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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM OCONEE COUNTY  
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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Case No. 2022-01785

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Judy Tupolo,

Respondent,

v.

Jirair Baghdassarian,

Appellant.

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MOTION TO DISMISS

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October 5, 2023



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YOU WILL PLEASE TAKE NOTICE that the Respondent hereby moves, pursuant to *S.C. Code of Laws Ann. § 62-8-110 et seq* and South Carolina case-law, for an Order Dismissing this case in its entirety.

The grounds for this motion are as follows:

1. This case, as originally instituted, involved a single cause of action, being an action to remove the Respondent as Power of Attorney for Donnie Wayne Adair.

This case was dismissed by Judge Sprouse.

2. Mr. Adair died on July 19, 2023. When Mr. Adair died, the Power of Attorney in dispute was terminated pursuant to *S.C. Code of Laws Ann. § 62-8-110(a)(1)* (attached). A certified copy of the death certificate for Mr. Adair has been provided to the Court by mail (and a redacted copy by email).

3. This appeal is now moot since Respondent has now been removed as the agent of Donnie Wayne Adair by operation of law.

4. In addition, Appellant's Initial Brief fails to show that there were any appealable errors made by the Trial Court.

5. As a further ground, Appellant failed to timely file a proper Designation of Matter, therefore his appeal has no evidence upon which to base a Decision. The arguments in his Initial Brief are not evidence, and may only be considered if there is evidence to back up the arguments, therefore for this reason, the appeal should be dismissed.

6. The Order to Appoint a Guardian ad Litem was reasonable under the circumstances of the case and contributed greatly to the Trial Judge being able to make a

just decision. It was Appellant's own allegations that greatly justified the appointment of a Guardian ad Litem to investigate the matter. Further, the Order that each party pay one-half of the Guardian ad Litem fees was reasonable, especially so as to the Appellant since he made a large number of allegations that called for an investigation. Respondent has paid her one-half of the fees.

Therefore, Respondent requests an ORDER dismissing this Appeal in its entirety and affirming the requirement that Appellant pay one-half of the Guardian ad Litem fees.

For the foregoing reasons, Respondent respectfully requests that her Motion to Dismiss be GRANTED.

## **Exhibit A**

**SECTION 62-8-101. Short title.**

This article may be cited as the "South Carolina Uniform Power of Attorney Act".

HISTORY: 2016 Act No. 279 (S.778), Section 1, eff January 1, 2017.

**SECTION 62-8-110. Termination of power of attorney or agent's authority.**

(a) A power of attorney terminates when the:

- (1) principal dies;
- (2) principal becomes incapacitated, if the power of attorney is not durable;
- (3) principal revokes the power of attorney;
- (4) power of attorney provides that it terminates;
- (5) purpose of the power of attorney is accomplished; or
- (6) principal revokes the agent's authority or the agent dies, becomes incapacitated, or resigns, and the power of attorney does not provide for another agent to act under the power of attorney.

(b) An agent's authority terminates when the:

- (1) principal revokes the authority;
- (2) agent dies, becomes incapacitated, or resigns;
- (3) agent's authority is revoked pursuant to Section 62-2-507, unless the power of attorney otherwise provides; or
- (4) power of attorney terminates.

(c) Unless the power of attorney otherwise provides and subject to Section 62-8-109, an agent's authority is exercisable until the agent's authority terminates under subsection (b), notwithstanding a lapse of time since the execution of the power of attorney.

(d) Termination of an agent's authority or of a power of attorney is not effective as to the agent or another person that, without actual knowledge of the termination, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(e) Incapacity of the principal of a power of attorney that is not durable does not revoke or terminate the power of attorney as to an agent or other person that, without actual knowledge of the incapacity, acts in good faith under the power of attorney. An act so performed, unless otherwise invalid or unenforceable, binds the principal and the principal's successors in interest.

(f) The execution of a power of attorney does not revoke a power of attorney previously executed by the principal unless the subsequent power of attorney provides that the previous power of attorney is revoked or that all other powers of attorney are revoked.

(g) Unless otherwise provided in the power of attorney, a revocation of a power of attorney must be executed in accordance with Sections 62-8-105 and 62-8-106 and, if the power of attorney has been recorded, then the revocation also must be recorded in the same county as the recorded power of attorney.

HISTORY: 2016 Act No. 279 (S.778), Section 1, eff January 1, 2017.