

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)
Jirair Baghdassarian,)
Plaintiff,)
vs.)
Judy Tupolo as Power of Attorney,)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A No.: 2022-CP-37-00157

ORDER OF DISMISSAL

RECEIVED

DEC 19 2022

SC Court of Appeals

This action was initially filed by the Plaintiff in Probate Court in an attempt to remove the Defendant as Power of Attorney for Donnie Wayne Adair. The case was then removed to the Court of Common Pleas and motion was made by Plaintiff for a Temporary Restraining Order against the Defendant restraining her from carrying out her duties as agent for Donnie Wayne Adair. The initial Motion Hearing was held before me as a virtual hearing on July 11, 2022. Present was Plaintiff and W. Trey Merck, attorney for Defendant.

After the hearing, I took the matter under advisement and decided to appoint a *Guardian ad Litem* in the matter, therefore by Order of August 1, 2022, I appointed TJay Bagwell, Esquire, as *Guardian ad Litem*. Mr. Bagwell looked into the matter and reported his findings in a Report filed on September 20, 2022. Another hearing was scheduled and held virtually on October 25, 2022 at 11:30am. Present was Plaintiff and W. Trey Merck, attorney for Defendant, along with TJ Bagwell, Esquire, as *Guardian ad*

Litem. The Court heard from Mr. Bagwell and also heard from the parties. The Court took the matter under advisement.

After hearing arguments of Plaintiff and Defendant's counsel and considering the evidence in the case, I make the following Findings of Fact and Conclusions of Law:

Judy Tupolo has served as the agent for Donnie Way Adair involving the financial, legal and health care decisions related to the principal through a Durable Power of Attorney and a Durable Health Care Power of Attorney. Both of these documents were executed on July 27, 2020, and the Durable Power of Attorney was recorded. It appears that Mr. Adair has been well-taken care of by Judy Tupolo. There is evidence to suggest that Mr. Adair may be incapacitated, however the proper medical evaluations have not been performed, and a petition for conservatorship and/or guardianship have not been filed. There is enough question about Mr. Adair's capacity that his alleged verbal revocation of the Powers of Attorney cannot be accepted at this time. Plaintiff's formal allegations are vague and not credible. The financial allegations do not involve the personal funds of Mr. Adair, therefore this issue is not properly before the Court or involved in the Petition filed by Plaintiff.

This action is strictly governed by the South Carolina Uniform Power of Attorney Act as set out in *S.C. Code of Laws Ann. § 62-8-101, et seq.* As such, Plaintiff must prove that he has standing to bring an action under this Act by showing that he belongs to one of the classifications set out therein. Plaintiff is just an acquaintance of Mr. Adair who is not in a position to care for Mr. Adair or manage his assets, and he has failed to make such proof that he fits one of the classifications of the Act. Mr. Merck made motion

at the July 11, 2022 to dismiss the Petition of Plaintiff, and it appears that this relief is proper. Further, the Court notes that a fee affidavit totaling \$2,670 was submitted by Mr. Bagwell for his work as *Guardian ad Litem*.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

Defendant's motion to dismiss the Petition is granted, therefore this action is dismissed, with prejudice. The *Guardian ad Litem* fee shall be split evenly between the parties, requiring each side to remit \$1,335 to Mr. Bagwell.

IT IS SO ORDERED.

R. Scott Sprouse
Circuit Court Judge

Walhalla, South Carolina
November ____, 2022



Oconee Common Pleas

Case Caption: Jirair Baghdassarian VS Judy Tupolo as Power of Attorney ,
defendant, et al
Case Number: 2022CP3700157
Type: Order/Dismissal

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit