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RECEIVED

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S.C. SUPREME COURT

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April 5, 2026

The Honorable Patricia A. Howard, Clerk of Court
The Supreme Court of South Carolina
1231 Gervais Street
Columbia, South Carolina 29201

Re: Elizabeth Evans, etc. v. Tom Vestal Evans
Appellate Case No.: 2026-000758

Dear Ms. Howard,

I am writing to inform the Court that I support Ms. Ferguson's Motion to Reconsider the Petition for Original Jurisdiction and respectfully request that it be granted. For the reasons set forth herein, as court-appointed counsel for Duane Evans (hereafter "Mr Evans"), I urge that the Court accept original jurisdiction of this action.

This is an extraordinary legal proceeding, and I am in a unique position. What began as a guardianship proceeding now centers around the South Carolina Adult Health Care Consent Act (the "Act").

I was appointed to serve as Mr. Evans's legal counsel by the Greenville County Probate Court (the "Probate Court") on February 18, 2026. Mr. Evans is unable to communicate his wishes, interests, and preferences with regard to the dispute in issue; however, I take the position that it is my duty and obligation to ensure that the legal system and its procedures are utilized for Mr. Evans's benefit. I will note that Mr. Evans is not specifically named as a party in the Supreme Court action.

The documents filed thus far with the Supreme Court, including those recently filed by Prisma Health, speak for themselves as to the underlying facts surrounding this case. To provide a brief recap, Mr. Evans suffered from a major stroke on February 3, 2026. Since February 6, 2026, he has required the use of an endotracheal (ET) tube, a nasogastric (NG) tube and a mechanical ventilator. Mr. Evans has no health care power of attorney or advance directive. He is a patient of Prisma Health, being held in the Neurological Intensive Care Unit at Greenville Memorial Hospital.

The ET tube, which goes from Mr. Evans's mouth and into his trachea, maintains an open airway and delivers oxygen to the lungs. The NG tube, inserted through Mr. Evans's nose and down his esophagus into his stomach, provides nutrition, hydration, and medicines. The ventilator provides mechanical breathing. As I understand, the insertion of the ET and the NG tubes are meant to be only temporary in nature, a maximum of seven (7) to ten (10) days. After that time, decisions in light of the patient's prognosis and wishes regarding further invasive procedures for long term use are typically made. We are now approaching sixty (60) days since the ET and NG tubes were put into place.

I believe that the next course of medical action for Mr. Evans, *if elected*, would be the placement of a tracheostomy tube and a Percutaneous Endoscopic Gastronomy (PEG) tube. The tracheostomy tube, in essence, would serve the same function as the ET tube, and the PEG tube would provide for tube-feeding. Both the tracheostomy tube and PEG tube are intended for long term and/or permanent use. I understand that the decision as to further medical action should only be made within the full context of informed consent by the patient, if he is able to consent, or alternatively, by the patient's surrogate decision maker.

We are long past the point in time where the decision must be made whether to proceed with the placement of a tracheostomy tube and PEG tube, or to cease the use of medical devices to extend Mr. Evans's life. No matter what decision is made, it must be made immediately.

Since February 18, 2026, in chronological order, the following filings and events, as pertinent to this letter, have transpired in this case:

- February 18, 2026: Mr. Evans's son, Tom Evans (hereafter "Tom") filed a Petition for Temporary Relief on an emergency basis in the Greenville County Probate Court (the "Probate Court").¹ The Petition was styled as "Tom Vistal Evans vs. Elizabeth Evans." I was appointed to serve as Mr. Evans's court-appointed counsel, and Cathy Hall was appointed to serve as Guardian *ad Litem*, on this same date. Based on the four corners of Tom's pleadings, the Probate Court appointed Tom as Mr. Evans's guardian by way of an *ex parte* order.
- February 19, 2026: Mr. Evans's wife of eighteen (18) years, Elizabeth Evans (hereafter "Elizabeth"), filed a competing petition for guardianship in the Probate Court. This specific action has not commenced due to the petition having not been served on any parties. Filed simultaneously with Elizabeth's petition were the supporting affidavits of Anna Evans Okupinski, Mr. Evans's oldest daughter, and Lyndon Moore Vistal, Mr. Evans's former wife and the mother of his children. I note that Mikal Evans McAlister, Mr. Evans's youngest daughter, also supports Elizabeth.

¹ Tom's Petition was supported by two physicians' affidavits, one from Dr. Joseph Evans, Mr. Evans's brother, and one from Dr. Martin White, an individual in a romantic relationship with Mr. Evans's niece who is also the paralegal of Tom's attorney. Neither of these physicians were or are a part of Mr. Evans's treatment team as related to the stroke.

- February 20, 2026: A hearing was held in the Probate Court on Tom's Petition for Temporary Relief. At the hearing, the parties agreed to appoint Tracy Parsons, a neutral third party professional, as Mr. Evans's guardian. On this same date, the Probate Court entered an order finding Mr. Evans to be an incapacitated individual and appointing Ms. Parsons as his temporary guardian.
- February 26, 2026: After it became evident that Ms. Parsons was not willing to make a decision between terminating life support and proceeding with a tracheostomy tube and PEG tube due to the contrasting viewpoints of the parties, I filed a Motion for Emergency Relief seeking that the Probate Court appoint one of Mr. Evans's family members to make further medical decisions.
- February 27, 2026: A hearing was held in the Probate Court on my Motion for Emergency Relief. The Probate Court ruled that the South Carolina Adult Health Care Consent Act is the controlling and operative statute in the case. As such, the Probate Court determined that Elizabeth, as Mr. Evans's spouse, is the proper individual to serve as his surrogate decision maker and had the exclusive authorization to make treatment and medical decisions. The Probate Court requested that Elizabeth's attorney draft and circulate a proposed order.
- February 28, 2026: Over the weekend, Tom, through his counsel, emailed all the circuit court judges of the 13th Judicial Circuit, seeking to appeal the Probate Court's February 27, 2026 ruling. Attached to the email was a Notice of Appeal, an affidavit from Dr. Joseph Evans, and an Emergency Motion for Temporary Injunction. The affidavit from Dr. Joseph Evans set forth his written statement that Mr. Evans purportedly, through the use of his hands to certain questions, indicated his wish to remain on life support.
- March 3, 2026: Tom filed with the Probate Court his Motion to Reopen the Record. This Motion was based primarily on Dr. Joseph Evans's affidavit which states that Mr. Evans expressed his own desire to continue life support.
- March 5, 2026: A hearing was held in the Circuit Court on Tom's February 28 filings. The Circuit Court found that it did not have jurisdiction due to the absence of a written and final order from the Probate Court.
- March 6, 2026: The Probate Court denied Tom's Motion to Reopen the Record, finding that Tom failed to show that any new evidence would materially change the outcome of the February 27 hearing.
- March 7, 2026: The Circuit Court issued its Form 4 Order reflecting its ruling of March 5, 2026 that it lacked jurisdiction over the appeal and motion for injunctive relief. The Circuit Court's Order stated that the order did not end the case. On this same date, Tom filed his

Amended Appeal in the Circuit Court. A second affidavit from Tom similar to his February 28 affidavit was filed with his Amended Appeal.

- March 9, 2026: I filed a new action in the Probate Court for an Emergency Hearing and Emergency Relief. My petition alleged that even more so than at the time that I filed the Motion for Emergency Relief on February 27, 2026, Mr. Evans was at a juncture in time wherein critical and crucial decisions must be made as to the provision or non-provision of medical treatment. My petition also alleged that a legitimate argument could be had as to whether further treatment and procedures, including a tracheostomy and placement of a PEG tube, is medically ethical under the circumstances and/or on the cusp of being inhumane. My petition further set forth the opposite viewpoints of Tom and Elizabeth, and requested that the Probate Court schedule an emergency hearing so that each party could present witnesses and proffer arguments surrounding the validity, integrity, and soundness of their respective positions. Finally, I noted that the dispute had strayed from who the surrogate decision maker should be under the law to whether the decision maker was operating under good faith. I also noted that Tom's filing of an appeal would only allow the appellate court to evaluate whether the appointment of Elizabeth as the authorized agent under the Act was proper, not as to whether her decision was sound or unsound.
- March 13 2026: After all parties were served with a copy of my March 9, 2026 Petition for Emergency Relief, I filed a second Motion for Emergency Relief with the Probate Court. I requested an immediate hearing so the issues I set forth could be heard and determined. My motion quoted correspondence from the Associate General Counsel for Prisma Health stating, "[w]e are at a place where the ongoing legal dispute/delays here are having the secondary effect of violating the professional conscience of those caring for him daily."
- March 16, 2026: A hearing on my March 13, 2026 Motion for Emergency Relief was held in the Probate Court. Due to the appeal pending in the Circuit Court, the Probate Court declined to move forward.
- March 19, 2026: Elizabeth filed an Emergency Motion to Dismiss the appeal in Circuit Court. Elizabeth's Motion to Dismiss was grounded on Tom's failure to name and serve all parties with the Notice of Appeal, as well as his failure to file the Probate Court's Order subject to the appeal. On this same date, Tom filed with the Circuit Court his Emergency Motion for Leave to File Under Rule 60(b).
- March 26, 2026: The Circuit Court held a hearing on Elizabeth's Motion to Dismiss and Tom's Motion for Leave. Later that afternoon, Elizabeth filed her pleadings in the Supreme Court seeking original jurisdiction.
- March 27, 2026: The Circuit Court issued its Form 4 Order granting Elizabeth's Motion to Dismiss with prejudice, and dismissing Tom's Motion for Leave as moot. On this same date,

Tom filed a Rule 60(b) motion with the Probate Court. Tom's motion was based on various affidavits which allege Mr. Evans has communicated by movement his desire to continue living. Tom also asserts that he has an independent medical examiner who would expectedly testify that Mr. Evans has reasonable prospects for improvement and healing.

- April 3, 2026: The Supreme Court denied Elizabeth's petition on the grounds that relief may be sought in the Probate Court.

The ability of this case to move forward to a final resolution — to where any decision of any type can be made for Mr. Evans — is entirely and utterly obstructed by the very legal system which was put into place to benefit Mr. Evans. The party most adversely affected is Mr. Evans. He is, at the very least, uncomfortable and, most likely, in pain. He is distressed and riddled with agitation. To the extent that he is at all cognizant, he is certainly frightened. Time is not on Mr. Evans' side.

This case reveals troubling flaws of the South Carolina Adult Health Care Consent Act. Attention should be paid to the following:

- (a) The Act currently allows for any opposing party to force a delay in the decision making process, even if it is detrimental to the patient;
- (b) The Act does not address situations where an individual with surrogate decision making priority is available and willing to make a decision, but is procedurally barred from doing so as the result of court filings; and,
- (c) Procedural mechanisms, such as appeals and stays, not only adversely affect the patient, but also the protections set forth in South Carolina Code Ann. § 44-66-70 to decision makers and health care providers.

The Supreme Court opines that relief can be had in the Probate Court. Respectfully, it cannot. The Probate Court has made clear that it will not interfere with the decision of the party holding priority insofar as the South Carolina Health Care Consent Act is concerned. So far, each and every decision which has been rendered in the the Probate Court has been appealed or challenged in some fashion or another. Further appeals and challenges can only be expected to ensue. In the meantime, Mr. Evans is physically deteriorating, and no one has the power to make any sort of decision on his behalf. The Supreme Court, through the exercise of original jurisdiction, is the only means by which this legal impossibility can be remedied.

In consideration of the foregoing, the undersigned, in his capacity as court-appointed counsel for Mr. Evans, respectfully prays that the Supreme Court reconsider its dismissal and hear this matter on original jurisdiction.

By carbon copy of this letter, I am hereby serving a copy of the same upon all interested parties.

Sincerely,

A handwritten signature in black ink, appearing to read "Joseph M. Plaxco". The signature is fluid and cursive, with the first name "Joseph" being the most prominent.

Joseph M. Plaxco

JMP

cc: Jessica S. Ferguson, Esq.
James G. Carpenter, Esq.
Brian Smith, Esq.
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