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Apr 16 2026

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

JIRAIR BAGHDASSARIAN,
Appellant,

v.

JUDY TUPOLO, as Power of Attorney,
Respondent.

Appellate Case No. 2022-001785

PETITION FOR REHEARING

(Rule 221, SCACR)

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA COURT OF APPEALS:

Appellant respectfully petitions this Court for rehearing pursuant to Rule 221, SCACR.

Rehearing is warranted because the Court overlooked and misapprehended material facts and controlling law in several dispositive respects. This Petition does not seek to reargue the case, but to correct specific errors that materially affected the Court's decision.

Each of these errors independently warrants rehearing, and collectively they demonstrate that the Court's decision rests on multiple misapprehensions of the record.

Specifically, the Court:

1. Erroneously held that the Guardian ad Litem (GAL) fee issue was unpreserved despite record evidence to the contrary;
2. Misapplied mootness despite the existence of a live financial controversy;
3. Failed to address recognized exceptions to mootness;
4. Misapprehended the record regarding Appellant's request for compensation;
5. Overlooked material inconsistencies regarding capacity;
6. Misapprehended the record regarding standing; and
7. Failed to consider the principal's own expressed wishes contained in the record.

I. THE COURT MISAPPREHENDED THE RECORD REGARDING PRESERVATION OF THE GAL FEE ISSUE

The Court held that the GAL fee issue was not preserved.

The record demonstrates otherwise.

The GAL fee was:

- Imposed in the final Order of Dismissal:

“The Guardian ad Litem fee shall be split evenly...” (R. pp. 243–245)

- Challenged in a timely post-trial motion accepted by the circuit court as compliant with Rules 59 and 60; and

- Expressly ruled upon in the December 21, 2022 Order:

“The Court previously ordered that the named parties split the GAL bill evenly and this remains the order of the Court.” (R. pp. 246–247)

Because the issue was imposed in the final order, raised in a timely post-trial motion, and expressly ruled upon, it was preserved as a matter of law.

The Court’s conclusion to the contrary is a misapprehension of the record.

II. THE COURT MISAPPLIED MOOTNESS BECAUSE A LIVE CONTROVERSY REMAINS

The Court held that the remaining issues are moot because Mr. Adair is deceased.

However, the Court overlooked that the order requiring Appellant to pay \$1,335 in GAL fees remains a live controversy.

This financial obligation:

- Continues to bind Appellant;
- Is directly subject to appellate review;
- Can be reversed or modified by this Court.

A case is not moot where a court can grant effectual relief, including reversal of a financial obligation imposed by the lower court.

Because meaningful relief remains available, the case is not moot.

The Court therefore misapprehended the record in concluding that no practical relief could be granted.

III. THE COURT FAILED TO ADDRESS EXCEPTIONS TO MOOTNESS

Even if certain aspects of the case were considered moot, the Court overlooked recognized exceptions.

This case falls within the exception for issues:

- Capable of repetition yet evading review; and
- Of significant public importance.

Disputes involving elderly principals and powers of attorney frequently evade appellate review due to the principal's death before resolution.

If such cases are consistently dismissed as moot, important legal questions regarding standing, revocation, and judicial oversight of POA authority will never be addressed.

The Court's opinion fails to address these recognized exceptions, constituting a misapplication of controlling mootness principles.

IV. THE COURT MISAPPREHENDED THE RECORD REGARDING APPELLANT'S REQUEST FOR COMPENSATION

The Court held that Appellant's request for compensation was not preserved because it was raised for the first time in a Rule 59(e) motion.

This conclusion overlooks the record.

Appellant raised the issue of compensation for his time, effort, and financial expenditures in multiple pre-judgment filings, including:

- Plaintiff's Memorandum (July 29, 2022, R. pp. 185–187);
- Affidavit of J. Baghdassarian (Nov. 1, 2022, R. pp. 213–227);
- Statement of J. Baghdassarian (Nov. 1, 2022, R. pp. 90–94, 228–232).

Because the issue was presented to the circuit court prior to judgment, the Court's conclusion that it was raised for the first time in a Rule 59(e) motion is inconsistent with the record and constitutes a misapprehension of fact.

V. THE COURT OVERLOOKED MATERIAL INCONSISTENCIES REGARDING CAPACITY

The circuit court found:

“There is evidence to suggest that Mr. Adair may be incapacitated, however the proper medical evaluations have not been performed...” (R. pp. 243–245)

Despite this, the court:

- Refused to recognize Mr. Adair’s revocation of the power of attorney;
- Did not order any medical evaluation;
- Declined to permit Mr. Adair to testify;
- Relied on non-medical impressions.

The Guardian ad Litem acknowledged:

“I am not a medical doctor...” (R. pp. 203–206)

Appellant requested that the court permit evaluation of capacity, including through independent examination or voir dire-type inquiry.

Despite capacity being central, no evaluation or examination was permitted.

The circuit court further indicated that any additional relief should be pursued through conservatorship or guardianship proceedings in probate court. However, those proceedings are generally designed to determine whether a person lacks capacity and requires substitution of decision-making authority.

Here, the principal was presumptively competent, and Appellant’s position—supported by recordings and testimony—was that the principal retained sufficient capacity to revoke the power of attorney.

By directing Appellant to pursue a proceeding premised on establishing incapacity, while simultaneously relying on unproven concerns about capacity to reject the principal’s revocation and declining to permit evaluation within this proceeding, the court failed to apply the presumption of capacity and created a procedural inconsistency that prevented meaningful adjudication of the issue.

A court may not rely on unresolved doubts about capacity to defeat a principal’s actions while declining to provide a procedurally appropriate means to resolve those doubts.

Resolving capacity without medical evaluation while rejecting revocation constitutes a fundamental procedural inconsistency and material error of law.

The issues presented also implicate fundamental constitutional protections. An individual retains a liberty interest in autonomy and decision-making, which may not be curtailed without due process of law. Here, the principal's autonomy was effectively restricted without a meaningful opportunity to be heard and without competent evidence establishing incapacity, reinforcing the procedural deficiency.

VI. THE COURT MISAPPREHENDED THE RECORD AND STATUTORY FRAMEWORK REGARDING STANDING

The circuit court characterized Appellant as “just an acquaintance.”

However, the record reflects that Mr. Adair expressly requested Appellant's assistance and indicated a desire that Appellant assume a representative role.

For example:

“Don Adair says that he does not want her...” (Tr. 10/25/22, R. pp. 321–328)

Additionally, Appellant submitted recordings and statements demonstrating that Mr. Adair requested Appellant's help and was willing to appoint Appellant as his representative.

This evidence places Appellant within the category of:

“a person asked to accept the power of attorney” under S.C. Code § 62-8-116(a)(9).

The Court did not address this evidence.

Furthermore, the Court treated this matter as governed exclusively by the Uniform Power of Attorney Act, while overlooking that many issues involved health care decision-making, revocation, and personal autonomy.

The statutory framework governing health care powers of attorney reflects broader protective principles that are not constrained by the same restrictive standing analysis applied to financial POA disputes.

Additionally, the Court did not meaningfully address the principal's own standing and right to participate in proceedings directly affecting his autonomy and representation. Although the case centered on Mr. Adair's rights, he was not permitted to testify, and his position was considered only indirectly through others. This omission further underscores the procedural deficiencies in the case.

VII. THE COURT OVERLOOKED THAT THE PRINCIPAL'S OWN EXPRESSED WISHES WERE IN THE RECORD

The record contains evidence of Mr. Adair's own expressed wishes, including recorded statements in which he:

- Communicated coherently;
- Expressed a desire to revoke Respondent's authority;
- Requested assistance from Appellant.

These recordings were referenced in affidavits, testimony, and filings.

Despite this direct evidence, the circuit court:

- Did not permit Mr. Adair to testify;
- Did not conduct any formal evaluation of his capacity;
- Declined to give effect to his expressed revocation.

Instead, the court relied on second-hand and non-medical impressions.

This omission is particularly significant where the principal's own statements were among the most direct evidence before the court.

The failure to consider these statements—while denying any meaningful method to evaluate or hear from the principal—constitutes a denial of meaningful consideration of critical evidence and reflects a material oversight of both fact and procedure.

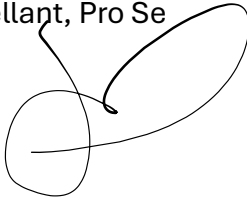
PRAYER FOR RELIEF

WHEREFORE, Appellant respectfully requests that this Court:

1. Grant this Petition for Rehearing;
2. Correct the identified misapprehensions of fact and law;
3. Reconsider its application of mootness;
4. Address the identified procedural and statutory errors; and
5. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

Jirair Baghdassarian
Appellant, Pro Se

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Dated: __April 15, 2026_____

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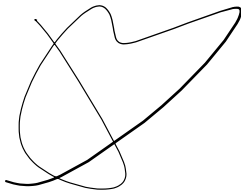
CERTIFICATE OF SERVICE

I certify that a copy of this Petition has been served upon counsel for Respondent by U.S.
Mail, first-class postage prepaid:

W. Trey Merck, Esquire
119 S. Main Street, Suite B
Six Mile, SC 29682

Dated: __April 16, 2027__

Jirair Baghdassarian

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