RECEIVED
May 03 2024
SC Court of Appeals

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.

Appellant's reply to Respondent's brief.

Table of Contents

Respondent’s standard of review.

The Respondent needs to cite and explain the nature of his standard of review, which makes it unclear, undefined, and burdensome to read, understand, and reply to. Clarity and definition are required and requested.

In his brief, p. 2, Respondent argues that the issue of Don Adair's competency was raised, thus justifying the GAL appointment. Respondent Raising competency issues about any witness or person does not make that witness or person, in this situation Don Adair, a party to a litigation, nor does it make him incompetent.

The appointment of a guardian ad litem not only inflicts unnecessary costs on the party attempting to help him but is also a further violation of his right to represent himself. Respondent is turning in a vicious circle where he assumes that Do Adair is a "ward," literally using the term, and believes he is a party in the litigation, justifying the appointment of a GAL. Assuming an argument does not make it either a law or fact.

We have argued from the initiation of the motion that, in U.S. law, a man is innocent until proven guilty, not vice versa.

We have exposed several cases in our initial brief where the Supreme Court decided in several cases that there should be no involuntary commitment by the assumption of incompetency and ward status without due process first. The Respondent has again jumped over the law and assumed what he could not prove. The due process needs to be conducted properly. Don Adair was not officially declared a ward, nor is he part of litigation. There is no justification for appointing a GAL. The latter appointment tramples on Adair's right to express himself and deprives him of witnessing in Court without due process. Any due process should include complex, legally appointed medical opinions and allow a "voir dire" process to the opposing party, which was not granted. An appointment of a guardian ad litem was an unjust and unfair means to deprive Don Adair of speaking for himself in Court and punish those trying to help him with an insensible GAL fee. It is not legal nor morally justified.

In addition, the argument was a case of abuse of power of attorney, not a family court or guardianship case. The process of addressing the abuse was not addressed, and the GAL avoided discussing the subject with the Appellant and continually diverted to the subject of guardianship, which was not the motion's subject. There was nothing even in his report that addressed the abuse of POA. He arbitrarily decided, while admitting not having the scope to do so and without having the commission from the circuit court to do so, that Don Adair was incompetent. The Court appointed him to investigate the matter of abuse of power of attorney, not to investigate Don Adair or his competency. Mr. Bagwell did not investigate the matter and visibly failed in his duty, failing verbally, orally, and in writing to express his understanding of it.

Standard of Review

The standard of review is the main principle upon which the Respondent's argument lies.

The Respondent needs to expose the nature or logic of his standard, which makes his argument unclear and extremely difficult to answer. Clarity is requested. The Respondent has yet to attempt to respond directly to the Appellant's review standards, which makes his response, as usual, elusive or evasive.

He presents three cases: Townes Assoc. vs. City of Greenville, Tiger Inc vs. Fisher Agor, and Buffington vs. E. Enterprises.

In the above arguments, he argues that an appellate court will not disregard the findings of a trial court that "saw and heard" the witnesses and was in a better position to evaluate their credibility.

The argument is pitifully desperate since it proves the absurdity of appointing guardian ad litem and of the motion of transferring the case to circuit court. The reason for the transfer was explicitly to be able to "see" and "hear" "witnesses." Paradoxically, the circuit court refused to see or hear any witnesses, specifically Don Adair, Judy Tupolo, and the representative from the assisted living facility where Adair was being held. This makes all his standards of review pointless and without any valid argument or factual evidence when the guardian ad litem was placed in the Court, a process that tramples on Don Adair's rights to represent himself, to witness for Don Adair, the GAL.

So, in his standard of review, the Respondent says that the appellate Court has a broad scope of review, which is the very scope we are requesting the appellate Court to use. Nevertheless, he is asking the Court to respect the findings based on witnesses brought by the circuit court. The last argument is neither coincidental nor relevant since the circuit court has accepted no direct witness. The GAL is not a direct witness, nor does he have any scope to determine competency. We have also argued that, despite our great respect and appreciation for Mr. Bagwell's person and work, his resources were biased, and therefore, his report cannot be considered neutral. Consequently, his report being a non-direct witness, based on his biased choice of witnesses, as explained in our brief and other places, cannot be considered an unbiased, direct witness, and his arguments relating to the Respondent cannot be considered neutral and, therefore could and should be disregarded by appellate Court, for lack of standing by failing to be an unbiased, direct witness. Other than that, the appellate Court should be in an equal position to review the case based on the same written materials that the circuit court has.

The Respondent's standard of review is thereby refuted and should be rejected. Appellate Court has the broad scope to review all matters based on the materials presented.

Respondent has not argued in his standard about the validity or invalidity of the Appellant's standards, so he has not defined his response clearly and seems to have no argument, except that the circuit court's finding on witnesses should not be disregarded.

Again, we do not see that the Respondent has been able to define his goal nor to answer our arguments.

RESPONDENT'S "FACTS"

In his "FACTS" section, Mr. Merck arrogantly and hopelessly slanders again against the Appellant by claiming that the Appellant is an "outsider" whose "real purpose …… is to gain control over the valuable writings and publications that are in possession of the local association." (Respondent's brief p. 3)

This is an unacceptable slander worthy of civil pursuit and not based on facts or evidence. Mr. Merck bases most of his arguments on opinions. In this case, accusing the Appellant of opportunistic scavenging an elder has neither factual, logical, moral, nor historical basis. Respondent could not and will not find anything in our history that proves or expresses that we have ever coveted any material or possessions from Don Adair. Guessing our intention without a valid argument is an ad hominem attack and a desperate attempt to divert from his incapacity to answer legal arguments. Despite his biased choice of witnesses, even Mr. Bagwell, whom we respect and thank, has admitted and expressed the Appellant's good intentions and respect toward Don Adair. To claim from affidavits that the Appellant is an outsider is nonfactual. There is no affidavit from any person who knows us personally who has said so. We cite the affidavits of Rob Peralta, Lynne Bernassky, and Trevor Bingham, a childhood friend of Don Adair, that testify the opposite. The above witnesses are considered neutral as they would deny any conflict of interest in the matter. We have never had any common business with them. In fact, we have many open and documented religious disagreements with them on the matter. Had the Court called them for witnessing, and would the Court reread their affidavit, the Court would have understood that their intention is simply humanistic and not opportunistic; we need, therefore, to question the honesty of Mr. Merck and the honesty of his client who is allowing him to tell lies and slanders about us.

Respondent furthermore contradicts himself when he repeats our declaration that we are an "independent" Davidian and have never belonged to any Davidian SDA association. That is simply open evidence that we have never coveted any association leadership, benefits, or material valuables.

He reintroduces arguments that we have already answered and all we could do is redirect the Court to reread our replies in our brief. For example, he says that we "would let Don decide what he wanted to do", and the argument that we are an outsider, and that Judy took good care of Don.

Moreover, his dishonest slander can be easily disproven as Judy Tupolo has already admitted to being in control of all of Don Adair's valuables. So, what is left for us to scavenge unless we go to Court to request it for Don Adair's benefit? Or is Mr. Merck concerned that the valuables issue will proceed to civil Court?

We did State in our motion that if we delivered Don Adair from his confinement, we would endeavor to file a lawsuit to return to Don Adair what she may have potentially abused from him, but that is through legal supervised means, not through opportunistic abusive manner as Respondent claims. The guardian litem responds that nothing financial is gone, including the over $100,000 used by Judy to remodel her private house, and that he does not believe there is anything left to restore.

Can he explain how we can now acquire the copyright after the owner dies? How can we scavenge or abuse a deceased person? The Respondent contradicts himself when he claims that the copyrights belong to the association and that her "pro-Judy" sympathizers are supposedly in alleged legitimate control of the association. Then, if her claim is legitimate, what is she concerned about? Is it her legitimacy at stake or a financially invaluable copyright that she has been desperately attempting to sell out on Facebook and her association's website, as factually documented? Our suspicions of abuse are valid and were validated by the judge himself when he requested an investigation of accusations. Our accusations are worthy of investigation; the abuses we could confirm are the ones that the Respondent is publicly displaying by calling Don Adair a Ward and requesting his deprivation of self-representation and witnessing. Recordings and affidavits have proved the accusations of confinement without due process are true with clear and convincing evidence.

In the last paragraph of his brief, p. 3, the Respondent persistently repeats the illegal claim that Don Adair should be deprived of his civil rights, as defined in S.C. law, to revoke his power of attorney without due process.

He also claims that we did not accomplish anything that benefited Don Adair. In other words, his argument is that since Judy was able to keep Don Adair in confinement till his death, it means that no one should have even attempted to help Don Adair, based on the latter's explicit request to find a legal course to restore his civil rights and freedom. Respondent does not support a moral argument but a de facto argument. He claims Don Adair should not have struggled for his freedom by requesting us to help him acquire what is his right under safe conditions, even if Adair was competent enough to make such a decision.

Respondent also says that our request for financial compensation for our legal expenses, if we prevail, is unwarranted.

This is another contradiction since he communicated many times his will to present a motion requesting attorney fees in certain conditions. Under reasonable circumstances, Title 15 allows us to request attorney fees, and we intend to file the same motion if we prevail. The Court has the right and scope to grant us attorney fees under Title 15 if our request is found reasonable, and we are confident it is. We kindly request the Court to do so.

Another self-contradiction is that Judy Tupolo did not seek to be his agent but only "agreed" to do so. The statement is pitiful. She agreed with whom and who requested her. We have recordings proving Don Adair is the one who requested our help. The facility did not even allow incoming calls without Judy's consent. He was the one actively calling us and asking us for help on the rare occasions he was able to. He explicitly specified in one of the recorded statements that he did not want her as a caregiver. Her lawyer even said that he hit her. So, who really demanded her to take care of him so she could agree? He says on the recording that he even told her that he could not pay her. So, what evidence did she have that she did not seek to become his power of attorney but rather only agreed to take care of him while she fiercely and vehemently forbade anyone from even talking to him without her presence and supervision? Many people, including Bingham and us, as well as others, requested to help him, but she would refuse. Brother Don's choice also fell on another friend, whom we tried to contact but could not find. He gave us his number, and he was an option to become his caregiver. We attempted to contact the person for that purpose. We were always favorable that someone else, more neutral and less dictating and closer to his location, would take care of him, but she would not allow anyone else. Does that reasonably sound like someone who did not seek to care for him but only agreed to do so?

We are amazed that all these opinions are placed in the "FACTS" section when they have no relationship with factuality.

Respondent's Arguments

Respondent presents noncoherent arguments. For instance, he says that because we could claim a conditional status of "next friend," among other claims, then we are contradicting ourselves since such a status pursuant to rule 17 is used in the case of an incompetent person. Therefore, he concludes that we are implying that we are claiming that Don Adair is incompetent.

He uses the same arguments when he states that our claim that Don Adair is a vulnerable adult means that he is legally incompetent.

We would like to answer both statements.

Concerning the Next Friend statement, we were not requesting the Court to appoint us as the next friend. Rule 17 states that "if," which means "in case," the Respondent claims that Don Adair is incompetent, a next friend status is enough status to provide standing for a non-relative to help an incompetent person. By extension, a vulnerable adult who is not able to defend himself in this situation not because of incompetency but rather because he is "falsely imprisoned" by Judy Tupolo, a friend can have enough standing to represent him. In fact, Rule

17 (d) (4) allows a "friend" to apply or petition on behalf of the person. This is not speaking about the legal term of the court-appointed "next friend" but rather about the concept of the human friendship status having enough standing to allow the Appellant to present a motion on behalf of Don Adair in this motion.

In fact, we have very clearly explained on p. 43 of the Appellant's brief that the case of Don Adair being represented by either a guardian ad litem or a next friend is not applicable since he was not deemed legally incompetent.

We would like to emphasize that it is the Respondent who is contradicting himself by denying us the status of next friend only on the basis that Don Adair should be incompetent for us to claim such a status. In other words, he is already admitting that since Don Adair is not incapacitated nor incompetent, therefore we cannot claim such a status.

Mr. Merck has an alternative: either Don Adair is incompetent, and we could claim standing based on the status of next friend, or he is not incompetent, and his client's behavior has no justification, and he has committed literal kidnapping. Which one has he made up his mind about?

Concerning the vulnerable adult claim, it is very sad that for Mr. Merck the word vulnerable means incompetent. A concept that no English dictionary nor any legal reference would agree with.

We quote the Washington State Department of Social Health Services definition of vulnerable adult.

"Who is a Vulnerable Adult?

A vulnerable adult is defined by law as a person:

60 years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

Found incapacitated under chapter 11.88 RCW; or

Who has a developmental disability as defined under RCW 71A.10.020; or

Admitted to any facility; or

Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

Receiving services from an individual provider; or

Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW."

Who is a Vulnerable Adult? | DSHS (wa.gov)

https://www.dshs.wa.gov/altsa/home-and-community-services/who-vulnerable-adult

Don Adair, being under the care of Judy Tupolo and having been in a facility when the motion was filed, was legally very clearly a vulnerable adult, and that has nothing to do with his capacity or legal competency.

Answering the arguments.

1. Reply to argument I.

Respondent argues that the trial court's actions were completely reasonable and should be affirmed.

The Respondent's reason lies in his argument that he "raised the issue of the possible incapacity of Don Adair" (Respondent's brief p. 1 par. 0), that guardian ad litem equated Don's status as a "five year old" needing "24-hour care and supervision" (Ibidem). He continues that the trial court relied on the GAL report finding an appearance of her good care and that it found "enough questions about Mr. Adair's capacity" (Ibidem), thus justifying refusing or "not accepting" his verbal revocation of the power of attorney (Ibidem).

All the above arguments have been answered in the Appellant's Brief, and the Respondent has so far not brought any reply to our answers except by citing the case of Creed V. City of Columbia (1993) by stating that the Trial judge was in the best position to make this decision because the case states that "Absent clear abuse of discretion amounting to an error of law, the trial's court's ruling will not be disturbed on appeal" (Ibidem).

The case of Creed vs. City was based upon the validity of the medical expert in determining cognitive decline post-motor vehicle accident for the purpose of financial compensation. It argues that a general practitioner can rely on neuropsychological testing done by a specialist neurologist to give a valid evaluation of cognitive decline in Court. The expert's evaluation is valid since it is a medical practitioner, and he has ordered the proper exams and tests for cognitive evaluations following due process.

This differs from the present trial court's decision being appealed, as it has not relied upon due process, including, but not limited to, nominating two valid medical experts having performed or ordered the appropriate medical examinations. Moreover, measuring

a cognitive decline for civil financial compensation in the case of a motor vehicle accident does not require the same requirements as the case of medical incapacity or legal incompetency in the case of depriving someone of their freedom, liberty, and civil rights. It does not carry the same weight, nor does it mandate the same preponderance of evidence.

The case is not applicable, and the appellate Court cannot accept the argument.

2. Reply to argument II

Respondent argues that the appointment of a guardian ad litem by the trial court was completely proper. (Idem par. 2)
He argues that it is an inherent power of the court based on Rule 17 and that it may be done without having to prove neither incapacity nor incompetency. (Idem Par. 3)
Respondent does not explain how and where Rule 17 provides the court absolute discretion of appointing guardian ad litem in a civil case and charge any party, without their consent or application the high cost or charge of the services and deprive the elderly from his right of self-representation. Rule 17 (c) says that a representative can be either guardian ad litem or a friend. This argument has already been answered and explained in our initial brief and above in this brief. Moreover, the statement says that the choice of a guardian is inherent to the trial court but rule 17 (d)(5) mandates that **"**The guardian ad litem for an incompetent person shall be appointed upon the application of his guardian or committee or of a relative or friend".
Moreover, the respondent himself admits in his brief p. 5 that an appointment can only be inherent when there is an incapacitated person with no duly appointed representative (in a case of litigation where the incapacitated is party of litigation). This is not the case of Don Adair.
We have already argued that It would be simply not fair nor acceptable to appoint a guardian ad litem in (1) a case of a power of attorney abuse where (2) the principal is not even party of litigation nor where (3) any of the parties have applied for one nor where (4) the principal has been legally pronounced incompetent based on a legitimate due process, and to (5) place the financial burden on a party that has not applied for it, and where (6) the financial burden is too high, even more than $50 . All the has been exposed in our brief and not replied to by respondent.

Respondent uses the case of Wilson vs. Ball (1999) to argue that the court does not have to prove capacity to appoint guardian ad litem.

In this situation Wilson has already been previously evaluated as incompetent by another trial court. When Wilson, many years later, wanted to open a new case against Ball, he argued that there was change in circumstance and that he is no longer

incapacitated after being already evaluated incompetent. In this situation the trial judge required Wilson, not Ball, to have the burden of proof.

Respondent has either willfully misinterpreted or unwilfully misunderstood the legal situation or literature. All these articles support our stand on the case.

A commentary on the case is found in the following link:
WILSON v. BALL (1999) | FindLaw https://casetext.com/case/wilson-v-ball-2
The judgment posted by respondent stating the trial court's decisions: "Wilson's challenge to the trial court's jurisdiction to appoint guardian ad litem without a finding of incompetency by the probate court first having been made is manifestly without merit." (*Wilson v. Ball, 337 S.C. 493*)

This trial court's decision is, according to article section II, was reversed and remanded by the appeal court for being error. That means Wilson's objection to the appointment of guardian ad litem is with merit and has been accepted as correct. The trial's court's decision was reversed.
The legal article comments that "the party alleging incompetency bears the burden of proof of the issue". (Ibidem) It agrees that "the trial court erred in requiring him to prove changed circumstances to establish his competency to litigate the instant action without a guardian ad litem." (Ibidem) and that putting "put the burden of proof on Wilson, the party denying the allegation of incompetency." Was "error in law". (Ibidem) It adds also that "The very nature of a guardian ad litem dictates a fresh evaluation whenever a court is asked to appoint guardian ad litem for an alleged incompetent adult who, as in the present case, resists the appointment. Courts should make every effort not to appoint guardians ad litem for persons who are competent. This is because no court should deprive "competent persons of the *right to control their own litigation*."" (*Wilson v. Ball, 337 S.C. 493*)

Thus, the article even emphasizes that even if Don Adair was already deemed incompetent by due process, appointing guardian ad litem mandates a reevaluation at each appointment before depriving Don Adair from his right to choose his own advocacy and legal representation.

Moreover, the article continues affirming that "Because Wilson has never been adjudicated incompetent by the probate court and therefore enjoys the presumption of competency, Ball had the burden of proving Wilson was now incompetent so as to require the appointment of a guardian ad litem to represent him in this action." (*Wilson v. Ball, 337 S.C. 493*)
In other words, unless probate court, the only court that has the jurisdiction, finds by legal due process the validity of incompetency, it is not the jurisdiction of any other court to do so. That means it was not in the jurisdiction of judge Sprouse to determine incompetency being not a probate judge and because there was no due process followed according to SC laws, rules and regulations related to the matter. Since no probate court has previously

made such decision then the burden of proof lies on the person alleging incompetency, in this situation Judy Tupolo.
The other cases mentioned by respondent, include Barr vs. One, Thompson vs Moore, and Grapner vs. Atlantic Land Title Co. all affirm equally our stand and confirm that no appointment of GAL should deprive a litigant from his civil rights without due process, and that the burden of proof lies on the person alleging incompetence, not on the alleged incompetent person.

In the case of Barr vs. One, 1935, since Barr has not been proven by due process as non compos mentis, the case says:

“"To justify such an appointment, which may have the effect to deprive a person of the control of litigation in which his interests may be largely involved, the fact of incompetency should be specifically alleged, and the Court should be satisfied from the proofs that the status of incompetency exists at the time the appointment is made. A finding of incompetency should be made."

In other words, we think the Court or officer to whom the application is made should require proof, by affidavits or otherwise, reasonably sufficient to establish the fact that the subject is an insane person. The mere fact that the petition is based upon information and belief without giving the sources of information or the grounds of belief would not invalidate the appointment, provided, there was presented in support of the petition proof of mental incompetency of reasonable sufficiency. But if such a verified petition is offered for consideration as an affidavit, the sources of information and grounds of belief must obviously be stated therein.

While we do not desire to lay down a hard and fast rule as to the sufficiency of evidence, where there has been no previous adjudication, we do not think it amiss to call attention by way of analogy to Section 6234, Code, 1932, relating to the appointment of a committee for an insane person by the Probate Judge, which provides for the examination of the alleged insane person, if practicable, and such other witnesses as may be deemed necessary, at least two of whom shall be practicing physicians.” *Barr v. One 1935 V-8 Ford Truck*, 188 S.C. 181, 198 S.E. 389 (S.C. 1938)

The appeal court in this situation affirmed the Circuit’s court’s clerk decision of revoking what he considered an error out of scope in appointing a Gal without due process.
This decision agrees with our plea not vice versa.
See Barr v. One 1935 V-8 Ford Truck, 188 S.C. 181 | Casetext Search + Citator
https://casetext.com/case/barr-v-one-1935-v-8-ford-truck

The case of Thompson vs Moore confirms our claim that it is neither our burden nor the burden of Don Adair to prove his competency but that it is rather: “The burden of proving

mental incompetency of the subject is upon the appellant who seeks to establish it." (Thompson vs Moore, 1955 p. 423)
The appeal court, referring to Barr vs One case, affirmed the circuit's court's decision that proofs were "insufficient" (Ibidem) to establish incompetency and appoint guardian ad litem and "The conclusions herein are without prejudice to the institution of new proceedings for the appointment of a guardian *ad litem* for the subject herein." (Ibidem).

See Thompson v. Moore, 227 S.C. 417 | Casetext Search + Citator
https://casetext.com/case/thompson-v-moore-10

In the case of Grapner vs. Atlantic, confirms that: "The party alleging incompetence must prove by a preponderance of the evidence that he was incompetent at the time of the transaction." by establishing "by credible evidence that the subject, because of mental impairment, has become incapable of managing his own affairs." (*Grapner v. Atlantic Land Title Co.,* 307 p. 551)
In this case it is Judy Tupolo the party alleging incompetence, that must prove incompetency not the opposite party. It must prove it by preponderance of evidence, not by suspicions, allegations, impressions or "prima facie". This means that the circuit court was in error when it decided that it appears that Don Adair "may be" incompetent. This is prima facie adjudication instead of by due process where it is "The party alleging incompetence must prove by a preponderance of the evidence that he was incompetent at the time of the transaction."
See Grapner v. Atlantic Land Title Co., 307 S.C. 549 | Casetext Search + Citator
https://casetext.com/case/grapner-v-atlantic-land-title-co

Respondent argues that the status of incompetency is not the reason why the court dismissed the case, but rather for failing to find sufficient basis to overturn the power of attorney.

This is inconsistent with all the arguments being presented. Appellant is ignoring all the main arguments in this case that he has been struggling to answer.
Respondent admits she has been depriving the principal of his human rights, though for alleged "benevolent" reasons. The whole case fully stands on the status of incompetence, without which her acts would be not only illegal and an abuse of power of attorney, but also criminal. If this is not sufficient basis then what is it? When the respondent admits his act, all what remains is answering whether his act was justified simply by alleging incompetence or whether a legal due process was necessary for adjudication by preponderance of evidence.
We have already stated the reasons why we believe that a temporary suspension for the sake of investigation of the matter did not need clear evidence nor preponderance of evidence but rather enough reasons to suspect. The judge did find enough reasons to suspect, and the respondent admits that it is the very reason for which he appointed

guardian ad litem to "investigate" the abuse of power of attorney. The latter process has not been done. Instead, the guardian ad litem plays the role of the medical committee deciding the due process of competency, a role out of his scope, which makes his report invalid.
No less importantly, the judgment denied Don Adair another basic human right granted by SC law to revoke his power of attorney, simply based on an unproven alleged incompetency. How can then the respondent boast "that the issue of competency" …. "is not why the case was dismissed?" (Respondent's brief p. 6)

Most importantly, the fact that makes the judgment collapse from its very foundation is that it is not concerning a written document but rather the powers granted by an alleged document whose existence has not been proven nor demonstrated. Since respondent has not proven his powers by presenting the document then the respondent has no claim at all and all his actions that are based on a legal agency of a power of attorney become illegal. The non presentation of such a document to be scrutinized and validated should be enough reason to overturn the power thereof. No medical or healthcare of power of attorney has been presented to court then such document should be considered nonexistent till proven otherwise since it is a privilege granted by the principal and not a basic right.

3. Reply to Argument III:

In this section the respondent claims that we have not proven status.

Argument 3. A

He claims that status in general requires suffering an injury in fact- an invasion of a legally protected interest and that there must be causal connection between conduct and injury, and that the redressing thereof must be likely. He enumerates further the obligations of the claimant to establish standing to avoid dismissal, otherwise the action of the presented motion cannot be instituted and therefore must be dismissed.

We have sufficiently established how we suffered injury by being deprived of our right to talk to our friend and how we were deprived of establishing a power of attorney that was requested by the principal, Don Adair. None of this has been answered nor addressed by the Respondent, so we abstain from repetition to avoid redundancy.

Argument 3. B

Respondent mandates that we should fulfill the specific requirement for standing as related to a financial power of attorney as mentioned in SECTION 62-8-116

Again, we have sufficiently established such points in our response to his memorandum, and we again abstain from repetition to avoid redundancy. For example, we must remind that sections (8) and (9) are applicable to us. If all the actions, expenses, and efforts we have done so far do

not show sufficient interest in the principal's welfare, then we do not know what does. Don Adair has asked us to become a power of attorney agent (the matter of competency is a core subject of the case and has nothing to do with the standing to file a motion). It's up to the Respondent to prove non-competency, and it's not up to us or Don Adair.)

Concerning our claim that we are doing a benevolent act for the principal does not negate or void any standing.

Most importantly, we have emphasized that Judy Tupolo is using the medical power of attorney to deprive Don Adair of his rights, not the financial power of attorney, which is not covered by the above section. We mentioned this in our reply to his memorandum, and we will discuss it further below.

Argument 3.D

Respondent claims that claiming the status of the next friend requires legal procedure and that it is only applicable to the case of an incompetent person. Rule 17 says a Next friend can be Any legally competent person.

By bringing up the example of Next Friend, we do not claim that the Respondent is competent. It is rather the Respondent that is claiming so. Our objective is to state that even if someone is considered incompetent, we can still claim standing under such status.

We were not claiming nor applying for any legal procedure. We were simply replying to the case of standing, whereby a person can advocate for another person who cannot advocate for themselves when the first person is in a situation where he needs help. This agrees with the above-mentioned SECTION 62-8-116 (8).

We are speaking by comparison, not by direct application.

Argument 3. D-1

Respondent claims that a medical power of attorney is not under section 62-5-500 but rather under SECTION 62-8-116 since South Carolina's Uniform Power of Attorney Act replaced section 62-5-501 in 2017.

This is another misreading of the legal text. The fact that he contradicts himself in his Foot Note 6, in his same brief, raises questions about Mr. Merck's honesty. It seems that he uses the argument when it fits him, then negates it and contradicts it when the opposite fits him. Or is he relying on his supposed candid ignorance of the reader?

Read the commentary on page 5 of the above-mentioned Uniform Power of Attorney Act of 2017

It states that: "Consequently, Title 62, Article 5, Part 5 now covers only health care powers of attorney and Title 62, Article 8 now covers powers of attorney (other than health care powers) that were formerly found in Title 62, Article 5, Part 5."

2015-2016 Bill 778: S.C. Uniform Power of Attorney Act (scstatehouse.gov)

https://www.scstatehouse.gov/sess121_2015-2016/bills/778.htm

What is published today, whether in section 62-8-116 or section 62-5- 500, are both valid; otherwise, they would not be kept published today and would have been removed or altered. The commentary the Respondent is quoting addresses the old section 62-5-501 and how it was altered. It does not say that section 62-5-500 is no longer applicable to any agency document established after 2017. It is rather stating that after adding the uniform act, section 62-5-500 governs only healthcare powers of attorney and that section 62-8-116 the financial ones. This is exactly in agreement with our claim and even with the Respondent's F.N. 6 where he states that "S.C. Code Ann. § 62-5-500 et seq. states it governs healthcare powers of attorney" and that the "health care power of attorney, "substantially in the form set forth in S.C. code Ann. § 62-5-504" (as required by S.C. code Ann. § 62-5-503)."

What more convincing argument do we need when even the Respondent agrees with us negating his own statement?

If we supposedly agree with the Respondent for a moment, for the sake of argument, that the medical power of attorney is governed by § 62-8-101 through 403. In that case, Respondent has to admit that the medical power of attorney has to follow the regulation of § 62-8-109 that mandates that for the power of attorney to be effective, it must be first recorded and thus made public.

§ 62-8-109 (c) "After the principal's incapacity, an agent may exercise the authority granted unto the agent under the power of attorney only if the power of attorney has been recorded in the same manner as a deed in the county where the principal resides at the time the instrument is recorded. If the principal resides out of State, a power of attorney may be recorded in any county where the principal's property is located when the instrument is recorded. The power of attorney may be recorded before or after the principal's incapacity. After the principal's incapacity and before recordation, the agent's authority cannot be exercised."

Since Judy Tupolo kept this document secret and never recorded it, then the document should have never been effective even if existent and legitimate. Consequently, using its powers before recording it is considered abuse of power of attorney and enough reason for suspension.

Argument 3 D.2.

> Respondent argues that since we did not attach a copy of the contested power of attorney, which is the primary object of the motion presented by Appellant, that is, the medical or healthcare power of attorney, such failure is a reason to dismiss the case.

He admits that the reason we never presented it is because we have never seen it. He understands fully, without doubt, and without any need for any evidence, that the reason why the Appellant has not seen it is that the Respondent failed to present it, although requested innumerable times by the Appellant.

We do not understand the logic behind such an argument, nor based on what rules or standards he is presenting his case. He is likely arguing that since we have no proof of the existence of such a document, then there is no sense in presenting a motion to revoke or suspend it.

We agree that it is absurd to pursue a motion to dismiss a document that may belong to the world of fantasy and may not even exist, and that is the very reason why the defendant was under the obligation from the very first day we filed this motion to either present the proof of its existence or refrain from using the powers inherent to it if applicable. The very argument he uses should be against, not for, him.

Our motion has no purpose in suspending a document made of ink and paper nor in proving its existence. The purpose of the motion is to suspend the powers that are "used" or "abused" by the Respondent that is claiming to have the alleged document, supposedly allowing the Respondent to purport claiming such powers inherent to the alleged document.

To make it plain, Judy Tupolo claimed to have a power of attorney, by which she claimed she could make certain medical and personal decisions on behalf of Don Adair, thus depriving him of his freedom and civil rights. Such actions purporting agency power are based on alleging the possession of a document that may or may not exist, and if it exists, may or may not be legitimate.

We agree that the case should have been pursued only after requesting and presenting evidence of the document upon which the whole purported powers lie. Nevertheless, we declare also that Respondent should have been deprived of using powers of the medical power of attorney without presenting evidence of its existence and legitimacy. In other words, the motion should have revoked her powers sufficiently based on her failure to present the document that proves its purported powers. Unfortunately, such a decision has not been made so far despite our constant and regular protests at every stage of the litigation. In vain, our requests were brushed aside. It would be an outrageous irony to use the very foundational argument that should have collapsed every argument of the respondent/defendant.

Yes, Judy Tupolo never presented her proof, and it is too late for her to show any. And since she has no proof or evidence of possession, existence, legality, or legitimacy of such document, then this alone should be more than enough reason to decide to affirm her abuse of a power of attorney. In other words, since she has no document providing evidence of such powers, her use of the powers deriving from it should be suspended and the document be considered void regardless of its status.

4. Reply to argument IV

Respondent claims that "An award of attorney's fees rests within the sound discretion of the trial judge and will not be disturbed on appeal absent an abuse of discretion."

We will not present our case again concerning the reason why we should not be charged a fee for the guardian ad litem since this has been amply explained in our initial brief.

We can answer that there is abuse of discretion as we have explained in our initial brief why the guardian ad litem should not have been appointed and how his report did not fulfill his duty of investigating the accusations of abuse of power of attorney, the main subject of the case, and how his resources were practically all biased. Although the Appellant presented the motion, for humane reasons, to deliver Mr. Adair from his confinement. Because Respondent has deprived Don Adair of his basic rights, if it is found that she has abused powers, then we believe the cost should be allocated to Respondent Judy Tupolo, not to Appellant.

The above Respondent's quoted statement does not set in stone the allocation decided by the trial court. It simply asks for an argument based on which to determine whether there is an abuse of discretion in deciding for or against its reversal. We notice in each of the three cases that the appellate Court presents reasons for determining the soundness of the trial court allocation. This is exactly what we are requesting.

It is ironic that Respondent argues that this is not a family court case and family case rules do not apply to it, yet the cases he uses to support his arguments are all family case situations: Nash vs Byrd, Garris vs McDuffie and Hollar vs Holler. Again, we see the Respondent applying the principal when it benefits him while denying it to his opponent when it does not benefit him.

Concerning the $50 cap from rule 41, Respondent argues that the cap applies only to family court, and since it is not a family court issue, there is no cap, and restrictions do not apply.

The Court has treated this issue in many instances as a struggle for guardianship, particularly in the case of appointing a guardian ad litem. Probate guardianship court situations are very similar to family situations and may overlap, particularly when there is abuse.

Considering that there are no rules in probate court related to guardian ad litem, the closest applicable situation would be family court. It is more closely applicable than civil court rules since, in this situation, the allegedly abused principal is not officially the party to litigation but rather an allegedly abused elder. The rule that is morally, humanly, and legally most applicable is rule 41 of the family court.

We are not arguing that the rule should be applied since we insist that the very appointment of a guardian ad litem was an abuse of discretion for reasons we have

already explained. We thus insisted that no fee at all should be allocated to the Appellant. What we kindly plead with the Court, though, is that, from the human point of view, if it were to assign a fee for a guardian ad litem, the fee should be in the situation of an abused, vulnerable adult unable to represent himself nor has control over his finances because the person allegedly abusing him has acquired that control, to apply in this situation rule 41 of family court and have the fee not to exceed $50 total. If any portion is to be allocated to the Appellant, then we kindly request that it be no more than 50% of the total $25.

Respondent argues also that this is not a case of abuse. From its title, it is a case of abuse of power of attorney. The principal in this situation is a vulnerable adult. The power of attorney is being used in this situation as a means of abuse of human and civil rights. The adult is, in fact, so vulnerable that he has no legal representation of his choice. A guardian ad litem appointment deprives the adult of his choice of advocacy, which, when not done according to due process, is a further infringement on civil rights. The principal is so isolated that he cannot use his finances nor communicate with the world about his decisions or status. If this is not a case of abuse, then what is?

5. Reply to argument V

We are not requesting an award for damages but rather compensation for our time, legal expenses, and fees related to going through this case to help a friend in need who had no other resource or means of advocacy to help him. It would not be fair that when a vulnerable adult is in a crisis and being abused by a third party, the person who is helping him bears all the expenses, and the abusing party gets away with no sharing of expenses.

We believe that Title 15 Chapter 37 warrants such a request, and we kindly solicit the discretion of the honorable appeal court for the sake of fairness and justice. Our endeavor to do what was morally right toward a vulnerable adult and toward the elderly population in general in South Carolina should not have its financial burden totally placed on the Appellant but shared by, or allocated to, the alleged abuser, which is the Respondent.

Respondent also argues that we were unable to improve Don Adair's life when he was alive, thus deeming our attempt to help him futile and useless. We answer that this is not a moral argument. Doing what is morally right should never be considered useless or ineffective. It sounds like he is comparing a father trying to snatch his son from a kidnapper while his attempt led to the son's death. This was not the situation since we did not compromise the elderly's safety. Moreover, this would be a simple admittance of the immoral character and deed of the abuser and is not a positive statement to her image. Don Adair literally solicited our help, as proven in the recording we sent to the Court.

The argument of adding stress to his life sounds very simplistic when Respondent admits that he was hitting Judy Tupolo and kept calling us for help and assistance. Why was he hitting her? Isn't it because he was stressed out about losing his dignity and freedom? Wasn't he actively trying to get away from her control, as admitted by the recording? Did

we ask him to do that? Can he claim that we are the ones that caused him to do such actions? Certainly not, and there is no proof of such. Don Adair was unhappy from the first moment we talked to him in January 2022 and all actions were done upon his direct verbal request. If any stress was added, it's because Judy Tupolo respected no one's wishes. Neither Adair nor his friends considered herself the sole decision-maker in his life.

6. Reply to argument VI.

In this argument, the Respondent did not present any new idea or opinion that was not answered in our brief. We see no legal statement worthy of an answer.

We can reiterate briefly that Respondent admits that Don Adair has been deprived of his human rights and does not deny it. Instead, he argues that "we also have to balance human preservation and safety along with human rights." And that Judy Tupolo was Adair's agent under a power of attorney, so she had a duty to care for him and do what was best for him, and according to the evidence, she did so." (Respondent's brief p. 15)

Our argument against such purported "evidence" of good care has already been answered, and we see no reason to repeat it. Judy Tupolo has left it to her own discretion to decide what balance should be taken and what should not, while no jurisdiction has been given to her to do so without due process. We have already had such arguments before very clearly, and the Respondent is turning a deaf ear to our responses. Judy Tupolo has shown no evidence of possession of legitimate medical power of attorney documents giving her any agency. The latter agency does not give guardianship powers. Guardianship powers are limited and cannot infringe upon basic rights unless determined by a court of justice following a legal, due process involving medical reports specifying exactly that the principal is a ward and specifying what he is capable of and what he isn't. The Court decides which powers exactly have been transferred from the ward to the guardian. A power of attorney has no such powers, and using them as admitted in the Respondent's brief clearly admits abuse of agency powers.

Criminal laws remain South Carolina laws and breaking them still pertains to abusing the power of attorney when the act relates to the rights and welfare of the principal, which is the case in this situation.

We have not seen any official document from the investigations that the Respondent is claiming. We have not seen any results to comment on them. We have not placed ourselves as judges on criminal matters, and we leave the legitimate authorities to make such decisions. Nevertheless, we do welcome, even request, criminal investigations at the state level if the Court has the jurisdiction to forward or request them.

a. Reply to argument VII

Respondent claims that even if Don Adair were competent our attempt for revocation would be ineffective. He cites S.C. codes 62-8-101 through 403 to state that our revocation method was not legal.

But this is very absurd and makes no sense.

For one, we have already shown, according to the Code… how a revocation should happen, and it happened in such a manner. But what is even more absurd is that he supposes that if Don Adair was competent, he would still be able to deprive him of performing the acts of revocation and record it in writing, whether according to code 62-8 or 6r-500. Respondent would be admitting to criminal acts that Judy Tupolo is depriving a competent person of his freedom of choice and detaining him against his will. Such arguments are not even worth answering. This is not only absurd but insulting to the reader's intelligence.

In our present brief, we have exposed that the medical power of attorney is governed by Code 62-5-500 et seq.

We quote SECTION 62-5-512. Revocation of health care power of attorney.

"(a) A health care power of attorney may be revoked in the following ways:

by a writing, an oral statement, or any other act constituting notification by the principal to the agent or to a health care provider responsible for the principal's care of the principal's specific intent to revoke the health care power of attorney;"

This is self-explanatory and could not be any clearer.

Can the Respondent show us in what section of 62-5-500 et seq it is mentioned that any part of this Code, in part or in full, has been revoked and is not applicable anymore? He cannot show it because nothing in the text says so. His conclusion is the result of fantasy and misreading the text. If the legal Code were not applicable, it would still not be published. We do not wish to repeat ourselves, but the case is obvious for the validity of the revocation.

We want to emphasize that we have assessed Don Adair on the phone and have and still testify under oath that, based on our assessment, when he revoked his power of attorney, he fully understood the document's nature and its consequences. This makes him fully competent to cancel it, and his revocation should be accepted lest we trample on a human being's fundamental civil rights.

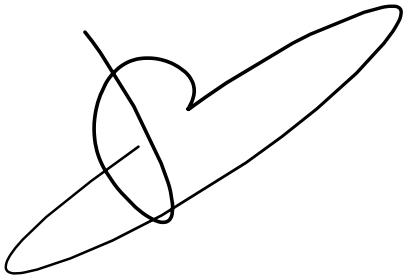
Conclusion

For the reasons stated in the Appellant's present response and initial brief, this Court should reverse the Circuit Court's judgment.

Respectfully

Jirair Baghdassarian

Appellant



References

Who is a vulnerable adult?. DSHS. (n.d.). https://www.dshs.wa.gov/altsa/home-and-community-services/who-vulnerable-adult

Wilson v. Ball, 337 S.C. 493 | casetext search + citator. (n.d.). https://casetext.com/case/wilson-v-ball-2

Barr v. One 1935 V-8 Ford Truck, 188 S.C. 181, 198 S.E. 389 (S.C. 1938) https://casetext.com/case/barr-v-one-1935-v-8-ford-truck

Thompson v. Moore, 227 S.C. 417, 88 S.E.2d 354 (S.C. 1955) https://casetext.com/case/thompson-v-moore-10

Grapner v. Atlantic Land Title Co., 307 S.C. 549, 416 S.E.2d 617 (S.C. 1992) https://casetext.com/case/grapner-v-atlantic-land-title-co

2015-2016 Bill 778: S.C. Uniform Power of Attorney Act (scstatehouse.gov) https://www.scstatehouse.gov/sess121_2015-2016/bills/778.htm