

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

FILED

C/A Nos.: 2026GC2300023
2026CP2301277

IN RE: DUANE EVANS,
an Alleged Incapacitated Individual

MAR 05 2026

TOM VESTAL EVANS,

GREENVILLE COUNTY
PROBATE COURT

Petitioner,

ORDER

vs.

RECEIVED

ELIZABETH EVANS, ET AL.

Mar 26 2026

Respondent.

S.C. SUPREME COURT

THIS MATTER COMES BEFORE THE COURT pursuant to the Summons and Petition for a Finding of Incapacity and Appointment of Temporary Guardian for Duane Evans (“Mr. Evans”) filed on February 18, 2026 (“Petition”), by Tom Vestal Evans (“Tom”) through his attorney, Brian T. Smith. Accompanying this Petition was a Notice of and Motion for Emergency Relief and Hearing, seeking the emergency appointment of Tom as Guardian of Duane Evans (“Motion”). The Motion was granted via an *Ex Parte* Order for Emergency Relief and Notice of Hearing on February 18, 2026 (“Emergency Order”).

Pursuant to S.C. Code Ann. § 62-5-108 and upon the filing of a Motion for the Appointment of Counsel for Emergency Proceedings, Joseph Plaxco, Esq., was appointed as counsel for Mr. Evans, and upon the filing of a Motion for the Appointment of Guardian *ad Litem* for Emergency Proceedings, Cathy Hall was appointed as his Guardian *ad Litem*. On February 19, 2026, Elizabeth Evans filed a counter Summons and Petition for a Finding of Incapacity and for Appointment of a Temporary and Permanent Guardian and Conservator of Mr. Evans, with an accompanying

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competing Notice of and Motion for Emergency Relief and Hearing, seeking the emergency appointment of Elizabeth Evans as Guardian of Duane Evans.

An emergency hearing to review the Emergency Order was scheduled for and held on February 20, 2026. Prior to the commencement of the hearing, the parties discussed this matter and made an agreement, which resulted in the Order Appointing Temporary Guardian dated February 20, 2026, making Tracy Parsons the Temporary Guardian of Duane Evans.

After her appointment, Mrs. Parsons set a visitation schedule for the family to see Mr. Duane Evans, interviewed the parties, and obtained a second opinion regarding Mr. Evans' condition and prognosis. Based on her investigation of the matter, on February 25, 2026, Mrs. Parsons informed the Court and the parties by email that she "would like the court to appoint a family member to further carry out the medical decisions."

In response Mr. Plaxco that same day filed a Motion for Emergency Relief and Emergency Hearing, and an emergency hearing was scheduled for and held on February 26, 2026. At the commencement of the hearing, Mr. Plaxco explained that although Mr. Evans was incapable of communicating his wishes or preferences as to the present dispute, Mr. Plaxco, in his role as court-appointed Counsel, was obligated to bring the matter back before the Court.

Present at the hearing were: Tom Vestal Evans with his attorneys, Brian T. Smith and Aaron Debruin; Elizabeth Evans with her attorney, Jessica S. Ferguson; Mikal McAlister, daughter of Mr. Evans, appearing *pro se*; Anna Okupinski, daughter of Mr. Evans, appearing *pro se*; Joseph Plaxco as legal counsel for Mr. Evans; Cathy Hall, Guardian *ad Litem*; Markita Ebersole, Senior Associate General Counsel of Prisma Health, where Mr. Evans is currently located, and Tracy Parsons, Temporary Guardian, with her legal counsel Rodney Pillsbury, Esq. Witnesses for the Petitioner

were: Joseph A. Evans (brother of Mr. Evans), Tom Vestal Evans, Dr. Marshall White (qualified as a medical expert), and Phillip Evans (brother of Mr. Evans). Witnesses for the Respondent were: Markita Ebersole (qualified as expert in Prisma policy and procedures), Elizabeth Evans, Anna Okupinski, Mikal McAlister, and Lydon Moore Vestal (ex-wife of Mr. Evans).

Prior to the hearing, counsel for Tom Evans filed an Emergency Motion for Assumption of Jurisdiction, Appointment of Temporary Guardian, and Injunctive Relief, as well as, a Motion to Transfer from Probate Court and To Set Hearing for Appointment of Permanent Family Guardian. These Motions were orally withdrawn at the outset of the hearing at sidebar. Counsel for Tom Evans also filed a Motion to Continue Emergency Hearing.

Prior to the hearing, the Court had granted Mr. Plaxco's Motion for an emergency hearing, by scheduling this hearing. The Court held ruling on the remainder of Mr. Plaxco's Motion in abeyance until after the presentation of testimony and argument.

The Court then proceeded to hear testimony on Petitioner Tom Evans' Motion to Continue Emergency Hearing.

Upon close of the Petitioner's case, Mr. Smith made an oral Motion for Directed Verdict, which was summarily denied. Likewise, Ms. Ferguson made a competing Motion for Directed Verdict, which was also denied.

Upon my review of the file and testimony taken in open Court, I make the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Jurisdiction, Venue, & Procedure

1. The Probate Court has exclusive original subject matter jurisdiction over this matter pursuant to S.C. Code Ann. §62-1-302(a)(2)(i) and §62-5-201, and venue is proper pursuant to S.C. Code Ann. §62-5-401.

2. All parties were properly served with the Summons, Petition, Motion, and Emergency Order filed by Tom Evans.

3. All parties were properly served with Mr. Plaxco's Motion for Emergency Relief and Emergency Hearing.

Incapacity

4. In its Order Appointing Temporary Guardian dated February 20, 2026, the Court found that Mr. Evans is an incapacitated individual as defined in S.C. Code Ann. §62-5-101(13). Likewise, there remains clear and convincing evidence of Mr. Evans' incapacity and therefore, he remains an incapacitated individual.

5. Due to Mr. Evan's incapacity, he is unable to consent¹ to medical care.

¹ "Unable to consent" means unable to appreciate the nature and implications of the patient's condition and proposed health care, to make a reasoned decision concerning the proposed health care, or to communicate that decision in an unambiguous manner. This term does not apply to minors, and this chapter does not affect the delivery of health care to minors unless they are married or have been determined judicially to be emancipated. A patient's inability to consent must be certified by two licensed physicians, each of whom has examined the patient. However, in an emergency the patient's inability to consent may be certified by a health care professional responsible for the care of the patient if the health care professional states in writing in the patient's record that the delay occasioned by obtaining certification from two licensed physicians would be detrimental to the patient's health. A certifying physician or other health care professional shall give an opinion regarding the cause and nature of the inability to consent, its extent, and its probable duration. If a patient unable to consent is being admitted to hospice care pursuant to a physician certification of a terminal illness required by Medicare, that certification meets the certification requirements of this item." S.C. Code Ann. § 44-66-20(8).

6. When an individual is found to be incapacitated, the Court must determine if there is any less restrictive alternative² to guardianship, including reasonable supports and assistance available to the incapacitated individual, in determining who should make health care decisions on their behalf. S.C. Code Ann. § 62-5-303 and § 62-5-403.

7. Supports and assistance include:

(a) systems in place for the alleged incapacitated individual to make decisions in advance *or to have another person to act on his behalf including*, but not limited to, having an agent under a durable power of attorney, a health care power of attorney, a trustee under a trust, a representative payee to manage social security funds, *a designated health care decision maker under Section 44-66-30*, or an educational representative designated under Section 59-33-310 to Section 59-33-370; and

(b) reasonable accommodations that enable the alleged incapacitated individual to act as the principal decision-maker including, but not limited to, using technology and devices; receiving assistance with communication; having additional time and focused discussion to process information; providing tailored information oriented to the comprehension level of the alleged incapacitated individual; and accessing services from community organizations and governmental agencies.

S.C. Code Ann. § 62-3-106(A)(2)(f) (*emphasis added*).

Surrogate Health Care Decision Maker

8. S.C. Code Ann. § 44-66-30 provides a list of individuals with priority to make healthcare decisions for incapacitated individuals. The list is as follows:

- 1) a guardian appointed by the court pursuant to Article 5, Part 3 of the South Carolina Probate Code, if the decision is within the scope of the guardianship;

² “‘Less restrictive alternative’ means the provision of support and assistance as defined in this section which maximizes the alleged incapacitated individual’s capacity for self-determination and autonomy in lieu of a guardianship or conservatorship.” S.C. Code Ann. § 62-5-101(14).

- 2) an attorney-in-fact appointed by the patient in a durable power of attorney executed pursuant to Section 62-5-501, if the decision is within the scope of his authority;
- 3) a spouse of the patient unless the spouse and the patient are separated pursuant to one of the following:
 - i. entry of a pendente lite order in a divorce or separate maintenance action;
 - ii. formal signing of a written property or marital settlement agreement; or
 - iii. entry of a permanent order of separate maintenance and support or of a permanent order approving a property or marital settlement agreement between the parties;
- 4) an adult child of the patient, or if the patient has more than one adult child, a majority of the adult children who are reasonably available for consultation....

S.C. Code Ann. § 44-66-30(A)(1-4)

9. Upon taking testimony and after reviewing her filings, I find that Tracy Parsons as Temporary Guardian conducted a thorough investigation and determined that a family member should be Mr. Evan's surrogate decision maker. Therefore, Tracy Parsons is hereby released as Temporary Guardian of Duane Evans. Her invoice, attached to this Order, shall be paid by the Petitioner within thirty (30) days of the date of his Order. Further, the invoice of her attorney, Mr. Pillsbury, shall also be paid by the Petitioner within thirty (30) days of the date of his Order.

10. Accordingly, Mr. Evans has no guardian with decision making priority pursuant to S.C. Code Ann. § 44-66-30(A)(1).

11. Upon taking testimony and reviewing all filings, I find that Mr. Evans does not have a Health Care Power of Attorney pursuant to S.C. Code Ann. § 44-66-30(A)(2).

12. Upon taking testimony and review of all filings, I find that Mr. Evans is married to Elizabeth Evans, and that they have been married for eighteen (18) years. No testimony was presented as to the entry of a pendente lite order in a divorce or separate maintenance action, a formal signing of a written property or marital settlement agreement, the entry of a permanent

order of separate maintenance and support, or of a permanent order approving a property or marital settlement agreement between the parties.

13. Upon hearing her testimony, I find that Elizabeth is available and willing to serve as Mr. Evan's surrogate healthcare decision maker, and that there is no barrier to her ability to serve in this role.

14. I find both of Mr. Evan's daughters and his ex-wife testified as to their support of Elizabeth, and they knew of no barrier as to her ability to serve in this role.

15. Cathy Hall, the Guardian *ad Litem*, found no reason disqualifying Elizabeth Evans from her priority as spouse under the Adult Health Care Consent Act. Ms. Hall shall be relieved as Guardian *ad Litem* thirty (30) days from the date of this Order. Her invoice, attached to this Order, shall be paid by the Petitioner within thirty (30) days of the date of this Order.

16. Joseph Plaxco, Counsel for Mr. Evans, stated he found no reason to believe Elizabeth Evans was disqualified from her priority as spouse under the Adult Health Care Consent Act. Mr. Plaxco shall be relieved as counsel for Duane Evans thirty (30) days from the date of this. His invoice, attached to this Order, shall be paid by the Petitioner within thirty (30) days of the date of this Order.

17. Markita Ebersole, Senior Associate General Counsel of Prisma Health, testified as an expert witness as to Prisma's policies and procedures. Ms. Ebersole testified Prisma had been operating in conformity with the Adult Healthcare Consent Act prior to the filing of Petitioner Evans' Emergency Motion. She additionally testified Duane Evans' inability to consent was certified by two licensed physicians who had examined the patient as required by the Adult Healthcare

Consent Act. On cross-examination she indicated that Prisma staunchly understood that physician assisted suicide is illegal in the State of South Carolina.

18. Upon hearing his testimony, I find Joseph A. Evans is a physician and is the brother of Duane Evans. I find he disagrees with the medical information provided by Prisma; however, he did not state any reason that would disqualify Elizabeth from her priority under the Adult Health Care Consent Act.

19. Upon hearing his testimony, I find Tom Vestal Evans is the son of Duane Evans. I find he disagrees with the medical information provided by Prisma; however, he did not state any reason that would disqualify Elizabeth from her priority under the Adult Health Care Consent Act. I also find Tom Evans testified that he had no conversation with Mr. Evans about his end-of-life wishes.

20. Dr. Marshall White testified as an expert in neurology. I find he is the ex-spouse and current romantic interest of Mr. Smith's paralegal, Maddison Evans, who is also a cousin of Tom Evans. Dr. White disagrees with the medical information provided by Prisma; however, he did not state any reason that would disqualify Elizabeth from her priority under the Adult Health Care Consent Act.

21. Upon hearing his testimony, I find that Phillip Evans, is the brother of Duane Evans. I find he disagrees with the medical information provided by Prisma; however, he did not state any reason that would disqualify Elizabeth from her priority under the Adult Health Care Consent Act. He additionally testified that Mr. Evans is a fighter.

22. The General Assembly of South Carolina intended the Adult Health Care Consent Act to operate in these exact situations. No evidence was introduced indicating the existence of

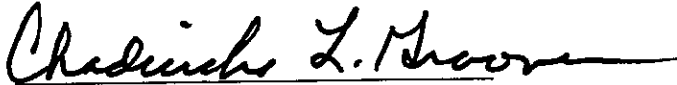
any divorce, separation, or marital agreement, that would disqualify Elizabeth Evans from her priority as surrogate decision maker. The Court does not presume to know what Elizabeth's health care decisions for her husband will be. The private communications which have occurred during their eighteen years of matrimony will inform her decision as to his care.

23. Therefore, in considering the totality of the evidence, I find that Elizabeth Evans is the proper person to serve as Mr. Evan's surrogate healthcare decision maker pursuant to S.C. Code Ann. § 44-66-30(A)(3).

THEREFORE IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. Petitioner Tom Evans' Motion to Continue Emergency Hearing is denied.
2. Mr. Plaxco's Motion for Emergency Relief and Emergency Hearing is granted.
3. The Temporary Guardianship is terminated as there is a less restrictive means to effectuate Mr. Evan's health care decisions making.
4. Mrs. Tracy Parsons is relieved as Temporary Guardian for Mr. Duane Evans.
5. Mrs. Elizabeth Evans is recognized to be the proper person to serve as Mr. Duane Evans' surrogate healthcare decision maker pursuant to the priorities set forth in S.C. Code Ann. § 44-66-30(A)(3).

IT IS SO ORDERED.


Chadwicke L. Groover
Greenville County Probate Judge

March 5, 2026
Greenville, South Carolina

STATE OF SOUTH CAROLINA

IN THE PROBATE COURT

COUNTY OF GREENVILLE

FILED

PROOF OF DELIVERY

IN THE MATTER OF:

DUANE EVANS

MAR 05 2026

CASE NUMBER: 2026GC2300023

(All)

GREENVILLE COUNTY
PROBATE COURT

CHECK ONE:

- DECISION BY THE COURT
- JURY VERDICT
- ACTION DISMISSED
- ACTION STRICKEN

See attached Order.

Dated at Greenville, South Carolina, March 5, 2026.

Chadwicke L Groover

Probate Judge

This judgment was entered on March 5, 2026, and a certified copy sent ordinary first-class mail this March 5, 2026, to the following:

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I ATTEST A TRUE COPY



Clerk, Probate Court
Greenville County, SC
Dated: 3/5/2026

Handwritten initials