of paying for guardian ad litem who did not seem to understand the nature of his assignment and had not investigated the nature, validity, or extent of abuse of power of attorney based on the South Carolina probate code of law.

No matter what cost must be shared between Plaintiff and Defendant over the guardian ad litem report, it should not have exceeded, by law, \$50. The bill sent to us needed to be more realistic and is unjustified by any extraordinary necessary measures.

The Guardian ad litem report was de facto biased due to its ignorance, be it unwilful, of one side of the story and taking practically all its resources from the defendant's party. We have not seen one valid reply from the defense to one of our allegations. What has been presented to seems relatively occult and lacks transparency and should have been represented publicly to scrutinize its validity. Since this issue has been forwarded from probate court to circuit court because it needed more live interactions, and since no live interaction has brought any information that documents could not have presented, the only interaction that would have made a difference was allowing the plaintiff to

subpoena people to court for interrogation, including Donnie Wayne Adair. The latter should have been allowed to speak in court when he was legally subpoenaed and was ready to speak.

Our plea to the honorable justice.

We request the honorable justice to grant us our request in the motion presented by reversing the circuit court's order and suspending the medical power of attorney temporarily, if not permanently, and, if possible, the financial power of attorney and any other testamentary or agency document she may have had him sign. We request also for compensation for all our expenses fighting for the rights of an elder who has been deprived to enjoy freedom in the last day of the twilight of his years.

Thank you very much.

Appellant
Jirair M Baghdassarian

ARGUMENT

1. BECAUSE THE RESPONDENT IS NOT A LEGAL GUARDIAN OF DON ADAIR, BECAUSE THE LATTER HAS NOT BEEN DECLARED A WARD, BECAUSE NO COURT OF LAW HAS DECIDED TO DEPRIVE DON ADAIR OF ANY PART OF HIS BASIC RIGHTS PRESENTED IN THE APPELLANT'S ALLEGATIONS, BECAUSE NO COURT OF LAW HAS TRANSFERRED THESE BASIC RIGHT FROM THE PRINCIPAL DON ADAIR TO THE AGENT JUDY TUPOLO, THE RESPONDENT HAS NO JURISDICTION TO DEPRIVE AN ELDER OF HIS BASIC HUMAN RIGHTS, SUCH AS FREEDOM OF TRANSPORTATION, SAFE DISCHARGE, CHOOSING WITH WHOM AND WHERE TO LIVE, RECEIVING VISITS AND PHONE CALLS, RESPONDENT HAS VIOLATED CONSTITUTIONAL, AND SOUTH CAROLINA LAW RELATED TO CIVIL RIGHTS AND HAS COMMITTED A CRIMINAL ACT, THE TRIAL HAS ERRED IN MATTER OF LAW DISREGARDING ANY PLEA FROM DON ADAIR, TO BE GIVEN AUDIENCE, GRANTED HIS RIGHT FOR SPEECH AND MAKING CHOICES AND IN PROTECTING HIS CIVIL RIGHTS.

Discussion: 1ST amendment of the US Constitution gives every US citizen freedom of speech which Don Adair was deprived of this by Judy Tupolo:

“Congress shall make no law” “abridging the freedom of speech,” ...

Fifth Amendment guarantees free life, liberty, or property that cannot be deprived without legal due process.

“ No person ... shall be deprived of life, liberty, or property, without due process of law;...”

Ninth amendment guarantees basic rights cannot be taken by any other rights, so a possession of a power of attorney is no sufficient reason to take away from someone individual basic rights.

“The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.”

The Thirteenth Amendment protects against slavery and involuntary servitude or confinement. Don Adair has been treated as a slave and had involuntary confinement against his will by being deprived of his basic rights.

“section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof

the party shall have been duly convicted, shall exist within the United States or any place subject to their jurisdiction.”

Fourteenth Amendment section one protects the privileges of all US citizens for freedom, liberty, and property.

“...No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law;”

All the above constitutional laws have been violated by Judy Tupolo when she admittedly deprived him of freely receiving phone calls and visits, from freely discharging himself under safe conditions to a safe and reasonable alternative location of his choice.

Infringing on constitutional law makes this motion a constitutional federal case.

In doing so, she would have broken the following SC laws mentioned in the allegations regarding the memorandum:

- 1) Kidnapping according to Section 16-3-910 as explained in our reply to memorandum, p. 6, dated July 21st, 2022
- 2) Unlawful restraint According to section 16-3-915 (A) and (B) and explained in the same document p. 7
- 3)Unlawful confinement according to section 16-3-20
- 4)She has deprived him of several rights secured even to an incapacitated ward by probate law, such as the ones enumerated in our reply to memorandum p. 9 and 10 as codified in Section 62-5-304A. These rights include the right to choose the place of residence, travel without guardian consent, make medical and personal decisions, consent or refuse hospitalization admission, discharge and transfer, authorize disclosure of information, participate in activities, and guarantees all Bill of Rights for Residents of Long term facilities under chapter 81, Title 44.

She has done so without any jurisdiction or constitutional powers granted to her, as explained in the same document p. 10, 11, and 12.

Respondent has been requested to reply in 4 points and prove where she has received the jurisdiction to trample on Don Adair’s rights mentioned in our Reply to Opposition Memorandum from July 26, 2022, p. 12 and 13 and in 6 points mentioned in the same document p. 8 and 9, reiterated again in 8 points in Plaintiff’s Memorandum from 7/29/2022. These points requested responded to justify the deprivation of Mr. Adair of his basic rights since she entered into his life in 2020, by acting as a guardian with special powers and treating Don Adair of his basic rights that even a ward should retain unless specifically mentioned by court. It was the burden of the respondent, not the appellant nor Don Adair, to justify those practices.

None of our requests, not even one, was replied to by the defense attorney, nor did the judge request the defense to reply to use. Their lack of reply is self-incrimination and should be a reason to favor reversing the above decision.

The case of [State v. Forte, 206 N.C. App. 699 \(2010\)](#) testifies that old age and mental diagnosis or use of hallucinogens are not reasons to refuse someone's witnessing as long as they fulfilled the above criteria.

Read the further comment in the NC Prosecutor resource: <https://ncpro.sog.unc.edu/manual/705-01>

Rule 601:

https://www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_8C/GS_8C-1_Rule_601.pdf

Section 62-5-505, entitled health care agent powers, defines the scope and privileges of the power of attorney agent. None of these nor those that should be mentioned in the power of attorney document that should conform to the form rules described in section 62-5-504 allow the agent to deprive the principal of the basic constitutional rights mentioned above. Moreover, we have not been given the right to read the document to scrutinize what it stipulates nor its conformity to the above law.

Thus, Don Adair is presumed free to make decisions over his personal life unless proven otherwise by the respondent or defendant, which the defendant has failed to do by being unable to respond to any of our requests above. Unless the respondent can prove that she retains those that were taken away from Don Adair and transferred to her, with clear evidence, beyond a reasonable doubt, then the court has committed a plain error in law in not protecting Don Adair's rights and allowing Judy Tupolo in pursuing her violations of his rights.

According to SC probate code, anyone has the testamentary capacity to revoke a trust revocable trust, even if incapacity was found, unless it was determined by due process through the probate court of justice. In other words, if Don Adair is presumed capable of revoking a revocable trust, he should be presumed to revoke a revocable agency such as a medical or financial power of attorney since a due process in probate court has determined nothing that he does not have testamentary capacity. The burden of proving the incapacity relies on the opponent alleging such incapacity. He expressed to us that he wanted nothing to do with her, was unaware of what he signed, and wished to revoke it, whatever it was. In other words, his revocation should be extended to any document she has made him sign, including any testamentary and agency document.

As witnesses are presumptively competent under Rule 601, it is the burden of the opponent of the witness, the one alleging the incapacity in this case, the defendant or respondent Judy Tupolo and her defense team, not on anyone else, neither on the defendant nor on the allegedly incompetent person nor on the guardian ad litem to prove incompetence.

In this situation, sending a guardian litem to determine competency in an occult manner was not appropriate as the guardian is not qualified to determine competency, he has shown bias in choosing his resources, a Voir Dire was not set up, allowing the proponent of the witness, which is appellant to cross-examine, and mainly because the two items that allow determining capacity to witness was not examined. The two components rely on asking him questions to determine if he can communicate and if his answers are truthful. There is nothing in the Guardian ad Litem's report that says that Don Adair cannot communicate as he was able to communicate, nor is there any hint that any of his answers were not correct or lacked accuracy or that he did not understand the duty of a witness to be truthful as mentioned in Rule 601. Most importantly, the burden of proving incompetency was not laid on the opponent, Judy Tupolo.

If Don Adair should be allowed to witness in a legal court, why shouldn't he she heard in matters of everyday decisions?

Federal Rules of Evidence rule 601 mandates that : “ (a) general Rule: Every person is competent to be a witness except as otherwise provided in these rules.”

b) Disqualification of witness in general. – A person is disqualified to testify as a witness when the court determines that the person is (1) incapable of expressing himself or herself concerning the matter as to be understood, either directly or through interpretation by one who can understand him or her, or (2) incapable of understanding the duty of a witness, to tell the truth.”

The burden of disqualifying a witness falls on the person who is attempting to prove it, not on the other party nor the alleged incompetent person.

The case of O'Connor vs Donaldson confirms the Right for mentally ill to refuse involuntary confinement.

In the case of Addington vs. Texas, the Supreme court decided that it is unlawful to involuntarily commit individuals without due process, where the burden of proof must be “clear and convincing evidence”.

The case of Jones vs. United States Confirms Addington vs. Texas

In the case of Jackson vs. Indiana the Supreme Court decision that indefinite commitment violates equal protection and is unlawful.

The court has committed plain error in law.

2. BECAUSE THE RESPONDENT IS NOT A GUARDIAN AND HAS NO JURISDICTION FROM A COURT OF LAW TO DEPRIVE AN ELDER OF BASIC HUMAN RIGHTS, SHE HAS VIOLATED SOUTH CAROLINA LAW RELATED TO THE USE OF POWERS OF ATTORNEY; THE TRIAL HAS ERRED IN DISMISSING THE CASE AND NOT SUSPENDING HER POWER OF ATTORNEY PRIVILEGES.

As mentioned and explained in argument 1, the respondent, Judy Tupolo did not fulfill her burden by explaining by what rights or privileges she deprived Don Adair of his basic rights, and since he is presumed born with his basic rights with testamentary capacity and the rights given to a ward mentioned in our reply to memorandum p. 6-12, dated July 26st, 2022 and the consecutive memorandum dated 7/29/2023 p. 12 and 13, therefore She is guilty of abusing her power of attorney privileges and the court has committed plain error in fact and law in dismissing the case.

3. BECAUSE FREEDOM OF EXPRESSION OF MOVEMENTS AND CHOICE OF SELF-DETERMINATION, OF USING OWN OF PROPERTY AND FUNDS ARE BASIC HUMAN RIGHTS THAT EVERY US CITIZEN IS BORN WITH, THAT ARE DIVINELY GIVEN TO EVERY INDIVIDUAL AND ARE PROTECTED BY THE UNITED STATES CONSTITUTION AND SOUTH CAROLINA LAW, AND IT IS UP TO THE RESPONDENT THAT HAS NOT DENIED, THAT IS OPENLY ADMITTING, AND THAT IS EVEN REQUESTING TO VIOLATE THOSE RIGHTS, TO PROVE WITH CLEAR EVIDENCE, BEYOND REASONABLE DOUBT, THAT SHE HAS BEEN GIVEN THE LEGAL RIGHT AND JURISDICTION BY A PROBATE COURT OF LAW TO BYPASS THOSE RIGHTS AND TO JUSTIFY THE REASONS WHY SHE IS VIOLATING THOSE RIGHTS OF THE ELDER DON ADAIR SINCE JULY 2020, THE TRIAL HAS ERRED IN PLACING THE BURDEN OF PROOF ON APPELLANT NOT THE RESPONDENT. BECAUSE SHE HAS NOT BEEN ABLE TO PROVE WITH CLEAR EVIDENCE, BEYOND REASONABLE DOUBT, THE JURISDICTION BY WHICH SHE DEPRIVED DON ADAIR OF HIS RIGHTS, THE TRIAL HAS ERRED IN NOT FINDING HER ABUSE AS FACTUAL AND NOT SUSPENDING HER POWER OF ATTORNEY PRIVILEGES.

Judy Tupolo and her lawyer have never denied the actions mentioned above, although her lawyer attempted, in a contradictory manner, to “deny all allegations” under the

pretext that her human rights violations are for a benevolent cause and for the protection of Don Adair. We have affidavits and records proving so. None of the respondent's witnesses have sworn affidavits except the one of Mrs. Nichols and, therefore, should be rejected. Mrs. Nichol's affidavit submitted on Aug 26th, 2022 is questionable as her witnessing on July 7 that Don Adair had left before the affidavit was written on July 7, coincides with the witnessing of Judy Tupolo and contradicts the police report that states that he was served at the facility on July 8th; which means he was still residing there on July 8th. The pictures she presented do not prove that Mr. Adair is incapacitated or that the place is unlivable by some people's standards as Don Adair. Even if the place is unlivable and it was found that Don Adair needs assistance and cannot take care of himself without assistance, they do not prove that the principal is either permanently medically incapable or legally incompetent. Even if incapacity or incompetence was found, this still does not prove that the principal has lost the legal capacity to revoke his power of attorney or lost any of the inborn rights mentioned in section 62-5-304A.

The case of O'Connor vs Donaldson confirms the Right for mentally ill to refuse involuntary confinement.

In the case of Addington vs. Texas, the Supreme court decided that it is unlawful to involuntarily commit individuals without due process, where the burden of proof must be "clear and convincing evidence".

The case of Jones vs. United States Confirms Addington vs. Texas

In the case of Jackson vs. Indiana the Supreme Court decision that indefinite commitment violates equal protection and is unlawful.

The court has committed plain error in not recognizing that it was the respondent's burden to prove beyond reasonable doubt that her admitted actions are not an abuse of power of attorney privileges and that it is not the appellant's burden to prove the opposite, and this the court has committed a plain error in not suspending temporarily or permanently her power of attorney(s).

4. BECAUSE TEMPORARY SUSPENSION OF A POWER OF ATTORNEY IS NOT SEEKING A PUNITIVE ACTION AGAINST THE RESPONDENT BUT RATHER SEEKING ACCESS TO THE ELDER TO ADVOCATE FOR HIS RIGHTS AND SEEKING INVESTIGATIVE TOOLS FOR THE PURPOSE OF FURTHER INVESTIGATION OF ALLEGED FINANCIAL, EMOTIONAL, AND SPIRITUAL ABUSE AGAINST AN ELDER, THE DECISION FOR

SUSPENSION MUST BE BASED ON APPELLANT PRESENTING NO MORE THAN REASONABLE SUSPICIONS INSTEAD OF CLEAR AND CONVINCING EVIDENCE OR PROOFS THAT ARE BEYOND REASONABLE DOUBT, THE TRIAL HAS ERRED IN LAW BY NOT ACCEPTING THE SUSPICIONS THAT HAVE BEEN CONSIDERED BY THE JUDGE AS SERIOUS, BY REQUESTING CLEAR EVIDENCE THAT IS BEYOND REASONABLE DOUBT AND BY NOT GRANTING THE MOTION.

It would not be fair to request us to bring evidence to prove abuse when the whole purpose of the motion is to find means for acquiring further evidence of abuse. We have laid down our allegations in reply to the memorandum on submitted on 7/26st,2022; we have presented enough affidavits from reliable witnesses and recordings, which makes our allegations reasonable suspicions, which is the acceptable level of evidence required for such a motion not requesting punitive actions against respondent but rather only requesting investigative tools. The judge agreed with us that our suspicions were “serious allegations” in his order to appoint a GAL dated 08/01/2022, p. 2, but instead of giving us the tools to investigate by temporarily suspending a power of attorney and allowing us to talk to Mr. Adair, he instead appointed a guardian ad litem to investigate the matter. In a sense, when it was the duty of the defense to prove their jurisdiction over the civil rights of Mr. Don Adair, it was another attorney appointed instead that the appellant had to partially pay for to alleviate the burden from the defense and place it on us. The guardian ad litem did not clarify any of the presented allegations. We believe that was not fair treatment.

The court has committed plain error in expecting the appellant to bring clear and convincing evidence and by placing the burden upon a guardian ad litem while the burden should have been upon the respondent, and since the respondent has not been able to prove by what rights or jurisdiction they act as guardian with special court granted power and treat Don Adair as a ward who has been deprived of civil rights that even a ward retains then the court should have erred in dismissing our motion with prejudice.

5. BECAUSE THE POWER OF ATTORNEY DOCUMENTS ARE NOT GOVERNED BY S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ., BUT INSTEAD, UNDER TITLE 62-5-500 ET SEQ., STATUS DOES NOT HAVE TO BE PROVEN IN MATTERS OF MEDICAL POWER OF ATTORNEY; THE TRIAL HAS ERRED IN DISMISSING THE CASE UNDER CLAIMING THAT THE APPELLANT HAS NO STANDING IN FILING THIS MOTION ACCORDING TO S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ.

Our reply to the defense in our reply to Memorandum dated July 21st, 2022, submitted July 26th, 2022, p. 2 and 3, we have proven from SC that a medical

power of attorney is governed under TITLE 62-5-500 ET SEQ. not under title § 62-8-101, ET SEQ.. The judge understood that argument and overlooked the defense's attorney after they have presented their objection at the beginning of the case. We are surprised that the signed order was written by the defense's attorney without consulting us, and that contradicts what the judge has already decided at the beginning of the case. The defense did not present any further arguments to contradict it and the judge followed through the process till the end based on that decision. The medical power of attorney is designed for principals who can be easily incapacitated due to loss of consciousness, inability to communicate, or mental or physical disability. Thus, lawmakers have designed the law based on the potential vulnerability of the principal and made it possible for any person interested in the principal's welfare to request suspension and advocate for the principal. We have shown from Rule 17 (c) that even a friend can sue on behalf of an allegedly incapacitated person: "...a minor or incompetent person...may sue by his next friend..." The court has erred in law by dismissing the case due to a lack of status by the appellant. Moreover, We have also exposed in the same document that the Appellant still has standing, even for a financial power of attorney governed under title § 62-8-101, ET SEQ...

6. BECAUSE THE APPELLANT HAS PROVEN STATUS EVEN FROM S.C. CODE OF LAWS ANN. § 62-8-101, ET SEQ., FOR FINANCIAL POWER OF ATTORNEY AS WELL, THE TRIAL HAS ERRED IN LAW AND FACT IN THE DECISION THAT THE APPELLANT HAS NO STATUS.

We have replied to the defense's argument in our reply to the defense's memorandum dated July 21st, 2022, submitted July 26th p. 2 and 3, that the medical power of attorney is governed under Title § 62-8-101, ET SEQ. because the appellant can be considered a next friend according to Rule 17 (c) when the representation of the legal representative is being contested, has demonstrated sufficient interest in the principal's welfare since at least 2021, has been requested to accept the power of attorney by Judy Tupolo and the long term facility where the principal was residing, and because the principal has, as proven from recordings, asked the appellant to become his legal representative. The court has erred in law and facts by dismissing the case based on lack of status.

7. BECAUSE DON ADAIR HAS NOT BEEN PROVEN AN INCAPACITATED WARD ACCORDING TO LEGAL DUE PROCESS IN PROBATE COURT, THE TRIAL ERRED IN REJECTING DON ADAIR'S REVOCATION OF THE POWER OF ATTORNEY ACCORDING TO SOUTH CAROLINA LAW BY SUSPICION INSTEAD OF CLEAR, CONVINCING EVIDENCE.

Fifth amendment: Free life, liberty, or property cannot be deprived without legal due process.

The case of O'Connor vs Donaldson confirms the Right of the mentally ill to refuse involuntary confinement.

In the case of Addington vs. Texas, the Supreme Court decided it is unlawful to involuntarily commit individuals without due process, where the burden of proof must be "clear and convincing evidence."

The case of Jones vs. United States Confirms Addington vs. Texas

In the case of Jackson vs. Indiana the Supreme Court decision that indefinite commitment violates equal protection and is unlawful.

The court has committed plain error in law by rejecting Don Adair's revocation of the power of attorney document.

8. BECAUSE DON ADAIR HAS NOT BEEN PROVEN INCOMPETENT AND IS NOT A PARTY IN THE LITIGATIVE PROCESS, THE TRIAL ERRED IN APPOINTING A GUARDIAN AD LITEM FOR A US CITIZEN THAT HAS NOT BEEN PROVEN INCOMPETENT AND IS NOT A PARTY OF TRIAL.

The court order of 08/01/22 appointed guardian ad litem according to rule 17 of SC rules of civil procedure, while if we look at this rule, it addresses civil procedures where there are parties of plaintiff or defendant who has no capacity. This means is that when a minor or a legally incompetent person is party of a lawsuit (see Rule 17 (a) and (b)), they can sue by "a next friend or by guardian ad litem". This is not the case of Don Adair since he is not the one officially suing in this situation nor is he party of interest in the litigation, nor has he yet been proven neither incapacitated nor legally incompetent. The court has erred in law and abuse of discretion by appointing guardian ad litem when the burden of proof lies on the defendant or respondent, not the appellant, plaintiff, or court.

9. THE TRIAL ERRED IN LAW AND ABUSE OF DISCRETION BY CHARGING A FEE OF OVER \$50 FOR A GUARDIAN AD LITEM REPORT AND BY CHARGING THE APPELLANT HALF OF THE COST.

The court order appointed guardian ad litem based on rule 17 of civil process. No condition in rule 17 entitles the court to appoint a guardian ad litem since it is obvious from rule 17 (a), (b) and (c) are addressing situations where the incapacitated person is party of a litigation where he is party of interest in a lawsuit and his capacity of suing is compromised. Rule 17 (d) allows the court to appoint guardian ad litem in the situation where the party of a lawsuit is incapacitated from suing or being sued based on an application explained in (d) (5) as having to be initiated by a guardian or relative or in (d) (6), by a party to the action. In this situation, no one applied for guardian ad litem, neither a guardian

nor a relative nor a party to the action. Don Adair has not been proven incapacitated to sue or be sued yet, nor is he party to the present litigation. Therefore, based on Rule 17 of the civil process, there was no reason for the appointment of a guardian ad litem. The defense should have been ordered to reply to the allegations instead of sending a guardian ad litem who did not perform the task, nor did he seem to understand the nature of the required task, based on the order, which is to investigate the allegations, was not able to refute nor answer not a single one of our allegations against Judy Tupolo nor any of the 8 points requested from the respondent in our memorandum in support of Plaintiff dated 11/26/2023, submitted July 29th, 2022, p. 12 and 13. Plaintiff has not applied for a guardian ad litem who showed bias in choosing his resources from the defendant's side and whose duty resulted in relieving the burden of reply from the respondent's attorney and who failed his duty in answering. It would consequently not be fair to bestow any of the cost in part or full on the appellant. Any cost, if applicable, should be applied to the respondent alone or the court that made the decision.

Moreover, based on rule 41 of family courts, limit the fee to \$50. If the court decided to apply any part of the cost on the plaintiff, it should not exceed half of the above amount, which is \$25.

The court has erred in law, in fact, and has abused discretion in applying a fee of 1,335 to the appellant. We request that the appeal court reverse the order and apply no fee to the appellant. If any fee should be applied, we request that it would be reduced, not to exceed \$25 if possible.

10. BECAUSE THE PRESUMPTION OF COMPETENCY IN FEDERAL AND SOUTH CAROLINA LAW REQUIRES THAT THE PERSON WOULD BE CONSIDERED AND TREATED AS COMPETENT TILL PROVEN BEYOND REASONABLE DOUBT AS INCOMPETENT AND NOT VICE VERSA, THE TRIAL HAS ERRED IN DISMISSING THE CASE FOR SIMPLE SUSPICIONS OF INCOMPETENCE WITHOUT CLEAR EVIDENCE AND LEGAL DUE PROCESS DETERMINING THE SCOPE OF COMPETENCY AND WHAT ARE THE FUNCTIONS THAT THE ALLEGED INCAPACITATED PERSON CAN AND CANNOT COMPREHEND AND PERFORM.

Based on constitutional laws a US citizen has the right to pursue happiness freely without any constraint or any limitations within the boundary of respecting other and the civil law of the land. US constitution amendment 1.

Fifth amendment: Free life, liberty, or property cannot be deprived without legal due process.

The case of O'Connor vs. Donaldson case exemplifies that even a mentally ill can

refuse involuntary confinement imposed without due process to evaluate capacity of living without confinement or with least restrictive conditions.

In the case of Addington vs. Texas, and Jones vs. United States the Supreme Court decided that it is unlawful to involuntarily commit a psychiatric patient without due process and that the burden of proof should be “clear and convincing evidence” that the patient is mentally ill, and dangerous to himself or others. None of that process has been done which makes the act unlawful civil and criminal act.

In the case of Jackson vs. Indiana the Supreme Court decided that mentally ill people cannot be confined indefinitely due to violation of equal protection.

Ironically Don Adair was expected to defend himself without advocacy nor legal help and without access to any assistance and was indefinitely confined and he was expected, along with anyone who was trying to help him, to prove with clear and convincing evidence that he was not mentally ill while not even being given access to witness for himself. This was a blatant violation of human rights and clear abuse that needs to be criminally investigated at the state level.

CONCLUSION

For the reasons stated, this Court should reverse the judgment of the circuit court.

ADDENDUM: We have been informed recently that Mr. Don Adair has deceased. We still think the order should be reversed since we believe we should not be responsible for the guardian ad litem fee. We also believe that the order sets an unacceptable precedent that is very dangerous for the general elderly population in Oconee County, South Carolina, and the United States. Since our concern is not only about Don Adair but about justice in general and human rights, specifically the right for elderly to protect themselves and avoid abuse we object to dismissal of the motion, though the power of attorney may become ineffective after the decease of the principal. Moreover, we have reasons to suspect that Judy Tupolo may have had Don Adair sign other documents that he obviously, based on his testimony to us and as verified by the recordings, was not aware of. We request the court to reverse the order and suspend all legal, testamentary, or agency documents that Don Adair signed for the benefit or under the direction of Appellant Judy Tupolo. We also plead with the court to have the respondent compensate us for our time, effort, and financial expenses during our plight to defend the rights of Don Adair and the general elderly population.

September 11 , 2023

Respectfully submitted,

Jirair Baghdassarian
Appellant