

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Elizabeth Evans Individually and as Surrogate Health Care Decision Maker for Duane Evans, Mikal McAlister, and Anna Okupinski.....Petitioners,

v.

Tom Vestal Evans.....Respondent.

EMERGENCY COMPLAINT

PETITIONERS, by and through undersigned counsel, bring this Emergency Complaint pursuant to Rule 245, SCACR, the South Carolina Declaratory Judgments Act, S.C. Code Ann. § 15-53-10 et seq., and the Adult Health Care Consent Act, S.C. Code Ann. § 44-66-10 et seq. and pray as follows:

PARTIES

1. Petitioner Elizabeth Evans (“Elizabeth”) is the lawful spouse of Duane Evans and has been married to him for over eighteen (18) years. She has been judicially recognized as his Surrogate Health Care Decision Maker pursuant to S.C. Code Ann. § 44-66-30.
2. Duane Evans is unable to consent to medical care and has been adjudicated an incapacitated individual.¹

¹ Duane Evans is intentionally not named individually in this Complaint due to these adjudicated findings.

3. Petitioners Mikal McAlister and Anna Okupinski are the adult daughters of Duane Evans and support Elizabeth's role and decisions as Surrogate.
4. Respondent Tom Vestal Evans ("Tom") is the adult son of Duane Evans and has actively opposed Elizabeth's exercise of her lawful authority.

JURISDICTION AND VENUE

4. Immediate intervention is required to prevent ongoing, irreparable harm. Each passing day subjects Duane Evans to invasive, non-curative medical intervention that serves only to prolong the dying process.
5. This Court has original jurisdiction pursuant to Rule 245, SCACR, due to the existence of an emergency, the involvement of significant public interest, and the need for immediate resolution to prevent irreparable harm. *See* Emergency Petition for Original Jurisdiction.
6. This action seeks declaratory and injunctive relief concerning the lawful authority of a surrogate decision maker under South Carolina law.

FACTUAL ALLEGATIONS

6. On February 3, 2026, Duane Evans suffered a catastrophic stroke, specifically a large intracranial hemorrhage, and was admitted to the Neuro and Trauma ICU at Prisma Health Greenville Memorial Hospital.

7. Duane has been determined by medical professionals and the Greenville County Probate Court to be unable to consent to his own medical treatment and is an incapacitated individual under South Carolina law.
8. Duane remains intubated, bedbound, and dependent upon life-sustaining medical interventions, with a poor prognosis and a significantly diminished quality of life expected even in the event of survival.
9. On March 5, 2026, the Greenville County Probate Court entered an Order recognizing Elizabeth as the proper Surrogate Health Care Decision Maker pursuant to S.C. Code Ann. § 44-66-30(A)(3).
10. As Surrogate, Elizabeth is vested with the authority to make health care decisions on Duane's behalf, including decisions regarding the withholding or withdrawal of life-sustaining procedures.
11. Based upon her knowledge of Duane's values, beliefs, and prior expressed wishes, Elizabeth believes that Duane would not have wanted to remain in his current condition sustained by artificial means.
12. The attending medical providers have indicated that withdrawal of life-sustaining procedures is medically appropriate and consistent with Duane's condition and prognosis.
13. Respondent Tom Evans has engaged in repeated legal actions and interference to prevent Elizabeth from exercising her lawful authority, thereby delaying the withdrawal of life-sustaining treatment.

14. As a result of this interference, Duane continues to be subjected to invasive medical interventions that prolong the dying process and cause unnecessary suffering.
15. Time is of the essence. Each day of delay results in continued harm, indignity, and deprivation of Duane's rights.

FIRST CAUSE OF ACTION

(Declaratory Judgment – Authority Under Adult Health Care Consent Act)

16. Petitioners reallege the foregoing paragraphs.
17. An actual and justiciable controversy exists regarding Elizabeth's authority as Surrogate Health Care Decision Maker.
18. Pursuant to S.C. Code Ann. § 44-66-30, Elizabeth, as spouse, is the highest-priority decision maker and has already been recognized by court order as such.
19. Under the Adult Health Care Consent Act, a surrogate decision maker has the authority to make all health care decisions the patient could make if competent, including the withdrawal of life-sustaining procedures.
20. The continued interference by Respondent creates uncertainty and prevents the lawful exercise of this authority.
21. Petitioners are entitled to a declaration that:
 1. Elizabeth Evans has full authority to make end-of-life medical decisions on behalf of Duane Evans; and
 2. Such authority includes directing the withholding or withdrawal of all life-sustaining procedures.

SECOND CAUSE OF ACTION

(Declaratory Judgment – Constitutional Liberty Interest)

22. Petitioners reallege the foregoing paragraphs.
23. Article I, § 4 of the South Carolina Constitution protects the fundamental right to liberty, including bodily integrity, informed consent, and personal autonomy in medical decision-making.
24. The right to refuse medical treatment necessarily includes the right to withdraw life-sustaining procedures.
25. Exercised through a lawful surrogate, this right extends to incapacitated individuals.
26. Continued prevention of Elizabeth's decision-making authority violates Duane's constitutional liberty interest by forcing unwanted medical treatment and prolonging the dying process.
27. Petitioners are entitled to a declaration affirming that withdrawal of life-sustaining treatment under these circumstances is consistent with Duane's constitutional rights.

THIRD CAUSE OF ACTION

(Injunctive Relief)

28. Petitioners reallege the foregoing paragraphs.
29. Petitioners have no adequate remedy at law.
30. Absent immediate relief, Duane will continue to suffer irreparable harm through prolonged, unwanted medical intervention.

31. Petitioners are likely to succeed on the merits based on statutory authority and constitutional protections.
32. The balance of equities strongly favors Petitioners, and the public interest supports honoring patient autonomy and dignity at the end of life.
33. Petitioners are entitled to injunctive relief prohibiting Respondent from interfering with Elizabeth's authority and permitting immediate implementation of her medical decisions.

PRAYER FOR RELIEF

WHEREFORE, Petitioners respectfully request that this Court:

1. Assume original jurisdiction over this matter;
2. Declare that Elizabeth Evans, as Surrogate Health Care Decision Maker, has full legal authority under South Carolina law to make all medical decisions on behalf of Duane Evans;
3. Specifically declare that such authority includes the right to direct the withdrawal of all life-sustaining procedures;
4. Declare that the exercise of such authority is consistent with Duane Evans' constitutional rights to liberty, bodily integrity, and dignity;
5. Issue injunctive relief prohibiting Respondent from interfering with Elizabeth's lawful authority;
6. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted by:

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s/ Jessica Shultz Ferguson, Esq_____

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Greenville, South Carolina