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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 ..... Respondents.

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# Final Reply to Respondent Tracy Parsons' Brief

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## ARGUMENT OF APPELLANT TO RESPONDENT PARSONS' INITIAL BRIEF

### I. It was Error for The Circuit Court to Grant Respondent Parson's Motion for Summary Judgment on Any Ground.

#### A. Respondent Was Not Entitled to Quasi-Judicial Immunity.

To begin, Respondent does not separately address Appellant's arguments as to why summary judgment was improper on Appellant's claims of negligence/gross negligence and conspiracy against Respondent. [*See generally* Initial Brief of Respondent]. Instead, Respondent relies entirely on her argument that Respondent was entitled to quasi-judicial immunity. *Id.*

In her Initial Brief, Respondent concedes that the Falk court determined that although "court appointed guardians are generally afforded absolute quasi-judicial immunity from civil liability" that immunity does not apply to actions beyond the scope of a guardian's duties. *Falk v. Sadler,* 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000) (Fleming v. Asbill, 326 S.C. 49, 483 S.E. 2d 751 (1997)). Similar to Respondents Browning and Browning Geriatrics, LLC, Respondent Parsons attempts to minimize the evidence of her conduct that falls beyond the scope of her duties as a guardian, suggesting the weight of the evidence is more valuable than the existence of the fact itself. It is the nature of the acts, not simply the status of the defendants as guardian that determines the availability of immunity for the challenged acts and the extent of protection afforded by that immunity. *See Falk v. Sadler*, 341 S.C. at 281 (Ct. App. 2000).

In response to this argument, Respondent takes the following positions: (1) Ms. Parson's statement, noted in a Comfort Keepers log entry, to "…let sleeping dogs sleep" was not "…raised and ruled upon by the trial judge…"; (2) that the log entry containing the above referenced quote

is inadmissible hearsay; and (3) that the referenced log entry does not rise to the level of "…concealing information from anyone." (R. P. 2458)

Respondent first argues that because "[t]he log entry quoted above is not addressed in the Parsons Order, and Appellants did not reference it in their Motion to Alter/Amend pertaining to the Parsons Order that it is not preserved for appellate review." [Initial Brief of Respondent at 11.]. While Respondent is correct in arguing that the January 6, 2025, Order of the trial court did not make specific reference to the log entry, or any material fact Appellant argued was subject to dispute in opposition to summary judgment for that matter, this is of no consequence. (R. p. 29) Respondent cannot argue that a substantial portion of Appellant's briefing and/or oral argument in opposition to summary judgment was not focused on the contention that Respondent was not immune from civil liability because her conduct fell beyond the scope of her appointment. (R. pp. 1753-1824) [*See* Appellant's June 6, 2025, Designation of Matters]. More specifically, this issue was raised, again in support of Appellant's argument that Respondent was not immune from civil liability, during the summary judgment hearing, at which time counsel for Appellant, making direct reference to the entry log, argued:

> "…We reported it to Ms. Parsons and Ms. Parsons was made aware of the alleged sexual misconduct. In those notes and nobody can argue to the contrary, Comfort Keepers' notes, that Ms. Parsons' response to allegations of sexual assault was "I think it's best to let sleeping dogs lay." That to me, Your Honor, is an acknowledgment that I'm being formed as a fiduciary, that the person under my care has been sexually assaulted but I'm making the decision, the election, I believe outside of her scope as a guardian, to simply not do anything about it."

[Motion for Summary Judgment Transcript dated Oct. 16, 2024, at 49] [Initial Brief of Appellant] (R. p. 1801) The transcript goes on to read:

> "The let sleeping dogs lay, that decision lies in the face of the guardian and I think that election -- because the guardian very clearly said that if a

> guardian becomes aware of any harm being suffered by someone 6 under their care, they have an automatic responsibility to report the same. The internal notes of Comfort Keepers makes very clear that that information was brought to Ms. Parsons' knowledge and she elected to simply let sleeping dogs lay. I think that that's clearly outside of her authority, as a guardian, that she is required to report that type of conduct. And so for those reasons, Your Honor, I believe summary judgment is improper, and I think most importantly we should be given an opportunity to take her deposition."

[*Id.* at 53] (R. p. 1805)

"There are four basic requirements to preserving issues at trial for appellate review. The issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity." *Hodge v. UniHealth Post-Acute Care of Bamberg*, LLC, 422 S.C. 544, 563 n.7, 813 S.E.2d 292, 302 (Ct. App. 2018). Respondent has presented nothing, beyond conclusory statements, that this Court can rely on to demonstrate that the issue was not timely raised by the Appellant with sufficient specificity for the trial court to make a ruling. [*See generally* Initial Brief of Respondent].

In a rather bold fashion, Respondent seemingly places all of her eggs in her argument that the issue was not raised and ruled upon. *Id.* If the issue was raised and ruled upon, which Appellant submits it certainly was, Respondent has conceded that such conduct would in fact fall beyond the scope of Respondent's appointment and thus give rise to civil liability.

Secondly, Respondent takes the rather perplexing position that summary judgment was proper because if the issue of the entry log supporting a finding of no quasi-judicial immunity was raised and ruled upon, the same would be considered inadmissible hearsay. [Initial Brief of Respondent at 11]. Respondent seemingly glosses over SCRCP Rule 801(d)(2). This rule plainly states that an admission by a party opponent constitutes a statement that is not hearsay. SCRCP Rule 801(d)(2). This rule applies not only to individual party-opponents but also representatives

of a party opponent. SCRCP Rule 801(d)(2)(A). Respondent acknowledges that the "…log of notes…" were "maintained by Comfort Keepers…", thus the author of the same, albeit unknown, would have been acting as a representative of Comfort Keepers. Respondent has introduced nothing into the record to suggest otherwise. *Id.* [Initial Brief of Respondent at 10]. Kiki's Care, LLC d/b/a/ Comfort Keepers was a named Defendant in the lower court proceeding and a named Respondent in this proceeding.

Therefore, any statements by a representative of Comfort Keepers, i.e. the referenced entry logs/log of notes, are not considered hearsay pursuant to SCRCP 801(d)(2).

**B. It was Error for the Circuit Court to Grant Respondent Parson's Motion for Summary Judgment Prior to the Conclusion of Discovery (Adopted from Section II of Appellant's Brief to Respondent Browning in its entirety).**

As a preliminary matter, Respondent's brief contains a material misrepresentation of the facts and record in this matter. [*See generally* Initial Brief of Respondent]. Respondent argues that Appellant's failure to depose Respondent during the October 9, 2024, deposition constituted a waiver of any future depositions, relying heavily on the suggestion that the Honorable G.D. Morgan's August 9, 2024, Order rendered the Motion for Order of Protection filed by Respondent "moot." *Id*.

While Respondents Initial Brief accurately parrots the words of the lower court, it appears to intentionally omit the backdrop against which the court found the pending motion to be "moot." Here, context is key. Respondent asserts, unequivocally, that because her Motion for Order of Protection was rendered moot by the lower court, the motion itself no longer served as an impediment to proceeding with Respondent's deposition. *Id.* This is an intentional misrepresentation at worst, and a grossly negligent omission at best.

On February 27, 2024, Appellant noticed the deposition of Respondent. [Initial Brief of Appellant at 17] (R. pp. 363-364). On or about May 17, 2024, five (5) days before Respondent's scheduled deposition, Appellant forwarded to Respondent, along with a number of other future defendants, a notice of Appellant's intention to file suit under the federal Racketeer Influenced and Corrupt Organizations Act ("RICO). Upon information and belief, counsel for respondent received the RICO letter on May 21, 2025, the day before Respondent's scheduled deposition. [Initial Brief of Appellant at 17-18]. On the same day counsel for Respondent informed Appellant that his client would not be attending the deposition scheduled for the following day, noting he would not subject her to depositions in both the state court and federal court action without one of the courts ordering her to do so. *Id.* On May 21, 2024, counsel for Respondent filed her Motion for Order of Protection wherein Respondent expressly indicated her unwillingness to sit for a state court deposition and a federal court deposition without a court order to do so. *Id.* (R. pp. 814-819)

As promised, on July 3, 2024, Appellant filed suit in the United States District Court for the District of South Carolina alleging, *inter alia*, violations of the federal RICO statute. (R.. P. 365-406) In an effort to avoid litigating in two different forums, Appellant moved for an order staying the state court proceedings on August 2, 2024. [Initial Brief of Appellant at 18] (R. pp. 823-825). This motion was opposed by all state court defendants.

At the time of the hearing referenced by Respondent in her Initial Brief, which was heard by Judge G.D. Morgan, Appellant's motion to stay was still pending. Judge G.D. Morgan's ruling that the motion for order of protection was "moot" was directly tied to his finding that should the motion to stay be granted, the order of protection would no longer need to be heard;

however, Judge Morgan expressly noted that the order of protection would have to be addressed at a later date if the motion to stay were in fact denied. (R. pp. 17-18)

Additionally, Appellant does not argue that the deposition of Respondent was not a critical component of the discovery in the underlying case. [*See generally* Respondent's Initial Brief]. Rather, Respondent relies, again, entirely on the argument that Appellant, despite knowledge of a pending motion for order of protection[1], should have attempted to force the testimony of Respondent, lest she forever waive her right to take the same. *Id.*

Dated this 30th day of January 2026.

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[1] Which was **not** rendered moot by Judge G.D. Morgan's Order.