

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Perry H. Gravelly, Circuit Court Judge

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Circuit Court Case No. 2022-CP-23-04055 and  
Appellate Case No. 2025-000366

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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,.....Appellants,

v.

Priscilla Mickie Grist, Caroline 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

Of which Jennifer Browning, Browning Geriatrics Consulting, LLC,  
Tracy Parsons, Kiki’s Kare 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.....Respondents.

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INITIAL BRIEF OF RESPONDENTS JENNIFER BROWNING AND BROWNING  
GERIATRICS CONSULTING, LLC

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Fred W. “Trey” Suggs III, SC Bar No. 70222  
Cassidy Coates Price, P.A.  
1052 N. Church Street (29601)  
Post Office Box 10529  
Greenville, SC 29603  
(864) 349-2616 (p)  
(864) 349-0303 (f)  
tsuggs@cassidycoates.com

Attorneys for Respondents Jennifer Browning and  
Browning Geriatrics Consulting, LLC

**TABLE OF CONTENTS**

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIESiv ..... iv

STATEMENT OF THE ISSUES ON APPEAL..... 1

STATEMENT OF THE CASE.....1

STATEMENT OF THE FACTS.....2

STANDARD OF REVIEW ..... 6

ARGUMENT..... 7

    I.    THE TRIAL COURT APPROPRIATELY CONCLUDED THAT RESPONDENTS ARE ENTITLED TO QUASI-JUDICIAL IMMUNITY FOR NEGLIGENCE AND/OR GROSS NEGLIGENCE .....7

    II.   THE TRIAL COURT PROPERLY FOUND THAT RESPONDENT HAS FAILED TO PRODUCE EVIDENCE THAT RESPONDENTS CONSPIRED TO INJURE APPELLANT AND APPROPRIATELY AWARDED RESPONDENTS SUMMARY JUDGMENT.....13

    III.  THE MOTION FOR SUMMARY JUDGMENT WAS RIPE AS ADEQUATE TIME WAS AFFORDED FOR DISCOVERY.....17

CONCLUSION..... 18

**TABLE OF AUTHORITIES**

**CASES**

Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991).....6

Benedict College v. Nat’l Credit Sys., 400 S.C. 538, 735 S.E.2d 518 (Ct. App. 2012)..... 15

Boone v. Sunbelt Newspapers, Inc., 347 S.C. 571, 556 S.E.2d 732 (Ct. App. 2001).....6

Evans v. Stewart, 370 S.C. 522, 636 S.E.2d 632 (Ct. App. 2006).....14

Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).....12

Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997).....7, 8, 12

Fleming v. Rose, 350 S.C. 488, 567 S.E.2d 857 (2002).....6

Grimsley v. S.C. Law Enf’ t Div., 415 S.C. 33, 780 S.E.2d 897 (2015).....14

Guinan v. Tenet Health Systems of Hilton Head, Inc., 383 S.C. 48, 677 S.E.2d 32 (Ct. App. 2009).....18

Helms Realty, Inc. v. Gibson–Wall Co., 363 S.C. 334, 611 S.E.2d 485 (2005).....6

Island Car Wash, Inc. v. Norris, 292 S.C. 595, 358 S.E.2d 150 (Ct. App. 1987).....13

Paradis v. Charleston Cnty. Sch. Dist., 433 S.C. 562, 861 S.E.2d 774 (2021).....13

Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 776 S.E.2d 426 (Ct. App. 2015).....7

Town of Hollywood v. Floyd, 403 S.C. 466, 744 S.E.2d 161 (2013).....7, 14

USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 661 S.E.2d 791 (2008).....6

Vista Del Mar Condo. Ass'n v. Vista Del Mar Condominiums, LLC, 441 S.C. 223, 892 S.E.2d 532 (Ct. App. 2023) .....6

Willis v. Wu, 362 S.C. 146, 607 S.E.2d 63 (2004).....6

**RULES**

SCRCP Rule  
56(c).....6

SCRCP  
30(a)(2).....18

**STATUTES**

S.C. Code Ann. Section 32-5-106, et seq.....3

S.C. Code Ann. Section 62-5-106, et seq.....9, 16

## **STATEMENT OF THE ISSUES ON APPEAL**

1. The circuit court appropriately concluded that Respondents are entitled to quasi-judicial immunity regarding Appellants' claims of negligence/gross negligence.
2. The circuit court properly determined that there exist no genuine issues of material fact and Respondents are entitled to judgment as a matter of law as to the conspiracy cause of action.
3. Adequate discovery had been completed; thus, that summary judgment was ripe and timely.

## **STATEMENT OF THE CASE**

This case arises out of the appropriate performance by Jennifer Browning and Browning Geriatric Consulting, LLC's ("Respondents") of their duties upon being appointed by the Greenville County Probate Court as Guardian ad Litem for Sanford W. Grist. Dissatisfied with the performance of the Respondents, as well as the other parties who served Dr. Grist in the probate proceedings, Stacey Grist ("Appellant") sued Respondents and others for 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.<sup>1</sup>

By way of procedural history, on August 1, 2022, Appellant filed a Complaint against Respondents and others in the Court of Common Pleas of Greenville County. See Compl. On August 15, 2022, Appellant filed an Amended Complaint with no substantive changes to the pleading. See Amended Compl. Respondents filed a timely Answer. Appellant filed a Second Amended Complaint on January 29, 2024, asserting an additional claim for negligence/gross negligence, which again was timely answered by Respondents. See Second Amended Compl.

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<sup>1</sup> Appellants have only appealed the grant of summary judgment as to negligence and conspiracy; thus, the remainder of the causes of action have been abandoned.

The case was litigated for over two years. The parties exchanged extensive written discovery and took at least eight (8) depositions. On October 10, 2024, Respondents filed a Motion for Summary Judgment pursuant to South Carolian Rules of Civil Procedure Rule 56. See Respondents' Motion for Summary Judgment. Respondents filed a memorandum in support of the Motion for Summary Judgment on October 11, 2024. See Respondents' Memorandum in Support of Motion for Summary Judgment. The Respondents' Motion for Summary Judgment was heard by Judge Perry H. Gravelly of the 13<sup>th</sup> Circuit on October 16, 2024. Judge Gravelly subsequently and appropriately granted Respondent's Motion for Summary Judgment by way of an order filed on January 6, 2025, concluding, amongst other findings, that Respondents were afforded immunity related to their service as a court-appointed guardian ad litem with respect to the negligence and gross negligence causes of action, and that Appellant's claims must fail as there were no genuine issues of material fact and Respondents were entitled to judgment as a matter of law as to all causes of action. See Order Granting Respondents' Motion for Summary Judgment. Appellant's subsequent Motion to Alter and Amend was appropriately denied. See Order Denying Motion to Alter and Amend. This appeal followed by filing of a notice of appeal on February 27, 2025.

### **STATEMENT OF FACTS**

This civil lawsuit arises out of probate matter involving all Respondents, as well as Dr. Stanford 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 "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. See Order Appointing Prescilla Mickie Grist and Jennifer Browning.<sup>2</sup> Additionally, on July 27, 2020, the probate court appointed Heather Scalzo as Dr. Grist’s attorney. See Order Appointing Heather Scalzo.

Upon appointment as guardian ad litem, Respondent Browning interviewed all of the family members, as well as several of the attorneys who were already involved. See Preliminary Report of the GAL, Jennifer Browning. In her preliminary report dated July 29, 2020, Respondent 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. *Id.*

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 known to the Court, as the Temporary Guardian by order of July 30, 2020. See Order Appointing Tracy Parsons. Additionally, the Court held that, as a temporary finding, Dr. Grist was “an incapacitated person in need of protection and assistance.” *Id.* This was noted to be supported by an affidavit by Dr. John Absher, 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.” *Id.* Parsons as temporary

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<sup>2</sup> Appellants incorrectly assert that Respondent Browning was appointed as GAL at the same time that Respondent Tracy Parsons was appointed as guardian; in fact, Respondent was appointed as GAL simultaneously with the appointment of Mickie Grist as temporary guardian on July 15, 2020.

guardian was responsible for coordinating and managing Dr. Grist's care pursuant to the duties and responsibilities outlined by South Carolina statute.

Thereafter, Respondent Browning interviewed Dr. Grist on August 18, 2020 and September 2, 2020, and reviewed the documents available on PAWS. See Guardian Ad Litem Report.

Pursuant to statute, Respondent Browning submitted a Guardian Ad Litem Report on January 29, 2021. *Id.* 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 that Dr. Grist retain. Respondent 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." *Id.* With respect to a conservator, Respondent Browning recommended that the court appoint a third-party professional conservator "due to the family discord and conflict." *Id.*

According to the Second Amended 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 Compl, ¶ 41. The records evidence that Comfort Keepers provided this in-home care to Dr. Grist. Appellant alleged that one of Comfort Keepers' employees, Kerry Burnett McCreary ("McCreary"), also a Defendant, sexually assaulted Dr. Grist while providing the in-home care. See Second Amended Compl, ¶ 51. While the veracity of this allegation is unknown, it is undisputed that Comfort Keepers investigated the report and terminated McCreary. McCreary Dep. 72:5-11; Couchell Dep. 73:10-18; Stacey Grist Dep. 200: 5-10. The alleged incident was also reported to the Greenville County Sheriff's Office, which declined to investigate the matter further.

Couchell Dep. 78: 7-17. Additionally, all of the family members, including Appellant, were aware of the allegations of sexual interactions between McCreary and Dr. Grist.

In January of 2022, the order appointing Parsons as temporary guardian expired. On April 7, 2022, Respondent Browning submitted an Addendum to Guardian Ad Litem Report. See Addendum to Guardian Ad Litem Report. Respondent Browning noted that she had conducted a wellness visit on Dr. Grist at his home on March 30, 2022. Respondent Browning attached to the report an email from Chris Couchell, the owner of Comfort Keepers, related to concerns about Dr. Grist's care. Respondent Browning 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. *Id.* The probate court issued an order on April 20, 2022 extending Parsons as temporary guardian for an additional 120 days. See Order Extending Temporary Guardianship.

Respondent Browning submitted a Final Addendum to Guardian Ad Litem Report on August 11, 2022. See Addendum to Guardian Ad Litem Report. Respondent Browning 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, Respondent Browning also expressed concerns about an apparent change in care-givers, as well as costs associated with that change. *Id.*

On August 25, 2022, Respondents filed a Motion to be Relieved as Guardian Ad Litem, which was granted. See Motion to be Relieved as Guardian Ad Litem.<sup>3</sup>

### **STANDARD OF REVIEW**

When reviewing the grant of a summary judgment motion, appellate courts apply the same standard that governs the trial court under Rule 56(c), SCRPC, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRPC; Helms Realty, Inc. v. Gibson–Wall Co., 363 S.C. 334, 340, 611 S.E.2d 485, 488 (2005); Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. Willis v. Wu, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004); USAA Prop. & Cas. Ins. Co. v. Clegg, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008).

“The plain language of Rule 56(c), *South Carolina Rules of Civil Procedure*, 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 v. American Tel. and Tel. Co., 306 S.C. at 116, 410 S.E.2d at 545-46 (1991).

“When the circuit court grants summary judgment on a question of law, [this Court] review[s] the ruling de novo.” Vista Del Mar Condo. Ass'n v. Vista Del Mar Condominiums, LLC,

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<sup>3</sup> Respondents do not address the veracity or accuracy of the Statement of Facts and Statement of Additional Facts found in Appellants’ Initial Brief as it relates to the history of Dr. Grist’s estate planning, as they are irrelevant to the causes of action against Respondents. Stated otherwise, Respondents were appointed by the Probate Court and ordered to serve as guardian ad litem. Dr. Grist’s estate planning and related documents have no bearing on that appointment and requirement that Respondent serve as GAL.

441 S.C. 223, 232, 892 S.E.2d 532, 537 (Ct. App. 2023). “In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.” Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Clear View Const., LLC, 413 S.C. 615, 620, 776 S.E.2d 426, 429 (Ct. App. 2015). “However, it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine.” Id., quoting Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013).

## **ARGUMENT**

### **I. THE TRIAL COURT APPROPRIATELY CONCLUDED THAT RESPONDENTS ARE ENTITLED TO QUASI-JUDICIAL IMMUNITY FOR NEGLIGENCE AND/OR GROSS NEGLIGENCE.**

Respondents are entitled to quasi-judicial immunity for actions while serving as guardian ad litem. Fleming v. Asbill, 326 S.C. 49, 483 S.E.2d 751 (1997). It is an uncontroverted fact that Respondent 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. Thus, Respondents retain the benefit of that immunity while acting within the scope of the guardianship.

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, “Case 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 ad 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 for guardians to properly discharge their duties.

Id. The Court, however, understandably 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. Respondents accept and embrace those limitations. However, Appellants cannot and have not identified, articulated, or produced evidence which supports or suggests that Respondents' actions ever exceeded the bounds or scope of the guardianship.

Rather than present facts, testimony, or evidence to establish that Respondents acted outside of the scope of guardianship and thus are not entitled to immunity, instead, as she did in her Second Amended Complaint, Appellant relies upon smoke, mirrors and inuendo, what she speciously refers to as "circumstantial evidence," in arguing that Respondents "used these probate filings . . . to exercise complete control over Dr. Grist's person and finances, in an attempt to assist in the re-writing of Dr. Grist's estate plan . . . ." App. Brief at 8. This allegation is supported by neither evidence nor testimony. All of the evidence establishes that all of Respondents' actions as guardian ad litem, including representations, reports, and submission to the probate court, were within the scope of the guardianship.

As stated above, Appellant asserts that Respondents were negligent in fulfilling the role of guardian ad litem in so much as while Respondent 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 Compl. ¶¶ 55 and 59. Additionally, Appellant claims that Respondents submitted

“numerous reports to the Greenville County Probate Court which contained on many occasions knowingly false, inaccurate, or intentionally misleading information, all geared towards ensuring the continuance of the guardianship action.” App. Brief at 8-9. Specifically, Appellant submits that by communicating thirty-four times with the then-serving guardian, Mickie Grist, who had no prior experience serving as a guardian, Respondents exceeded the scope of the services they were ordered by the probate court to provide. Appellant relies upon out-of-context and intentionally brief excerpts from Respondent Browning’s deposition to argue that she even admitted that some of her actions were beyond the scope of her service as guardian ad litem. Respondents made no such admissions.

S.C. Code Ann. Section 62-5-106 summarizes the responsibilities of a court-appointed guardian ad litem. The responsibilities are broad and 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. *S.C. Code Ann. Section 62-5-106, et seq.* 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, *arguendo*, that Respondents were in fact responsible, and that they failed in those responsibilities, they would still be entitled to immunity for those failures.

While Appellant did not explicitly allege in the Second Amended Complaint 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. Second Amended Compl. ¶¶ 47-50. Of course, Appellant also alleges such "facts" in her Initial Brief, as well. App. Brief at 8-9. To the extent that the Appellant contends that these were negligent acts outside of the scope of Respondents' services as guardian ad litem, first, the allegations are blatant falsehoods without any evidentiary support, and secondly, the actions are squarely 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.

Appellant does not cite to any specifics in her initial brief pertaining to her allegation that Respondents filed numerous reports containing "knowingly false, inaccurate, or intentionally misleading information." App. Brief at 8. Thus, it is not possible to address this contention with disproving facts. However, again, the Circuit Court properly found that had there been errors in the reports, or had Respondents been negligent in completing and filing the reports, Respondents would be entitled to immunity for those actions as those responsibilities fall squarely within the statutorily described duties of a guardian ad litem.

Appellant also suggests that Browning's communications with Mickie Grist were somehow outside of the scope of her guardianship and were intended to harm Dr. Grist. Appellant cites to page 151 of Respondent Browning's deposition for the proposition that "Respondent Browning testified to speaking to Respondent Prescilla Mickie Grist on no less than thirty-four (34) occasions . . . in an effort to 'provide support' to Respondent Prescilla Mickie Grist in furtherance of her endeavors, i.e. have Dr. Grist's estate plan rewritten- while at the same time carefully tailoring

her findings in an attempt to avoid triggering the trusts no contest clause . . . .” App. Brief at 9. A complete review of the exchange between counsel and Respondent Browning disproves Appellant’s mischaracterization of the testimony.

Q: So then we have 07-23. Communications with Deputy Williams times three. Now, is it coincidental that you talked to Deputy Williams here by that’s a different Deputy Wilson than Tracey spoke to? Is that your understanding?

A: Yes.

Q: Okay. You spoke Deputy Williams. Multiple communications with Mickie. Welfare check concerns about guns and Dr. Grist’s safety. Two hours on 07-23. So did you actually speak to Deputy Williams three times?

A: Yes.

Q. Okay. Did he express frustration with you?

A: I think he expressed frustration with the situation.

Q: On 07-24 communications with Neal Rabon you times three to review the court order. Update on the case. Direction on the sheriff’s office. Emails and telephone communications to and from Mickie to provide support. Is it your job to support her? I thought you were independent? Is it your job to support her?

Mr. Suggs: Object to the form of the question.

A: It’s not my job to.

Browning Dep. 150: 18 –151: 18. Respondent Browning was being questioned about billing entries related to her investigation as guardian ad litem. One of the billing entries related to a phone call with Mickie Grist to “provide support” to her as the individual then serving as guardian. Respondent Browning simply stated that it is not her “job” to support Mickie Grist. However, even if it was not Respondent Browning’s “job” to do so, she was still communicating with Ms. Grist in her capacity and within the scope as guardian ad litem. The exchange between Appellant’s attorney and Respondent Browning certainly does not establish that by communicating with the guardian, Respondent Browning was doing so personally and outside of the scope of her guardianship. Clearly, she billed for the time as the guardian ad litem and also included references to the conversations with Mickie Grist in her reports to the probate court. Moreover, there is

nothing in the exchange, or in any other testimony or document, that supports the Appellant's conclusion that the conversations with Mickie Grist were "in furtherance of her endeavors, i.e. have Dr. Grist's estate plan rewritten- while at the same time carefully tailoring her findings in an attempt to avoid triggering the trusts no contest clause . . . ." App. Brief at 9. None. All that is known about the conversation comes from Respondent Browning, who certainly did not admit to communicating with Mickie Grist to assist with re-writing Dr. Grist's estate plan or for any other purpose than as guardian ad litem speaking to temporary guardian. One cannot reasonably infer from the deposition exchange that Respondent was engaged in anything untoward as it relates to Appellant.<sup>4</sup>

Appellant has failed to produce evidence or testimony that can reasonably be interpreted as suggesting that any actions taken by Respondents were outside of the scope of duties as the guardian ad litem. Again, Respondents, as guardian ad litem, cannot be found liable for acts of negligence, or even gross negligence or recklessness, in the performance of their 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)). Accordingly, summary judgment was appropriately awarded as to the negligence and gross negligence causes of action.

The Circuit Court considered all of the evidence and testimony before it in properly concluding that there was no evidence that Respondents acted outside of the scope of the guardianship and in awarding summary judgment to Respondents.

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<sup>4</sup> It should be noted that Respondent Browning recommended that Mickie Grist be substituted with a non-family member to serve as temporary guardian at Respondent's first opportunity. See Preliminary Report of Guardian ad Litem.

**II. THE TRIAL COURT PROPERLY FOUND THAT APPELLANT HAS FAILED TO PRODUCE EVIDENCE THAT RESPONDENTS CONSPIRED TO INJURE APPELLANT AND APPROPRIATELY AWARDED RESPONDENTS SUMMARY JUDGMENT.**

Appellant has concocted a theory that Respondents conspired with other professionals, both individuals and companies, to injure Appellant by contriving a plan to exploit money from Appellant, 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. Second Amended Compl. ¶ 91. There is no evidence that any of the Respondents, including Respondent Browning, conspired with one another in any form or fashion as alleged by Appellant. Nothing. Instead, Respondent Browning was simply doing her job 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) (*emphasis ours*). In other words, actual evidence of the conspiracy is required to withstand a motion for summary judgment; there has to be more than an unsubstantiated theory. Appellant has not provided evidence which reasonably infers that the requisite elements of conspiracy have been met.

Appellant has failed to produce or identify a single piece of evidence or testimony, which taken in the light most favorable to Appellant, creates a genuine issue of material fact that can lead to a reasonable inference that Respondents did anything other than appropriately communicate and correspond with the other professionals involved in the probate matter and Dr. Grist's care. While it is true that courts are required to view the facts in the light most favorable to the nonmoving party, to survive a motion for summary judgment, "it is not sufficient for a party to create an inference that is not reasonable or an issue of fact that is not genuine." Town of Hollywood v. Floyd, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) (citing Evans v. Stewart, 370 S.C. 522, 526, 636 S.E.2d 632, 635 (Ct. App. 2006)); Grimsley v. S.C. Law Enf' t Div., 415 S.C. 33, 40, 780 S.E.2d 897, 900 (2015). All communications by Respondent Browning to the other parties were appropriate and consistent with her statutory duties and responsibilities. There is no evidence of any agreement between Respondents and any other party outside of the normal course of business in this type of probate matter.

Once again, Appellant relies upon Respondent Browning's answer to a single deposition question, taken out of context as explained hereinabove, to support her allegation that "Respondent Browning became a critical part of Defendant Priscilla Mickie Grist's efforts to gain control over her father and his estate." App. Brief at 11. Respondent Browning simply stated that it was not her job to support Priscilla Mickie Grist as temporary guardian. This is true. Respondent Browning did not have an affirmative duty or responsibility to assist an inexperienced temporary guardian; however, working with an individual who has been appointed by the probate court as the temporary guardian is not evidence of conspiracy no matter how hard one squints. Instead, it is evidence that Respondent Browning took her appointed role as guardian ad litem to heart and made efforts to communicate with Mickey Grist, primarily by email, to assist with coordinating Dr.

Grist's care. That is all the 34 communications establish- appropriate and reasonable communication between guardian ad litem and guardian. If the 34 communications established otherwise, Appellant would certainly cite to the language within the email communications to support her claim of a conspiracy.

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).

Appellant cannot cite to evidence or testimony inferring or suggesting an unlawful act or lawful act by unlawful means, nor is there evidence of commission of an overt act in furtherance of the action. Again, Respondent Browning was appointed *by the Court* to serve as the guardian ad litem. She did not volunteer. She did not contact the Court or the parties and ask whether she could serve. The Court, instead, requested that she serve. She agreed to do so. She did her job. Doing one's job as guardian ad litem is certainly not an unlawful act. Nor did Respondents serve as guardian ad litem by unlawful means. Respondent Browning did not participate or contrive a plan to exploit money from Dr. Grist's estate. She did her job and was paid for doing her job. There is no evidence to the contrary. She did not contrive a plan to change Dr. Grist's estate documents<sup>5</sup>. She did her job. She never petitioned the Court to challenge or change Dr. Grist's estate documents. She did not contrive a plan to use Dr. Grist's funds for her own gain. She did her job, for which she was paid. She did not contrive a plan to gain control over Grist. She did her

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<sup>5</sup> Stacey Grist testified that she is not aware of Browning ever seeking to change estate documents and that the estate documents have not been changed. Depo Stacey Grist p. 209, ll. 11-15.

job, repeatedly recommending that a neutral, *rather than any family member, including Mickie Grist of Caroline Lyon*, serve as guardian or conservator. Finally, Respondent Browning did not name Comfort Keepers as in-home care giver in violation of the estate documents. She did her job, recommending an in-home care giver that she was familiar with whom she thought would provide reasonable and necessary services to Dr. Grist.

Appellant also points to Respondents' failure to notify the Court of allegations of sexual assault by a third-party of whom Respondent Browning had no control or involvement as further evidence of a conspiracy, although she fails to explain how other than "presumably to ensure continuation of the guardianship process and the fees that were being paid as a result of the same." App. Brief at 12. As Respondent Browning testified in her deposition, to which Appellants cite, she learned of the alleged assault and discussed the allegations with the temporary guardian, Respondent Parsons. Respondent Browning understood that Respondent Parsons was going to advise the probate court of the allegations; thus, Respondent Browning did not. Browning Dep. 200: 21 – 201: 5. That is all that can be deduced from the evidence and testimony before the Court. One cannot reasonably infer from Respondent Browning's reliance upon the guardian to report the alleged assault that she was conspiring to conceal the assault so that she could continue to bilk the estate for her services. Reporting (or not reporting) an alleged assault to the Court would not have any impact on Browning's status as guardian ad litem. Thus, this does not create a genuine issue of material fact. Even if it was determined that Browning was required to report the allegations to the probate court, which she was not, her duty to report clearly falls within the scope of her statutory duties as guardian ad litem, for which she has quasi-judicial immunity. *S.C. Code Ann. Section 62-5-106.*

Appellant also submits that Respondent Browning submitted “knowingly false reports” to the Probate Court; however, Appellant does not offer any support for this contention. App. Brief at 15. While she cites to page 172 of Respondent Browning’s deposition, the purpose of this citation is unclear as it does not establish a material fact, and certainly not an admission, related to the submission of false reports. Instead, the exchange between counsel and Respondent Browning simply pertains to counsel questioning Browning about her reports regarding Dr. Grist, specifically about falls. Respondent Browning simply states that she does not know why the Comfort Keepers’ caregivers notes did not include certain information over which she had no control. That is it and that is all.

In sum, the Circuit Court rightly concluded that Appellant failed to produce evidence or testimony that creates a genuine issue of fact or reasonable inference to establish the necessary elements of conspiracy- circumstantial or otherwise. As such, summary judgment was appropriate.

**III. THE MOTION FOR SUMMARY JUDGMENT WAS RIPE AS ADEQUATE TIME WAS AFFORDED FOR DISCOVERY.**

Appellant filed her initial Summons and Complaint on August 1, 2022. Respondents filed their Motion for Summary Judgment on October 10, 2024. During the two years of litigation, the parties exchanged multiple sets of discovery, including thousands of pages of documents, and collectively took eight (8) depositions, six of which were of parties. Appellant argues that two years of litigation was an inadequate amount of time to complete discovery and that Respondents’ motion for summary judgment was premature. Appellant’s argument is belied by the timeline, as well as the amount of discovery that was obtained prior to Respondents’ Motion for Summary Judgment.

While it is generally true that summary judgment may be premature where a party has not been provided a fair opportunity to complete discovery, “a party claiming summary judgment is premature because they have not been provided a full and fair opportunity to conduct discovery must advance a good reason why the time was insufficient under the facts of the case, and why further discovery would uncover additional relevant evidence and create a genuine issue of material fact.” Guinan v. Tenet Health Systems of Hilton Head, Inc., 383 S.C. 48, 54–55, 677 S.E.2d 32, 36 (Ct. App. 2009). Appellant has not and cannot carry this burden. Instead, Appellant submits as the sole basis for her prematurity argument that she did not have an opportunity to question Respondent Parsons at her deposition on October 9, 2024. App. Brief at 19.

Appellant provides a complicated procedural history as cover for Appellant’s failure to question Respondent Parsons at her deposition. App. Brief at 17-19. However, counsel for Appellant was not prevented from questioning Respondent Parsons. This was a choice Appellant’s counsel made. Counsel for Appellant did not raise at the deposition what he viewed as the procedural obstacles to questioning Respondent Parsons. Instead, upon the attorneys for the various parties being invited by the noticing attorney to question Respondent Parsons, counsel for Appellant stated, simply, “I don’t have any [questions].” Depo Parsons, p. 15, l. 21]. Simply put, Appellant was afforded the opportunity to question Respondent Parsons under oath, but declined to do so. Under SCRCF 30(a)(2), this was Appellant’s only opportunity to depose Respondent Parsons. As such, discovery had been completed and Respondents’ motion for summary judgment was ripe and not premature.

### **CONCLUSION**

For the reasons stated above, this Court should affirm the trial judge’s rulings granting Respondents’ motion for summary judgment.

s/Fred W. Suggs III  
Fred W. "Trey" Suggs III, SC Bar No. 70222  
Cassidy Coates Price, P.A.  
1052 N. Church Street (29601)  
Post Office Box 10529  
Greenville, SC 29603  
(864) 349-2616

Attorney for Respondents Jennifer Browning  
and Browning Geriatrics Consulting, LLC

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