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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Alex B. Hyman, Circuit Court Judge
Circuit Court Case No.: 2022-CP-26-0314

Appellate Case No.: 2024-000599

Mary Michelle Miles..... Appellant,

v.

Claudia Troyer Miles, David V. King, and
John M. Strasswimmer..... Respondents.

RESPONDENT, DAVID VREELAND KING'S
INITIAL BRIEF

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This appeal arises from a 2018 guardian and conservatorship matter that was initiated in the Horry County Probate Court by the Appellant Mary Michelle Miles and Respondent John M. Strasswimmer, in which Miles and Strasswimmer sought to wrest control of the person and the finances of their mother, the late Dr. Claudia Troyer Miles, from Dr. Miles and her husband, the Respondent David V. King. At the conclusion of that matter, the Horry County Probate Court issued a series of Orders, an Interim Order on April 26, 2019, a Final Order on May 7, 2019, and an Order on Post-Trial Motions on May 13, 2022 (the "Probate Court Orders"). Among other findings, the Probate Court Orders removed Michelle Miles as the Temporary Guardian for her mother, found that Michelle Miles had breached her fiduciary duties as Temporary Guardian, and had failed to properly account for the financial transactions undertaken by her as Temporary Guardian. The Probate Court Orders further denied John Strasswimmer's Motion for Attorneys' fees, granted David King's Motion for Attorneys fees, held John Strasswimmer responsible for \$77,034 in attorneys' fees incurred by David V. King, and held John Strasswimmer and Michelle Miles jointly and severally responsible for \$251,981.87 in funds the Probate Court concluded had been wrongfully misappropriated from the Estate of Dr. Claudia Troyer Miles.

Both John Strasswimmer and Michelle Miles appealed to the Circuit Court from the Probate Court Orders, and on March 15, 2024, the Court of Common Pleas for the 15th Judicial Circuit, Judge B. Alex Hyman, issued an Order affirming the Orders of the Probate Court in part, and reversing or remanding certain holdings from the Probate Court Orders, particularly as they related to the then-appellant John Strasswimmer. This appeal, by the Appellant Michelle Miles, followed.

Appellant bases her present appeal on the argument that the lower courts erred in finding that: Michelle Miles was not an appropriate temporary guardian for Claudia Troyer Miles, in finding that Ms. Miles breached her fiduciary duties as temporary guardian by misappropriating or improperly disbursing assets and failing to provide an appropriate accounting, and in finding that Ms. Miles abused her discretion in making various expenditures from her mother's funds including, but not limited to, an extensive remodel of her own personal residence, and the retention of Synergy Home Health Care to provide in-home care for her mother. Michelle Miles further finds reversible error in the lower courts' rulings that Ms. Miles inappropriately placed her mother in an assisted living facility, that S.C. Code Ann §62-5-103 is applicable in this case, in allowing testimony at trial from attorney Clifford Tall, Esq., in granting the GAL's motion for sanctions against her, and in awarding attorneys fees to Respondent David Vreeland King.

STATEMENT OF THE CASE

Background and Introduction to the Parties

As Appellant has set forth in her briefing, the Alleged Incapacitated Individual in this case is Claudia Troyer Miles (the "AlI," the "Ward," or "Dr. Miles"). Dr. Miles passed away in South Carolina on August 16, 2019, having succumbed to a glioblastoma brain tumor. At the time of her passing in 2019, Dr. Miles resided in South Carolina with her husband, Respondent David King, whom she had wed in 2018. While they were formally married in 2018, Dr. Miles and David King had been faithful partners in a long-term relationship, and except for the period of involuntary separation attributable to the actions of John Strasswimmer and Michelle Miles in the

proceedings below, Dr. Miles and David King lived together continuously since they first moved in together in 1980, until the time of her passing in 2019. When they met in 1979, Dr. Miles had three children, including the Appellant Michelle Miles and the Respondent John Strasswimmer, and David King had two children of his own.

Factual Background and Events Giving Rise to these Proceedings

By 2018, Dr. Miles and David King had been residing in Horry County for nearly 20 years, living together in a home that they owned together in Briarcliffe Acres since approximately June 2000. Dr. Miles and David King enjoyed a pleasant but largely private life together. They enjoyed the beach that was a short walk from their home; they enjoyed camping and hiking and other activities, and often traveled, especially after Claudia retired. In 2018, the couple took several trips together, including a three-week trip to Spain in September and October of that year. Upon return from the Spain trip, Dr. Miles sought medical attention for symptoms she began experiencing: headaches, difficulty communicating verbally, and unsteadiness. Following a visit to the Grand Strand Regional Medical Center Emergency Room it was revealed that she had developed an approximately 6 x 3.5cm heterogeneously enhancing mass (“brain tumor”) in the left orbitofrontal region of her brain. *See* GAL Report, at p. 1. On October 18, 2018, she underwent surgery to effect the partial removal of the brain tumor, at MUSC in Charleston, S.C., which was determined to be glioblastoma multiforme. *Id.* Upon discharge from MUSC on October 23, 2018, follow-up out-patient appointments were scheduled with neuro-oncology and radiation oncology at MUSC on October 24 and 25, 2018. *See* Trial Transcript V. III, Testimony of John Strasswimmer, at pp. 398, 422; Petitioner’s Trial Exhibit 1, at pp. 43-

53.

At a meeting the following day, October 26, 2018, held at Dr. Miles and David King's residence in Briarcliffe Acres, divisions between the children, Michelle Miles and John Strasswimmer, and David King, became evident in regard to the preferred course of treatment for Dr. Miles. The dividing issue was whether Dr. Miles should seek treatment at MUSC in Charleston, or travel to Seattle, Washington, to be treated at the University of Washington Medical Center ("UWMC"). See Trial Transcript V. III, Testimony of John Strasswimmer, at pp. 262, 422-423. The evidence adduced at trial strongly indicated that the children exerted great pressure on Dr. Miles to seek treatment in Washington State, at UWMC, and not at MUSC in Charleston. Attorney Clifford H. Tall, who prepared Dr. Miles' estate planning documents, and who participated in the October 26 meeting at the request of John Strasswimmer, subsequently noted in the affidavit that he filed in the trial court below, that the meeting included discussion of whether Dr. Miles should seek follow up care "in South Carolina or in Washington State, where her daughter, Michelle resided." King Trial Exhibit 12, at p. 1.

While Dr. Miles agreed to travel to Washington State for evaluation and treatment at WUMC, it is also clear from the record that she was not happy with the course of treatment options offered to her, and she decided to return home to South Carolina on November 8, 2018. David King testified that on the morning of November 8, 2018, Dr. Miles abruptly instructed him to return home to South Carolina, without consulting her children or the physicians she had consulted at WUMC. Final Order dated May 7, 2019, at p.6. Attorney Cliff Tall testified at trial that Dr. Miles called him

from Washington State on November 9, 2018, that she sounded lucid, and that she indicated that she wanted to return home to South Carolina, and that she wanted to amend her healthcare power of attorney to remove her daughter Michelle as a co-agent on her medical power of attorney. King Trial Exhibit 12, at p. 2; Trial Transcript V. III, Testimony of Clifford Tall, at pp. 544-550.

Upon her return to South Carolina, Dr. Miles was re-admitted to MUSC on November 12, 2018. The evidence produced at trial showed that, not only did the children continue in their efforts to unduly influence their mother, they sought to drive a wedge between Dr. Miles and David King. MUSC treatment notes reflect a staff concern that “the patient [Dr. Miles’] children are coercing the patient in some fashion, specifically into stating that the patient has asked her husband to be barred from visiting, for example.” King Trial Exhibit 3, at p. 1.

Immediately thereafter, on November 15, 2018, Petitioner John Strasswimmer filed Emergency Petitions, on an *ex parte* basis, seeking his appointment as conservator and the appointment of Michelle Miles as temporary guardian over their mother, Claudia Miles. See Final Order dated May 7, 2019, at p. 8. Without prior notice to Dr. Miles or David King, the probate court below appointed Michelle Miles as Temporary Guardian over her mother, Claudia Miles, on November 15, 2018. David King did not learn of the appointment until he was served with a copy of the Emergency Order on November 16, 2018, granting temporary guardianship of his wife to her daughter, Michelle Miles. Final Order, at p. 8.

There is no indication in the record that either Michelle Miles or John Strasswimmer advised the probate court below during the *ex parte* proceedings that

they intended to immediately return their mother to Washington State; indeed, the Petition for her appointment as Temporary Guardian noted that Michelle Miles was “willing and able to move to Charleston” to care for her mother. See Petition for Appointment of Guardian, at p.4. Nonetheless, within approximately one week of her appointment, Michelle Miles removed her mother from MUSC, removed her from South Carolina, and took her to another jurisdiction, all without notice to the Respondent David King, and without telling David King where his wife, Claudia Miles, was thereafter located. See Final Order, at p. 9. The probate court below found that:

the children did not disclose to David King where they were taking their mother on November 23, 2018, and the Temporary Guardian instructed UWMC to not allow David King to have any access to Dr. Miles, and to not give David King any information about Dr. Miles’ treatment progress or her condition. David King testified that it was more than one month after the Temporary Guardian relocated Claudia Miles to Washington State before he was able to see her again.

Final Order, 5/7/2019, at p. 9. The court below found that the actions of the children in regard to filing their petitions on an *ex parte* basis, and not discussing the matter with David King until they had already obtained an emergency order, were “at best, disingenuous, and did not serve the interests of Dr. Claudia Miles.” *Id.*, at p. 8.

After moving Dr. Miles to Washington State for treatment at WUMC, and after her release from WUMC, Michelle Miles transferred her mother not to her personal residence, but to an assisted living facility, the “Frank Tobey Jones Assisted Living Facility” in Tacoma, Washington. See Trial Transcript V. III, Testimony of John Strasswimmer, at p. 93, 94, 158-159. While discharge notes from WUMC indicated that Dr. Miles’ stay in the facility would be only for a few days, Michelle Miles kept her at

FTJ for more than two months. *See* Trial Transcript V. III, Testimony of John Strasswimmer, at p. 94. The evidence made clear that Dr. Miles was not happy at FTJ, and that she considered the place a “prison.” *See* Trial Transcript V. III, Testimony of John Strasswimmer, at pp. 174-175, 427-428; Trial Transcript V. I, Testimony of Michelle Miles, at pp. 80-81; Trial Transcript V. III, Testimony of Julie Forkasdi, at pp. 447-448, 449-450; GAL Report, Exhibit B at p. 5; Diary page displayed during testimony of David King. The court below found that the lengthy placement at FTJ by the Temporary Guardian was “not medically necessary” and was “not in Dr. Miles’ best interests.” Final Order, at pp. 10-11.

Under increasing scrutiny and pressure from the GAL, Michelle Miles removed Claudia Miles from the FTJ facility, and moved her into her home, but then later moved out of her own home, leaving her mother under the care of professional caregivers in her home. *See* GAL Final Report, and GAL Emergency Motion to Remove Temporary Guardian, filed Apr. 17, 2019. Significantly, after this case had been partially tried in the probate court below, on April 1, 2, and 3, 2019, the GAL filed an Emergency Motion to Remove the Temporary Guardian, on April 17, 2019. In her April 2019 motion filing, the GAL noted that Michelle Miles had “breached the fiduciary duties bestowed upon her by this Court as evidenced by the information presented in the GAL report as well as Michelle Miles’ own testimony before the Court on April 2-3, 2019, on direct examination.” *Id.*, at p. 2. The GAL’s Emergency Motion of April 2019 noted that, among other things, two independent advocates for Dr. Miles had resigned since the Temporary Guardian had been appointed, and that the Temporary Guardian was no longer responding timely to the GAL’s inquiries related to Dr. Miles’ location, status,

and well-being. Id.

Procedural History

The matter is an appeal from the Horry County Probate Court and the subsequent appeal to the ruling of the Horry County Court of Common Pleas which affirmed the lower court ruling, in part. The Appellant, Mary Michelle Miles, has filed this appeal based on the findings that Michelle Miles was not an appropriate temporary guardian for Claudia Troyer Miles, that Ms. Miles breached her fiduciary duties as temporary guardian by misappropriating or improperly disbursing assets and failing to provide an appropriate accounting, that Ms. Miles abused her discretion in making various expenditures from her mother's funds including, but not limited to, an extensive remodel of her home and the retention of Synergy Home Health Care, that Ms. Miles inappropriately placed her mother in an assisted living facility, S.C. Code Ann §62-5-103 is applicable in this instance, allowing testimony of Clifford Tall, Esq., granting the GAL's motion for sanctions, and awarding attorneys fees to Respondent David Vreeland King.

This action was originally brought by John Strasswimmer in the Horry County Probate Court for the appointment of a Guardian and Conservator for Claudia Troyer Miles. Mr. Strasswimmer filed an *ex parte* Emergency Petition and an Affidavit in Support of his Emergency Petition, among other filings, on November 15, 2018. On the same day, the Court issued an Order appointing Respondent Mary Michelle Miles as the Temporary Guardian over Claudia Troyer Miles. In response to these developments, Respondent David V. King subsequently filed a Petition for the Removal of the Temporary Guardian, and for the appointment of himself as the Successor

Guardian for his wife, Claudia Troyer Miles.

The matter proceeded to trial on the issues raised in the multiple petitions, where the Court heard five days of testimony at the hearing of the matter in April of 2019. After the lengthy trial proceeding, the Court issued an Interim Order on April 26, 2019, and a Final Order in the matter on May 7, 2019. The Court's Orders, among other things, removed the Temporary Guardian, Michelle Miles, from her position; denied compensation to the Temporary Guardian for her services, and denied the other remedies sought in the Petitions of John Strasswimmer. The Court's Interim and Final Orders required the Temporary Guardian to produce an accurate and formal accounting, on or before May 26, 2019, and further appointed Bess Lochocki, Esq., as Guardian and Conservator over Claudia T. Miles, with the consent of her husband, David V. King.

The lower court further found that Appellant Miles had, among other things, and without limitation:

1. After relocating her mother to Washington State, ostensibly to her home located at 1335 N. Heatherwood E. in Tacoma, Washington, the Temporary Guardian spent, by her own testimony, in excess of \$75,000 remodeling her home, even though the court had never decided that Michelle Miles would be an effective permanent Guardian in the interests of Dr. Claudia Miles, and it had never been determined that Michelle Mile's residence in Tacoma was an effective permanent placement for Dr. Miles. See Trial Transcript V. I, Testimony of Michelle Miles, at pp. 196-200, Trial Transcript V. II, Testimony of Michelle Miles, at pp. 88-89, 95-96; Final Order May 7, 2019 at pp. 12-13.

2. The Guardian *ad litem*, Bess Lochocki, Esq., testified in the Probate Court below, and rendered an opinion in the case that (a) Michelle Miles was not suitable and should not be appointed as the permanent Guardian for Dr. Claudia Miles, and (b) that Michelle Miles' residence located in Tacoma, Washington was not a suitable permanent placement for the ward, Claudia Miles. See GAL Report at pp. 3-4; GAL Report Exhibit B at pp. 5-6.

3. In her testimony, Michelle Miles testified that she had not been gainfully employed since September, 2017 and that she had no material financial assets that would allow her to repay her mother for the monies that she had spent on her residence, in the event that this Court (as it did) decline to appoint Michelle Miles as the Permanent Guardian over her mother. See Trial Transcript V. I, Testimony of Michelle Miles, at pp. 6-7.

4. In addition to the numerous decisions made by Michelle Miles with respect to remodeling her home, which were not prudent and which were indeed very unwise, and resulted in the wasting of Dr. Claudia Miles' assets, Michelle Miles also testified that she transferred approximately \$377,599.00 of her mother's funds from a Fidelity Investment account to a simple checking account, which did not bear interest, and that she made this investment decision without seeking any financial or investment advice as to whether such a transfer was prudent, or whether it would harm her mother. See Trial Transcript V. I, Testimony of Michelle Miles, at pp. 158, 166-167.

5. Michelle Miles admitted no less than 16 times during her direct testimony (under questioning by her own counsel) that she had commingled her mother's funds with her own funds. See Trial Transcript V. I, Testimony of Michelle Miles, at pp. 110,

114-118, 134, 139-142, 145, 147, 150, 157.

6. At the time of trial in this matter, in April of 2019, the Temporary Guardian had still not provided a full and complete accounting of her actions as the Temporary Guardian, even though the GAL and counsel for David King had been requesting this information since the first week of January 2019. See Trial Transcript V. II, Testimony of Michelle Miles, at pp. 58-59, 62-63; GAL Final Report Exhibit B at p. 9.

Comment regarding the Record on Appeal in this Matter

There was significant difficulty in getting the transcript record assembled in this matter, and at this time the record remains incomplete, missing all testimony given by David King on April 22, 2019, as well as the direct testimony of the Guardian Ad Litem, Bess Lochocki, on April 23, 2019. Thus, two of the five days of trial testimony taken in this matter have not been fully transcribed. Day three of trial (April 22) is missing entirely, and day four (April 23) appears to be only partially transcribed. Respondent David King notes that it is the responsibility of Appellants to produce a full transcript of the lower court proceedings for the judgment appealed from. S.C. Code §62-1-308(c). After several months of unsuccessful attempts to obtain transcripts of the full proceeding in the probate court below, Respondent David King was advised by Appellant Michelle Miles that the flash drive containing the record of proceedings in the matter on April 22, 2019, was apparently lost due to a flash drive malfunction. This absence of a full record in the matter is an impediment to the Respondent David King.

STANDARD OF REVIEW

On appeals from the Probate Court, the Appellate Court will hear matters and determine appeals based upon the rules of law. See S.C. Code 62-1-308(i); see also In

re: Estate of Pallister, 363 S.C. 437, 611 S.E.2d 250 (2005). As claims raised in the Probate Court can be (and in this case, are), both legal and equitable, the applicable standard of review will depend upon the classification of each claim at issue. See Pallister, 611 S.E. 2d at 448. See also Townes Assocs. Ltd. V. City of Greenville, 266 S.C. 81, 221 S.E. 2d 773 (1976). On appeal from a case tried by a judge in an action at law, “the findings of fact of the Judge will not be disturbed on appeal found to be without evidence that which reasonably supports the judge’s findings.” Townes Assocs., 221 S.E.2d at 87. In an action in equity tried by a judge, the appellate court has the authority to find facts in accordance with its own view of the preponderance of the evidence. Id. South Carolina Appellate Court Rules, at Rule 208(1)(D), require that when different standards of review are to be applied, “a separate section with a heading of ‘Standard of Review’ shall be included at the start of the argument of each issue.” S.C.A.C.R. Rule 208(1)(D). Appellant has failed to provide such a statement of the applicable standard of review for each of the arguments presented in her brief. She has provided a Standard of Review for appointment of a guardian and conservator, and for breach of fiduciary duty; but she does not provide a standard of review for the myriad of other arguments raised by the Appellant in her brief.

SUMMARY ARGUMENT

Unfortunately, this Court does not have the benefit of reviewing the testimony of David V. King, or the direct examination of the GAL by Respondent’s counsel, as a technical issue prevented the court reporter from transcribing the trial testimony taken on April 22, 2023. Respondents spent several months attempting to obtain a full and complete transcript record from the Appellant in this case, and ultimately learned that

a technical problem with the court reporter's "thumb drive" data storage device had prevented her from creating a full and complete transcript record.¹ This absence of a full and complete record on appeal presents a material disadvantage to Respondent, David King, as counsel is unable to cite testimony from the record, from David King, or certain testimony of the Guardian *ad litem*, to refute certain statements made by the Appellant and certain assertions contained in her briefing.

Appellant has cherry-picked portions of testimony to support her arguments in this appeal, but ignores the inconvenient truth that the records from Frank Tobey Jones and other evidence from the trial, do not square with her assertions. As noted herein above, Claudia did not want to remain at Frank Tobey, and referred to the facility as "a prison" in her journal entry on January 1, 2019. Trial Transcript V. III, Testimony of John Strasswimmer, at pp. 427-428. Appellant testified on the one hand that her mother was being taken to Washington as Michelle was not working and could care for Claudia, Trial Transcript V. III, Testimony of John Strasswimmer, at p. 33; Trial Transcript V. I, Testimony of Michelle Miles, at p. 21, but on the other hand, Michelle testified that she had no intention of living with her mother, and that she hired 24/7 care to live with Claudia while she was in Washington State. See Trial Transcript V. I, Testimony of Michelle Miles, at pp. 223-224. The Appellants appear to have made the irrational decision that Claudia would be better off living with strangers than living with her husband and partner of 38 years.

¹ After months of attempts to obtain a full transcript of all proceedings in this matter, Respondents learned on April 26, 2023, with the filing of the Reply to Respondent David King's Motion to Dismiss, that the record of testimony for April 22, 2019 would not be produced despite Appellants statements in prior motion that they "requested additional time to attempt to collect this transcript or research proper remedies for the missing portion." See Michelle Miles Amended Memorandum in Opposition to Motion to Dismiss of David King, January 23, 2023.

Reviewing the testimony of David King would allow the Court to see this matter from the perspective of Claudia's husband and constant companion of 38 years. It is extremely difficult, if not impossible, for this Court to have an accurate and balanced understanding of the trial proceedings below, without access to the testimony of David King.

Appellant testified that Claudia wanted to go to Washington but the record shows that she did not want to be in Washington, and that she asked David to take her home to South Carolina on November 8, 2018. John Strasswimmer testified that his mother's death was not anticipated to occur in a reasonably short period of time but medical evidence and the records in this case show that life expectancy with a glioblastoma is very short even with treatment. *See* GAL report at p. 2, citing the prognosis for Dr. Miles given by Dr. McGranaham, her neuro-oncologist. John testified that comfort care allows a patient to have treatment with the autonomy to say no any time they want. However, the Appellant attempted to control her mother's treatment by transporting her out of state, and then intimidating the care-givers and the staff at the facility that were retained to assist with the care for Dr. Miles.

ARGUMENT

I. The Horry County Court of Common Pleas Did Not Err in Affirming the Horry County Probate Court's Findings Regarding Michelle Miles

Appellant alleges that the Court erred in finding that she breached her fiduciary duty to Claudia Miles. Based on the testimony and evidence presented at the merits hearing, specifically during the testimony of Mary Michelle Miles, it is clear that she breached her fiduciary duty to Claudia Troyer Miles on multiple and repeated occasions. (Testimony of Michelle Miles, pp. 149-154, 157-165, 181-193). This breach is

clarified in the Final Order of the Court issued on May 3, 2019 at paragraphs 27, 28, 32, 33-39, and the Appellant has provided no basis whatsoever for reversing these findings at this time. Mary Michelle Miles' term as Temporary Guardian was due to end on or about May 15, 2019 and removing her as temporary guardian based on the evidence and testimony presented at the merits hearing was clearly appropriate under the circumstances. The testimony of the two elder advocates, who resigned from their positions due to the Temporary Guardian's actions, further revealed the Mary Michelle Miles was not an appropriate guardian for Claudia Miles.

II. The Probate Court Did Not Err in Terminating the Temporary Guardianship of Michelle Miles

The Court had previously determined that Claudia Miles was incapacitated on November 15, 2018 and the testimony presented at the merits hearing further clarified that Claudia Troyer Miles was incapacitated and therefore in need of a permanent guardian. Appellant testified that Claudia Miles was in need of a guardian and she also testified that she needed constant supervision due to her status as a fall risk. (Michelle Miles testimony pp. 224, 314, 315.) Petitioner further introduced voluminous medical records into the record that attested to the incapacity of Claudia Miles necessitating the need for a guardian. The Court, in its Final Order of May 7, 2019 found that the Court inappropriately appointed Michelle Miles as Temporary Guardian on November 15, 2018. However, the Court did not reverse the earlier determination that Claudia Miles was incapacitated and in need of a guardian. The testimony of all parties clearly indicated that they were not adverse to the appointment of an independent guardian and conservator for Claudia Troyer Miles (Testimony of Michelle Miles, at p. 222) and the selection of the Guardian ad Litem to fill that role was sensible in light of the fact

that the Guardian ad Litem is familiar with the case and is able to act as a neutral party to insure that the needs of Claudia Miles were met. As her term as Guardian ad Litem officially ends at the conclusion of this case, the appointment of Bess D. Lochocki as Permanent Guardian was appropriate.

Mary Michelle Miles' term as Temporary Guardian was due to end on or about May 15, 2019, *See* Modified Temp. Order Appt., Dec. 21, 2018, at p. 4., and there was, in any event, ample evidence and testimony presented at the merits hearing to support Michelle's removal as Temporary Guardian. The report of the Guardian *ad litem* found that Michelle Miles (along with John Strasswimmer) had engaged in behavior that had influenced certain of Dr. Miles' caregivers "to be biased against David King," *see* GAL Report, at p. 4, that certain caregivers for Dr. Miles had resigned in response to pressure from the Temporary Guardian and John Strasswimmer (*Id.*), and that "more than one advocate for Dr. Miles' care expressed to me that they are concerned, apprehensive, or afraid of backlash from Michelle and John and being accused of taking sides." *Id.* The Guardian *ad litem* did not recommend that the Temporary Guardian be re-appointed or be appointed on a permanent basis, but rather recommended that an "independent, professional" guardian be appointed with the powers of a conservator and fiduciary [over Dr. Miles]. *Id.*, at p. 3.

The testimony of the two elder advocates who resigned from their positions due to the Temporary Guardian's actions, further revealed the Mary Michelle Miles was not an appropriate guardian for Claudia Miles, and provide more than ample evidentiary basis for the Probate Court's decision to remove Michelle Miles as Temporary Guardian in this matter. The two elder advocates resigned from this case, prior to trial, due to the

actions of the Temporary Guardian and Appellant John Strasswimmer. The evidence presented at trial strongly supports the Court's finding that the Appellants Michelle Miles and John Strasswimmer rejected Julie Forkasdi's further involvement in this case, once they determined that Julie Forkasdi would not join in their efforts to alienate Dr. Miles from her husband. The second elder advocate, Elizabeth Stone, resigned after repeated interference by the Temporary Guardian. See GAL Report, Exhibit G, and Trial Transcript V. III, Testimony of Julie Forkasdi, at pp. 435-485.

Moreover, during the pendency of the proceedings below, after three days of testimony had been heard, but before the trial had been concluded, the Guardian *ad litem* filed an Emergency Motion, on or about April 17, 2023, which noted the following:

- (a) The information already presented in the lower court, in Michelle Miles' own, *direct examination by her counsel*, demonstrated that the Temporary Guardian had breached her fiduciary duties to Dr. Miles, and that she should be immediately removed, before the trial in progress was even completed;
- (b) That the Temporary Guardian had failed to produce financial records and an accounting as previously ordered;
- (c) That two (2) independent advocates for Dr. Miles had resigned, and that Michelle Miles had moved out of her home, without consulting the GAL, leaving the Guardian *ad litem* (and the care of Dr. Miles) wholly at the mercy and "under the complete control of hired caregivers and professional certified nursing assistants who are now residing [in the Tacoma home of Michelle Miles] with the AII," Dr. Claudia Miles.

GAL Emergency Motion, Apr. 17, 2019, at pp. 1-3.

Indeed, in her own testimony presented to the court below on April 2, 2019, the Temporary Guardian admitted and testified to the court below, as follows:

- (a) That she had transferred approximately \$377,599 from her mother's Fidelity Investments account to a simple, non-interest-bearing checking account, without seeking any financial or other advice. *See* Trial Transcript V. I, Testimony of Michelle Miles, at pp. 158-59, 166-67;
- (b) That she had spent well in excess of \$70,000 remodeling her home for the care of her mother, when the home had never been ruled to be a suitable or appropriate location for housing Dr. Miles on a permanent basis, and in fact that the GAL had found in her report that the Tacoma home was not a suitable or effective permanent placement for Dr. Miles. *See* Trial Transcript V. I, Testimony of Michelle Miles, at p. 197;
- (c) No less than sixteen (16) times during her testimony, Michelle Miles admitted to commingling her mother's funds with her own personal funds; that she had been unemployed since September of 2017 and that she had no material finances or assets that would allow her to repay her mother for the monies that she had spent on her (Michelle's) residence. *See* Trial Transcript V. I, Testimony of Michelle Miles, at pp. 110, 114-18, 134, 139-42, 145, 147, 150, 157;

Thus, even if no other evidence was available to the Probate Court than these few points of testimony (and there was much additional evidence and testimony presented in the lower court that supports its ruling), on these bases alone the court below would

have been amply justified in its decision to remove Michelle Miles as the Temporary Guardian.

Moreover, in its Interim Order in response to the GAL's Emergency Motion of April 17, 2019, the Probate Court below concluded that it could not do its job without an elder advocate in Washington, assisting the GAL in handling her duties, and assisting the Court in its evaluation and determination of the proper outcome in this case. It therefore removed Michelle Miles from her duties as Temporary Guardian, and appointed the GAL, Bess Lochocki, Esq., as Permanent Guardian and Conservator for Dr. Claudia T. Miles, in her place. *See* Interim Order, Apr. 26, 2019, at p. 3.

There was clearly and unquestionably, ample evidence submitted at the trial below to support the court's decision to remove Michelle Miles from her position as Temporary Guardian. That decision should not be disturbed or interfered with.

III. The Probate Court Correctly Determined That the Temporary Guardian Breached her Fiduciary Duties

Appellant alleges that the Court erred in finding that Respondent Mary Michelle Miles breached her fiduciary duty to Claudia Miles. Based on the testimony and evidence presented at the merits hearing, specifically during the testimony of Mary Michelle Miles, and other evidence presented at trial, it is clear that Michelle Miles breached her fiduciary duties to Claudia Troyer Miles on multiple and repeated occasions, and there was ample evidence to support the probate court below in reaching this conclusion in its findings. *See, e.g.*, Trial Transcript V. I, Testimony of Michelle Miles, at pp. 149-154, 157-165, 181-193; and GAL Emergency Motion, Apr. 17, 2019, at pp. 2-4. These various breaches of fiduciary duty were set forth with specificity by the probate court in her Final Order of May 3, 2019, at paragraphs 27, 28, 32, 33-39.

Appellant suggests no sound basis in their briefs for reversing these conclusions and findings of the trial court below at this juncture, and all testimony referenced by the trial court below can be found in the transcripts contained in the Record on Appeal: the Temporary Guardian placed Dr. Miles in a facility (Frank Toby Jones) that she did not like, she considered to be a “prison” and in the final analysis was found to have been a placement not in her best interests (Final Order at pp. 9, 10); during her short time as Temporary Guardian (approximately five and one-half months), Michelle Miles managed to spend in excess of \$300,000 of her mother’s funds (Id. at p. 11; *see also* Trial Transcript V. I, Testimony of Michelle Miles, at pp. 96-97, 219-221), including approximately \$70,000 that was spent on Michelle Miles’ own residence (Id. at p. 12; *see also* Trial Transcript V. I, Testimony of Michelle Miles, at p. 197), she transferred approximately \$110,000 from a Fidelity Investment account to a non-interest-bearing basic checking account, and advised her own counsel during questioning that, when she made the transfer, she did not seek investment advice. Id. at p. 13-14; *see also* Trial Transcript V. I, Testimony of Michelle Miles, at p. 166. Finally, the trial court found that the Temporary Guardian repeatedly failed to provide accountings and to respond to requests for information, and, perhaps most troubling, that she used her authority in these proceedings “to alienate Dr. Miles from her husband, for no good or apparent reason” (Id. at p. 14, 15; *see also* GAL Report, Ex. B, at p. 4) “The Court finds that as Temporary Guardian, Michelle Miles repeatedly used her authority over Dr. Miles to discourage or interfere with David King’s efforts to have visitation with his wife.” (Id. at p. 15; *see also* GAL Report, Ex. B, at p. 4.)

By her own testimony, the Temporary Guardian breached her fiduciary duties to

her mother on numerous respects:

- (a) The Temporary Guardian, Mary Michelle Miles, transported her Ward outside of the State of South Carolina, without specific authorization from the Probate Court; thereby rendering the task of the Probate Court to supervise the guardianship of Claudia Troyer Miles virtually impossible. *See* Trial Transcript V. II, Testimony of Michelle Miles at pp. 349-356.
- (b) The Temporary Guardian engaged in uncertain and potentially unauthorized transfers of the assets of Claudia Troyer Miles, and repeatedly failed to provide an accounting of her actions as the Temporary Guardian in this regard. *See* Trial Transcript V. I, Testimony of Michelle Miles, at pp. 110, 114-118, 134, 139-142, 145, 147, 150, 157, 158, 166-167; Trial Transcript V. II, Testimony of Michelle Miles, at pp. 58-59, 62-63; GAL Final Report Exhibit B, p. 9.
- (c) The Temporary Guardian placed her mother, Dr. Miles, in a skilled nursing facility that provided no medical treatment, contrary to her assertion that she moved her mother to Washington State so that she could receive appropriate treatment for her diagnosis. The Temporary Guardian then moved Dr. Miles from the skilled nursing facility to the home of the Temporary Guardian without notice to the GAL when the GAL was concerned that placement in the Temporary Guardian's home would not be appropriate. *See* Trial Transcript V. III, Testimony of John Strasswimmer, at pp. 93, 94, 158-159; Final Order, at pp. 10-11; GAL Final Report, and GAL Emergency Motion to Remove Temporary Guardian,

filed Apr. 17, 2019.

- (d) The Temporary Guardian interfered with Court ordered visitation between Dr. Miles and her husband and went so far as to contact the police and/or Adult Protective Services, in an effort to have David King (presumably) arrested, or at minimum, investigated for the attempted abduction of a vulnerable adult. Trial Transcript V. I, Testimony of Michelle Miles at pp. 50-51, 54, 81-82; Trial Transcript V. II, Testimony of Michelle Miles at pp. 171-172.

On July 3, 2019, the Temporary Guardian submitted an accounting to the court below that identified myriad questionable or apparently unnecessary expenses, including, but not limited to, the following:

- (1) Travel expenses for the Temporary Guardian in excess of \$17,500;
- (2) Installation of a new security system in the Temporary Guardian's home;
- (3) Miscellaneous expenses not appropriately categorized on the accounting in excess of \$1,000
- (4) Renovations to the Temporary Guardian's home in excess of \$65,500 including Bandido Construction, Lowes, Taran Randall for floor install, and Lumber Liquidators;
- (5) Rental car expenses in excess of \$3,000;
- (6) Unexplained hotel expenses in excess of \$5,600;
- (7) Unexplained clothing and shoe expenses from Charlotte 2088A totaling \$833.34;
- (8) Grocery expenses in excess of \$12,000 from February through April;

- (9) Unexplained moving service fees of \$495;
- (10) Federal Express and UPS Store Copy/Print/Shipping services of \$1,857.94;
- (11) An unknown charge to GERAS, LLC in the amount of \$11,760;
- (12) Fees to GoGo Air, Viasat in-flight, and Hudson News for travel in excess of \$500;
- (13) Furniture expenses in excess of \$5,600;
- (14) Clothing and shoe expenditures in excess of \$7,186;
- (15) Utilities and rent charged to Claudia Miles in excess of \$2,649.57;
- (16) Fees paid to Synergy Homecare of \$179,971.99 when testimony at the merits hearing indicated that the fee for homecare was approximately \$20,000 per month;
- (17) Fees for “hospital visits” at UWMC Cafeteria, Surgery Pavilion, and Gift Shop of \$585.93;
- (18) Various reimbursements to “TG” totaling \$21,243.28;
- (19) Fee paid to Tuell McKee Funeral Home of \$1,273.53;
- (20) Fees paid to Union Club for Business expenses of \$346.75; and
- (21) Fees paid to Seldens Sleep Gallery for “Healthcare/Medical” and dining room set of \$16,575.83. Seldens is a designer furniture store not likely to provide healthcare and medical devices for the benefit of Claudia Miles.

See Accounting filed by Michelle Miles, July 3, 2023.

It is Respondent King’s position that the accounting eventually submitted by Mary Michelle Miles on July 3, 2019, was incomplete and inaccurate, but further

identified excessive and unnecessary expenditures on the part of the then Temporary Guardian, which ultimately depleted over 40% of Claudia Miles' assets. See Final Accounting filed with the Probate Court on July 3, 2019. The Court should note that, even now, the Appellant Michelle Miles has never submitted a full and completely accurate accounting of her activities on behalf of her mother, Dr. Miles, during the five and one-half months that she served as Dr. Miles' Temporary Guardian in 2018 and 2019. When it ultimately did rule in its Order on Post-Trial Motions dated May 13, 2022, the Probate Court below found that, the accounting "did not include bank statements, credit card statements, or receipts of any kind to cross-reference the information presented as the final and formal accounting." Order on Post-Trial Motions, May 13, 2022, at p. 11. The Court further noted in this Order that Michelle Miles had "not submitted a revised complete and accurate accounting and has exhibited *dilatory conduct* and *unabashed disregard for the Court's Final Order to account for all of Claudia Miles' monies*. *Id.* (emphasis added).

Appellant Miles alleges that the Court erred in finding that Mary Michelle Miles breached her fiduciary duties, and as a result, among others, was not entitled to and shall not be compensated for her services as Temporary Guardian. Mary Michelle Miles had spent a considerable portion of her mother's estate. Her "service" as Temporary Guardian caused great harm on her mother's Estate. She incurred independent liability to her mother's Estate as a result of the various ill-advised expenditures she made, and the extremely irresponsible and wasteful financial decisions that she made on behalf of her mother while she served as her Temporary Guardian. There is no remotely plausible or even rational basis upon which it can be

said that Michelle Miles should be entitled to payment for her “services” as Temporary Guardian to her mother. She conveyed no benefit to her mother by her service, but instead, grievously and substantially harmed her.

A claim of breach of fiduciary duty may be either legal or equitable. Deborah Dereede Living Trust v. Karp, 427 S.C. 336, 340, 831 S.E.2d 435, 437 (S.C. Ct. App. 2019).

Should the Court determine that the claims here are legal in nature, the Court is limited to determining whether or not there is any evidence to support the findings of the probate court.

IV. The Probate Court Did Not Err in Finding That Expenditures Made By Michelle Miles to Renovate Her Home were Wasteful and Should be Repaid by Michelle Miles to the Estate

As previously indicated, Michelle Miles spent approximately \$70,000 on furnishing and renovations to her private residence (Transcript V. I, Testimony of Michelle Miles, at pp. 96-97, 219-221, *see also* Trial Transcript V. I, Testimony of Michelle Miles, at p. 197). The Probate Court found that while “some or most of these expenditures” were relevant, a Temporary Guardian did not have authority to incur these exorbitant expenses at that point in time. (Order May 2019 @ pp. 12-13). The Probate Court further expressed concern that some of the expenditures were solely for the benefit of Michelle Miles and not her Ward. Michelle Miles planned to move in with her boyfriend and therefore moved furniture from her home, leading to the required refurnishing of her own home. (Trial Transcript V. , Testimony of Michelle Miles at p. 348). Thus, the Court ordered that certain expenditures be refunded to the Estate. (Order on Post Trial Motions, p. 12)

Appellant spent a considerable portion of her mother’s estate. Her service as

temporary Guardian has worked a great harm on her mother's Estate. She incurred independent liability to her mother's Estate as a result of the various ill-advised expenditures she made, and the extremely irresponsible and wasteful financial decisions that she made on behalf of her mother while she served as her Temporary Guardian. She conveyed no benefit to her mother by the renovations that she chose to make to her home but, instead, grievously and substantially harmed her mother's Estate. It was therefore appropriate for the Probate Court to order that those expenses be reimbursed to the Estate.

V. The Probate Court Did Not Err in Finding That Expenditures Made By Michelle Miles for the retention of Synergy Homecare were Improper and Should be Repaid by Michelle Miles to the Estate

The Probate Court properly ruled that, in accordance with S.C. Probate Code 62-5-312, a guardian is prohibited from using funds for a Ward's room and board. (Order on Post Trial Motions at p. 13). The Court further opined that the temporary Guardian had moved out of the home and assigned her role as Guardian to Synergy Homecare, in violation of the Probate Code. Michelle Miles hired Synergy as a replacement for services that would normally be fulfilled by the Guardian so that Michelle Miles could move in with her boyfriend. (Trial Transcript, Michelle Miles at pp. 347-348)

VI. The Probate Court Did Not Err in Finding That Placement of Claudia Miles at the France Tobey Jones Facility Was Not Medically Necessary

While Appellant has argued that placement at Franke Tobey Jones was based on the opinion and recommendations of medical professionals, the record reflects otherwise. Medical notes of Dr. Theresa McGranahan indicated that the placement of Claudia Miles at Frank Tobey Jones assisted living facility was not medically necessary (Final Order at p. 10-11) and the Probate Court was concerned about the excessive

expenditures made by Michelle Miles during her term as temporary Guardian.

Appellant argues that placement at Frank Tobey Jones was necessary as Dr. Miles was not compliant during her hospital admission at the University of Washington Medical Center. However, the record also reflects that Dr. Miles was not compliant with the services rendered at FTJ either. (See trial exhibit King 11) Furthermore, the placement at FTJ was to be for a few days and she was interred at that facility for 2 months. (Trial Transcript Miles, p. 250)

There is no argument that Claudia Miles required services. However, the placement of Dr. Miles at FTJ was not in her best interests and placement was made arbitrarily by the temporary Guardian.

VII. The Probate Court Did Not Err In Applying S.C. Code Ann. §62-5-103 In Finding That The Temporary Guardian Made Unauthorized Expenditures

Appellant appears to argue in her brief that the Probate Court erred in applying South Carolina Code Ann. § 62-5-103 to the facts of this case, arguing that the statute in question limits the ability of a guardian to *receive* funds on behalf of a ward, but not on their ability to *spend* funds in excess of \$15,000 on behalf of their ward. This argument presents a distinction without a difference. It is axiomatic that if Michelle Miles spent funds of the protected ward (her mother), ostensibly on behalf of her mother (which the record clearly establishes that she did), then she clearly must have *received* those funds (or in some way obtained control over them), before she *spent* them, whether allegedly for the benefit of her mother, or otherwise. It is noteworthy that the statute in question, § 62-5-103, further provides at sub-section (C), that in cases involving funds “in excess of \$15,000,” that a conservatorship “shall be required.” S.C. Code Ann. § 62-5-103(C).

So irrespective of any argument that the Courts below may have misapplied the statute in question, the Appellant Michelle Miles, having violated the statute in question, many times over, by spending over *One-quarter of a Million Dollars* of her mother's Estate, under a *temporary guardianship*, cannot now come before this Court and claim "reversible error" in the Court's alleged mis-application of that same statute.

VIII. The Probate Court Did Not Err In Finding That The Temporary Guardian Misappropriated or Improperly Disbursed Her Mother's Assets

The Probate Court appropriately ruled on the breach of fiduciary duty by Michelle Miles as she took it upon herself to spend one-third of her mother's assets on caregivers who were implanted in her home to take over her duties as temporary Guardian, she moved her furniture to her boyfriend's home and therefore had to purchase new furniture to accommodate her mother's move from the assisted living facility. The lower Court allowed for some of the renovations to the home of Michelle Miles to accommodate the needs of Claudia Miles but was justified in requiring that Michelle reimburse her mother's Estate for expenses that were not made in the best interests or for the comfort and safety of Claudia. Accordingly, no reversal of the Probate Court ruling is appropriate.

IX. The Testimony of Clifford H. Tall, Esquire was Appropriately Allowed by the Court

Appellant alleges that the Court erred in admitting the affidavit and testimony of attorney Clifford Tall regarding his conversations with Claudia Troyer Miles, which, they allege, were protected by the attorney-client privilege. Ms. Miles had called Mr. Tall for advice and while he was acting as her attorney, he had also consulted with other family members. Further, documents were produced at trial wherein John

Strasswimmer specifically instructed David King NOT to retain Cliff Tall in the fall of 2018. (Respondent King Exhibit 1.) John Strasswimmer's Emergency Petition was brought in bad faith and without a legitimate basis in fact. As he testified at trial, David King would have much preferred for the parties to cooperate in order to resolve their differences informally. Attorney Cliff Tall also testified that he sought to assist the family in working through their differences regarding Claudia's estate plan, informally and without resort to litigation. David King testified that he would have preferred to resolve the matter in that fashion, and supported the retention of Cliff Tall for that purpose. It was the Petitioner, John Strasswimmer, who directed David King to have no further discussions with attorney Cliff Tall regarding the matter, and then sought other counsel to bring the "Emergency" Petition. David King transcripts are not available, but *see also*, Tr. Transcript, Cliff Tall, at p. 563.

Instead of encouraging, or even allowing, attorney Cliff Tall to pursue a course of discussion with the parties aimed at an informal resolution of any disputes between or among them, the Petitioner, John Strasswimmer, unilaterally set into motion a series of events and a litigation proceeding that cost Dr. Claudia Miles and her family members well in excess of \$600,000, and which has further cost David King in excess of \$100,000 from his own personal savings. The underlying proceeding here was not only not justified, it was, as the probate court below properly found, brought in bad faith.

Among other things, Attorney Cliff Tall testified that he faxed a "blank" healthcare power of attorney form to Dr. Miles, at her hotel in Washington State, in response to her request that Attorney Tall remove Michelle Miles as her healthcare agent, and replace Michelle with her husband, David King. Trial Transcript V. IV,

Testimony of Cliff Tall, at p. 549-54. Dr. Miles had called Mr. Tall for advice during her trip to Washington State in November 8, 2018 (*Id.*, at 562.) While he was acting as her attorney, he had also consulted with other family members. Mr. Tall testified later that his invoice could be for Dr. Miles, or it could be for “Dr. Strasswimmer and David King.” *Id.* at 570. Significantly, Cliff Tall testified that David King was present on a speakerphone when Claudia Miles called him from Washington State for legal advice on November the 8th. *Id.*, at p. 548. So, whether the discussions were sufficiently “open” as to generate a question as to who the “client” for purposes of all discussions specifically was (as there appear to be), or whether Dr. Miles simply involved David King, a third party, in her discussions with Cliff Tall, the notion that Cliff Tall’s discussions with Dr. Miles were sufficiently confidential and privileged, that they should have been excluded from the proceeding, does not withstand scrutiny.

However, even if it is assumed *arguendo* that the communications in question between Dr. Miles and Attorney Cliff Tall were privileged, then such privilege would have been waivable by Dr. Miles’ Successor Guardian, Bess Lochocki, Esq. Prior to the conclusion of the proceedings in the lower court below, based on the Emergency Motion filed by Ms. Lochocki as Guardian *ad litem*, Ms. Lochocki thereafter was appointed as the successor Permanent Guardian and Conservator for Dr. Miles. *See* Interim Order, April 26, 2019, at p. 3. It is a well-settled principal of law, that, in the event of the death or incapacity of a client, the legal attorney-client privilege formerly owned by the client will pass to the client’s fiduciary representative, whether that is the personal representative in the case of a deceased client, or a guardian in the case of an incapacitated client: “because the client owns the attorney-client privilege, the client’s

successor (such as a trustee, executor, or administrator), owns the privilege” in the event of the client’s passing or incapacity. Such successors may assert or waive the privilege. Thomas E. Spahn, A Practitioner’s Guide to the Attorney-Client Privilege and the Work Product Doctrine (Virginia Law Found., 2000), at ¶ 2.205, p. 20 (*internal citations omitted*). Further, South Carolina Code §62-5-304A (B)(7) specifically authorizes guardians to “authorize disclosures of confidential information.” (*Id.*) While there is no South Carolina case law that is directly on point this question, it is a well settled principal of law that a fiduciary (a guardian, temporary guardian, personal representative, etc.) may not hide behind the attorney-client privilege when the attorney consulting the ward or decedent may be able to share information that will help inform the Court of the ward (or the decedent’s) true wishes, which is – presumably – what the ward (or the decedent), who cannot speak for themselves, would in fact want to occur – that in the interests of justice and obtaining the result consistent with the ward’s true wishes, such information ought to be disclosed to the tribunal. See Hugo v. Clark, 99 S.E. 521, 522-524 (Va. 1919). See also U.S. v. Osborn, 561 F.2d 1334, 1340 and n. 11 (9th Cir. 1977).

There was no sound rationale in this case for excluding the testimony of Attorney Clifford Tall, either on the basis of the attorney-client privilege, or any other basis. The lower court below properly admitted Mr. Tall’s testimony, and Appellant’s objections in this regard are unfounded.

X. The Probate Court Correctly Determined That Appellant Engaged in Egregious, Sanctionable Conduct and that Appellant be Held Equally Responsible for the Attorneys Fees of David King

By her wrongful and unjustified actions, Michelle Miles, deprived David King

from access to and companionship with his wife during the precious final months of her active life. The resulting litigation that John Strasswimmer commenced was lengthy, emotionally devastating, and forced both the Respondent David V. King and Claudia T. Miles to incur hundreds of thousands of dollars in un-necessary expenses that resulted in no benefit to any party, including Claudia T. Miles.

The Probate Court had previously determined that Claudia Miles was incapacitated on November 15, 2018 and the testimony presented at the merits hearing further clarified that Claudia Troyer Miles was incapacitated and therefore in need of a permanent guardian. Appellants testified that Claudia Miles was in need of a guardian and they also testified that she needed constant supervision due to her status as a fall risk. Transcript, Michelle Miles, at pp. 224, 314, 315. The Court, in its Final Order of May 7, 2019, found that previously, it had inappropriately appointed Michelle Miles as Temporary Guardian on November 15, 2018. That determination was later reversed, by the probate court, on the GAL's Emergency Motion, in its Interim Order of April 26, 2019. However, the court below never reversed the earlier determination it had made that Claudia Miles was in fact incapacitated and in need of a guardian. As noted herein above, decisions related to the appointment and selection of a guardian are generally at "the discretion of the appointing court, whose decision will only be interfered with on appeal in the case of an abuse of discretion." 39 Am. Jur. 2d, Guardian and Ward § 38 (2008).

Two elder advocates had resigned from this case, prior to trial, due to the actions of the Temporary Guardian and John Strasswimmer. It appeared that the Temporary Guardian and John Strasswimmer rejected Julie Forkasdi's further involvement in this

case, once they determined that Julie Forkasdi would not join in their efforts to alienate Dr. Miles from her husband. The second elder advocate, Elizabeth Stone, resigned after repeated interference by the Temporary Guardian. The Lower Court concluded that it could not do its job without an elder advocate in Washington, assisting the GAL in handling her duties, and assisting the Court in its evaluation and determination of the proper outcome in this case, and the fact that every elder advocate retained in this matter had resigned was sufficient to establish a *prima facie* basis for the immediate removal of Michelle Miles, without further hearing. The Lower Court acknowledged that the existing circumstances presented a clear and convincing, immediate and ongoing danger to the health and well-being of Dr. Claudia Troyer Miles. The Lower Court therefore deemed it appropriate to remove Michelle Miles from her duties as Temporary Guardian.

Respondent, David King, did not seek to become a litigant in this matter, nor a litigant in any case with his family members, nor did he seek to expend a substantial portion of his savings on legal fees in litigation that he never wished to become involved in. David King's counter petition was brought in response to the *ex parte* emergency petition filed by John Strasswimmer. Had the Petitioner John Strasswimmer never brought his action, David King would have never filed his counter petition. David King was, in effect, "dragged" into court, reluctantly and against his wishes, by a Petitioner who had no basis in law or fact to file his "Emergency" Petition in the first place.

South Carolina Code Section 62-5-105 contains no requirement for "success on the merits" in order for this Court to issue an award of attorneys' fees in this matter.

No such showing is necessary if this Court believes that an attorneys' fee award would be in the interests of equity and justice.

The probate court was much better positioned to assess the credibility and motives of the witnesses than this Court, and given the absence of a full and complete record, we no longer have access to all of the testimony that the Probate Court was able to hear and consider in the trial proceedings below. For these reasons, the findings and Orders of the Probate Court and Circuit Court should not be disturbed by this Court at this juncture. The lower court's rulings that the Strasswimmer petition was not brought in good faith and the resulting sanctions imposed by the trial court should be upheld here.

CONCLUSION

Appellant's recitations of the factual summaries, her statement of the case, and her various cites to the testimony contained in her briefing are extremely one-sided recitations of the facts of this case, cherry-picked from the voluminous evidence presented in five full days of testimony, understandably arranged in a light most favorable to the Appellant. It is a version of the story, however, that the probate court below, who was in a position and best-suited to most effectively evaluate the nature, presentation, demeanor, and credibility of the various witnesses, failed to find persuasive in any way. Moreover, there is nothing that Appellant has raised, and nothing contained in the Record on Appeal, that would constitute any abuse of discretion on the part of the trial court below, sufficient to justify disturbing or reversing the findings of fact and law, and the various Orders of the probate court below, in any way. For the reasons set forth herein, Respondent David V. King

respectfully requests that this Court uphold the judgments and rulings of the courts below in this matter.

Respectfully submitted,

s/ Reese R. Boyd, III

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