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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS

William A. McKinnon, Circuit Court Judge

Appellate Case No. 2025-002217
Lower Court Case No. 2024-CP-46-02169

In the Matter of TJ Martin

Virginia M. Morris, individually and in her capacity as Personal
Representative of the Estate of TJ Martin, Respondent,

v.

Pamela Ligato, as Guardian/Conservator for N.M.Y a/k/a N.Y.M., a protected
person, Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in determining that the Probate Court's grant of conservatorship which removes the right of the protected person to bring suits at law and equity for themselves and grants that power to the guardian and conservator does not include the ability of the guardian and conservator to bring an elective share claim in the estate of the spouse of a protected person?

STATEMENT OF THE CASE AND FACTS

On April 3, 2019, T. J. Martin and N.M.Y. aka N.Y.M. were married. Martin died testate on May 15, 2023. Pamela Ligato was appointed as guardian and as conservator for N. M. Y. on September 6, 2023. Counsel for Pamela Ligato inquired of the Probate Court whether a separate order was needed to assert elective share rights and was informed the existing orders allowed the guardian and conservator to assert those rights. (R. pp. 92-93) Ligato acting in her capacity as guardian and as conservator for N. M. Y. filed an action seeking an elective share for N. M. Y. in the Estate of Martin on September 19, 2023. (R. pp. 27-28) Virginia M. Morris as Personal Representative of the Estate of T. J. Martin filed a motion to dismiss the action for elective share for failure to obtain an order pursuant to S.C. Code § 62-2-203. (R. pp. 29-30) N. M. Y. died on November 25, 2023. The Probate Court denied the motion to dismiss the action for elective share, and Morris appealed. (R. pp. 2-6)

The value of the elective share claim has not yet been determined in this matter.

The Circuit Court reversed the Probate Court by order entered June 12, 2025, finding that the specific statutory language of S.C. Code § 62-2-203 controlled the general grants of authority contained in S.C. Code §§ 62-5-305 and 62-5-422. (R. pp. 7-10) Ligato filed a motion to reconsider which was denied by order entered September 29, 2025. (R. pp. 11-13) A notice of appeal served on counsel for Morris on October 29, 2025 and was filed October 30. This appeal followed.

STANDARD OF REVIEW

Matters of statutory interpretation are questions of law, and are therefore reviewed de novo. *Oulla v. Velazques*, 427 S.C. 428, 439, 831 S.E.2d 450, 456 (Ct. App. 2019). The trial court's findings of fact are not in dispute, and the trial court's decision and Circuit Court as an appellate court decided this matter on application of relevant law.

ARGUMENT

- I. The Circuit Court erred in deciding that the Probate Court's Order removing the right to bring actions in law or equity and vesting those rights in a guardian and conservator did not include the ability to assert elective share rights.

N. Y. M. was a protected person as defined by South Carolina Code Ann. § 62-5-101(19). The Probate Court, "shall exercise its authority to encourage maximum self-reliance and independence of the protected person and issue orders only to the extent necessitated by the protected person's mental and adaptive limitations." S.C. Code Ann. § 62-5-407. The Probate Court expressly removed the right to bring or defend actions in law and equity, and determined that, "except as otherwise qualified or limited by court order, a conservator... may act without court approval to: (17) prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties." (R. pp. 15-16)

The right of elective share is a statutory right, governed by South Carolina Code Ann. § 62-2-203, which provides that the right may be exercised in the case of a protected person, "only by order of the court in which protective proceedings as to his property are pending." S.C. Code Ann. § 62-2-203.

The Circuit Court erred in finding that Ligato as guardian and conservator did not have authority pursuant to South Carolina Code Ann. § 62-5-304A (B)(11) and § 62-5-422(A)(17) to prosecute an elective share claim, notwithstanding the right to “prosecute or defend actions, claims, or proceedings in any jurisdiction for the protection of estate assets and of the conservator in the performance of his duties.” The Court’s err was based upon that these powers are general in nature, and that the exercise of elective share as set forth in South Carolina Code § 62-2-203 is specific in nature, therefore the specific statute must control. “Generally, when a general statute and a specific statute conflict, the specific statute prevails.”, however “[s]tatutes in apparent conflict should be construed, if possible to allow both to stand and give effect to each.” *James v. S.C. Dep’t of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) (internal citations omitted). Circuit Court found conflict between the statutory requirement that elective share actions brought by conservators only by court order and the general powers that Probate Courts may grant to conservators, including the right to bring and defend lawsuits of the protected person. The Circuit Court erred in not seeing harmony as the Probate Court found. (R. pp. 5-6) “[S]tatutes touching upon the same subject matter must be read in harmony to give effect to each whenever possible.” *Seels v. Smalls*, 437 S.C. 167, 176–77, 877 S.E.2d 351, 356 (2022). In this case, South Carolina Code §§ 62-2-203, 62-5-405, 62-5-407, and 62-5-422 should be read to be in harmony. Reading these statutes in harmony causes the Probate Court to consider if a protected person could maintain legal actions themselves rather than through a guardian or conservator, allow a guardian or conservator in a situation that a protected person retains rights to bring actions for themselves to seek court approval to bring an action for this person with diminished capacity, and alternatively for the Probate Court to find that a protected person does not retain rights to bring actions in their own name, and to vest those rights in a guardian or conservator as the Probate

Court did in this case. Reading the statutes in this way protects persons with diminished capacity while allowing those persons, “maximum self-reliance and independence.” S.C. Code Ann. §62-5-407(A). Not every guardianship nor conservatorship necessitates the removal of the rights of a protected person to bring their own lawsuits. The statutory scheme also does not leave guardians and conservators of protected persons who retain rights to bring their own lawsuits with no recourse when a protected person declines to bring an elective share claim, as such person can seek a protective arraignment pursuant South Carolina Code § 62-5-405.

The Circuit Court erred in finding that S.C. Code §§ 62-5-304A and 62-5-422 empowering guardians and conservators to exercise elective share rights would render S.C. Code § 62-2-203 a nullity, (R. p. 8, line 22 – p. 9, line 2); because “[t]o the extent rights are not removed, they are retained by the ward.” S.C. Code Ann. § 62-5-304A(A). Likewise in conservatorships, “[t]he court shall set forth the rights and powers removed from the protected person. To the extent that rights are not removed, they are retained by the protected person.” S.C. Code § 62-5-407(B). Narrowly reading S.C. Code § 62-2-203 as the Circuit Court did should also limit the restrictions to conservators as a protected person is, “an individual for whom a conservator has been appointed.” S.C. Code Ann. § 62-5-101(19). Distinctly, a ward is, “an adult for whom a guardianship has been appointed.” S.C. Code Ann. § 62-5-101(24). South Carolina Code § 62-2-203 places no limitations on a guardian acting on behalf of a ward.

CONCLUSION

Ligato respectfully requests this Court to reverse the Circuit Court and reinstate the decision of the trial court.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211(b), SCACR.

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