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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Apr 07 2026
S.C. SUPREME COURT

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

v.

Tom Vestal Evans.....Respondent.

MEMORANDUM RE: MOTION TO RECONSIDER EMERGENCY PETITION FOR ORIGINAL JURISDICTION FILED APRIL 3, 2026

Petitioner Elizabeth Evans, Individually and as Surrogate Health Care Decision Maker for Duane Evans, respectively moves this Court to reconsider its’ Order dated April 3, 2026, denying her Emergency Petition For Original Jurisdiction filed on March 26, 2026 (“Petition”). Her desperate prayer is made as timely relief in this matter is unattainable through the lower courts, causing extreme prejudice and harm to Duane Evans. This memorandum complements Petitioner’s Motion to Reconsider filed on April, 2026. This is life or death.

The Petition was denied as “Petitioners may seek relief in the probate court.” However, the Greenville County Probate Court did not explicitly declare that it is within Elizabeth’s authority as Agent under the South Carolina Adult Health Care Consent Act (“SCAHCCA”) to direct that all Life-Sustaining Procedures¹ be withdrawn from Duane; the Court deferred to the sacred, private marital communications between husband and wife of eighteen (18) years for the basis of any

¹ “Life-sustaining procedures” medical procedures or intervention which would serve only to prolong the dying process and where, in the judgment of the attending physician, death will occur whether or not the procedures are utilized. Life-sustaining procedures do not include the administration of medication or other treatment for comfort care or alleviation of pain.” S.C. Code Ann §44-77-20(2).

medical decision to be made², leaving the issue of the *scope*³ of Elizabeth’s authorities unresolved.

There is no ruling in the lower court addressing the precise relief sought, and thus no meaningful avenue for relief in that forum. Presumably, a Surrogate Decision Maker under the SCAHCCA can make the decision to withdrawal life support as an extension of the individual’s own right to bodily autonomy, however this is not explicit in South Carolina statutory law. This lack of specificity is exactly what lead these parties to the Supreme Court, as the lower Court is either unable or unwilling to adjudicate the scope of SCAHCCA authorities.

Duane Evans remains intubated, bedbound, and entirely incapable of expressing his wishes. He is not improving. His condition is deteriorating. The invasive medical interventions sustaining him are not curative but instead serve only to prolong the dying process—subjecting him to continued physical invasion, medical complications, and the indignity of a prolonged, artificial existence that he never would have chosen. At this point, “[m]ultiple and extensive conversations with family have been held. Long term life support not in line with patients wishes per his spouse. Pending court rules, wife’s intention is to transition to palliative measures.”⁴

The record reflects that Duane is critically ill, at high risk of imminent deterioration or death, and requires continuous intensive care. He has now endured prolonged intubation well beyond recommended limits, exposing him to additional complications, infections, and escalating discomfort. Each passing day compounds that suffering. Blood appears in the tubes connected to his face.⁵ This is not preservation of life—it is the extension of the dying process under invasive conditions. As of April 6, 2026, Duane was “awake but no[t] oriented, does not follow commands

² Greenville County Probate Court Order Dated March 5, 2026 (C.A. No. 2026-GC-23-00023).

³ AMICUS BRIEF OF PRISMA HEALTH April 3, 2026.

⁴ **Exhibit A.** Progress Notes by Emma Rose Boyer Hayden, PA at 4/5/2026 8:36 AM

⁵ **Exhibit B.** Photo of Duane Evans.

with repeat stimulation, does not clearly make eye contact but occasionally tracks.”⁶ He is “is at high risk of imminent life threatening clinical deterioration and/or death due to respiratory failure requiring mechanical ventilation and ventilator management.”⁷ Duane is deteriorating despite evidence that his final wishes were to die with dignity, as testified to by both of Duane’s daughters⁸, his ex-wife⁹, and Elizabeth.¹⁰ This harm is not abstract. It is immediate, ongoing, *and borne entirely by Duane himself*. He is the one enduring the consequences of delay. He is the one being kept alive in a condition he would not have accepted. Duane’s progress notes capture that “[t]he family’s ability to reach a final decision remains contingent upon the resolution of the ongoing court proceedings.”¹¹ By refusing to act, this Supreme Court stands by idly, watching and allowing Duane to deteriorate.

Requiring Petitioners to return to Probate Court—after that Court has already declined to resolve the dispositive issue—would not provide relief. It would ensure continued delay, and with it, continued suffering. In this context, delay is not procedural—it is substantive. Every additional day without resolution is another day Duane is forced to endure unwanted medical intervention; Duane has effectively been left without a functioning decision maker, despite the law clearly establishing one.

This prayer is joined by Prisma Health as evidenced by its Motion for Leave to File Amicus Brief dated April 3, 2026, expressing the urgent need for a resolution of the “serious and important issues presented...and the scope of the authority of a surrogate health care decision maker.”¹² Dr. Andrea Camila Ruiz, one of the physicians treating Duane, indicated that “[s]ince I have known

⁶ **Exhibit B.** Progress Notes by Robert Seth Martin, AGACNP at 4/6/2026 7:55 AM

⁷ *Id.*

⁸ **Exhibit C.** Affidavit of Anna Okupinski February 19, 2026; *see* trial transcript.

⁹ **Exhibit D.** Affidavit of Lydon Moore Vestal February 19, 2026

¹⁰ **Exhibit D.** Affidavit of Elizabeth Evans February 19, 2026

¹¹ **Exhibit F.** Progress Notes by Nurse Georgette J at 4/6/2026 8:54 AM

¹² MOTION OF PRISMA HEALTH FOR LEAVE TO FILE AMICUS BRIEF, April 3, 2026.

Mr. Evans and upon review of his medical file, the majority of his family members have consistently expressed that his wishes were to withhold and/or withdraw life sustaining treatment in such a medical status.”¹³ Art Spading RN, a nurse who has been caring for Duane, also expressed his support of Elizabeth.¹⁴ Similarly, Angela Vallie RN swore that “Elizabeth Evans, [Duane’s] wife, is of sound mind and has his wishes at heart, that she is following his known wishes and acting in his best interest, and that she is not motivated by any nefarious reason. The medical decisions she intends to make as Agent under the AHCA are medically reasonable.”¹⁵

In his April 5, 2026 Supporting Letter, Joseph Plaxco, Esq. (the court appointed attorney for Duane Evans) detailed this matter’s extensive procedural history and stresses that “[t]he 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.”¹⁶ Similarly, Prisma Health opined that “prolonged procedural delays arising from probate proceedings, appellate filings, and requests for stays can materially affect whether a patient’s wishes are honored within a clinically meaningful timeframe. For health care providers, delay is not a neutral state because continued treatment during legal uncertainty may prolong suffering, compromise ethical obligations, and distort the statutory priority accorded to timely surrogate decision-making.¹⁷” Further “if litigation can indefinitely delay honoring patient wishes, advance directives lose practical force, public confidence in statutory protections are diminished, and legislative policy encouraging patient self-determination is undermined.”¹⁸

This case is not about procedure—it is about whether the law will function in time to

¹³ **Exhibit H.** Affidavit of Dr. Andrea Camila Ruiz February 19, 2026

¹⁴ **Exhibit I.** Affidavit of Art Spading RN March 16, 2026

¹⁵ **Exhibit J.** Affidavit of Angela Vallie RN March 16, 2026

¹⁶ Supporting Letter, Joseph Plaxco, Esq., April 5, 2026.

¹⁷ MOTION OF PRISMA HEALTH FOR LEAVE TO FILE AMICUS BRIEF, April 3, 2026

¹⁸ Id.

matter. Duane Evans has been left in a state of prolonged suffering, sustained only by invasive medical intervention that is neither curative nor consistent with his expressed wishes, as known by his family. The only barrier preventing the exercise of his autonomy is legal uncertainty that the lower court has declined to resolve.

Elizabeth Evans is the legally recognized surrogate decision maker. The authority she seeks to exercise is not novel—it is the natural extension of Duane’s fundamental right to bodily autonomy and to refuse unwanted medical treatment. Yet, without this Court’s intervention, that right is rendered meaningless. Delay, in this context, is not neutral; it is the continued infliction of harm. There is no adequate remedy below and the prejudice is immediate and irreparable. The extraordinary circumstances of this case demand an equally decisive response.

Accordingly, Elizabeth respectfully requests that this Court reconsider its prior denial, assume original jurisdiction, and issue a clear and definitive ruling recognizing Elizabeth Evans’ authority to direct the withdrawal of life-sustaining procedures—so that Duane Evans may be afforded the dignity, peace, and autonomy the law promises, but which time is rapidly taking away.

Respectfully submitted by:

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s/ Jessica Shultz Ferguson, Esq

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Greenville, South Carolina