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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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APPEAL FROM GREENVILLE COUNTY
PERRY H. GRAVELY, CIRCUIT COURT JUDGE

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Appellate Case No. 2025-000366
Civil Action No. 2022-CP-23-04055

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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 Parsons, 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 are the,..... Respondents.

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# Final Reply to Respondent Jennifer Browning's Brief

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TRULUCK THOMASON, LLC

s/Devon Puriefoy
Devon M. Puriefoy

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## ARGUMENT OF APPELLANT TO RESPONDENT BROWNING

### I. It was Error to Have Granted Defendant Browning's Motion for Summary Judgment on Any Ground.

#### A. Summary Judgment was Improper as to Appellant's Claim of Negligence/Gross Negligence.

Although court-appointed guardians are generally afforded absolute quasi-judicial immunity from civil liability, this immunity is not blanket protection for all actions taken by a guardian, and actions performed outside the scope of their appointment are still subject to liability. *See Falk v. Sadler,* 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000).

In the Initial Brief of Respondents they concede, at a minimum, that in order to have prevailed at the summary judgment phase as to the question of the applicability of the theory of quasi-judicial immunity for negligence and/or gross negligence, the Court needed to have relied on "uncontroverted" facts. [Initial Brief of Respondent at 7]. Again, at a minimum, Appellant was able to "…produce evidence or *testimony* that can reasonably be interpreted as suggesting that **any** actions taken by Browning were outside of her scope of duties as the guardian ad litem" despite Respondent's contention to the contrary in her briefing to the trial court. [Initial Brief of Appellant at 12.] In fact, Respondent quoted the referenced deposition testimony, wherein Respondent quite literally concludes the line of questioning with a blanket admission to acting beyond the scope of her appointment, admitting when questioned about whether specific conduct in this case was a part of her job, stating "It's not my job to." [Initial Brief of Respondent at 11] (R. p. 1667). While Appellant takes such a statement at face value, even if Respondents could argue in good faith this was not an admission to acting beyond the scope, it would, at the very least constitute a latent ambiguity.

Respondent's brief does not argue, nor could it, that Respondent Browning did not say what she said; rather, Respondent is asking this Court to find that the quoted deposition testimony could not be reasonably interpreted to suggest "…that any actions taken by Respondents were outside of the scope of duties…" *Id.* Said another way, Respondents convinced the trial court to construe, and now attempts to convince this Court to construe, any alleged ambiguity, conclusion, or inference arising from this evidence most strongly against Appellant, rather than Respondent. This is a clear violation of the well settled law of this state. "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the moving party." *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 (Ct. App. 1999); *See also Hall v. Fedor,* 349 S.C. 169, 173-74, 561 S.E.2d 654, 656 (Ct. App. 2002) ("Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.")

For the foregoing reasons, Appellant believes the Circuit Court erred in its grant of summary judgment as to Respondent's claim of Negligence/Gross Negligence.

**B. Summary Judgment was Improper as to Appellant's Claim of Conspiracy.**

Appellant demonstrated in her Initial Brief that the trial court erred in finding that she failed to submit "compelling" evidence in support of her conspiracy claim. [Initial Brief of Appellant]. "At the summary judgment stage of litigation, the court does not weigh conflicting evidence with respect to a disputed material fact." *S.C. Prop. & Cas. Guar. Ass'n v. Yensen*, 345 S.C. 512, 518, 548 S.E.2d 880, 883 (Ct. App. 2001). This contention was not addressed by Respondents and has therefore been conceded. Because Appellant was also able to demonstrate that each of the pieces of circumstantial evidence introduced constitutes a link in the chain of proof that cumulatively

established the existence of a genuine issue of material fact as to Respondent Browning's liability, summary judgment was again improper. *Rhodes v. Granby Cotton Mills*, 87 S.C. 18, 28, 68 S.E. 824, 828 (1910).

Having conceded the lower court erred in holding Appellant to a heightened standard i.e. "compelling evidence" and having conceded that summary judgment motions do not call for the court to weigh conflicting evidence, summary judgment was inappropriate.

## II. It was Error for the Circuit Court to Grant Respondent Browning's Motion for Summary Judgment Prior to the Conclusion of Discovery.

"…[S]ummary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). Respondents' Initial Brief does not even attempt to claim otherwise. Instead, Respondents take the grossly oversimplified position that because Respondent Parsons was noticed to sit for a deposition by then co-defendant, and now co-respondent, Kiki's Kare, LLC, and Appellant elected to not knowingly and intentionally attempt to solicit testimony before a final adjudication on Respondents' pending motion for order of protection from discovery, she had waived her right to do so at a later date. [Initial Brief of Respondents at 18] Respondents cite to no case that stands for the proposition that all parties to a suit must each agree to depose another party on the same date, and at the same time noticed by another party.

It is, however, the tortured procedural history, and thinly veiled gamesmanship, that deprived Appellant of a meaningful opportunity to depose Respondent Parsons and complete discovery, thus rendering the summary judgment proceeding premature. [Initial Brief of Appellant at pp. 17-19].

On May 21, 2024, the day before the state court deposition – which was noticed by Appellant - counsel for Respondent Parsons notified Appellant that "…we are postponing the deposition of Tracy Parsons. **We are not going to voluntarily agree to potentially expose her to two depositions….**" On even date with the email, counsel for Respondent Parsons sought an order of protection seeking, *inter alia*, a determination of whether Respondent Parsons would be required to sit for a deposition during the pendency of both the state court action and forthcoming federal action. [Initial Brief of Appellant at 18] (Emphasis added) (R. pp. 814-819) This objection to Appellant's deposition notice was never withdrawn nor resolved prior to Kiki's Kare, LLC's deposition of Respondent Parsons. The primary objective of discovery is to ensure that lawsuits are decided by what the facts reveal, not by what facts are concealed." *In re Alford Chevrolet-Geo*, 997 S.W.2d 173, 180 (Tex. 1999). The entire thrust of our discovery rules involves full and fair disclosure, to prevent a trial from becoming a guessing game or one of surprise for either party. *Samples v. Mitchell*, 329 S.C. 105, 495 S.E.2d 213 (Ct. App. 1997). In this respect, the discovery process is designed to "make a trial less a game of blind man's bluff and more a fair contest with the basic issues and facts disclosed to the fullest practicable extent." *See United States v. Procter & Gamble Co.*, 356 U.S. 677, 682, 78 S. Ct. 983, 986-87, 2 L. Ed. 2d 1077 (1958). I*n re Anonymous Mbr. of S.C. Bar*, 346 S.C. 177, 193, 552 S.E.2d 10, 18 (2001).

## III. It was Error for the Circuit Court to Make Findings of Fact and Conclusions of Law at the Summary Judgment Phase.

### A. It was Improper for the Circuit Court to Make Findings of Facts.

Appellant demonstrated in her Initial Brief that, by definition, rulings on summary judgment cannot include findings of fact because the standard for summary judgment requires a

finding that there is "no genuine issue of material fact" and virtually every fact included in the order on appeal was disputed. [Initial Brief of Appellant at 21]. Having failed to present any argument to the contrary, Respondents have conceded this point.

This is of particular importance, as the entirety of Respondents' Initial Brief is predicated on the findings of fact and conclusions of law set forth in the trial court's order. [*See generally* Respondents' Initial Brief]. As a direct result of Respondents' concession that all, or substantially all, of the "facts", spanning pages two through nine of the lower court's order, were in fact in dispute, reliance on the same in support of their arguments presented above render the same of no consequence.

## CONCLUSION

This Court should reverse the judgment below and remand for further proceedings in the Circuit Court.

Dated this 30th day of January, 2026.

**TRULUCK THOMASON, LLC**

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