STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS FOR THE THIRTEETH JUDICIAL CIRCUIT
Stacey Grist as Agent under a Power of Attorney for Stanford W. Grist and as Trustee of the Second Amended Trust of Stanford W. Grist living Trust dated December 5, 2005, Stanford Grist Veterinary Services, LLC, Chestnut Ridge Farm, LLC, and Hilly Street, LLC, Plaintiffs, v. Priscilla Mickie Grist, Carolina York Grist Lyon, Leyland H. Lyon, Jr., Jennifer Browning, Browning Geriatrics Consulting LLC, Tracy Parson, Kiki's Kare, LLC d/b/a Comfort Keepers, Erin Couchell Individually and as a member of Kiki's Kare, Chris Couchell individually and as a member of Kiki's Kare, LLC, and Kerry Burnett McCreary, Defendants.	C.A. No.: 2022-CP-23-04055 **ORDER GRANTING DEFENDANTS JENNIFER BROWNING AND BROWNING GERIATRICS CONSULTING, LLC'S MOTION FOR SUMMARY JUDGMENT**

This matter comes before me on Defendants Jennifer Browning and Browning Geriatrics Consulting, LLC's Motion for Summary Judgment. This motion was heard on October 16, 2024.[1] V. Clark Price appeared on behalf of Defendants Jennifer Browning and Browning Geriatrics Consulting, LLC (hereinafter "Browning"), while the Plaintiffs, Stacey Grist as Agent under a Power of Attorney for Stanford W. Grist and as Trustee of the Second Amended Trust of Stanford W. Grist living Trust dated December 5, 2005, Stanford Grist Veterinary Services, LLC, Chestnut

[1] The Court notes that while the motion was scheduled for a hearing to occur fewer than 10 days from the date of filing, the Plaintiffs did not object and were provided an additional 10 days from the date of the hearing to submit additional argument to the Court, which they in fact did.

Ridge Farm, LLC, and Hilly Street, LLC (hereinafter "Grist"), were represented by Devon Puriefoy.

FINDINGS OF FACT

This civil lawsuit arises out of probate matter involving many of the Defendants, as well as Dr. Stanford W. Grist (hereinafter "Dr. Grist"). On or about July 13, 2020, Priscilla Mickie Grist (hereinafter "Mickie Grist"), one of Dr. Grist's three daughters, filed an *Ex Parte* Petition for Finding of Incapacity and Appointment of Guardian and/or Conservator in the Greenville County Probate Court (hereinafter "GC matter" and "the probate court"). Sherry Dykes, the litigation specialist for the probate court, contacted Jennifer Browning, a professional guardian and counselor, to inquire of her willingness and ability to serve as guardian ad litem for Dr. Grist. Browning agreed to do so. On July 15, 2020, Judge Debora Faulkner issued an order appointing Mickie Grist as Temporary Guardian and Jennifer Browning as Guardian Ad Litem pursuant to S.C. Code Ann. Section 32-5-106.

According to a report filed by Browning with the probate court, upon her appointment as guardian ad litem, Browning interviewed the family members, as well as several of the attorneys who were already involved in the GC matter. She also interviewed Dr. Grist on August 18, 2020 and September 2, 2020.

On January 29, 2021, Browning submitted to the probate court a preliminary report of the guardian ad litem. In that report, Browning noted that there was significant conflict amongst the family members, and therefore recommended it would be in Dr. Grist's best interest for the probate court to appoint a neutral guardian, rather than have Mickie Grist continue to serve as Temporary Guardian.

On July 29, 2020, the probate court held a hearing to evaluate Dr. Grist's incapacity, as well as to consider appointment of a guardian for Dr. Grist. The probate court appointed Tracy Parsons (hereinafter "Parsons"), a professional guardian, as the Temporary Guardian by order of July 30, 2020. Additionally, the court held that, as a temporary finding, Dr. Grist was "an incapacitated person in need of protection and assistance." This was noted to be supported by an affidavit by Dr. John Absher, a neurologist who evaluated Dr. Grist and found that Dr. Grist was "unable to effectively receive, evaluate or respond to information or to make or communicate decisions with appropriate, reasonably available support and assistance in order to meet the essential requirements for his physical health, safety, or self-care, or manage property or financial affairs to provide for his support." Parsons as temporary guardian was responsible for coordinating and managing Dr. Grist's care.

Based on the record, it appears that, pursuant to statute, Browning submitted a Guardian *Ad Litem* Report on January 29, 2021. In that report, she outlined for the Court Dr. Grist's current care and treatment needs, as well as potential future care and treatment needs. She explicitly noted that the goal was for Dr. Grist to remain in his residence with 24/7 caregivers as long as home-care remained safe. She also outlined the rights and powers that she recommended Dr. Grist retain, which were coordinated through Dr. Grist's counsel. Browning also recommended that Parsons continue to serve as temporary guardian, noting that "she has done an excellent job as the temporary guardian in this matter and would be the most appropriate person to serve." With respect to a conservator, Browning recommended that the court appoint a third-party professional conservator, rather than family members Mickie Grist or Carolina Lyons, "due to the family discord and conflict."

According to the Complaint, Parsons "contracted with Comfort Keepers to provide 24 hour a day, 7 days a week, 365 days a year in-home health care for Dr. Grist." *Second Amended Complaint Para 41*. The records evidence that Comfort Keepers did in fact provide this in-home care to Dr. Grist. The Plaintiffs allege that one of Comfort Keepers' employees, Kerry Burnett McCreary, also a Defendant, sexually assaulted Dr. Grist while providing the in-home care. Based on the report, Comfort Keepers investigated the complaint and terminated McCreary. According to Defendant Browning's Memorandum, Parsons also reported the allegations to the Greenville County Sheriff's Office, which declined to investigate the matter further. Additionally, the family members, including Stacey Grist, were aware of the allegations of sexual interactions between McCreary and Dr. Grist.

Based on the record, it appears that in January of 2022, the order appointing Parsons as temporary guardian expired. On April 7, 2022, Browning submitted an Addendum to Guardian *Ad Litem* Report. She noted that she had conducted a wellness visit of Dr. Grist at his home on March 30, 2022. She attached to the report an email from Chris Couchell, the owner of Comfort Keepers, related to concerns about Dr. Grist's care and reporting. She concluded, "I am concerned that there is not a temporary guardian in place to look out for his best interest, caregivers, medications, health care needs, therapy, and any additional emergency or urgent matters," and recommended a third-party professional be reappointed. The probate court issued an order on April 20, 2022 extending Parsons as temporary guardian for an additional 120 days.

Browning submitted a final Addendum to Guardian *Ad Litem* Report on August 11, 2022. She expressed concerns about the lack of durable medical equipment in the home following a recent hospitalization, as well as caregivers' failure to wear masks during Covid. In the report,

Browning also expressed concerns about an apparent change in care-givers, as well as costs associated with that change.

On August 25, 2022, Browning filed a Motion to be Relieved as Guardian Ad Litem, which was granted.

The Plaintiffs have alleged six causes of action against Browning including negligence/gross negligence, negligent hiring/negligent training/negligent supervision, abuse of process/aiding and abetting abuse of process, civil conspiracy, violation of South Carolina Unfair Trade Practices Act, and violation of the Power of Attorney Act.

The Plaintiffs allege that from 2005-2020, Dr. Grist took "extensive steps to ensure that the manner in which he wished for his estate to be distributed" was properly documented and to "prevent deviation from his wishes in the event of mental capacity." *Second Amended Complaint Para 20.*

Per the Second Amended Complaint, on February 19, 2019, Dr. Grist amended his durable power of attorney to name Stacey Grist as the POA upon his incapacity and to serve as guardian and/or conservator if such an appointment is necessary. *Second Amended Complaint Para 23.* On May 1, 2019, Dr. Grist amended his trust to name Stacey as successor trustee. *Second Amended Complaint Para 24.* The Plaintiffs allege that on May 13, 2020, Dr. Grist further amended his trust as it relates to distributions upon his death, diminishing Mickie's stake in the estate. *Second Amended Complaint Para 26.*

The Complaint states that upon being notified of the change in the estate documents, Mickie resigned as healthcare power of attorney and then "set about to take Dr. Grist to an unplanned doctor's appointment to have 'papers signed' with no explanation." *Second Amended Complaint Para 30.* The Plaintiffs allege that upon learning of Mickie's scheme, they called the

police to "stop Mickie." *Id.*

The Plaintiffs contend that on July 9, 2020, in direct violation of the POA, Mickie submitted an *ex parte* petition to the probate court seeking to be appointed guardian of Dr. Grist. Caroline Lyons filed a subsequent petition to serve as conservator. *Second Amended Complaint Para 31.* Thereafter, the Court appointed Browning to serve as emergency GAL. The Plaintiffs contend that they were "confused by this petition and appointment," as Dr. Grist had expressly instructed that Stacey serve as guardian and conservator. *Second Amended Complaint Para 36.*

The Complaint alleges that in the coming months, "it became clear that the proceedings . . . were intended to serve as a vehicle to gain control over Trust assets and to force a modification to the terms of the Trust" as it relates to Mickie's share of the estate. *Second Amended Complaint Para 37.*

The Plaintiffs contend that while Ms. Browning was serving as GAL, she was in contact with Mickie and/or her attorneys at least 34 times, but only contacted Stacey twice. *Second Amended Complaint Para 39.*

The Plaintiffs allege that the Court appointed Tracy Parsons as guardian and that she contracted with Comfort Keepers to provide fulltime in-home care for Dr. Grist. *Second Amended Complaint Para 41.* The Plaintiffs claim that Parsons went to great lengths to isolate Dr. Grist and prevent family members from visiting. They allege that Parsons was derelict in her duties, allowing Dr. Grist to be over-medicated and sexually exploited. *Second Amended Complaint Para 44.*

The Plaintiffs also allege that "in support of Ms. Browning's belief that Ms. Parsons' guardianship needed to be extended, Ms. Browning presented to the Court with an email dated March 25, 2022, approximately two weeks before the hearing to remove Tracy Parsons, which

purports to be an email from Chris Couchell of Comfort Keepers. In this correspondence Mr. Couchell seemingly attempts to provide evidence in support of Comfort Keepers' ongoing care, citing that Dr. Grist has wielded knives, has previously made threats to employees, and has also threatened self-harm." *Complaint Para 47.* The Complaint also states Browning submitted a letter to the court referencing "numerous falls that Dr. Grist had suffered," leading to the Court extending Parsons' guardianship. *Complaint Paras 48-49.* The Plaintiffs claim that "it became abundantly clear that none of the conduct noted by Ms. Browning actually occurred, but rather, was fabricated." *Second Amended Complaint Para 50.*

The Plaintiffs also allege that an internal investigation by Comfort Keepers and Parsons revealed that Comfort Keepers employee Kerry McCreary "admitted . . . that she had performed numerous sexual acts on Dr. Grist." *Second Amended Complaint Para 51.* The Complaint states that Parsons failed to report the incident to the Court.

The Plaintiffs assert that Browning was negligent in fulfilling her role as guardian ad litem in so much as while Ms. Browning "was responsible for Dr. Grist's health, wellbeing and safety," Dr. Grist was sexually assaulted by Ms. McCreary while she was "working within the course and scope of her employment with Comfort Keepers." *Second Amended Complaint Paras 55 and 59.* The Plaintiffs claim that Dr. Grist experienced bodily injury, past and future medical expenses, and pain and suffering as a proximate result of Browning's negligence. *Second Amended Complaint Para 62.*

The Complaint also includes a cause of action for negligent hiring, training and supervision as it relates to Comfort Keepers. Specifically, the Plaintiffs claim that Ms. Browning had a duty to supervise and properly hire workers for Dr. Grist. *Second Amended Complaint Para 73.* They claim that the Defendants breached the duty of care by failing to ensure that Dr. Grist was not

exposed to injurious behavior; in allowing Comfort Keepers employees to groom, harass, exploit, and abuse Dr. Grist in a sexual manner; in failing to ensure that Dr. Grist was safe while in Ms. McCreary's presence; in ignoring Ms. McCreary's known predilections toward sexual misconduct and abuse; in failing to shield Dr. Grist from dangerous conditions, situations and individuals; in failing to warn about Ms. McCreary's sexual proclivities; in failing to shield Dr. Grist from dangerous conditions, situations, and individuals, including predators such as Ms. McCreary; in failing to warn Plaintiff about Ms. McCreary's sexual proclivities; in failing to supervise Ms. McCreary; in failing to take steps to report to civil or criminal authorities related to the abuse; and in failing to exercise due care for the safety and well-being of Dr. Grist. *Second Amended Complaint Para 74.*

As it relates to the abuse of process cause of action, the Plaintiffs contend that Mickie and Caroline petitioned the Court for the appointment of a guardian and conservator in direct violation of Dr. Grist's clear directives. They allege that "Mickie and Caroline had Ms. Browning exceed her scope as Guardian ad Litem . . . by having her advocate, represent, or attempt to represent [their] interests." *Second Amended Complaint Para 83.* Specifically, the Plaintiffs contend that Ms. Browning interfered with issues between family members, committed misconduct in knowingly misrepresenting facts in reports submitted to the court, failed to take a guardian oath, covered up sexual misconduct of Comfort Keepers employees so as to allow Mickie and Caroline to continue their improper legal proceedings, made false reports regarding the court case, and committed misconduct by advocating and acting under an inherent conflict of interest in performing her duties. *Id.* They also contend that all of the Defendants, including Browning, helped aid and abet Mickie and Caroline's exercise of control of Dr. Grist. *Second Amended Complaint Para 86.*

The Plaintiffs also allege that the Defendants, including Browning, conspired to contrive a plan to exploit money from the Plaintiffs, to change Dr. Grist's estate documents, to use Dr. Grist's funds for their own personal gain, to gain control over Dr. Grist, and to name Comfort Keepers as caregiver in violation of the estate and trust documents. *Second Amended Complaint Para 91.* The Complaint states that "the intended purpose of the conspiracy was to gain control over Dr. Grist's assets, more specifically Trust assets, while seeking to avoid the No Contest Clause in the Trust and Will and what would have been the subsequent disinheritance of Mickie and Caroline." *Second Amended Complaint Para 92.*

The Plaintiffs also claim that Browning violated the South Carolina Unfair Trade Practices Act. Specifically, they allege that the Defendants "gained control over Dr. Grist illegally and billed him improperly," charging him "astronomically higher rates than similar companies or persons." *Second Amended Complaint Para 98.*

Finally, the Plaintiffs allege that the Defendants, including Browning, violated the Power of Attorney Act by "refusing to accept Dr. Grist's acknowledged durable power of attorney" naming Stacey Grist as his agent. *Second Amended Complaint Para 124.*

CONCLUSIONS OF LAW

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Baird v. Charleston County, 333 S.C. 519, 529, 511 S.E.2d 69, 74 (1999). In determining whether any triable issues of fact exist, the trial court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party. Manning v. Quinn, 294 S.C. 383, 386, 365 S.E.2d 24 (1988). Although the burden is on the party seeking summary judgment, the non-moving party must make a

showing sufficient to establish the existence of an element on which it will bear the ultimate burden of proof at trial; otherwise, the failure of proof concerning an essential element of the case necessarily renders all other facts immaterial. Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S. Ct. 2548, 2552, 91 L. Ed. 2d 265 (1986).

Once the moving party carries its initial burden, the "opposing party must, under Rule 56 (c), do more than simply show that there is some metaphysical doubt as to the material facts' but 'must come forward with specific facts showing that there is a genuine issue for trial." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991) (internal citation omitted). A party cannot rest on the mere allegations in her Complaint. Nor can a party "escape summary judgment on the mere hope that something may develop later at trial, or by remaining silent and later claiming additional facts supporting the cause of action." Hammond v. Scott, 268 S.C. 137, 143, 232 S.E.2d 336, 339 (1977).

"The plain language of Rule 56(c), SCRCP, mandates the entry of summary judgment, after adequate time for discovery against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case and on which that party will bear the burden of proof at trial." Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 579, 556 S.E.2d 732, 736 (Ct.App.2001); Baughman, 306 S.C. at 116, 410 S.E.2d at 545-546 (internal citation and quotation omitted). Furthermore, "[a] complete failure of proof concerning an essential element of the non-moving party's case necessarily renders all other facts immaterial." Baughman, 306 S.C. at 116, 410 S.E.2d at 546.

II. DISCUSSION

A. The Court Finds that Browning is afforded immunity related to her service as a court-appointed guardian ad litem.

Browning was appointed by order of the probate court to serve as guardian ad litem for Dr. Grist. She was the court-appointed guardian ad litem for the entirety of her involvement with Dr. Grist. Accordingly, Browning and Browning Geriatric Consulting, LLC are entitled to absolute quasi-judicial immunity related to the performance of Browning's duties as guardian ad litem for Dr. Grist. Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997).

In Fleming, the Court considered whether a court-appointed guardian *ad litem* in a child custody suit was immune from negligence claims for those acts performed within the scope of her appointment. The Court held, "[c]ase law from other jurisdictions, as well as strong policy reasons, convince us that guardians ad litem in private custody actions should be entitled to immunity." Id at 55. In fact, the Court found that the immunity extended to guardians *at litem* "is an absolute quasi-judicial immunity. Id at 57. The Court explained its reasoning:

> Both persuasive authority and the policy reasons set forth above convince us to hold today that private persons appointed as guardians ad litem in private custody proceedings are afforded immunity for acts performed within the scope of their appointment. Because one of the guardian's roles is to act as a representative of the court, and because this role can only be fulfilled if the guardian is not exposed to a constant threat of lawsuits from disgruntled parties, a finding of quasi-judicial immunity is necessary. Such a grant of immunity is crucial in order tor guardians to properly discharge their duties.

Id. The Court, however, limited that immunity to those acts within the scope of the guardian ad litem's duties, and stated that it would not extend, for example, to a guardian who abuses a child. Id at 56. This Court finds that all of Browning's actions related to Dr. Grist fell within the scope of her appointment as guardian ad litem, and does not find persuasive the Plaintiffs' arguments to the contrary, including those pertaining to alleged conflicts of interest between Browning and the

probate court, as well as Browning and other attorneys involved in the probate matter.

To the extent that the Plaintiffs argue that Browning failed to disclose conflicts of interest pertaining to a probate court judge, as well as other attorneys involved in the GC matter, the Plaintiffs have failed to provide evidence or testimony to support the factual contentions, and have also failed to cite to any statutory or case law which establishes that Browning would lose the immunity protections if she failed to disclose a conflict of interest. The Plaintiffs point to Browning previously being retained by attorney Dan Collins, prior counsel for Dr. Grist, to perform a mental status evaluation a year prior to her being appointed as guardian ad litem, as evidence of a failure to disclose a conflict of interest. However, the Plaintiffs fail to explain how this represents a conflict of interest that bars her from serving as guardian ad litem at a later point. Moreover, the Plaintiffs failed to disclose to this Court that neither Browning nor anyone from her office ever actually met Dr. Grist or performed the requested evaluation.

Additionally, the Plaintiffs argue that Browning had a conflict of interest because she was previously represented by one of the associate probate court judges, as well as some of the attorneys involved in the GC matter. However, this Court is not aware of any evidence that Browning's appointment as guardian ad litem was influenced by her relationships with any of the attorneys or judges associated with the probate case, nor have the Plaintiffs cited to any statutory or case law establishing that her professional relationships with those individuals amount to a conflict of interest which must be disclosed by Browning. Additionally, it should be noted that Browning was appointed by Judge Faulkner, not by an associate probate judge with whom she had a prior professional relationship. Finally, again, the Plaintiffs have not cited any law for the proposition that failure to disclose a conflict of interest would result in a guardian ad litem losing quasi-judicial immunity, and the Court does not find this argument compelling.

Accordingly, Browning and Browning Geriatric Consulting, LLC are entitled to absolute quasi-judicial immunity for all actions as guardian ad litem for Dr. Grist.

i. Browning and Browning Geriatric Consulting, LLC have immunity as to the Plaintiffs' negligence claims.

The Plaintiffs assert that Browning was negligent in fulfilling her role as guardian ad litem in so much as while Browning "was responsible for Dr. Grist's health, wellbeing and safety," Dr. Grist was sexually assaulted by Ms. McCreary while she was "working within the course and scope of her employment with Comfort Keepers." *Second Amended Complaint Paras 55 and 59.* Again, Browning, as guardian ad litem, cannot be found liable for acts of negligence, or even gross negligence or recklessness, in the performance of her duties. Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct.App. 2000) (*citing* Fleming v. Asbill, 326 S.C. 49, 57, 483 S.E.2d 751, 755-6 (1997)).

S.C. Code Ann. Section 62-5-106 summarizes the broad responsibilities of a court-appointed guardian ad litem. The responsibilities include acting within the best interest of the alleged incapacitated individual, obtaining and reviewing documents, interviewing the parties, discerning the alleged incapacitated individual's interests, contacting the Department of Social Services to facilitate investigations, filing reports of the guardian ad litem, and advocating for the best interests of the alleged incapacitated individual by making specific recommendations regarding resources, the appropriateness of a guardian or conservator, and any limitations to be imposed. It should be noted that the role of the guardian ad litem is distinct from that of the guardian. These positions are not duplicative. One does not find in the statute that the guardian ad litem is responsible for the alleged incapacitated individual's "health, wellbeing, and safety." That, in fact, is the responsibility of the guardian- not the guardian ad litem. However, assuming

that Browning was in fact responsible, and that she failed in those responsibilities, she would still be entitled to immunity for those failures.

While the Plaintiffs do not explicitly allege negligent acts by Browning beyond her failure to provide for Dr. Grist's "health, wellbeing, and safety," they do allude to misrepresentations made by Browning to the Court, and in fact, contend that Browning fabricated reports related to Dr. Grist, including Dr. Grist's threatening behavior, as well as falls. *See Second Amended Complaint Paras 47-50*. To the extent that the Plaintiffs contend that these were negligent acts outside of the scope of Browning's services as guardian ad litem, the Court disagrees and finds that the actions complained of would still be within the scope of her services because a guardian ad litem's duty to report is explicitly outlined in S.C. Code Ann. Section 62-5-106.

With respect to Browning reporting concerns related to Dr. Grist, reporting was part of her job and within the scope of her services pursuant to S.C. Code Ann. Section 62-5-106. Additionally, the Court does not find any evidence that Browning's reports were intentionally fraudulent or that she committed a fraud upon the Court by making specific recommendations, as argued by the Plaintiffs. In her report of April 7, 2022, Browning attached an email from Chris Couchell, owner of Comfort Keepers, who shared concerns about Dr. Grist. In that email, Mr. Couchell shared that a caregiver reported that Dr. Grist had made sexual advances, that he had thrown a coffee cup at her, that he had tried to leave and jump the gate, and he had made threats. This email by Mr. Couchell is supported by contemporaneous emails by his staff. Additionally, Ann Crippen, one of Dr. Grist's caregivers who appears to have been hostile toward the Defendants, corroborated that Dr. Grist had been aggressive and struck another caregiver. She also "might have heard through the grapevine" that Dr. Grist had thrown a coffee cup at another caregiver. It does not appear that Browning made these allegations, but instead simply relayed

information from Couchell to the Court. The record seems to support the truthfulness of these assertions. However, to the extent that information was untrue, sharing that information with the Court was her job as guardian ad litem, for which she is entitled to immunity. There is no evidence that Browning ever reported anything to the Court that she knew to be untrue, or that she was improperly motivated in her reporting to the Court.

With respect to Browning submitting a letter to the Court which referenced numerous falls, again, that was within the scope of her services as guardian ad litem. It also appears from documents submitted to the Court that Dr. Grist did have multiple documented falls, including one for which EMS had to be called. Additionally, Ann Crippen testified that Dr. Grist fell one time that she witnessed. (Crippen Depo. Page 68. Lines 3-7) Even had Browning referenced falls, plural, in error, and there had been only a single fall, that is simply a mistake in reporting, which is within the scope of her duties as guardian ad litem, for which she has immunity.

The Plaintiffs also appear to criticize Browning's recommendations to the probate pertaining to Dr. Grist, including her recommendation that Parsons serve as a neutral guardian. A guardian ad litem's recommendations to the Court are explicitly protected and immune from attacks such as the Plaintiffs'. "A recommendation by the guardian ad litem, no matter how disagreeable to one of the parties, will not sustain an action against the guardian." Falk at 288. Thus, Browning and Browning Geriatric Consulting, LLC are immune from any accusation that Browning's recommendations to the Court amount to negligence or are outside of the scope of her service as guardian ad litem.

The Plaintiffs have failed to produce evidence or testimony that any actions taken by Browning were outside of her scope of duties as the guardian ad litem. Accordingly, Browning is entitled to summary judgment as to the negligence cause of action.

ii. Browning and Browning Geriatric Consulting, LLC have immunity as to the Plaintiffs' negligent hiring/training/supervision claims.

The Plaintiffs contend that Browning, along with other Defendants, was negligent with respect to hiring, training and/or supervising Kerry McCreary, a Comfort Keepers employee who allegedly sexually assaulted Dr. Grist while providing home-sitting services to him. Specifically, the Plaintiffs claim that these Defendants breached the duty of care by failing to ensure that Dr. Grist was not exposed to injurious behavior; in allowing Comfort Keepers employees to groom, harass, exploit, and abuse Dr. Grist in a sexual manner; in failing to ensure that Dr. Grist was safe while in Ms. McCreary's presence; in ignoring Ms. McCreary's known predilections toward sexual misconduct and abuse; in failing to shield Dr. Grist from dangerous conditions, situations and individuals; in failing to warn about Ms. McCreary's sexual proclivities; in failing to shield Dr. Grist from dangerous conditions, situations, and individuals, including predators such as Ms. McCreary; in failing to warn Plaintiff about Ms. McCreary's sexual proclivities; in failing to supervise Ms. McCreary; in failing to take steps to report to civil or criminal authorities related to the abuse; and in failing to exercise due care for the safety and well-being of Dr. Grist. *Second Amended Complaint Para 74.*

The Plaintiffs have not produced any evidence establishing that Browning hired, trained or supervised McCreary. Based upon the testimony of Browning and McCreary, Browning did not know McCreary and McCreary did not know Browning. (McCreary Depo page 97 lines 3-6) When asked whether she recalled ever having any conversation or interaction with Jennifer Browning, McCreary not only testified that she did not, she further testified, "I don't know who that is." Additionally, McCreary testified that she never had any conversations with Browning about her sexual preferences or sexual interactions with Dr. Grist. Stacey Grist, the Plaintiff, also admitted in her deposition that she is not aware of any evidence that Browning hired McCreary, knew

McCreary, or was aware of McCreary's "history of abuse, sexual or otherwise." Stacey Grist likewise acknowledged that prior to the report of the McCreary incident, Browning was never made aware of any concerns related to Comfort Keepers. The Court finds that there is no evidence that supports that Browning was involved in hiring, training or supervising McCreary, that she had a duty to do so, or that she was aware of McCreary's "sexual proclivities." However, even if the evidence, taken in the light most favorable to the Plaintiffs, did establish that Browning was negligent with respect to hiring, training and/or supervising Kerry McCreary, Browning has immunity as to these claims.

To the extent that the Plaintiffs argue that Browning was negligent in failing to supervise and then report the alleged sexual abuse by McCreary, the evidence establishes that the police were notified and investigated. Browning acknowledges that she did not report the incident to the probate court; however, the Court agrees that doing so would fall within the scope of her duties under S.C. Code Ann. Section 62-5-106. With respect to the failure to report the alleged assault, Stacey Grist testified in her deposition that "it was [Browning's] job to bring it to the Court," acknowledging that her complaint of Browning pertains to a failure to act which falls within the parameters of her service as guardian ad litem. Thus, assuming that Browning should have reported the alleged incident to the probate court, and that failing to do so was negligent, which Browning denies, Browning is immune as it relates to the failure to report, just as she is immune from the claim that she was negligent in hiring, training and supervising McCreary.

The Court concludes that Browning and Browning Geriatric Consulting, LLC are thus entitled to judgment as a matter of law as to the negligent hiring, training and supervising cause of action.

iii. The Plaintiffs' cause of action for abuse of process must fail as there is no evidence to support such a claim against Browning and Browning Geriatric Consulting, LLC.

The Plaintiffs claim that Browning set out to "aid and abet" Mickie Grist and Caroline Lyon, people whom Browning had never met prior to being appointed by the Court, to allegedly "exercise control over Dr. Grist." *Second Amended Complaint Paras 83 and 86*. However, the Plaintiffs have not produced any evidence or testimony to support this claim.

Abuse of process is the "employment of legal process for some purpose other than which it was intended by law to effect- the improper use of a regularly issued process." Huggins v. Winn-Dixie Greenville, Inc., 249 S.C. 206, 153 S.E.693, 695 (1967). In order to prove abuse of process, the Plaintiffs must establish 1) an ulterior purpose, and 2) willful act in the use of the process not proper in the regular conduct of the proceeding. Id. The second element of abuse of process includes three parts: a willful or overt act; the act was in the use of the process; and the act was improper either because it was unauthorized or was aimed at an illegitimate collateral objective. Food Lion, Inc., v. UFCW, 351 S.C. 65, 567 S.E.2d 251, 153-4 (Ct.App. 2002).

As established above, Browning was appointed by the Court to serve as guardian ad litem for Dr. Grist. Her duty was to Dr. Grist. There is no evidence that Browning knew Dr. Grist or any of the other parties to the action, although, as stated above, she had been asked by Dr. Grist's attorney one year prior to her appointment to perform a mental status evaluation on Dr. Grist, which she did not perform. She did not initiate the probate court proceedings. Instead, she responded to an inquiry from the probate court as to whether she would agree to serve.

The Court agrees with Browning's argument that if her appointment was contrary to Dr. Grist's previously executed estate documents, that is an issue for the probate court, not Browning. It is not incumbent upon Browning, as a non-attorney, to analyze and evaluate complicated estate

documents to evaluate whether her appointment as guardian ad litem is consistent or contrary to the estate documents. Her duty, instead, is to fulfill the role which the probate court has ordered her to fulfill. Even if the initiation of the GC action in probate court was contrary to the estate documents, again, Browning did not initiate the action.

Additionally, there is no evidence that Browning committed a willful act in the use of the process that was improper. She did not "use the process," as she did not initiate the claim. The Court agrees that all of her actions were within the scope of her responsibilities as guardian ad litem and were neither improper nor unauthorized.

Finally, while the Plaintiffs argue that Browning evidenced bias toward Mickie Grist and Caroline Lyons, they have not cited to any reasonable evidence or testimony to support this allegation. In fact, the probate court records themselves show that Browning recommended against either Mickie Grist or Caroline Lyons serving as guardian or conservator, and instead, repeatedly recommended that a neutral party be appointed.

The Plaintiffs have not produced any evidence or testimony to support the elements of an abuse of process claim against Browning. Additionally, the Court finds that Browning enjoys quasi-judicial immunity against an abuse of process claim given that all of her actions were within the scope of her role as the guardian ad litem. Accordingly, the Plaintiffs' abuse of process cause of action against these Defendants must fail and Browning is entitled to summary judgment.

iv. The Plaintiffs are unable to prove any of the required elements to establish a cause of action for civil conspiracy by Browning.

The Plaintiffs are required to present to the Court evidence or testimony that taken in the light most favorable to the Plaintiffs could establish a claim of civil conspiracy against Browning. They have failed to do so. While the Plaintiffs claim that the Defendants, including Browning, contrived a plan to exploit money from the Plaintiffs, to change Dr. Grist's estate documents, to

use Dr. Grist's funds for their own personal gain, to gain control over Grist, and to name Comfort Keepers as Dr. Grist's in-home care giver in direct violation of the estate documents, they have failed to point to evidence or testimony that actually supports these allegations. *Second Amended Complaint Para 91*. There is no evidence that Browning conspired with the other Defendants as alleged by the Plaintiffs. There is likewise no evidence that Browning made intentional misrepresentations to the Court in order to justify her continued appointment as guardian ad litem for Dr. Grist. Instead, Browning was doing what the probate court ordered her to do- serve as a court-appointed guardian ad litem for Dr. Grist.

In South Carolina, a civil conspiracy claim requires a plaintiff show the following:

> "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to the plaintiff."

Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). While conspiracy may be inferred from the nature of certain acts, the relationship of parties, the interests of the alleged conspirators, or other circumstances, the Plaintiff must *actually produce evidence* from which joint assent of the minds of two or more parties may be inferred. Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150, 153 (Ct.App. 1987). In other words, evidence of the conspiracy is actually required to withstand a motion for summary judgment. There must be more than inuendo.

The Plaintiffs have failed to produce or identify evidence or testimony to establish that Browning did anything other than appropriately communicate and correspond with the other Defendants related to the probate matter and Dr. Grist's care. All communications by Browning to the other parties were appropriate and consistent with Browning's statutory duties and

responsibilities. There is no evidence of any agreement between Browning and any other party outside of the normal course of business with this type of probate matter.

In addition to the requirement that a plaintiff provide actual evidence to support the combination or agreement of the parties to the conspiracy, the plaintiff must also prove that the parties conspired to commit an unlawful act or a lawful act by unlawful means, together with the commission of an overt act in furtherance of the action. To be actionable, the primary purpose or object of an alleged conspiracy must be to injure the Plaintiff. Benedict College v. Nat'l Credit Sys., 400 S.C. 538, 735 S.E.2d 518 (Ct.App. 2012). The Court finds no compelling evidence of an unlawful act or lawful act by unlawful means, nor is there evidence of commission of an overt act in furtherance of the action. Browning was appointed by the probate court to serve as the guardian ad litem. She did not volunteer. She did not contact the probate court or the parties and ask to serve. There is no evidence that any of the parties or their attorneys requested that Browning serve as guardian ad litem. The court, instead, requested that she consider serving. She agreed to do so. Doing one's job as guardian ad litem is certainly not an unlawful act. Nor did Browning serve as guardian ad litem by unlawful means.

The Plaintiff has not presented evidence that Browning participated in or contrived a plan to exploit money from the Dr. Grist's estate. She did her job and was paid for doing her job. She did not contrive a plan to change Dr. Grist's estate documents, which was admitted by Stacey Grist. There is no evidence that Browning ever petitioned the court to challenge or change Dr. Grist's estate documents. There is likewise no evidence that Browning contrived a plan to gain control over Grist or use his funds for her own gain. She did her job, repeatedly recommending that a neutral, rather than any family member, including Mickie Grist of Caroline Lyon, serve as guardian or conservator. Finally, there is no evidence that Browning named Comfort Keepers as

in-home care giver in violation of the estate documents. Instead, the evidence establishes that she recommended an in-home care giver that she was familiar with which she thought would provide reasonable and necessary services to Dr. Grist.

In sum, the Plaintiffs have failed to produce any evidence or testimony to establish the necessary elements of conspiracy. Browning is thus entitled to judgment as a matter of law as to the conspiracy cause of action.

v. The Plaintiffs' claim for Violation of the S.C. Unfair Trade Practices Act is likewise deficient and fails as a matter of law.

The Plaintiffs allege that these Defendants violated the South Carolina Unfair Trade Practices Act (hereinafter "SCUTPA") by gaining control over Dr. Grist "illegally," billing him improperly, and charging him "an astronomically higher rate than similar companies and/or persons." The Plaintiffs, however, have not cited to any evidence that supports their allegations.

SCUTPA provides that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce" are unlawful. S.C. Code Ann. § 39-5-20(a). To recover under SCUTPA, a plaintiff must show "(1) the defendant engaged in an unfair or deceptive act in the conduct of trade or commerce; (2) the unfair or deceptive act affected [the] public interest; and (3) the plaintiff suffered monetary or property loss as a result of the defendant's unfair or deceptive act(s)." Century Aluminum of S.C., Inc. v. S.C. Pub. Serv. Auth., 278 F. Supp. 3d 877, 890 (D.S.C. 2017).

With respect to the first element of a SCUTPA claim, an act is "unfair" when it is offensive to public policy or when it is immoral, unethical, or oppressive. An act is "deceptive" when it has a tendency to deceive. Id. (citing Health Promotion Specialists, LLC v. S.C. Bd. of Dentistry, 403

S.C. 623, 743 S.E.2d 808 (2013). A mere showing that a company's representative was negligent or incompetent does not amount to a showing of a deceptive act or practice. Clarkson v. Orkin Exterminating Co., 761 F.2d 189, 191 (4th Cir. 1985). Indeed, where there is no evidence that an actor knew information to be false, the act is not unfair or deceptive. Washington Mut. Bank, FA v. Hiott, No. 2006-UP-329, 2006 WL 7286775 (S.C. Ct. App. Sept. 19, 2006) (unpublished) (no evidence supporting that bank employee knew loan application contained false information).

The Plaintiffs contend that Browning violated SCUPTA by attempting to gain control over Dr. Grist illegally and billing him improperly, charging him an astronomically higher rate than others. The Court finds that the Plaintiffs have not provided any proof to support these allegations. Again, Browning was appointed by the probate court; she did not attempt to gain control over Dr. Grist "illegally." Her appointment as guardian ad litem was both appropriate and necessary, and was ordered by the probate court. Browning, like other professional guardians, charges a set rate for all court-appointed cases. Browning submits a schedule of fees to the probate court on an annual or near-annual basis and there is no evidence that this schedule was rejected by the Probate Court. Browning has also argued that the rate that she charged for Dr. Grist's probate matter was consistent with the schedule of fees and approved by the court ahead of time, and was also the same rate charged on the other probate matters on which she worked during the same timeframe. The Plaintiff has not contested this position. While it may be true that Browning's rate is higher than some other professional guardians, she has over 30 years of experience and is well known to the probate court. Other than simply claiming that her rates were unnecessary high, the Plaintiffs have not provided any evidence to support this allegation. They have likewise failed to provide evidence or testimony that Ms. Browning improperly billed for her services. Thus, Browning's service as guardian ad litem to Dr. Grist could not amount to a SCUTPA violation.

The Plaintiffs' SCUTPA claim against Browning must fail as a matter of law, as there exists no evidence to support any of the necessary elements of the claim. Summary judgment is thus warranted.

vi. A cause of action for violation of the Power of Attorney Act does not exist, and even if it does, there is no evidence that Browning breached the Act.

The Plaintiffs have sued Browning for violation of the South Carolina Uniform Power of Attorney Act, contending that Dr. Grist executed a durable power of attorney naming Stacey Grist as his agent and that the Defendants "refused to accept" the durable power of attorney. *Amended Complaint Paras 123-124.* The Court has not identified any case law in South Carolina recognizing a private cause of action for violation of the Power of Attorney Act. Additionally, the Plaintiffs did not argue in their memorandum in opposition to the motion that this cause of action is valid, nor did they cite to any supportive case law. Accordingly, this cause of action must be dismissed.

However, the Court further finds that should such a cause of action exists, there is no evidence that Browning violated the Act. Browning never refused to accept Dr. Grist's previously executed power of attorney. Browning was appointed by the probate court as guardian ad litem. She did not challenge the prior power of attorney. She did not serve as power of attorney. She did the job that she was ordered to do- serve as guardian ad litem for Dr. Grist.

Assuming that she did refuse to accept the durable power of attorney naming Stacey Grist, which the Court finds she did not, the Act grants the guardian, conservator, *or other fiduciary* acting for the principal the right to challenge the power of attorney or ask the Court to construe the power of attorney. S.C. Code Ann. § 62-8-116. Thus, as a fiduciary, Browning's theoretical actions were explicitly provided for by the Act.

The Court would note that S.C. Code §62-8-120 does provide for the award of "reasonable attorney's fees and costs incurred in an action or proceeding that confirms the validity of the power of attorney or mandates acceptance of the power of attorney." The Plaintiffs have not established that this provision applies or grants the Plaintiffs a private right of action under the Act.

Thus, summary judgment is appropriate.

CONCLUSION

For the foregoing reasons, the Defendants' Motion for Summary Judgment is granted as to all causes of action.

AND IT IS SO ORDERED.

E-signature of Judge Gravely to follow

Greenville Common Pleas

Case Caption: Stacey Grist , plaintiff, et al vs. Priscilla Mickie Grist , defendant, et al

Case Number: 2022CP2304055

Type: Order/Summary Judgment

So Ordered

s/ Honorable Perry H. Gravely, #2755