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Dec 29 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM HORRY COUNTY  
Honorable Alex B. Hyman, Circuit Court Judge

Court of Appeals Op. No. 2025-UP-374  
Appellate Case No. 2024-000599  
Circuit Court Case No.: 2022-CP-26-03314

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

v.

Mary Michelle Miles .....Appellant.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT

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**CERTIFICATION OF COUNSEL**

Pursuant to South Carolina Appellate Court Rules the below signed certifies that a Petition for Rehearing was made and finally ruled upon by the South Carolina Court of Appeals on November 25, 2025. Pursuant to the April 30, 2024, Order of this Court that suspended the requirement of the filing of an Appendix, the undersigned hereby relies on the Record on Appeal filed with the Court of Appeals and all filings and briefings made to the Court of Appeals.

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**TABLE OF AUTHORITIES**

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## **QUESTIONS PRESENTED**

- I. Did the Court of Appeals err in affirming the lower court findings that Mary Michelle Miles breached her fiduciary duty to her mother by violating the purported visitation rights of her mother's Spouse and not filing an accounting acceptable to the Court?
- II. Did the Court of Appeals erroneously overlook the jurisdictional defect when affirming the lower Court's rulings?
- III. Did the Court of Appeals err in its ruling that it does not matter whether you apply the correct statute?
- IV. Did the Court of Appeals err in stating that issues were not preserved for appeal?
- V. Did the Court of Appeals err by not applying the proper standard of review?
- VI. Did the Court of Appeals err by stating that the remaining issues were moot?

## **INTRODUCTION**

This matter started as an Emergency Conservatorship/Guardianship filing in the Horry County Probate Court regarding Dr. Claudia Troyer Miles ("Claudia"). Claudia unfortunately died at the age of 76 on August 16, 2019, following a one-year battle with glioblastoma brain cancer. At the time of her death, she was married to David Vreeland King ("Respondent King"), who she wed in 2018. Claudia had two biological children from a previous marriage: Dr. John Michael Strasswimmer ("Petitioner" and "John") and Mary Michelle Miles ("Appellant" and "Michelle"). The caption for this matter is misleading as John is not and has never been adverse to Michelle. The appeal is essentially Michelle versus Respondent King since there is no Personal Representative appointed to represent the Estate of Claudia Troyer Miles; therefore, there is and has been nobody to speak for Claudia since 2019.

The Probate Court issued various Orders that were appealed by Mary Michelle Miles first to the Circuit Court, and then to the Court of Appeals. All of the Court rulings have been erroneous, unfavorable, and with complete disregard to the facts of the case and the laws of this

State and this country. In fact, the Court of Appeals summarily denied Appellant's Petition for Rehearing within a matter of days the week of Thanksgiving. The rulings have consistently been made without anyone to represent the interests of the Estate of Claudia Troyer Miles. This Court should grant the Writ of Certiorari pursuant to Rule 242 of the South Carolina Appellate Court Rules because the decision involves special and important reasons. The various rulings have all overlooked fundamental laws and procedures that are designed to protect the foundation of our legal system.

### **FACTUAL BACKGROUND**

Claudia was exhibiting symptoms and had phone conversations with John, that led her to Grand Strand Emergency Room in Myrtle Beach, South Carolina, which revealed a 6 x 3.5 cm heterogeneously enhancing mass in the left orbitofrontal region of her brain. (R. pp. 2842-2849, 0481, 0044, 1823). Shortly thereafter, on October 18, 2018, Claudia underwent brain surgery and partial removal of the mass at Medical University of South Carolina ("MUSC") and pathology revealed glioblastoma multiforme in the left inferior frontal lobe of her brain, which was causing her neurological issues. (R. pp. 2842-2849, 0044, 1823).

Following Claudia's surgery, her family held a meeting to determine how to best address this medical diagnosis. (R. p. 0492). In attendance at this family meeting were: Claudia, Respondent King, Michelle, and John. The family discussed Claudia's options for treatment, including receiving treatment at Medical University of South Carolina ("MUSC"), Duke, and Florida. (R. pp. 0493, 0494, 0501). John was also concerned that the level of care Claudia needed, including daily care at home, exceeded Respondent King's ability to provide such care, citing Respondent King's previous hesitation to evacuate Claudia from the path of a hurricane, the poor condition of his vehicle, and his lack of motivation to take Claudia to the emergency room initially.

(R. pp. 0495-0498). To remedy this, Michelle, who lives in Washington, had free time as she was currently unemployed and offered to assist care for Claudia if she were to choose treatment in Washington. (R. p. 0494). After familial discussions, Claudia indicated she wished to receive treatment in Washington. (R. pp. 0493, 0494, 0501, 0927, 2481-2482).

Claudia received her first treatment at MUSC before continuing treatment at the University of Washington, Seattle Cancer Care Alliance, Fred Hutchinson Cancer Center. (R. p. 0500). The family dutifully worked together to move Claudia from South Carolina to Washington. (R. pp. 0501-0502, 0927). Claudia and Respondent King arrived in Washington on or around November 1, 2018, and stayed in a hotel in Washington for approximately one week, exploring places to live, including applying for an apartment, and visiting the University of Washington. (R. pp. 0501-0502, 0930).

At this point, Respondent King became reluctant to assist or facilitate telephonic communication between Claudia and her children, and began to lie about their whereabouts. (R. pp. 0514-0515). John called Michelle to report his worry – that Respondent King would not reveal their location and that Claudia was “basically fresh out of brain surgery with glucose out of control, being dehydrated, hurting her medical status” with a possible infection to blame for her paranoia. (R. pp. 0516-0517). Michelle was also concerned with Respondent King’s sudden failure to clearly communicate with her as Co-Agent under Claudia’s Health Care Power of Attorney (“HCPOA”). (R. pp. 0933-0936). Growing increasingly worried, Michelle called the hotel Claudia and Respondent King were staying at to discover they had checked out of the hotel. (R. p. 0939). Oddly, a pile of the couple’s belongings and the keys to the rental car were left at the hotel. (R. p. 0940). This caused Michelle distress, as she worried something had happened to her mother and Respondent King, especially as, up until this point, the family had been in close contact, and

together every day. (R. pp. 0942-0943). Due to Claudia's deteriorating medical condition and Respondent King's alienating behavior, Michelle called for a Silver Alert, which was not issued, and filed a police report, citing Claudia's dire medical condition.(R. pp. 0517, 0944-0945, 0948, 2849). Apparently, Respondent King had suddenly returned Claudia to South Carolina, without informing Michelle, who had been very involved in the care of Claudia since her diagnoses and also her Co-Agent, nor John, who had also been very involved. (R. pp. 0508-0509, 2378-2383). In fact, John was not informed that his mother was returned to South Carolina until Friday (11/09/2018) that week, while he was preparing to fly to Washington to visit her. (R. pp. 0508-0509, 0511-0512). John had to change flights the day-of the flight. (R. pp. 0511-0512).

During his visit, John learned that Respondent King had not taken Claudia to see a physician upon her return to South Carolina, nor even alerted her doctors that she had returned to the state. (R. p. 0518). Respondent King reported that he had not made *any* arrangements for Claudia to resume care in Charleston, but that he would "send an email through the portal." (R. p. 0522). Claudia's health condition was so poor, there could be no oncological evaluation and instead, she was sent directly to the emergency room, where she was admitted for delirium and concern of subclinical active seizures. (R. p. 0526). She was hospitalized for 11 days, until November 23, 2018. (R.p. 0527).

During this hospitalization, tensions mounted between Claudia's children and Respondent King. Although Michelle and Respondent King were appointed co-agents under Claudia's HCPOA, Respondent King excluded Michelle by actively failing to consult with or even include her in necessary health care decision making processes. (R. p. 0536). Respondent King's actions also disrupted Claudia's treatment plan. (R. p. 0537). Claudia's condition and moral were

deteriorating. (R. pp. 0539-0540). She was frequently disorientated and refused to participate in her treatment. (R. pp. 0545, 1868-1892).

Due to Respondent King's alienation of Claudia from her family, blatant disregard and disrespect of Michelle as co-health-care-agent, disruption of Claudia's treatment plan, and his overall inept care of Claudia, on November 15, 2018, Dr. John Michael Strasswimmer, through counsel, filed a Summons and Petition for Finding of Incapacity and Appointment of Guardian seeking appointment of himself and/or Mary Michelle Miles as Emergency/Temporary and Permanent Guardian of Claudia. (R. pp. 0535-0536). John also filed a companion Summons and Petition for Protective Order and Appointment of Conservator and appointment of himself as Emergency/Temporary and Permanent Conservator of Claudia.

After receipt of the pleadings, the Horry County Probate Court ("Probate Court") appointed Bess Lochocki, Esq. ("Lochocki" and "Guardian ad Litem") on November 20, 2018, to serve as Claudia's Guardian ad Litem. Based on the pleadings and the other documents in the Probate Court's file, Judge Carroll D. Padgett, Jr., Chief Associate Probate Judge, issued an Order of Appointment of Temporary Guardian on November 15, 2018, finding that Claudia is an incapacitated individual and ordering that Mary Michelle Miles be immediately appointed her mother's Temporary Guardian. (R. p. 0006). It should be noted that this is the only Order that includes a finding of incapacity, and it was in fact a Temporary Order. The Probate Court did not appoint a Conservator at that time, but addressed the Temporary Guardian's authorities, including that "Mary Michelle Miles, as Guardian, may receive money and tangible property deliverable to Claudia Troyer Miles and apply the money and property for the support, care, education of Claudia Troyer Miles, pursuant to S.C. Code Ann. §62-5-312(a)(4)(ii)." (R. p. 0007).

On November 15, 2018, during her inpatient stay, Claudia, on her own accord and ratified by Michelle as Temporary Guardian, initiated a Request for Privacy, asking hospital staff not to allow Respondent King to visit her. (R. pp. 0547-0548). Subsequently, on November 21, 2018, Respondent King, through counsel, filed a competing Summons and Petition for Appointment of Successor Guardian of Claudia, seeking to appoint himself as her fiduciary. Lochocki filed Answers dated December 11, 2018, the same day John filed an Amended Petition for Protective Order and Appointment of Conservator.

Following a telephone conference between Judge Kathy G. Ward, Probate Judge for Horry County, and V. Lee Moore, Esq., counsel for Petitioner Strasswimmer, Davis Inabnit, Jr., Esq., counsel for Respondent King, and the Guardian ad Litem, Bess D. Lochocki, Esq., the Probate Court issued a Modification of Order for Appointment of Temporary Guardian on December 21, 2018. This Order added a directive for the Temporary Guardian to “engage an elder care advocate for the purpose of facilitating communication between David Vreeland King as the spouse of Claudia Troyer Miles” and declared that contact and visitation between Respondent King and Claudia “shall be supervised and monitored by the elder advocate and may be limited at the request of Claudia Troyer Miles' or at the direction of her medical providers.” (R. pp. 0012-0015). The Probate Court later issued two additional orders regarding visitation in its Order Regarding Visitation of Claudia Troyer Miles by Respondent King filed December 27, 2018, and the Order Regarding Continuing Visitation of Claudia Troyer Miles by Respondent King and Order to Mediate filed January 15, 2019, which ordered directives to facilitate visitation between Respondent King and Claudia. (R. pp. 0016-0021).

To continue her healthcare and honor her original choice of treatment location, Michelle and John prepared their mother to travel back to Washington to continue her care there – including

consulting with her medical team for travel clearance and, at the direction of medical professionals, provided a high dose of corticosteroids to Claudia for the flight. (R. p. 0551). Upon arrival in Washington, Claudia was admitted to the hospital for psychosis, diabetes complications, and dehydration. (R. pp. 0551-0552). At this point, Claudia was uncooperative with her care, which disrupted the family's plan to discharge her to Michelle's house. (R. p. 0553). Instead, she was discharged to the Franke Tobey Jones adult living center in Tacoma, Washington, for nursing-home level care, much to the Guardian ad Litem's dislike. (R. pp. 0554, 0620, 2991-2999). Claudia resided at this facility for two months. (R. p. 0555). During her time at this facility, Claudia fluctuated between cooperating with her treatment and refusing treatment, stating she did not like being at the facility. (R. pp. 0555, 0635, 0772).

From Franke Tobey Jones, Claudia was moved into Michelle's home, which she had outfitted for her disabled mother's care and comfort, including hiring a 24/7 certified nursing assistant and a private duty registered nurse to administer medication. (R. pp. 0556-0558). Unfortunately, despite excellent, professional care, Claudia endured additional emergency room visits for early pneumonia and swelling in her legs cause by a deep vein thrombosis blood clot. (R. p. 0558).

The Guardian ad Litem filed her report on March 20, 2019, recommending the appointment of a neutral, third-party professional guardian and conservator, that Claudia be removed from Michelle's home and placed in a neutral location, that Respondent King posed no threat to Claudia's health for safety, among other findings. (R. pp. 2842-2849). John filed a Notice of Motion and Motion for Order Appointing Counsel for Respondent Dr. Claudia Troyer Miles and Extension of Temporary Guardian Appointment dated April 12, 2019. However, subsequently,

the Guardian ad Litem filed an Emergency Motion dated April 17, 2019, citing concerns with Michelle's actions as Temporary Guardian.

After a five-day bench trial, the Probate Court issued its Interim Order dated April 26, 2019, received by Appellant on April 26, 2019, denying John's Petition, removing Michelle as Temporary Guardian, finding that Michelle breached her fiduciary duties, demanding an accounting from Michelle, and appointing Lochocki as Permanent Guardian and Conservator for Claudia, among other findings. Michelle filed a Motion to Alter or Amend Interim Order on May 3, 2019, which was later denied by the Court. There was a hearing on August 26, 2019, and September 16, 2019, which was after Claudia's death. The Probate Court issued a Final Order on May 7, 2019, confirming its Interim Order, which Michelle also unsuccessfully challenged.

Pursuant to the Court's Final Order, Michelle filed an Initial Accounting of Temporary Guardianship ("Accounting") on July 3, 2019, prepared by Arthur Unger, Managing Director of EisnerAmper LLP, one of the largest accounting, tax, and business advisory firms in the U.S. Subsequently, unsatisfied with Michelle's professionally-completed accounting, the Guardian ad Litem filed a Motion for Order of Sanctions Pursuant to the Final Order, which Michelle contested with her Return to the Guardian/Conservator's Motion. Lochocki, as Guardian, moved Claudia from Washington back to South Carolina. Claudia died on August 16, 2019.

Ultimately, more than two years later, the Horry County Probate Court issued its Order on Post-Trial Motions dated May 7, 2022, which was received by Appellant Michelle on May 13, 2022. On May 20, 2022, Michelle timely filed a Notice of Intent to Appeal to Circuit Court in the Horry County Probate Court and Court of Common Pleas for Horry County on the same date. It was properly served on the parties within ten (10) days of receipt of the Order pursuant to S.C. Code Ann. §62-1-308(a). Thereafter, Michelle filed a Statement of Issues on Appeal on August

10, 2022, after an Order of Continuance extended the deadline for such filing due to a delay in obtaining the complete trial transcript.

After the filing of all statutorily-required pleadings, this matter was heard before the Honorable Alex B. Hyman, Circuit Court Judge of the Horry Circuit Court on December 19, 2023. The Horry County Circuit Court by Order dated March 19, 2024, upheld the Horry County Probate Court's decisions in connection with the issues on appeal related to Michelle, with the sole exception of remanding the issue of attorney fees back to the Probate Court in order for that Court to allocate the fees between the Appellants in this case. This matter was then appealed to the Court of Appeals. After oral arguments on September 9, 2025, the Court of Appeals summarily affirmed the Circuit Court Order, and then the Court of Appeals denied the Petition for Rehearing within days of it being filed.

Mary Michelle Miles respectfully comes now to request this Court to grant a Writ of Certiorari to review this matter and right the various miscarriages of justice that have occurred at every level.

## **ARGUMENTS**

### **I. THE COURT OF APPEALS ERRED IN AFFIRMING THE LOWER COURT FINDINGS THAT MARY MICHELLE MILES BREACHED HER FIDUCIARY DUTY TO HER MOTHER, CLAUDIA TROYER MILES, BY PURPORTEDLY VIOLATING THE VISITATION RIGHTS OF HER THIRD SPOUSE AND NOT PROVIDING A PROPER ACCOUNTING.**

The Court of Appeals incorrectly affirmed the lower court decisions that Mary Michelle Miles breached her fiduciary duty to her mother. The statement by the Court of Appeals that she breached a duty to her mother based on purported visitation rights of Respondent King and failure to provide an accounting are simply without merit. Purported visitation rights of a Spouse are not one of the elements of breach of fiduciary duty. The Court of Appeals set forth the elements of

breach of fiduciary duty: (1) existence of a fiduciary duty; (2) breach of that duty; and (3) damages from the breach citing RFT Mgmt. Co., LLC v. Tinsley & Adams, L.L.P., 399 S.C. 322, 33-36, 723 S.E.2d 166, 173 (2012). It is unclear how an alleged violation of a right of Respondent King has any place in a breach of fiduciary duty action as it relates to Claudia Troyer Miles. Appellant was not in a fiduciary relationship with Respondent King. There was nobody at the lower court level or the Appellate Court representing the interests of the Decedent, and it was improper for the Court of Appeals to base a breach of fiduciary finding on purported visitation rights that Respondent King has asserted. That would be a claim of his, not the Estate's. The Courts are punishing Mary Michelle Miles for alleged harm to Respondent King, which is not what this action is about. It is about Claudia Troyer Miles.

The Court of Appeals stated in its Order that Appellant did not file a proper accounting in this action, despite the fact that the accounting submitted was prepared by Arthur Unger, Managing Director of EisnerAmper, LLP, one of the largest accounting, tax, and business advisory firms in the United States. (R. pp. 3091-3191). The accounting submitted by Appellant was much more detailed than the Probate Court accounting forms provided by South Carolina Court Administration for fiduciaries to use in their Probate Court filings.

A review of the record clearly evidences that the expenditures made by Michelle as Temporary Guardian were only for the care, safety, comfort, and quality of life of her mother. Her Accounting reports disbursements in the amount of \$453,474.82, which encompassed allowable administration expenses, travel expenses, clothing expenses, entertainment expenses, medical expenses, and legal expenses. (R. pp. 3138-3191). A portion of the funds spent (\$64,764.12) were paid to Bandido Solutions LLC for the renovations of Michelle's home to make it safe and comfortable for Claudia (R. pp. 3138-3191). The renovations were necessary for the health and

safety of Claudia and were made to specifically meet her needs; the Court's finding that these expenses were imprudent and "extremely wasteful" is unfounded and without merit. Another large portion of the funds (\$179,971.99) were paid to Synergy Homecare, ensuring Claudia received the professional level of care she required. (R. pp. 3138-3191). Synergy Homecare was employed at Franke Toney Jones to attend Claudia as she was deemed a high fall risk. (R. p. 0070).

Legal fees were paid on behalf of Claudia in the amount of \$62,912.75. (R. pp. 3138-3191). All expenses made by Michelle were for Claudia's benefit, from the time Michelle was appointed until she was removed on April 26, 2019. While the Guardian ad Litem expressed concern in her report over the rate at which Michelle was spending Claudia's funds, she stated "[m]ost of these seem acceptable expenditures on their face." (R. p. 2998). Michelle went to great lengths to ensure her mother's final days were lived to the fullest possible, considering her prognosis, and the evidence clearly shows that Michelle's first priority was her mother's care and comfort.

Synergy Home Care was employed by Michelle to assist Claudia during her tenancy at Franke Tobey Jones because she was deemed a high fall risk due to her gait problems. (R. pp. 2189, 0070). Likewise, Claudia continued to be a fall risk upon her discharge to Michelle's residence, and professional health care providers were certainly more fit to provide such care to Claudia. Guardians are explicitly granted the ability to "make provision for the care, comfort, and maintenance of [her] ward." S.C. Code Ann. § 62-5-312(2). Approximately \$179,971.99 was paid to Synergy Homecare to ensure Claudia received the professional level of care she required. Considering Claudia's poor health condition, it was reasonable for Michelle to retain the services of Synergy Home Care to assist her take care of her mother, but in no way made Synergy Home Care Claudia's primary care giver. While Michelle moved from her home where Claudia resided, she, in no way, reduced her involvement and control of Claudia's

care. The expenditures for Synergy Health Care were made directly for Respondent Claudia Miles' care, safety and comfort and could not be substituted by someone without medical training. Again, there was no malice, no ill-intent, and no personal gain. Accordingly, Michelle should bear no personal burden of repaying these expenses to her mother's estate. It is clear and evident from Michelle's actions and decisions that her mother's best interests were her number one priority. The Probate Court had no basis to find that engaging home healthcare for a dying woman was improper.

Bess Lochocki, Esq., as Guardian ad Litem, asserted that Michelle's July 3, 2019, Accounting was not a complete and accurate accounting of all monies received or monies spent by her, based on the fact that all underlying documents referred to in the Accounting were not submitted with the Accounting. The Probate Court agreed. (R. p. 0069). However, Black's Law Dictionary, Fifth Edition, defines "account" in pertinent part as, "[a] statement in writing, of debits and credits, or of receipts and payments; a list of items of debits and credits, with their respective dates." There is no independent definition of "accounting" in the South Carolina Probate Code. Accordingly, Michelle submitted a complete Accounting to the Probate Court that was prepared by Arthur Unger, Managing Director of EisnerAmper LLP, one of the largest accounting, tax, and business advisory firms in the United States. Lochocki did not indicate which underlying documents and receipts she wished to review until she filed the Document entitled "Disbursement Requiring Review of Receipts" on August 22, 2019, which was after the death of Claudia Troyer Miles. The Probate Court did not request any further documentation from Michelle, yet chastised her for not producing such documentation. (R. pp. 0069-0070).

Michelle served as Claudia's Temporary Guardian for approximately five months, generating a multitude of financial records. Certainly, filing a purchased, professionally-prepared

Accounting was a reasonable attempt to meet the Court's original demand for such documentation. (R. pp. 0069-0070). All hearings in this matter and filings after the death of Claudia Troyer Miles were improper as they lacked the proper parties since there was no Personal Representative or Special Administrator appointed to represent the Estate. The Probate Court should have first appointed someone to represent the Estate before having any further hearings or issuing any further Orders.

As argued previously, the expenditures made by Michelle as Temporary Guardian were only for the benefit of Claudia – to provide for her health, safety, and welfare – and Michelle did not benefit personally from her mother's funds whatsoever. A review of the record will clearly support that. To say that it was not in Claudia's best interests for Michelle to renovate her personal residence to be accessible and safe for an elderly, terminally ill woman is a ridiculous inference. Further, and again, it is completely unfair to have found Michelle's purchased, professionally-completed accounting insufficient, as there is no independent definition of "accounting" in the South Carolina Probate Code, nor did the Probate Court express what requirements it demanded from an accounting. Michelle's Accounting satisfied the Black's Law Dictionary definition of accounting. Finally, the finding that Michelle hired Synergy Home Care to replace her as Claudia's Guardian is absurd. Michelle continued to be engaged in her mother's care while receiving professional assistance; in fact, Michele would have been negligent not to hire professional caregiving services for her mother, as her care needs exceeded a non-healthcare professional's ability.

In addition to being unfounded, the Guardian ad Litem's Motion for Sanctions Pursuant to the Final Order and As Matter of Equity is entirely hypocritical as Bess Lochocki, Esq., as Conservator, failed to file *any* accounting of her actions and transactions with Claudia's funds –

before or after Claudia's death. It is a miscarriage of justice to sanction Michelle for filing a professionally-provided accounting, while simultaneously allowing the Conservator – an attorney – to proceed without filing any sort of accounting documentation.

## **II. THE COURT OF APPEALS ERRED BY OVERLOOKING THE JURISDICTIONAL DEFECT WHEN MAKING ITS RULING.**

The Court of Appeals has denied each and every argument made by Appellant Mary Michelle Miles without addressing the fact that there is nobody with authority to represent the Estate in this matter. This jurisdictional defect in and of itself is enough to remand this case back to the Probate Court until such time as there is someone with authority to speak for the Decedent and address all issues at that time. There has been no one with standing or authority to act or represent the Estate; therefore, subject matter jurisdiction is lacking. Lack of subject matter jurisdiction can be raised at any time, including for the first time on appeal, and sua sponte by the Court. McCain v. Brightharp, 399 S.C. 240, 730 S.E.2d 916 (Ct. App. 2012).

How can any Court affirm or deny a decision that affects an Estate without a properly appointed Personal Representative? How can this or any Court decide on a matter without the proper parties? Even at the Probate Court hearings in which Bess Lochocki argued for sanctions and to deny the accounting submitted by Mary Michelle Miles (August 26, 2019, and September 15, 2019, hearings both occurred after Claudia's death), Claudia Troyer Miles had already passed away, and the authority of the Guardian/Conservator ended upon the death of Claudia Troyer Miles. The Probate Court held not one, but two hearings, after the death of Claudia Troyer Miles, during which nobody had standing to argue on behalf of the Estate of Claudia Troyer Miles. The Probate Court hearings and the appellate hearings should never have proceeded without the appointment of a Personal Representative to represent the Estate of Claudia Troyer Miles. The lack of standing is a fatal flaw and denies this or any Court's jurisdiction to rule upon any matter

related to the Estate of Claudia Troyer Miles. Therefore, this Court can remedy this jurisdictional defect by sending the case back to the Probate Court to first have a Personal Representative appointed to represent the interests of the Estate of Claudia Troyer Miles.

**III. THE COURT OF APPEALS ERRED IN ITS RULING THAT IT DOES NOT MATTER WHETHER YOU APPLY THE CORRECT CODE SECTION.**

In its Order on Post-Trial Motions, the Probate Court incorrectly stated that S.C. Code Ann. § 62-5-103, 1976, as amended, expressly limits a guardian fiduciary to “handling” more than \$15,000.00 for their ward. (R. pp. 0059-0075). However, a review of this statute titled “Facility of Payment or Delivery” clearly reveals that the South Carolina legislature has set a monetary limit on guardians *receiving* funds in excess of \$15,000.00 owed to their Ward, but not any monetary limit on the guardian’s authority to *spend* funds in excess of \$15,000.00 for the benefit of the Ward. *See* S.C. Code Ann. § 62-5-103. This statute assists “[a] person under a duty to pay or deliver money or personal property to a[n]...incapacitated individual” identify who to whom they may transfer these assets. If a Guardian receives their Ward’s asset, they must apply the money for the benefit of their Ward with due regard to (1) the size of the Ward’s estate and the likelihood that they, at some future time, may be able to manage their own affairs, (2) the Ward’s accustomed standard of living, and (3) other funds or resources used or available for the support or any obligation to provide support for Ward. S.C. Code Ann. § 62-5-103. The Probate Court did not, in any order issued, consider or apply these express statutory elements for due application of a Ward’s assets to Michelle’s expenditures as Temporary Guardian.

The Court of Appeals stated that it does not matter if the wrong statute was applied. However, the Probate Code and its provisions are legislative requirements that the Court is not free to disregard. Essentially the Court of Appeals is saying that the Probate Court had the right to make up statutes to fit its ruling. The Court of Appeals also stated that it did not matter if the

numbers added up, but of course this matters. The decision resulted after Rule 59(e) Motions, SCRCF, were made and ruled upon; therefore, there was no chance to seek further clarification from the Probate Court. The Court of Appeals specifically asked counsel during the oral argument how the Probate Court arrived at the numbers since the Court could not figure it out. Counsel also could not determine how the Probate Court arrived at the numbers, and this illustrated yet another major flaw in the Probate Court ruling.

**IV. THE COURT OF APPEALS ERRED STATING THAT THE ISSUES WERE NOT PRESERVED FOR APPEAL.**

The Court of Appeals erred in stating that the issues were not preserved for appeal. Mary Michelle Miles was not required to file an additional repetitive South Carolina Rule of Civil Procedure 59(e) Motion prior to filing a Notice of Intent to Appeal. There is nothing in South Carolina Code Annotated Section 62-1-308 or otherwise that requires the filing of South Carolina Rule of Civil Procedure 59 (e) Motion prior to filing an appeal. The ruling that came from Judge Ward was after Motions for Reconsideration had already been filed for the prior Order (R. pp. 0287-0298). Therefore, this would have been a second Rule 59(e) Motion for the same matters filed on behalf of the same party. Counsel for Mary Michelle Miles and John Strasswimmer had both filed South Carolina Rule of Civil Procedure 59(e) Motions, and those were heard at August 26, 2019, and September 16, 2019, hearings. The Court of Appeals is essentially saying one South Carolina Rule of Civil Procedure 59(e) Motion from each party was not enough, and the Appellant should have filed yet another Motion for Reconsideration. The Court of Appeals erred in its finding that the issues were not preserved for review at the Probate Court level.

**V. THE COURT OF APPEALS ERRED BY NOT APPLYING THE PROPER STANDARD OF REVIEW.**

In this action, the Horry County Probate Court issued sanctions against the Temporary

Guardian “pursuant to South Carolina law and the equitable principals of restitution and disgorgement” as requested by the Guardian ad Litem. (R. pp. 0059-0083, 0299-0308). A claim of breach of fiduciary duty can be 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) citing Verenes v. Alvanos, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010) (stating “an action alleging a breach of fiduciary duty is an action at law,” but also that “a breach of fiduciary duty may sound in equity if the relief sought is equitable”). Characterization of an action as equitable or legal depends on the main purpose in bringing the action.” Verenes, 387 S.C. at 16, 690 S.E.2d at 773. The holding in Verenes rested on a conclusion that the main purpose of a damages action against a trustee was equitable, as it sought the classic equitable remedies of restitution and disgorgement. *See Verenes*, 387 S.C. at 17, 690 S.E.2d at 773. Disgorgement is “the act of giving up something (such as profits illegally obtained) on demand or by legal compulsion.” Black's Law Dictionary (10th ed. 2014: Bryan A. Garner, ed.) p. 568. In this action, the Horry County Probate Court issued sanctions against the Temporary Guardian “pursuant to South Carolina law and the equitable principals of restitution and disgorgement” as requested by the Guardian ad Litem. (R. pp. 0059-0083, 0299-0308). Similarly, the Court cited its ability to award costs and expenses “as justice and equity may require in an action for guardianship.” (R. P. 0064). Therefore, the Probate Court’s finding of a breach of fiduciary duty sounded in equity, allowing the appellate courts to make findings in accordance with their own view of the preponderance of the evidence. The Circuit Court’s affirmation of the Probate Court’s findings without any explanations allowed the Court of Appeals to make its own findings of fact, which it did not.

There are seven volumes in the Record on Appeal consisting of more than 3,000 pages, and there was more than enough evidence in the record for the Court of Appeals and this Court to

review. Since this matter was based in equity, the review of the Probate Court matter was de novo; therefore, the Circuit Court's review was not what is definitive. The appellate Courts should be looking at the original rulings from the Probate Court, not the Circuit Court rulings. Thus, there was no need or requirement to include all the briefs from the Circuit Court, which were nearly identical to the briefs filed in this matter. The Circuit Court essentially affirmed all the Probate Court rulings as they related to Mary Michelle Miles, and all the same arguments were made and raised with the Court of Appeals as had been made to the Circuit Court. The Court of Appeals had a voluminous record to review to make its own findings of fact. For the Court of Appeals to say that not having the Circuit Court Briefs was a fatal flaw in the appeal is erroneous. Since the Circuit Court was acting as an appellate court in this matter- not the trial court- it was not the facts from the Circuit Court that the Court of Appeals should have been reviewing. The Court of Appeals erred by not using the proper standard of review and treating it like it was only reviewing the Circuit Court findings rather than exercising a de novo review of the Probate Court record and findings.

## **VI. THE COURT OF APPEALS ERRED BY STATING THE REMAINING ISSUES WERE MOOT.**

Appellant disagrees that the remaining issues are moot since they all lead to the Probate Court's rulings. How can the denial of independent counsel be moot? If Mary Michelle Miles does not have standing to bring this before the Court, then how does Respondent King have standing to bring any of this before this or any Court? Again, he is not the Personal Representative of this Estate. The authority of the Guardian/Conservator died with Claudia Troyer Miles. The irony of the claims made against Mary Michelle Miles are that to date there has been no Accounting filed with the Probate Court in the Guardianship/Conservatorship matter by the court appointed Guardian/Conservator despite the fact that Claudia Troyer Miles passed away in 2019;

therefore, this matter still shows as open as if she were still alive.

The Court of Appeals also did not address the fact that the various Probate Court Orders were all missing the findings of incapacity required to appoint a Conservator or Guardian. A hearing for a permanent Conservator and/or Guardian is de novo; therefore, the findings of the Temporary Order do not carry over into a final Order. S.C. Code Ann. § 62-5-108(D). The Probate Court took away an individual's rights without a finding of incapacity and without the appointment of independent counsel. The issue of personal capacity is never moot when the Court is exercising its power to limit or deny an individual's freedom and appoint a Conservator or Guardian. How can failure to appoint independent counsel for Claudia in the Probate Court proceedings as required by the Probate Code be moot?

The Probate Court also erroneously admitted testimony and evidence that was subject to the attorney client privilege. Rule 1.6 of the South Carolina Rules of Professional Conduct, Rule 407 SCACR, states that a "lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent ..." This privilege belongs to the client, and this privilege survives the client's death. State v. Doster, 276 S.C. 647, 284 S.E. 2d 218 (1981). When Clifford Tall, Esquire was called to testify at trial, Attorney Angela Harrison objected to his testimony about information he obtained from Claudia due to attorney client privilege. (R. pp. 1279-1283). Attorney Reese Boyd argued that Bess Lochocki as Guardian ad Litem could waive the privilege. (R. pp. 1280-1282). At that time, Bess Lochocki was the Guardian ad Litem and not the Guardian or Conservator for Claudia. It was an error for the trial court to allow a Guardian Ad Litem to waive privilege for an incapacitated person and an error to admit attorney Clifford Tall's testimony and Affidavit creating reversible error. The Probate Court never appointed an attorney for Claudia to represent her interests, and in fact the Probate Court specifically denied the

appointment of an attorney for Claudia despite the requirement for appointment of an attorney and Guardian Ad Litem in the Probate Code. South Carolina Code Section 62-5-303B requires appointment of counsel for alleged incapacitated prior to appointment of a Guardian, which was not done in this case. How can the denial of right to counsel or admission of attorney client privileged information ever be moot? This was yet another reversible error made by the Probate Court.

### CONCLUSION

Appellant respectfully requests that this Court take a close look at the various errors that have been made by the Courts in this matter creating a great injustice that threatens the fundamental rights and protections afforded by our laws and Constitution. The various Courts have casually overlooked the jurisdictional flaws and constitutional issues in this case that have created unjust results for Appellant. The various courts have sided with the third Spouse of Claudia Troyer Miles without anyone with a voice to speak for the Decedent and continued to issue rulings to punish Mary Michelle Miles for trying to help her dying mother. This Court should grant the Petition for Writ of Certiorari for the important reasons set forth herein.

Respectfully submitted,

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