THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
William C. McMaster III, Circuit Judge

App. Case No. 2025-001474

Craig Hanna,..…….……..…...Appellant,

v.

Bradley J. Hanna and Wilkie Development, LLC,..……..……. Respondents.

FINAL BRIEF OF RESPONDENT BRADLEY J. HANNA

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I. Did the trial commit reversible error by granting Respondents' motions to dismiss and for judgment on the pleadings?

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STATEMENT OF THE CASE

This is an appeal by Appellant Craig Hanna ("Hanna") of orders that granted Respondent Bradley J. Hanna ("Bradley")'s motion to dismiss Craig's complaint and granted Respondent Wilkie Development, LLC ("Wilkie Development")'s motion for judgment on the pleadings. (R. pp. 9-18.) The Honorable William C. McMaster, III, determined Craig, who held no representative capacity with regard to his mother, Georgia Hanna ("Georgia"), at any time during the pendency of the suit, lacked standing to bring this action, which concerned a deed of Georgia's property executed by Bradley at the time Bradley was serving as Georgia's conservator. (R. pp. 9-18, 24-26, 95.) Judge McMaster rejected Craig's arguments that he had standing arising out of his status as a former guardian for Georgia or arising from his potential or likely inheritance from Georgia in the future, after her death. (R. pp. 9-18.) Judge McMaster noted that Craig had no interest in the deeded property nor the proceeds of its sale. (R. p. 15.)

At one time, Craig served as Georgia's probate court-appointed guardian, and Bradley served as her appointed conservator. (R. pp. 9-18, 95, 99.) While Bradley served as Georgia's conservator, he sold and deeded Georgia's interest in some real estate she commonly owned with others. (R. pp. 24, 36-44.) All owners of the real estate sold their interests to Wilkie Development. (R. pp. 36-44.) Craig was not an owner of any interest in that property and did not allege or argue that he was. (R. pp. 24-26, 36-44, 58-81.) Bradley did not obtain prior probate court approval for the sale, which was required under the terms of the order appointing him as conservator. (R. pp. 24, 27-35.) Bradley advised the court that Georgia's portion of the sales proceeds was placed and is in an interest-bearing account owned by her. (R. p. 64 ln. 20-22.) Craig did not contend or allege otherwise. (R. pp. 24-26, 58-81.)

Some time after the sale to Wilkie Development occurred, Craig and Bradley were both removed from their respective positions as guardian and conservator by probate court order. (R. pp. 24-26, 99.) Later, Craig brought the subject lawsuit in the court of common pleas, claiming that Bradley was liable for breach of fiduciary duty and constructive fraud and seeking a declaration that the deed was fraudulent and should be set aside. (R. pp. 24-26.) The complaint sought both relief in favor of Georgia, who was not a party to the suit, and in favor of Craig. (R. pp. 24-26.)

Bradley answered and counterclaimed, and Wilkie Development answered. (R. pp. 45-54.) Bradley also moved for dismissal of the complaint, and Wilkie Development moved for judgment on the pleadings. (R. pp. 82-87.)

As the hearing on the motions approached, Craig filed a brief in opposition to the motions, in which Craig acknowledged that he had been removed as Georgia's guardian. (R. p. 95.) Craig also filed a motion to stay the suit pending the appointment of guardian or conservator for Georgia. (R. pp. 99-100.)

At the hearing on the motions, Bradley and Wilkie Development both argued that Craig lacked standing to bring the claims in his suit, noting that Craig owned no interest in the property sold and that his potential to inherit from Georgia in the future did not invest him with standing. (R. pp. 58-81.) Bradley argued that a stay was not needed or practical, stating that, "[i]f and when a guardian is ever appointed, and that guardian believes that misconduct is taking place, that guardian can file an action, a new one." (R. p. 66 ln. 17-19.)

Craig argued that he has standing because Craig was Georgia's guardian at the time of the deed to Wilkie Development, he was not notified of the sale of the property, Georgia's

estate "was diminished greatly" by the sale, and Craig stands to inherit from Georgia. (R. p. 70 ln. 6-11 & ln. 19-20, p. 71 ln. 12-14 & ln. 21-25, p. 72 ln. 1-2.)

Judge McMaster first issued Form 4 orders granting Bradley and Wilkie Development's motions. (R. pp. 3-8.) Craig made a motion to reconsider following the entry of the Form 4 orders. (R. pp. 101-07.) The next day, Judge McMaster filed formal orders granting the motion to dismiss and motion for judgment on the pleadings. (R. pp. 9-18.) Both orders concluded that Craig lacks standing to bring the claims he asserted in the suit. (R. pp. 9-18.) Judge McMaster later denied Craig's motion to reconsider. (R. pp. 19-21.)

This appeal followed.

STANDARD OF REVIEW

> When reviewing a dismissal under Rule 12(b)(6), SCRCP, [the appellate court] appl[ies] "the same standard of review as the trial court." Patterson v. Witter, 425 S.C. 213, 225, 821 S.E.2d 677, 684 (2018) (quoting Doe v. Marion, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007)). "The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief." Id. (quoting Marion, 373 S.C. at 395, 645 S.E.2d at 247–48).

Thompson v. Killian, 447 S.C. 177, 185-86, 924 S.E.2d 606, 610 (2025).

The standard of whether a motion for judgment on the pleadings should be granted is the same as for a motion under Rule 12(b)(6), SCRCP, and the appellate court applies the same standard to the review of an order granting such a motion. See Sapp v. Ford Motor Co., 386 S.C. 143, 687 S.E.2d 47, 49 (2009); Russell v. City of Columbia, 305 S.C. 86, 406 S.E.2d 338 (1991); Rosenthal v. Unarco Indus., Inc., 278 S.C. 420, 422, 297 S.E.2d 639 (1982); Wooten v. Standard Life & Cas. Ins. Co., 239 S.C. 243, 247-49, 122 S.E.2d 637 (1961); Falk v. Sadler, 341 S.C. 281, 533 S.E.2d 350 (Ct. App. 2000); Fireman's Ins. Co. v. Cincinnati Ins. Co., 302 S.C. 234, 394 S.E.2d 855 (Ct. App. 1990).

ARGUMENT

I. Craig has no standing to prosecute the claims brought in his suit.

The trial court was correct to determine that Craig was without standing to bring the suit. No property or right of Craig's was at issue in the suit, and he could not have sustained an injury as a result of the conduct alleged. As Bradley noted below, Craig "attempts to confuse the issue of not having the sale approved[] with his legal ability to bring this litigation." (R. p. 108.) Craig neither alleged nor otherwise contended anything in this case that would constitute an actual injury *to him*. (R. pp. 24-26.)

South Carolina courts use the same standing analysis as that used by the Supreme Court of the United States, which has the following requirements:

> (1) the plaintiff must suffer an "injury in fact" that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

Beaufort Realty Co., Inc. v. Beaufort Cnty., 348 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001) (citing Lujan v. Defenders of Wildlife, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992)).

Craig now cites S.C. Code Ann. § 62-2-606, though it is unclear from his brief whether he contends that statute vests him with standing. (Brief of Appellant p. 7.) That statute does not apply to the instant situation and does not confer standing on Craig. The statutory section does not speak of giving anyone the right to bring suit, but, moreover, the record is devoid of anything that would indicate the section would apply here at all. Under S.C. Code Ann. § 62-2-606, if "specifically devised property is sold or mortgaged by a conservator . . . the specific devisee has the right to a general pecuniary devise equal to the net sale price[.]" Id.

Not all devises are specific devises. "A specific devise differs from a general devise in that it is not intended by the testator to be paid out of the estate generally, but *is to be paid solely by delivering to the devisee that specific article given by the will.*" Polson v. Craig, 351 S.C. 433, 439, 570 S.E.2d 190 (Ct. App. 2002) (quoting In re Estate of Wales, 223 Mont. 515, 727 P.2d 536, 537 (1986) (emphasis added by Court of Appeals)). Craig did not allege that he is a specific devisee of the subject real estate under any will executed by Georgia, who has, in any event, not died. (R. pp. 24-26.) Nothing in the record indicates that there is a will that contains such a specific devise. The provisions of S.C. Code Ann. § 62-2-606 are not applicable here.

Craig argues that Bradley had a duty to get court approval for the sale and to account for the proceeds of it. (Brief of Appellant p. 7.) To whom, though, would such a duty run? Not to Craig. Craig certainly cites no authority to the effect that those duties run to him. By failing to cite any such authority, Craig has abandoned any argument that they do. Whitehurst v. Town of Sullivan's Island, 446 S.C. 137, 157-58, 919 S.E.2d 402, 413 (2025); First Sav. Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994). Further, the only logical interpretation of the law concerning a conservator's duties is that, unless otherwise specified, the conservator's duties run to his ward, not to his ward's child. See S.C. Code Ann. § 62-5-414 (general duties of conservator).

Craig next contends that, since he meets the definition of "interested person" under the Probate Code's general definition of that term, he has standing to pursue the subject claims. S.C. Code Ann. § 62-1-201(23). Craig cites no authority for the proposition that this definitional statutory section confers standing on someone in Craig's position or that this definition in any other way alters the law of standing. Whitehurst, 446 S.C. at 157-58; First

Sav. Bank, 314 S.C. at 363. There is no logical reason to think it does. Craig is Georgia's child, but he is not her heir; since she is alive, she has no heirs yet. S.C. Code Ann. § 62-1-201(20) ("'Heirs' means those persons, including the surviving spouse, who *are entitled* under the statute of intestate succession to the property *of a decedent*" (emphasis added)). The general Probate Code definition of "'[i]nterested person' includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim *against a trust estate or the estate of a decedent, ward, or protected person* which may be affected by the proceeding." S.C. Code Ann. § 62-1-201(23) (emphasis added). There is no trust involved here. (R. pp. 24-26.) Georgia is alive, is not anyone's ward, and is not a "protected person[,]" since she has neither a guardian nor a conservator. (R. pp. 24-26, p. 66 ln. 7-12, p. 75 ln. 11-14.) Just as with his argument about S.C. Code Ann. § 62-2-606, Craig's argument about this definitional statute misses that the statute does not purport to change the law about standing and also misses that it simply does not apply to the instant situation. S.C. Code Ann. § 62-1-201(23).

Craig contends that he has standing because he is Georgia's former guardian and guardians are fiduciaries. (Brief of Appellant p. 8.). Craig cites no authority for the proposition that the fiduciary relation continues after the guardian's appointment ends, and he gives neither authority nor explanation for how, if such a duty does continue, that would mean he has standing to sue for an injury to his former ward. Whitehurst, 446 S.C. at 157-58; First Sav. Bank, 314 S.C. at 363.

Citing Weeks v. Drawdy, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997), Craig argues that the court there recognized that a person "with a direct and legitimate interest in an estate may maintain an action to protect its assets" and that he is such a person because he "remains

a beneficiary and heir upon Ms. Hanna's death whose interests are directly impacted by the unauthorized sale." (Brief of Appellant p. 8.) As Judge McMaster noted, we cannot now know whether Craig will be a person who has the right to inherit anything from Georgia at her death. (R. pp. 9-18.) In Weeks, differently from the instant case, there was a decedent and a decedent's estate; Mrs. Weeks had died. 329 S.C. at 256. Craig cannot have a direct and legitimate interest in an estate that does not exist.

Craig contends that he has standing because Bradley violated duties to him as Georgia's heir. (Brief of Appellant p. 9.) As discussed above, Georgia does not have any heirs right now, as she is alive. He cites the cases of Witherspoon v. Stogner, 182 S.C. 413, 189 S.E. 758 (1937), and Turpin v. Lowther, 404 S.C. 581, 745 S.E.2d 397 (Ct. App. 2013), for the proposition that a fiduciary relationship exists between the administrator of an estate and each heir or beneficiary. Both cases deal with estates of decedents. As discussed above, there is no estate; Georgia is not dead. Who will be heirs or other beneficiaries of Georgia's decedent estate, once that estate comes into being with her death, is not known.

Craig also cites statutes that he says set forth the duties of a conservator, but he makes no argument that any of those statutes provide for a duty to someone in his position, rather than to the conservator's ward. (Brief of Appellant p. 9.)

What Craig has about whether what he ultimately inherits from Georgia will be diminished by the sale to Wilkie Development is not an actual injury; it is prospective concern, concern that, in the future, things may not go as well for him as he hopes. See Beaufort Realty, 348 S.C. at 303. "Prospective concern falls far short of the standard of 'concrete and particularized and . . . actual or imminent' harm" required for standing. Id. (quoting Lujan, 504 U.S. at 560).

Even if he does not realize it, Craig has told us in his brief that he has no stake in the case. Craig writes that "he seeks to remedy the unauthorized depletion of his mother's estate for a transaction that occurred during his tenure as Guardian, but also to preserve its plan and restore compliance with the Probate Court's directives." (Brief of Appellant p. 9.) That, too, falls far short of the standard of 'concrete and particularized and . . . actual or imminent' harm" Craig would have to sustain to meet an element of standing. Beaufort Realty, 348 S.C. at 303 (quoting Lujan, 504 U.S. at 560). Craig seeks to remedy something he sees as an injury, but the ostensible injury is to *someone else*.

Craig has not suffered an injury in fact. Id. at 301. He lacks standing, and the trial court made no reversible error in dismissing his complaint. Id.

II. No law supports Craig's argument that the trial court should have stayed the suit pending the appointment of a guardian for Georgia, and such a stay would be impractical in any event.

Craig contends "the Circuit Court was obligated to address Craig Hanna's motion to stay before dismissal" and argues that, if he lacked standing, "the appropriate remedy was not dismissal, but instead a temporary stay of proceedings pending the appointment of a successor guardian or conservator." (Brief of Appellant p. 10.) Craig cites no authority for these propositions, which are abandoned. Whitehurst, 446 S.C. at 157-58; First Sav. Bank, 314 S.C. at 363.

As with his other arguments that are unsupported by authority, these do not hold up to logical scrutiny. The more sound approach was the one the trial court took and Bradley advocated below: "[i]f and when a guardian is ever appointed, and that guardian believes that misconduct is taking place, that guardian can file an action, a new one." (R. p. 66 ln. 17-19.)

Otherwise, this suit might hang in limbo forever, as no one indicated that such an appointment was anything close to imminent or even expected.

Craig argues that the trial court's failure to act on the motion to stay violates statutory guardianship procedure, though he cites no authority for this argument. (Brief of Appellant p. 10.) It is abandoned. Whitehurst, 446 S.C. at 157-58; First Sav. Bank, 314 S.C. at 363. Further, Bradley knows of no way in which any such violation occurred here. In addition, these were not guardianship proceedings; this was a circuit court action brought seeking damages and injunctive relief. (R. pp. ___; complaint.)

Craig argues that the circuit court's failure to rule on (and, by implication, to grant) the motion to stay violated constitutional due process because "courts must ensure parties receive a meaningful opportunity to be heard before issuing orders that affect property or fiduciary rights." (Brief of Appellant p. 10.) Craig had a meaningful opportunity to be heard. See Moore v. Moore, 376 S.C. 467, 472, 657 S.E.2d 743, 746 (2008) (procedural due process requirements, including an opportunity to be heard). A hearing was held in which Craig got to argue against the motions to dismiss and for judgment on the pleadings. (R. pp. 58-81.) The requirements of due process were met. See id.

Neither legal authority nor logical persuasion backs up Craig's arguments. The trial court did not commit reversible error by not ruling on Craig's stay motion. Craig was not entitled to prevail on it, anyway.

III. Craig makes some arguments now that never raised to the trial court and are unpreserved.

Craig makes at least two arguments for the first time to this court: 1) the argument that a statute concerning specific devises and property sales by conservators vests him with standing and 2) his argument that the trial court committed a due process violation.

To be preserved for appellate review, an argument must have been both raised to and ruled upon by the trial court. E.g., Wilder Corp. v. Wilke, 330 S.C. 71, 497 S.E.2d 731 (1998). "Where a matter is not ruled on by the circuit court, the issue is not preserved for appellate review unless the complaining party moves to amend the judgment pursuant to Rule 59(e)." Vespazziani v. McAlister, 307 S.C. 411, 413, 415 S.E.2d 427, 428 (Ct. App. 1992).

A party's unpreserved arguments cannot prevail on appeal. E.g., Hatfield v. Hatfield, 327 S.C. 360, 367, 489 S.E.2d 212, 216 (Ct. App. 1997). Craig's arguments, but, as what may be a more important threshold matter, at least these two arguments are not preserved for review. Wilder Corp., 330 S.C. 71; Vespazziani, 307 S.C. at 413.

CONCLUSION

Craig brought this suit seeking redress of alleged injuries that were not injuries to him. He lacked standing to do so. Beaufort Realty, 348 S.C. at 301. The trial court committed no error, and certainly no reversible error, in granting the motions to dismiss and for judgment on the pleadings.

Respectfully submitted,

/s/ Andrew S. Radeker

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